



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Dé Máirt, 01 Aibreán 2014*

*Tuesday, 01 April 2014*

Chuaigh an Cathaoirleach i gceannas ar 14.30 p.m.

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*Machnamh agus Paidir.*  
***Reflection and Prayer.***

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### **Business of Seanad**

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

The need for the Minister for Education and Skills to make a statement on the patron's proposed amalgamation of St. Peter's boys national school, St. Paul's junior girls national school and St. Paul's senior girls national school in Greenhills-Limekiln, Dublin 12, and to outline the timeframe and process for the commencement and completion of the proposed amalgamation.

I have also received notice from Senator Martin Conway of the following matter:

The need for the Minister for Health to make a statement on the progress of the national physical activity plan and other measures to tackle obesity in society.

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

The need for the Minister for Children and Youth Affairs to make a statement on the audit report undertaken by POBAL on behalf of her Department into Naíolann na nOileán-Muintearas; whether the recommendations in the report have been complied with and whether the matters outlined have been referred to the Garda and-or Director of Public Prosecutions, DPP, and, if not, why not.

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

The need for the Minister for the Environment, Community and Local Government to review the current planning regulation whereby local authorities can grant planning permission in areas where there are no adequate communications services available to home owners.

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

and they will be taken at the conclusion of business.

### **Order of Business**

**An Cathaoirleach:** Before I call on the Leader I wish on my behalf and on behalf of the House to express sympathy on the death of a former Member of the House, Mr. Sam McAughtry, who was a very popular Senator. The Leader will move formal expressions of sympathy at a later stage when Members can contribute. Sam was a very popular Member. He was elected to the 20th Seanad where he made many friends. He was also a very astute and respected politician. He was a writer, broadcaster and a former columnist with *The Irish Times*. I extend my sympathy to his partner and extended family on their sad loss.

**Senator Maurice Cummins:** I join with the Cathaoirleach in expressing our sympathy to the family of former Senator, Mr. McAughtry. We will have formal tributes at a later stage. I also express the sympathy of the House to Senator John Kelly on the death of his father Kevin. The funeral is taking place today.

The Order of Business is No.1, Fines (Payment and Recovery) Bill 2013, Committee and Remaining Stages, to be taken at 3.45 p.m.

**Senator Darragh O'Brien:** On behalf of Fianna Fáil I pass on my condolences to Senator John Kelly on the sad death of his father. I also pay tribute to former Senator Sam McAughtry and pass on my sympathies and those of the Fianna Fáil group to his family. On another occasion we will have an opportunity to make full expressions of sympathy.

The ongoing controversy regarding the Government, the Department of Justice and Equality, the Attorney General and the Taoiseach is spiralling absolutely out of control. The datelines given by the Government and the statements made by the Taoiseach, the Minister for Justice and Equality, the former Garda Commissioner and the Attorney General, Marie Whelan, do not tally. Forget about whether my party has a motion of no confidence in the Minister, Deputy Shatter, in the other House, the public is entitled to know what is really going on. The only people who can answer this question are the Minister himself, the Attorney General herself and the Taoiseach himself, who last week effectively sent Mr. Brian Purcell to sack the Garda Commissioner. There are many questions that remain outstanding. The Attorney General who sits at the Cabinet table and is a member of the Government has questions to answer and could bring clarity to the situation. Effectively, she was aware of the illegal recordings at a number of Garda stations since 11 November 2013. Are we to believe she never informed either the Minister for Justice and Equality or the Taoiseach in the four month period to Monday, 24 March? I do not believe that and the general public does not believe it either. How many meetings did the Attorney General attend in the intervening period and why did she not raise the issue at the Cabinet or separate meetings with the Minister for Justice and Equality? Are we to believe, when we know the former Garda Commissioner, Martin Callinan, had a close relationship with the Minister, that none of this was ever mentioned in conversation between the two of them? The Attorney General has claimed she intervened by stopping the recordings from being destroyed. When did she make this known to the Government? Does she at the Cabinet table and say nothing? There are many unanswered questions on the role of the Attorney General in this saga.

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With that in mind, I propose an amendment to the Order of Business that, under Standing Order 56, the Attorney General come to the House to answer questions that my colleagues and I have because the current controversy has brought into question the management of the justice system; the management of the Cabinet; the role of the Attorney General and the communication between Departments. I will not refer to a specific case that has been mentioned in the media in deference to the Cathaoirleach, but the Attorney General has been asked to come to the House to answer questions. This is the correct forum for the Attorney General as a member of the Government to answer the very serious questions raised in order that the general public can have confidence in the justice system.

Personally, I do not have confidence in the Minister for Justice and Equality; neither do my colleagues. Nearly two years ago I tabled a motion of no confidence in him. The current controversies lead me to believe I was correct back then.

I ask the Leader to accept my amendment to the Order of Business and schedule time for the Attorney General to answer questions in the House under Standing Order 56. We wish to put these and other questions to her on her management and the reason she did not inform the Government of these very serious allegations and findings of fact when she became aware of them in November 2013. We will have other questions to put to the Secretary General, Mr. Purcell, in due course. The Attorney General is a member of the Government and answerable to Members. I, therefore, call on the Leader to ask her to come to the House. I formally propose an amendment that under Standing Order 56 the Attorney General come to the House to answer questions in this regard.

**Senator John Gilroy:** I had wished to speak about the recently published crime figures, but Senator Darragh O'Brien's speculation and dramatisation of events require that I comment. While his remarks add to the political tension, they shed no light. It is now 2.45 p.m. and he has requested that the Attorney General come to the House today-----

**Senator Darragh O'Brien:** She may come tomorrow.

**Senator John Gilroy:** In accordance with the amendment proposed to the Order of Business, the Senator is insisting that she come to the House today.

