



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Business of Seanad	639
Order of Business	640
Medical Practitioners (Amendment) Bill 2013: First Stage	652
An Bille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a chur le Seanad Éireann) 2013: An Tuarascáil (Atógáil).	653
Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013: Report Stage (Resumed)	653
An Bille um Dara Leasú is Tríocha ar an mBunreacht (Deireadh a chur le Seanad Éireann) 2013: An Cúigiú Céim.	699
Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013: Fifth Stage	699
Ráiteas mar Fhaisnéis do Vótálaithe i ndáil leis an mBille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a Chur le Seanad Éireann) 2013: Tairiscint	711
Statement for the Information of Voters in relation to the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013: Motion	711
Construction Contracts Bill 2010: [Seanad Bill amended by the Dáil] Report and Final Stages	713
Protection of Life During Pregnancy Bill 2013: Report Stage (Resumed) and Final Stage.	725
Adjournment Matters.	767
National Asthma Programme	767
Internet Pornography	770
Appointment of Ombudsman	772
Copyright Infringement.	774

SEANAD ÉIREANN

Dé Máirt, 23 Iúil 2013

Tuesday, 23 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 Averil Power that, on the motion for the Adjournment of the House today, she proposes to raise the following matter:

The need for the Minister for Health to commit to implementing the first phase of the national asthma programme in 2014, as proposed by the Asthma Society of Ireland, to include the national asthma programme in the new GP contracts and the 2014 HSE service plan; and the need for a budget to be allocated for the recruitment of 17 clinical nurse specialists to support the roll-out of the programme in 2014.

I have also received notice from Senator Deirdre Clune of the following matter:

The need for the Minister for Justice and Equality to ensure Internet companies introduce facilities to block pornographic and child abuse images.

I have also received notice from Senator Paul Bradford of the following matter:

The need for the Minister for Public Expenditure and Reform to outline the process to be followed in the appointment of a suitable candidate to succeed Ms Emily O'Reilly as Ombudsman following Ms O'Reilly's election as European Ombudsman.

I have also received notice from Senator Kathryn Reilly of the following matter:

The need for the Minister of State with responsibility for research and innovation to discuss the implications, in terms of censorship, of the High Court ruling causing *The Pirate Bay* to be blocked and the safeguards, if any, in place to ensure other websites are protected from action by big businesses, given the benefits for society of a free and open Internet.

I have also received notice from Senator Mary Moran of the following matter:

The need for the Minister for Health to address the funding issues at St. Mary's, Drumcar, County Louth, resulting in the recent announcement of the closure of catering facilities for those with an intellectual disability in day services.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment. I

have selected the matters raised by Senators Averil Power, Deirdre Clune, Paul Bradford and Kathryn Reilly and they will be taken at the conclusion of business. Senator Mary Moran may give notice on another day of the matter she wishes to raise.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013 - Report Stage (resumed), to be taken at the conclusion of the Order of Business and conclude not later than 4 p.m.; No. 2, motion re statement for information of voters with regard to the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013, to be taken without debate at the conclusion of No. 1; No.3, Construction Contracts Bill 2010 [*Seanad Bill amended by the Dáil*] - Report Stage, to be taken at 4.30 p.m. and conclude not later than 5.30 p.m.; and No. 4, Protection of Life During Pregnancy Bill 2013 - Report Stage (resumed), to be taken at 5.30 p.m. and conclude not later than 8 p.m.

Senator Marc MacSharry: I realise time is short but, in the context of the new session, I call for a series of early debates as the budget preparations are under way. Reports of horse trading have made it into the public domain. Fine Gael is happy to cut child benefit and the Labour Minister, Deputy Burton, is reluctant to do so. On this occasion we might consider adding to the burden of those best placed to take it, those on incomes over €100,000. There were Labour, Sinn Féin and Fianna Fáil proposals to do that in last year's budget preparations rather than hitting the most vulnerable, such as those with a disability or in receipt of mobility grants or child care payments, which are needed for regular life payments. With households feeling the pinch, people are spending up to €67 less per week on groceries for their homes. We must make sure that, in preparing the budget, those best placed to meet the burden are those we ask to do so. Child benefit is not the correct place to start.

I welcome that Permanent TSB is making offers to people on split mortgages. It is many years since we started talking about this and calling for it to happen in a meaningful way. Some evidence indicates it is happening with Permanent TSB. However, the silence from the other four banks is deafening. Ulster Bank has loosely said it has met its target under the conditions set by the Central Bank. Making an offer to someone includes offering the assisted foreclosure of the house. As with other times, I do not trust the banks. They are packed with individuals who are family, friends and neighbours of us all but, collectively, the banks are only interested in the bottom line, not families of Ireland, which is the responsibility of these Houses.

The Seanad is in its second last day and has a packed schedule but early in the new session perhaps we can have a debate to review progress and see whether banks have engaged in a meaningful way as it appears Permanent TSB has set out to do. The silence of the four banks in the past number of days is deafening and is evidence of the superficiality with which they have engaged heretofore. I fear they will continue to engage with the people of Ireland in that way.

Senator Susan O'Keeffe: Every Senator shares Senator MacSharry's desire to have a debate on the budget and I am sure the Leader will endeavour to facilitate it as soon as we return. One of the problems with debating the budget is the flying of kites between Government parties. The matter of who is saying what to whom becomes tedious.

I welcome the prompt response of the Minister for Communications, Energy and Natural

23 July 2013

Resources,, Deputy Rabbitte, in respect of the matters raised about pornography on the Internet. It is good to hear him saying he welcomes the remarks made by the ISPC. We could have a debate about how the Internet has changed our lives, the lives of our children and the vulnerability of those children to things on the Internet.

It is interesting to observe that the Russians have invested thousands of dollars buying typewriters because they have realised the Internet is no longer a safe place to do secret business. They have gone back to the old ways of using typewriters and papers to ensure some level of secrecy is kept. Perhaps there is something in that for the rest of us.

I would like to take the opportunity to welcome the royal baby. It raises a matter discussed here recently, paternity leave. In the modern age, it is important paternity leave is something we discuss again and that we insist on. Under the modern monarchy in the UK, Prince William will have paternity leave from the RAF to spend time with his wife and their son. I am sure we all wish them well.

I welcome Senator Hildegard Naughton. Most Senators did that yesterday and I personally extend my warm wishes to her. The rules of this classroom are rather different from the ones she is familiar with. She may bring some of her rules and discipline to bear on this House and that would be welcome.

Senator Martin Conway: The rules are broken here. That is the only problem.

Senator David Norris: I propose an amendment to the Order of Business, “That No. 11 be taken before No. 1”. I join the congratulations given by the acting leader of the Labour Party in the House, Senator O’Keeffe, to Senator Mary Ann O’Brien on introducing the very important topic of the access of young children to extreme forms of pornography. However, I cannot congratulate the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte. I am glad Senator O’Keeffe mentioned it. Despite the fact that this measure originated in the House, in his lengthy discussion the Minister scrupulously avoided any mention of Seanad Éireann or Senator Mary Ann O’Brien.

Senator Fidelma Healy Eames: Hear, hear.

Senator David Norris: Is that not interesting? It is par for the course. I would love a debate on the budget and I would love to have the budget a few days before the referendum on the Senate. We all know it will be a stinker of a budget and the timing of this is very clearly done. There is a continuing usurpation of democratic forces. The schedule that this must be taken after we conclude the Bill, No. 2 on the Order Paper, purports to be an information service to the people of Ireland but is another example of the usurpation. It is a function of the referendum commission. How dare the Government stick its nose into it. It is grossly partisan and wrong.

I have compared what is going on here to Grattan’s Parliament and the way it was suborned. There was bribery and corruption and bullying. I have mentioned, and I believe it to be true, that jobs, promotion and preferment are on offer and that is one of the things that is corrupt in this House. The Government is up to its ears in it. Will the Leader have an investigation into the allegation of Senator Landy? For the first time, money has been specifically mentioned and financial inducements to travel to America. I do not know which side it was but it does not matter to me.

Senator Ned O’Sullivan: It was not this side.

Senator Terry Leyden: It was not us.

Senator David Norris: It is completely wrong. I see lots of smiling in the other side.

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

Senator David Norris: Yes, I have asked the question and I am supporting it. There has been a serious allegation of an attempt to bribe a Member of this House and I would like to know the truth of it. I would like to know the names of the people involved and I would like the investigation also-----

An Cathaoirleach: It is not relevant to the Order of Business.

Senator David Norris: -----to track the preferment, the jobs and other inducements offered to people. It is an exact replica of Grattan's Parliament. The corruption must be exposed and if it was the last thing the House did, it would be a service to the people of Ireland.

Senator Hildegarde Naughton: A Chathaoirligh, ba mhaith liom buíochas ar leith a ghlacadh leat agus le Baill an tSeanaid as ucht an fáilte chroíúil agus an dea-ghuí a tugadh dom. It is a great honour for me to be appointed to the House and I thank the Members for their good wishes and warm welcome. I look forward to working with them in a positive and constructive manner in the national interest and in the interest of the people of Galway West.

Senator Mark Daly: I ask the Leader to organise a debate on the Irish overseas and the diaspora. I spoke on this issue previously and Fianna Fáil has produced a policy paper on it. We seek the appointment of a Minister with responsibility for the Irish overseas and the diaspora. We have the largest diaspora in the world, ahead of India, Poland and Israel, yet we do not have anyone in government specifically in charge of this huge resource for the Irish people. The Irish overseas are immensely proud of their heritage, but we do not seem to be as immensely proud of them as they are of us. I am looking for an early debate on this issue and to see how we can engage in a constructive manner not only on issues of investment but on culture, education and a range of issues. We have 70 million people overseas and the nearly 3 million of those who hold Irish passports and live outside the State should be entitled to vote. We should address that issue also. Any republic that denies any citizen the right to vote cannot truly call itself a republic.

Senator Martin Conway: Following up on the point Senator Daly raised, there is good deal of merit in having a Minister of State with responsibility for the Irish overseas. I support the call for a debate not only on the Irish overseas but more specifically on the undocumented Irish in the United States and on what is happening in that respect. There are many positive developments but we have seen many false dawns. I would like the Tánaiste and Minister for Foreign Affairs and Trade to come into the House in early September to update the House on what is being done at Government level and formally and informally to assist our friends on Capitol Hill who are trying to get legislation over the line that will help the 50,000 of our citizens who are undocumented in the United States.

I also support the call by Senator MacSharry for a pre-budget debate. To be fair to the Leader, this House has been very active in having pre-budget debates in the past few years. As I have said previously, I would very much subscribe to a process whereby the Budget Statement would be a summing up of our full deliberations that would take place in Parliament in the months prior to the budget. Under the current process the budget is effectively the opening

23 July 2013

shot. If Parliament is to be properly reformed and to mean something radical, we would have a completely changed structure where all the various committees and interests, whether it be in the area of education, tourism, arts, culture, housing or the environment, would debate the worthwhile budget submissions we receive, recommendations would be made to the Minister on areas where effective cost savings and spending programmes would be initiated and the Minister would sum up that and that would be the end of the process, as opposed to the beginning of it. I appreciate that would constitute radical reform and it may not happen in the lifetime of this Government but we should debate it.

Senator Sean D. Barrett: I rise to congratulate Young Fine Gael in Kilkenny on its refusal to support the abolition of this House.

Senators: Hear, hear.

Senator Sean D. Barrett: They are an example to old Fine Gael, middle-aged Fine Gael and senile Fine Gael.

Senator Brian Ó Domhnaill: Phil Hogan's Fine Gael.

Senator Sean D. Barrett: It was done in the Minister, Phil Hogan's, home city at the Garret FitzGerald Summer School. Garret's spirit must have been there. I am sure he would be very proud of those young people.

An Cathaoirleach: I remind the Senator that we do not have any political broadcasts in the Chamber.

Senator Mark Daly: The Senator is not broadcasting on behalf of Fine Gael, rather he is broadcasting against it.

Senator Sean D. Barrett: I would like to echo the words of the Pope and Joe Connolly: "Young people of Ireland, we love you."

Senator Colm Burke: Following on from what Senator Barrett said, as a former national chairman - the current title being president - of Young Fine Gael-----

Senator Ned O'Sullivan: Was it around then?

Senator Brian Ó Domhnaill: That is a long time ago.

Senator Colm Burke: -----I left the organisation with a degree of independence and there has not been a change in that respect since the day I left it. I am delighted that level of independence has remained.

I wish to raise the report published by the ESRI, Growing Up in Ireland, in terms of the issue of child care. It is an interesting report that comprises a study of more than 11,000 infants. In terms of the level of child care, its findings are interesting in that only one in five child care employees have a HETAC or third level qualification and 50% of child minders and 80% of relatives have no child care related qualification. One of the findings of the study is that while we have the fourth highest rate of child benefit in the 27 member states of the EU, we do not have the same level of affordable and accessible child care. We should have a debate on this issue in the next term because it is an area where much more long-term planning is required and we need to change the policy direction in this area. I ask the Leader to arrange for a debate on

this matter for next term.

Senator David Cullinane: The Leader will know that last week a few hundred former Waterford Crystal workers protested outside Leinster House for their rights and for their pensions to be paid to them. Unfortunately, despite the best efforts of an all-party Oireachtas group of Senators and Deputies, from all parties and none, to seek meetings with the Taoiseach or with the Minister for Finance or the Minister for Social Protection, no meeting has been arranged and all three have refused to meet the workers.

At the protest last week a briefing was held in the AV room by the legal team and by the trade union representatives. They were very clear in pointing out that unless the Government intervenes and does the right thing, the current court case could be dragged out until as late as 2016. I do not believe it is acceptable that those former Waterford Crystal workers would have to wait that length of time to get what they are due.

Legally under the ruling of the European Court of Justice, they are entitled to at least 50%. At the very least the State should pay the workers the money they are legally due, at least 50%, and then enter into discussions with the trade union to pay them what it should pay them which, in my view, is their full entitlement. It would be unacceptable if we continue to hide behind the courts and if the Government continues to drag its heels. I am sure if that happens those workers will be back up here again protesting outside Leinster House to get what they are due. It is unfortunate that time and again they have to continue to take to the streets to get what they deserve. Surely those Waterford Crystal workers deserve justice. Surely they deserve at least a meeting with a senior Minister to discuss what they are due.

Senator Paul Coghlan: I am glad to note the softer, calmer tones of Senator MacSharry this morning. I want to join him in calling for a debate on a matter early in the next session.

Senator Marc MacSharry: I remember earlier in-----

Senator Paul Coghlan: Earlier in which?

Senator Diarmuid Wilson: Was the Senator in Young Fine Gael.

Senator Paul Coghlan: Originally, I was one of the so-called young tigers but I will not comment further.

I welcome what Senator MacSharry said in a general sense. It is good to know that PTSB and some of the other financial institutions are at last making more amenable longer-term arrangements for mortgage holders who are in serious distress. I am sure the Leader will oblige in arranging a debate on that matter early in the new session - I think Senator MacSharry said early in the new year but I am sure he meant to say early in the new session.

As regards Senator Norris's charge about a bribe or inducement to a Senator, I am sure that if that were ever such a thing in respect of that Senator or any Senator, it would be correctly reported to the proper authorities.

Senator David Norris: I hope so, and I will not mention private conversations.

Senator Ned O'Sullivan: I congratulate Senator Norris on another sterling performance on the "Today with Pat Kenny" show on RTE Radio 1 this morning. I am sure many of the Members heard it. I have no doubt that if that man gets enough access to the airwaves, I would

23 July 2013

be very sanguine about the outcome of any referendum on the abolition of the Seanad.

Senator Brian Ó Domhnaill: Hear, hear.

Senator Ned O'Sullivan: I would not hold my breath waiting for the Taoiseach, or the *Führer*, Enda Kenny, to take him up on his offer of a debate. I think that is highly unlikely.

On a more serious matter and referring to what Senator Coghlan said, I do not think we can pass too lightly over the allegations made about bribery in the Chamber. It is too serious a matter for that. In my Second Stage speech-----

Senator Paul Coghlan: I was not being flippant. Senator Norris raised it.

Senator Ned O'Sullivan: -----I referred to Grattan's Parliament and what the old Gaelic writers said about it at the time was mealladh breabadh agus bagairt, which means persuasion, bribery and threats. That is how that Parliament was suppressed.

Senator David Norris: Hear, hear.

Senator Ned O'Sullivan: At the time I made a point to making sure that I was not making any allegation of bribery. I said certainly there were threats and we know that and a lot of persuasion was going on but I am not so sure about the bribery aspect now.

11 o'clock

However, I am not so sure about the bribery aspect now. We must examine this, even if we are in the dying days of the session. The idea that anyone's vote or silence could be bought is a very serious issue and it must be referred to the Committee on Procedure and Privileges.

Senator Cáit Keane: I support the issue raised by Senator Burke, which I raised yesterday. He emphasised the need for the child care debate. Again I would like to talk about children, although I do so in an indirect way. A survey was carried out in the US which showed that a healthy breakfast prevents heart disease. The survey was carried out on 27,000 men over a 20 year period, and it has shown that men who skip breakfast may face a higher risk of heart attack. I presume the same would hold true for women if the survey was carried out on them. There is no sexism here and I would presume it would be the case for both. Everybody should be made aware of the importance of breakfast. However, the issue I raise today is the importance of breakfast for schoolchildren.

It has been known over the years that children who eat a good breakfast perform better in school, concentrate better in school and have better outcomes, but the sad part is that we do not have any surveys in Ireland. The Minister for Social Protection launched a pilot project with six schools in association with a commercial company. If we are to get serious about best outcomes in education, particularly for disadvantaged children, then we should ensure that we start where it matters, at breakfast time. There are now children who are part of the new poor and cannot afford breakfast, as their parents spend all their money on mortgages and so on. This is not confined to DEIS areas, it is happening all over Ireland. Fair play to the Minister for starting the pilot project. We have an old urban scheme in Dublin and Cork and administered by councils, VECs and so on, but this should be put on national basis. The Minister for Social Protection has initiated this pilot project in conjunction with the private sector, even if the Minister for Education and Skills should be doing it. We need to proceed with this in whatever way we go about it. The figures are there to show that it is a false economy not to do it. If we are serious

about education, we should feed the child and the child will do the rest.

Senator Fidelma Healy Eames: That is a well made point by Senator Keane. The outcomes for children when they have a good breakfast are well documented.

Senator Landy's allegations are very serious. If someone attempted to bribe him to absent himself from votes in this House last week, then that is very serious. I call on the Labour Party to substantiate that. I would also call on the Leader to ensure there is an inquiry into that very serious allegation-----

An Cathaoirleach: This is not relevant to the Order of Business.

Senator Fidelma Healy Eames: It is very relevant

Senator Paul Coughlan: He reported it.

Senator Fidelma Healy Eames: I welcome that if he has, but we do not have that information. The reputation of this House is being affected by that type of behaviour. To be fair to Senator Landy, he has gone a long way towards explaining it. He needs to go another little way and give us the truth on this.

I noticed an article in *The Irish Times* today which stated that women in Ireland face extra burdens going to the UK for abortions. That is true, because we are not addressing the real problems and pressures here. We are not finding out what would have helped them not to have made that decision. What shocked me is that at the bottom of the article, they presume that the only way forward for women in difficulty is abortion, and they provide a website, *abortionsupport.org.uk*.

An Cathaoirleach: Have you a question for the Leader?

Senator Fidelma Healy Eames: Yes. Why is it that the only type of support which some in this House feel is needed for women in difficulty is abortion? What we are not having positive discussions about-----

An Cathaoirleach: You can ask those questions to the Minister for Health today.

Senator Fidelma Healy Eames: Why are we not having positive discussions about sex education, adoption and non-directive counselling, which we know is not happening in the Irish Family Planning Association?

An Cathaoirleach: You are way over time.

Senator Fidelma Healy Eames: That is a very serious allegation. The Minister for Health promised an inquiry on this, and it has still not been delivered.

An Cathaoirleach: You are way over time.

Senator Fidelma Healy Eames: I am grateful for your time, but I am looking for a response.

Senator Michael Mullins: I join with colleagues who called for a debate on the forthcoming budget in the House when we return. We all want to see an expansionary budget that will help grow our economy, start getting people back to work and help small businesses in

23 July 2013

particular. Many Members of this House will have a valuable input to make into the budgetary process, and I hope the Leader will facilitate that.

I would like to support the community of Kiltullagh near Athenry this morning, who are calling on the thieves who stole some valuable art from the Catholic church in Kiltullagh a few weeks ago to return them, or to give information to the Garda that would help their early recovery. The paintings of the stations of the cross by the renowned Dublin-born painter and stained glass artist, Evie Hone, are valuable, but they are priceless to the people of Kiltullagh and surrounding areas. This artist is particularly well known. Her painting entitled “My Four Green Fields” hangs in Government Buildings, so there is a connection between the Houses of the Oireachtas and the theft in Kiltullagh, near Athenry. I appeal to the thieves who took six of those paintings. They are invaluable to the people of Kiltullagh. I hope that somebody would respond to the offer being made by Crimestoppers, who are offering a reward for their safe return. I hope that the criminals responsible would be brought to justice, and that anybody trying to pass those paintings off overseas would be apprehended in due course.

Senator Brian Ó Domhnaill: I second the amendment on the Order of Business by Senator Norris. I also want to be associated with the words of other Members in respect of the claims of bribery, which have been exposed by Senator Landy. It is of the most serious nature. It affects parliamentary democracy in the Oireachtas, because if a vote can be bought or swayed in any way by the inducement of money or a trip as in this case, then it is a most serious matter. The Leader needs to establish an investigation into this matter, and I would like to hear what he has to say about it.

I also agree with Senator MacSharry’s calls for a pre-budget debate. Let us have a sensible pre-budget debate and let us not criticise simply to be critical, but to be constructive as well. If the Leader could facilitate such a debate as soon as possible with each of the main Ministers, we will not be found wanting in coming forward with specific proposals on where we believe money could be saved. I appeal to the Leader to facilitate that. It will mean Ministers being available.

I call on the Leader to have a debate on the serious issue which I recently raised on the Order of Business in respect of waiting lists in our public hospitals. The Leader indicated at the time that there was no issue, but I now have the facts to confirm to the contrary. The number of people waiting over six months has almost doubled in the last six months. The total number of patients waiting over six months for in-patient treatment and day treatment has doubled from 6,038 in December to 11,985 in June. The figures for those waiting more than nine months show an extraordinary increase of 3,621%, from 107 in December to 3,982 at the end of June. That is alarming. We were promised before the last general election a new way of providing health for the citizens of our nation. That is not what is happening. It is a very serious situation. Politicians should not have to represent people who are looking for what they should get on entitlement. We should not have to assist people in scheduling appointments. It is an emergency situation. I call on the Leader to facilitate a debate as soon as we come back in September on the issue of waiting lists in all our public hospitals.

Senator Terry Brennan: At the outset I thank my colleague Senator Keane for her advice this morning that people who are less likely to take their breakfast in the morning are more likely to have a heart attack. As one who does that regularly I must thank her and assure her-----

Senator Cáit Keane: I am minding Senator Brennan.

Senator Terry Brennan: -----that it is not going to happen in the future.

Dunleer railway station in County Louth is on the main commuter belt running from Dublin to Dundalk and Belfast. It has been closed for several years. In mid-Louth the towns of Dunleer and Ardee and the area in general have developed significantly over the past 15 or 20 years. I appeal to the Minister for Transport, Tourism and Sport to reopen the station.

An Cathaoirleach: That is more appropriate to an Adjournment debate.

Senator Terry Brennan: Perhaps. The station should be opened for the benefit of people working in Dublin and students who travel to and from Dublin daily who now have to travel to Drogheda and Dundalk. It should be reconsidered as the town and the area have developed significantly in recent years. Will the Leader ask the Minister for Transport, Tourism and Sport, Deputy Varadkar, if he will do this?

Senator Catherine Noone: I echo Senator Keane's comments on breakfast. It may seem like a frivolous matter on the face of it in the context of economic and other such matters but I have been calling for a debate on nutrition generally for some time. On the other side of the equation, going without breakfast is a difficulty for some children. There are also some children who, through no fault of their own and perhaps because of the society in which we live and the lack of education on nutrition, are eating far too much, and there is a huge obesity crisis. I reiterate my call for a debate on nutrition generally. There was a healthy eating week in the Houses of the Oireachtas the week before last. Advertising calorie content is very helpful in highlighting nutrition, which is so fundamental for every human being.

I also echo Senator Mullins' contribution about the paintings stolen in a village near Athenry. Evie Hone was one of a few female Cubist artists. She is well recognised but was not very prolific. The fact that these few paintings have gone missing is significant for that reason. To reassure Senator Mullins, in my view there would be a very limited market for these paintings abroad simply because most Irish art abroad is sold within a fairly confined market. Her paintings would be fairly obvious. I do not see where these thieves will go with these paintings but this is a very important issue in respect of that particular artist.

Senator Aileen Hayden: We are all well aware of the really good weather we have been having over the past two weeks or thereabouts, although today is not the most spectacular day. It came to my attention recently that Bord Gáis, among other providers, is dealing with a much higher level of arrears this year than in previous years due to the fact that we have had an unprecedented series of bad winters. Indeed, this year's winter went on significantly longer than normal. This has left many of the poorest people in Ireland living in fuel poverty and dealing with serious arrears in essential services. In that context I congratulate the Minister of State at the Department of Environment, Community and Local Government with responsibility for housing and planning, Deputy Jan O'Sullivan, on her announcement of the first tranche of funding for an energy efficiency programme for local authority houses. Some local authority houses are among the worst constructed in the country. This is a very important measure to deal with the fuel poverty experienced by some of the poorest people in Irish society. I would like a debate early in our new session, in September, on the matter of the budget, to include further fiscal measures that can be taken to retrofit and improve the heat and fuel efficiency of the Irish housing stock generally. This issue is not going to go away. There have been unprecedented rises in fuel prices and there is no indication that these prices will come down at any time in the future.

23 July 2013

Senator Tom Sheahan: We should be directing our attention towards the upcoming budget. To that end I have written this morning to the Minister for Finance, Deputy Noonan, asking that we give austerity a break, following the words of Mr. Mody, formerly of the IMF. I believe he is right. The working people are suffering. They are finding life very difficult and we cannot hit them again in this budget. This year's budget will not take the promissory note of €1 billion into account. It was asked how could we raise the funds so that we would not have to increase taxes in the forthcoming budget. I suggest now, as I did this morning to the Minister, that the country needs a transfusion of funds. During the banking debacle endless billions of Irish money left the State and I believe, although this might not go down too well in some sectors, that now would be an appropriate time for a tax amnesty. We could repatriate that money and get it working for the economy. Aside from the immorality of tax avoidance, we need an injection so that the Government will not raise taxes on working people. An amnesty would be a windfall for the Exchequer. It will put capital back into the economy. It will recapitalise the banks and will get the economy working. As soon as possible we should start a debate on this in the House because on all sides there are some very good minds and they could be of assistance to the Minister.

Senator Feargal Quinn: I support Senator Keane's reference to nutrition and healthy eating. We had a very interesting debate and passed Second Stage of the Food Provenance Bill. This is something the Government can actually do. The Bill has passed Second Stage. It can be created and passed and it will give all citizens an opportunity to know where their food comes from and what is in it.

We also had a very good debate last year on food wastage. There is a huge amount of wasted food in the hands of retailers and suppliers and very much in the hands of individual citizens who buy more food than they need. There are very simple solutions to this. One is to do away with "best before" stamps in order to have only "use by". That is just one little example.

The other matter on which we had a good debate some time ago was the use of salt and the amount of salt in food. I do not believe we should pass a law saying that people should not use a certain amount of salt. It is up to the citizens themselves. The debate is educational. Maybe we can manage to encourage people to consider the amount of salt they use. Salt intake is a huge killer in ways that we have discussed.

This is a reminder of some very good debates that we have had in this House and that I hope we will continue to have. It is a reminder of the value of the Seanad, not just in passing legislation but also in being able to debate very topical issues that are very serious. I urge us to consider recognising the benefit of this House, particularly in such areas that do not depend only on passing legislation but also on informing our citizens of things they need to know about themselves.

Senator Marie Moloney: We have waited many years for a good spell of weather but unfortunately it has brought the drowning tragedies of the past few weeks. In my own county a number of young people lost their lives in drowning tragedies. A campaign is needed to warn people to take care when swimming in lakes and rivers because these waters do not have the buoyancy of the sea because of the lack of salt and there is also the risk of the body becoming too cold in them.

The Cabinet is meeting as we speak. I presume it will be dealing with the Walsh report, the details of which will be published after the meeting. We have waited a long time for this report

and it is unfortunate that it will be published just as the two Houses go into recess and there will be no time for an immediate debate. I ask the Leader to put the debate of the Walsh report's findings and recommendations on the agenda for the first week of the next term. It is a very important issue for victims of symphysiotomy.

Senator Diarmuid Wilson: I join with other colleagues who welcomed Senator Naughton to the House. I wish her well in the next two and a half years or so that remain in this Seanad. I commend Senator David Norris on his excellent contribution on "Today with Pat Kenny" this morning. I encourage him to keep going throughout the summer until we have well and truly won this proposed referendum. I am conscious of the fact that the legislation has not passed through the House yet.

I support Senator Fidelma Healy Eames's comments with regard to the article in today's *The Irish Times* about pregnant women in crisis. There is a tendency in this country to make them think that abortion is the only option open to them, to culturalise them into this way of thinking, so to speak. I agree with the Senator that the other options should be clearly identified and put forward as solutions so that abortion is not the only solution to a crisis pregnancy.

I congratulate my near neighbour, County Monaghan, on its first Ulster senior football title in 25 years and the first minor title in over 60 years. I point out to the Cathaoirleach that not only is Mayo still in the all-Ireland but that-----

An Cathaoirleach: Cavan is still there.

Senator Diarmuid Wilson: -----Cavan, Monaghan, Donegal and Tyrone, four proud Ulster counties, are still there, with each and every one of them capable of taking on whatever-----

An Cathaoirleach: I do not think this is relevant to the Order of Business.

Senator David Norris: Bravo.

Senator Maurice Cummins: I might as well start with Senator Wilson and remind him that the Kerry and Cork people are still there as well.

Senator Diarmuid Wilson: I forgot about that.

Senator Maurice Cummins: I suggest that Senator MacSharry should not believe everything he reads in the newspaper. There will be much speculation about the budget-----

Senator Marc MacSharry: I have managed to think of that point all by myself.

Senator Maurice Cummins: -----between now and budget time. There will be plenty of such speculation. Senator MacSharry also asked for a debate on the progress of the banks on mortgage arrears. He welcomed the fact that Permanent TSB is moving in the right direction at least. We hope that all the other banks will follow. I agree with him that the House should debate that matter in September or October.

Senator Susan O'Keeffe welcomed the statement from the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, on pornography on the Internet. This matter was raised by Senator Mary Ann O'Brien yesterday and hopefully the Minister will attend in the autumn to discuss safeguards on the Internet. Senator Susan O'Keeffe also welcomed the birth of the royal baby on which she congratulated Kate and William.

23 July 2013

Senator David Norris proposed an amendment to the Order of Business: “That No. 11 be taken before No. 1.” I accept that amendment to the Order of Business.

Senator Norris and several other Senators have raised a very important matter about allegations of bribery and corruption and that a Member of this House was offered money to miss a particular vote last week. I view that matter as being very serious. I hope that the Senator involved - Senator Landy - has already reported this matter to the Garda Síochána. It is of such importance to this House and to the Houses of the Oireachtas that any such inducement by any person should be dealt with by the Garda Síochána, the relevant authority. I hope this matter, if not already reported, will be reported immediately by Senator Landy.

We welcome Senator Naughton on the occasion of her maiden speech. We hope she will have a very good stay here. I am sure her contribution to this House will be excellent.

Senator Daly asked for a debate about the Irish diaspora overseas. Senator Conway spoke about the undocumented Irish in the United States. The Tánaiste visited the US recently and he lobbied politicians on this matter. It is hoped his efforts will prove fruitful. I note Senator Conway’s points about budget submissions.

Senator Sean D. Barrett welcomed the Young Fine Gael decision to have freedom to canvass on whichever side they wish on the referendum for the abolition of the Seanad. It seems the vote was tied and they decided to give that freedom. Senator Burke raised the same issue about the ESRI report as Senator Keane raised yesterday. Senator Cullinane raised the matter of the Waterford Crystal workers which he has raised on a number of occasions on the Order of Business. In my view the workers should be paid 50% at least, up front and immediately. However, the Government takes its advice from the Attorney General which is that the court case must take precedence. While we may not agree with that decision, the Government must adhere to it. I hope that matter will be concluded in a timely manner and that it will not drag on. Many of these workers are waiting up to ten or 15 years for pension entitlements. It is neither fair nor just.

Senator Paul Coghlan asked for a debate on mortgage-holders in distress to be held early in the new term. Senators Keane, Quinn and Noone, referred to the importance of a good breakfast for schoolchildren. I note Senator Quinn’s reference to the excellent debate on the Food Provenance Bill. It is proven that a good breakfast results in good outcomes for schoolchildren. The public consultation committee debated nutrition and healthy lifestyles. We will have a debate in September on that report.

Senator Healy Eames referred to an article in *The Irish Times* and which Senator Wilson also raised. Of course, abortion is not the only option for women in crisis pregnancies. I am sure that matter will be debated at length in the future.

Senator Mullins asked for a debate on jobs. Senator Noone raised the matter of the robbery of valuable paintings from Killtullagh church. We all call for a safe return of those paintings. Senator Ó Domhnaill asked for a debate on waiting lists. I am not quite sure to which waiting lists he refers. If he provides me with the details I can find out the situation for him.

Senator Terry Brennan referred to Dunleer railway station. He might take the Cathaoirleach’s advice and submit that matter for debate on the Adjournment.

Senator Aideen Hayden spoke about the number of Bord Gáis customers who are in arrears,

which is a matter for concern. She also welcomed the initiative by the Minister of State at the Department of the Environment, Community and Local Government, Deputy Jan O'Sullivan, on the retrofitting of local authority housing. These are issues we will discuss in the future.

Senator Tom Sheahan acknowledged that there would most likely be significant opposition to his call for a tax amnesty. The Senator has brought the matter to the attention of the Minister for Finance and it will be interesting to hear what the latter has to say.

Senator Marie Moloney referred to the tragic drowning deaths in recent days and conveyed her condolences to the families involved. She also joined with Senator Mary Moran and others in recent weeks in calling for a debate on the report on symphysiotomy. I will try to accommodate that debate in the next session.

I wish to clarify the Order of Business for today. Instead of referring to Report Stage of Nos. 1, 3 and 4, I should have indicated that Report and Final Stages will be taken in each case.

An Cathaoirleach: Senator David Norris has moved an amendment to the Order of Business, "That No. 11 on the Order Paper be taken before No. 1." The Leader has indicated his willingness to accept the proposal.

Senator David Norris: I thank the Leader for his graciousness.

Amendment agreed to.

Order of Business, as amended, agreed to.

Medical Practitioners (Amendment) Bill 2013: First Stage

Senator David Norris: I move:

That leave be granted to introduce a Bill entitled an Act to provide for mandatory professional indemnity cover for certain medical practitioners; to confer additional functions on the Medical Council; and for that purpose to amend and extend the Medical Practitioners Act 2007 and to provide for related matters.

Senator Sean D. Barrett: I second the proposal.

Question put and agreed to.

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

Senator David Norris: On Wednesday, 24 July 2013.

An Cathaoirleach: Is that agreed? Agreed.

Second Stage ordered for Wednesday, 24 July 2013.

Sitting suspended at 11.35 a.m. and resumed at 11.45 a.m.

An Bille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a chur le Seanad Éireann) 2013: An Tuarascáil (Atógáil)

23 July 2013

**Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013:
Report Stage (Resumed)**

Atógadh an díospóireacht ar leasú a 28:

I leathanach 9, línte 8 go 11 a scriosadh agus an méid seo a leanas a chur ina n-ionad:

“2° Is é an lá dá dtagraítear i bhfo-alt 1° den alt seo an 91ú lá a thiocfaidh Dáil Éireann le chéile den chéad uair tar éis an olltoghcháin do chomhaltaí de Dháil Éireann is tuisce a bheidh ann tar eis an tAirteagal seo a achtú.”.

agus

I leathanach 9, línte 26 go 29 a scriosadh agus an méid seo a leanas a chur ina n-ionad:

“2° The day referred to in subsection 1° hereof is the 91st day on which Dáil Éireann first meets after the general election for members of Dáil Éireann that next takes place after the enactment of this Article.”.

-(An Seanadóir Sean D. Barrett).

Debate resumed on amendment No. 28:

In page 8, to delete lines 8 to 11 and substitute the following:

“2° Is é an lá dá dtagraítear i bhfo-alt 1° den alt seo an 91ú lá a thiocfaidh Dáil Éireann le chéile den chéad uair tar éis an olltoghcháin do chomhaltaí de Dháil Éireann is tuisce a bheidh ann tar eis an tAirteagal seo a achtú.”.

and

In page 8, to delete lines 26 to 29 and substitute the following:

“2° The day referred to in subsection 1° hereof is the 91st day on which Dáil Éireann first meets after the general election for members of Dáil Éireann that next takes place after the enactment of this Article.”.

-(Senator Sean D. Barrett).

An Leas-Chathaoirleach: I am conscious that many Senators have already contributed to the debate on this amendment. The next speaker is Senator Mary M. White. I remind the House that, with the exception of the proposer, Senators may speak only once on individual amendments.

Senator Mary M. White: We are in the final hours of a process which is intended to lead to the abolition of this House of the Oireachtas which has operated for 74 years in accordance with the Constitution. It is a shameful process conceived in a moment of expediency. I am reminded of another shameful process 213 years ago when the Irish Parliament of the day voted itself out of existence to facilitate the Act of Union. As a result, in the words of Professor Elaine Byrne, “Ireland was robbed of legislative independence for 120 years.” In this case, by removing the second legislative Chamber, the intention of the Government is that its already powerful posi-

tion in the Oireachtas in ramming legislation through is made even stronger.

There are also Members of this House appointed by the Taoiseach who I would have expected to exercise their Independent mandate but who have so far backed this Bill. They no longer can call themselves Independent yet they can help this House demonstrate its independent role, and their own personal independence, by voting against the Bill before we conclude. I will refer to their role later.

At least one difference from the events preceding the Act of Union is that the people in Ireland will have the last say in the planned referendum if this House proceeds to endorse this expedient Bill. If we can have an open debate in the public arena on the choice before the electorate in a referendum, the result may not be the done deal the Government believes it will be.

Regarding abolition or reform, I will not repeat or rehearse the main arguments put forward against the Bill to date but the failure to offer a choice to the people to opt for a reformed second Chamber is reflective of an arrogant determination by the Government in pursuit of its expedient objective of not having to deal with a second House of the Oireachtas.

The most stunning failure to achieve a partial reform of the Seanad has been the failure to reform the electorate for election to the six university places as decided by the people in a referendum in 1979. I see the university Senators are not present.

Senator David Norris: Yes, we are.

Senator Mary M. White: In particular I would have liked Senator Barrett to be here. On Thursday, 5 July 1979, the Irish people voted in a referendum to support a Bill to broaden the electorate for the university seats beyond Trinity College Dublin, and the NUI, incorporating UCD, Maynooth, UCC and UCG, to the graduates of other institutions of higher education in the State such as the equivalent of today's University of Limerick, Dublin City University and the institutes of technology. Over half a million people voted in favour of this amendment to the Constitution, with only 45,000 voting against it. As the proposal was duly approved by the people of Ireland, it was signed by the President in August 1979 and promulgated as a law.

Over the past 34 years since the 1979 referendum, Governments of all political hues, including our own Fianna Fáil governments, have failed to pass the regulations to implement the legislation providing for the extension of the university electorate beyond the current universities. Those Governments should apologise to the tens of thousands of third level graduates who were let down by their failure to implement the amendment passed in the referendum in 1979 that they would be entitled to vote. It is a total failure. What does this say about the political will over the years to implement a straightforward modification of the Seanad electorate agreed by the people?

What is equally shocking is that the six elected Senators of NUI and Trinity College, who are generally most articulate and radical in their contributions, seem to have a vow of silence when it comes to implementing the one change in the Seanad the Irish people voted-----

Senator David Norris: No, that is untrue.

Senator Mary M. White: They have opted to remain silent and not call for a modest extension to their relatively elitist electorate.

On the other hand, in my 12 years as a Member of this House, I have witnessed a disre-

23 July 2013

spectful and elitist attitude towards my electorate, including my Fianna Fáil colleagues sitting beside me, but primarily towards county and city councillors from every district of the country. Forty-three Members of this House are so elected after very competitive contests, certainly among Fianna Fáil Seanad candidates. As former Senator Martin Mansergh has pointed out, this “form of indirect democracy is very similar to the French system which ensures that there is no conflict of legitimacy between the two chambers”.

Today’s city and county councillors are elected by the people in ever more vigorous and hotly contested elections in every one of the electoral districts of the country. They could not be closer or more accountable to the people in their local areas. They do an immense amount of work in resolving social problems and mediating between the people and the State administrations at all levels. That is a most valuable contribution at this time of economic and related social stress on families. These city and county councillors - the electorate of the majority of the Members of the Seanad - deserve the respect of this House as the foundation layer in our democratic system. Already the Government has abolished the town councils, and 300 town councillors have been deprived of their contribution to democracy.

I spoke to Senator Cullinane last week and only one Sinn Féin candidate is going for election to the Seanad. All the Sinn Féin Senators vote for the one person and he or she is appointed to the Seanad, along with the Taoiseach’s 11 nominees. Regarding the Labour Party candidates, can Senator Landy say if it has more than one candidate on its panel because I suspect-----

An Leas-Chathaoirleach: I remind the Senator that we are on Report Stage-----

Senator Mary M. White: This is very important. Fianna Fáil and Fine Gael-----

An Leas-Chathaoirleach: -----and her contribution is more like a Second Stage speech. I am being very-----

Senator Mary M. White: We are talking about history.

An Leas-Chathaoirleach: I know, but this is not a history lesson.

Senator Mary M. White: I hope the Minister, Deputy Richard Bruton, is crucified at the end of the day.

There are 11 Members of this House whose electorate is one person, namely, the Taoiseach. Those without political affiliations are expected to bring a different perspective and a more independent approach to this House. In the votes on this Bill, Senator Katherine Zappone and Senator Mary Ann O’Brien have maintained that tradition by opposing this Bill, and I commend them for it. The other three non-aligned Taoiseach’s nominees, namely, Senator Marie Louise O’Donnell, Senator Jillian van Turnout and Senator Fiach Mac Conghail, have so far supported it.

An Leas-Chathaoirleach: Senator White, I have been very kind to you. Do not name people who are not in the House to defend themselves. It is most unparliamentary. You have been a Member for 12 years-----

Senator Mary M. White: I find it impossible to believe that their stance was based on a conviction that the Seanad should be simply abolished and that the people should not have the option of voting for reform of the Seanad. It is more likely that they had a moment when their courage failed them and they chose to follow the Taoiseach’s path of expedience in regard to the

Seanad. Individually, they have made distinctive and impressive contributions to this House but it is tragic-----

An Leas-Chathaoirleach: Senator White, respect the Chair.

Senator Mary M. White: -----that on this issue they have been found wanting.

An Leas-Chathaoirleach: You are breaching the protocol of this House.

Senator Mary M. White: This is like the Act of Union, a Leas-Chathaoirligh.

An Leas-Chathaoirleach: No. You are referring to people who are not here to defend themselves and I am sure if you-----

Senator Mary M. White: I do not mind.

An Leas-Chathaoirleach: Listen to me for a moment. If somebody laid a charge against you when you were not here, I am sure you would resent it also.

Senator Mary M. White: I could not care less whether they do or not.

An Leas-Chathaoirleach: I do care and if you continue-----

Senator Mary M. White: If they are participants in-----

An Leas-Chathaoirleach: -----in that mode, I will have to stop you speaking. Do not refer to or make charges against people who are not here, whether they are fair or not. We are on Report Stage, and I am being very lenient with you.

Senator Mary M. White: One of the powers of the Seanad, in opposing a Bill, is to delay the passing of that Bill by at least 90 days. This Bill deserves more consideration by the Oireachtas, and the three Senators in question can ensure that extra time is available by voting against it on Report Stage. In continuing to support this Bill, they are denying this House one of its most important constitutional powers of delaying rushed legislation. I would appeal to each of them, even at this stage, to reconsider their position and oppose Report Stage of this Bill.

Senator Marc MacSharry: Well said.

An Leas-Chathaoirleach: As no speaker is offering on the opposite side I call Senator Norris.

Senator David Norris: I am horrified-----

(Interruptions).

An Leas-Chathaoirleach: I offered it to the other side but nobody was offering and therefore Senator Norris is next, apart from going back to the Fianna Fáil side. Has Senator Norris spoken already?

Senator David Norris: No, I have not.

An Leas-Chathaoirleach: I am just checking whether the Senator has spoken already on Report Stage because if he has he cannot speak again.

23 July 2013

Senator David Norris: Yes, but I asked and I was told I-----

An Leas-Chathaoirleach: No. The Senator seconded the amendment and therefore I cannot allow him speak again. I call Senator Labhrás Ó Murchú.

Senator David Norris: I beg your pardon.

An Leas-Chathaoirleach: The Senator seconded Senator Barrett's amendment. It is on the record. This is Report Stage. We are still on that amendment and therefore I cannot allow the Senator speak.

Senator David Norris: I accept your ruling, a Leas-Chathaoirligh, but I want to put a challenge, and I might even-----

An Leas-Chathaoirleach: No.

Senator David Norris: -----take it further to a legal point that-----

An Leas-Chathaoirleach: No, Senator Norris. I have made a ruling.

Senator David Norris: -----out of 78 amendments, 77, and less than 12 of mine, have been consistently ruled out of order.

An Leas-Chathaoirleach: Senator Norris, please. I call Senator Ó Murchú.

Senator David Norris: I will be taking advice about that. I challenge the ruling of the House. It makes the process a farce but I will obey your ruling on this occasion.

An Leas-Chathaoirleach: I have no choice.

Senator David Norris: I know.

An Leas-Chathaoirleach: I call Senator Labhrás Ó Murchú.

Senator Labhrás Ó Murchú: Fáilte romhat thar n-ais arís, a Aire. The process here of discussing the referendum is exactly what it should be.

12 o'clock

It also is what the Seanad should be, in that if the Government has a proposal to put to the people and if that proposal concerns the future of Seanad Éireann, then democracy allows and demands that Members have an opportunity to express their view. In doing that and in the context of reform, it is important that Members are careful to understand how the word "reform" entered the debate. It virtually has become the mantra of this debate and one must ask how that word rose to the top of the debate. One must ask how did the Government not foresee this would be the case. While Members already have gone through this on Second stage, one reason is that much of what happened was exceptionally impulsive and precipitative. Everyone was taken by surprise when An Taoiseach announced in the middle of an emotional general election campaign that not only was he in favour of the abolition of the Seanad but, if elected, he would proceed along those lines. Members are aware of what happened as a result of that precipitative strike because no opportunity was given to consider the pros and cons.

I made this point earlier, which is the reason I make the same points in the context of reform. In the face of such a major proposal, I can never understand the reason a White Paper

was not produced. Everyone is familiar with the purpose of such a White Paper, which collects together the various information that is required to be central to the debate itself. Had that been the case, I am almost certain that reform would have formed part of such a White Paper. What now is happening is an effort to catch up, to fill the gaps and to fill the vacuum. This is one reason the word “reform” has come to the top of the debate. Incidentally, it is not merely coming from Members of this House but also is coming from media commentators and the people on the street. I acknowledge everyone moves in different circles and I can only speak about the circle in which I move but in the past three or four weeks, I have been absolutely amazed and of course delighted by the number of people who have availed of the opportunity to speak to me about the Seanad. I reiterate we all move in our own circles and so one always must make allowances for a degree of prejudice but without exception, everyone who has spoken to me is in favour of its retention. As Members can appreciate, I did not raise the issue. Second, almost in the second breath, the word “reform” is mentioned. I am a great believer in consensus and the more I find this consensus coming forward, the more I realise the opportunity that has been lost by not having reform as part of the referendum. No one is suggesting there should not be a referendum and no one is suggesting the choice should not be left to the people. While the choice of course should be left to the people, Members also owe it to them to provide them with as much information as possible.

I have been looking back on the history of the Seanad in so far as I have been involved over a long number of years and I remember people like Senator Shane Ross sitting in this Chamber. Invariably, the contributions he made on issues relating to banking, finance and the economy of the country to a large degree were ahead of time. Members used to listen to him in the Chamber in the realisation he had taken a time to research the issues. Consequently, the suggestion that Members come into the Chamber simply to have rows or arguments is not true. Of course there is a bit of heat here but there also is a fair degree of light in the debates. I will not get into the area of comparing the Lower House with the Upper House as I do not believe that serves any purpose but one must look at the track record of the House and I have given Members one example. I could make the same point in respect of Senator Norris. It does not matter how many punches are thrown at him as he still comes forward to make his point. I did not hear him on the “Today with Pat Kenny” show this morning but I am reliably informed he did an exceptionally good job. It is great that even if punches are thrown at one, one still bounces back if one believes in democracy and in one’s contribution to the fabric of democracy. I have seen that in this House many times. While partisanship of course exists, it largely comes from the Whip system. I do not suggest Members should not have a Whip system but it should be examined in the context of reform because it has been sacrosanct, which is not correct. Members always will argue for its imposition, just as the devil also will argue, in a given situation but I refer to this issue in a general sense. It should not follow that the Whip system is absolutely and utterly sacrosanct. There are times when one would have a much more edifying, revealing and informative debate, were the Whip system not to exist. I sat on the Government side of the House and saw precisely the same thing, that is, people were absolutely straining to express a contrary point of view to that of one’s party or the Government if the party also was in government. Is that not good for democracy? Are Members so stifled and so much in a straitjacket that this cannot even be considered? This should have formed part of the debate regarding the Seanad.

When one considers the Seanad being the central issue of reform and debates at present, one knows no major reform is evident. Certainly, no major thrust towards a radical reform is discernible. While there may be a certain amount of cosmetic change and a certain amount of window-dressing, it is a terrible feeling when one knows within oneself this is not correct and

23 July 2013

one is dealing with public relations gimmicks in that regard at a time when the country is in such a terrible state. Members are all told - and it is true - that politicians are not held in the highest esteem. While a person may feel he or she is held in high esteem, that is not the case as the entire body politic is not held in high esteem at present. There is great cynicism, scepticism and lack of trust and consequently, the suggestion that with a stroke of a pen one may abolish one House of Parliament and that in some way, this will give one greater oversight, responsibility, accountability or transparency does not stand up to any logical examination. All Members in this House know this to be true but if this is the case and they are trying to sell a pig in a poke to the people, who already do not trust them, do Members honestly believe, whatever the outcome of the referendum, the body politic will be enhanced and enriched? It will not and what will happen eventually is there will be a breakdown in the democratic structures in the State and one already can discern a degree of erosion in this regard.

Consequently, one should consider the position in respect of the Seanad and one should consider reform. That Members of this House went to the trouble of drawing up Bills with regard to the reform of the Seanad demonstrates how seriously they were taking it. However, one can go back far further than that point and I recall the review conducted under the former Leader of the House, Mary O'Rourke, into which many Members put a lot of time. I do not suggest for a moment that Members were not conscious of in some way defending their own little territory. That is a human thing and one should forget about it for a moment. However, the extent of the consultation and the amount of time given to it by Members of this House were huge. At the time, I believed Members were on the right road and I still look back at the proposals that were put forward. They refer to the method of election, to the duties and so on and two of those possibilities for reform kept rising to the top. At a time when Members thought everything was settled and placid, Senator Barrett raised a very important point the other morning regarding the dangerous potential of the riots in Belfast. It was the same earlier this year in respect of the flags controversy. If one looks back on the documents on reform, the authors suggested this House was the only one that had the potential to interact with Northern Ireland.

Perhaps we were the only ones who had the opportunity to do something to ensure that a fragile peace process would not be sundered. That was important. For example, when representatives of the Orange Order came to the House, that in itself was historic. People had doubts about it but we could see that one could have debate and one could still think of the present and the future and not be a prisoner of the past. There was an opportunity in the context of reform.

How often do we hear, out among the public, that we no longer have control of our own destiny and that our sovereignty has been diluted because we are now subservient to Europe? Let us look at the smallest issues. Where, for instance, one had a few hens that were fed with offal and had eggs at home, one now must register the hens to satisfy Europe. People who were doing some home baking and selling apple tarts and cakes to the local shop as wholesome food have had to change their kitchens and use stainless steel. I am taking the most insignificant examples merely to indicate where we are. There are directives coming in by the tonne from Europe and it has been suggested that there is a committee to look at that. The committee structure is not working. It is as simple as that. One sits at a committee, as I do, and sees it as little more than a talking shop. It is a cosmetic exercise. It has no teeth whatsoever. Even in the case of the committee dealing with European issues, there is absolutely no way it is in any context looking at these directives and examining their impact. There is an opportunity, incidentally, within the structures of Europe to confront those types of directive. I think we have done this only once. Here was a very capable House with plenty of experienced Members, who are prepared to do

their research and who are genuine and positive and trying to make change. Here was an opportunity. Those were two of the main proposals. It was not within the remit of the Seanad to do anything about that reform. We do not have that power. That power rests with Government. When we talk about no reform for 75 years, we all know full well that is a distraction. It does not add up. We did our homework and the proposals are still there. I still ask people to look at that homework. Even the public would be surprised at our efforts. However, we were stymied. The Government did not accept our proposals.

Let us be frank in stating that we provide the people with the opportunity to make this decision. We have not given them a choice, or at least it is a stark choice - to be or not to be. Is that what our present difficulties require? Is that what democracy requires at present?

Looking back to the beginning of this campaign, it was quite evident that little thought had gone in to the arguments being put forward by the Government. On the cost of the Seanad, for instance, I have heard figures gradually fall from €100 million to €50 million as people became a little sceptical. Then they came down from €50 million to €20 million. Now we know the cost is €8.2 million. I have come to the conclusion that if we wait long enough, we will not be costing anything but will be making a profit. That is the type of debate. In the circle in which I move, many people have been coming forward because they see what is happening in this regard.

We were then promised a super-committee. The other committees are not working. We have amalgamated committees in the past two years and there is not even time to talk. Now there will be this super-committee, which will be a Seanad by another name. It will not be democratic because it will not be elected. As to who will select the members, it will be the Government. As to who will be on this committee, it will largely be members of the Civil Service. This is meant to fill the gap that will be created by removing a House of Parliament.

We seem to be left with little or nothing to propose or to support the idea of this referendum, but there is still the strong mantra of reform, and that suggests to me, as I have always felt, a discerning electorate. There are people who are very well informed and they realise that no case has been made - one may exist, but I do not know - for the abolition of the Seanad.

I was somewhat surprised in recent days when one commentator wrote that a comment somebody made in the House was the reason we should get rid of the Seanad. Is that the level of that we are talking about? Is that what democracy means to us - a single comment by a single person? Would that not also mean we should get rid of the Dáil, when one looks at some of the comments being made there every day? That is a little disturbing.

I do not regard myself as an intellectual. I am an ordinary person, but I am a person, like all of the Members, who feels strongly for the welfare of the country. I also feel strongly for the people who are suffering. I felt this particularly strongly this morning when listening to the radio, when I heard there would be a large number of evictions. The Minister of State, Deputy Brian Hayes, knows as well as I do - I will not go too deeply into that - that the very word "eviction" strikes terror and anger into the heart of an Irish person.

Senator David Norris: Quite rightly.

Senator Labhrás Ó Murchú: Many of these people are not responsible for the position they are in. They are looking to those of us in public life whom they hold responsible. We see well educated people leaving the country in their thousands; these were the very people whom

23 July 2013

we had looked forward to being the future of this country. We look at people who have no reason to get out of bed in the morning because they are living on €200 a week. One should try living on €200 a week. There is many a person in public life having one meal in the evening for €200. These are the big issues and it is not right to try to create some type of distraction from that. It is vulgar. It is incorrect. It is not something to which we should lend our names. Therefore, we should look seriously at reform.

Are we too late for a change of direction on the part of the Government? Is there still a possibility that it will see the messages coming back in favour of reform? There is no doubt that everyone should review his or her position at a given time. Society changes, the world changes, we change and the media change. There is no doubt that we all change. We would be foolhardy to think that we are perfect. We are not perfect. There is no question of it. No group or society can claim to be perfect.

We are in favour of reform. Even at this late stage, even if the detail of reform was not available in the referendum, would it not be wonderful for the Government to state, "Maybe we got this wrong. Maybe we were precipitate. Maybe we did not give enough thought to it. Maybe the people will not like us for the way they are handling this." Would it not be great if, for once, the Government could step back, put the hand on the heart and state, "Right, we still have time to bring reform into this referendum"?

Senator Sean D. Barrett: Young Fine Gael did it last weekend.

Senator Labhrás Ó Murchú: Exactly.

Let us look at what will happen, assuming the referendum does not succeed. I have a feeling it may not be as straightforward as the populist approach was in the beginning. Through the contributions of many fine Members in this House and the media, as we saw in the *Sunday Independent* and other newspapers, I get the feeling that we are filling the vacuum where the White Paper should have been. Assuming the referendum does not succeed, we have lost the opportunity for reform that would require constitutional change. Nobody will be rewarded for having made that mistake. The abolition of the Seanad is becoming a much bigger issue than the Seanad itself. The Government's suggestion of abolition and the way it is being handled will cast a spotlight on the way Government operates here. We talk about democracy. What democracy is there for a backbencher in Dáil Éireann? I have never served there but, having observed it, I believe its Members fill a gap and press a button. Can one sleep at night if one sells one's soul like that? There are only a few Ministers running the country at present. They may be lucky and get it right but if they get it wrong, which is always possible, people will suddenly ask why they got rid of the Seanad and whether they had not realised that only four people were running the country and everybody else was just pressing a button when told to do so. That type of democracy may have served in the past when the partisanship that goes with party politics was accepted. As I stated, times, society and the world change, and we change as individuals. The discerning electorate has now been given a single focus to be able to examine the bigger picture. The single focus is the fact that a Government, in the present dire straits of the country, wants to get rid of a House where accountability would be to the fore and where we could help and work together for the good of the country.

That is all I want to say on this but I am possibly whistling in the wind. Sometimes, however, people stop and listen when one does that. There will be other contributions along the same lines. It is interesting how a single sentence can trigger a reaction. The trigger will not

be the big headlines or megaphone diplomacy but a single issue. Suddenly, the people will ask whether they are being made fools of in the biggest way possible, namely, through the taking away of a House that would give Members responsibility and allow for accountability. I urge the Minister of State, a decent man who served here with us and impressed us all, although I know he will not change the view of the Taoiseach on this matter, to say to the Taoiseach that Members of this House are not trying to be anti-Government. We are not trying to be smart or insult anybody; all we are genuinely trying to do is reflect what we know to be the case on the ground. Sometimes arrogance is an obstruction to that reflection and echo. Perhaps we should all be less arrogant in our approach and do that for the good of the people.

Minister of State at the Department of Finance (Deputy Brian Hayes): Hear, hear.

Senator Jillian van Turnhout: It is always wonderful to listen to Senator Ó Murchú, whose interventions are always very thoughtful and considered. I hope what he said today will be reported. I had not intended to speak but earlier events have encouraged me to do so. I take my role as a legislator very seriously. In addition to being a legislator, I am a citizen who is directly affected by the legislation we pass and referendums to change the Constitution, as will be the case when the question of Seanad abolition comes before the people in the autumn. As such, in approaching this Bill I endeavoured to balance my Senator's hat and my private citizen's hat appropriately and honestly. As an active Member of Seanad Éireann, I see its flaws, live the frustration and understand the criticisms. On the other hand, I have experienced the capacity of the Seanad to scrutinise Bills, secure greater human-rights-proofing of legislation and policy and add a layer of expertise and consideration that is often lacking in Dáil debates. At the very least, the Seanad is in need of radical reform, but so too is the Dáil if we are to resuscitate political democracy. As it stands, I am utterly unconvinced about the Dáil's ability to deliver the self-reform needed to plug the hole in checks and balances that would be left by Seanad abolition.

I went into some considerable detail on these points in my Second Stage intervention and made it clear that I would not impede the passage of the Bill through the House. Arriving at my position on this incredibly important question is a journey I am still in the process of making. However, as reflected in my intervention on Second Stage and my vote against the motion tabled by my colleagues to recommit the Bill to Committee Stage and consequently delay the referendum, I believe this is a question for the people alone to answer. If we were to have invoked the 90-day delay, I wish we had done so regarding respite care. I could not, in good conscience, have this as the first occasion in my term as a Senator on which we would invoke the delay. I do not believe I should have to. The only conversations I had with people last week prior to my vote were with colleagues who wished me to vote in support of the motion. Most were respectful but, unfortunately, not all were. I will let that sit in the past, however. The record of this House will clearly show that, on each and every decision, I vote with my conscience and with courage.

Senator Brian Ó Domhnaill: Tá lúcháir orm an deis a bheith agam labhairt anseo ar an mír seo den díospóireacht agus ar an leasú atá curtha chun tosaigh anseo. Is lá brónach é seo do Seanadóirí den Teach seo atá ag freastal ar phobal na hÉireann. Tá an Seanad iontach stairiúil, chan amháin i mBunreacht na hÉireann ach i mBunú na tíre seo. Tá an Teach seo ann ó 1922. Bhí guth i gcónaí ag daoine sa Teach seo, go háirithe ag mionlaigh na tíre. Anois, de bhrí go ndearna ceannaire Fhine Gael cinneadh polaitiúil roimh an toghchán deireannach, tá sé ag iarraidh deiridh a chur leis an Teach seo agus ag cur brú go rachaidh sin tríd an Teach. Ní hamháin go bhfuil sé ag tabhairt an rogha sin do phobal na tíre, ach tá a pháirtí ag dul ag caitheamh suas le €250,000 sa phróiseas sin fosta. Is masla iomlán é sin do daonlathas sa tír seo. Is masla

23 July 2013

iomlán é sin don obair atá ar bun sa Teach seo. Cuireann sé díomá orm go bhfuil an Taoiseach ag cur an oiread sin béime ar seo agus ag iarraidh deiridh a chur le remit daonlathach don tír seo agus don Oireachtas.

I have listened to the debate on this issue and know that certain Members of the Seanad have been criticised for their passion during the course of the debate. That was wrong. Every Member has an obligation to speak passionately about this issue. It is on our watch that legislation will be passed to extinguish or abolish this House. Therefore, we have an obligation not only to ourselves and the House but to every past and prospective Member to uphold the Constitution and speak our minds freely and openly on this very issue.

We are living in the best of times but also living in very dangerous times. I use the word “dangerous” because of the dictatorial attitude of the Government towards our democratic institutions. Four members of the Cabinet are ruling the roost and deciding that democracy comes at a price. That price, as we know, is power. I say this because, before the last general election, the current Taoiseach, who was then the Leader of the Opposition, committed, against the better judgment of many respectable people within his party, to abolishing an institution of the Oireachtas, Seanad Éireann. The reason, of course, was to gain political popularity for Fine Gael, not to bring about the political reform the country requires. That was wrong and no one, irrespective of what office he holds, should play politics with any institution of the State, particularly the democratic institution of Seanad Éireann.

There will be a vote on this issue this afternoon. Members of Fine Gael and the Labour Party, as well as a number of the Independents, will most likely vote in favour of the legislation, which is regrettable, but it shows that the party whip system is clearly being imposed, although not on the Independents, to ensure Members vote in accordance with the Taoiseach’s wishes. That is exactly what is happening here, nothing else. The Taoiseach is imposing a party whip system whereby people are voting against their own beliefs. I appeal to people, even at this late stage, to challenge it and ask whether it is the right thing to do. In recent weeks, we have spoken about conscience in this House and it has also been discussed in the Lower House and the media concerning another piece of legislation. Conscience comes into every piece of legislation, however, particularly one which will affect our democracy now and long into the future.

Ireland does need political reform and that was talked about before the last general election. We all subscribe to that, including my own party Fianna Fáil, Sinn Féin, Labour and Fine Gael. We need to reform the political institutions of the State. The economic crisis has clearly shown the limits of governmental structures. In the years leading up to the banking crisis the topic of financial regulation was only mentioned three times in both Houses. That demonstrates that the Oireachtas suffers from a real lack of perspective and depth. We need root and branch reform of State institutions, reviewing all aspects of how we make the decisions that govern us as a people and which achieve the common good. At stake here is the potential for our democracy to thrive and flourish in future. No one could disagree with that.

In their election manifestos, both Fine Gael and the Labour Party proposed to abolish Seanad Éireann. However, the Government’s failure to implement a holistic package of political reform measures means that the abolition of the Seanad will be little more than a cynical sideshow, diverting attention from the Government’s inaction on creating new politics. The severely limited Constitutional Convention, which avoids the big issues of Irish politics, exposes the lack of ambition and imagination by the Government for far-reaching reform. A referendum on the future of Seanad Éireann is little more than crude, knee-jerk, populism that will disrupt

a significant part of our constitutional architecture with no clear thought of what impact it will have.

We fully recognise that serious questions must be asked about the continued role of Seanad Éireann. We all subscribe to that. If, after 75 years, we are struggling to justify the existence of Seanad Éireann, then it is only right that we should ask those questions. The proposals being put forward by our own party answer those legitimate questions by building on the work of expert reviews and the lessons of the past few years. It puts forward a fresh vision for the Seanad and will act as a check on the Government, scrutinise legislation, and represent voices that would otherwise not be heard in our national Parliament.

There are other ways of doing this, for example, by examining a reformed, holistic Seanad. Before the last general election, the Government promised political reform. The Taoiseach, Deputy Kenny, made a big issue of this and said that the way politics was done in this country would be changed forever. He went before the people promising that and, of course, everyone believed him. The Irish people voted for Fine Gael on the basis that politics had to be cleaned up and changed. Everybody subscribed to that idea, but what has happened since? More quangos have been created and more State jobs have been filled. I have the facts to prove it. The biggest quango of all was created when the direct elections to the State board, *Údarás na Gaeltachta*, were dropped. Some 16 people were democratically elected to it since 1979. However, a piece of legislation was driven through this House but when I and others tried to amend it not one amendment was accepted. Since then, those 16 places have been replaced by 12 Fine Gael and Labour Party activists.

Senator Diarmuid Wilson: It is outrageous.

Senator Brian Ó Domhnaill: They are not from Fianna Fáil, Sinn Féin or Independents, but people with political affiliations to the Government parties.

An Leas-Chathaoirleach: I must remind the Senator that we are on Report Stage and I have been very lenient to all speakers.

Senator Brian Ó Domhnaill: I am making a point about the promises that were made and where we have gone.

An Leas-Chathaoirleach: I am not sure that is relevant to amendment No. 28.

Senator Brian Ó Domhnaill: I agree that I may have gone off the point slightly.

Senator Sean D. Barrett: They are abolishing elected bodies over there.

Senator Brian Ó Domhnaill: Exactly. Senator Barrett has articulated his arguments very well on this issue. I come from a county which adjoins the Border, but of course we no longer recognise the Border. We live in a 32-county Ireland, which is the way I envisage it. As someone who spent five years living in the North of Ireland just before the Good Friday Agreement, during a time of relative peace, I can say more than most that the part played by this Republic in bringing about that peace was substantial. It has proved to be long-lasting and we all welcome that, but we should not disenfranchise any community in the North of Ireland by an action that would remove a democratic institution in this State. The abolition of the Seanad would remove an opportunity for the people in the North to be represented in the Upper Chamber of the Oireachtas.

23 July 2013

I travel through the North of Ireland when going up and down to Donegal. I have many friends in the North of Ireland with whom I went to college and others who live in the North. I visited the North of Ireland the weekend before the Twelfth celebrations. I witnessed at first hand the peace and tranquility that exists there. There have been outbursts during the last week or ten days but the part being played by the Oireachtas to highlight those outbursts is particularly articulated by our university Senators, given that many graduates - particularly from Trinity but also from NUI - are living in the North of Ireland.

This House has always been a place where the views, expressions and concerns of the minority within our population were expressed but also, more importantly, were represented. Down through the years, exceptional Members of this House have come from the North of Ireland, including Séamus Mallon and others. It would be a disservice to the people of the North of Ireland, and to this Government's commitment to the North of Ireland, if the Seanad were to be abolished in one fell swoop.

What explanation can the Minister of State give to the people living in the North of Ireland for whom Fine Gael has proclaimed to work hard over the years? I acknowledge the work that was done by the late Dr. Garret FitzGerald through the Anglo-Irish Agreement. I am sure, however, that Dr. FitzGerald would not subscribe to the abolition of Seanad Éireann. One of the founding fathers of Fine Gael, Michael Collins, played an integral role in the establishment of this House. He certainly recognised the need to represent people in the North of Ireland.

The plan to abolish the Seanad does a grave disservice to those living in the North. I want to hear what explanation the Minister of State can offer to those people. What consultations have taken place with minority groups in our society concerning the abolition of Seanad Éireann? One can only presume that those discussions have taken place. No Government in any democracy would ram through a piece of legislation without consulting minority groups in the Republic or the North. I can only assume that such consultations have taken place. Perhaps the Minister of State can outline what those consultations were, where they took place and how many members were consulted from each community. I refer in particular to members of the Protestant communities, both in the Republic and the North of Ireland. This House has many great opportunities. Apart from building and developing on its potential to build a greater Ireland, North and South, and to work closer with the Stormont Assembly, it can work with minority groups in our society, religious or otherwise, to develop the holistic Ireland we all want to achieve. This House has a role to play in all of this.

Members have an obligation to protect this House and ensure future generations can be represented through it. We must ensure, however, that the representation they receive is better than what the House is providing now. This House needs to be drastically reformed. It is no accident that the Government ignored 12 reports on Seanad reform since its foundation. I accept my party also ignored it when it was in government which was a grave mistake. Action should have been taken at the time to deal with some of those reform proposals, particularly the excellent 2002 report by the former Minister and then Leader of the House, Mary O'Rourke. There was also a referendum in 1979 on the Seanad franchise which was never implemented.

There are alternatives to abolition. They should be provided to the people by way of referendum where they can have an honest say and a choice, not a knee-jerk reaction because it is politically popular. I subscribe to what Senator Ó Murchú said regarding the sentiment of the electorate. I have consulted widely on this particular issue in my constituency in Donegal. The feedback I have received, even on the street, is a positive one. People do not want to see

the Seanad abolished. They certainly want to see Seanad reform but they are very afraid of this dictatorial attitude coming from the Government with its huge majority in Dáil Éireann.

We have seen over the past week how this House made the Government uncomfortable. That is the way it should be. We also now know why the Taoiseach wants to get rid of this House. He envisages that he will still be Taoiseach after the next general election. He has a greater plan to ensure he has more control and fewer long speeches against his own popularity coming from this House. He wants the four Ministers at the heart of Government in the fiscal Cabinet sub-committee to be insulated with their power not undermined while the majority in the Dáil will continue to vote in favour of their policies. We are going down a dangerous road. If we are serious about reforming politics, then we need to examine every aspect of it, including the party Whip system within certain divisions. No party in any other parliament in the world would throw out honourable and respectable party members just because they voted in accordance with their consciences.

Senator Maurice Cummins: We are not a long way from Fianna Fáil's past in this regard too.

Senator Brian Ó Domhnaill: The Taoiseach chose to do so. This is the man who is showing a dictatorial attitude to politics and people's opinions where they count.

By ensuring more power for the Executive, we will turn Ireland into the most undemocratic country in the world. We have the weakest form of local government anywhere in the world. That is being ripped apart as well with the abolition of town councils. We are going down a very dangerous road.

The cost issue was raised earlier. Last weekend, in an excellent newspaper article, former Tánaiste, Michael McDowell, touched on the cost issue. The director and deputy director of Fine Gael's referendum campaign referred to the Seanad costing €20 million a year. They were way off the mark. Seanadóirí salaries come to €4.5 million. With levies, the universal social charge and taxes, that figure is reduced by €1.6 million, meaning salaries come to under €3 million. Why will the Government not look at reducing Dáil numbers? We are spending €15 million this year to fund the European space programme. Will the Minister explain to me what the programme is about?

Deputy Brian Hayes: We will be sending the Senator into space.

Senator Brian Ó Domhnaill: The Minister of State may like to do that but some might argue the Taoiseach has already sent him into space by asking him to be his scapegoat when he does not bother to come into the Chamber to answer some of these questions. Up to €15 million will be spent on the European space programme. How does this benefit any of our citizens?

Deputy Brian Hayes: Repopulation.

Senator Brian Ó Domhnaill: Has any debate in this House over the past 77 years benefited any of our citizens? Have amendments been made to legislation in this House? Yes, 1,500 amendments were made to legislation in this House over the past year alone. This has benefited citizens far more than spending €15 million on the European space programme. If the Minister were to ask anyone on Grafton Street if that spend has made a difference to their lives, I am sure the answer would be quite simply, "No".

23 July 2013

Senator Diarmuid Wilson: The better weather?

Senator Brian Ó Domhnaill: We have a right to know if this money spent is beneficial. The Minister may have an explanation as to how the money spent on the programme is making a difference to any citizen.

If the abolition of the Seanad is about saving money, then we should examine all of the moneys spent by the Government. As Michael McDowell stated in his article, if the Seanad were to be abolished, the cost saving per year to each citizen would be €1.60, less than the price of the *Irish Independent*. It really is not about money. It is about grabbing and holding on to power. I feel sorry for Seanadóirí from Fine Gael and the Labour Party because they are being undermined by their Government.

Senator Sean D. Barrett: Hear, hear.

Senator Brian Ó Domhnaill: It is a disgraceful kick in the teeth to honourable Members of Fine Gael and the Labour Party to be asked to vote against their better judgment to make dinosaurs out of us all.

An Cathaoirleach: We are on Report Stage.

Senator Sean D. Barrett: The young ones are good.

Senator Brian Ó Domhnaill: Yes, Young Fine Gael is impressive and, perhaps, it will build the future Fine Gael talks about.

Senator Diarmuid Wilson: Young Fine Gael will probably be disbanded for standing up for the Seanad.

Senator Brian Ó Domhnaill: Yes, the Taoiseach will probably throw them out of the party as well or stop its members running in future elections.

An Cathaoirleach: Can I remind the Senator we are on Report Stage and amendment No. 28?

Senator Brian Ó Domhnaill: I am trying to speak to amendment No. 28.

Senator Maurice Cummins: He is making a bad job of it.

Senator Brian Ó Domhnaill: Unfortunately, it is the only option I have to address these matters. Senators Norris and Barrett tabled excellent amendments but they have all been ruled out of order. I am not sure whether the Chief Whip's office was instructing that they be ruled out of order.

An Cathaoirleach: Senator, I can assure you they were not.

Senator Brian Ó Domhnaill: I accept the Cathaoirleach's reply. We are going down a slippery road. At this late stage, will Government Members, including the Independent ones, consider if they are doing the right thing by allowing a flawed referendum to proceed? If there were a referendum held on any institution of the State, including the Dáil, without a proper choice made available, the people would probably vote to get rid of the Dáil as well. We have to be honest with the people. We cannot send a referendum to the people under a charade of lies. Misinformation is being given about the cost savings.

Will Government Members abstain from voting or vote against this Bill? This is an issue of fundamental importance to future generations. It will define how democracy is carried on and how people are represented long into the future. It will tear up our Constitution. As Michael McDowell, a man whom I respect, has written extensively, it would be easier to rewrite Bunreacht na Éireann than to let this referendum proceed. I appeal to those Members on the opposite side to consider their options when this vote comes up today, because this is not the right thing to do. One can argue that we should let the people have their say, but what are we actually saying? We are giving people a smokescreen of a political gimmick of a choice when they should be afforded a real choice and when we should have a real debate on whether this Seanad should be retained or reformed. That is what the debate should be about, but it will only be about whether the Seanad stays as it is or is extinguished. If we allow the referendum to go ahead on that basis, we will not have the debate this House deserves. No Senator who votes for this piece of legislation can appear on any media outlet and say credibly that he or she supports reform, because he or she is not giving the people the opportunity to vote for reform.

It is never wrong to change one's mind and it is never too late to do the right thing. Members should either abstain from the vote, make themselves scarce or vote against this piece of legislation, because the people deserve an option. Members should reflect on the €15 million that the Minister and his Government are spending this year on the European space programme. How is that benefiting any of us or any citizen of the country? This is a sum of €15 million. It is outrageous and disgraceful and does not help this country to get out of austerity. At least we can play a role in parliamentary democracy. Whether we are here or not does not matter. It is about who will be here in the future and the future of the House, our democracy and our Constitution as we know it. I see the Minister of State has a copy of the Constitution sitting on his desk.

An Cathaoirleach: The Senator is being repetitive. This is the fourth time he has said the same thing.

Senator Brian Ó Domhnaill: If this vote goes ahead tonight, that Constitution is ripped up.

Senator Fiach Mac Conghail: I welcome the Minister of State back to the House. I did not intend to speak on section 28 but there is a misapprehension among some of my esteemed colleagues about my rationale. We are opposing each other on this occasion. I will explain my rationale in very slow and methodical language. I regret that I also hear that my esteemed colleagues Senators Barrett and Darragh O'Brien and my eloquent and esteemed colleague Senator O'Sullivan all feel either ashamed or disappointed on my behalf.

In my business I produce many plays, which are normally three-act plays. I suggest that the first act of this process is a farce - a farce in terms of the Government's response and approach to political reform. I do not intend to repeat my Second Stage speech but if Senators Darragh O'Brien and Barrett and, in particular, Senator O'Sullivan had read or indeed attended the Chamber and heard my Second Stage speech, they would not have lost too much energy and would not be surprised at why I voted the way I did. I explained how I was going to vote and will continue to vote in the same way. I will explain in a minute, including to that other esteemed Senator, Senator Ó Domhnaill, why I voted the way I did and how clear it was.

The farce related to the Taoiseach's approach to political reform and having multiple avenues of reform. First of all, the Dáil reform package is just non-existent. We are having this debate on Seanad reform without seeing any clear-thinking and accurate presentation of Dáil

23 July 2013

reform. I said this to the Minister of State in my Second Stage speech, so I will not repeat it. The committee process does not work. There are not enough committees. Some committees are dependent on enlightened Chairmen and Ministers who take the committees seriously. We know some Ministers just do not take them seriously. We then had the Constitutional Convention, as I explained in my Second Stage speech.

If the farce I described in Act One is about that, Act Two is about the melodrama of this House and the pallor of disappointment and perceived shame felt by Senator Barrett about the way I voted. The third act has yet to be written and concerns the reason I voted against the recommittal motion and the fact that the Government ruled my amendment out of order. The aim of my amendment was to include in the Bill a clause suggesting that if this referendum is defeated, the reform of the Seanad would go straight to the Constitutional Convention, which would report back to the Oireachtas. That is why I am voting in favour of this Bill. This could be difficult for Senators Barrett and Ó Domhnaill, so I will give them the A, B and C. By voting for this Bill, I am not voting for the abolition of the Seanad.

Senator Ivana Bacik: Well said.

Senator Fiach Mac Conghail: That is the point. I am disappointed that Senators Barrett and Darragh O'Brien, to whom I am referring because they are not in the House, feel disappointed on my behalf. I am also disappointed that they feel ashamed on my behalf. To be clear about it, I have been consistent. I admire much of Senator Zappone and Senator Quinn's Bill and much of Senator's Crown's Bill. What is abusive about this debate is that the Taoiseach has given us a very narrow choice with which I am extremely uncomfortable and which I do not like - abolition or retention, when it should be abolition or reform. However, let us do the numbers. With the Whip as it is, regardless of whether the recommittal was voted for, we would have wasted another 90 days in this House. The more we talk about ourselves in this House, which is where the melodrama comes in, the less likely it is that this referendum will be defeated. That is a fact. That is Act Three. We need to get out of here as quickly as possible and allow civil society to debate what I consider to be one of the most important elements of our democracy, which is our parliamentary democracy. It is the connection between our parliamentary democracy and our citizens through participation and trust. I believe in a bicameral model and an Upper House that is reformed and I believe this will be achieved by voting "No" to the referendum and not by filibustering or agreeing to the recommittal of the Bill. The longer we speak to ourselves and the more dramatic we are in our speech, the more likely it is that the extremes on both sides will be reported in the newspapers and that the middle ground will not be achieved.

The sense of disappointment and the pallor of melodramatic fugue in this House are not found outside. Even though they have been given a very convoluted and almost perverted choice, I believe that Irish citizens will vote "No" and for reform. The sooner we get out of here, the sooner we will have that debate. Let me be clear once more, because an impassioned speech was made. I voted against the recommittal because we will do damage to the debate on a bicameral model if we continue to spend time on this. That debate needs to be a national conversation outside Parliament because there will be a movement and coalition of politicians, activists and community workers from all sides who believe they cannot trust 158 Deputies at the next election and a Presidential-style Government. The great weakness in the Government's argument is that it has not shown any Dáil reform. It has introduced the famous Friday sittings but there is no evidence of reform that works. It has crowded the committee system and there are mixed signals. What are we afraid of?

1 o'clock

Are we afraid of reform or are we afraid of not being elected once reform is complete? I am in the lucky position of not having been elected but I expect future reform will not include nominated Senators. Perhaps some of us are afraid that we might not have the capacity to be elected.

I am voting in favour of the legislation in order that our citizens will become more involved in the debate through a referendum campaign but I am not voting for abolition. The referendum can be defeated as long as the conversation occurs nationally and not in this Chamber. That was the reason I voted with my conscience on Second Stage, although “conscience” is an over-abused word. Members have expressed sympathy or anxiety about how I reached my decision and whether I was influenced. I was influenced by my own political beliefs and interest in how I think reform should occur. I had those discussions with myself but, in fairness to myself, I plead with Senators O’Sullivan, White, O’Brien, Whelan, Ó Domhnaill, Quinn and Barrett to read my Second Stage contribution and not to in any way over exert their anxieties about me or over exert their own consideration for me. I acknowledge they are worried sometimes about how I might vote but my record stands, as does that of my colleague on respite care.

I am in favour of reform and the Bill being put to the people as soon as possible because the numbers do not stack up in the House and we should get it out there. I will vote “No” when the referendum takes place.

Senator Marc MacSharry: I welcome the Minister of State to the House. I thank him for visiting Sligo last week. I do not disagree with Senator Mac Conghail because I still hold out the hope that he will cast me in a production in the Abbey Theatre.

Senator Fiach Mac Conghail: On a point of order, our next production will not be a melodrama.

Senator Marc MacSharry: I have a much better chance than other Members of getting a part.

An Cathaoirleach: Is the Senator auditioning for a part?

Senator Marc MacSharry: No.

Much of this discussion was covered on Second Stage and the Chair has given everybody a great deal of latitude given the nature of the debate. How the Taoiseach has approached certain issues has been a massive disappointment. I am hugely proud of the fact, irrespective of my political leanings, that somebody from the west is Taoiseach. His election was a proud day for all on the western seaboard. However, most recently, the shenanigans relating to membership of committees last week and the nature of this proposal have been disappointing. They make Mugabe and Idi Amin look like Kofi Annan. There is nothing wrong with asking the people whether the Seanad should be retained except when the full energies of the State are ploughing in one direction. I would be much more comfortable with a recommittal of the Bill to give us an opportunity to ask whether we get rid of the House or reform it. That would be reasonable and if the Bill was recommitted, that could be done on Committee Stage. I favour that approach and I would be all for a referendum if that were done. It is not a question of fearing the people. I do not know, irrespective of whether I continue my political career, whether I will ever seek re-election to the Seanad. Hopefully, I will have a long life with many options. I have changed

career a few times and I am sure I can again.

However, democracy in this State is managed and prescribed. If we seek to remove threads of democracy without considering in advance what will be used to replace them, that is a serious problem. To only ask the people to abolish the House is dangerous because we do not know what will come after. Given the cynicism and understandable anger and frustration among people at the system failing them politically over the years, regardless of who was in government, although I have no problem admitting Fianna Fáil was in government more often than any other party and it will take its share of the blame, as it did in the most recent election, some of the commentary by the director of elections on behalf of the Government, including during a radio debate I had with him last week, only adds to this. I mentioned on Second Stage that I asked him how many times the Government amended legislation in the House last year and he could not answer and I asked him how many times as Minister he had amended legislation and he was not able to tell me. There is a credibility issue. If a Minister is going to direct a campaign on behalf of the establishment and says this is good for the people and they must get rid of the House, the least he should do is be fully informed about what the House does, albeit in its flawed state as he sees it.