**Senator Darragh O'Brien:** As I raised the matter last week, the Attorney General has been on notice.

**An Cathaoirleach:** Senator John Gilroy to continue, without interruption.

**Senator John Gilroy:** It is obvious that Senator Darragh O'Brien has no interest in pursuing the issue of the Attorney General coming to the House. From his point of view -----

**Senator Darragh O'Brien:** The Attorney General has a lot of questions to answer.

**Senator John Gilroy:** ----- it makes more sense to try to catch "Oireachtas Report" and in the great Fianna Fáil tradition to be seen trying to do something when it really does not want to do it.

**Senator Darragh O'Brien:** Not at all; it is more important that she answer the questions asked.

**An Cathaoirleach:** Senator John Gilroy to continue, without interruption.

**Senator John Gilroy:** If it was a real and serious proposal that the Attorney General come to the House today, she would have been given notice and it would have been scheduled for tomorrow or Thursday. I am loath to refer to it, but it brings the procedures of the House to a new low and shows indecency that the Fianna Fáil Party is using the circumstances of the death of a Member's father, at a time when Labour Party Senators are not present, to propose that the Attorney General be brought to the Seanad.

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

**Senator Darragh O'Brien:** On a point of order, Senator Gilroy should know me better than that. I would not, in 1 million years, dream of capitalising on someone's bereavement.

**An Cathaoirleach:** That is not a point of order.

**Senator Darragh O'Brien:** I can assure the Senator that if it goes to a vote that Senator John Kelly will be paired. I ask the Senator to withdraw that remark.

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

**Senator John Gilroy:** I do not propose that Senator Darragh O'Brien take this personally. I do not intend it as a smear on him. Senator Darragh O'Brien is a decent, honourable Senator-----

**Senator Darragh O'Brien:** He was paired with Senator Leyden.

**Senator John Gilroy:** -----but I am saying that this is an opportunistic move on behalf of Fianna Fáil and I find this-----

**Senator David Norris:** What about the Cathaoirleach? Is he opportunistic as well?

**Senator John Gilroy:** I can only call what I see here and that is what I do.

**An Cathaoirleach:** So does the Cathaoirleach.

**Senator Darragh O'Brien:** He is paired with Senator Leyden.

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

**Senator John Gilroy:** I do not intend to withdraw the remark. I am going to leave the remark to stand on the record because we are asked to consider this to be just a coincidence and it is far from that.

**Senator Darragh O'Brien:** What is the Senator talking about? This is absolute rubbish.

**Senator John Gilroy:** I intend to ask the Leader, with regard to my first contribution on the recently published crime figures, if we might have a debate on the issue at the earliest convenience.

**Senator Darragh O'Brien:** With whom?

**Senator John Gilroy:** I note that crime figures under most headings are down except in one or two areas, which is totally unacceptable. There is a matter of public confidence and public safety with regard to crime figures. The recent comment in the media about different types of crime being out of control is not borne out by the most recent figures released for 2011 and

2012. I ask the Leader to organise a time for a debate on this important issue.

**Senator Jillian van Turnhout:** I extend my sympathy to Senator John Kelly and his family on the death of his father. I cannot support the Fianna Fáil motion because I have agreed to vote with the Government in order to allow some of the Labour Party Senators attend the funeral. That is a fact. I know some of my group colleagues are also facilitating that.

In regard to the Bill on smoking in cars in which there are children, I understand it did not go to Cabinet as intended. Can the Leader advise as to when the Government will have its amendments ready to be considered by the House?

I wish to raise the national neurorehabilitation strategy. The long-awaited implementation group has been established. We have also seen a recent report which Senator Marie Moloney raised in the House two weeks ago on living with a neurological condition in Ireland and the survey conducted by the members of the Neurological Alliance of Ireland, which comprises more than 30 well-respected organisations. It would be appropriate if we were to have a debate in the House next week, being national stroke awareness week. In light of the death of former Senator and Deputy Nicky McFadden, it may be appropriate to have a debate about neurorehabilitation services in the community and the need for such services to be provided in the community.

We had the Louise O’Keeffe judgment at the end of January and were told that within weeks we would have the Children First legislation which will put child protection on a statutory basis. I ask this question because the UK is considering what it calls a Cinderella law which will ensure that emotional abuse and neglect will be included in the legislation. We had this debate when the heads of the Children First Bill came before the Joint Committee on Health and Children two years ago. While it was not included in the draft Bill, the majority of the NGOs, myself and other colleagues argued on the importance of including emotional abuse. It is important that child protection guidance in the State is put on a statutory basis. I know the Government agrees but I would like to see the legislation as soon as possible. As eight weeks is more than a few weeks, I ask what progress has been made.

**Senator David Norris:** I do not intend to expatiate on the current political turmoil. I said my piece in the past two weeks and as far as I am concerned it is one down and one to go. At the risk of being called opportunistic, I extend my sympathy to the family of our colleague Senator John Kelly. I am glad there will be an opportunity to pay tribute to my old friend Sam McAughtry who was a Member of this House. I also broadcast with him and I was on the committee of the peace train but that is for another day.

Something I really want to raise is the GAA. I am very concerned. There are many loyal members and supporters of the GAA in this House and I have many friends within that organisation, although I never played or raised a hurley stick in my life. It is quite shocking that the organisation is concluding discussions as we speak with Sky Sports, part of Mr. Rubert Murdoch’s evil empire. What on earth are they at? All I have heard from them about this is money. If it is money, they are not strapped for a few bob. I remember analysing the national lottery distributions and in every county the GAA was way up at the top. That is out of the public purse. That is why we all have an interest in it. Our money is given to them. They also got a considerable capital injection to build Croke Park, with which I have no problem at all. It is a magnificent facility. However, they have five concerts coming up from Garth Brooks and they will make a mint out of that, and they rent it out for conferences. It is appalling for them



to surrender to something as malign as the Murdoch operation for money. When I think about the record of the GAA and its ban on foreign games such as cricket and rugby, I simply cannot understand how it has given in to the greatest blackguard from the other side of Irish Sea, via Australia. I do not see why the Irish should pay to view their national sport on their own television and pay a beast like Mr. Murdoch. His views on the Irish were expressed in *The Sun* and *The News of the World*, which, thank God, is now extinct.

**An Cathaoirleach:** That is unparliamentary language and I ask Senator Norris to withdraw it.

**Senator David Norris:** What, “God”?

**An Cathaoirleach:** The language you used.

**Senator David Norris:** There is nothing unparliamentary about God. He is a democrat.

**Senator Michael Comiskey:** I express my gratitude to the Minister for the Environment, Community and Local Government, Deputy Hogan, for visiting Leitrim on Friday last to inspect a number of projects.

**Senator Diarmuid Wilson:** He should have stayed there.

**Senator Terry Leyden:** Is Senator Comiskey serious?

**Senator Michael Comiskey:** Wait until Senator Leyden gets the good news.

The projects were funded through the Leitrim Development Company. The Minister visited Tullaghan and Kinlough in Leitrim. This is the good news. A total of €3 million has been spent in north Leitrim in particular over the past number of months. Some of these projects have been finished. Working is proceeding on more of them and will finish up soon, and those will be officially opened shortly. I call on the Minister for Arts, Heritage and the Gaeltacht, Deputy Deenihan, and the Minister of State at the Department of Public Expenditure and Reform, Deputy Brian Hayes, to look at the possibility of giving us funding for a car park at Seán Mac Diarmada’s cottage. There is great potential there, especially now that we are coming up to the 2016 commemorations. This will provide a significant opportunity for tourism in County Leitrim, a county that badly needs more revenue from tourism. Of course, it is close to the Wild Atlantic Way and the famous Ballroom of Romance. The more we can bring into this area, the better. Certainly it will be good for Leitrim, as well as Sligo, Donegal and all the other counties around it. Hopefully, in the near future, we will get a meeting with the Ministers, Deputies Deenihan and Brian Hayes, to look at the possibility of a funding allocation for the rest of the projects that have to be developed. That is the good news.

**Senator Terry Leyden:** I congratulate Senator Comiskey. Did he thank the Minister for reducing the number of councillors in Leitrim to 18?

**Senator Denis O’Donovan:** I second my leader’s proposal to amend the Order of Business. In fairness, this matter was raised seven days ago and there was a vote on it. A full week’s notice was given. It is also provided for legitimately under Standing Orders. We are entitled to a full debate on this debacle concerning the justice situation - the Minister, the Garda, and the sacking, or retirement, of the Commissioner. For too long, this House has been playing second fiddle to the other House. When any serious issue of national interest comes up, we may get a debate two or three months down the road. The people of Ireland, under the Constitution,

restored faith in us as a House four or five months ago, yet when we ask for a debate with either the Taoiseach or the Minister, as we did last week - there were two separate proposals - we get no accession to our request. If Members are serious about reform of the Seanad and the status of this important establishment and whatever about Members' political differences, it is about time this House had a debate on this urgent matter. Whether it is the Taoiseach, the Minister, Deputy Shatter, or the Attorney General who comes into the House, it is high time that Members stopped playing second fiddle and being treated as second-class citizens. The people gave a resounding "Yes" vote to this House five or six months ago. Had the same proposal been put forward about the abolition of the Dáil and given what is going on there at present, would the vote have been so resounding? Consequently, I take great pride in seconding this motion and demanding that the status of this House is not diminished further by being treated along the lines of being told Members are all right and the matter will be dealt with in three months time. A debate is urgent and essential and I urge the Leader, who is a reforming Leader, to take on board the point I make because there is no point in having a debate after Easter when the stable door will have been bolted, the horse having fled.

**Senator Eamonn Coghlan:** I have lived in Dublin West for a quarter of a century and have been a Member of Seanad Éireann for almost three years. However, I have never received as many calls, contacts or communications on any other issue in the past three years as I did in the space of the past 24 hours. They came from quite a number of people who expressed their displeasure with Fingal County Council's decision to deprive almost 1 million people in the city of Dublin of an opportunity to say "Yes" or "No" with regard to voting in a lord mayor of Dublin.

**Senator Darragh O'Brien:** They were right.

**Senator Diarmuid Wilson:** Hear, hear.

**Senator Eamonn Coghlan:** In Dublin City Council, 50 councillors out of 52 agreed with no opposition. In Dún Laoghaire-Rathdown County Council, 23 councillors out of 28 agreed, again with no opposition. In South County Dublin County Council, 19 councillors agreed with three in opposition. However, in Fingal County Council, 16 councillors said "No" to giving the citizens an opportunity. Of all the councillors who voted recently, a clear majority was in favour with 98 out of 127 being in favour. The issues that were raised yesterday and the reason these councillors did not go along with the proposal should have been raised over the past three months, when I was in this House, or when the matter was being discussed in newspapers and on television. I believe the aforementioned councillors have held the people of Dublin to ransom. I believe they are out of touch with the people.

**Senator Darragh O'Brien:** That is not true.

**Senator Eamonn Coghlan:** This is all about new politics. The people of Dublin deserve a chance to say whether they are for or against the proposal, not 16 councillors. Senator O'Brien may be aware the Irish name for Fingal can be translated as "foreign tribe", a territory of foreigners. It is a medieval name and if the 274,000 citizens who live in what is the second most populous county in Ireland, including those in Dublin West, are not given a chance to say "Yes" or "No", then I am afraid Fingal County Council still lives in medieval times.