In a retort to me during a somewhat intemperate outburst, he said on air the numbers are rigged in the House to guarantee the Government's success. That is true but the Government Whip ensures that is the case. Senator Ó Murchú and others have questioned who ensures that outcome. I recall the frustration of sitting on the Government benches reading a Private Members' motion penned by Senator Brian Hayes at the time and waiting for the Government amendment to be sent over from Government Buildings. Such Government motions commend the Government on this, that or the other. I used to hate it and it was frustrating but it is still happening. Who ensures that remains the case? The Taoiseach of the day has control. Deputy Richard Bruton in his capacity as director of elections live on Highland Radio with me last week was right to say that it is a rigged scenario where the Government is guaranteed as a majority but, as Senator Norris correctly pointed out earlier, with 78 amendments tabled on Report Stage and 77 ruled out of order, one must wonder by whom? It is the same people who rig the situation.

An Cathaoirleach: The Cathaoirleach makes the decision on the amendments.

Senator Marc MacSharry: I am sorry but one wonders about the method of his deliberations.

An Cathaoirleach: I ask the Senator to read the Constitution regarding referendum Bills.

Senator Marc MacSharry: I will. It is the most peculiar coincidence that of 78 amendments, 77 were ruled out of order. We had the shenanigans last week regarding committee membership, which undermine the entire democratic fabric of the country. Regardless of who has been in government since the 1950s, I refer to the tangible direction of the changes from one Government to the next. The Progressive Democrats is the only party that can take credit for pushing politics further right that some of us were happy with. However, directionally, little has changed. That tells us the permanent government is in full control. We have all been in meetings with civil servants even at our minnow level where the boxes do not connect and, for example, we hear, "We cannot do that with the Ardvarney school bus in County Leitrim because it does not connect to this box over here." Instead, the very function of our job here, whether it is as politicians or civil servants, is to make the boxes connect, not to decide that something can-

not be done because the boxes do not connect. Our job is to connect the boxes. I would like to see a recommittal on the basis that people would be asked whether they preferred reform, along with a schedule of suggestions which would be kicked to the convention out in Malahide, with a White Paper followed by a Green Paper, or abolition. That is a real question, one worthy of a leader to put to the people. However, the notion that the Taoiseach wants to abolish the Seanad because he made a populist suggestion outside the Citywest Hotel and one of his advisers said it would capture the public imagination, - which it clearly did, as it flabbergasted the poor leader of the Fine Gael group, the then Senator Frances Fitzgerald - certainly did nothing to enhance democracy in this country.

The Fianna Fáil group will later in the week launch a reform paper in this regard. What we need is for the Oireachtas - the Dáil and Seanad - not to be subservient to the Cabinet of the day but for the Cabinet of the day to be subservient to the Parliament.

Senator Sean D. Barrett: Hear, hear.

Senator Marc MacSharry: That would certainly be difficult. There is not a single Minister who would not celebrate the demise of the Seanad because they hate coming in here - present company excluded, I am sure - and officials hate coming in here. Does anyone think, when the Finance Bill is being dealt with in October and there are 13 officials from the Department of Finance in the ante room, they will feel they should be here? They will not. They say: "What are we doing in here, talking to these muppets? We are the people. We are the machine. They are only the tools." It ought to be the other way around.

While I do not know if many would agree with me on this, our system needs to be similar to the Congressional system, so that a Taoiseach is elected and then picks Ministers, and perhaps five of those Ministers could come from civil society. For example, Senator Mac Conghail could be the Minister responsible for the arts - we could not have a better person - and the Minister of State, Deputy Brian Hayes, might be chosen given his educational background. These Ministers would then step out of Parliament and there would be a panel of people to take their seats. The Ministers would have to come to sell their policy to the Parliament of the day. If there are contentious issues such as abortion or measures with regard to banking, people can put their genuine views on the floor of the House without fear of being removed from a committee or without fear of losing the Whip. Deputy Mathews has shown respect to this House by coming to listen to the debates when he could be on his holiday break. That is real democracy. The other democracy is more reminiscent of the Mugabes, the Imins and much worse individuals.

I know the Taoiseach, Deputy Enda Kenny, is a decent man. I have been hugely disappointed, personally, at how he has approached certain things, but it was reminiscent of countless Taoisigh before him. Believe me, I know what goes on in the Labour Parliamentary Party room or the Fine Gael Parliamentary Party room because I have watched it go on in the Fianna Fáil Parliamentary Party room. The line is: "If you do not like it, there is a queue at the gate to take your place." For democracy, that is simply not good enough.

An Cathaoirleach: Is the Senator speaking on the amendment?

Senator Marc MacSharry: I am. I will conclude as I know others want to speak. In essence, real leadership is about having the courage to take on the vested interests and ask the real questions. When we are talking about playing the man or playing the ball, or playing both, there is something legitimate about that. However, if we are going to dig up the pitch just because

23 July 2013

last year's team did not win the league, that is foolish. Clearly, however, it is a done deal and we are going for the referendum. I agree with the referendum but not one that asks a flawed question based on political gimmickry.

Senator Catherine Noone: I want to make a few points on the amendment. I have put on record on previous occasions that I am disappointed that the potential abolition of the Seanad was not put before the Constitutional Convention. I suppose talk about that is futile considering how soon the referendum is likely to be.

I want to pick up on a point made by Senator Mac Conghail in regard to the drama and melodrama that has gone on here. It struck me on the various occasions on which I listened to soundbites from the Seanad that we really are, on occasion, putting a nail in our own coffin in the sense that we are giving fodder to the media, which is not well disposed to the Seanad, to get rid of us. I agree with Senator Mac Conghail that this debate now needs to go outside the House because on so many occasions we let ourselves down with the shouting and the type of language that is used. Senator MacSharry referred to how other people would call us "muppets". Even using the word "muppet" towards ourselves and repeating that is very negative towards us. We need to be very careful of what can be picked up from this House and put out into the wider media.

The more of those from civil society who come out in favour of the Seanad and the work we do in here, and the potential it actually has, the better. I understand Senator Norris was excellent on the radio this morning. However, the more of those from civil society and the fewer Senators who are on the radio or any other media on this issue, the better for any potential reform.

Senator Mac Conghail also said that many of us would not relish the thought of an election. I can tell him there are many of us who would. Even if we have come through the process we have, we would be quite willing to face the people.

The point was made that there might be 30 civil servants in the ante room feeling disgruntled at the fact they are here at all. We should look to a situation in which we challenge the civil servants and Ministers, as we have done on many occasions. I would love to be in a Seanad that was not just seen as a hoop that had to be gone through to get the legislation or the budget through, and where it was genuinely seen as a challenge. While I am not sure the Minister of State, Deputy Brian Hayes, would be kind enough to say it, on many occasions Ministers and civil servants are genuinely challenged in this House.

Senator Paschal Mooney: I will not delay the House as I have already contributed on Second Stage and on a number of occasions on Committee Stage. Suffice to say I have been watching with some interest the media campaign that has been going on, which has been alluded to by a number of Senators. It staggered me that because of the way the debate went here in the last week or two, particularly in regard to the abortion issue, which perhaps is the most emotive and divisive to come before both Houses, somehow there was a suggestion among the commentariat that we had let ourselves down. I do not understand that. This is a political Chamber as much as anything else. It may not be seen to be as adversarial as the Dáil but it is still a political Chamber and people still have opinions. People hold very strong opinions in regard to the Bill on abortion and also in regard to the Bill before us here - why would they not, particularly in regard to the abolition of Seanad Éireann? Are we to go meekly like lambs to the slaughter? It is important, indeed essential, that people on all sides of the House should express their opinions. What I have noticed is that there is a continuing exchange or dialogue

going on through the letters pages of all of the national newspapers. Unlike some issues that tend to come and go as flavour of the month, this one has been running for quite some time, and I believe it will run right up to the time of the referendum.

I agree with everybody who has made the following point. I cannot for the life of me understand why the Taoiseach decided that it was going to be a “Yes” or “No” vote on abolition. However, it is plainly obvious that he wants to be rid of the House and that he does not really want to have any debate or discussion about it. As far as he is concerned, and listening to the deputy director of the campaign most recently on radio, there is no need for it whatsoever. That is what this debate has been about, namely, to have an exchange of views to justify the reasons this House should continue. We are now in the final analysis and it will be down to the people to decide.

I will leave the House with this thought, which I mentioned on Second Stage. It has been only on very rare occasions that a lack of political consensus on a referendum has actually ensured the passage of that referendum. There is no political consensus on this matter in the country. Let the people decide.

Senator James Heffernan: I welcome the Minister of State, Deputy Brian Hayes, to the Chamber. I am sure he would prefer to be on his holidays.

Deputy Brian Hayes: Not for another three weeks.

Senator James Heffernan: It was with interest that I listened to some of the debate in the Chamber on this Bill, particularly today’s contributions by Members who are apparently independent. Yesterday Senator Ned O’Sullivan referred to them as quasi-Independents. The debate spurred me to enter the Chamber. I have already made my feelings on this legislation well known, but I must take exception to Senator Fiach Mac Conghail’s contribution. With respect, the Senator is well versed in treading the boards and acting the part. When it comes to theatre, theatrics and acting, one must be sure one has learned one’s lines before taking to the stage. It is clear to anyone who received today’s Order Paper - it is even on the television screens now for those who have not seen it - that the first item to be dealt with is the Thirty-second Amendment of the Constitution - in brackets for slower learners - (Abolition of Seanad Éireann) Bill 2013. That is what every Member will vote on. It is as simple as that. I do not know whether Senator Fiach Mac Conghail or some of the other Independents are being prompted from backstage, but they certainly have not learned their lines or certainly do not know what they are talking about. It is there in black and white for all to see that we will vote on the abolition of Seanad Éireann. Obviously, they are not clear on it.

I want to make this point because I took exception to the speech made. Although I see it happen a great deal in political life, one cannot talk out of both sides of one’s mouth. One nails one’s colours to the flag; one cannot be all things to all people. Too many Members are trying to do just this. I respect many of my colleagues on the Government side who have refuted the Bill. They object to what it is about and see it for what it is, namely, a slap in the face for democracy and a solo run by a man who, after having a couple of jars at a presidential dinner, decided-----

An Cathaoirleach: On the amendment, please.

Senator James Heffernan: Maybe he was on Ballygowan. I apologise and withdraw that comment. I will focus my fury on the Independent voices who claim to be independent but do not act like Independents at all. Senators are as one in what the Bill is about. We reject it, yet

23 July 2013

we must vote for it. That is ridiculous. I urge Senators, particularly the Independents, to be honest, to throw the Bill out and vote against it.

Senator Diarmuid Wilson: How does one follow that? I agree with every word of Senator James Heffernan's contribution. I welcome the Minister of State, but I am disappointed that the Taoiseach has not spent more time in the House, apart from a few minutes on Second Stage. He acted like a school bully, throwing a box before running away to leave someone else deal with the ensuing chaos. I was disappointed last Wednesday when he chose to launch a colleague's book instead of attending this House for even half an hour or an hour to listen to comments from both sides on Committee Stage of this important Bill. It is not important for me or colleagues on any side of the House but for the people and the Constitution. Without a doubt, the Bill is tinkering with the Constitution and wrong. Those Senators who vote for the Bill - not me - are voting to get rid of the House. They may delude themselves by claiming that they are voting to lay legislation before the people in a referendum. These are the facts.

The least the Taoiseach could do is spend a little time in the House to listen to our debate, not the spin of those reporting to him. I am referring to the facts, as outlined by colleagues on all sides of the House. As Senator Sean D. Barrett pointed out on Second Stage, it is disappointing that the Taoiseach spent four times more time cycling the Ring of Kerry than he has spent in this House since becoming Taoiseach. That is not acceptable. It is an insult to the House and every Senator.

Arguments have been made by the Government as to why the referendum is going ahead. I welcome Senator Fiach Mac Conghail's comments, in that he has clarified his position on the legislation and his reasons for voting with the Government. However, it is a sad afternoon for those Fine Gael and Labour Party Senators who will be forced to vote for legislation to which they are opposed. Not one Government Senator wants to vote for it, if the truth were told, and it is wrong that they are being forced to do so. A colleague on the Government side has alleged that an attempt was made to bribe him. He needs to clarify the position. I am aware of Government Senators who have been promised certain projects if they stay in line. That is a fact.

Deputy Brian Hayes: Name them.

An Cathaoirleach: The Senator should speak to the amendment.

Senator Diarmuid Wilson: This is important. This is our only opportunity to speak to the amendment, as the others have been ruled out of order. However, I respect the Cathaoirleach and his decision in that regard. It is a fact that Government Senators have been promised projects for their constituencies if they vote for the abortion legislation and this Bill. Hearing this may be uncomfortable for the Minister of State, but it is the fact.

Senator Maurice Cummins: The Senator should name them.

Senator Mark Daly: I hear that we should not name people.

Senator Diarmuid Wilson: I have no intention of naming them. The Leader knows this to be a fact.

Senator Maurice Cummins: The Senator has the privilege of the House to name them.

An Cathaoirleach: On the amendment, please.

Senator Diarmuid Wilson: I genuinely welcomed Senator Hildegarde Naughton to the House today and look forward to working with her for the two and a half years left in this term. However, it is important that she realise what the Taoiseach and his colleagues think of her and the rest of us.

An Cathaoirleach: This has nothing to do with the amendment.

Senator Diarmuid Wilson: The Taoiseach believes she is surplus to requirements, a waster, not fit for purpose and irrelevant. That is what the Taoiseach and the Government think of each and every one of us in the House. This fact must be noted. I wish the Senator well, but that is what the Taoiseach who appointed her to the Seanad thinks of her.

It is regrettable that, in attempting to do away with the House, the Government is disenfranchising the island's only 32 county electorate. That includes university graduates from Trinity College Dublin and the National University of Ireland. That franchise should be expanded to all graduates, and the 1979 referendum indicated that should happen. Nothing was ever done about that, and my party was in government for the bulk of that time. It is disgraceful that the matter was not dealt with.

Many good proposals have been put before the House by colleagues in dealing with Seanad reform, both in this Seanad and in the first Seanad in which I was privileged to serve. There was a report from Mary O'Rourke, along with the Minister of State and other colleagues. Nothing was done about that either.

Senator Maurice Cummins: It was buried. The Government of the time buried it.

Senator Diarmuid Wilson: Yes, I agree with the Leader that it was buried or shelved or dumped, whatever one might call it. Truth be told, no government wants a properly functioning Seanad as we are an inconvenience. As Senator MacSharry outlined, we are not only an inconvenience to the Minister, we are an inconvenience to the Civil Service. How dare we have any say in amendments to legislation?

I also take exception to Deputies from the Lower House or the many commentators who say we are not democratically elected. I have been democratically elected to the House under the Constitution of this country.

Senator Brian Ó Domhnaill: Hear, hear.

Senator Diarmuid Wilson: The 11 Taoiseach's nominees are democratic Members of the House under the Constitution. I take grave exception to any suggestion otherwise, with a portrayal that I sneaked in the gate and grabbed one of the seats in this House. I was nominated to this House and elected to it, and I am very proud of the fact. That story should be struck on the head. We should be elected in a different way, but currently, that is the way it is. Should the public have a say in the election of Members to this House? Yes, they should, although perhaps not for every Member. The public should certainly have a say in the election of the majority of Members to this House. On Second Stage of this Bill it was argued that contributions were made through the decades by excellent people but most of those would not have had a chance of being elected to the Dáil. The contributions made, particularly by Independent Members and university Senators, have been exceptional, and it is a disgrace that the Government and the Taoiseach in particular is proposing to do away with us.

23 July 2013

I had many disagreements with the former Minister for Justice, Equality and Law Reform Michael McDowell, but I have great respect for him. He started out thinking we should get rid of the Seanad but because of the time he spent as Minister before the House and since, he has changed his mind. He wrote an article to which some of my colleagues have alluded, stating many sensible things. It is entitled “Scrapping the Seanad is about a bid for total power, not saving money”, and that sums up exactly what this piece of legislation is all about. He argues that there are 37 politically appointed Government advisers, costing €3.4 million per year; so much for change and a new form of Government. Those advisers cost much more than the Members of this House cost on an annual basis.

Senator Aideen Hayden: I will be brief, as I made a speech on Second Stage and made my opinions on the matter known at that time. I would like to make one point. It has been put across in the media very clearly that Government Senators are voting to abolish the Seanad. In fact, Government Senators are being asked to put a referendum to the people, who will decide whether the Seanad will be abolished. That is the basic question, and I personally resent having to listen to other claims. The earlier stages of this debate were very respectful but it has deteriorated in this session.

What is dishonesty? The matter of the abolition of the Seanad was put into the programme for Government, the jointly negotiated agreement between the Fine Gael and Labour Parties. It would be dishonest for any Member who ever stood as a Senator for Fine Gael or for the Labour Party or was nominated by the Taoiseach to fly in the face of that commitment. It would be dishonest of me to oppose this motion, because I knew when I accepted the Taoiseach’s nomination that this was in the programme for Government. I respect Senator Mac Conghail for taking a similar perspective, and in my opinion, every Independent Senator should take that perspective. Any Labour Senator elected in this Seanad for the Labour Party should similarly take-----

Senator James Heffernan: I did not take that position.

Senator Aideen Hayden: -----that perspective. It is dishonest to have been elected as a Labour Party Senator knowing that it was part of the programme for Government-----

Senator James Heffernan: It was not my party’s position.

Senator Aideen Hayden: -----that the matter would be put to the people. Anything else is dishonest.

Senator James Heffernan: We are supposed to be democrats.

Senator Aideen Hayden: I will finish by saying I am supporting this Bill and I hope every Government and Independent Member will do so as well. I would respect them for doing that. This is a matter for the people and the Taoiseach will not determine the discussion that will take place over the summer. It will be a matter for any of the Senators who wish to make any contribution they want in the public domain to do so, and it will not be a matter for the Taoiseach, Deputy Kenny. I hope there will be a very robust debate, not just about the role of the Seanad but also about the role of local government, Dáil reform and all the other matters that should be discussed in the context of the abolition of this House.

I make one request of the Taoiseach. I am entitled to personally hope that the referendum is defeated, as a “No” vote is a vote for reform, and in such a case I ask the Taoiseach to put the

matter of Seanad reform to the Constitutional Convention.

Senator Mark Daly: This is really about dismantling the Constitution and a grab for power. The Dáil should have been reformed first, and the promises of such reform were to reduce the numbers of Deputies by 20 and the number of junior Ministers by eight. I am not referring to the Minister of State before us, I hasten to add. If that had happened, the issue of the cost of this House would not arise.

Daniel O'Connell fought for Home Rule all his life and his political life's work ended in failure because Home Rule was not achieved in his lifetime. There is a portrait near the Dáil staircase of the first Lord Oriel, John Foster, who did not believe in Catholic emancipation or that any Catholic should sit in an Irish Parliament. He did not even believe they should have had the vote, but his portrait is in a place of honour in these Houses because, as the last Speaker of the old Irish Parliament, it was his job to read the result of the vote of the Act of Union, which he fought long and hard to try to prevent. He fought those who accepted bribes, titles and land, and he succeeded with the first vote before failing on the second. As he read the result and went to take the mace that symbolised that the Parliament was in session, he believed he would some day have the honour of bringing that mace back to the House of Commons and the House of Lords, which was just over the road from us. It took 118 years to bring a Parliament back. Many people like Daniel O'Connell, who fought to bring it back, were not able to achieve it in their life's work. In the past two and half years we have seen a loss because the Government legislated for a 40% reduction in representation, at local authority level, by the dismantling of town councils. If today's proposal goes through we will lose one third of the Parliament and a democratically elected body.

My colleague, Senator Brian Ó Domhnaill, pointed out the loss of the democratically elected members of Údarás na Gaeltachta who were replaced by experts, as is proposed for Seanad Éireann. If Údarás na Gaeltachta is an example of how experts will be picked then they will all have some link to the Government. If Fianna Fáil, Sinn Féin or some other party were in power, in years to come, the same thing would happen and supporters of the Government party or parties would be appointed in our place. Such people will replace the Seanad just as was done with Údarás na Gaeltachta.

We have yet to see the Dáil or the legislative process reformed. The Leader has heard me talk about our lack of legislative scrutiny many times. The real work of the Parliament and this House is not to block legislation but amend it. We have witnessed a democratic deficit on a monumental scale that has not been addressed. In one calendar year 1,291 EU regulations were brought into this country and Ministers signed 164 EU directives without referring to the Dáil, the Seanad or the committees and passed the legislation without scrutiny. In one calendar year we have seen 594 statutory instruments, that can amend legislation, passed by this House without ever being referred back to this House. That is a national democratic deficit of monumental proportions. Ministers use statutory instruments to change and amend primary legislation. As many as 28,000 statutory instruments have been signed since the foundation of the State but 25% were signed in the past ten years. There is more and more centralised power, by the Government, resting in the hands of the few in Cabinet.

We have seen Bills guillotined. The previous Government could also be accused of guillotining Bills. We know, at this moment in time, that Bills are being guillotined at an alarming rate. We have also seen the impact of regulatory impact assessments. They are supposed to be carried out in advance of legislation to see how will it impede business, and how they will im-

23 July 2013

prove or disprove the current situation when it comes to regulations and red tape in this country. The Government has produced virtually none. When I asked the Minister for Public Expenditure and Reform about how many regulatory impact assessments, RIAs, had been carried out on legislation by his Department in two and a half years, his reply was “One”.

We are tied up in red tape. We need to cut it in terms of job creation. When a report was conducted on Valentia Island, which has a population of 600 people, we found that removing red tape in terms of planning and foreshore licences could create 72 jobs. That number would be badly needed in any community were it not for red tape.

Secondary legislation, for example, statutory instruments, is amending primary legislation without being referred by Ministers. There is a little known term called the King Henry VIII clause, which gives Ministers the power to change legislation passed by the Houses without referring it to the Deputies or Senators who passed it in the first place. Does this sound like a functioning democracy? Does it sound like a republic or Legislature that is working? It most certainly does not.

There is a significant absence of scrutiny, which we need to change. Instead of considering a Bill like this, we should be considering the opportunities afforded to us. Many Senators have discussed the democratic process and the question of people in the North. I have referred to how long and hard we struggled to achieve the vote for all citizens. Daniel O’Connell fought for Home Rule and achieved Catholic emancipation 184 years ago. Women fought for and won the franchise only 95 years ago. In Derry, people marched 45 years ago for one man, one vote. This is how hard and long the struggle has been to achieve the vote.

However, not all citizens have that vote. As has been pointed out by other Senators, only those in the North who came to the South for an education in certain universities have the right to vote in our election. Under our Constitution, they are entitled to be citizens. The first benchmark of any republic is whether it gives its citizens the right to vote.

An Cathaoirleach: The Senator is moving away from the amendment.

Senator Mark Daly: I will return to it in one second. I am discussing the Constitution, which is about to be amended by this Bill.

Articles 2 and 3 relate to the special relationship between people on this island and in this House and people of Irish heritage overseas. Rather than deciding that the House should be transformed to accommodate those citizens’ right to vote in this Parliament, we are removing that opportunity. The establishment, the Government and the economic council will never give citizens living outside the State the right to vote in a Dáil election. The only place where they can be given their voice is in the Seanad.

Not only are we dismantling the 75 elements of the Constitution that refer to the Seanad, we are also failing to fulfill the most important parts of the Constitution, Articles 2 and 3, as regards citizens in the North and overseas.

The Minister of State has had a long affinity with the great Kerryman, Daniel O’Connell. He well knows that Daniel O’Connell was lambasted for his achievement of Catholic emancipation, in that he did not achieve the vote for everyone. People’s voting rights were qualified. His entire life’s work was not achieved, but neither was Home Rule achieved by others, including John Redmond, to whom the Leader referred.

When one dismantles something, it does not return easily. It took 118 years to get the old Irish Parliament back into Ireland and for us to have our own Parliament again. We are wasting an opportunity to reform a political process that clearly does not work, as the Minister of State is well aware. Our scrutiny of EU legislation and directives is minimal and derisory. When people wondered whether officials were examining EU directives, a former Taoiseach replied that he was unsure of how much time departmental officials spent reading them. These are the facts. Neither we nor the committees are scrutinising directives properly. Deputies and Senators do not have support staff of their own to ensure that legislation is being handled correctly.

Scrutinising legislation should be the function of this House. EU directives outnumber Acts of the Oireachtas 3:1, yet the number of amendments being made by the Dáil or the Seanad to those directives is zero. Amendments are not allowed, as there is no process to provide for them. Ministers sign directives into law without referring them to the Parliament for scrutiny. This is an affront to the democratic process, as the Minister of State is aware.

I thank the Cathaoirleach for his indulgence. Will the Minister of State consider what Daniel O'Connell would have done in this situation? He would not have allowed the Seanad to be abolished until the Dáil was reformed.

Senator Cáit Keane: I was not going to speak, as I contributed on Second Stage. If only I had a button to delete repetitions from contributions in the Seanad. They should be banned. There should be a machine to survey regurgitation-----

Senator Mark Daly: It is called a referendum.

Senator Cáit Keane: That is why we are voting for it.

Deputy Brian Hayes: Let us get on and have it.

Senator Cáit Keane: I was spurred to rise. A Senator referred to the Title of the Bill and said it was an abolition of the Seanad Bill. This House is noted for putting facts on the record and for scrutinising Bills in detail and not allowing misinformation that this Bill is about abolition of the Seanad go out. The Bill's Title is the Thirty-second Amendment of the Constitution (Abolition of the Seanad) Bill. Abolition of the Seanad is in brackets. I will give a definition of what brackets mean to those who have not read the Bill correctly. Brackets are punctuation to interject text within the main text and can be omitted without destroying or altering, in any way, the meaning of the main text. The main text of the Title is the Thirty-second Amendment of the Constitution Bill.

The Constitution is the book of the people, who will speak. Not a word, a full stop or anything else can be changed without the people speaking. We, on this side of the House, are giving the power to the people and are giving them their right. There have been ten reports on the Seanad but nothing has been done; there has been no action from anybody. Members on the other side of the House were in government for a long time. It is time to give the people the choice. We are always talking about participative democracy. Let the people choose. Senator Maurice Cummins has brought the people into this House to ensure they are included.

We are being true to the pledge made in the Fine Gael general election manifesto in 2011 to hold a referendum. The Government would have been accused of breaking pledges if it did not have one. I am sorry but one cannot have it both ways. The Bill, if approved by the people, will make many changes to the Constitution and it would serve this House better if it concentrated

23 July 2013

more on the minutiae of the amendments and the details of the 70 odd changes to the Constitution which will be made. We had a good debate on Second Stage, as another Senator pointed out, and I would like such debate continue.

I would like to hear more debate on the transition provisions in the Bill because one cannot leave the House hanging without any provisions being made. Transitional arrangements will have to be made. The Taoiseach, Fine Gael and the Labour Party are giving the choice to the people. No action has been taken heretofore.

I think Senator Daly spoke about red tape. If there was one bit of red tape I could change in this House, it would be repetition. We talk about a family-friendly environment and time management but I have listened today to much of what I had heard on Second Stage. We should reform how we do our business in terms of repetition. Somebody referred to women being given the vote. Women would get home to their families, as would men, if we engaged in a bit of time management and ensured we said things once and well rather than often. Something will not get any better even if one repeats it ten times.

Senator Terry Leyden: I welcome the Minister of State, Deputy Brian Hayes. I do not think it was ever envisaged that there would be a constitutional amendment to remove one part of the Oireachtas. It was never considered possible that this would come about. The Taoiseach and Fine Gael promised to reduce the number of Members of the Dáil by 20 but found that would be in breach of the Constitution and, strangely enough, decided it would not put an amendment to the people on that. However, when it came to the Seanad, they decided to go ahead with the referendum. That has never been explained. The commitment was made to reduce the number of Deputies by 20, with which I would not particularly agree, but it is only going to be reduced by eight, which is constitutional. This was referred to in the Fine Gael manifesto, which had to be honoured, but it is not being put to the people. That is not made up, it is a fact. The Government decided it would not have a referendum on a reduction in the number of Deputies by 20 but it would reduce the number of Oireachtas Members by 60 by abolishing the Seanad.

On 15 October 2009, the Twenty-eighth Amendment of the Constitution Act allowed the State to ratify the Treaty of Lisbon. During the debate, in particular on Lisbon II, it was felt there was a democratic deficit - a distance from the legislative epicentre in Brussels and a growing knowledge gap between the citizens of member states and the Union that may be countered by a strengthened and bolstered role of the Seanad within the European sphere. Previous fora, such as the National Forum on Europe, which was disbanded, played a role in bringing attention to citizens the mutually beneficial role and future role of Ireland and Europe in their lives. The Lisbon II campaign saw the activist and mobilizing effect of certain civil society groups, which was welcome. The Seanad could step up to the plate here.

The White Paper on the Lisbon treaty, published by the Department of Foreign Affairs, referenced the national parliaments and Houses of the Oireachtas at least 14 times. Articles 9 to 12 of the Treaty of the European Union deal with the relationship between citizens and the EU institutions. In addition to references to the relationship between EU institutions, representative associations and civil society and the citizens' initiative, there is reference to the role of national parliaments.

The White Paper states:

The Treaty will give the national parliaments of the Member States a direct input for the first time into European Union legislation. These provisions are contained in two additional Protocols, one on the role of national parliaments and other on the application of the principles of subsidiarity and proportionality.

The people voted on the second Lisbon treaty referendum on the basis that there would be an enhanced role for the Dáil and Seanad and not only the Dáil. The Seanad was the ideal forum to bring this about - the Leader made every effort in this regard in the past two years - that we would be allowed to scrutinise EU legislation. This would have been a major and a worthwhile role because one can refer Bills back. The Minister of State will know the procedure in this regard but it is not being operated.

The protocol on the role of national parliaments provides for a process where Commission consultation documents - Green and White Papers and communications - shall be forwarded directly by the Commission to national parliaments upon publication. Draft European legislative Acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments. Draft European legislative acts originating in the EU Commission, European Parliament, European Central Bank, European Investment Bank, European Court of Justice or member states shall also be forwarded to national Parliaments. Article 3 of the protocol provides that national parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion-----

An Cathaoirleach: The Senator is moving away from the amendment.

Senator Terry Leyden: No, I am not. This is the kernel of the Constitution. We are taking away the power of the amended Lisbon treaty, on which the people voted. They voted for it on the basis that there would be a direct connection between the treaty and the Seanad. Given all these factors, the President should refer this Bill to the Supreme Court to assess exactly the position in which it puts the House *vis-à-vis* a decision by the people. I would be very satisfied to hold a referendum if the Supreme Court decides what we propose is legal, irrespective of the view of the Attorney General's office. The Attorney General is appointed by the Government. Although she has an independent position, she relies on the Government for appointment. She is at the bidding of the Taoiseach and the Government to bring forward the legislation and the regulations to gut the Constitution in regard to the abolition of the Seanad. The real independent voice in Irish society is the Supreme Court.

The President will be informed of the wishes of this House. The President is someone who would read most of the debates, as did Presidents McAleese and Robinson, who were very well informed on the overall discussion on this issue.

2 o'clock

I think the Taoiseach would read most of the debates, as President McAleese and President Robinson did. They were very well informed on the overall discussion regarding this issue. To finalise this important point, Article 8 provides that where the national parliamentary system is not unicameral, the above provisions - Articles 1 to 8 - shall apply to the component chambers. In Ireland's case, both the Dáil and the Seanad will be involved. The protocol provides for timeframes within which national parliaments will be afforded, advised and furnished of European Union institutional documents, together with the timeframe in which national parliaments are to respond. In such circumstances, the Seanad or the Dáil would be allowed to refer any

23 July 2013

legislation back to Europe. I suggest that would be a very important role for the Seanad. I have made the point previously that the Seanad can have a role in protecting the rights of the people and Senators can do some work in that regard.

As I have said previously, I have been a Member of both Houses. I was a Member of the Dáil for longer than I have been a Member of the Seanad. As I have pointed out, I have also been in the Minister of State's position. I will not go through that again. I am not speaking here as someone who has ever shown any disrespect for the Seanad. I have enormous respect for the Seanad. I brought the Companies (No. 2) Bill 1987 through this House. Many companies are going into protection at the moment under the terms of that legislation, which I brought through this House and the Dáil. The protection afforded to companies under the legislation in question has saved thousands of jobs over the years. When I brought Bills through this House, I did so with the full support of the Civil Service. I gave each Bill the time that was necessary. I did not rush any legislation through. I was available to take each Bill on behalf of the Department of Industry and Commerce, where I served as Minister of State with responsibility for trade and marketing, the Department of Health or whatever Department I served in. Aside from that, I am speaking on the basis of the work I have done since I became a Member of this House. I have represented Irish people abroad at many events in my capacity as a Senator, sometimes in very difficult circumstances. I will not go into the details of the case of a particular Irish citizen-----

An Cathaoirleach: On the amendment, Senator.

Senator Terry Leyden: I am making the point that being a Senator involves more than being in this Chamber.

An Cathaoirleach: The Senator spoke at length on Second Stage.

Senator Terry Leyden: I did not get around to this point. When I represented an Irish citizen in the courts of Greece, I was successful in persuading them to release this man, who was up on a charge. The point I am making is that the Greek courts respected the fact that a Senator in the Irish Parliament was speaking on behalf of an Irish citizen. There will have been many cases of Members of this House going abroad to successfully represent individuals in difficult circumstances. More than being in the Seanad Chamber is involved in being a Member of the Seanad. I am not doing this from any personal point of view. I know the Bill is going to go through and the question will be put to the people. At the end of the day, I hope the people will reject the proposal. If it is rejected, there should be a complete review of the Seanad and it should be sent back to the protocol like the current consideration of things. Then there might be a Seanad that is more reflective of modern requirements.

Senator Feargal Quinn: While I have not spoken during the Report Stage debate on this Bill before now, it feels like I have spoken in this House in the presence of the Minister of State, Deputy Brian Hayes, on many occasions recently. He is practically living here at this stage.

It is quite shameful that the amendment we are debating - No. 28 - is the only one of the 78 amendments that has been accepted for debate. I am worried that democracy is being endangered in this House. I have a real concern that democracy is very much in danger in the Oireachtas as a whole - in the Dáil and the Seanad - given that just one of the 78 amendments that have been proposed has been deemed appropriate for debate. If this Bill is accepted, we will not necessarily have a Seanad to debate these matters unless the citizens vote the right way on referendum day.

This amendment proposes that an additional 90 days be provided for consideration of this matter. I do not believe the 110 nominating bodies that have a vested interest in this Seanad have been consulted on this proposal, so we need to make sure they get an opportunity to express their thoughts on it. It would be appropriate to extend the relevant time period by 90 days so that these bodies can have a say and we can hear their views.

Senator Barrett has pointed out that quite a few graduates from Northern Ireland have a voice because they can vote in the elections for the NUI seats and the Trinity College seats. Although they might feel they have some ownership of this House, it does not seem that they will be asked for their opinions before this referendum takes place. They will not have an opportunity to debate the matter. They will not even have a chance to vote on it. It seems wrong.

What will happen if this Bill is passed and the abolition of the Seanad is debated but the proposal is ultimately defeated by the people? I hope it will be defeated. I do not believe we have given it enough attention. What will happen if the majority of those who vote - only citizens will have the opportunity to do so - vote "No"? The Taoiseach has already said he does not plan to reform the Seanad in such circumstances. He is planning to leave it as it is. I believe that is the topic that should be debated in the next 90 days.

I know the Taoiseach has said he does not intend to organise a referendum. That is okay because it may not be allowed under the Constitution. The Taoiseach should at least accept that if the people decide to vote "No", there will be a need for a discussion on Seanad reform. He has not said that, however. He has said there will be no reform in the event of a "No" vote. I think that is undemocratic.

My real concern about this legislation relates to the whole area of democracy. I have had an opportunity this week to read an interesting book I have had for the last five or six years, *Judging Dev* by Diarmaid Ferriter. It takes us right back to the period when the Constitution was written. The book focuses on a number of different aspects of that process, including the Seanad, of course. Senator Keane said that speakers should not repeat themselves.

During the debate on the compilation of the 1937 Constitution, there was a debate on the position of women. I have always assumed that a subservient place was given to women in that Constitution against the wishes of a large number of women. It turns out that a high proportion of people in Ireland wanted that constraint and control to be imposed on women in the Constitution. I did not understand that. I assumed it was pushed through and forced through. In fact, it would appear that there was strong and substantial support for that measure. I mention this as a reminder of how a Constitution can last 75 years in spite of the need for it to be reformed.

We have been able to reform the position of women and other things in more recent years, but we have not reformed the Seanad even though we have had an opportunity to do so. The 1979 referendum proposal was brought forward after it was accepted that there was a difficulty with not recognising the new colleges by allowing their graduates to vote in the same way as university graduates. Although that proposal was accepted, none of the Governments we have had since then did anything about it.

It is frustrating that Government spokespersons are suggesting that neither individual Senators nor the Seanad as a whole did anything about the need to reform this House. We were not able to do anything about it. I have been here for 20 years. Senator Norris has been here for almost 30 years. We have called for the reform of the Seanad, but the power to provide for such

23 July 2013

reform has not been in our hands. It has been in the hands of various Governments. We have not had a chance to reform the House.

When we look back on the events of 1937, we should reflect on how various aspects of the Constitution have influenced this country over the years. The word “neutrality” did not feature in the 1937 Constitution, yet it was pursued as a policy.

The decision not to establish a replica or duplicate of the Lower House was considered. Having the various panels elected by elected representatives is not undemocratic, although it could be argued that the five panels are no longer representative. If one were establishing panels now, one would probably have the disability sector and other groups represented. The Seanad is not in a position to change the panels, however.

I was pleased to support the Seanad reform Bill introduced by Senators Zappone and Crown. Senators recognise the need for reform. For the Government to turn its back on reform and choose abolition is wrong. If we choose not to delay the Bill for 90 days, we will not have an opportunity to consider the option of reform.

Reference is made to the Seanad 75 times in the Constitution. The number of changes required were the Seanad to be abolished would devastate and tear apart the Constitution. This issue had not been given sufficient thought. When the Government was elected I was not enthusiastic about its idea of holding a constitutional convention because I did not understand its purpose. The Constitutional Convention has earned its keep, however, as its chairman and members have shown great commitment and demonstrated that the convention is capable of doing a valuable job. Despite earning the respect of citizens, we were not given an opportunity to put before the convention the greatest proposed change to the Constitution, namely, the abolition of the Seanad. The Taoiseach and a small coterie of four Ministers have decided they will not allow the issue of Seanad abolition to be discussed at the Constitutional Convention, whereas issues such as voting age and the length of the President’s term may be discussed. I do not understand the reason the proposed abolition of this House may not be discussed, especially given the 75 references to the Seanad in the Constitution.

The number of times the Seanad has amended Bills that have been passed in the other House demonstrates that the abolition of the Upper House would damage democracy. According to the information we have received, approximately 450 amendments have been made in this House since the Government was formed two and a half years ago. While some of them were introduced by the Government, a large number were introduced because Senators identified improvements to the Bills in question. This would no longer be the case if we did not have a second Chamber.

This Bill has not received sufficient attention. Delaying it for 90 days would give citizens an opportunity to debate the legislation and ensure that, if they decide to vote in favour of abolishing the House, they will have at least done so having given the matter some thought. Citizens are not being given this opportunity. For this reason, I urge the Government to accept the amendment to ensure the proposal receives the attention it deserves.

Deputy Brian Hayes: I welcome the opportunity to speak. Senator Leyden, who was an important officeholder in a number of Administrations, raised an important issue. He indicated it may be possible for the President to refer the legislation to the Supreme Court. Article 26 expressly states that this is not allowed. According to the article, a Bill expressed to be a Bill

containing a proposal to amend the Constitution is not an issue for consideration by the President of the Supreme Court. There is, therefore, no provision for the scenario Senator Leyden has suggested.

Senator Terry Leyden: I thank the Minister of State for clarifying the issue, although I am surprised that is the case.

Deputy Brian Hayes: We have been up and down and around the houses debating this issue for several weeks. The most honest contributions were made by Senators Mac Conghail and Hayden who stated openly they will vote “No” but allow the Bill to pass in order that people are given their say. That is the nub of the issue. The Government is seeking the support of the House to ask the people of this great constitutional Republic to finally determine its view on this issue. After all of the reports and having excluded citizens from the Seanad for 75 years, we want to allow them to come to a view on the issue.

The reason we chose this route as opposed to asking the Constitutional Convention to examine the possibility of abolishing the Seanad was that we gave a commitment in the course of the previous general election. This commitment was joined by Sinn Féin and the Fianna Fáil Party, both of which stated they would hold a referendum if they were in government. That is the reason we did not ask the Constitutional Convention to examine the matter. We are holding good on a commitment we gave to the Irish people during the election campaign of 2011.

I reassure the House that, contrary to the views expressed by some Senators, this is not a power grab by either the Taoiseach, a select group of Ministers, the Government or anyone else. These are not the last days of the Weimar Republic, as some would have us believe. I heard outrageous claims being made about the Taoiseach, for example, when he was painted in some pitiful contributions as being somewhere between Robert Mugabe and Mussolini. The Taoiseach is holding good on a commitment he made, which was subsequently included in the programme of Government. This is a difficult decision for any Taoiseach to make because he must effectively tell 20% of his parliamentary party that he proposes to radically reduce the number of politicians in Leinster House. He has shown enormous courage in holding good on the commitment he gave the Irish people. It would have been easier for him to go down the reform route, ask the Constitutional Convention to examine the issue or find some weasel words to allow him to abandon his commitment. Instead, he chose to honour it and in doing so, he has shown authority in circumstances where the country has gone through the mire and the political establishment, including me, the Senators present and the Deputies elected to the other House, must radically change the way in which we present politics. In stating they believe it is possible to function with one House of Parliament, the Taoiseach and Government are making a public statement. This is the proposition that will feature in the referendum campaign. I agree with colleagues that the sooner the campaign commences, the better. It will be for the people to decide whether they want a unicameral or bicameral Parliament. To present this proposal as some form of power grab or the decision of a dictatorial cabal consisting of the four Ministers who make up the economic management council is childish nonsense.