**Senator Darragh O'Brien:** The Senator should talk to Fingal's Fine Gael mayor, Kieran Dennison.

**Senator Eamonn Coghlan:** I call on the Minister, Deputy Hogan-----



**An Cathaoirleach:** Does the Senator seek a debate on this matter?

**Senator Eamonn Coghlan:** ----- to not let this go away. I call on him to identify another means of keeping this proposal on the agenda and to give the citizens of Dublin a opportunity to decide whether they wish to vote in a lord mayor or not.

**Senator Sean D. Barrett:** I echo the sympathies expressed to the McAughtry and Kelly families and, in their time of sadness, thank the McFadden family and the people of Athlone for receiving so many Members of the Oireachtas last week. I compliment the Government on today being the first day of the abolition of the travel tax. The Minister for Transport, Tourism and Sport, Deputy Varadkar, and the Minister of State at the Department of Public Expenditure and Reform, Deputy Brian Hayes, were in TCD yesterday to announce that measure. There already are 20 new European routes and this summer, four airlines will provide a service between Ireland and Canada. It is predicted there will be 1 million additional passengers and 1,000 additional jobs, which is commendable support for the tourism sector.

I also welcome yesterday's report that the Central Bank shortly will become the regulator of the VHI. This is not a criticism of the Minister but when one examines the website of the Department of Health, one can see the practice whereby it states "The following table sets out the names of those bodies and agencies operating under the aegis of the Department of Health to which the Minister makes nominations/appointments". Included in this table are both the Health Insurance Authority and Voluntary Health Insurance. In other words, the Minister owns one of the teams and chooses the referee. For a very long time, Europe has asked that this position should cease and I hope it now will so do. Finally, I ask that No. 11 on the Order Paper be taken today and I ask for the Leader's support in that regard.

*3 o'clock*

**An Cathaoirleach:** Is the Senator proposing an amendment to the Order of Business to take No. 11?

**Senator Sean D. Barrett:** I thank the Cathaoirleach for his guidance. I propose an amendment to the Order of Business that No. 11 be taken today.

**An Cathaoirleach:** I call Senator Michael Mullins.

**Senator Michael Mullins:** It is very disappointing that my colleagues across the aisle are spending so much time trying to bring down an honourable, honest, hardworking and reforming Minister-----

**Senator Jim Walsh:** He has undermined the Garda and the Commissioner.

**Senator Michael Mullins:** -----and now they are trying to cast aspirations on the Attorney General. We all appreciate that the Minister inherited some significant level of dysfunction, as we have seen not only from the issues that have arisen in recent times but from the many serious issues that have arisen during the past four decades. What politicians should be doing at this time is discussing the shape of the structures needed to be put in place to restore confidence in the justice system and in the Garda.

**Senator Darragh O'Brien:** A new Minister.

**Senator Michael Mullins:** The general public do not want this charade; they want the

structures of inquiry that were put in place to be allowed to work and to come to their conclusions.

My colleagues across the aisle in Fianna Fáil are out of touch with the people. That is obvious from the opinion polls published at the weekend which show there is no increase-----

**Senator Darragh O'Brien:** You are doing fierce well as well - you are down 5%.

**Senator Terry Leyden:** They are down 5%.

**Senator Michael Mullins:** -----in support for their good selves.

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

**Senator Darragh O'Brien:** The Senator's party need not worry about us, he has enough to be worrying about. He should just truck on-----

**Senator Michael Mullins:** My question for the Leader is to outline when we will get back to discussing what the people really want us to discuss, namely, how can we accelerate the level of recovery in the economy and how we can create more jobs. I ask the Leader if we could have a further discussion in the coming weeks, if possible before Easter, with the Minister, Deputy Richard Bruton, on the Action Plan for Jobs 2014. That is what people want us to discuss here and now. I was listening to a popular radio programme for a few minutes this afternoon and people are sick to the teeth of this. They want politicians to get back to dealing with the issues of the day and to solving the problems facing the ordinary person who is at work or out of work at this time. They certainly do not want any more time wasting on this particular issue.

**Senator Trevor Ó Clochartaigh:** Ba mhaith liom mo chomhbhrón a dhéanamh le clann John Kelly tar éis an bás sa chlann sin.

By Senator Mullins's measure, Sinn Féin must be the only party in touch with the people, therefore, under his guidance, I believe I can speak authoritatively this afternoon. It is important that we would a full debate on the issues around the Department of Justice and Equality at present and particularly on the functioning of the Garda. There is no point in trying to play it down, there is a massive level of unrest about this. The Seanad needs to have a debate on these issues and I would support that.

To return to an issue which is very much i mbéal an phobail and is very important, last week we saw an unprecedented meeting take place in Galway. Up to 200 GPs called Members of the Oireachtas to a meeting to voice their concerns over the current draft contract for those under-six years of age that has been put forward by the Minister for Health. They raised a number of serious issues and wanted us to listen to their arguments. I was very concerned in particular about the situation of rural GPs. They find it very difficult to get people who are willing to take up a position as a GP in a rural area and those rural GPs who are in practice find it very difficult to maintain the level of service that is needed in those areas. There are serious concerns around the proposals.

The GPs also drew attention to the fact that the FEMPI legislation has had a massive impact on them. The calculation was made not only on the salaries of the doctors in question but on the full amount of the grant given to the doctors to run their GP services. That coupled with the fall in the number of people with medical cards in some areas is exacerbating the situation. The GPs maintain the resources are being cut back for the work they need to do, that the number of

consultations will increase, that we will see waiting lists in general practice and that GPs are going to become bureaucrats rather than doctors.

Another big issue is that a gagging clause, as they call it, is going to be put into the contract. A debate around GP services around the country would be very welcome. It would be a good way of our being able to raise some of the issues that have been brought to our attention by the IMO and GPs. We call on the Minister to engage in meaningful negotiation to sort out this issue.

**Senator Tom Sheahan:** In light of the requests for a debate on justice matters, is it appropriate under Standing Orders to bring the former Ministers for Justice, Dermot Ahern, Michael McDowell, John O'Donoghue and Gerry Collins, before the House?

**Senator Darragh O'Brien:** And Deputy Noonan.

**An Cathaoirleach:** That is a matter for the Committee on Procedure and Privileges. Has the Deputy a question for the Leader?

**Senator Tom Sheahan:** If a real and honest debate is to be held, the aforementioned individuals should be part of it.

**Senator David Norris:** We should also invite Nora Owen.

**Senator Tom Sheahan:** I wonder whether it could happen.

**Senator David Norris:** We do not want gender discrimination.

**Senator Tom Sheahan:** Absolutely. In light of the fact that the phone bugging continued for 30 years, all the former Ministers for Justice should be included.

**Senator Darragh O'Brien:** What about starting with the current incumbent?

**Senator Tom Sheahan:** While some might think it is a trivial issue, people who lodge money in banks are exposed to a serious threat at present. There is only one bank in my local town and it has a small carpark used by staff. I am getting hammered with parking fines and I see the same thing happening to people who pull up outside their banks to run in and lodge money. This means people are parking in carparks located several hundred metres from their banks and walking down the street to make lodgments. Criminals are smarter than we give them credit for. They are observing this practice and I predict that people who are walking to their banks will be targeted. A mechanism should be devised, perhaps by ministerial order, to protect people who are lodging money. It was never a written law but it was understood that people who were lodging money would not be hit by parking fines when they pulled up outside their banks. People may think it is a trivial matter but I envisage people being attacked on their way to their banks. We should do something to avert that threat.

**Senator Terry Leyden:** I join my colleagues in expressing my deepest sympathy to Senator John Kelly on the death of his beloved father, Kevin Kelly, and to his widow Mary and the family, John, Kevin, Bernadette, Anne and Claire, and his nine grandchildren. Kevin was a good friend and a wonderful community welfare officer in his time. He was in business up to his death. He was much loved in the community, as was evident from the turnout at his funeral last night at Oran and this morning at Clooneycolgan.

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I advise Senator Gilroy that I volunteered to pair with Senators for the funeral. We do not take advantage of bereavement. For the Senator's information, three Members of Fianna Fáil have paired with his colleagues to permit them to attend the funeral. Give credit where credit is due; we do not do that sort of business. It is not our style. We are a very honourable people.

The Attorney General should avail of the opportunity to come to this House to explain her situation in regard to the bugging scandal and other issues. She might also explain to the House the reason for the lack of legislation coming from her office. The Attorney General is a political appointee. She was nominated by the Labour Party and appointed by the Government. There is nothing wrong with that; it has been the tradition since the foundation of the State that the Attorney General was aligned to a party before he or she was appointed. I have no doubt about her abilities but it would be in her interest to come before the House to discuss these issues. As far as I can see, people are leaking information to their favourite journalists and everyone has a story to tell about the letter, the non-delivery of the letter and the advice that the Attorney General gave to the Taoiseach last Monday. The leader of another party has alleged that her telephone has been bugged. These matters could be cleared up if the Attorney General came into this House.

I thank the Cathaoirleach and the Committee on Procedure and Privileges for agreeing to invite the President of the Parliamentary Assembly of the Council of Europe, Ms Anne Brasseur, to address the House.

**An Cathaoirleach:** That matter is only in progress.

**Senator Terry Leyden:** My information is that it was granted.

**An Cathaoirleach:** It must go before the House, as the Senator well knows.

**Senator Terry Leyden:** I thank the Cathaoirleach.

**Senator Terry Brennan:** I, too, extend my sympathy to our colleague Senator John Kelly on the death of his father.

Following the general election in 2011, the Government said it would reduce the travel tax to zero. It was reduced from €10 to €3 but, thankfully, the Government has honoured the commitment it made and, from today, there will be no travel tax on flights into and out of Ireland. The airlines have responded positively too, with more than 20 new flights into Ireland and increased capacity on existing routes. That is why the Government is fulfilling that commitment today. The abolition of this tax will greatly enhance the tourism potential of our country and will increase tourist numbers. Last year - the year of The Gathering - saw the most significant increase in visitor numbers since 2009, but the abolition of the travel tax will ensure that greater numbers travel to our country in the future.

**Senator Feargal Quinn:** Like everybody else, I extend my sympathy to Senator John Kelly on the death of his father. Coming so shortly after the deaths of Nicky McFadden and Edward Haughey, it is a reminder of how short life is and how we must fit as much as we can into our lives. I am sure we will get the chance to talk about Nicky McFadden and Edward Haughey at a later stage.

I second Senator Barrett's amendment to the Order of Business.

Senator Michael Mullins spoke about getting the economy going and what we can do. I

made a proposal a couple of years ago that the Government should release the money in pensions for those who wish to take it, so that they could spend it now rather than necessarily keeping it. Very minor first steps were taken in the budget last year. However, it was interesting to note last week that the UK Government announced that retirees would have the freedom to take out savings built up in any defined contribution scheme as a lump sum, subject to the marginal rate of tax. Instead of turning their savings into a guaranteed lifetime income as an annuity, they will have the opportunity to spend the money. This is something we should, and can, do. It will not cost the Government as it will get the tax on the money, but it could mean that money would be spent in ways that will enable the economy to benefit. I think it is something we should do. I believe the Minister's heart is in the right place, and he has taken the first steps, but he has a lot further to go. We have seen the example in Britain and I am delighted to think the British are listening to us, even if the Government here is not.

**Senator Pat O'Neill:** I would like to be associated with the expressions of sympathy to Senator John Kelly on the death of his father. I ask the Leader the following question. When is a student not a student? It seems it is when someone reaches 18 years of age or travels on public transport. I have two issues that I ask the Leader to bring to the attention of the Ministers for Education and Skills, Social Protection and Transport, Tourism and Sport.