This is a radical move for which the Government does not make any apologies. Politics must radically change if we are to ensure the crisis that befell this country does not happen again. We think we can do that with one parliament, but that requires radical change. We do not suggest the abolition of Seanad Éireann alone will be the catalyst for that change. There is a host of things we need to do. To be honest, the winning of this campaign by the Government which is committed to holding this referendum will prove to the people that we can reform Dáil

23 July 2013

Éireann and that it can be the place where the required radical change and shake-up of politics takes place. That will be the campaign.

I respect utterly the fact that colleagues in my party will vote “No” in the campaign. I suspect the majority of Senators in front of me will vote “No”. Equally, I respect those colleagues who are backing the Bill and allowing the people to come to a view. I respect the fact that they are willing to put this issue before them. We should not forget the fact that under the Constitution, it is the people who are sovereign. It will not be some group of parliamentarians whose career plans may be upset but the people who will decide this issue. They are sovereign and they will change the Constitution or choose not to amend it. I will live or die by that decision.

What the Government is doing in holding the referendum is asking the people to decide. It is asking the one group whose view on this issue has been singularly ignored in the past 75 years. It is not asking some elite or group that has been given a vote because it happens to have a university education, nor is it asking some group of politicians. No, it is the people who will be asked for their view on this issue and the Government will accept that view.

Senator Diarmuid Wilson made a charge that I am obliged to rebut. He is a man of good standing, but he suggested some inducement or bribe had been offered to Members of this House to vote a certain way.

Senator David Norris: Most undoubtedly.

Deputy Brian Hayes: That is a very serious charge.

Senator David Norris: Indeed and I have asked for it to be investigated.

Deputy Brian Hayes: It is a very serious charge. Senator Diarmuid Wilson has parliamentary privilege under the Constitution, as I have in the other House, to make the charge he has made.

Senator Terry Leyden: There is parliamentary privilege in this House also.

Deputy Brian Hayes: I encourage Senator Diarmuid Wilson to substantiate that charge. Otherwise, it will remain on the record.

Senator David Norris: For the Minister of State’s information, I have asked for it to be investigated by the Committee on Procedure and Privileges. There is not the slightest doubt that inducements will be offered all over the place. Jobs and preferment will be offered, as we all know. If the Minister of State is too innocent to see that, God bless him.

Acting Chairman (Senator Pat O’Neill): The Senator should resume his seat and allow the Minister of State to continue. He should not ignore the Chair. Will he, please, allow the Minister of State to reply?

Deputy Brian Hayes: With respect, I have listened for 20 hours to this debate without interrupting Senators, but the Senator cannot even show me that bit of respect.

Senator David Norris: The Minister of State certainly did interrupt. He has interrupted all the time. I will show him the record.

Acting Chairman (Senator Pat O’Neill): I ask the Senator to respect the Chair.

Deputy Brian Hayes: The comment I have made is fair. The Senator should stop abusing privilege in this House.

Senator David Norris: Privilege is precisely to be used for the business of unearthing corruption.

Deputy Brian Hayes: I want to turn to the issue that is the substance of amendment No. 28, on which we started the debate last week and which we have spent eight hours debating. Very few Senators have referred to the substance of the point made by Senator Sean D. Barrett in the amendment, including the Senator himself. The suggestion made by him is that when it gets to the point of establishment of a new Dáil, a further 90 days after the reassembly of the next Dáil, a new Government could decide whether it wished to abolish the Seanad. That is undemocratic and flies in the face of the referendum which I hope will take place. Effectively, the Senator is trying to second guess the will of the people in this matter. As I said, this is an issue for them decide, not the Senator, any group of us, the Executive or any part of it. This is an issue for the people to determine. Therefore, we will not accept the amendment. It would effectively kick off the issue again and second guess the express wish of the people.

As I said during the course of my contribution to the debate, the net issue is whether we require a one House or two House system. That is the issue for debate in the next couple of months, leading up to the referendum in the autumn. It is the task of the Government and those who support us on this proposition to promote the reforms we will make. I accept that there is legitimate scepticism about the scale of these reforms and how they will deliver the kind of political system we need. That is why this debate needs to be about the pre-legislative and the pre and post-enactment stages we propose, which I set out in my Second Stage contribution.

I found the mention of the Constitutional Convention very interesting. I have read in detail the remarks made by Senators on all sides of the House about the convention. The majority of them opposed the establishment of the convention and refused to have a debate in the House on it. They filibustered on that issue, as they have on this. However, everyone is now speaking in defence of the convention. What hypocrisy. The convention was designed by the Government and initiated by both Fine Gael and the Labour Party. It has happened under the Government, yet the allegation is that this is some sort of power grab. What utter rubbish. Look at the record. When this issue was debated in the House, the Tánaiste could not get an opportunity to speak because of the filibustering that occurred on that occasion. That is the record, as against the hypocrisy I have heard in the past three weeks from some Senators. Therefore, the so-called Constitutional Convention-----

Senator David Norris: It is the so-called convention now, is it? That shows the Minister of State's attitude towards it all right.

Deputy Brian Hayes: The so-called Constitutional Convention, as referred to by the Senator and others and opposed by their filibustering tactics, is now the means through which we will extrapolate reform.

Senator David Norris: I never opposed it.

Deputy Brian Hayes: The convention has been a very good exercise and having panels of experts to work with it is the means through which we can ensure better legislative scrutiny in the future. We stand over this.

23 July 2013

Senator Sean D. Barrett made a number of claims on which I ask him to reflect, in particular his remarks on Northern Ireland. Like Senator Terry Leyden, he is not over the Constitution. Clearly, he has not read it or refuses to understand the bits of it that do not suit him. I refer him to Article 47.3 which states: “Every citizen who has the right to vote at an election for members of Dáil Éireann shall have the right to vote at a Referendum”. Therefore, the question does not arise in regard to Northern Ireland for the reason that only those who can vote in a Dáil election will have a vote when it comes to the holding of a constitutional referendum. If someone is living in Northern Ireland and not registered to vote in a Dáil election, he or she does not have a vote in a referendum. Therefore, the proposition outlined by the Senator is constitutionally suspect to say the least.

The second issue relates to voters who have a vote in the university constituency. Those people in Northern Ireland who have a vote have it because they are graduates of the universities. What about the rest of the people living in Northern Ireland who are Irish citizens and part of the Irish nation? Are they to be excluded? Are they children of a lesser god when it comes to the less than 40% who turn out to vote for the university Senators? The Government has a different view. It believes people who live in the Republic should vote on this issue. The question does not arise in regard to Irish citizens living in Northern Ireland because they are not entitled to vote in a Dáil election. This is not about one category of voter and their entitlement to vote. The issue is whether this republic needs a one-House or two-House parliament. That is the issue that will be debated in the course of the campaign.

The issue of the public information campaign was raised by Senator David Norris, but I want to rebut his suggestion. The Government will not be running a publicly funded Government information campaign. The suggestion is that in some way Government funds will be used for the purpose of winning this campaign. Political parties will spend money on this campaign in the normal way and will account for that in the normal way. A referendum commission is being established and a sum of €2.1 million is being set aside for the purposes of that campaign in an independent way, as has been the case in recent referendums in a very honest transparent way.

Senator Norris is confusing a number of issues, which I hope to explain to him now. On the ballot paper, we will have a very clear reference to the proposed abolition referendum. The statement for the information of voters will be sent to all homes and will make it clear that we are talking about the abolition of the Seanad. There will be an information campaign conducted by the referendum commission, which is an independent body that will set out the arguments and encourage people to vote and take part in the process. The commission has been established. There has been much criticism of previous government decisions for the late establishment of commissions and the like. In this case, the commission is being established and is getting ready for its work in informing voters.

As a Minister of State of the Government, I have always enjoyed coming to this House. I have always found the debate to be of use to me as a Minister of State. Although Senator Barrett ignored it during his contribution last week, on two separate occasions I overruled the advice of my officials and took his Bills. I am not so sure I will do it in the future, given his remarks to me already.

Senator David Norris: I think the Minister of State should withdraw that remark. It is unworthy of him that he would refuse to enact legislation for the benefit of the people-----

Deputy Brian Hayes: That was meant in jest. Even Senator Norris should have the humil-

ity to accept that.

Senator David Norris: I certainly accept that, but I do not have any humility.

Deputy Brian Hayes: I accepted them in good faith, and I ask the Senator to accept my good faith on this issue. I have come to the conclusion and it is the firm view of the Government that this is the way to proceed. However, it is not my view or the Senator's view that will prevail. It is the view of the Irish people. Can we all agree on that at the very least?

Senator Sean D. Barrett: I thank the Minister of State for concluding on that note. We sent the material to Brussels last week. I will be joining with him because we need anything that can be done to get the banking sector in the way we both want it. I am glad he appreciated the contribution of this House. That is the spirit in which we came here two years ago. He came in as a reforming Minister of State. We were all here to help and I am afraid this is an issue which has poisoned the atmosphere around here, and I regret that. I look forward to the restoration of the kind of relationships that he described there.

It is a tribute to this House that the Government wants collectively get rid of us and the Title of the Bill contains the words "Abolition of Seanad Éireann". There should be natural tensions. Checks and balances require that. If we were such a teddy bear that nobody in the Cabinet ever noticed us and we were drawing pay and doing nothing, that would be a far more serious situation. These checks and balances are absolutely necessary in my view and that is why I will be arguing the opposite case to the Minister of State when this goes to the public. It is regrettable that we did not have a Green Paper, a White Paper or an impact assessment. Some of the things that have happened in recent days have weakened the reform cause that the Minister of State and I share. I think the inquiries Bill proposed by the Minister for Public Expenditure and Reform, which was before this House last Friday, was seriously undermined by the fact that the strong impression given beforehand was that the committees are in some way in the gift of the Government. Deputy Peter Mathews, who knows much about finance, and other Deputies who knew about medicine, as pointed out by Senator Crown, were removed from it. If committees are to replace this House, they must have credibility. We are already in trouble with the *Abbeylara* judgment, and I suspect that what will happen in committees will damage us and weaken the possibility of reforming banking, which is what we all want to do.

The Minister of State spoke about reforms. Nothing in this Senate prevents the reform of the Dáil. I mentioned last week that the *Ceann Comhairle* should be chosen by secret ballot. Government Senators should be allowed to put down amendments. They may be required to vote, but it would enhance the debate here. There should be far more freedom from the Whip than has been the case heretofore. The Minister of State has heard people say that they are going to vote "No", but will vote "Yes" today. It is like a problem that we encountered when we were trying to change the economy and there were absolute prohibitions on international trade. We gradually reduced them by 5% and 10%. Could we start with 5% of Whip free days or Bills and gradually increase that freedom?

Senator Crown has proposed that we should make the pledge to Ireland and its Constitution. It is rather strange to see people voting one way because they made a pledge to a political party. The Constitution stands above that. We could go further down the reform route and the Minister of State will not find many obstacles to that reform in here. However, it is rather blunt to abolish the 60 people in here as part of that reform programme. There could be other elements in the reform programme as well.

23 July 2013

I have SI 563 of 2012 in front of me, signed by Deputy Simon Coveney and Deputy Michael Noonan, who gave the official seal. It allocated on 12 December 2012 the sum of €841, 771,713 to the horses and dogs sectors, 80% of which went for horses and 20% for dogs. Savings on this House of Parliament might come to €3 million or €4 million and then the Government allocates over €841 million on 12 December by a statutory instrument which is not even discussed here, because that is part of the flaws in our system as Europe and the statutory instruments do not get discussed.

Some of the costings which make up the €20 million figure struck me as bizarre. This is in respect of a statement to *The Irish Times* that the €20.1 million figure is not exaggerated. We find that each Senator makes €32,000 worth of telephone calls and that the Bills Office cost €47,000 per Senator. Most Senators do not put down any amendments or never run Bills. Those of us who do run Bills, including those that the Minister of State likes, must cost the State an absolute fortune, if we are to judge them by the costings that make up the €20.1 million figure. Indirect costs are allocated at €155,000 per Senator, compared to a €65,000 basic salary. It just seems that there is an attempt to throw everything, including the kitchen sink, on top of us.

Senator David Norris: Cleaning.

Senator Sean D. Barrett: I note Muiris MacCárthaigh's article in yesterday's edition of the *Irish Independent*, entitled "Executive accountability in the Dáil still elephant in the room". I quoted the article from *The Irish Times* and I met its author. He gave the name of the Minister who, during a break said, Ministers decide, the Civil Service then takes over and if anybody in the Dáil puts his head above the parapet it is not going to happen. I shall tell the Senator the name in private conversation. I did not ask Stephen Collins who it was but he volunteered the name. That Minister is obviously concerned.

I come from a long line, dating back to 1607, of TCD representation in College Green, in Westminster and here. We have never let the side down. I will be sorry to see our constituency abolished if this is passed. The people whom I admire most from the past are David Plunkett and John Ball, the two TCD MPs in Westminster who, on 12 March 1873, voted against Gladstone's Irish Universities Bill which would have absorbed Queen's University into Trinity, run down Cork and closed Galway as uneconomic. Those two voted out Gladstone's government and voted Disraeli in. They had the courage of their convictions. We have always been like that, right up to the modern era, for example, Skeffington arguing against the ill-treatment of children when that was the norm, Mary Robinson favouring human rights long before that was the norm and Trevor West's stand on anti-sectarianism North and South. That is a proud record and I will defend it. I agree with the speaker - I think it was Senator Quinn - who said that if we ever do discuss reform, we cannot really expect to end up with a Seanad that is the same as the Dáil. That is not the purpose of the Seanad. This is a review Chamber, for putting forward views which are not otherwise represented.

I thank everybody who spoke on this amendment and I am proud to respond to their comments. I feel somewhat strange in this role. There were 77 amendments with something like 180 signatures-----

Senator David Norris: There were 78.

Senator Sean D. Barrett: Yes, there were 78 and 77 were dropped. I am not yet aware how I succeeded where 177 other signatures did not work. I was quite surprised to be called

upon.

Senator David Norris: They picked it out of a hat.

Senator Sean D. Barrett: Whatever is included in this, I am delighted to accept whatever accolade is implied.

Deputy Brian Hayes: I had nothing to do with it. My hands are clean.

Senator Sean D. Barrett: Senator Zappone said the Seanad has the job of providing checks and balances, to engage in deliberation and to generate new ideas. I think it does so. That is why I disagree with Lord Edward Fitzgerald who said that Leinster House does not inspire the brightest ideas. I find it to be the most exciting and interesting place. It is certainly far superior to any of the committees, quangos and bodies on which Taoisigh, including John Bruton and others up to the previous Government, asked me to serve. I agree with Senator van Turnhout that we need to do more on legislation. The Taoiseach should come in here more often. I do not want to make any melodrama out of that.

Dáil reform is needed. I have spoken about the Whip system. We need the diverse voices because group-think got us into the mess that we all, the Minister of State, I and everybody here, are trying to correct. We need more diverse voices, more elected people. When we consider the disasters from 2008 to now, the political part was solved, our Fianna Fáil friends are 58 Deputies lighter as a result. The other parts have not been solved and they will be pleased because there will be a much smaller Oireachtas without the Seanad to call them to account. The people have solved the political bit and I hope that it will be solved by the people the right way around on this occasion.

Senator Noone mentioned the media. The media has turned in our favour in the recent past. The longer this discussion goes on, the more the media sees a role for this House. People said that not one Government Senator is in favour of this.

Senator Wilson referred to tinkering with the Constitution. My research assistant tells me this will change the Constitution and its schedules in 96 places. That is virtually writing a new constitution. I would like the literature given to people to include a remark to the effect that the Constitution will be altered in 96 places if this goes through. We do need transitional arrangements and I will come to those in a second. The people will decide but I have been in court cases for the citizen versus the State and the State holds all the aces. That is the fear people on our side have. I appreciate the Minister of State's assurance that it may not in this particular case.

I have to stick to the point about Northern Ireland being neglected. Indeed, the Minister of State mentioned it in his response. We will be using a Dáil electoral register to abolish the Seanad which has a different electoral register, the main difference being Northern Ireland, as the Minister of State said. Those voters are being put out of the Oireachtas by a referendum in which they have no say. That is the point I am sticking to. The Minister of State cannot give votes to my constituents in Northern Ireland because the Constitution does not allow it. If the Minister of State, and the Government, get their way they will no longer have any say in this House.

There is a most interesting article in the current issue of *The Church of Ireland Gazette* by Martin Mansergh, a distinguished former Member of this House. He feels that the way the two

23 July 2013

parts of Ireland relate to each other has been going wrong for a long time not least because the Parliament in Northern Ireland was already in session in the June before the talks took place in November and December to sign the Treaty. He feels that the Home Rule solution and more accommodation between the two sides would have been a better way to run things. He has always been a voice for reconciliation and was a major voice in the peace process. In his book *The Legacy of History* Dr. Mansergh says that we have lacked the generosity needed for the two parts of Ireland to talk to and relate to one another. They do it with me but that is a historical accident. I can draw bigger numbers at a meeting in Enniskillen and the first one I held after being elected was in Belfast. That is a historical accident. These people are scorned in the documentation the Minister of State has cited. Dr. Mansergh quotes the manifesto of the Belfast Whigs in 1790:

That the Protestant Dissenters, fully convinced of the constitutional principles of their brethren, the Roman Catholics, and of their zeal to support and defend the Liberty of their country will on all occasions support their just claim to the enjoyment of the rights and privileges of freeborn citizens entitled to fill every office and serve in whatever station their country may think proper to call them to.

Martin Mansergh goes on to write:

The generous tones of the 1780s and 1790s which in this country would have made an enormous impact in building confidence, harmony and reconciliation between the communities, have been conspicuous by their absence.

I have no doubt that this will be felt North of the Border.

James Madison, the fourth American President, one of the framers of the American Constitution, said that the founding fathers did not intend the United States Government to be partisan, the question is how to incorporate in a republic people who differ from us. That is what Arthur Griffith did when the Provost of TCD and others approached him. The undertakings were specified in a letter written to Arthur Griffith by Lloyd George. That is what Arthur Griffith agreed to. That spirit may be evident at the meeting of Young Fine Gael at the weekend. On page 75 of his book, Donal O'Sullivan writes that they argued that there should be Senate. Griffith said he was in favour of a second chamber and believed his colleagues would be. The purpose was to provide safeguards for the representation of minorities and the general protection of their interests. The TCD seats have done that. The need for that is still felt. That is why there are people demonstrating against the PSNI and the Parades Commission. Two of the Northern Ireland parties will campaign against the Government on this issue.

The Church of Ireland notes in *The Irish Times* on 13 July 2013 about the commemorations state: "These are valuable initiatives for they provide a voice for the small minority which is the Church of Ireland – a community which has something significant to say but whose voice could be so easily overwhelmed by the national scale of commemoration". These valuable initiatives provide a voice for a small minority, the Church of Ireland - a community which has something significant to say but whose voice can be so easily overwhelmed by the national scale of commemoration. I refer to the Steve McDonagh book about Barack Obama's Irish connection, which documents the decline in the Protestant population in the Republic from more than 10% in 1900 to around 3% now. The goals of Arthur Griffith and company have not been realised. We need a voice for all of the different strata of Irish society. The book refers to such elements of unhappy history as the Mayo librarian controversy; an incident in which a Galway obstetri-

cian, a graduate of TCD, was forced to surrender his appointment as professor of gynaecology at UCG and had to emigrate; the Fethard-on-Sea boycott - I remember my father going there on business to break that boycott; the TCD ban, which was in place right up to the 1970s; the threat to small rural Church of Ireland schools and the threat to the fee-paying schools of the Church of Ireland; and the treatment of the Church of Ireland College of Education and TCD itself. Now the seats here in this Parliament are to be abolished. That is very regrettable and a very sad occasion for those who believe in an Ireland of inclusiveness, as we all do.

Let me quote from Gordon Wilson when he spoke at the New Ireland Forum. He was one of the great Senators.

My being here stems from my love of this land and of its people but also from convictions nurtured from earliest days and sharpened by personal sufferings through the conflicts of the past years. I am no mere Northerner but one whose heritage, religiously, socially and culturally, has been woven into my being, the person I am. I am no foreigner in an alien land but in a land due to me and mine.

I strongly agree with Gordon Wilson's comments.

I clarify that I am against the abolition of the Seanad. I will be voting against the Bill today in the interests of consistency, because, unlike some of our colleagues, I see emblazoned in large type, "Abolition of Seanad Éireann".

Senator David Norris: Exactly.

Senator Sean D. Barrett: It is not a vote for anything else. It has been very helpfully included by the Office of the Parliamentary Counsel, for which I thank it.

It is a principle of republican government - as in the United States - that structures are needed to exist to prevent the tyranny of the majority. That is what we are getting now. The Seanad was a beacon in preventing two sectarian states in Ireland. It is a task that becomes no less urgent now than it ever was in the past.

The 90-day delay is the normal time period allowed between the Seanad and Dáil elections. It allows time for reflection. The constitutional changes are profound - 96 changes, according to some calculations, and 75 according to other calculations. This is no small alteration to the Constitution. The issue cannot be covered by the Constitutional Convention. I have vague memories of the debate the Minister of State describes. All I can plead is that I had been here as a Member for only around two weeks at that time and I was not familiar with the procedure. Senator Quinn and I went to see the Taoiseach. I am of the same view as the Americans, that the Constitution should not be changed very frequently. My goal is to go to the Seanad and to make it work. We also offered the Taoiseach some advice on the use of the electoral register as a way of ensuring that the real people were included. We actually mentioned to him that people from Belmullet would have a say and not just everybody from the same quangos in Dublin 4. The Bill to use the electoral register for the first time for that purpose was introduced in this House. My aim was to assist the Government and to make this House work. What is before the people is not an amendment of the 1937 Constitution. The proposal will fundamentally change how the business of government is performed. All these checks and balances provided by Senator Quinn, Senator Crown and all the Senators here will be gone. There will be a rigid whip system which must be obeyed, or else one cannot sit on a committee or one will be fired out of one's office or subjected to some other form of torture, because people made a pledge not

23 July 2013

to the country nor to the Constitution but to a political party. I am glad I was never a member of a political party when I hear some of those things. It seems to be an awful situation into which people lock themselves.

Governments certainly take time to reflect on referendum results. They have been reflecting on the referendum on university representation since 1979. They did not get rid of the existing university seats at midnight before the Dáil reconvened. In the case of referendums on Europe, it seems that if the result is not liked, the referendum can be run again. We have done that a couple of times. The fact that a new Government might like to reflect on the gravity of what is proposed in the Government's Bill is very well worth considering. It may even be the secret reason that amendment No. 28 survived and the other 77 were turfed out. Some amendments were proposed by 20 Senators, and they cannot all be wrong. Senators Zappone and Mary Ann O'Brien have four pages of amendments. I am speaking on their behalf by default. We could have had a far different discussion. It devolved to me because 28 is a nicer number than any other number between zero and 78.

This legislation is wrong. I respect the Minister of State, as always, but I do not think it illustrates political courage. It is foolhardy to tear in like this. More scrutiny is exhibited in these islands with the success of the new parliaments in Edinburgh, Cardiff and Belfast. Unless we change other aspects of our political system, getting rid of the Seanad will be a fatal blow to Irish democracy. Political parties should reflect on the way in which they have behaved towards dissidents in the recent past. The Seanad was the home of dissident views. That is why Arthur Griffith put it here. I wonder how a distinguished Member in the Gallery, Deputy Peter Mathews, feels about how the new system will treat dissidents.

I am very much cheered up by the vote of Young Fine Gael. I have found that young people like this House. I checked the debating list in college the other evening. Trinity College regularly debates and defeats Harvard, Yale, Oxford and Cambridge. When Senator David Norris and myself shuffle off, there will be much better debaters coming up. We are not even Old Testament prophets for the kind of people that are coming along the way. One of the Senators on the Government side asked me to find a research assistant. Seven candidates were identified and they all had brilliant degrees, including two candidates who had obtained 600 points in the leaving certificate examination. These brilliant people want to serve in this House. They are perhaps not as cynical as the Government in proposing to get rid of 60 politicians because they might have 60 far better people in mind.

It will be a turning point in the history of this country if this Bill goes through today and if this House is abolished. We will be turning our backs on Northern Ireland and turning our backs on ideas. We need ideas; they are not here. There were no dissident voices when all the money was being spent.

3 o'clock

In 2002 I argued the case that Members of the Northern Ireland Assembly should oppose any proposal for the North to join the euro. That was my contribution to the dissident voices on that issue. There is too much groupthink in public discourse on a range of matters. That is why the Seanad is needed. When the Minister of State goes into the ballot box in Tallaght or Terenure, I hope he will think of us.

I referred on the first day of the debate to the observation by John Kells Ingram that might

will sometimes conquer right. That is what I fear will happen in this case. The last poem Ingram wrote before his death seems suited to the situation in which we find ourselves:

Unhappy Erin, what a lot was thine!
Half-conquered by a greedy robber band;
Ill governed with now lax, now ruthless hand;
Misled by zealots, wresting laws divine
To sanction every dark or mad design;
Lured by false lights of pseudo-patriot league
Through crooked paths of faction and intrigue;
And drugged with selfish flattery's poisoned wine.
Yet, reading all they mournful history,
Thy children with a mystic faith sublime,
Turn to the future, confident that Fate,
Become at last thy friend, reserves for thee,
To be thy portion in the coming time,
They know not what -- but surely something great.

The Seanad can be something great. A great Upper House can assist the Government in bringing forward the necessary reforms we all support. I ask everybody here to support the amendment and to vote "No" in the referendum.

Senator David Norris: Bravo.

Cuireadh an cheist: "Go bhfanfaidh na focail a thairgtear a scriosadh."

Question put: "That the words proposed to be deleted stand."

The Seanad divided: Tá, 31; Níl, 24.	
Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Brennan, Terry.	Bradford, Paul.
Burke, Colm.	Byrne, Thomas.
Clune, Deirdre.	Daly, Mark.
Coghlan, Eamonn.	Healy Eames, Fidelma.
Coghlan, Paul.	Heffernan, James.
Comiskey, Michael.	Leyden, Terry.
Conway, Martin.	MacSharry, Marc.
Cummins, Maurice.	Mooney, Paschal.

23 July 2013

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

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Sean D. Barrett and David Norris.

Question declared carried.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Faisnéiseadh go rabhthas tar éis diúltú don leasú.

Amendment declared lost.

An Cathaoirleach: Amendments Nos. 29 to 78, inclusive, are out of order.

Amendments Nos. 29 to 78, inclusive, not moved.

Cuireadh an cheist: “Go nglacfar an Bille chun an breithniú deiridh a dhéanamh air.”

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

The Seanad divided: Tá, 31; Níl, 25.

Seanad Éireann

Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Brennan, Terry.	Bradford, Paul.
Burke, Colm.	Byrne, Thomas.
Clune, Deirdre.	Daly, Mark.
Coghlan, Eamonn.	Healy Eames, Fidelma.
Coghlan, Paul.	Heffernan, James.
Comiskey, Michael.	Leyden, Terry.
Conway, Martin.	MacSharry, Marc.
Cummins, Maurice.	Mooney, Paschal.
D’Arcy, Jim.	Mullen, Rónán.
D’Arcy, Michael.	Norris, David.
Gilroy, John.	Ó Clochartaigh, Trevor.
Harte, Jimmy.	Ó Domhnaill, Brian.
Hayden, Aideen.	Ó Murchú, Labhrás.
Henry, Imelda.	O’Brien, Darragh.
Higgins, Lorraine.	O’Brien, Mary Ann.
Keane, Cáit.	O’Donovan, Denis.
Kelly, John.	O’Sullivan, Ned.
Landy, Denis.	Power, Averil.
Moloney, Marie.	Quinn, Feargal.
Moran, Mary.	Reilly, Kathryn.
Mulcahy, Tony.	Walsh, Jim.
Mullins, Michael.	White, Mary M.
Naughton, Hildegard.	Wilson, Diarmuid.
Noone, Catherine.	Zappone, Katherine.
O’Donnell, Marie-Louise.	
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.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

23 July 2013

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

Senator Maurice Cummins: Now.

Cuireadh an cheist, “Go ndéanfar an Cúigiú Céim a thógáil anois”, agus faisnéiseadh go rabhthas tar éis glacadh léi.

Question, “That Fifth Stage be taken now”, put and declared carried.

An Bille um Dara Leasú is Tríocha ar an mBunreacht (Deireadh a chur le Seanad Éireann) 2013: An Cúigiú Céim

Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013: Fifth Stage

Tairgeadh an cheist: “Go righfear an Bille anois.”

Question proposed: “That the Bill do now pass.”

Senator David Norris: This is a very sad day for Seanad Éireann. Like my colleague, I also look forward to the restoration of good relations. They do not exist at the moment. The Minister of State is rather naive. I would like to put something rather important on the record of the House today for the Minister of State’s attention.

An Cathaoirleach: Can we have silence in the Chamber please?

Senator David Norris: I have today discovered from an unimpeachable source, who is centrally involved in all these discussions about Seanad reform and all the rest of it with the Taoiseach and the Fine Gael Party, that the Taoiseach and the Fine Gael Party established a sub-committee to look at the Seanad and it unanimously endorsed reform. There was then a focus group report, a public relations exercise, that said to the Government that a populist stunt that would bear votes for it would be to talk for the abolition of the Seanad. That is what actually happened.

Senator Ned O’Sullivan: Shocking.

Senator David Norris: I found that out today, and the source is unimpeachable and was directly personally involved. That is the truth. It is for that reason I want this Bill to be rejected.

University graduates were singled out by the Minister. It is a wonder to me that the Government did not have the guts to go the whole hog and use the word “Protestant” as quite a number of the correspondents who wrote in the media did. They derided what they called the Protestant ascendancy antics and so on. There is a little veil of sectarianism underneath this and Senator Barrett is right that it will not wash in the North.

Senator Brian Ó Domhnaill: Hear, hear.

Senator David Norris: Turning to the Constitutional Convention, I tried to get that involved in this discussion. It was ruthlessly hammered out by the Government. The Minister should know I was here during that filibuster, and it had nothing whatever to do with the Con-

stitutional Convention.

An Cathaoirleach: Can we have silence in the Chamber please?

Senator David Norris: He should withdraw that because that was a filibuster on the Order of Business and the Tánaiste, Deputy Gilmore, waltzed off in a snit at the end of it. That is why we did not have the debate on it. It had nothing to do with the Constitutional Convention.

Senator Ivana Bacik: Come on. That is rubbish.

Senator David Norris: The Government picks and chooses. I think 96% voted in favour of more direct public access to the nomination procedures of the Seanad, and it threw it out. It took things at about 52%, so it is very *à la carte* with regard to that.

We then had the business of second guessing the people. I have to laugh. Has the Minister of State ever heard of the Lisbon referendum?

Minister of State at the Department of Finance (Deputy Brian Hayes): Yes.

Senator David Norris: He was not behind the door second guessing the people then when they had already passed a referendum so let us not have any more of this hypocrisy. There were 78 amendments, of which one was allowed. I am glad it was an amendment tabled by my good colleague, Senator Barrett, whose speech was one of the most outstanding of this Seanad and was superlative. Although I have been in this House for 26 years, I have never known anything remotely approaching the rejection of 77 out of 78 amendments. Moreover, the grounds were completely specious and that, a Chathaoirleach, is deeply worrying. Some of the Cathaoirleach's decisions are indefensible.

Senator Maurice Cummins: That is an attack on the Cathaoirleach.

An Cathaoirleach: Senator, you are questioning the Cathaoirleach's decision on that.

Senator David Norris: I will let off the Minister of State because I often make intemperate remarks. The Minister of State did state he would exact vengeance by not bringing in any more amendments from Senator Barrett.

Deputy Brian Hayes: It was a joke.

Senator David Norris: That was an off-the-cuff remark, and God knows I am known for them. Consequently, it would not be right to punish him for that. It was fair enough and was part of the debate. I know the Minister of State to be a generous man and he did not mean it. Moreover, he would be very unwise to, because he might remember the little goody I delivered to him at lunch in recent days, which will be good for the Government and the country.

An Cathaoirleach: I remind the Senator that we are on Fifth Stage of the Bill.

Senator Mark Daly: We are not at lunch.

Senator David Norris: Yes, I know that.

Finally, I note that after this Bill, Members will be asked to pass this piece of rubbish, namely, the motion that is No. 2 on the Order Paper. This is another clear example of the Government usurping the right of the Referendum Commission, because this purports to write for that com-

23 July 2013

mission part of the information that will be distributed. This is as grossly wrong as the manner in which, last Friday, the Government in a unique act first suspended the Standing Orders of this House and then bypassed the Committee of Selection. I have never known anything like that previously. Let the people of Ireland beware: if this is what happens when there are two Houses, then God help Ireland if the Government manages to get rid of this House. I rely, as I always have done, on the good sense of the people of Ireland. I believe they will perceive that they have an open goal. The Government, very cleverly and strategically, may have placed the referendum before the budget, because this will be one hell of a budget. This will be a savage budget and nothing the Government proposes would be passed thereafter.

An Cathaoirleach: Senator, we are on Fifth Stage of this Bill.

Senator David Norris: Consequently, the Government's sleight of hand, dishonesty, manipulation, Machiavellian conniving and use of corruption - in every sense of the word - will backfire on it. The people will see through the poke but will give one almighty poke to the pig that is contained within it.

Senator Denis O'Donovan: I will make a brief comment. When people come into this Chamber, they should speak from the heart rather than being told what to say. Most Members on the other side, were they really to open up their inner thoughts on what is happening here today, would be voting otherwise than they are

Senator Darragh O'Brien: Hear, hear.

Senator Denis O'Donovan: I will conclude with an old saying recounted to me by my grandfather, because I have heard people opposite speaking on both sides of the House, namely, "May he never be fat, a man who wears two faces under one hat." Most of the Members opposite are doing that today.

Senator Darragh O'Brien: As I stated on Second Stage and again on Report Stage, what is happening and has just happened here in respect of the vote to pass this Bill is nothing short of shameful. I directly ask the Minister of State: where was the Taoiseach? On Second Stage, the Taoiseach stated directly to Members and gave a commitment that he would come to the House and answer questions that I and my colleagues put to him. He was not even man enough to come into this Chamber to answer those questions. I find that to be absolutely deplorable. He would not come in to answer questions.

Senator Ned O'Sullivan: He was not in the mood.

Senator Thomas Byrne: Bhí ceist a fhreagairt aige as Gaeilge.

Senator Darragh O'Brien: I also ask-----

An Cathaoirleach: On Fifth Stage, Senator.

Senator Darragh O'Brien: Yes; I am on Fifth Stage, effectively. I will ask the Minister of State another question that will not be answered today: what is the date for the referendum? I have listened to some Members on the Government side - I include some of the Taoiseach's nominees in this regard - who have spoken about giving the people a right to have a say on this issue. Nowhere within this Bill has the Government actually stated when the referendum will take place. The Bill does not even mention a referendum. This Bill is about the abolition of the Seanad and I repeat that it is the worst act of political vandalism in the history of the State. The

Government is dismantling-----

Senator John Gilroy: Apart from Fianna Fáil destroying the country.

Senator Darragh O'Brien: I have listened to Senator Gilroy and at this stage-----

An Cathaoirleach: Senator O'Brien without interruption.

Senator Darragh O'Brien: This debate has further proved to me that the Labour Party in particular is finished, because the Labour Party stands for nothing.

An Cathaoirleach: Please, Senator, on Fifth Stage.

Senator Darragh O'Brien: No; this is important.

An Cathaoirleach: Senator, on Fifth Stage. We are on the Bill, not on political parties.

Senator Darragh O'Brien: The Labour Party is irrelevant-----

An Cathaoirleach: Senator, we are on Fifth Stage now.

Senator John Gilroy: Bring forward a referendum to abolish the Labour Party.

Senator Darragh O'Brien: -----and stands for nothing. I will tell the Cathaoirleach the reason it stands for nothing. Every single Member on the other side-----

An Cathaoirleach: Senator, on Fifth Stage.

Senator Darragh O'Brien: I am on the Bill. Every single Member on the other side has, privately and in discussions, stated to everyone present that he or she does not agree with the abolition of the Seanad. That is what they have said.

Senator Ivana Bacik: The people will vote on that.

(Interruptions).

Senator Darragh O'Brien: I ask them all to read the Short Title of the Bill and look precisely at what they are voting for. If anything has been proven, it is that more and not less oversight is what is required. There are no real proposals from the Government as to what will replace the Seanad, should the people vote to abolish it. Finally, like my colleague Senator Norris, I put much faith in the Irish people in this regard and know that whenever this matter is put to a referendum, the Irish people will make their decision on this issue. In the interim, however, I do not believe any Government Senator should ever come to the Seanad to propose any amendment, Bill, Private Members' motion or anything else because the Government Members have voted no confidence in the Chamber they purport to respect.

(Interruptions).

An Cathaoirleach: Senator O'Brien without interruption.

Senator David Norris: Show me the word "referendum" in the Bill.

An Cathaoirleach: Please.

Senator Darragh O'Brien: None of the Members opposite deserve any respect from this

side after voting-----

An Cathaoirleach: Senator, on Fifth Stage of the Bill, please.

Senator Darragh O'Brien: -----for this. That is a fact.

An Cathaoirleach: Senator O'Brien, on Fifth Stage of the Bill.

Senator Darragh O'Brien: Many of the Members opposite have marched up the mountain on many issues, including social welfare Bills and budgets.

An Cathaoirleach: Senator, on Fifth Stage.

Senator Darragh O'Brien: They have walked up the hill and then walked all the way back down, as they did last Friday-----

Senator Maurice Cummins: This has nothing to do with the Bill.

An Cathaoirleach: Senator, on Fifth Stage of the Bill.

Senator Darragh O'Brien: -----when this House set aside Standing Orders, set aside a Committee of Selection and rammed through changes here.

Senator David Norris: Hear, hear.

Senator Darragh O'Brien: The Labour Party Members-----

An Cathaoirleach: Senator O'Brien, on Fifth Stage of the Bill.

Senator Darragh O'Brien: I am on Fifth Stage.

Senator Maurice Cummins: This has nothing to do with the Bill at all.

Senator Darragh O'Brien: This is about how the Seanad operates and about the Labour Party Members, who shed *faux* tears last Friday, stating they could not back this and could not replace Senator Heffernan. However, as Senator Bacik stated, they sorted it out among themselves and came into the Chamber like the sheep they are and voted for it.

Senator Maurice Cummins: This has nothing to do with the Bill at all.

Senator Darragh O'Brien: This is what they have done here again today, and consequently, should this be the last Seanad, in the two and a half years remaining to the House, none of them should ever bring forward an item, because they have lost all credibility.

Senator Fidelma Healy Eames: This is a defining moment in our history. Members are being presented with a referendum to decide whether this House should be abolished or retained. I believe this argument will be won by reasoned debate, but only by reasoned debate that will demonstrate the benefits of this House to Irish politics and in the service of Irish people. There will be many cat fights originating from both sides of this House, but Members must forget about themselves. The majority of Members present may never be returned in the future, with the exception of those who may have been promised something that is not democratically based. Consequently, Members should consider how they can serve the Irish people, as that is their sole purpose here. My vision for a reformed Seanad is one in which all Irish citizens will have a vote, where there will be thinking politics-----

An Cathaoirleach: Senator, we are on Fifth Stage, not on reform.

Senator Fidelma Healy Eames: On the Bill, I refer to a vision in which there will be thinking politics in this House unimpeded by a Whip system or party politics. While I completely support that in the Dáil, the Seanad should be a thinking House that will inform policy that can then be taken on board by the Dáil. I will not impede democracy and today I will vote for the passage of this Bill. I do not wish to impede democracy but to improve it. There has been sufficient political interference for populist reasons, and that damages politics. One of the reasons this was a poorly motivated proposal in the first instance is that it did not emerge for the right reasons. It emerged for populist reasons only and that is never a good motivation.

I believe the Irish people are not looking for small politics anymore. They are looking for thinking politics. Let us give it to them. Let us forget about ourselves here. We may be the fall guys but at least we will have made our mark.

Senator Jimmy Harte: I took umbrage with the Fianna Fáil Party stating the Labour Party was finished.

Senator Darragh O'Brien: I stated the Labour Party was irrelevant.

Senator Thomas Byrne: The polls are usually right.

An Cathaoirleach: On Fifth Stage of the Bill, please.

Senator Jimmy Harte: Someone recently stated that when they have a roll call in the Fianna Fáil Party, they do not know whether to say "Present" or "Not guilty".

An Cathaoirleach: On Fifth Stage of the Bill, please.

Senator Jimmy Harte: I note Senator O'Brien laughing.

Senator Catherine Noone: They have expertise here.

Senator Diarmuid Wilson: That is an outrageous comment.

Senator Jimmy Harte: The day politicians are afraid of the public is the day one leaves democracy. Nobody here should fear the Irish public's view. Ultimately, they are the arbiters of this referendum. If the public feel the way we do and choose not to abolish the Seanad, the Seanad will come back as a much stronger organisation. Maybe the Taoiseach has done the Seanad a favour by putting it out there and saying, "Let the public, after 75 years, decide whether the Seanad is worth retaining." The wisdom of the public is what we must go on. If we had the law on our side and could vote in favour or against, I am sure 100% of the Senators would vote to retain the Seanad, but it is not for us to tell the public that it should not get a chance to endorse this fine House and the worthwhile contributions from all sides in this and other debates. We must let the public decide. We can kick our heels up and say the House does not deserve to be abolished. That is not a matter for us, as Senators, in here. It is a matter for the public outside. I ask the public, in October or November or whenever the vote takes place, to retain the Seanad.

The Fianna Fáil Senator stated that we are voting to get rid of the Seanad. We have a private vote and I will be voting in the polling booth to retain the Seanad, as I am sure many other Members will.

Senator David Norris: Good man.

23 July 2013

Senator Jimmy Harte: I and many Members here are on the record as saying so. Those who propose to abolish it are doing so for their own reasons. That will be decided by the public, not by 60 Senators in here. We all have a role to play between now and referendum day.

One should not be afraid of the public. One should let the electorate decide. If the electorate gives its endorsement to the Seanad, when we come back in October or November we can say we are a part of democracy that the people maintained, but if they vote to abolish the Seanad, that is also democracy.

Senator John Crown: Fairly uniquely in this House, I ran, in the one election campaign in which I ever ran as an adult - although some would argue that one too - with a brochure that stated I would campaign for the abolition or reform of that Chamber for which I was running because its electoral system was an affront to democracy, and I still believe that. I believe this is a House that needs to be reformed. If there were no option but to keep it as it is or abolish it, I probably would reluctantly vote for abolition, but I believe there is the prospect of reform. Putting my money where my mouth is, I, together with Senators Quinn and Zappone, authored Bills which are aimed specifically at reform. I am grateful to the leadership of the House for allowing our Bill to proceed to the Stage it has so that we can with a clean conscience campaign for a "No" vote in the referendum, stating that there is an option. If we win, if the Seanad is retained, there is significant moral pressure on the Government to consider the Bills to reform the Seanad.

It is a rather breathtaking piece of historical revisionism to blame the Seanad for failing to reform itself over all the years. Certainly, I was not in the Seanad. The Taoiseach, who has been the primary *auteur* of the move to end the existence of the Seanad, has had a long and distinguished career in Leinster House and I have not noticed many initiatives from him over the years to reform the Seanad.

In summary, my opposition stems around a few facts. First, as someone who has screamed and roared for increased funding to be made available for the health service and other parts of the social system, I can say that the figures that were trumpeted as the potential savings associated with abolition have been shown to be wrong and have, in fact, been partly retracted by others in the Government. I would go further. I believe the saving will be zero. I believe there will be no moneys redeployed to the health service. The Minister for Public Expenditure and Reform, Deputy Howlin, the man who is responsible for saving money in the public service, in this Chamber in 2011, again on RTE and more recently in a private conversation with me, which he gave me gracious permission to quote in public, has told us that the moneys saved from the Seanad would be redeployed to Dáil committees.

There is undoubtedly a democratic deficit in the Dáil and Seanad. The democratic deficit, collectively, in Leinster House, will be larger - it will be further in the red - if the currently quasi-democratic Seanad is replaced by a wholly undemocratic politburo of experts appointed by the Taoiseach. With respect to the Taoiseach, he has shown himself in recent weeks to be not immune to the idea of using appointments which should be technical - the very kind of appointment he stated he would make for the oversight of our legislation - in removing Deputies Mathews and Denis Naughten from committees in which they had technical expertise, for reasons which had nothing whatsoever to do with their competence in the committees-----

Senator David Norris: Exactly.

Senator John Crown: -----because he wanted to make a political point and, with respect, to introduce a little cronyism. Instead, while there is a need to end Tammany Hall, there is no need to replace it with the Politburo.

There also has been a substantial rewriting of history. I will not use the analogy I used previously, but the Taoiseach, in his inaugural speech for a Seanad abolition campaign, stated that the Seanad was somehow - I am still trying to work this one out - at fault for inflating the Celtic tiger. That is a little like God blaming Met Éireann for the great flood. The reality is that the Taoiseach, who was then leader of the Opposition and was sitting in Leinster House, did exactly nothing to deflate the bubble. I am not saying he was primarily responsible. We all bought into the madness and exuberance of crowds at the time. However, he did not have any particular unique insight or wisdom. One certainly cannot quote any particular argument-----

An Cathaoirleach: On Fifth Stage of the Bill.

Senator David Norris: Senator Crown is speaking on it.

Senator John Crown: I believe I am speaking about the Bill.

Senator Maurice Cummins: We have had five Second Stages.

Senator John Crown: I have stated previously that I believe the current Taoiseach is the best we have had over a number of terms, although the competition for that accolade has not always been significant. I do not believe that the Taoiseach was in any corrupt sense involved with the former Anglo Irish Bank at all - I note allegations have been made that somehow he has questions to answer - but he was part of the continuity of dysfunctional relationships that Fianna Fáil, and now Fine Gael, had with a highly dysfunctional banking system.

An Cathaoirleach: Senator Crown is moving away from the Bill.

Senator John Crown: The relationship between the bankers and the politicians was not one of highly amorous serial monogamy in which they dumped Fianna Fáil and then embraced Fine Gael.

An Cathaoirleach: Senator Crown is moving away from the Bill.

Senator John Crown: We now know that it is best described as serial polygamy, which is exactly what was happening in the relationship between these groups.

There is no valid argument on its own merits for abolishing the Seanad. There is a valid argument for reforming it. The strongest argument is that if we reformed it along the lines of my Bill or my colleagues' Bill, there would be one House in the Oireachtas which was focused on national issues and was thoroughly democratic in its composition and which was not focused on parochialism. That is why I will be opposing this Bill in its Final Stage.

Senator Marc MacSharry: For me, this question is flawed. There is no fear whatsoever of asking the people a question - indeed, we should do so more often on a wide variety of issues - but it is dishonest not to ask the people whether they would prefer reform or abolition, because one must ask what comes next. As Senator Norris stated, No. 2, which is to be taken without debate, simply states that the Oireachtas will constitute the President and the Dáil. As for who controls the Dáil, as we have seen, with an iron hand, the Taoiseach does, and nobody else. I refer to Deputy Mathews and Senators Heffernan and Healy Eames, whose contribu-

23 July 2013

tions are based purely on their loyalty, as it were, to the Crown. That is fundamentally wrong. It is relevant to ask when the McKenna judgment will become relevant. Clearly, considerable resources of the State have been used in the promotion of abolishing what the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, in directing the Government's campaign, called the rigged situation that guaranteed that the Government succeeded. The records in Highland Radio can give the House the exact wording. They are the words of a man who could not tell us how many times his Government had amended legislation in the House in the past 12 months. When I made it easier for him by asking him how many times he had amended his own legislation in the House, I was met with silence.

There are probably thousands of very good reasons to abolish the Seanad, the Dáil, the Judiciary, the Garda Síochána and countless other organisations, as there are very good ones to reform or constantly improve them. It is not valid to blame the excesses of the Celtic tiger on the Seanad, as Senator John Crown said.

I used a word often associated with people who juggle in circus rings and I do not intend to use it today. Is it any wonder that I used such a term when somebody of such intelligence and with 37 years of proud public service in the Houses of the Oireachtas since 1976 could regard this House as rigged to ensure the Government would have absolute control? The Minister admitted this in directing the campaign for the Government. He implied that this House had done nothing to quell the excesses of the Celtic tiger era. We could debate that issue for years and talk about the abolition of stamp duty, etc.

I am aware that the debate on the Bill is to be guillotined at 4 p.m. and I am anxious that some of my democratic colleagues be allowed to say a few words. The question is flawed. I have no difficulty with or fear of putting the question to the people. I would welcome it, but the opportunity to reform the House should also be put to them. It is for that reason I supported the motion on recomittal. Sadly, the proposal will go through *en masse*, which, for the most part, is to be regretted by the Members of this House. Let us see what the future brings.

Senator Cáit Keane: I was not going to speak at all, but I could not sit here and listen to motives being attributed to me on how or why I am going to vote. I vote because I want to vote. I am voting for the Bill because ten reports have been produced on Seanad reform during the years-----

Senator David Norris: The Senator's party blocked reform every single time.

Senator Cáit Keane: I am proud to say I am voting for it. It has been stated the Title of the Bill is the "Abolition of the Seanad Bill". That is wrong. The Title is the Thirty-second Amendment of the Constitution Bill 2013. It is only the people who can change the Constitution. I am giving the vote to the people of Ireland.

Senator Brian Ó Domhnaill: The Senator is ramming it down their throats.

Senator Cáit Keane: That is what the Taoiseach said.

Senator David Norris: The real Title of the Bill-----

Senator Cáit Keane: Sit down.

Senator David Norris: -----is the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013.

(Interruptions).

Senator Brian Ó Domhnaill: Do not ask the poor man to sit down; that is rude.

Senator Cáit Keane: Excuse me. I have the floor and every right to ask a man to sit down. I have the floor and ask for the protection of the Chair.

An Cathaoirleach: Senator Cáit Keane to continue, without interruption, please.

Senator Cáit Keane: The Title of the Bill is the Thirty-second Amendment of the Constitution-----

Senator David Norris: Will the Senator complete the Title of the Bill? She should tell the truth.

An Cathaoirleach: Will the Senator, please, resume his seat?

Senator Cáit Keane: What do brackets mean? What do curved brackets mean?

An Cathaoirleach: This has been said in the House.

Senator Cáit Keane: They do not alter the text of the main sentence, which is about giving the choice to the people.

Senator David Norris: It is not a sentence; there is no verb in it.

Senator Cáit Keane: It is in brackets and punctuated, that is the meaning of it. The Senator is a scholar of English and should know-----

Senator David Norris: It is not a sentence; there is no verb in it.

Senator Rónán Mullen: I support much of what has been said by Senators David Norris and John Crown, in particular, and Senator Marc MacSharry, although I have difficulty with the God Enda Kenny analogy. The Taoiseach reminds me more of the Wizard of Oz.

Senator David Norris: Smoke and mirrors.

Senator Rónán Mullen: He is a relatively small man hidden behind a smokescreen of advisers and handlers but who is making a loud noise and certainly managing to scare the people under his command.

Senator Fidelma Healy Eames: Most of the people.

Senator Rónán Mullen: Most of the people, I am correctly reminded. I thank the Senator for that intervention.

An Cathaoirleach: We are on Fifth Stage.

Senator Rónán Mullen: One thing I have learned, if I had not already learned it in recent weeks, is that we should be very grateful for the Constitution. It is the Constitution that can save us from the shallowness of our political leaders right now. I am thankful, in particular, for the McKenna judgment and the Coughlan judgment, specifically the former. When we hear people grumbling about the McKenna judgment, we can safely conclude that they do not have the best interests of democracy at heart because the judgment and the Constitution stand

23 July 2013

in the way of people such as the members of the Government and their supporters who would oversimplify issues, deprive us of our necessary democratic institutions, reduce the quality of politics and the scrutiny to which they are subjected.

Henry Kissinger famously said 90% of politicians gave the other 10% a bad name. I am not sure whether I admire Henry Kissinger or whether he is right about his ratio, but I believe a pleasant aspect of life around here is that, even when we disagree strongly with each other on policy, we continue to be personally friendly. I hope that will always be the case, but I believe that in respect of the initiative to abolish the Seanad, Government Senators, individually and collectively, deserve the sternest of criticism. They are present because they believe in our democratic institutions. Not one of them is on the record during the years as stating he or she did not believe in the quality or necessity of the Seanad. I am sure I will be corrected if I am wrong. They were all happy to run for and be elected to it and the nominees were all happy to be nominated.

Senator John Gilroy: They might change their minds after hearing the Senator.

Senator Rónán Mullen: They took a proposal from the Taoiseach that we all know to have been a shallow one. It came only a wet week after he had talked up the merits of reforming the Seanad and giving it an enhanced role. The advisers, minders and people who deal in shallow populist ideas told him it would be a good idea to curry favour with the electorate by reducing the number of politicians. Interestingly, as we know, he did not seek to reform the Dáil at the same time, although he talked a lot about it. We were told there would be 20 fewer Deputies. The only reason there are now to be eight fewer is that it would require a referendum to reduce the size of the Dáil to any great degree, yet we are to have a referendum on the Seanad. The reality is that we have a Government that has no genuine interest in political reform. It has an interest only in creating the appearance of reform and being seen as the sheriff that will come in and clean up the town. In reality, however, it is not out to clean up the town at all but to buttress its own elite position.

What saddens me about the performance on the Government side is that the Members have shown a shocking lack of gumption. They have completely failed to man-up or woman-up and resist this grubby little proposal. It is quite clear that the Government ought to have reshaped or rejected this legislation. It should have carried through on what it states in private it would like to see happen, that is, the reform of the Seanad.

4 o'clock

An Cathaoirleach: As it is now 4 p.m. and in keeping with an order of this day, I have to put the question.

(Interruptions).

Senator Rónán Mullen: I presumed the Leader would allow people to contribute.

Senator David Norris: That is a guillotine. That is your idea of democracy.

Cuireadh an cheist.

Question put.

The Seanad divided by electronic means.

Seanad Éireann

Rinne an tSeanad vótáil ar mhodh leictreonach.

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

Faoi Ordú 62(3), ba mhaith liom go dtógfaí an vóta ar bhealach eile seachas ar bhealach leictreonach.

Cuireadh an cheist.

Question put:

The Seanad divided: Tá, 33; Níl, 25.	
Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Bradford, Paul.	Byrne, Thomas.
Brennan, Terry.	Crown, John.
Burke, Colm.	Cullinane, David.
Clune, Deirdre.	Daly, Mark.
Coghlan, Eamonn.	Heffernan, James.
Coghlan, Paul.	Leyden, Terry.
Comiskey, Michael.	MacSharry, Marc.
Conway, Martin.	Mooney, Paschal.
Cummins, Maurice.	Mullen, Rónán.
D'Arcy, Jim.	Norris, David.
D'Arcy, Michael.	O'Brien, Darragh.
Gilroy, John.	O'Brien, Mary Ann.
Harte, Jimmy.	O'Donovan, Denis.
Hayden, Aideen.	O'Sullivan, Ned.
Healy Eames, Fidelma.	Ó Clochartaigh, Trevor.
Henry, Imelda.	Ó Domhnaill, Brian.
Higgins, Lorraine.	Ó Murchú, Labhrás.
Keane, Cáit.	Power, Averil.
Kelly, John.	Quinn, Feargal.
Landy, Denis.	Reilly, Kathryn.
Moloney, Marie.	Walsh, Jim.
Moran, Mary.	White, Mary M.
Mulcahy, Tony.	Wilson, Diarmuid.
Mullins, Michael.	Zappone, Katherine.
Naughton, Hildegard.	
Noone, Catherine.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
O'Neill, Pat.	
Sheahan, Tom.	

23 July 2013

van Turnhout, Jillian.	
Whelan, John.	

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

Question declared carried.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Ráiteas mar Fhaisnéis do Vótálaithe i ndáil leis an mBille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a Chur le Seanad Éireann) 2013: Tairiscint

Statement for the Information of Voters in relation to the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013: Motion

Senator Maurice Cummins: Tairgim:

“GO ndéanfar an ráiteas atá leagtha amach sa Sceideal a ghabhann leis an Rún seo a fhorordú mar fhaisnéis do vótálaithe, de bhun alt 23 d’Acht an Reifrinn, 1994 (Uimh. 12 de 1994), i ndáil leis an togra chun an Bunreacht a leasú chun deireadh a chur le Seanad Éireann agus chun foráil a dhéanamh gurb iad an tUachtarán agus Dáil Éireann a bheidh san Oireachtas ón data a chuirfear deireadh le Seanad Éireann agus, de dhroim an mhéid sin roimhe seo, chun an Bunreacht a leasú thairis sin agus, go háirithe, chun leasú a dhéanamh ar na forálacha sin de lena dtugtar feidhmeanna do Sheanad Éireann nó atá bunaithe ar an Teach sin a bheith ann, ar togra é atá ar áireamh sa Bhille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a Chur le Seanad Éireann), 2013, agus is ábhar do reifreann bunreacht.

An Sceideal

Fiafraítear díot an aontaíonn tú leis an togra chun an Bunreacht a leasú chun deireadh a chur le Seanad Éireann, chun foráil a dhéanamh gurb iad an tUachtarán agus Dáil Éireann a bheidh san Oireachtas ón data a chuirfear deireadh le Seanad Éireann, agus chun leasú a dhéanamh ar fhorálacha eile den Bhunreacht lena dtugtar feidhmeanna do Sheanad Éireann nó atá bunaithe ar Sheanad Éireann a bheith ann.

MÁ THOILÍONN TÚ leis an togra, cuir X os coinne an fhocail TÁ ar an bpáipéar ballóide.

MURA dTOILÍONN TÚ leis an togra, cuir X os coinne an fhocail NÍL ar an bpáipéar ballóide.

I move:

“THAT the statement set out in the Schedule to this Resolution be prescribed for the information of voters, pursuant to section 23 of the Referendum Act 1994 (No. 12 of 1994), in relation to the proposal to amend the Constitution for the purpose of abolishing Seanad Éireann and providing that the Oireachtas shall, from the date of such abolition, consist of the President and Dáil Éireann and in consequence of the foregoing, to amend otherwise the Constitution and, in particular, to amend those provisions of it that confer functions on Seanad Éireann or that are premised on the existence of that House, which is contained in the Thirtysecond Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013 and is the subject of a constitutional referendum.

Schedule

You are being asked if you agree with the proposal to amend the Constitution to abolish Seanad Éireann, to provide that from the date of such abolition the Oireachtas shall consist of the President and Dáil Éireann, and to amend other provisions of the Constitution that confer functions on Seanad Éireann or that are premised on the existence of Seanad Éireann.

IF YOU APPROVE of the proposal, mark X opposite the word YES on the ballot paper.

IF YOU DO NOT APPROVE of the proposal, mark X opposite the word NO on the ballot paper.”

Senator David Norris: I demand the right to speak on this motion. This is an outrageous abrogation of democracy. Let the record show that this is again the Government pushing through without debate what purports to be an attempt to subvert the commission.

Cuireadh an cheist.

Question put:

The Seanad divided: Tá, 30; Níl, 25.	
Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Brennan, Terry.	Bradford, Paul.
Burke, Colm.	Byrne, Thomas.
Clune, Deirdre.	Crown, John.
Coghlan, Eamonn.	Cullinane, David.
Coghlan, Paul.	Daly, Mark.
Comiskey, Michael.	Healy Eames, Fidelma.
Conway, Martin.	Heffernan, James.
Cummins, Maurice.	Leyden, Terry.
D’Arcy, Jim.	MacSharry, Marc.
D’Arcy, Michael.	Mooney, Paschal.
Gilroy, John.	Mullen, Rónán.
Harte, Jimmy.	Norris, David.

23 July 2013

Hayden, Aideen.	O'Brien, Darragh.
Henry, Imelda.	O'Sullivan, Ned.
Higgins, Lorraine.	Ó Clochartaigh, Trevor.
Keane, Cáit.	Ó Domhnaill, Brian.
Kelly, John.	Ó Murchú, Labhrás.
Landy, Denis.	Power, Averil.
Moloney, Marie.	Quinn, Feargal.
Moran, Mary.	Reilly, Kathryn.
Mulcahy, Tony.	Walsh, Jim.
Mullins, Michael.	White, Mary M.
Naughton, Hildegarde.	Wilson, Diarmuid.
Noone, Catherine.	Zappone, Katherine.
O'Donnell, Marie-Louise.	
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.

Faisnéiseadh go rabhtas tar éis glacadh leis an gceist.

Construction Contracts Bill 2010: [Seanad Bill amended by the Dáil] Report and Final Stages

An Cathaoirleach: I welcome the Minister of State, Deputy Brian Hayes, back to the House. This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 118, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question "That the Bill be received for final consideration", the Minister of State may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators' convenience, I have arranged for the printing and circulation of the amendments. The Minister of State will deal with the subject matter of the amendments in each group. I have also circulated the proposed grouping to the House. A Senator may contribute once on each grouping. I remind Senators that the only matter that may be discussed is the amendments made by the Dáil.

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

Minister of State at the Department of Public Expenditure and Reform (Deputy Brian Hayes): I wish to address the first grouping, comprising amendments Nos. 1 and 2. Amendment No. 1 provides for the exclusion of mining and drilling operations from the scope of the Bill. Section 1(1)(g) included mining and exploration as construction activities. These activities should not have been included, as similar activities are specifically excluded from the definition of “construction activities” under EU Directive 2004/18/EC, which relates to procurement procedures for the award of public works contracts. It was not the intention to include such activities, as it is our understanding that there is no evidence of payment disputes in this specific area of construction. Given the potential of such sectors, a further regulatory impact analysis would need to occur before a decision could be taken.

Amendment No. 2 allocates the responsibility for policy and administration of legislation to the Minister for Public Expenditure and Reform. This is a standard provision.

Senator David Norris: We are back to having good relations.

Deputy Brian Hayes: I thank the Senator.

Senator David Norris: The Minister of State mentioned that further analysis was necessary. We have had three years. How much longer does he want? For God’s sake, we are moving at a snail’s pace. This has been the most agonising progress for a Bill. Claiming that more analysis is necessary is not a legitimate argument. Tomorrow, we will debate a Bill that has been dithered about for the past four years. Everyone agrees with it, but it will only go through because this side is pushing it. Let us accelerate.

The Seanad does its work. We send Bills down to the Dáil. I compliment Senator Quinn.

Senator Sean D. Barrett: Hear, hear.

Senator David Norris: This is brilliant legislation. Had it been passed in 2010, a number of people would not be out of jobs and some small subcontractors would not have gone out of business. I am not being unpleasant because of our previous ding-dongs, but I no longer accept that the Dáil should be allowed to dither for three or four years while people’s livelihoods are at stake. Although there may be technical reasons, they should have been worked out by the Government by now.

Deputy Brian Hayes: I welcome the Senator’s intervention. He is right in that this is Senator Quinn’s Bill, not my Bill. We would not be here were it not for him.

Senator Sean D. Barrett: Hear, hear.

Deputy Brian Hayes: I wanted to put that on the record, as I have done every time we have discussed the Bill in the past two years.

Senator David Norris: The Minister of State has been gracious.

Deputy Brian Hayes: The Seanad sent the Bill to the previous Dáil. As Senator Quinn would agree, this is a radically different Bill from the original. I agree with Senator Norris that it has taken too long. One reason for taking more time than expected was that this was the first legislation in respect of which a regulatory impact assessment, RIA, was conducted. All of the partners in the industry were involved in trying to tease out the problems with the Bill, which we managed to do in the course of the deliberations in the Lower House. The length of time

taken was not for lack of trying on my part.

This important amendment is concerned with certainty about payment for the small guy, as it were. Mining and exploration do not fall within that definition, for which reason we have excluded them. I would have hoped to be in a position to return the Bill before now. I am sorry it was not done in that way.

The second grouping relates to amendments Nos. 3 to 6, inclusive. The main element relates to issues raised in the context of the consultation process that formed a part of the Bill's RIA. The RIA examined the experience of adjudication in other jurisdictions and found that, in the majority of disputes that used such processes, contracts were valued at between €13,000 and €65,000. Therefore, the RIAI concluded that these thresholds were too high and should be reviewed or removed. The amendments included on Committee Stage in the Dáil removed the current thresholds from €200,000 for private contracts and €50,000 for public contracts and replaced them with a single threshold of €10,000. That issue came from the regulatory impact assessment, and Senator Quinn was supportive of what we had to do in bringing back those thresholds to the minimum €10,000 level.

In this regard, I note there has been some confusion about to what the threshold applies. The new threshold of €10,000 relates to the overall contract value, and therefore subcontractors will be free to refer payment disputes relating to lesser amounts to adjudication. For example, if a contract with an overall value of €11,000 gives rise to a payment dispute for €1,000, this will come within the scope of the legislation. The reason thresholds were included in the Bill was to avoid placing undue administrative burden arising from financial security provisions in an earlier form of the Bill. As there is evidence that obtaining such financial instruments would be prohibitively costly for the sector, these security provisions were removed from the Bill in the Seanad. The removal of the financial security provisions made it possible to reduce the monetary thresholds. It is important to note the threshold relates to the size of the overall contract; therefore, subcontractors will be free to refer payment disputes relating to lesser amounts to adjudication.

Amendment No. 3 is a technical amendment as a consequence of amendments Nos. 4 and 5, which relate to the removal of the two different thresholds that apply to State contracting or private entities. Since the new threshold of €10,000 now applies equally to public and private entities, the definition of a State contracting entity under section 1 is no longer necessary and, as such, has been removed.

Senator Cáit Keane: I thank the Minister of State. With regard to payments under contracts, payments claims notices and who is entitled to claim, what is included in the Bill? In the previous section of the Bill there is reference to the exclusion of materials, plant and machinery, but in this section it is indicated that construction contracts shall provide for what is not included in the other section. I know of a subcontractor who had all his plant and machinery stolen and taken to Dubai under a construction contract. He is a very good subcontractor and worked here on the M50. The machinery was taken to Dubai by the main contractor and the subcontractor did not realise this was happening. When he got out to Dubai to do the work, he found out he did not own the machinery, and €1.5 million of his plant and machinery had been taken from Ireland to Dubai. Does this Bill include something that would help that subcontractor? It happened a couple of years ago so the action would have to be retrospective.

What happens if the contractor applies for a State contract, as dealt with by other sections of

the Bill? Anybody who acts in such a way to a subcontractor should never again be employed on a State contract. There is such a provision in the planning Acts.

Deputy Brian Hayes: The Bill does not involve retrospective activity and it cannot do so under the Constitution. We are only responsible for legislation enacted from this day forth. Needless to say, the issue referred to by the Senator is straightforward theft, and if somebody has taken plant and machinery from a contractor or subcontractor, the appropriate sanction would have to be brought through the Garda or other international agencies.

The Senator raises a very important issue, with which the Government is grappling, of how we can ensure that those who win contracts are effectively people who have a good standing within the construction industry and comply with employment and other health and safety legislation that is in place. It is a very important point. The Government is currently working on a proposal to introduce what is called a statutory register, whereby construction contractors who are fully compliant in all legislation that goes through these Houses would be put on a register, and it would be a matter for public authorities to utilise those. We do not have recourse to that at the moment, which is a major problem. One of the more recent analyses of the National Employment Rights Authority, NERA, which considers these issues, has shown a significant problem of non-compliance in the construction industry. That is not only non-compliance in terms of legislation, and this Bill will deal with the real problem of payment.

Considering the construction industry as a whole, there are not enough contracts in place, and we hope that as a result of Senator Quinn's Bill there will be a standard upon which the industry can go forward. As part of the new armoury we are obtaining under the Bill, we must also have a regulatory statutory instrument to ensure that cowboys will be clearly and demonstrably outside the loop. Those who comply with the legislation should be clear for all to see.

Senator David Norris: On a point of order, there may be some confusion or misprint in these amendments. Amendment No. 5 states "In page 5, subsection (1)(b), line 36, "the value of the contract is more than €200,000, and" deleted." Have these amendments already been made?

Deputy Brian Hayes: Yes. The figure was €200,000, and it has been taken out.

Senator David Norris: I understand.

An Cathaoirleach: It was a good try. The third group includes amendment No. 7.

Deputy Brian Hayes: This amendment essentially removes the words "an act of a person other than one of the parties to the construction contract" and replaces them with "the making of a payment by a person who is not a party to the construction contract". Section 3(5) excludes the practice of "pay when paid" clauses in construction contracts; this is a key provision of the legislation. There is a concern that the wording of section 3(5) in the Bill passed by the Seanad, particularly the phrase "an act of", may give rise to a challenge to the practice of certification of payment, which is a key provision in many contracts between a building commissioner and a main contractor and is provided for in section 3(1). Typically, payments under a construction contract between the project commissioner and the main contractor are conditional upon a certificate of payment being issued by the named certifier under the contract. If section 3(5) is not amended, it may give rise to a challenge to any payment where the payment application made by the contractor was reduced by the certifier in line with the terms of the contract. This amendment brings clarity to the practice of certification of payments under a construction con-

23 July 2013

tract without diminishing the key intent of section 5(5), which is to outlaw the inclusion of “pay when paid” clauses in construction contracts.

Senator David Norris: This sounds suspiciously similar to mining contracts, and I am very disturbed that the Minister of State has indicated that mining has been excluded from this. I presume exploration has been excluded as well. The Minister is nodding. I am concerned because we may be giving away much of our resources without due regard and protection for local people. The very big contractors such as Shell and BP are well able to shaft people lower down while they take our oil, which is being given free, gratis and for nothing. I am very sorry that mining has been excluded. Is there a reason for that?

Deputy Brian Hayes: When the Bill was first devised by Senator Quinn, he did much work on international comparisons. This is a straightforward piece of legislation, as Senator Quinn rightfully stated, which will help the small guy in particular and bring some order to the industry after the considerable disorder we have seen in the past. It is not intended to deal with large plcs, even though it does. In the area of construction, we are typically referring to residential and commercial construction, not mining exploration. The Bill’s objective was to streamline matters similarly to the UK, which also excludes mining exploration. There is nothing untoward in its exclusion from this Bill. Mining simply is not within its ambit. I apologise, as I am not expert enough to discuss the larger issue of Shell.

Senator David Norris: That is fine. I am happy to leave it at that, but I will pursue the business of mining.

Deputy Brian Hayes: The fourth grouping relates to provisions in the Seanad Bill that, by requiring the unpaid subcontractor to return to work after two weeks even though he or she might not be in receipt of payment for work carried out, favoured the main contractor. Everyone accepted this as fact. The provisions were amended to provide for suspension of work following seven days’ notification in writing. This suspension can continue until referral of the payment dispute for adjudication, and following an adjudicator’s award where the award has not been paid. The amendment provides for a more balanced solution that, while not prejudging the outcome of a payment dispute, allows this issue to be resolved.

There is universal agreement that what we have done in this context has dealt with one of the key issues raised by subcontractors in the course of the regulatory impact assessment - that is, allowing people to return to work while the dispute is being resolved. This was not the case in the original draft and is a significant improvement.

The fifth grouping comprises amendments 9 to 11, inclusive. These are technical amendments to remove the provision in section 6(2) that is already provided for in section 2(5)(b), which reads:

This Act applies to a construction contract whether or not-- [...]

(b) the parties to the construction contract purport to limit or exclude its application.

This was mistakenly repeated in section 6(5).

Regarding amendments Nos. 10 and 11, at the start of Second Stage in the Dáil, I mentioned the helpful contributions of both main Opposition spokespersons, those from Sinn Féin and Fianna Fáil, in respect of the RIA. This was the first legislation on which a RIA was conducted.

I invited to those discussions both main Opposition spokespersons. They were around the table with me and we listened to the industry's opinions. I have attempted to take as broad an approach as possible.

This consultation highlighted a number of matters relating to the Bill that required further consideration, chief among those being the provision that limited the effectiveness of the adjudication process by making the adjudicator's award binding, provided the award was not appealed. This measure was included to provide protection to the State in the event of insolvency of the payee.

During Second Stage, a number of Deputies asked to have the adjudicator's award made binding - that is, payable even if the award was appealed to arbitration. I accepted these concerns. The amendment before the Seanad is the response to those issues. It means that adjudication will be binding and will apply equally to private and State contracts.

The adjudication provisions contained in the Bill are vital to its proper functioning. In a sense, they give the legislation the necessary teeth to provide a swift and cost-effective means of dispute resolution.

Amendment No. 11 is required to remove section 7(3), which states that work may not be suspended if the adjudicator's award is not binding. Since the non-binding aspect of the adjudicator's award has been removed in amendment No. 10, this subsection is no longer necessary.

Senator Cáit Keane: I thank the Minister of State and I understand his comment about retrospective application. Perhaps my query will be too detailed for him, but I want to find out if a certain scenario is included. What happens if a contract has not been signed and a dispute is ongoing? What happens if the dispute is about a payment, the theft of machinery or whatever, but a contract was not signed before the Bill was enacted? It is a word of mouth contract so it is one person's word against another. Can the wronged person - in this instance, the subcontractor - refer the matter to the adjudicator? Can he or she do so particularly when payments have not been made to the bank for two years? Is there any way the subcontractor can approach the adjudicator or persons in this instance? I am one of many Senators but I know of two cases. I am sure many other Senators know subcontractors who have been diddled, fiddled or whatever one likes to call it in various ways, and the disputes are ongoing. This has happened.

Deputy Brian Hayes: Without knowing the details of the case, it depends. Can it be proved that both parties had a contract? Can it be proved that there was a verbal contract even though there is no written contract? Was there a legitimate expectation that an action would follow the agreement by the parties? I would be loath to say that it would automatically fall under it even though there is no written contract. There is some form of agreement, and I suppose it would be a matter for the courts to reach a view on its nature. Obviously the agreement is some years old.

The Bill's objective, thanks to Senator Quinn, is to avoid the legal route by having a legally binding adjudicating system under which parties will, instead of going to the High Court, follow what is effectively a non-judicial route in which a third party is asked to examine the case and produce a fair resolution.

As I just said, amendment No. 10 makes the process binding. That is a good thing because it will encourage more cases to go down the less costly and more efficient arbitration route and will encourage people to pay as they go. That is the nature of the provision's construction.

23 July 2013

I have not seen the case mentioned by the Senator, so I do not want to be definitive. It seems to me that there is some form of agreement and establishing its form would probably be a matter for the courts.

Senator Cáit Keane: Can I comment again?

An Cathaoirleach: No, Senator.

Senator Cáit Keane: That is okay.

Deputy Brian Hayes: Amendment No. 12 is a technical amendment to provide for a standard definition of days based on that included in the Organisation of Working Time Act 1997. The term “day(s)” is used throughout the legislation and it was important that this aspect did not generate any confusion in relation to the application of legislation. This dates back to a difficulty in planning cases, as I can recall, whereby if a party makes a planning application on 23 December, even though the officials are not in their office for the next two weeks those days are regarded as days under the planning application system. The amendment will bring clarity to what counts as a day and improve the matter with a definition. There was a general acceptance of its need at the time.

Amendment No. 13 is a technical amendment that allows expenses incurred by the Minister to be paid out of moneys provided by the Oireachtas. This is a standard provision.

Question put and agreed to.

Question proposed: “That the Bill do now pass.”

Senator Feargal Quinn: I thank the Minister of State for his explanation. I did not speak during tonight’s debate as it is 1,168 days since the Bill commenced and, as we have spoken a lot about abolition or reform of the Seanad today, I felt that we should not speak any longer on the Bill than needed.

I wish to touch on some of the points that the Minister of State made. He said that the Bill came about due to a small incident. It was not a small incident but quite a substantial scandal whereby somebody who was not short of money had a company that did not pay its subcontractors. This came to the attention of Seán Gallagher, who wrote to a number of people, including his local Deputy, who circulated his letter.

5 o’clock

What struck me when I saw the letter was that it did not seem right that somebody who is clearly not short of money was worried about getting a sub-contractor to build his own home. It was because he had let so many of them down. What I then did was run with it. I had the help of Ms Anne Ó Broin, my executive assistant for 27 years, who grasped the issue and explored ways of finding a solution. The British had introduced legislation in 1998, 15 years ago, and we were put in touch with Professor Rudi Klein, the expert who was actively involved in it. He had already spoken with the Construction Industry Federation, CIF, on a number of occasions and he came over and gave us advice. Part of the advice he gave us was that the Bill enacted in Britain had had to be adjusted and some improvements had been made, particularly with regard to certain states of Australia, New Zealand and the Isle of Man. He put us in touch with the relevant people, who were very helpful to us. I always thought the grocery business was fairly tough and rough, but what I have learned is that nothing compares to how tough the construc-

tion industry is. There was great sympathy around the world for the fact that we did not have legislation, and we were offered support immediately. I contacted the then Minister, the late Brian Lenihan, who demonstrated the same enthusiasm as the Minister of State, Deputy Brian Hayes, who has taken hold of it to make it work. He left it in my hands to bring it through the Seanad. The commitment of the late Brian Lenihan was such that, following the general election in which he was the only Fianna Fáil Member who was re-elected in Dublin, and with a brief 12 hours before the election of the Taoiseach, he helped the Bill get through this House. He was committed to this Bill.

The objective was to have sensible law which would be easy to understand. Senators Norris and Keane expressed concerns that the Bill does not cover everything. The concept, after 1,168 days, was to make it as simple as we could. The Bill became quite involved because we tried to achieve too much in it. We have had some very good debates and different viewpoints have been expressed. Not everything we set out to do has been achieved, including, in particular, ways of dealing with bespoke items - in other words, a thing that has been made especially for a particular job. We would have liked to be able to include provision for bespoke items but we were not able to. As the Minister of State explained, there were other aspects that could not be handled on this basis. Under the law, if I sell a car to a person who does not pay me, I can go and collect the car from him, but if the customer does not pay for tiling or plumbing, those things are embedded in the building and the contractor cannot take them out. We understood that this would make it difficult to deal with it in legislation.

What impressed me no end was the commitment from the Government to deal with the Bill. The Minister of State, Deputy Hayes, grasped the Bill and decided to run with it. I commend the officials who dealt with the Bill, some of whom are not here now, including Nicholas O'Loughlin, who put his heart and soul into it, as did Deirdre Hanlon and Ronan O'Reilly, who is not present. One of the officials who is sitting behind the Minister is David O'Brien, who was very helpful and committed to making the legislation work. I am sure Anne Ó Broin must have given them nightmares on occasion when she phoned them to find out what was happening.

I was able to pick up the phone to Arthur Cox at the beginning and was greatly helped by Patrick McGovern, Níav O'Higgins and Niamh Burke, who put their hearts and souls into getting the Bill off the ground at first. In the Bills Office, Noreen Banim put her heart and soul into the effort as well.

Nothing would have happened if Seán Gallagher had not contacted his local TD, who got in touch with me. People also contacted me when they heard the Bill was being published and offered their help. Tom Parlon, the former Minister, and Don O'Sullivan, who are in the Visitors' Gallery, put great effort into the legislation. Everybody involved in the industry put so much effort into it, including Engineers Ireland, the Royal Institute of the Architects of Ireland, the Society of Chartered Surveyors Ireland, the Chartered Institute of Arbitrators, the Irish Concrete Federation - even though it did not get everything it would have liked out of it, particularly in respect of bespoke goods - and Hardware Association Ireland. What has resulted is a Bill we are all pleased with. People from right round the country have contacted me asking me to include certain provisions. The Minister and his team were very responsive to the suggestions and people were understanding when we could not include them. The Minister of State explained very well the issues of "pay when paid" clauses, bespoke items and the limits involved.

Will the Minister consider the possibility of a commitment from the Government to review the operation of the Act in two years time? It might be possible to do something on that basis.

23 July 2013

We believe the Bill is as good as we can get, but we could look again in time at dealing with disputes. The number of disputes going to court in Britain have been reduced significantly from approximately 2,500 to some 5% of the total. We have the door open and if a person is unhappy with the legislation he or she can go to court afterwards, but it takes time. The subcontractor will have been paid on that basis.

I believe this House has proved its value here tonight.

Senator David Norris: Hear, hear.

Senator Feargal Quinn: The House gives an opportunity to Independent Members to introduce legislation on their own. The Government is prepared to accept good legislation and to help those proposing it to forge really good legislation that will help the community. I believe, as Senator Norris has already stated, that if we had been able to get this Bill enacted ten years ago, a number of jobs would have been saved, many people would still be working and many companies would still be in business.

I thank everybody who has been involved, particularly those who have come along tonight to see the passage of the legislation, which makes history. It will make the construction industry even healthier than it has been in the past.

An Cathaoirleach: Ten Senators have indicated that they wish to speak. Usually only the group leaders speak. I ask Senators to be brief.

Senator Darragh O'Brien: I commend Senator Quinn on his perseverance. I absolutely endorse everything he said in regard to the worth of the Upper House. My colleague Deputy Dara Calleary was asking about the passage of the Bill. Many Members of both Houses have been involved in the Bill. On behalf of the Fianna Fáil group, I commend Senator Quinn on the passage of the Bill, which will ensure that many jobs are saved.

Senator David Norris: I apologise to Senator Quinn for giving him a nudge to say something, but it was perfectly obvious - I have clarified this with him - that he had quite-----

An Cathaoirleach: There is no need for Senator Norris to nudge himself.

Senator David Norris: I do not need to nudge myself at all. I am always happy to speak. I have to say I thought it would be an impertinence to speak before Senator Quinn, or in his absence. I think it is important that he is able to take his bow at the end. I would like to record my personal jealousy because nobody has ever approached me with a Bill, unfortunately. I say to anybody out there who has a Bill to spare "I am your man, please think of me as well". This is a really good day - this part of it, at least - because we are seeing some positive collaboration between the Seanad and the Government. I want to congratulate Senator Quinn and everyone else involved, particularly Anne Ó Broin whom I know very well because our secretarial and administrative offices are very close to each other. I know how hard she has worked. We would not have this Bill without Senator Quinn. It is a very good day. This is not the only Bill that has come through this House. I think we should be proud of what has happened here today. I congratulate Senator Quinn.

Senator Tom Sheahan: I commend Senator Quinn. When he initiated this legislation, I wondered why this could not be done in six months because it was such a simple Bill and he explained it so simply at the time. We are where we are. The Senator is to be commended on

introducing this Bill. The Minister has to be commended for running with it and bringing it to fruition today. I know the Irish Concrete Federation is not delighted with it, ach b'fhéidir go mbeidh lá eile acu, le cúnamh Dé. I commend Senator Quinn - I almost referred to him as the Minister - on his good work.

Senator David Norris: He could be appointed as the Minister for the Seanad.

Senator Denis Landy: If ministerial posts were given out for effort, Senator Quinn would certainly get one on the basis of the work he has put into this legislation. I commend and thank him for his achievement in this regard. This is one of the biggest issues I have encountered in my home town of Carrick-on-Suir and across my constituency of South Tipperary since I became a Member of this House. I could do nothing about it because there was no legislation to deal with it. The only grain of hope I was able to give people was to tell them that Senator Quinn was trying to bring a Bill through the Oireachtas and to make it law. I respect what Senator Quinn has said about the passage of this legislation coming too late for some people. Small operators such as subcontractors will be able to sleep a little easier in their beds knowing that this legislation will give them some protection in the future. I commend and congratulate the Senator.

Senator Jillian van Turnhout: I would like to join Senators in heaping plaudits on Senator Quinn. He has shown us a fine example of how the Seanad can work. He mentioned that 1,168 days have passed since he introduced this Bill. We certainly hope the subcontractors will be paid much more quickly as a result of this legislation. Many of them may have been waiting for the length of time he mentioned. I congratulate Senator Quinn on bringing the Bill to this House and pursuing it through the Dáil. I thank him for that on behalf of the Independent group.

Senator Catherine Noone: I commend Senator Quinn, who has put a great effort into bringing this Bill to fruition. He has done a great service to the construction industry. I congratulate him on his perseverance. It is regrettable that it took so long to get to this stage, but we are where we are. I suppose we should be positive now that we have reached this stage. As a litigator, I welcome the Bill, especially in light of the remarks that were made about the number of cases in this area. I am probably running the risk of talking myself out of two jobs-----

Senator Darragh O'Brien: The Senator did a good job on the first one.