Children do not go to school as early as in previous years. I remember, when I was young, children were sent to school at four years of age, but now many children do not go to school until they are five years of age. There is also an extra year - transition year - so many students do not leave second level until they are 19 years of age. There is an anomaly here. The leaving certificate year is one of the most expensive years in a student's life, especially when families are under pressure and there are single parents, but they do not receive the children's allowance after a child reaches 18 years of age, even if he or she is still in full-time education. Will the Minister contact the Ministers for Social Protection and Education and Skills about this matter?

I support Young Fine Gael's Fair Fares campaign. Those aged under 16 years are allowed to travel on public transport as students but if one is aged between 16 and 18 years, one is charged the adult fare. This costs these students approximately €312 more per year to travel on public transport. When they turn 18 years and are attending a third level institution, they can obtain a student card and are entitled to travel as students. There is an anomaly in respect of those aged between 16 and 18 years. Will the Minister for Transport, Tourism and Sport examine this issue because it is costing families a great deal of money for school transport and so on? It needs to be addressed. A student in full-time secondary education should be considered to be a student for the duration of his or her schooling for the purposes of public transport.

**Senator Mark Daly:** I second Senator Darragh O'Brien's amendment to the Order of Business to bring the Attorney General before the House.

**An Cathaoirleach:** Senator Denis O'Donovan has seconded it.

**Senator Darragh O'Brien:** We would like as much support as possible.

**Senator Mark Daly:** I support my colleague on the issue because the Attorney General has many more questions to answer than the former Garda Commissioner. She has been sitting at the Cabinet table since 11 November. She has been sitting next to the Minister for Justice and Equality and the Taoiseach who was disturbed by what he had learned last Sunday night week and decided to ask for the Commissioner's head----



**An Cathaoirleach:** The Senator can raise these issues during the debate.

**Senator Mark Daly:** -----yet she appears to have no questions to answer and the former Garda Commissioner has paid for it with his job.

**Senator John Gilroy:** This is madness. The Senator does not understand the system at all.

**Senator Mark Daly:** If the Government and the Taoiseach are to be consistent on this issue, the Attorney General should also be gone and asked to consider her position. Why is there no disquiet at the Cabinet about the Attorney General who knew as much as the Commissioner? One of them has paid for it with his job.

I previously asked the Leader about the human tissue Bill, on which we had a debate last August during which Government Members said the Bill that was due to be brought before the Oireachtas would be introduced during the next parliamentary session. The Bill covers consent arrangements for transplantation and research purposes, but the Government's recently published legislative programme states there is no possibility of indicating at this stage when the legislation will be brought before us. I seek clarification on the issue. According to *The Sunday Business Post*, the Beaumont Hospital kidney transplant list is closed. When an organ donation list is closed, people are effectively being consigned to die. One in ten people on life saving organ transplant lists dies unnecessarily because if we had better systems, everybody who needed a transplant would have one. I seek an urgent debate on the human tissue Bill and the issue of organ donation. As this is organ donation week, it would be appropriate to have such a debate.

**Senator Paul Coghlan:** I would like to be associated with the remarks of the Leader and others in offering sympathy to Senator John Kelly on the sudden death of his father. We recently experienced the sad passing of our colleague, Nicky McFadden. I did not know the former Member, Sam McAughtry, who also died last week, but he was a great man and I often listened to him on radio.

I do not understand the amendment, but I respect Senator Darragh O'Brien's right to propose it as a parliamentary tactic. In fairness, the Attorney General is the most diligent officer of the State-----

**Senator Darragh O'Brien:** The evidence would not bear that out.

**Senator Paul Coghlan:** -----and she is a good person.

Senators Sean D. Barrett and Terry Brennan referred to the reduction in the travel tax to zero from today, which is a great move. As has been said, last year, that of the The Gathering, was the greatest since 2008 for inbound tourism. We had the honour yesterday at the British-Irish Parliamentary Assembly meeting in Kilmainham of listening to Mr. Michael O'Leary, who was extremely bullish about the situation. That is very heartening because he is often decried and criticised as a bit of a hard man. However, he has softened his image successfully and I believe he is a man of his word. Ryanair is to put 150 to 175 new aeroplanes into service. This is tremendous for the country.

**Senator Martin Conway:** He is good but he is not that good.

**Senator Paul Coghlan:** In fairness, it is good. The Minister and Mr. O'Leary are at one in trying to secure much more direct inbound tourism and air services. The Minister wants to increase the number of ferry services. I welcome these objectives very much. It augurs well



for us.

I welcome the announcement by my colleague, the Minister for Arts, Heritage and the Gaeltacht, Deputy Jimmy Deenihan, of the next phase of the restoration of Killarney House and Gardens. Some €1.1 million has been made available for this and it is beginning immediately. As Members know-----

**Senator Brian Ó Domhnaill:** A large percentage of the national budget is going on it.

**An Cathaoirleach:** That could be raised on the Adjournment.

**Senator Paul Coghlan:** I appreciate that, but this is something that has just happened. I have been campaigning over the years-----

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

**Senator Paul Coghlan:** This is going to be an outstanding visitor attraction.

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

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

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

*(Interruptions).*

**Senator Paul Coghlan:** I have, of course. Perhaps I will take the Cathaoirleach up on his suggestion of an Adjournment debate. Seriously, however, this initiative is great for tourism, not just for the region but also for the country as a whole, because the visitor attraction will be outstanding. I will take the opportunity in due course to invite all Members down to see it.