Senator Catherine Noone: -----when I say that the first thing litigation solicitors, especially on the defence side-----

Senator Darragh O'Brien: There is always Europe.

Senator Catherine Noone: -----generally do is advise that it be avoided at all costs because it is such a costly effort. Our neighbours in the UK have taken the lead on the adjudication process. Lawyers in this country are going to have to embrace this sensible and practical process, along with mediation and other very useful tools that have become fundamental parts of the wider litigation and legal system. I welcome Mr. Tom Parlon and the other representatives of the Construction Industry Federation who are present for this debate. I think they see this legislation as fundamental.

An Cathaoirleach: If Senators continue to speak at such length, there is a danger that the debate will have to be guillotined.

23 July 2013

Senator Catherine Noone: I would hate to see that happen. I beg the indulgence of the Chair for another minute. I would have made my point by now.

Senator Darragh O'Brien: Probably not.

Senator Catherine Noone: Those who are in attendance see this Bill as fundamental if they are to achieve their ambition of doubling the size of the industry in the next few years. This Bill is good because it will ensure small contractors and subcontractors receive payments promptly. It will benefit all contractors in the construction industry by providing for a fair playing field. I reiterate that huge congratulations must go to Senator Quinn and also to Anne Ó Broin who has been of great assistance to the Senator.

Senator Cáit Keane: I will be very brief. I could not let the day go without congratulating Senator Quinn on this Bill. I commend the Minister for Finance on accepting the Bill. In that context, I should also mention the previous Minister, Brian Lenihan - may the Lord have mercy on him - under whose stewardship this process was initiated. It is a good day for the Seanad. We may have gone out with a bang with the last Bill we passed, but this Bill shows what this House can really do. Many members of the press were in the Gallery for the last episode, but none of them is here when we are seeing the fruits of the actual work of this House.

Senator Catherine Noone: It is too positive for them.

Senator Cáit Keane: Senator Quinn gave another demonstration of what we can do two weeks ago when he introduced the defibrillator Bill. Many Bills are initiated in the Seanad. It is a poor day when our actual work is not reported. The media is interested in drama. I congratulate Senator Quinn. On the day that is in it, we are going out on a high.

Senator Michael Mullins: I welcome the passing of this legislation. I thank the Minister of State for his contribution to its passing. Senator Quinn has done the State some service, to quote a former politician.

Senator David Norris: That quote is from a murderer.

Senator Michael Mullins: If our economy is ever to recover-----

Senator David Norris: Othello.

Senator Michael Mullins: -----we need to see a significant level of activity in the construction sector. We need that sector to be credible and to operate ethically. I think the legislation we are passing will ensure that subcontractors, who were very badly treated in the past, will not suffer the same fate in the future. I know many subcontractors in east Galway who will never recovered from the financial hardship that has been imposed on them by unscrupulous people who failed to pay them when they delivered the goods. I congratulate Senator Quinn and thank him for his perseverance in ensuring this legislation has been successfully brought through the House. I think he has made a real contribution to the Oireachtas and to the Seanad. I hope the passing of this legislation will help us in the months ahead as we battle to ensure Seanad Éireann is retained.

Senator David Norris: Hear, hear.

Senator Terry Brennan: It was amazing to hear Senator Quinn say that 1,168 days - perhaps we are close to 1,169 by now - have passed since this Bill was introduced. Seán Gallagher

brought these issues to my attention when I was serving as a local councillor on Louth County Council. He was very concerned. As has been said, Senator Quinn was the only person up here who took on Mr. Gallagher's idea.

This Bill delivers on a commitment in the programme for Government to introduce new legislation to protect all small building contractors who have been denied payments from bigger companies. As Senator Landy has said, it will give great comfort to small contractors. I hope they will receive the payments they have been due for a long time. The failure to make payments has a domino effect on contractors and subcontractors, but it is the small contractor who is the first to be left out. We all have experience of small contracts in our respective areas. It is unfortunate that small contractors have gone out of business because they have not been paid. Local authorities do not pay contractors quickly enough and I am aware of contractors who are awaiting payment. While the Office of Public Works has improved in this regard, it still waits until the last minute to make payment. Money must circulate in the economy. Small contractors are waiting for much too long and I hope the legislation will ensure they are paid much sooner.

I congratulate my colleague, Senator Feargal Quinn, on his Bill, which is an example of what can be achieved in this House provided one is patient. This was one of the first Bills introduced in the new Seanad which I joined two years ago. It is great that this worthwhile legislation has reached this stage. I also congratulate the Minister of State and everyone else concerned.

Senator James Heffernan: This Bill has been a while coming. The Minister of State was also present when I spoke previously on issues addressed in the legislation. I refer to a case that came to light in my parish of Kilfinane involving contractors who were not paid for work done on a school. This was the second time the contractor in question had been left high and dry by unscrupulous individuals. Ugly scenes occurred as a result and when I discussed the matter with the Minister of State in the Chamber, he gave a commitment that they would not be repeated. He also stated he would ensure this legislation was brought before the House at the earliest possible date.

I wholeheartedly congratulate Senator Quinn who has given some solace and protection to people who had no recourse and nowhere to turn to and were forced in some cases to take the law into their own hands. This Bill is a victory for the House and the Senator in particular and shows the Seanad remains relevant. I hope we will be able to enact further legislation before we are all put to bed.

Minister of State at the Department of Finance (Deputy Brian Hayes): To respond to Senator Quinn, we will review the legislation. I gave a commitment to do so on Committee Stage in the other House, although I did not have the commitment written into the Bill. We will introduce a statutory instrument to allow the adjudicators to be appointed and the system established. This will be the bread and butter of the legislation and will ensure it works in practice.

This is historic legislation as it is the first private Bill to span two terms of the Oireachtas. This proves that while Governments come and go, Senator Quinn is still here. I hope those words will not be used against me in the weeks ahead.

Senator David Norris: I guarantee they will be.

Deputy Brian Hayes: The completion of the Bill is a significant achievement on which I

23 July 2013

congratulate the Senator. I thank especially Ms Anne Ó Broin who works with Senator Quinn and Mr. David O'Brien and Mr. Ronan O'Reilly from the Department. Senator Quinn, in referring to the late Deputy Brian Lenihan from the Dublin West constituency, reminds us that this Bill was first introduced when Mr. Lenihan was Minister for Finance. It was the late Minister who agreed to the legislation. Things move on and it is only right that Senator Quinn should recognise the late Mr. Lenihan's contribution during the term of the previous Government in accepting the legislation.

We must recognise that the construction industry is a fundamental part of national recovery. The sector must be sustainable but is currently unsustainable in that it accounts for less than 4% of gross domestic product when it should account for 10% or 11% of GDP. I accept it was not sustainable when it accounted for 20% of GDP.

The Government hopes that this key legislation, which is being enacted on the initiative of Senator Quinn, will set a new standard that is based on fairness across the construction industry. It will introduce rules, contracts and regulations that will help the sector grow and prosper. We need a prosperous construction industry and I hope the actions we take, with Senator Quinn and others in the House, will help it get back on its feet again. Construction must be a key driver of economic growth.

Question put and agreed to.

Sitting suspended at 5.25 p.m. and resumed at 5.30 p.m.

Protection of Life During Pregnancy Bill 2013: Report Stage (Resumed) and Final Stage

Debate resumed on amendment No. 8:

In page 9, to delete lines 4 and 5 and substitute the following:

“(b) that medical procedure is carried out at an appropriate institution by—

(i) an obstetrician, or

(ii) a medical practitioner of a medical speciality in respect of which he or she is registered in the Specialist Division of the register, and which is relevant to the care or treatment in respect of which the risk of such loss arises, not being a psychiatrist or a general practitioner.”.

- (Senator Rónán Mullen).

An Cathaoirleach: I welcome the Minister of State at the Department of Health, Deputy White, back to the House. Senator Mullen's amendment was seconded by Senator Healy Eames.

Senator Fidelma Healy Eames: I will pass on this.

Minister of State at the Department of Health (Deputy Alex White): I have nothing further to add. If I am not mistaken, I spoke on this amendment already.

An Cathaoirleach: No, not on this one.

Deputy Alex White: The amendment proposes widening the list of medical practitioners permitted to carry out the medical procedure at issue in the legislation. However, other than in an emergency, a termination of pregnancy should only be carried out by an obstetrician or gynaecologist. This strict provision is to ensure that the procedures are carried out by highly-skilled and qualified relevant medical personnel only, in order to secure the best possible care for the woman whose life is at risk and for the unborn. I cannot, therefore, accept the amendment.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments No. 9 and Nos. 18 to 21, inclusive, are related and will be discussed together. Is that agreed? Agreed.

Senator Fidelma Healy Eames: I move amendment No. 9:

In page 9, between lines 5 and 6, to insert the following:

“(c) where the unborn is sixteen weeks gestation or older, an effective anaesthetic for pain relief shall be administered to the foetus before the medical procedure is commenced, provided this does not increase the risk of the loss of life of the pregnant woman.”.

Senator Rónán Mullen: I second the amendment.

Senator Fidelma Healy Eames: I spoke about the issue of foetal pain on Committee Stage last week. A large body of evidence supports the fact the foetus feels pain in the womb during a termination or abortion, particularly if the foetus is over 20 weeks. Professor Glover, a pro-choice advocate in the United Kingdom, says this is the case from 17 weeks onwards. My amendment requests that an anaesthetic be provided for the unborn at terminations at 16 weeks, provided there is no ill effect for the mother.

I have looked widely at research in this area. In neonatal units in the United Kingdom, surgery on foetuses over 23 weeks is performed with the unborn child under anaesthetic. It is medically accepted that unborn babies feel pain and some people argue that they feel pain from 17 weeks. There have been several attempts to highlight this in the United Kingdom. In 2008, a motion was put forward to reduce the abortion time limit to 20 weeks, on the basis of pain research on unborn children. In the US, some 11 states now recommend an anaesthetic at the time of an abortion, because of the evidence on pain. The evidence is so strong that last month the US Congress passed the Pain-Capable Unborn Child Protection Act, limiting abortions to 20 weeks, due to the pain experienced by the unborn child during abortions of foetuses over 20 weeks. The common ground on this issue is that where abortions are performed on any unborn child over 20 weeks, there is broad agreement on the experience of pain by the unborn.

As Members know, the situation here is that a termination is allowed, legally, up to birth. I know the Minister has said that babies will be induced, but the Bill does not state that abortion cannot be carried out. I was struck by evidence that in the later stages of pregnancy, the placenta thickens to protect the unborn child from maternal viruses, HIV, alcohol and other toxic substances. In the process, it also protects the foetus against maternal anaesthesia. Although the mother may be under anaesthetic, that anaesthesia does not pass on to the unborn in the later stages of pregnancy. For this reason, since approximately 2000, a separate anaesthetic is given to the infant in perinatal surgery as it has been proven that infants feel pain quite intensely.

23 July 2013

Can anybody here name one Senator or citizen who would deny an unborn baby an anaesthetic if its life must be ended, if that would give some relief to the unborn child? I hope the Minister of State accepts this amendment. We are trying to be humane. It is a pity we have to go down this road, but if we do, let us end that life in as pain free and humane a manner as possible. If an animal has to be put down, that is done in a pain free manner. Let us not think a child's life is any less.

This is my request. I have a large body of information on foetal pain. I understand I will be able to come back on this, as I am the proposer of the motion. Is that correct?

Acting Chairman (Senator Michael Mullins): That is correct.

Senator Fidelma Healy Eames: I will leave it at that, because I know others want to speak.

Senator Jim Walsh: From reports I have come across on foetal pain, it is happening earlier than the 24 weeks indicated by the Minister of State yesterday. I would like to refer him to a report by the Royal College of Obstetricians and Gynaecologists in England, which strongly recommends that women should routinely be offered pain relief during surgical operations. It is part of their recommendations that this would be done. I cannot find where it states that pain relief should be given to the baby, but from the information we have, which is medically underpinned, everything that Senator Healy Eames says is factual. If we are even half interested in being humane, to me it would be a logical step that this would be done, especially given the fact that our abortion legislation is unique in that there are no effective time limits on it. It behoves us as legislators at least to have that level of compassion and include in the Bill provisions that avoid foetal pain.

Former US President Ronald Reagan was the man who introduced abortion in 1967 in California, so he did not come to the subject without some knowledge and perhaps some regret for what he had done. He later said that "Medical science doctors confirm that when the lives of the unborn are snuffed out, they often feel pain, pain that is long and agonizing". I support the amendment from Senator Healy Eames. I do not think it requires any great pressing from our point of view. Anybody who has a humane approach to this topic, even though we may have different perspectives on the substantive issue, would certainly not want the unborn baby to be suffering pain as a consequence of the procedure being carried out.

Senator Colm Burke: It is important to understand - many of us keep emphasising this - that this Bill is about the protection of life of the mother and the child. Every effort is made by all of the medical people working in this area in Ireland to do that in all circumstances. Not every case is the same. Each case must be approached in a different way, and managed in a different way. I have spoken to a number of consultants in the past two days and they all advised me that it is not physically possible to apply an anaesthetic in the way proposed by the amendment. In some of the amendments being put forward, we are trying to restrict what doctors can and cannot do.

Senator Jim Walsh: On a point of order-----

Senator Colm Burke: I did not interrupt the Senator.

Acting Chairman (Senator Michael Mullins): Senator Burke without interruption.

Senator Jim Walsh: The point of order is very clear. Yesterday evening we passed a Bill

that legitimises all the procedures of operation that were described as so disgusting and barbaric when I quoted medical doctors who gave this evidence in open session in the US Congress. We legalised that yesterday, so what the Senator says is incorrect.

Senator Colm Burke: I did not interrupt Senator Walsh. He has dominated about 70% of the speaking time in this debate, and I would appreciate it if he would not interrupt me. If he wants to come back and reply to me, he is more than welcome to do so. I am telling him as it is, and it is from Irish consultants.

What also intrigues me during this debate is the quoting from American consultants. Why can people not go and talk to Irish consultants? They spend time in here during the two public debates, gave their evidence and gave clear accounts of how they manage their patients, and why they required-----

Senator Fidelma Healy Eames: On a point of order-----

Senator Colm Burke: I did not interrupt anyone else. I have spoken very rarely in this debate. I am fed up with people interrupting me when I am trying to make a point. Senator Healy Eames has spoken for a large amount of time in this debate and I have not interrupted her. I wish to finish the point I am making, and if she wants to come back, she can do so.

Acting Chairman (Senator Michael Mullins): If it is a point of order, I have to take it.

Senator Fidelma Healy Eames: Thank you. Let us be accurate on the record.

Acting Chairman (Senator Michael Mullins): That is not a point of order.

Senator Fidelma Healy Eames: Irish consultants carry this out at the moment. There is a very simple reason for it. Thank you.

Acting Chairman (Senator Michael Mullins): With respect, you can respond again, but please do not interrupt. Senator Burke, without interruption.

Senator Colm Burke: We had consultants in here during the public debate who gave up their time freely to assist us in the drafting of this Bill. They gave their point of view. I am concerned that we are now extensively quoting from the UK and from America. The last quote from Senator Walsh went back to 1984. We have moved on in respect of medical practice and procedure in 30 years. We have a committed number of medical people in this country who are providing maternity care. We have over 75,000 deliveries in this country. We have the lowest maternal mortality rate and the lowest perinatal mortality rate across Europe. I have no doubt whatsoever that this will continue.

This amendment and some of the other amendments are trying to put restrictions on what doctors can and cannot do. They work with the sole purpose of trying to protect the life of the mother and the life of the unborn. All of the consultants who are working in this area spent five or six years in college, and another 11 or 12 years before they reach consultant status. Here we have people coming in who are reading papers and who have not got their expertise and who are now trying to put restrictions on what they can and cannot do.

The Constitution is quite clear on this matter. Article 40.3.3o sets out quite clearly that the life of the mother and the life of the unborn must be protected at all times. It is only when there is a risk to the life of the mother that certain procedures can be carried out in order to save the

mother. These proposals are unimplementable, are not feasible and that is the medical advice that I have received. Therefore, under no circumstances can the proposals as set out here be accepted.

Senator Ivana Bacik: Senator Burke has given a very clear reason to oppose these amendments. This reason comes from seeking advice from Irish consultants. It is very important that we look at Irish medical practice. We need to trust doctors in this country. I was present in the Chamber yesterday when the Minister for Health gave a very full explanation as to why these particular amendments would not be accepted. We had a very full debate on similar amendments on Committee Stage. We did not get to a number of other amendments on Committee Stage that would be worth debating, and I hope we can do so. The debate on this has really been gone over quite a number of times, and we have heard very clear reasons for opposing them. It is unfortunate that the debate has been dominated by a small number of individuals and by quoting from US practice and US research. We need to look more closely and focus on the Irish Constitution, which sets out the parameters within which we must legislate, and look also at Irish medical practice and trust our doctors.

Senator Paul Bradford: I support the amendments, especially amendment No.9 which we are currently debating. Senators are asking why we are quoting American and British consultants and not Irish consultants. Part of the answer to that conundrum is the following. The Irish medical model, the two-patient model, has a very different idea of care from the one that will arise from the passing of this legislation. We need therefore to look at the countries that are already down the road which we are now about to travel. Britain and America are two countries which many years ago introduced what they felt at the time was exceptionally limited abortion, to be used in very few cases, yet we know that is not what transpired.

Amendment No. 9, in the names of Senators Healy Eames and Mary Ann O'Brien, states that the proposal would be implemented, "provided this does not increase the risk of the loss of life of the pregnant woman". That is a very plain statement providing for an anaesthetic where there is no increase in the risk of the loss of life of the pregnant woman. The Minister debated this with us at some length on Committee Stage and said he would come back to Senator Healy Eames on the matter. I think he gave a partial answer yesterday. He quoted statistics, not from Ireland but from Britain. We can consider all the evidence available but I find it difficult to come up with any reason one would oppose the request that, where it absolutely would not in any way increase the health risk to the mother, the anaesthetic would be provided.

The argument has been made that we listened to consultants here in this room during the hearings of the Oireachtas Joint Committee on Health and Children. Those hearings were very useful but this particular issue was not addressed. Why not? It was not addressed because until now we had a very different model of health care provision from the one we are about to introduce. We also listened to medical consultants stating on the record that in other jurisdictions they would not have to participate in termination procedures if they had a conscientious objection to them. Now we will introduce a regime where such medical procedures will have to be provided.

What Senators Healy Eames and Mary Ann O'Brien are proposing is that we would at least try to do so in a humane fashion. I support the amendment. I heard the Minister's partial response yesterday and I have heard the response of the Minister of State at the Department of Health, Deputy White, which go back to what we were told in the early stages of the debate, namely, that there could be no substantive amendments and nothing other than the original Bill

would be accepted. Maybe that is the problem. The gate has been closed and we have been told that even reasonable amendments simply will not be accepted. I find this amendment very reasonable and the public would find it very difficult to oppose.

We speak about what the opinion polls tell us but we should never be led by opinion polls. Some of my colleagues love to quote polls saying 80% or 90% of people want this or that judgment. If one asked the Irish people in an opinion poll do they feel that an unborn child, whose life is about to be ended, should at least be provided with the dignity and the pain relief of an anaesthetic, there would not be 70% or 80% in favour, there would be 100%. We should at least be reasonable in responding to that. I accept that the Minister will not accept any amendment whatsoever but it is important that we put on the record this request from at least a minority of this House. I think the majority of Irish people would want this amendment to receive fair consideration. How can anybody say “No” to pain relief? How can anybody say “No” to humanity? How can anybody say to “No” to giving at least some degree of dignity at the end of life to an unborn child? As a society, if we say “No” to this amendment we are making a very profound and negative statement about the values or lack of values in our country.

Senator Rónán Mullen: This amendment deserves every support.

Senator Fidelma Healy Eames: Hear, hear.

Senator Rónán Mullen: It is an attempt by humanity to stare ideology in the face. I would also like to note the paternalism of Senator Burke’s suggestion that we have listened to doctors and therefore we have no business here setting out the rules for what should or should not happen. That is a complete misunderstanding of the role of a legislature and it is quite bizarre that he should suggest that, given how scant was the treatment at the hearings of the Oireachtas Joint Committee on Health and Children of many issues.

This issue was not dealt with at all. To suggest, as he and Senator Bacik are doing, that we should have regard to the Irish context and not look to the international scene is a denial of every good practice, particularly in a situation like this where we are changing the culture so dramatically. We are introducing an abortion regime, the extent of which may be disputed but there can be no disagreement about the fact that something completely new is going to happen here, namely, that doctors are expected to intervene in healthy pregnancies and in some cases destroy the lives of unborn children, and in other cases expose them to the risk of severe injury or disability.

Senator John Gilroy: That is not section 7.

Senator Rónán Mullen: That is the reality of what section 9 provides for. Now, for the first time, we have to have regard to whether pain relief would be appropriate because under the sections 7 and 8 procedures, which are necessary interventions to save life in a situation of physical illness, there is no doubt but that every effort is being made to preserve the life of the child. We do not credibly believe that will be the case in the section 9 situations, precisely because, to all intents and purposes, the departure of the unborn from this world is what will be sought and there is a heightened need to have regard to the welfare of the unborn. That is what is at the heart of this amendment. It is no argument to say we should trust doctors. Of course we should trust them but we should legislate to make sure that those who would not care for two patients would be circumscribed in their actions.

Senator Brian Ó Domhnaill: This is a very compassionate amendment which Senators

23 July 2013

Healy Eames and Mary Ann O'Brien have tabled. If we cannot have compassion for the unborn, for those who cannot speak for themselves even though they are being cruelly deprived of life as a result of this legislation, at least let it be compassionate. I am not sure why there is this apparent reluctance to entertain this amendment. Irrespective of where the medical evidence comes from, whether from the moon, America, Russia or Ireland it does not matter, because we are all human beings and we should all be concerned with the well-being and welfare of our fellow human beings. That is exactly the reason for this amendment.

We have heard Senators Colm Burke and Bacik on foetal pain and we do not question in any way Irish obstetricians or medical practices about this but where is the report by the Department of Health which confirms that foetal pain does not exist after 20 weeks? That report should accompany this Bill if this amendment is being rejected. We can only learn from other jurisdictions because this is the first time in the history of our State that abortion is being introduced where the rights of the child are being violated in respect of the Constitution under section 9 of this Bill.

Senator Colm Burke: On a point of order.

Senator Jim Walsh: This from a man who says he does not interrupt.

Senator Brian Ó Domhnaill: I thought Senator Colm Burke did not interrupt people.

Senator Colm Burke: The Senator has alleged that we are interfering with the rights of the child as protected in the Constitution.

Senator Brian Ó Domhnaill: Absolutely.

Senator Colm Burke: We are not.

Senator Brian Ó Domhnaill: I stand by that.

Senator Ivana Bacik: We are not.

Senator Brian Ó Domhnaill: I stand by that. I will reiterate the point for the purposes of clarity. Section 9 of this Bill violates the rights of the unborn child and it tears up the constitutional protection for the unborn child.

Senator Ivana Bacik: The Senator should read the Bill.

Senator Brian Ó Domhnaill: I do not have to read the Bill because it is abundantly clear-----

Senator Colm Burke: That is exactly what has happened.

Senator Ivana Bacik: Clearly, the Senator has not read it.

Senator Colm Burke: That is exactly what has happened.

Senator Brian Ó Domhnaill: -----in section 9. The Senator can be as vague as she wants-----

Senator Ivana Bacik: I was not vague about it.

Senator Brian Ó Domhnaill: -----but the reality is that the rights of the child protected

under Article 40.3.3° will be violated if this Bill is passed.

Why is the legislature in Texas introducing legislation for children who are going to be aborted post 20 weeks and accepting an amendment similar to that which Senator Healy Eames is trying to promote here?

Senator Ivana Bacik: Texas.

6 o'clock

Senator Brian Ó Domhnaill: Reference was made to President Reagan's statements in 1984. Twenty-six leading health professionals in the United States wrote to the President and outlined that it is an established fact that the unborn, the prematurely born and the newborn of the human species is a highly complex, sentient, functioning individual organism. That the human unborn and newly born respond to stimuli is also established beyond any reasonable doubt. According to Senator Burke and others, these professionals were not telling the truth in the letter they wrote to President Reagan.

Senator Colm Burke: Please stop misquoting me.

Senator Brian Ó Domhnaill: The final line of that letter stated, "Mr. President, in drawing attention to the capacity of the human fetus to feel pain, you stand on firmly established ground". I refer to President Reagan's comment, "When the lives of the unborn are snuffed out they often feel pain, pain that is long and agonizing". What has changed since 1984? In 2012 the sub-committee on the Constitution, the US House Judiciary Committee held a hearing on this issue. Colleen Malloy is an assistant professor of neonatology at the department of paediatrics, Northwestern University school of medicine. She stated that there is ample biological physiological hormonal and behavioural evidence for foetal and neonatal pain. Professor Malloy told the committee that by 20 weeks post-fertilisation, or 22 weeks LNP, the foetal brain has the full complement of neurons present in adulthood. When questioned she confirmed that the ability of the foetus to feel pain was the majority view of those in the field. It has been suggested that an Irish report shows that this view is rubbish, even though this view is held all over the world, including in Britain. Speakers can quote from such reports. Senator Fidelma Healy Eames has researched this topic. She has drawn the attention of the House to this issue, for which I compliment her. I was not aware of this topic until this amendment was tabled. She and Senator Mary Ann O'Brien should be applauded for bringing forward a compassionate amendment which tries to ensure that if a child is to be aborted, gruesome and barbaric as that it, that at least the pain is minimised during the process. How can anyone argue with that? The only reason for not accepting this amendment would be if a scientific report - an Irish report would be acceptable - shows clearly that foetal pain does not exist. I do not believe such a report exists but perhaps the Minister of State can prove the contrary.

Acting Chairman (Senator Michael Mullins): I remind Senators that there remain more than 50 amendments to be dealt with and we have less than two hours in which to do so.

Senator Brian Ó Domhnaill: We should keep going for the night.

Acting Chairman (Senator Michael Mullins): The House has ordered the business.

Senator John Gilroy: It is most dispiriting to have to listen to this level of debate. This is the third time we have been through it.

23 July 2013

Senator Ivana Bacik: Hear, hear.

Senator John Gilroy: The people whom Senator Ó Domhnaill dismisses as quacks or whatever he calls them, include the Royal College of Obstetricians and Gynaecologists in the UK and the American Association of Obstetricians. These are the most renowned people working in the field. They state very clearly -----

(Interruptions).

Acting Chairman (Senator Michael Mullins): Senator Gilroy without interruption.

Senator John Gilroy: There is constant cackling when a speaker says something that others do not agree with or do not accept. We are all looking for some respect in dealing with this matter rather than playing havoc-----

Senator Brian Ó Domhnaill: Hear, hear, respect.

Acting Chairman (Senator Michael Mullins): Senator Ó Domhnaill, please have a little bit of respect for other Senators.

Senator John Gilroy: We are constantly playing the *ad hominem* argument in this House. Speakers play the man when they cannot think of something to put up as a reasonable argument. Does my point need proving? We are making the very best case for the abolition of this House, no question about it. I go home from these debates-----

Senator Brian Ó Domhnaill: The Senator voted for it this evening.

Senator John Gilroy: Is it any wonder that I would vote for it? This is the sort of nonsense that passes for debate in this House. There is scant regard being paid to any evidence. We are talking about foetal pain which is a terrible and awful concept. We are being accused of not having compassion. Yet, the word, thalamus-limbic has not even been mentioned, which the highest authorities in the field of research dealing with obstetrics says is responsible for the perception, conception of pain and it does not develop in the foetus until at least the 23rd week.

Senator Fidelma Healy Eames: Rubbish. We placed this on the record. The Senator is not entering new information. He is contradicting it.

Acting Chairman (Senator Michael Mullins): Senator Gilroy without interruption.

Senator John Gilroy: If a foetus cannot feel pain for 23 weeks and Senator Burke has said that it is impossible to administer anaesthesia to a foetus at 16 weeks, why are we talking about an amendment that proposes 16 weeks? It might be reasonable to propose an amendment to administer anaesthesia at 22 weeks but it is preposterous to talk about 16 weeks. It is illogical, even by the Senator's own argument. If we are to be taken seriously as a House, let us have some regard to the facts and to the logic of our own arguments.

Senator Mary Ann O'Brien: I welcome the Minister of State to the House. I am aware that yesterday, the Minister, Deputy Reilly, referred to two reports from two respected medical journals which stated that the unborn do not experience pain until post-29 weeks in one report or 24 weeks gestation in the second report. I have done a lot of research on this topic since we first tabled the amendment. I have 22 pages of information from the *British Medical Journal*, *The Lancet*, and doctors from all over the world who have given different opinions and differ-

ent scientific views. There is disagreement with some of the research science stating 18 weeks while others state 20, 22 or 16 weeks. While I accept the Minister's words as being said in good faith, those words suited his argument. This is definitely an area of uncertain science. I have listed equally respected reports that contradict the two reports which the Minister cited. I will accept that given the various range of views on the topic, depending on whether one is classed as pro-life or pro-choice, this area is uncertain. When it comes to a burden of proof, one would have thought that the mature and civilised action would be to provide anaesthesia to the unborn at 20 weeks. Our whole argument is for the protection of the mother's life and this amendment will not hamper that in any way. Even if there is the slightest chance that some of my 18 pages of medical reports are correct, and that there is the slightest chance that the baby may feel pain, what is wrong with making this small amendment that will have an anaesthetist present to ensure the unborn baby does not feel pain? If the Minister of State cannot accept the amendment for any reason, I propose that we introduce a Bill very similar to the Pain-Capable Unborn Child Protection Act, which was passed by the House of Representatives on 18 June 2013 in the most liberal abortion regime in the world, namely, the United States. We should do so this autumn if he cannot see his way to accepting this provision. I had predicted that the Minister, Deputy James Reilly, would protest, in respect of the amendment, that we cannot be prescriptive in the legislation. It is clear, however, that we can be prescriptive enough to ask two doctors to make a decision, quite rightly, in cases in which a mother is suicidal. I am asking the Minister of State to consider that perhaps my science is correct and we should insist on an anaesthetist being present in the circumstances I have indicated. It is the least we can do.

Senator Rónán Mullen: Hear, hear.

Senator Brian Ó Domhnaill: Well said.

Minister of State at the Department of Health (Deputy Alex White): These amendments broadly concern the issue of viability. In making reference to a medical practitioner's reasonable opinion, the Bill places a statutory duty on each practitioner forming an opinion to have regard to the need to preserve unborn human life as far as practicable. This imposes a clear duty on doctors to make every effort to preserve the life of the foetus where possible. We had a discussion last night on what is meant by "where possible". A failure to do so would place a medical practitioner in breach of the proposed legislation and subject to its penalties.

The Bill does not impose any time limits on carrying out the medical procedure at issue with reference to the gestational stage of a pregnancy. The approach adopted provides protection for the unborn at all stages of pregnancy. This is because the legislation only covers situations in which there is a real and substantial risk to the life of a pregnant woman which can only be averted by termination of pregnancy. The limit of potential viability is subject to change as developments in medical treatments progress. It would be incorrect to legislate for a particular gestation limit as to do so could have the effect of depriving unborn life which has not reached that limit of protection.

Amendment No. 21 makes proposals regarding civil and criminal liability for negligence. As it is not the purpose of this Bill to regulate obstetric procedures such as the delivery of a viable premature infant or to change the law of negligence in regard to the practice of obstetrics, I cannot accept the amendment. It should be noted that normal cover for medical practitioners, through their professional regulatory mechanisms, will apply in such situations. Standard medical practice will provide appropriate mechanisms for the assessment and treatment of both the woman and the unborn. It would not be appropriate to include this or other details of medical

treatments in legislation.

I have reviewed the information from Senator Fidelma Healy Eames on the matter of foetal pain and have consulted my own medical advisers and officials in that regard. Having done so, I am satisfied with the position put forward in the Bill. To reiterate, it is not intended that the legislation will be prescriptive in regard to clinical practice. Clinical decisions, including the provision of pain relief, will be taken by the clinical team involved in line with evidence-based international practice. For these reasons, I do not propose to accept the amendments.

If colleagues consider it helpful, I will reiterate the response the Minister gave to Senator Healy Eames yesterday in respect of the various studies she quoted in the course of the debate. I am happy to do so.

Senator Rónán Mullen: There is no point unless the Minister of State has something new to say.

Deputy Alex White: There is often a tendency - I concede that it is not confined to one or other perspective in this debate - to quote from experts and expertise which tend to support or validate the argument one is putting forward. That is perfectly allowable and is a legitimate form of debate. There is no difficulty about it. We are all inclined to reach for studies that tend to support the case we wish to make. What the Government must do, however - and, I would respectfully suggest, what the Oireachtas must ultimately do, having considered the broad sweep of evidence - is to come to a conclusion on the matter at hand. I make no criticism of Senators in observing that we have heard all the arguments at great length. I would not presume to say how this House should approach its business, but the Government certainly must have regard to more than one particular perspective.

Senator Rónán Mullen referred several times to doctors having particular ideologies. It may be reasonable to use that word but the reality is that one person's ideology is often matched with an ideology on the other side of the argument. It is not proper or prudent to rely on selective quotation; we must have regard to all the evidence and studies. The Minister referred yesterday to multidisciplinary, systematic and peer-reviewed studies, not just reaching to one or another study here or there but looking to see what is the broad sweep of opinion. In fairness to Senator Mary Ann O'Brien, she made the point that there is a great deal of controversy about this issue. Those of us who have occasion to follow the debate in the United States can observe that it is a hugely contentious topic in that country, as indeed it is elsewhere.

The study published in the *Journal of the American Medical Association* in 2005, as referenced by the Minister yesterday, looked at a range of different studies, concluded that the evidence regarding the capacity for foetal pain is limited and indicated that foetal perception of pain is unlikely before the third trimester. The article observed that the capacity for conscious perception of pain can arise only after the thalamocortical pathways begin to function, which usually occurs at around 29 or 30 weeks' gestation. The Minister went on to refer to the study in the United Kingdom undertaken by the Royal College of Obstetricians and Gynaecologists following recommendations by a House of Commons committee in 1997. That study, published in 2010, reviewed all the evidence, including the recently published literature. This is the type of broad-ranging review that is required. It is no good simply accessing a study that takes one particular approach. It is still possible to come to a particular conclusion on one or other side of the argument, but it should not be done based on a flow of studies or arguments from one particular perspective. I would respectfully suggest that this is not good law-making. It is not

what we mean by evidence. When we talk about an evidence-based approach, it does not mean looking for a study that tends to support what we want to do. That is not my understanding of the proper marshalling of evidence in a legislative pursuit. It is about looking at all the evidence in the round. Senator Ivana Bacik made a fair point when she referred to the tendency to be overly reliant on medical opinion from the United States. The reality is that even in that country, medical opinion is not universally taking one particular perspective on this issue, as even a cursory look at the reporting will show.

Senator Paul Bradford is putting a negative characterisation on the position we have taken in this debate in claiming that we were never willing to accept amendments. After the heads of the Bill were published and debated in the committee hearings process and the legislation was brought to the Dáil, we made clear our willingness to consider amendments which improved the operation of the Bill. What has happened, however, is that we simply were not in a position to accept many of the amendments brought forward. There is no arguing with Members' rights to bring forward proposals; it is perfectly legitimate to do so. There can be no denial, however, that the majority of amendments - not all, perhaps, but certainly a lot of them - reflected colleagues' basic objection to section 9. I understand Senator Jim Walsh conceded that point last night; if I am wrong, he will correct me. Senators have adopted lots of different ways to attack that section, as is their right. That, essentially, is what most of the amendments have been about. The bottom line, however, is that the Government is not amenable to removing section 9. We will not agree to any amendments which seek, whether directly or indirectly, to undermine the operation of that section. That is our position and it is for the Seanad to make its own decisions.

I wish to make clear that the Government was open to amendments which might assist in improving the operation of the Bill. However, it was not interested in those which seek to drive a coach and four through its provisions. We are not prepared to accept such amendments. That is what we meant when we indicated that we would accept amendments which improved the operation of the legislation. For those reasons, it is not proposed to accept the amendments in this group.

Senator Fidelma Healy Eames: I agree with considering all the evidence in the round. My background is in research and I am aware that one does not just examine one item of evidence and draw a conclusion from it. To deny that there is no up-to-date medical evidence which shows that an unborn baby feels pain is to completely mislead the House. I will identify some patterns from the information available. There is broad agreement that after 26 the unborn feels pain. Some new evidence is emerging which indicates that the unborn feels pain from 17 weeks onwards. It is for this reason that - as a precautionary principle - I included the phrase "where the unborn is sixteen weeks gestation or older" in amendment No. 9. The precautionary principle suggests that there should be no doubt that the unborn may feel pain. As a result of the uncertainty - and just in case - surely the humane and compassionate course of action would be to provide for relief at that moment of the ending of life of an unborn baby. That is what we are doing here.

I spoke to two obstetricians yesterday, one of whom informed me that from 17 weeks onwards the procedure to end the life of a baby involves injecting potassium chloride into the heart. Those who perform such procedures are guided by ultrasound. Within one minute, this causes the baby to have a heart attack. It is the very same lethal injection that is used in executions.

Senator Ivana Bacik: Not in Ireland.

23 July 2013

Senator Fidelma Healy Eames: What I have just outlined is how an Irish obstetrician described to me the way in which these procedures are carried out elsewhere.

Deputy Alex White: Who is the person to whom the Senator refers?

Senator Fidelma Healy Eames: I would be happy to provide the Minister of State with his name after the debate.

Deputy Alex White: No, the Senator should place it on the record.

Senator Fidelma Healy Eames: I would be happy to give it to the Minister of State afterwards.

Senator Colm Burke: Put it on the record.

Senator Fidelma Healy Eames: Many names have been offered in this House and they have been rejected by the Cathaoirleach. I am, therefore, going to adhere to Standing Orders on this matter. However, I would be more than happy to supply the name to the Minister privately.

Senator Rónán Mullen: On a point of order, the Minister of State is smirking. However, Senator Healy Eames is showing respect for someone whose permission she may not have in the context of revealing his name.

Acting Chairman (Senator Michael Mullins): That is not a point of order.

Deputy Alex White: Plenty of obstetricians-----

Senator Brian Ó Domhnaill: On a point of order-----

Senator Fidelma Healy Eames: Excuse me, who has the floor here?

Senator Brian Ó Domhnaill: -----it is somewhat astonishing that the Minister of State, the leader of the Labour Party group and the health spokesperson of the Fine Gael group-----

Acting Chairman (Senator Michael Mullins): That is not a point of order.

Senator Brian Ó Domhnaill: -----would openly ask a Senator to abuse privilege.

Senator Fidelma Healy Eames: Hear, hear.

Acting Chairman (Senator Michael Mullins): Senator Healy Eames, without interruption.

Senator Brian Ó Domhnaill: It is disgraceful.

Senator Fidelma Healy Eames: Hear, hear.

Deputy Alex White: I really must-----

Acting Chairman (Senator Michael Mullins): I will allow the Minister of State to respond at the end of the debate.

Deputy Alex White: This is an issue of order. There was no request to ask anybody to abuse privilege.

Senator Brian Ó Domhnaill: The Minister of State called on Senator Healy Eames to name the obstetrician to whom she referred.

Deputy Alex White: There was no allegation made against anybody. No adverse statement was made in respect of a single person. If so-called evidence is being put on the record so late in the debate, then it is not unreasonable to request the source of that evidence.

Senator Rónán Mullen: Perhaps Senator Colm Burke might reveal the names of the medical professionals he consulted.

Senator Jim Walsh: Under Standing Orders, I am allowed to make an intervention if the person in possession permits me to do so.

Senator Fidelma Healy Eames: As long as I can continue. Is that acceptable to the Acting Chairman?

Acting Chairman (Senator Michael Mullins): Senator Walsh is not permitted to do so on Report Stage.

Senator Jim Walsh: Guidance from the Royal College of Obstetricians and Gynaecologists recommends that babies over-----

Acting Chairman (Senator Michael Mullins): Senator Walsh should please-----

Senator Jim Walsh: -----23 weeks who survive abortion should have their hearts stopped by lethal injection-----

Acting Chairman (Senator Michael Mullins): That is not a point of order.

Senator Jim Walsh: -----but that this can be a difficult procedure for doctors.

Senator Ivana Bacik: Here we go again. More of this nonsense.

Senator Jim Walsh: The Royal College of Obstetricians and Gynaecologists said that and I wanted to point it out in support of Senator Healy Eames and in answer to-----

Acting Chairman (Senator Michael Mullins): Senator Walsh should please respect the Chair.

Senator Jim Walsh: -----the Minister of State's question.

Senator Fidelma Healy Eames: The Minister of State indicated a few moments ago that it is important to consider all evidence. He has presented some evidence and I have done likewise. What the Minister of State is saying is that there is no openness on his part and that the Government is only acknowledging one view. In that context, I say "Shame on you" to the Minister of State.

Deputy Alex White: We must listen to everything the Senator says and we do so. However, if she is putting forward some additional evidence which, she says, she was informed about by an Irish obstetrician today, it is not unreasonable to ask the identity of that individual.

Senator Fidelma Healy Eames: I am not objecting to supplying the Minister of State with the name in private. However, I will not put it on the record without the person's permission.

23 July 2013

Deputy Alex White: That makes it much more difficult to rely on the evidence.

Senator Rónán Mullen: The Minister of State will not even-----

Senator Fidelma Healy Eames: I am not going to be-----

Senator Rónán Mullen: This is hypocrisy.

Senator Fidelma Healy Eames: -----ballyragged by the Minister of State.

Deputy Alex White: I merely asked the Senator to supply the name. Asking someone a question is not ballyragging.

Senator Fidelma Healy Eames: The Royal College of Obstetricians and Gynaecologists in the UK and the Royal College of Midwives have stated that after 24 weeks a foetus feels pain. What I completely object to is the condescending tone being used by some Members who cannot listen to the evidence. I am not just referring to the Minister of State in this regard, I am also referring to a number of Senators. The tone to which I refer is unacceptable. If people cannot bear hearing about the pain, why do they want to legislate in respect of it?

I return to my basic point regarding the precautionary principle. If there is any doubt, then let us, at the very least, be humane and provide for an anaesthetic to be administered to the unborn whose little life is being ended. If the mother is already being given an anaesthetic, what is wrong with providing the baby with one? This beggars belief. Why can we not accept that it is okay to be wrong? What is wrong with the Government? Is it the case that it does not want to recall the Dáil from recess? It is our job to provide - if we must go there at all - for the most humane ending of life. Let us have open minds. If we must end life, then let us do it humanely and let us operate, at the very least, on the basis of the precautionary principle. I included the term "sixteen weeks gestation or older" but I am very open to reaching agreement on the time-frame involved. Let us not deny, however, that foetuses feel pain, particularly after 20 weeks.

I again ask the Minister of State to think carefully before he rejects the amendment. If necessary, I will press the matter to a vote but I would rather not be obliged to do so.

Senator David Norris: I have not spoken on the amendment.

Acting Chairman (Senator Michael Mullin): Unfortunately, and due to the fact that the Minister of State had responded, Senator Healy Eames's was the final contribution. I must, therefore, put the question.

Senator David Norris: Perhaps that is a matter to which we could give consideration in the context of the Standing Orders of the House. I intend to support Senator Healy Eames. I must inform the Minister of State that I received a detailed briefing from somebody in Trinity College - I will communicate the name to him privately - in respect of this matter, about which I am concerned. What Senator Healy Eames has stated is reasonable. I deplore the fact that during the hearings of the Joint Committee on Health and Children and on Committee Stage here appalling language was used about children being dismembered, etc. That was absolute rubbish. However, I agree with Senator Healy Eames in respect of the issue of pain.

Acting Chairman (Senator Michael Mullin): Is the amendment being pressed?

Senator Fidelma Healy Eames: Yes.

Acting Chairman (Senator Michael Mullins): Those in favour say “Tá”.

Senator Fidelma Healy Eames: Tá.

Acting Chairman (Senator Michael Mullins): Those against say “Níl”.

Senator Ivana Bacik: Níl.

Deputy Alex White: Níl.

Senator Fidelma Healy Eames: Shame on ye.

Senator Ivana Bacik: Let us be respectful in this debate.

Acting Chairman (Senator Michael Mullins): The question is lost. Amendment No. 10 arises out of Committee proceedings.

Senator Fidelma Healy Eames: Vótáil.

Acting Chairman (Senator Michael Mullins): The question-----

Senator Fidelma Healy Eames: I said I was pressing the amendment.

Senator Ivana Bacik: The Senator did not-----

Acting Chairman (Senator Michael Mullins): The Senator did not do so.

Senator Fidelma Healy Eames: I said I was pressing the amendment. That is what it means.

Deputy Alex White: The Acting Chairman has already declared the result.

Acting Chairman (Senator Michael Mullins): Yes, that is correct.

Senator Fidelma Healy Eames: Sorry, vótáil.

Amendment put:

The Seanad divided: Tá, 14; Níl, 34.	
Tá	Níl
Bradford, Paul.	Bacik, Ivana.
Crown, John.	Brennan, Terry.
Healy Eames, Fidelma.	Burke, Colm.
MacSharry, Marc.	Clune, Deirdre.
Mooney, Paschal.	Coghlan, Eamonn.
Mullen, Rónán.	Coghlan, Paul.
Norris, David.	Comiskey, Michael.
O'Brien, Mary Ann.	Conway, Martin.
Ó Domhnaill, Brian.	Cullinane, David.
Ó Murchú, Labhrás.	Cummins, Maurice.
Quinn, Feargal.	D'Arcy, Jim.
Walsh, Jim.	Gilroy, John.

23 July 2013

White, Mary M.	Harte, Jimmy.
Wilson, Diarmuid.	Hayden, Aideen.
	Henry, Imelda.
	Higgins, Lorraine.
	Keane, Cáit.
	Kelly, John.
	Landy, Denis.
	Mac Conghail, Fiach.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegard.
	Noone, Catherine.
	O'Donnell, Marie-Louise.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Ó Clochartaigh, Trevor.
	Reilly, Kathryn.
	Sheahan, Tom.
	van Turnhout, Jillian.
	Whelan, John.
	Zappone, Katherine.

Tellers: Tá, Senators Fidelma Healy Eames and Mary Ann O'Brien; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

An Cathaoirleach: Amendments Nos. 10 and 13 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Rónán Mullen: I move amendment No. 10:

In page 9, line 26, to delete "is ended" and substitute "may be lost".

One remarkable aspect of this debate has been that when seeking to reassure Members, the various Ministers present talk about the necessity of procedures that involve the termination of a pregnancy. However, the legislation provides for the lawfulness of procedures in the course of which or as a result of which an unborn human life is ended. Not only has the Government resisted taking a precautionary approach to the possibility that the unborn, in the context of the termination of a pregnancy, might feel pain but Members have also seen a refusal to take on board a direct duty to protect the life of an unborn who is viable, as well as the rejection of

specific language that would require this where it was practicable to so do. This is extremely troubling. As I stated, the issue is that instead of using the word “ended”, that is, in the context of the lawfulness of procedures leading to the ending of life, one should be talking about the possibility of life being lost.

As was stated on Committee Stage, I seek to protect and provide for situations where it is clear to medical personnel that they are at no disadvantage from the perspective of civil or criminal law in the event that they perform the procedure in question but the child does not die and that, in fact, it is desirable that the child not die where that is avoidable. The Government has been talking out of both sides of its mouth because, on the one hand, it has been stating it is desirable that the child should not die where it is possible to provide for this, but there is nothing in the language used in the legislation to give comfort on that point. It appears that the word “lost” would be more appropriate if what the Government intends doing in any of these sections pertains to ending the pregnancy but trying to save the life where that is practicable. Ideally, instead of talking about when, in the course of which or as a result of which “an unborn life is ended”, wording stating “a pregnancy would be ended and the life of the unborn endangered or lost” should be used. The idea that the life would be lost really honours more what the Constitution requires, which is respect for the equal right to life of the unborn. Therefore, it appears that the word “lost” would introduce no ambiguity but bring much reassurance that where it was practicable to so do, the life of the child would always be saved.

There are two dimensions to the amendments. The first is the more desirable language of loss, implying that the intention is to save life, if at all possible, and that it is a regrettable fact that the child’s life is to be lost, not a sought end in itself. The second aspect is the use of the phrase “may be” instead of the word “is” in the context of the life being lost or ended because that would make it clear that such procedures would not necessarily end in the death of the child in post-viability situations and that doctors were both fully protected and fully expected to protect life in that context.

Senator Brian Ó Domhnaill: I second the amendment.

Deputy Alex White: I am unsure whether I understand fully the rationale for this amendment, even though I have listened carefully to Senator Rónán Mullen. In the first instance, I will give a general response and will then seek to consider precisely what he has said in support of his amendment.

As was stated on Committee Stage, the Bill, as drafted, reflects the policy requirements to implement the judgment in *A, B and C v. Ireland* which pertains only to effective and accessible procedures being available. However, the change proposed by the Senator would have the effect of bringing a greater number of medical procedures under the Bill. For example, medical procedures which are currently carried out but which may pose a risk to the unborn such as amniocentesis or the administration of a general anaesthetic do not require legal certification, apart from clinical indication, and it would not be desirable for them to so do. There would at least be a risk that this would be the effect of what the Senator has proposed. However, having examined the words proposed by him, I am still somewhat at a loss as to what is the rationale for this proposal. I believe he will agree with me that irrespective of one’s perspective on what is proposed in this legislation, the Bill must provide clarity with regard to what is protected. As a result, sections 7 to 9, inclusive, particularly sections 7 and 9, begin with the phrase “It shall be lawful”. In addition, the phrase “it shall be lawful” appears on the second line of section 8. The Bill is making it clear what is lawful and regardless of whether one likes it, the clear

23 July 2013

intention of the sections is that it shall be lawful. Therefore, there must be clarity in respect of what is lawful.

Senator Jim Walsh: When the baby dies.

Deputy Alex White: May I have the protection of the Chair?

An Cathaoirleach: The Minister of State to continue, without interruption, please.

Deputy Alex White: It is what is lawful that is protected and it must be clear in what one is doing. If one uses language such as “may be ended” or “may be lost” so that, for example, section 8, from the middle of the second line, would read, “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 may be lost”, it introduces at least an uncertainty as to what is protected here, and that would be unacceptable. Either it is being done in legislation or it is not. Some of the Senators opposite believe it should not be done. I respect that, although I disagree with it. Given that it is being done, it must be clear.

In what the Senator proposes, there may be, at least to some extent - I hope he will excuse me in this - a point being made by him. I am not taking from his right to introduce this amendment - I hope he will not react to this, as it is getting late - but there is a polemical element to what the Senator proposes. He is entitled to introduce such an element, but for it to be adopted in legislation would be most undesirable because it would undermine the protection that it is intended to give to the various persons who would be protected throughout sections 7 to 9, inclusive, by the use of the phrase “it shall be lawful”.

Senator Rónán Mullen: I thank the Minister of State for his response.

I assure him that this is a substantive amendment which would make the following substantive difference. There would be absolutely no doubt that in a pre-viable situation the unborn child’s life would be ended. However, in a situation at viability onwards, it would make clear that the intervention was not designed to take the life of the child but to end the pregnancy. There is no ambiguity or danger introduced by the words “may be lost”. It simply encapsulates the reality that, depending on the stage of pregnancy at which the intervention is made, the outcomes from the point of view of the unborn child may differ. There is no prejudice to the woman’s welfare here. This is not opposing section 9, which I certainly do oppose. I am saying, accepting for the moment that section 9 is in the Bill, that section 9 should make clear that any such intervention on foot of section 9 is not designed to end life. It is designed to end pregnancy, which, depending on the stage of pregnancy, may or may not end life. That is the entire purpose of the wording that I have proposed and I do not see how there is any danger imported by the use of the words “may be”.

Furthermore, and this is where I am afraid I must accuse the Minister of State, the Government and perhaps the officials advising the Minister of being polemical and perhaps being-----

Deputy Alex White: It is not fair to introduce the officials into the matter. These decisions and proposals are made entirely politically by the Government, not by officials.

Senator Jim Walsh: Not true.

Senator Rónán Mullen: I hear what the Minister of State says-----

Deputy Alex White: Senator Mullen should accept it.

Senator Rónán Mullen: -----but I am saying that only a contorted reading of the proposed amendment could view it as including procedures such as amniocentesis. This line was trotted out by the Minister, Deputy Reilly, at Committee Stage as well. I take the Minister of State, Deputy Alex White's, implication that he himself came up with the idea. It certainly is not a credit to him because subsequent subsections clearly establish that the only categories of medical procedure contemplated by the Bill are those which respond to a real and substantial risk of loss of maternal life as a necessary means of averting such risk and to introduce amniocentesis there as a reason not to make this change - bearing in mind, of course, that it would do no mischief, because the Minister of State is not pointing to any mischief that the use of the word "lost" would import, but is saying, rather, that it might introduce what are, at worst, irrelevancies - or to even claim that, is contorted. It is perverse and I would say it is even a corruption of debate.

Deputy Alex White: I repeat that my key objection to this amendment is that it would risk undermining the protection that the section is intended to give. If one has a doubt - if there is a phrase that talks about protecting something that is lawful in circumstances where something "may" happen - one must have protection-----

Senator Rónán Mullen: That is inclusive.

Deputy Alex White: Whether one agrees with it or not, if one is going to have protection, it must be protection where something actually happens. To start introducing language such as introducing protection for something that "may" happen-----

Senator Rónán Mullen: That is simply not logical.

Deputy Alex White: -----introduces a complete lack of clarity and, in my mind, doubt.

Question, "That the words proposed to be deleted stand," put and declared carried.

Amendment declared lost.

Senator Rónán Mullen: I move amendment No. 11:

In page 9, lines 31 to 33, to delete all words from and including "(being" in line 31 down to and including "practicable)" in line 33 and substitute the following:

"(being an opinion which respects the equal right to life of the unborn, and which has regard to the duty to deliver the viable unborn alive where practicable)".

An Cathaoirleach: Is there a seconder?

Senator Brian Ó Domhnaill: I second the amendment.

Question, "That the words proposed to be deleted stand," put and declared carried.

Amendment declared lost.

An Cathaoirleach: Amendment No. 12 arises out of Committee Stage proceedings. Amendments Nos. 12 and 15 are related. Amendment No. 14 is an alternative to amendment No. 12. Amendment No. 31 is related to 14. Amendments Nos. 12, 14, 15 and 31 may be dis-

23 July 2013

cussed together by agreement. Is that agreed? Agreed.

Senator Jim Walsh: I move amendment No. 12:

In page 10, to delete lines 4 to 39.

This goes to the core of the Bill. The Minister of State pointed out that we are against the substantive issue of section 9, and that is true. We have made no secret of that. However, that does not mean that issues such as foetal pain and trying to confine the procedures that are allowed for abortion should not have favourably considered, as they would not have changed the substantive issue. Anyway, so be it; that has not been done.

With regard to my objection to section 9, I am objecting fundamentally to suicide as a ground because there is no medical evidence in this regard. Even with regard to the last discussion, in which I think the Minister of State missed the point that was being made, where the phrase “it shall be lawful” was used in the context of when unborn human life has ended, what happens if the baby survives? It is silent as to whether that procedure is lawful or not. We do know that this will happen, particularly in that period post-viability in which babies can be seriously disabled.

There is a point I want to develop on this. There are a number of points, and this probably will be my last time to get in because I imagine there will be quite a bit of discussion of this group of amendments and this section. I will quote from something I came across which articulates, maybe better than I can, my point of view in its regard and to which I referred at Second Stage, which was to do with the principle of the inviolability of human life. It reads:

If we abandon the principle which teaches that innocent human life is inviolable, which is to say, that is it is sacred and must be protected by law, if we relinquish that principle, and begin to allow for the deliberate and direct destruction of human life, what basis will we have to object when the situation shifts further and other categories of vulnerable human beings are under threat? We will have none or very little, because we will have sacrificed the foundation, the basis, the principle: every human life is to be respected, because it is of inestimable value. This recognition is at the origin of every human society and community. It is not *per se* a religious truth; it is a human truth.

I would go further and say that this is an objective truth. It is not merely any ordinary truth; it is an objective truth. Because it is an objective truth, it is accessible. It is accessible by every Member of this House. Through our knowledge, through the research that we have done on the issue, through our intelligence and through our reason and conscience, we can arrive at what the truth is. I would argue that, on every issue, every decision and every Bill that comes before this House, there is a duty on us to seek out the truth. It is not always as easily accessible as it is, in my opinion, in this context.

I quote Pastor Martin Niemöller, who spoke about the atrocities committed during the last century. He wrote:

First, they came for the socialists,

and I did not speak out because I was not a socialist.

Then they came for the trade unionists,

and I did not speak out because I was not a trade unionist. Then they came for the Jews, and I did not speak out because I was not a Jew.

Then they came for me,

and there was no one left to speak for me.

Interestingly, something of which I was unaware, which I came across only within the past number of days, is that after the war the war crimes tribunal indicted ten Nazi leaders for encouraging and compelling abortions, which at that time was classed as a crime against humanity. I would argue that it is as big a crime against humanity today as it was at that time.

I am well aware, under this heading, that suicide is a major issue for society generally.

7 o'clock

I covered that on Second Stage. If there were any medical evidence suggesting a woman who is suicidal could be relieved by giving her an abortion, we would be challenged in making our argument. There is no such evidence. This was clearly enunciated at all the health committee hearings. Unfortunately, we continue with our approach. I said yesterday in the presence of Minister for Health, Deputy Reilly, that the abortion industry is evil. It is a multi-million dollar industry and absolutely corrupts the thinking of people, including medical professionals.

I did some research on abortions since the practice was legalised in the 1960s.

Senator Ivana Bacik: What is the relevance?

Senator Jim Walsh: Once we bring it in with the suicide clause, it will open the door. This has happened in every country. The number of procedures carried out is in the order of 600 million in four countries, namely China, the United States, Britain and India. If one accounts for the rest of the world, the number is in excess of 1 billion. I could give statistics from many countries.

A document I saw recently indicated our maternal health rate is the second highest on a list of 150 countries. Countries with liberal abortion regimes are well behind us in that regard.

Let me quote Deputy Brian Walsh on Second Stage in the Dáil. He made a comment that resonated with me and, I hope, the Minister and others. He said we are now poised to perpetuate in legislation the absurd principle that the suicidality of one human being can be abated by the killing of another.

I have been particularly uncompromising in the language I have used and have made no apology for that because I believe the unborn have neither a voice nor a vote. If those of a pro-life ethos are not prepared to articulate the innocent, vulnerable status of the unborn, their cause is totally conceded. That would be to the shame of humanity.

On the suicide issue and the mental health issue in general, research in New Zealand, with which the Minister and his Department will certainly be familiar, shows the rate of mental disorders among women who have had an abortion is approximately 30% higher than among other women. The research was produced by Professor David Fergusson, who is pro-choice.

I came across information on a commission on abortion headed by Lord Rawlinson in 1992.

23 July 2013

The commission found that 80% of women who responded to a survey suffered from the long-term effects of abortion.

I tried to articulate three areas in my Second Stage speech. One was concern for women faced with a medical emergency and who need every treatment available to save their lives. I have no dispute with this and fully support the argument. The second area concerns the women who are badly affected by having the procedure of abortion. The third area is obviously the devastating effect for the unborn.

I have come across information from 2007 or 2008 that indicates that botched abortions mean scores of babies are born alive and left to die. It was revealed in an official record.

Senator Ivana Bacik: On a point of order, how is this relevant? I have sat through Senator Walsh's quotations yet again-----

An Cathaoirleach: Can I make a point?

Senator Ivana Bacik: He is giving another Second Stage speech. It has no relevance.

An Cathaoirleach: This group of amendments proposes to delete almost two sections of the Bill.

Senator Ivana Bacik: He has already quoted at length-----

An Cathaoirleach: The amendments propose physiotherapy and counselling services. Therefore, they cover everything being said by Senator Jim Walsh.

Senator Ivana Bacik: He has already said a lot of this at least once. It is poor chairing that is letting him get away with it.

An Cathaoirleach: That is an outrageous statement to make.

Senator Jim Walsh: I know the Senator does not want to hear the hard facts but I would like her to listen to them and, perhaps, re-examine her conscience. A total of 66 infants survived NHS termination attempts in one year alone. Rather than dying at birth, as intended, they were able to breathe unaided. Approximately half were alive for an hour while one survived for ten hours. Once born, no medical help is offered. The statistics are contained in the small print of an official report by the confidential inquiry into maternal and child health commissioned by the British Government.

Senator Brian Ó Domhnaill was criticised for referring to disability. Perhaps it was a little unfortunate that his point got tangled up with the issue of foetal abnormalities, which is really challenging for us, but the point he made was no less valid. This report says that there is concern that babies with problems such as cleft palates or clubbed feet are being terminated because they are not perfect. Is this not reminiscent of anything from the 19th century?

Senator Ivana Bacik: How is this relevant to the amendment of suicide risk, or the amendment on section 9? I appeal to the Chair.

An Cathaoirleach: Amendment No. 15.

Senator Ivana Bacik: I accept the amendment would delete all of section 9. However, how is a discussion about abortion generally relevant to the amendment?

An Cathaoirleach: Amendment No. 15 refers to psychiatric treatment, physiotherapy and counselling services.

Senator Ivana Bacik: Senator Walsh is talking about an amendment to delete section 9. The amendments are directed at section 9.

Senator Jim Walsh: May I be allowed to continue without disruption?

Senator Ivana Bacik: There is nothing relevant. There is no limit.

Senator Jim Walsh: These deformities may be corrected during childhood. The findings follow evidence to MPs this week that foetuses feel pain before 24 weeks.

Senator Ivana Bacik: We have debated this already.

An Cathaoirleach: The Senator should stick to the amendment.

Senator Jim Walsh: I am sticking exactly to it.

Women will feel suicidal when, in fact, through the modern techniques of ultrasound-----

Senator Ivana Bacik: His amendments are about suicide risk.

Senator Jim Walsh: -----they will feel suicidal when they are told and many will actually obtain abortions under these headings because of that.

A baby born alive after a botched abortion at 21 weeks is among the worst cases reported in Britain. A little girl with Down's syndrome lived for three hours after being delivered.

An Cathaoirleach: The Senator has been given some latitude. I ask him to stick to the amendments.

Senator Jim Walsh: Her parents claim they were coerced into a termination by staff at Macclesfield District General Hospital. The 44-year-old mother said:

If I had been given any idea that the baby would be born alive after an abortion I would never have gone through with it. They coerced me.

Coercion is a huge factor.

An Cathaoirleach: I ask the Senator to stick to the amendment.

Senator Jim Walsh: I am sticking to the amendment. I am seeking the deletion of section 9 and making no bones about it.

Senator Ivana Bacik: It is about suicide risk.

Senator Jim Walsh: I am raising this because suicide will-----

An Cathaoirleach: We are not on section 9.

Senator Jim Walsh: My amendment is to delete section 9.

On the issue of suicide, many women in other countries have been advised to go down the suicidality route because it fast-tracks the abortion. It is the only mechanism in the Bill to

23 July 2013

facilitate abortion and, therefore, I believe it will be widely used. Therefore, I am seeking the deletion of the section.

There are various risks attached to abortions for women, and that is my concern. Risks are fewer when abortions are carried out in the early weeks, which I accept, but there is a greater chance of serious complications further into a pregnancy and a greater risk of dying. There was a report on this in one of yesterday's newspapers. While people might try to use that case, which was sad and unfortunate for both the lady and her family, it must be noted it is not that uncommon. One death from abortion occurs in every 530,000 cases where the period of gestation is eight weeks or fewer. This increases to one death per 17,000 for pregnancies between 16 and 20 weeks, and one death per 6,000 at 21 weeks and more.

Senator Ivana Bacik: What is the relevance to the suicide risk?

An Cathaoirleach: I ask the Senator to stick to the amendment.

Senator Jim Walsh: I am.

An Cathaoirleach: The Senator is moving away from the amendment.

Senator Jim Walsh: I am not. I am actually talking about why I want the section deleted. I seek to have it deleted because of its effects on women. Women who will have abortions under this provision will suffer, as I outlined on Second Stage and as distorted in one of the daily newspapers last Friday. The article had no substance at all and what I said was misrepresented. The actual effects are identified by medics.

One of my main objections to the section is that it has the effect of widening the abortion regime and bringing about the liberalisation of abortion. That has happened in Colombia, where there has been extensive-----

An Cathaoirleach: Could the Senator stick to the amendment?

Senator Jim Walsh: I am sticking to the amendment.

Senator Susan O'Keeffe: This is Ireland, not Colombia.

Senator Ivana Bacik: Stick to the Irish constitutional framework.

Senator Jim Walsh: I am sticking to the amendment. The Irish Constitution and procedures will have no effect once we pass this legislation because we are liberalising abortion.

Senator Ivana Bacik: That is rubbish.

An Cathaoirleach: Senator Walsh is being repetitive.

Senator Jim Walsh: No, I am not.

Senator Ivana Bacik: On a point of order, Senator Walsh has brought this House into disrepute through his use of inappropriate and insensitive language already in this debate. I appeal to you, a Chathaoirligh, to exercise a firm hand by stopping repetition, digression and inappropriate language.

An Cathaoirleach: I have asked Senator Walsh to stick to the amendments and not to be repetitive.

Senator Ivana Bacik: Let us speak on the amendment and be respectful in our department.

An Cathaoirleach: I am asking Senator Walsh not to be repetitive.

Senator Jim Walsh: I am not.

An Cathaoirleach: You are being repetitive.

Senator Jim Walsh: No. I have referred briefly to some of the things I said on Second Stage without going into any detail. The Cathaoirleach should allow me to conclude without interruption, if he does not mind.

An Cathaoirleach: You have been going on for the last ten minutes.

Senator Jim Walsh: I am going to finish.

Senator Susan O’Keeffe: We will interrupt if Senator Walsh keeps saying things that are not true.

Senator Jim Walsh: I am seeking that this section be removed because it is a practice where women deny their natural role. Many for various reasons feel distressed and suicidal as a consequence of the distress they suffered. I recognise that that is a real situation, but abortion harms women, it does not actually cure their suicidal ideation.

Senator Ivana Bacik: Four thousand a year.

Senator Jim Walsh: That is my point.

Senator Ivana Bacik: Four thousand women a year.

An Cathaoirleach: Please allow the Senator to continue without interruption.

Senator Jim Walsh: As we have seen, women have died as a consequence of this.

Senator Ivana Bacik: What is the point?

Senator Jim Walsh: Women suffer trauma as a consequence of having an abortion in these cases.

Senator Ivana Bacik: Senator Walsh has made these points already.

Senator Jim Walsh: Even women who are suicidal-----

An Cathaoirleach: Senator Bacik’s interventions are not helpful.

Senator Susan O’Keeffe: How do you know?

Senator Jim Walsh: We know that women suffer post-abortion trauma because of guilt afterwards. That is medically proven.

Senator Ivana Bacik: How is this relevant?

An Cathaoirleach: Senator Walsh is being repetitive.

Senator Jim Walsh: I am not.

23 July 2013

An Cathaoirleach: He should conclude.

Senator Jim Walsh: Many women - and we have had examples of it - suffer not just increased mental illness as a consequence of abortion, which is what this is about, but in fact some become suicidal as a consequence and have actually committed suicide as a consequence of it. So I am asking the Minister, in the interests of these women,-----

Senator Ivana Bacik: Irrelevant and repetitious.

Senator Jim Walsh: -----what counselling and support systems will be put in place for these women who are going to have abortions. All the evidence we have to date is that there are no backup services. It is all very fine for the pseudo-liberals and pseudo-feminists to argue for the woman's right to choose.

Senator Ivana Bacik: Has the Senator any more that is relevant?

Senator Jim Walsh: She is exercising that right to choose whether her baby lives or dies.

Senator Ivana Bacik: How is that relevant to this amendment? Let us see some firm chairing.

Senator Jim Walsh: However, as soon as that woman has had her abortion, they are no longer interested. All they are interested in is asserting the ideology.

An Cathaoirleach: The Senator is way out of order. I am asking the Senator to conclude.

Senator Jim Walsh: I am going to conclude. I am asking the Minister-----

Senator John Crown: I would like to call a quorum please.

An Cathaoirleach: Okay.

Notice taken that 12 Members were not present; House counted and 12 Members being present.

An Cathaoirleach: I now ask Senator Walsh to conclude.

Senator Jim Walsh: I will. In the case of these women who have had abortions - many of whom have often suffered trauma throughout their lifetimes, with no backup support - I am asking the Minister what support systems is he putting in place-----

An Cathaoirleach: All this has been said before.

Senator Jim Walsh: -----as a consequence of this Bill, in order to see that those women get the necessary supports to which they are entitled?

An Cathaoirleach: Is there a seconder for the amendment?

Senator Brian Ó Domhnaill: I second it. Section 9 is one to which, like Senator Walsh, I am absolutely opposed. Senator Walsh has referred to various studies and reports. One of the questions we must ask ourselves is whether abortion reduces the risk of suicide in pregnancy. It is a valid question. Dr. Eleanor Corcoran is an eminent psychiatrist of 27 years' standing who was based in England but now works at Letterkenny General Hospital. She compiled a report examining all the studies, both pro-abortion and pro-life. From her findings she could discover

no suggestion in the core text-books of psychiatry, including perinatal psychiatry, that abortion is a treatment on its own or as part of a risk reduction measure for suicidality in pregnancy.

The issue of abortion as an aid to reducing suicide has been examined more directly in a series of studies from Finland. The first of those studies, by Gissler in 1996, linked the individual records of those whose pregnancies ended either by delivery, miscarriage or abortion with the suicide records enabled by a common record number, between 1987 and 1994. In total, over 650,000 women were involved. The suicide rates in these were compared to the national average in Finland. The study showed that with a national average suicide rate for women of 11.5 per 100,000, the rate of suicide after abortion was 34.7 per 100,000. The rate of suicide after birth was only 5.9 per 100,000.

The author suggests that either abortion caused the increase in suicide or there were factors common to abortion and suicide, such as mental illness or poor supports, that led to the increase. One way or the other, this study confirms that abortion does not reduce the risk of suicide, but rather is associated with a several-fold increase.

A similar study covering a longer period-----

An Cathaoirleach: All of this was debated on Second Stage.

Senator Brian Ó Domhnaill: No. I have not raised any of this. This is new information which has become available to me over the weekend. I have not raised it before.

Deputy James Reilly: It is 20 years old.

Senator Brian Ó Domhnaill: Another study from 1987 to 2000, replicated these findings. In Finland, in 2005, it showed that accidental death, homicide and suicide all increased after abortion, and were lower after giving birth than the national average. In this study, the authors commented on the protection effects of pregnancy. The study concluded by recommending a post-abortion check-up, as necessary, in order to detect signs of depression and to identify the rare cases of psychosis after an induced abortion. It also recommended that such a check-up be made routine practice in all other countries where it has not yet been included in the current care practice scheme.

In the past few years, some cases of suicidal behaviour occurring after abortion have come to public attention - for example, Ms C and Emma Beck. Ms C was taken from Ireland to Britain for an abortion under the X case decision, which we are referring to here.

An Cathaoirleach: Can the Senator stick to the amendment please?

Senator Brian Ó Domhnaill: This is to do with section 9. Our amendment seeks to remove section 9, so it is relevant.

An Cathaoirleach: In what way?

Senator Brian Ó Domhnaill: It is relevant to section 9 because it deals with the whole suicide issue. As we all know, Ms C was taken from Ireland to England for an abortion under the X case decision. She publicly stated, a few years after, that she was suicidal and hospitalised for several months after this.

Senator Ivana Bacik: This is irrelevant.

23 July 2013

An Cathaoirleach: All of this has been put on the record before several times.

Senator Brian Ó Domhnaill: No, no.

Senator Ivana Bacik: It has been on Second and Committee Stages.

Senator Jim Walsh: But not on this Stage.

Senator Brian Ó Domhnaill: Maybe I am mistaken but my understanding is that this is section 9. This amendment aims to delete the section. This section is the kernel of this legislation. It is my responsibility as a legislator to bring these facts to the attention of the Minister. Our role as legislators is to do that whether we agree or disagree with the legislation.

An Cathaoirleach: The Senator is being repetitive.

Senator Brian Ó Domhnaill: The submission continued, “Emma Beck was an artist who died in 2008-----

Senator Ivana Bacik: We have heard all of this already.

Senator Brian Ó Domhnaill: -----by suicide after aborting her twins.”

Senator Ivana Bacik: We have heard about this on other Stages.

Senator Brian Ó Domhnaill: It continued: “Her mother spoke about her daughter’s grief.” Obviously, Senator Bacik does not want to hear what we have to say. This is factual evidence.

Senator Ivana Bacik: I have sat through hours of this already.

Senator Brian Ó Domhnaill: The submission stated:

Her mother spoke about her daughter’s grief. Cases such as these would suggest that abortion may have a negative rather than a positive effect on some women’s mental health.

The Royal College of Psychiatrists investigated whether abortion harms women’s mental health in its systematic review in 2011. This is a review of all high-quality studies, the results of which are then collated statistically to provide a total overview. It based its results on four studies. It found that the mental health outcome was the same whether the pregnancy ended in birth or abortion. In other words abortion made no difference to the outcome. Some researchers challenge this. [I am giving a balanced viewpoint as Senators will appreciate.]

Senator Susan O’Keeffe: The Senator has nothing new to say.

Senator Brian Ó Domhnaill: It continued:

Fergusson, a pro-choice researcher, has found in his work following 500 children born in Christchurch New Zealand for 30 years that mental health problems do occur post abortion even in those without any previous mental illness history and that abortion increases the risk by 30%.

An Cathaoirleach: Other Senators have indicated they wish to contribute. Senator Ó Domhnaill is being unfair to them.

Senator Brian Ó Domhnaill: It is not my fault that we are guillotining this Bill.

An Cathaoirleach: The Senator is being repetitive.

Senator Brian Ó Domhnaill: That is a matter for the Government parties, supported by Sinn Féin. They all want the debate to be guillotined.

Senator Susan O’Keeffe: The Senator has taken up 70% of the speaking time already.

Senator Brian Ó Domhnaill: I will not apologise for that because Fianna Fáil voted against the Order of Business this morning. We do not agree with guillotining legislation. When I am trying to make my point I am spoken down. Will the Chair give me protection? I know the Cathaoirleach has given it in the past. He is a very honourable Chairman.

An Cathaoirleach: Will the Senator get back to the amendment?

Senator Brian Ó Domhnaill: I will fast-track my presentation. I can see some Senators opposite smiling now. Unfortunately, when one brings in true facts, the people who want to ram this legislation through and guillotine it do not want to hear them.

Senator Susan O’Keeffe: If the Senator brought in some new facts, then we would listen. He is just being repetitive.

An Cathaoirleach: Senator O’Keeffe, please.

Senator Jim Walsh: Some never listen.

Senator Susan O’Keeffe: I beg your pardon, Senator Walsh.

An Cathaoirleach: Senator O’Keeffe, please. Senator Ó Domhnaill without interruption.

Senator Susan O’Keeffe: I will not take abuse from Senator Walsh.

An Cathaoirleach: Senator O’Keeffe, you were making charges. Senator Ó Domhnaill has the floor.

Senator Susan O’Keeffe: Senator Walsh was giving abuse again.

Senator Brian Ó Domhnaill: The abuse was coming from the other side of the House. I am in possession.

Senator Susan O’Keeffe: In possession? I did not know we were playing rugby.

An Cathaoirleach: Senator O’Keeffe.

Senator Brian Ó Domhnaill: Senator O’Keeffe is the one playing rugby.

Senator Susan O’Keeffe: You are the one.

An Cathaoirleach: Senator O’Keeffe, will you allow Senator O Domhnaill to proceed?

Senator Brian Ó Domhnaill: The eminent consultant, Patricia Casey, concluded:

There is no evidence from international studies showing that abortion is a recognised treatment or part of a treatment for a suicidal pregnant woman, nor has it been suggested

23 July 2013

that this might have prevented the rare cases of suicide that occur in pregnancy. The adequate recognition and treatment of mental illness during pregnancy is what is required.

In an individual case it is claimed that an abortion might be of benefit. The problem is that since suicide cannot be predicted there is no definitive way of identifying an individual woman who, on the balance of probability, is at risk of taking her life. Also, since there are no studies indicating benefits from abortion it will be impossible to tell whether such an intervention will help or harm the woman or what the likely magnitude of either is. The recommendation of the expert group in 2012 is that psychiatrists, in their role relating to the implementation of the X judgment, must ensure that their decision is evidence-based so as to comply with the Medical Council ethical guide, 2009. This is not met in respect of abortion and suicide.

In the event that legislation is enacted allowing for suicide risk as a ground for abortion, psychiatrists will be compromised. This will arise if the woman insists she is suicidal, against the opinion of the examining psychiatrists, who might understandably be tempted to err on the side of caution and accede to her wishes. Questions will also arise as to the role of a psychiatrist in recommending an abortion to a woman who is suicidal but does not have mental illness. Being expected to make decisions of this sort jeopardises their role as medical professionals who treat mental illness.

If legislation for abortion on the grounds of suicide risk is enacted psychiatrists will be expected to propose an unproven intervention - abortion - for a rare outcome, suicide, that is more often incorrectly rather than correctly predicted.

The possibility of abuse of such a law is also a consideration in light of recent comments from the British Pregnancy Advisory Service.

On the implications of the expert group report on the A, B and C ruling, she stated:

Legislation for the X case should not include suicide risk as a ground for abortion in Ireland as there is no evidence that it is necessary and no evidence of benefit. Thus the requirement that treatments must be evidence-based is not met.

Abortion does not cure suicide. All of the international evidence, from both pro-choice and pro-life psychiatrists, supports that. If this Bill is about protecting lives and supporting women, we should provide the adequate care and attention women require during a difficult time in their lives. Will Fine Gael and Labour Senators opposite, most of whom have been respectful during the course of this debate, consider at this late stage voting against this legislation because none of the evidence supports its introduction into Irish law?

Senator John Gilroy: Senator Ó Domhnaill eloquently quoted from many reports that abortion does not decrease the risk of suicide.

Senator Brian Ó Domhnaill: Reports from eminent consultants.

An Cathaoirleach: Senator Gilroy without interruption.

Senator John Gilroy: Yes, to support that contention. However, Senator Ó Domhnaill omitted three small words which change the entire complexion of the point and undermines his entire argument and credibility along with it. If we were to add, "Abortion does not decrease the risk of suicide in individual patients", it would change the entire complexity of the argu-

ment. We do not know if it does. There is no evidence.

Senator Ó Domhnaill quoted Dr. Fergusson. I will quote him fully:

I think it would be misleading for anyone to state emphatically that abortion does or does not help suicidal women.

Again, Senator Ó Domhnaill left out five small words which changed the whole complexion of what he said.

Senator David Cullinane: Hear, hear.

Senator John Gilroy: The Minister of State, Deputy White, asked us to be less selective with our quotations and instead gather the evidence, weigh it and measure it, look at in the round and make a decision on it. Senator Ó Domhnaill has failed on all of these criteria. I contend that not alone will he not agree with me but he will not even understand me.

Senator Walsh also vigorously opposes section 9. He is entitled to do so but his decision is not based on evidence. It is one based, obviously and as he admitted himself, on ideology. He compares what the Government is trying to do with what the Nazis did during the Second World War.

Senator Brian Ó Domhnaill: Genocide.

Senator John Gilroy: He uses the words “evil” and “conscience”. He draws on evidence from an individual he called “a renowned authority”, Dr. Pravin Thevathasan, who happens to be an acknowledged quack.

An Cathaoirleach: Could Senator Gilroy refrain from putting individual’s names on the record of the House who are not here to defend themselves and, particularly, from describing them as quacks?

Senator John Gilroy: I apologise and withdraw the word “quack”. This was a man who wrote a professional paper which was not peer-reviewed. It was hardly necessary for it to be peer-reviewed when he cited the *Book of Exodus* in the references, about which we need to say no more. When people start quoting renowned experts and it turns out that one of them might not be what he claims to be, it undermines the credibility of the argument made by the supporter.

Yesterday evening Senators Jim Walsh, Brian Ó Domhnaill and Rónán Mullen and I agreed that sections 7 and 8 were necessary - horrible, absolutely, but necessary. We said there was a provision in sections 7 and 8 to directly take the life of an otherwise healthy baby and we have agreed to that provision.

Senator Rónán Mullen: No, we have not.

Senator John Gilroy: Yes, we did.

Senator Rónán Mullen: We certainly did not agree to it in the terms described by the Senator.

Senator John Gilroy: We did.

Senator Rónán Mullen: The Senator should not mislead the House.

23 July 2013

Senator John Gilroy: Yes, we did and I will explain it.

Senator Brian Ó Domhnaill: The Senator is not speaking for me.

Senator Rónán Mullen: If he reads his garbled presentation-----

An Cathaoirleach: Senator John Gilroy to continue, without interruption, please.

Senator John Gilroy: The record of the House will show that three Senators agreed with me last night.

An Cathaoirleach: We are not discussing last night's business.

Senator John Gilroy: It is very important.

An Cathaoirleach: We are dealing with the amendments.

Senator John Gilroy: We have established that there are some circumstances - horrible, hateful and very challenging - where it is necessary. I can point to a particular illness which might jog one's memory. I will not identify the illness because there are people who are possibly suffering from it and, unlike Senator Jim Walsh, it would be offensive for me to nearly name-check them. There is an illness associated with aortic dissection where the root of the aorta is under pressure from an otherwise healthy baby in an otherwise healthy woman. These are the facts.

Senator Rónán Mullen: It is not a healthy pregnancy.

Senator John Gilroy: It is a healthy baby in an otherwise healthy woman.

An Cathaoirleach: What relevance does this have to the amendments before us?

Senator John Gilroy: It relates to the reason section 9 should stand. Despite the fact that Senator Jim Walsh called me an abortionist, he and I agree on this. Despite his mighty rhetoric of being more pure than me, we agree that abortion is sometimes necessary. All we disagree on are the circumstances in which it is necessary.

I will quote from a paper delivered at the public hearings on behalf of Professor Patricia Casey. I spoke to several people on the pro-life side and they agree with me. We are providing for a medical procedure known as abortion - let us call it what it is - in the rarest of circumstances in the most challenging of cases, yet the argument been portrayed on the other side of the House is that we are almost legalising compulsory abortion. It is so dishonest and despicable to go this way. The difference between Senator Jim Walsh and me - we both acknowledge the awful necessity of abortion sometimes - relates to the circumstances involved which I am saying include suicide. The Senator does not agree with this, but he disagrees not from a medical but from an ideological perspective. He is forever shouting about pseudo-feminists-----

Senator Jim Walsh: That is a distortion. The evidence given at the committee was very clear, even from pro-choice-----

An Cathaoirleach: The Senator should speak to the amendment.

Senator John Gilroy: It is an ideological argument.

Senator Jim Walsh: I know the Senator may believe he is an expert because he is Chair-

man of the committee.

Senator John Gilroy: The Senator is entitled to take an ideological view, but he is not entitled to ignore the medical evidence. When she was here, Senator Fidelma Healy Eames made a point on amendment No. 9 and Senator Jim Walsh-----

An Cathaoirleach: It is not in order to allude to a Senator who has left the Chamber.

Senator Jim Walsh: Give us the medical evidence that abortion is a treatment for suicidality.

Senator John Gilroy: On amendment No. 9, Senators Brian Ó Domhnaill, Jim Walsh and Rónán Mullen agreed with the proposer of the amendment that we must move towards the precautionary principle. As Dr. Ferguson says there is no evidence for or against it, let us use the precautionary principle here. If we say it will never happen, so much the better. It would be fantastic if it never happened, but let us not try to prescribe events that we do not know will ever happen. If the evidence is not available, are we absolutely sure it will never become available and that this will never happen?

Senator Brian Ó Domhnaill: Where is the evidence to support the argument that it is a cure?

An Cathaoirleach: Senator John Gilroy to continue, without interruption.

Senator John Gilroy: When we descend to this clownish behaviour on the part of my esteemed friend on the far side of the House, we know his argument is beaten.