**Senator David Norris:** Bravo.

**Senator John Crown:** I ask the Leader to bring to the attention of the Minister for Health the fact that there are now 32,000 children on waiting lists for hearing assessments. Some 16,000 are waiting for a first assessment and a further 16,000 are waiting for treatment, having been assessed. A substantial number are waiting for more than one or two years. There is a geographical discrepancy, but the circumstances are very unsatisfactory. Ultimately, are we just storing up problems for ourselves. Every year a child spends without having his hearing corrected is a year in which he is in danger of falling further behind educationally and socially.

I thank the Leader for his strong support for the legislation I proposed with my colleagues Senators Daly and van Turnhout on banning smoking in cars with children. That the legislation has been unconscionably delayed is not the Leader's fault at all. I am very grateful to him not only for his generous support of it on every Stage thus far but also for his decision to make time available specifically for the Report Stage debate tomorrow. We were promised by certain individuals, not the Leader, that the Report Stage amendments would be ready such that the Bill could be completed in the Seanad tomorrow before being passed on to Dáil Éireann. As of 3.25 p.m. today, the day before the proposed debate, I have not heard any report that there has been Cabinet approval of the amendments. I am presuming at this point that no such amendments have as yet been submitted to, discussed or passed by the Cabinet and that, as such, there will not be Government amendments ready for Report Stage tomorrow. Therefore, if Report Stage is passed here tomorrow, the Bill will disappear into the Dáil with some vague promise that,

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at some stage in the future, amendments will be made. For this reason, I ask the Leader for a favour. I guess I am leaning on his oft-expressed support for the Bill in asking him to indulge us by allowing us to postpone the debate for a week to give the Cabinet a chance to discuss and approve the amendments, which, apparently, are written. Thus, we could have a definitive Report Stage debate on the Government's amendments in the Seanad.

**An Cathaoirleach:** That is a matter for tomorrow's business.

**Senator John Crown:** I am formally asking the Leader to change tomorrow's Order of Business and not discuss the Bill tomorrow.

**Senator Jim D'Arcy:** Listening to Senator Mark Daly, one would think a double murderer had been found in the home of the Attorney General. The Minister for Education and Skills, Deputy Ruairí Quinn, announced today that €60,000 is being provided to support the delivery of anti-bullying training sessions for parents. The programme is being run jointly by the National Parents Council Primary and the National Parents Council Post Primary. The training sessions are available nationwide and provide supports to parents to enable them to assist their children when issues of bullying arise. Bullying is not a problem schools can, or should, be left to tackle alone. Parents, families and the wider community have an important role to play in tackling all forms of bullying and in teaching children how to manage relationships. I welcome the extension of the support network, which doubles the 3,279 participants of last year. I hope it can be rolled out to every parent in the country.

The Minister for Education and Skills said that when the financial situation improved, he would consider reinstating, in some way, the positions of guidance counsellors in schools.

**An Cathaoirleach:** Is the Senator looking for a debate?

**Senator Jim D'Arcy:** As things get better, the Minister should come into the Chamber to see what can be done in this regard. The work of guidance counsellors in dealing with the problems students have in schools should not be underestimated.

**Senator Jim Walsh:** I agree with Senator Michael Mullins. There are important economic issues troubling the public and they seek a resolution of them and assistance from these Houses. However, we cannot diminish the seriousness of what happened with regard to the Garda Commissioner. Last year, the Minister breached the confidence that should exist between every Garda Commissioner and the Minister for Justice and Equality. It is traditional that the Garda Commissioner keeps the Minister informed but the last thing he expects is that the Minister will go on television to use the information politically. The position of Commissioner was politicised at that stage. It was a serious error of judgment on behalf of the Taoiseach to fail to comprehend the gravity of what happened on that occasion. As a consequence, the Taoiseach has compounded the episode by sending the most senior official in the Department of Justice and Equality, An tUasal Ó Puirseil, to the Garda Commissioner with a political message. The intent of it was to cause the Commissioner to tender his resignation. That is particularly serious and it brings into question the position of the Taoiseach and not just the Minister for Justice and Equality. In that regard, I am somewhat critical of my party for tabling a motion in the Dáil that deals only with the Minister for Justice and Equality, Deputy Shatter. It should include the Taoiseach, who has also been culpable in the Shattergate debacle.

**Senator Michael D'Arcy:** I wish to be associated with the comments to Senator Kelly following the bereavement in his family.

I congratulate everyone concerned with the management buy-out of the Elverys group. Some 654 jobs have been protected. It is important not only to create new jobs but also to protect those that exist. I welcome the management buy-out, given the groups it was competing against, such as Sports Direct, a large international company.

There has been a very unseemly public row playing itself out in the media about the St. Vincent's Healthcare Group and the Health Service Executive, HSE. I have a vested interest because Wexford General Hospital is part of the Dublin East Hospital Group together with St. Vincent's University Hospital. It is time this issue was concluded. Will the Leader ask the Minister for Health to come in here to explain what is going on? It is not much of a negotiation because it is all happening via leaks of letters from the HSE to the St. Vincent's Healthcare Group. It is ridiculous and needs to be resolved so that the Dublin East Hospital Group can get on and deliver patient care which is what it is there for. I do not know if this is personality driven and do not care if it is. The Minister for Health needs to grab hold of this and bring it to a conclusion.

**Senator Rónán Mullen:** I extend my sympathy to Senator Kelly and his family on the death of his father.

Can the Leader say how the Taoiseach can tell the Dáil and the rest of us to have confidence in the Minister for Justice and Equality when it is clear from his actions he has no confidence in him? When the going got tough he stepped in and instructed an official from the Department to visit the Garda Commissioner, essentially to sack him. The Taoiseach met the Attorney General to discuss the unprecedented revelation of Garda recording of telephone conversations. All of this happened over the Minister's head. The Taoiseach seems to be a one-man Cabinet, chairman, Minister and chief executioner. Who knows his extraordinary powers? I do not think these powers were envisaged when the Constitution was drawn up. We are certainly in grotesque, unbelievable, bizarre and unprecedented, GUBU, territory when the Attorney General is afraid to speak to the Taoiseach over the phone for fear of bugging. By whom?