There are two problems with section 9, if we do not accept suicide as a legitimate reason. One is that we have different attitudes to mental illness. Some people do state mental illness, including suicide, is a very serious problem. Others have a different view. There might be a second argument, which is that we do not trust our doctors. We think there are pro-life and pro-choice doctors, which, of course, raises the appalling vista that the medical profession is not based on sound clinical practice but on some ideology perhaps shared by Senator Jim Walsh. These are the issues we need to examine.

I appreciate the indulgence shown to me by the Chair. If we acknowledge suicide and mental illness as presenting a real risk and if there is evidence, or none - I might be generous enough to say this - section 20 of the Bill offers protection against the ideologically driven doctor in the review to be laid before the Houses. If there is an ideologically driven doctor who suddenly ignores all clinical risk, clinical and professional good practice, the Hippocratic oath, the views of his or her colleagues and peers and just about everyone else because he or she is absolutely adamant that people should be aborted, every year before 30 June we will see the pattern emerging in the review. That should allay the fears about the ideologically driven doctor. The other reason for opposing section 9 is to deny the existence of suicide as a cause of real distress and to deny the existence of mental illness.

Senator Mary M. White: I welcome the Minister of State who I know is doing his very best in his portfolio. We will give him another two years and see how he delivers, but I am optimistic that he will deliver in his portfolio.

I believe our duty, as legislators elected in accordance with the Constitution, is to uphold the Constitution. In Ireland, thankfully, under the Constitution there is a separation of church

23 July 2013

and State and our obligation is to uphold the Constitution. There are two serious issues before us which previous Governments neglected for many years, including those which included my own party of Fianna Fáil. The first is how doctors faced with life or death decisions and in the absence of explanatory legislation are to interpret the constitutional provision that abortion can take place only where there is a real and substantial threat to the life of the mother. Thankfully, the law before us sets out procedures and processes to guide doctors and protect them legally.

In the X case in 1992, some 21 years ago, the Supreme Court held that a threat to commit suicide could constitute a real and substantial risk to the life of the pregnant mother. As the Supreme Court is the interpreter of the Constitution, its finding in the X case remains the constitutional position which we, as legislators, are duty bound to respect. We cannot have an *à la carte* approach to accepting the legitimacy of judgments of the the Supreme Court. We regularly accept as authoritative and binding its judgments on various issues. It is not warranted to set aside its findings in the X case because they do not suit our personal disposition.

Let us not forget that the people have spoken in two referendums on this issue. In 1992 the proposal that the possibility of suicide was not a sufficient threat to justify an abortion was defeated. In 2002 the proposal to remove the threat of suicide as a ground for legal abortion in the State was again rejected by the people. As legislators, we must respect the will of the people as demonstrated in these two referendums. For ten years since the referendum in 2002 successive Governments led by Fianna Fáil failed to deal with these two issues - providing clarification for doctors of the circumstances when abortion was permitted and legislating for the X case judgment.

In a poll in *The Irish Times* in June 2013 voters were asked several questions about the issue of abortion. A total of 89% of the people in the MRBI poll on 30 June said it should be allowed where a woman's life is at risk. As I said earlier in the debate, I know I am speaking for the majority of Irish women on this issue. When asked if abortion should be permitted in cases where the foetus is not capable of surviving outside the womb, 83% said it should be.

Senator David Norris: Hear, hear.

Senator Mary M. White: Some 81% of those polled said abortion should be allowed in cases of rape or abuse while 78% were in favour of it in cases where a woman's life is at risk.

I humbly refer to the challenge posed to Senator John F. Kennedy when he campaigned in 1960 to become the first Catholic US President. At a critical point in his campaign on 12 September 1960, he addressed the doubts of many Protestants as to whether his Catholic faith would allow him to make important national decisions as president, independent of the Catholic Church. His response was unequivocal. He said he believed in an America where the separation of church and state was absolute and he would uphold the US constitution. I commend President Kennedy's stance to all my colleagues,

I thank the Government for having the courage to bring this Bill forward and I am confident that I represent the position of the majority of Irish people.

Senator David Norris: Well said.

Senator Colm Burke: The amendments suggest that we should delete section 9. It is important that we go back to why the Bill is going through. It is the result of the interpretation by the Supreme Court of Article 40.3.3°. Mr. Justice McCarthy stated 20 years ago:

I think it reasonable, however, to hold that the people when enacting the amendment [the 1983 amendment] were entitled to believe that legislation would be introduced so as to regulate the manner in which the right to life of the unborn and the right to life of the mother could be reconciled. Failure by the Legislature to enact the appropriate legislation is no longer just unfortunate; it is inexcusable. What are pregnant women to do? What are the parents of a pregnant girl underage to do? What are the medical profession to do? They have no guidelines save what may be gleaned from the judgments in this case. What additional considerations are there?...The Amendment, born of public disquiet, historically divisive of our people [we have seen that 20 years on again] guaranteeing in its laws to respect and by its laws to defend the right to life of the unborn remains bare of legislative direction.

We have not dealt with this issue over the past 20 years but this legislation does. People dispute the X case judgment. When the 1995 Bill was before the Supreme Court, the judges referred to the X case. The court held: "Having regard to the judgment and the decision of this Court, which recognises and emphasises the supremacy of the Constitution, this Court is satisfied that, in the consideration of the issues raised in that case and the conflicting constitutional rights involved, the proper principles were applied in the interpretation of the relevant provisions of the Constitution and in the determination of the issues raised therein." The court set out that there was a need to put in place legislation in order that there would be clear guidance for the courts in dealing with this matter. Guidance is also needed for the medical profession and that is exactly what we are providing in this legislation.

Only one medical report was produced in the X case because the courts had no guidelines. The legislation sets out clearly that three medical experts must come forward to deal with this matter.

Senator David Norris: They will still die. We all know that.

Senator Colm Burke: It is important, therefore, that we move forward with this legislation and that the amendments are not accepted because section 9 is an important part of the Bill. We have done everything possible to take on board everyone's views in dealing with this legislation. In particular, we had three days of committee hearings in January and again in May. The committee took on board the opinions of more than 50 experts after the heads of the Bill were published. The Government has brought forward comprehensive legislation that the House should vote in favour of later.

Senator John Crown: For one moment, I wish it was admissible to take photographs in the Chamber. I appeal to the acting Leader to voluntarily make changes to the Order of Business. Important amendments will not be discussed and I greatly regret that. I do not mean to be disrespectful to those who have contributed at length on issues they feel strongly about but many Members would be happy for the debate to go on a little longer. Perhaps there should be a voluntary agreement by those on both sides to limit their contributions in order that there would not be an opportunity for an endless filibuster.

An Cathaoirleach: The Senator should stick to the amendments.

Senator David Norris: They can all be taken tomorrow.

Senator John Crown: I reassure colleagues who are terribly exercised by the issue of suicidality and evidence-based medicine that we are not legislating guidelines for evidence-based medicine. Such medicine is drawn up by panels of doctors, national steering committees, pro-

23 July 2013

fessional organisations, institutions and faculties within institutions when they have examined the raw data, listened to opinion leaders in the field and read meta analyses. If the weight of evidence-based medicine is that an abortion is never necessary to prevent a suicide, then an abortion will never occur to prevent a suicide. That is the truth. Some Members are assuming that either doctors will ignore evidence-based medicine deliberately or will be so incredibly incompetent that they will not be familiar with the teachings of evidence-based medicine and with contentious issues.

It is not even possible to say that the Senators who are terribly worried are concerned that perhaps one rogue doctor acting “malfeasantly” could make the decision; they are saying that three rogue doctors acting in collusion will make the decision. These are my colleagues and friends they are talking about. These Members are saying they are fighting to protect women and unborn children from the malfeasance of the woman who comes into lie in the first place to say she is suicidal and from the malfeasance and the incompetence of the three doctors who will collude with her in the wilful destruction of her unborn child for some other reason entirely. There is no short cut around that. That is that they are saying and I do not believe it.

There has been one tragedy in this country where there was a departure from evidence-based medicine because of legal constraints. We are all aware of the case where a sad outcome occurred and a young woman died. There were multiple factors involved and we will not conduct our own mini-inquest here but on the Monday she went into hospital, ambiguity was introduced into the minds of doctors who, if they were thinking only in terms of medicine-based medicine and were not legally constrained, might have made a different medical decision, which was in accordance with evidence-based medicine. That is the decision that somebody was having an inevitable miscarriage. Somebody’s precious first baby could not be saved; it was going to die. Under those circumstances one would induce the labour rather than let the woman run the risk of potentially life threatening infection. The ambiguity was there because there is ambiguity in our law. This is not some hypothetical construct; this happened. People need to be aware of all the issues surrounding evidence-based medicine in this circumstance.

I would also appeal for consideration to be given to some of the other amendments, although I know I am going to be ruled out of order on this. We have a situation in this Bill where somebody who rapes a woman will get a shorter life sentence-----

Senator David Norris: Exactly.

Senator John Crown: -----than the woman’s 15-year old sister might get for-----

An Cathaoirleach: That is the outside the scope of those amendments.

Senator John Crown: -----stopping that woman, if she is haemorrhaging to death, making her fearful of her life, so that she will not go into a hospital and seek medical attention. If somebody is really pro-life, they would not want that ever to happen to their daughter, their sister, their wife or anybody they even casually know. This is what our law is going to enshrine because we are not able to discuss these amendments tonight. I would appeal to the Ministers, to the acting leader of the House and to the Chair to give this consideration. It does not suit me more than it suits anybody else to spend more hours on this issue-----

An Cathaoirleach: The Chair has no involvement in this.

Senator John Crown: -----but I believe these are critical issues which will go unaddressed.

We are going to end up with a law which will be on our Statute Book forever because no one is ever going to want to tackle this again with a barge-pole. We are going to have a situation which I believe next year, next week, next month or in five years time could lead to some haemorrhaging woman being afraid to get medical attention. Let us not leave this House tonight without fixing it.

Senator David Norris: Well said. They will not accept any amendments because the Dáil is gone off on its holidays.

Senator Ivana Bacik: I welcome the Ministers to the House. I want to make three points in respect of the amendment seeking to delete section 9. First, it would be unconstitutional to delete section 9 because to delete the provision relating to suicide risk would give insufficient regard to the right to life of the pregnant woman and would not implement the X case judgment for the reasons others have already outlined. Second, although abortion is not a treatment for suicide, and nobody has ever said it was, because there is no treatment for suicide, it may sometimes be necessary to prevent the risk of suicide in a woman or a girl, as we saw in the X case and as we heard in the expert evidence.

Senator Rónán Mullen: That is not what is in the legislation.

Senator Ivana Bacik: Third, anyone who is really serious about trying to delete section 9 from the Bill should read again Chief Justice Finlay's judgment in the X case, those compassionate and humane words of a judge who was faced with the very real prospect of a 14-year old girl who had been raped and who was suicidal as a result. They should remember that the psychological evidence was accepted by the State and by the courts, given the very real concern of the court that the girl would commit suicide if her pregnancy was not terminated.

Senator David Norris: He was a very conservative judge.

Senator Ivana Bacik: That was the issue. It was not a case about treatment or about mental illness. It was a case about a young girl who was suicidal as a result of a crisis pregnancy and for whom abortion was a necessary option in order to avert the real and substantial risk that she would end her life.

I wish, like Senator Crown, that we could legislate for cases of rape and fatal foetal abnormality-----

An Cathaoirleach: That is outside the scope of the amendments.

Senator Ivana Bacik: It is outside the scope not only of these amendments but of the Constitution. I believe it is very welcome that this Government is finally, after 21 years-----

Senator John Crown: On a point of information, I did not advocate legislation for rape. What I am advocating is the amendment of the legislation to reduce the criminal penalty on a woman who-----

An Cathaoirleach: I call Senator Mullen.

Senator Rónán Mullen: I would like to speak to amendment No. 14. First, I agree with Senator Crown that this debate should be extended. I would be very happy to have a gentleman's or gentlewoman's agreement that we would make three-minute speeches as a maximum. However, we should at least do this most important of issues-----

23 July 2013

Senator Ivana Bacik: The Senator should apply it to his own side.

Senator Rónán Mullen: No, let us have the Leader in the House to make an arrangement.

An Cathaoirleach: The Senator should focus on the amendments.

Senator Rónán Mullen: I want to speak to the amendment because it has everything to do with evidence-based treatment. Like my friend and colleague, Senator Crown, I believe in evidence-based treatment. If evidence-based treatment was what we were legislating for, there would not be a problem. Let us look at the reality, however. The reality is that amendment No. 14, which I have proposed, changes the test required for the certifying doctors - those who will have the responsibility of certifying the procedure - from being a subjective good faith test of a kind which is increasingly discredited, to a more objective test that requires them to have regard to the relevant clinical evidence and to then jointly certify. That would be a more objective test and would approach what Senator Crown says he supports, and what I think everybody here supports, which is evidence-based medicine.

Senator David Norris: He is more of an authority on it than Senator Mullen.

Senator Rónán Mullen: I listened to the authorities very carefully, and I listened to Senator Crown's authority and have shown it great respect. However, I want to make the point that in regard to what is evidence-based medicine, this is our job, as legislators. Senator Gilroy, in a rather convoluted presentation, seemed not to grasp the fundamental idea-----

Senator John Gilroy: I am sorry if my lack of articulation offends the Senator.

Senator Rónán Mullen: -----that opposition to this legislation is not based on evidence, it is based on the lack of evidence that abortion is an appropriate treatment or response to a situation where a threat of suicide is deemed to constitute a risk to life.

An Cathaoirleach: The Senator is being repetitive. All of those points have been made.

Senator Rónán Mullen: What we do know is that abortion does not in any way improve mental health outcomes for women and is associated with a low to moderate risk of negative mental health sequelae in some women. It has been pointed out that one could not do the kind of study that would allow one to determine exactly whether, in situations where a person presented as suicidal, an abortion would help or hinder the situation. It is the first time I have ever heard the precautionary principle being invoked in favour of the taking of life, when the entire medical tradition is based on *primum non nocere* - first, do no harm. Far from it being a case, as the Government likes to posit, of "Let us save one life to avoid losing two", where there is an underlying mental health condition, it has been explained to us very clearly that abortion or any sudden life-changing decision could be contra-indicated - we heard that from Dr. John Sheehan, the perinatal psychiatrist. In the context of a situation where there is no underlying mental health illness, on one reading, as I have said here before, one might never have abortion because it would always be within the person's ability to change their mind.

An Cathaoirleach: Those points have been made. You are being repetitive.

Senator Rónán Mullen: I certainly am not. I am responding to the amendment. The issue arose on Second Stage and Committee Stage. Senator Crown's concerns in particular deserve a response. He is right in saying we must have evidence-based medicine. We do not have the requirement of evidence-based medicine here. Even though we are being told, on the one hand,

it is not medical, the Chief Medical Officer, Dr. Holohan, came in here and told us that all of this was being pursued through a medical model, yet Senator Bacik persists in telling us that, of course, it is not a treatment. The amount of playing with words and doublespeak that is going on defies credibility.

Senator David Cullinane: What happened to the three-minute contribution?

Senator John Gilroy: So much for the three-minute contribution.

An Cathaoirleach: Senator Mullen has made his point.

Senator Rónán Mullen: As to the question of whether rogue doctors exist and whether we should be legislating to prevent, not the collusion of three doctors, but of two psychiatrists, because the obstetrician will not be in a position to gainsay the certification of the psychiatrists that there is real and substantial risk-----

Senator John Gilroy: So the psychiatrists are the villains.

Senator Rónán Mullen: It is a two-doctor situation. The third doctor is involved at the level of the mechanics, quite frankly. In response to the suggestion that there might be rogue doctors out there, to use that phrase, I can only quote what Ann Furedi, who is involved in the provision of abortion in Britain, said in the comparable situation of mental health in Britain, which provides the grounds for the vast majority of abortions-----

Senator Ivana Bacik: It is not comparable.

Senator Rónán Mullen: -----that in most of those situations, there is no mental health challenge at all and yet the thing is routinely abused.

An Cathaoirleach: Will the Senator stick to the amendments?

Senator Ivana Bacik: It is not comparable.

Senator Rónán Mullen: It is comparable to this extent, namely, it is much easier to prove the existence of a mental health situation than it is to prove the reality that a threat of suicide might actually lead to the act of suicide.

Senator John Gilroy: Does the Senator deny that suicide exists?

Senator Rónán Mullen: It is no argument for Senator Gilroy to say we are not respecting mental health. This is all sham argumentation and bogus blustering by Senator Gilroy. We had in the House Professor Kevin Malone, a leading suicide prevention expert, perhaps the leading one. He warned about the possible impact of this legislation in terms of negative attitudes around suicide in the country, in terms of it being a contributory cause of the problem by foregrounding. He talked in particular about the dangers for young men but we can also point to the potential dangers that this imports.

This is bad legislation. It is unjust legislation, not just in terms of the unborn but in terms of a sincere approach to address the real crisis women face in pregnancy. It is certainly a million miles away from evidence-based medicine.

An Cathaoirleach: I call the Minister.

23 July 2013

Senator Jim Walsh: On a point of order, it is now 8 p.m.-----

Senator David Norris: It is not 8 p.m. according to the clock.

Senator Kathryn Reilly: It is one minute to eight.

An Cathaoirleach: What is the point of order?

8 o'clock

Senator Jim Walsh: If order is restored, I will make my point of order.

An Cathaoirleach: It is too late.

Senator Jim Walsh: As it is 8 p.m., I request that-----

Senator David Norris: The Senator should stop telling lies.

Senator Jim Walsh: -----the debate be extended to allow the Minister to reply.

An Cathaoirleach: As it is now 8 p.m., I am required to put the following question in accordance with the order of the Seanad of this day: "That amendment No. 12 is hereby negated; that the Bill is hereby received for final consideration; and that the Bill is hereby passed."

Question put:

The Seanad divided: Tá, 39; Níl, 14.	
Tá	Níl
Bacik, Ivana.	Bradford, Paul.
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.	Ó Domhnaill, Brian.
Crown, John.	Ó Murchú, Labhrás.
Cullinane, David.	O'Brien, Darragh.
Cummins, Maurice.	O'Brien, Mary Ann.
D'Arcy, Jim.	O'Donovan, Denis.
Gilroy, John.	Walsh, Jim.
Harte, Jimmy.	Wilson, Diarmuid.
Hayden, Aideen.	
Henry, Imelda.	
Higgins, Lorraine.	
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Mac Conghail, Fiach.	

Moran, Mary.	
Mulcahy, Tony.	
Mullins, Michael.	
Naughton, Hildegard.	
Noone, Catherine.	
Norris, David.	
Ó Clochartaigh, Trevor.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
O'Neill, Pat.	
O'Sullivan, Ned.	
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 Brian Ó Domhnaill and Diarmuid Wilson.

Question declared carried.

An Cathaoirleach: When is it proposed to sit again?

Senator Maurice Cummins: Ag 10.30 a.m. maidin amárach.

An Cathaoirleach: Is that agreed?

Senator David Norris: I object. This is a very bad day for democracy. I voted in favour of the Bill reluctantly, but the fact approximately 40 amendments were not reached, that we put significant effort and time into it and that we had the guillotine again is appalling.

An Cathaoirleach: That was decided by the House this morning. I will put the question.

Question, "That the House stand adjourned until 10.30 a.m. tomorrow morning", put and declared carried.

Adjournment Matters

23 July 2013

National Asthma Programme

Senator Averil Power: I welcome the Minister of State to the House. The national asthma programme was developed in 2010, modelled on a successful pilot project carried out by the Asthma Society of Ireland. The aim of the programme is to bring about a reduction in asthma deaths by 90% over ten years and a 10% reduction in hospital admissions, out of hours and emergency department visits over three years. This programme has already been a successful pilot.

It is now three years since the inception of the programme, but it has not been officially signed off and patients are not enrolled to take the programme forward. As a result of the commitment not being given to this initiative, emergency admissions for asthma patients increased in 2012 by 20% from the previous year. This is unfortunate, because asthma is an extremely manageable condition. There is no reason somebody whose asthma is being managed properly and who is on proper medication should find himself or herself being brought to hospital or suffering from an acute attack. We have the medicine to prevent this and we have the procedures by which asthma can be managed, but unfortunately patients are not engaged in proper asthma management programmes like those that are standard practice in other countries.

I have tabled this matter today so as to urge the Minister of State to ensure that in next year's budget, priority is given to the roll-out of the asthma management programme put forward by the Asthma Society of Ireland. I urge him to ensure that the necessary staff are provided and that the 17 clinical nurse specialists required for the roll-out of the programme are recruited. The programme must also be included in the HSE's service plan. The Asthma Society of Ireland also raised the issue of the new GP contract. GPs are an essential point of access to the health service and they are the people those with medical conditions see most frequently. It is essential to ensure that all GPs are properly trained in this regard and that they give priority to helping people manage their asthma. As the Minister of State is aware, approximately 470,000 people in Ireland have asthma - one out of every ten adults and one out of every five children. People with asthma make up the largest chronic disease group in the country. The majority of those affected are under 14 and their quality of life is badly affected by the condition.

Other issues that must be examined include education on the condition. The Asthma Society of Ireland provided me with some excellent materials it has developed for schools. We need to ensure the education system and teachers are given greater training on managing this, particularly PE teachers. Many young people only develop asthma in their teens and the PE teacher could well be the first person with them when they have an exercise induced attack. There is a need for action across the board on this issue. Resources are also needed and if these are put into the right area and into prevention and management of asthma, this would save the health service significant moneys over time.

As matters stand, people unnecessarily find themselves on nebulisers, etc., in emergency departments. This would be avoidable if resources were put into the primary care area. Other European countries, such as the UK and Finland, have shown how this can be done. They have advanced the primary care model and patient self-management, through having GPs train patients in how to manage their condition and to manage it with a peak flow meter and to respond when they realise they are in trouble. In Finland, a similar programme to that proposed by the Asthma Society of Ireland resulted in a 90% reduction in deaths, an 85% reduction in hospital admissions and a 50% reduction in the cost of treating each patient.

I tabled this matter to highlight this issue for the Minister of State. I acknowledge we are heading into the budget process and that there are many priorities for next year in the Department of Health. However, I stress that smart investment in this area can save significant money and can also save lives.

Minister of State at the Department of Health (Deputy Alex White): I thank Senator Power for raising this issue. It is good to have support and as Minister of State with responsibility for primary care, the more support I have from all sides of the House in regard to resources and the expansion and enhancement of primary care, the better. I agree with and thank the Senator for her remarks in that regard.

The national clinical programme for asthma, which commenced in 2011, is one of a number of chronic disease programmes established in the HSE's clinical care directorate aimed at bringing a systematic approach to changes in how services for patients are delivered. The national programme is included in the HSE's 2013 operational plan. Implementation of the programme is ongoing and will continue in 2014. The overarching aim of the national asthma programme is to reduce the morbidity and mortality associated with asthma in Ireland and to improve clinical outcomes and the quality of life of all patients with asthma. A key component is improved management of people with asthma in primary care, thereby avoiding emergency attendance at GP, out-of-hours services, hospital emergency departments and in-patient admission services.

In the first year of programme implementation, there was an 8% reduction in acute hospital bed days for acute asthma. The target for the national asthma programme is a further fall by 10% or more per year over the next three years, through implementing the programme's asthma guidelines and model of care. The national asthma programme is developing a national model of care for asthma, with an implementation plan which will detail how physicians, nurses, and other health care professionals will work with engaged patients to make the clinical decisions most appropriate to their circumstances and which will collaborate with specialist colleagues in providing a safe, seamless patient experience within the health system in Ireland. This is a key deliverable aspect of the national asthma programme for 2013.

As 85% of asthma is managed in primary care without the need for hospital specialist services, the national asthma programme is undertaking work to look at providing a yearly programme of assessment for asthma at primary care level. The model of care will focus on the following: "Asthma Check" outlines the step-by-step process for implementation of guideline-based asthma management in primary care, to deliver optimal outcomes for patients, with the aim being to facilitate the implementation of best practice asthma guidelines in primary care in order to improve asthma control; improving access to hospital-based specialist asthma service from primary and secondary care services, through scheduled or rapid access asthma services and access to specialist asthma therapies; improving links through clinical nurse specialists and asthma nurse specialists within the community services; developing and implementing a standard referral pathway to asthma services; developing structured assessment and review protocols throughout the system; establishing uniform discharge protocols; facilitating access to accurate asthma diagnostics; and examining solutions to develop and subsequently implement an asthma database register linked into all care levels, namely, GP, community pharmacist and hospital.

Implementation of the model of care by clinicians and managers is and will be supported by a range of documents describing care pathways, clinical guidelines and other decision-making tools. A draft model of care has been circulated to the programme's clinical advisory group for

23 July 2013

its feedback. This will be incorporated in the document and approval sought for external consultation. It is expected that the model of care will be published by the end of this year.

The programme for Government provides for the introduction of a new GMS general practitioner contract with an increased emphasis on the management of chronic conditions. It is envisaged that the new contract, when finalised, will focus on prevention and will include a requirement for GPs to provide care as part of integrated multidisciplinary primary care teams. Officials in the Department are working with the HSE with a view to drawing up and agreeing a new contract. The appropriate arrangements for chronic disease programmes will be considered as part of the new GMS contract.

The level of funding available for the health budget for 2014 has not yet been determined. The HSE is currently engaged in the estimates process. When the national clinical programme for asthma's model of care has been completed, an assessment can be made on how it will be implemented in the acute hospital and primary care system and what resources, including nursing resources, will be required.

I agree with the tenor and the direction of the Senator's observations and remarks this evening on the issue. I understand the importance of providing the kind of services and supports in primary care that she has outlined. I met with representatives of the Asthma Society of Ireland last Friday. I had a very good meeting with them, during the course of which many of these issues were raised, and I was able to give them my assurance that everything that can be done will be done in order to advance the kind of services and requirements that I believe are necessary.

Senator Averil Power: I thank the Minister of State for the positive tone of his reply. I welcome the fact that he met with representatives of the society last week. This is a very important issue and I am glad that it is a priority for the Minister of State heading into the budget process. I am encouraged by his response. The Minister of State mentioned that it is hoped that the model of care will be prepared before the end of the year. Will that be finalised early enough for the first phase of implementation to begin next year? I am conscious that the budget is in October and if proposals are to feed into that budget process, they need to be completed quite quickly. Nonetheless, I welcome the positive note that the Minister of State has brought to the issue this evening.

Deputy Alex White: We are moving that on as quickly as we possibly can.

Internet Pornography

Senator Deirdre Clune: I thank the Cathaoirleach for selecting this matter, which is the issue of child pornography and child abuse material, and ensuring that we introduce controls in the area. This has come to the fore following Prime Minister Cameron's speech yesterday in the UK. It has been discussed previously in this House. He addressed many issues yesterday. The Minister for Justice and Equality agreed in this House to do what he can to ensure that our obligations under the directive on combatting sexual exploitation of children are implemented. I understand that he is engaging with Internet service providers so that we can get to the position where such material can be blocked.

It is a very serious issue. Every image of a child that we see in such a situation is a crime. Anybody who looks at such images is perpetrating a crime. The enormous growth of the In-

ternet and its potential has certainly added to this. It has probably not got much attention until recently, but it was addressed by the UK Prime Minister yesterday. We need to see action on it and we await the Minister's statement as to how he proposes to proceed in that area.

The issue of obnoxious or extreme pornography and violence and simulated rape situations was also raised. I understand that such material is blocked in this jurisdiction, whereas it has not been blocked in the UK for technical reasons. Legal pornography should also be restricted. My generation would know of the likes of *Playboy*, adult movies and the 9 p.m. watershed on television, but such material is also on the Internet and there are no restrictions on it. It is available to children at home on their laptops, iPads and PCs. We can only begin to imagine the potential. Children are vulnerable. They need to be protected in their formative years, because pornographic images such as these can actually distort their view of a sexual relationship. It can be very difficult for them. It should not happen and we should control it.

The Minister for Communications, Energy and Natural Resources said on the radio today that this issue had not been raised with him before in this House. It has been raised with the Minister for Justice and Equality, but I do not know if it has been raised directly with Deputy Rabbitte. I know that Deputy Shatter said he would take the matter on board. We clearly need to see action to ensure that issues such as adult pornography, which should only be available for adults, are filtered so that they can be controlled. There has been criticism of filters and any tech savvy child can get around it, but it is not a defence to throw our hands up in the air. We want to try to avoid the situation where a child casually scanning different Internet sites comes across this material accidentally. We also need to educate parents who are not aware of it. They are not tech savvy like their children, unless they have high levels of skill themselves. They can be completely unaware of what their children are being exposed to.

The UK Prime Minister, in consultation with Internet service providers, is proposing a filter that would block this material permanently and if adults want to access such material, they can request that the filtering mechanism be turned off. That sounds like a very reasonable and sensible approach. He is also proposing that public WiFi be family friendly and that logos can claim that the WiFi in a particular area is family friendly.

We need to move on this issue. The growth of pornography on the Internet is continuing. It is racing ahead of all of us. Like anything, when we put something in place, we have to jump higher again. We need to engage with the service providers and ensure that they live up to their huge responsibility in this area. Ultimately, people look to the Government and legislators to raise awareness and to discuss how we can implement protection measures for our vulnerable children.

Deputy Alex White: I thank the Senator for raising this issue. We all accept that the web is one of the great innovations of our age. It has already brought huge benefits and has the potential to expand our knowledge in ways we could not have imagined only a few decades ago. Sadly, new innovations do not come with a guarantee against misuse. There are two distinct aspects of the Internet's evolution that concern us today and that arise from Senator Clune's contribution, the first being the fact that the web has long been used for the distribution of legal - if restricted - pornographic materials, and the second being around the entirely unacceptable practice of the web's use to circulate images of child abuse.

This latter issue has been the subject of a sustained and very substantial effort on the part of states all over the world, and with some success. For example, the Minister for Justice, Equal-

23 July 2013

ity and Defence, Deputy Shatter, had the opportunity recently during the Irish Presidency of the EU to raise the need for enhanced international cooperation in tackling the dissemination of child pornography. The EU and the USA have initiated a global alliance against child sexual abuse on-line and I gather that this initiative is expected to develop quickly in the coming years. Moreover, discussions on the establishment of a structured arrangement for the blocking of access to websites containing child pornography are at an advanced stage.

The arrangement that is being discussed will entail close collaboration between the Garda and Internet service providers, ISPs. It will be based on a written agreement and procedures between the gardaí and individual ISPs. Under the proposed arrangement the gardaí will identify sites and, when satisfied that the material is child pornography and therefore illegal, they will notify the ISP of the sites in question. The ISP will then act in accordance with the agreed arrangements to block access to the site or sites. The Garda will have the benefit of its links with other police forces and the international policing organisations such as Interpol and Europol in seeking out and identifying sites. The arrangements about which I have spoken are in line with the provisions of EU Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography, in particular Article 25 of that directive. Article 25 provides for measures against websites containing or disseminating child pornography. The first part of the article deals with the removal of web pages containing such material. In Ireland the *hotline.ie* service already provides for the removal of illegal material. It has performed very well and has had some notable successes in fighting this scourge. The second part of Article 25 is concerned with blocking access to sites containing or disseminating child pornography. The arrangements under discussion between the gardaí and the ISPs would provide us with a mechanism that fulfils the second part of Article 25.

I want to return to an aspect of the debate on blocking or restricting access to sites that causes genuine concern to many people. There are concerns about State censorship and interference with freedom of speech if official agencies are given powers to effect these measures. These are genuine and legitimate concerns. Some see any step in this direction as a beginning, the thin end of the wedge. Where the material involves children, however, different factors apply. We must recall that, not only are they forced to participate but, by virtue of their age alone, they do not have the capacity to consent to taking part. They have no freedom to exercise free choice and because of their age, they are unable to exercise that free choice. Therefore, while protecting the general principle of free expression, we must ensure that we also protect the very basic integrity of the children involved. In my view, the safeguarding of children must be the first priority.

The British Prime Minister's remarks on what is termed "filtering" focus the debate on a slightly different matter, however, the question of controlling access by children to material that is pornographic in nature. My colleague, the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, spoke about the UK plans on radio this morning. He told "Morning Ireland" he was prepared to take a look at the proposals from the UK Government and I agree that we should examine these with some urgency. The extent of the effects of widely available pornography on the development of young people is not yet fully understood, and it is entirely understandable that parents would seek means to address this. Both the Department of Education and Skills and the Department of Justice, Equality and Defence have long had programmes in place to support children, young people and parents in engaging and dealing with the on-line world. After all, the world-wide web is of profound benefit in expanding our knowledge of the world, and central to the future careers of many of our young people

- the last thing we want is fear of what it might hold. There is also a wide range of available tools that can be used to set content restrictions on devices. The route taken by the UK Government, however, asking Internet service providers to set a “default on” block is something new. It is unlikely to be without its problems in implementation but it may well be worth considering.

To conclude, I want to assure the Senator and the House of my own and the Government’s strong commitment to the safety of children, on- and off-line, and that we will continue to consider any additional steps that can be taken in cases where children are put at risk.

Senator Deirdre Clune: I thank the Minister of State for his reply and I note the comments of the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, that he believes it is probably worthwhile looking at the issue of pornography and children’s access to it, not necessarily child pornography but pornography in general that is legal but access to which should be restricted.

The Minister of State said that the extent of the effects of widely available pornography on the development of young people is not yet fully understood. Anything I have read shows that it has a distorting effect on children. I am sure it is not desirable. I hope that the Minister for Communications, Energy and Natural Resources will engage with this matter and do his utmost to ensure that the Internet service providers also engage and that we do have filtering mechanisms in place. I am not saying they will be the solution to everything and I know there will be mechanisms found to get around them but not necessarily by all children. Protection of vulnerable children should be our highest priority.

Appointment of Ombudsman

Senator Paul Bradford: My statement is more a question than a rambling discourse. I am interested in knowing what procedure will be used to fill the vacancy at the very important Office of the Ombudsman and Information Commissioner once the incumbent, Ms Emily O’Reilly, takes up her job in Europe. I want to put on record my admiration for the work she has done. It is an enormous tribute to her abilities and reputation that she succeeded in being elected to the position of European Ombudsman and I wish her every success in that role. If she brings to it the qualities that she brought to her domestic position every citizen of Europe will benefit.

We are lucky that since the Irish Government in the early 1980s put in place the Office of the Ombudsman - if I recall correctly the first holder of the position was Michael Mills - we have been very well served and countless thousands of citizens, sometimes in a very quiet way, have benefited from the investigations put in place time after time by the Ombudsman. It is fair to say that sometimes the Office of the Ombudsman and Information Commissioner seems just like another Department but all of us as politicians would have used the office and it is very reassuring to hear from people that, not only do they always get very detailed correspondence from the office, but occasionally they get a telephone call from a very senior official of that office and sometimes from the Ombudsman him or herself. It is a great interaction between an office of State and the citizen which is very reassuring.

In conclusion, I wish Ms O’Reilly well in her new and very significant posting but I want to know what process or procedure or application must be entered into to replace her. I recall that previously the appointment was made on the recommendation of the Minister for Finance to the

23 July 2013

Government. Are there now public appointments or is there a panel or some sort of application form on the back of one's local newspaper? The Minister of State might advise me on this. We look forward to matters progressing and the next person, man or woman, doing the same effective job on behalf of every citizen of the State as Ms O'Reilly and her predecessors did.

Deputy Alex White: I thank Senator Bradford for raising this matter. As he and the House are aware, Ms Emily O'Reilly has offered her resignation from the Office of Ombudsman and Information Commissioner with effect from 29 September 2013. I would like to take this opportunity to join with Senator Bradford in congratulating her on her election by the European Parliament as European Ombudsman and to wish her every success in her new role. I think we can all agree that Ms O'Reilly has made a significant contribution over the past 10 years as Ombudsman and Information Commissioner. I join Senator Bradford in acknowledging this before the House and thank her for all her work and dedication. I agree with Senator Bradford's remarks and would like personally to congratulate Ms O'Reilly and wish her well as somebody whom I knew for many years in our respective previous careers. I wish her every success in her new role.

I agree entirely with what Senator Bradford said about the broader question of the importance, efficiency and professionalism of the Office of the Ombudsman and Information Commissioner. Some of us in Government have been at the receiving end of decisions made by that independent office. As Ministers, we may not have liked them, but, of course, we accept them and fully acknowledge that the Ombudsman and Information Commissioner has acted entirely professionally and properly and in the public interest throughout her tenure in this role, just as her predecessors did.

The remit and powers of the Ombudsman were recently expanded following the passage of the Ombudsman (Amendment) Act 2012. The Ombudsman's remit now covers all Departments, local authorities, the HSE, and *circa* 180 additional public bodies recently added to the remit. This is a positive development which will empower citizens in their interactions with public bodies and help to further improve standards of public administration. The role of the Ombudsman is not simply to examine individual complaints but also to ensure a better quality service for customers or clients of public bodies by improving the system of public administration.

The process to be followed in the appointment of a new Ombudsman is set out in the Ombudsman Act 1980, as amended. The appointment is made by the President following nomination by resolution of each House of the Oireachtas. Since the Freedom of Information Act 1997 came into force, the Ombudsman has also held the office of Information Commissioner. Appointment to the post is by a similar process to that for the Ombudsman. The Ombudsman also serves as Commissioner for Environmental Information and is an *ex officio* member of the SIPOC, the CPSA, the Referendum Commission and the Constituency Commission.

The 2012 legislation now provides that the appointment may be preceded by consideration by a committee of the Houses of the Oireachtas as may be designated by the relevant Minister. It is the intention of the Minister for Public Expenditure and Reform that once a nominee has been approved by the Government, a referral will be made to the Public Services Oversight and Petitions Committee.

The Ombudsman is a senior public official charged with monitoring the public administration through the examination and investigation of complaints from members of the public

who believe they have been adversely affected by the administrative actions of a public body. The person appointed will be capable of leading a high profile institution through a period of expansion and change. A broad understanding and knowledge of Irish public administration, including the political and legal systems and the governance of public bodies, is essential. He or she should also demonstrate high level knowledge of current affairs and an understanding of the role of the institution of the Ombudsman within the public administration system, both in Ireland and internationally. The person appointed should also be recognised, either publicly or within his or her own professional area, as an individual of proven integrity and independence. He or she will have significant and high level professional achievements and be capable of presenting as the public face of the Office of the Ombudsman and Information Commissioner with credibility and authority. Good media or public speaking skills would be an advantage.

The practice in the past under previous Administrations was for the relevant Minister to ask the Government to note the name of the proposed nominee for the position prior to the resolutions placed before both Houses of the Oireachtas. The Minister for Public Expenditure and Reform is of the view that a more open approach should be adopted to the nomination process and he will be inviting expressions of interest in the appointment by public advertisement. This will widen the pool of possible candidates from which a nominee can be selected. Next week an advertisement will be published in the newspapers and on the Department's website seeking such expressions of interest. It is likely that the Government will approve a nominee in early September and the Minister will then consult the leaders of the Opposition parties prior to the resolutions been taken before the Houses of the Oireachtas.

Copyright Infringement

Senator Kathryn Reilly: Senator Deirdre Clune has also raised this matter. I am not a fan or an advocate of censorship because I believe a more free and open world will benefit everyone. I raise this matter because of the recent ruling by the High Court which ordered UPC to block the website *The Pirate Bay*. This was done at the whim of big business and could be the beginning of a slippery slope. We do not want to find ourselves in the same position as the Chinese in terms of the so-called great firewall of China where the content available to citizens is highly filtered. I acknowledge, however, that that is an extreme case. In Finland Internet censorship began with the very noble premise of blocking child pornography, but very quickly other websites which contained no morally questionable content were being blocked. Even worse, there is no procedure available for website owners to have their websites unblocked. If we are to go down this road of censorship, an independent body should be established to review reported websites on a case-by-case basis.

It goes without saying blocking websites should be a last resort and done in the interests of people, not big business. For example, if a website is found to be hosting copyright material, all other measures such as the US Digital Millennium Copyright Act take-down notice should be exhausted. It is possible that the people running a website have no idea that such content or material is on it, as may be the case with a public forum. It makes no sense to block the entire website owing to the actions of a couple of bad actors, particularly when less extreme actions can be taken first. It should be a transparent process and website owners should be able to appeal to have the block removed if the process is found to be in breach. It must be ensured only illegal content is blocked, not just ideas or opinions which are controversial. It should not be the case that secret lists are compiled, with few or no review procedures, and that websites not

23 July 2013

in breach of any legislation are filtered from the Internet.

I await the Minister of State's and the Department's response.

Deputy Alex White: I thank the Senator for raising this important matter. I assure her and the House that Ireland subscribes fully to the freedoms, opportunities and the access to information that the Internet provides. A broad and robust set of measures is in place to preserve these freedoms, including the profound protections given to freedom of speech in both the European Convention on Human Rights and the Constitution. These can only be breached in very particular circumstances and legally precise and transparent ways. As such, the measures that allow the State to interfere with the free flow of information over the Internet are precisely defined and can only be used in certain circumstances.

On the specific issue of copyright, it is the case that the holders of copyright are entitled, by virtue of the protections enjoyed under copyright law, to control the use of these works such as in the case of the right to make copies of the work, to broadcast the work or to disseminate the work on-line. Copyright law provides for remedies to be taken where copyright infringement is alleged, that is, where acts such as those just outlined take place without the consent of the copyright holder or without any remuneration being given to the holder of the copyright in the works. Such remedies are mandated by the EU copyright directive dating from 2001. The European Union (Copyright and Related Rights) Regulations 2012 were signed into law by the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, on 29 February 2012. These regulations are not about censorship but rather responding to the requirements of the EU copyright directive which requires member states to provide that injunctive relief may be sought against intermediaries whose services are being used by a third party to infringe a copyright. The regulations provide legal clarity and the ability to file for injunctive relief against an intermediary such as an Internet service provider, ISP, in a case where copyright infringement is alleged. The regulations facilitated the granting of a blocking injunction in the recent High Court case concerning *The Pirate Bay* website as mentioned by the Senator.

It is important to note that the granting of injunctions is not an automatic procedure but must involve a judicial process. The High Court has drawn significant guidance in this area from case law before the European Court of Justice. This ensures any remedy provided for must be balanced against a range of competing principles in a manner that is reasonable and proportionate to all concerned, including that the fundamental rights of an ISP's customer must be respected, namely, his or her right to protection of personal data and freedom to receive or impart information.

The Seanad adjourned at 8.50 p.m. until 10.30 a.m. on Wednesday, 24 July 2013.