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

**Senator Rónán Mullen:** The Taoiseach had a hand in sacking the Commissioner without so much as even a recorded courtesy call to the Minister.

**Senator Paul Coghlan:** He did not sack anyone.

**Senator Rónán Mullen:** It seems to me that the important public business of this country is being held up by a very unseemly and troubling affair. The Minister is a man of undeniable ability but does not seem to have the confidence of many people because of the way in which he has run his Department, from the Mick Wallace affair onwards. There is one solution, namely, that the Taoiseach bring forward the reshuffle he was undoubtedly thinking of having anyway.

**An Cathaoirleach:** That is a matter for the Taoiseach, as the Senator knows well.

**Senator Rónán Mullen:** Maybe it is time he did something that needed to be done anyway-----

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

**Senator Rónán Mullen:** -----to separate out the justice and defence briefs because those two briefs should not be held by the one person. I am sure Senator Bacik and others would

agree with me.

**An Cathaoirleach:** Does the Senator have a question for the Leader? We are on the Order of Business.

**Senator Rónán Mullen:** From the point of view of democratic theory, responsibility and accountability, the Garda and the Defence Forces should not be under the leadership of the same Minister. This has been a problem for a long time. Now is the opportunity for the Taoiseach, if he believes in the Minister's ability, and I have no doubt he does, to give him another brief. I do not know whether that should be the Department of Justice and Equality but it certainly should not be both the Department of Justice and Equality and the Department of Defence.

**Senator Martin Conway:** I extend sympathy to our good friend, Senator John Kelly, on the loss of his father.

I commend last week's "Prime Time" programme for its analysis of ambulance services. It raised some concerns. I would like to have a debate in this House on the service. Over the weekend it was brought to my attention that there are ongoing deficiencies in the commitment made to the people of Clare about the ambulance services. I understand that two ambulances and a rapid response car should be available at any one time at the ambulance station in Ennis. Each ambulance is supposed to have two paramedics, with the car supposed to have one advanced paramedic. From what I have been told, on numerous occasions, including at times during St. Patrick's weekend, the advanced paramedic was told to man the ambulance, as such. This meant that when a patient was being brought to the Mid-Western Regional Hospital in Limerick, the advanced paramedic had to travel with the patient because of requirements. The rapid response car was not available to deal with emergencies if they presented.

The Hanly report was debated-----

**An Cathaoirleach:** Is there a question for the Leader?

**Senator Martin Conway:** Yes. The Hanly report was debated *ad nauseam* and it committed to ambulance cover 24 hours a day, seven days a week, when at full throttle in Ennis and around County Clare. This is a serious issue and I would like a debate specifically concerning the ambulance services in light of what was raised in the "Prime Time" programme last week, together with the information made available to me over the weekend.

**Senator Brian Ó Domhnaill:** Ba mhaith liom fosta cur leis na focail chomhbhróin a cuireadh in iúl don Seanadóir Ó Ceallaigh ar bhás a athair. I also acknowledge an excellent contributor here, the late former Senator from Athlone, Nicky McFadden, who was a distinguished Member of this House.

I will raise two issues. The first is the haulage charge introduced as of midnight last evening for roads in the North of Ireland. There has been little or no request from the Irish Government on behalf of Irish hauliers for an exemption for the roads in the North of Ireland, despite a number of promises, including one made here by the Minister for Transport, Tourism and Sport in an Adjournment debate I tabled. This is a failure by the Government to protect Irish hauliers, particularly those from Border counties, from being hit by the levy. It will have an impact on jobs and industry in counties like my own in Donegal. I ask the Leader to facilitate a debate on the issue with the Minister for Transport, Tourism and Sport so we can get to the bottom of what he has or has not done in representing hauliers.

The second issue relates to the failings by An Taoiseach highlighted by the survivors of the Omagh bomb atrocity recently in the Belfast High Court. The court was told that the bombing could and should have been averted, and there have been calls for a public inquiry by the British authorities. That has not been met with any support from the current Irish Government or the Taoiseach, who has point blank refused to meet the survivors group headed by Mr. Michael Gallagher in Omagh. It is an unacceptable disgrace. The eye is currently off the ball with events in the North and, more important, with the public inquiry in this instance. I ask the Leader to invite the Taoiseach before the House to debate the North of Ireland. We will all be talking about it when it comes to the week of 12 July.

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

**Senator Brian Ó Domhnaill:** By then it will be too late so we should have the discussions now.

**Senator Marc MacSharry:** I agree with Senator Conway that there should be an urgent debate with Ministers about the ambulance service. After watching the programme the other night and hearing from representatives of the ambulance organisation throughout the country, one wonders why the Taoiseach did not dispatch the Secretary General of the Department of Health to the head of that organisation, considering the proclamations of how good it is.

We must have an urgent debate about the hospital groupings throughout the country. That point will not be lost on the Leader, with the south east so often treated in a peripheral fashion like the north west. People are aware that in the north west there is no cardio-catheterisation laboratory facility, meaning if somebody has a heart attack in that part of the country, they are at a marked disadvantage with regard to survivability and treatment compared with somebody elsewhere in the country. As a result, there are pathways to so-called centres of excellence, which in this instance would be the University College Hospital Galway. Yesterday a constituent had an angiogram there and was fitted with two stents before being returned in an ambulance to the coronary care unit at Sligo hospital. Having inquired about him at Sligo, his family was informed there was no bed for him at the coronary care unit in Sligo so he was on a trolley in the accident and emergency department. He was on it for many hours following his rough journey by ambulance to Sligo some hours after undergoing a heart procedure. He is almost 84 years of age and as I left Sligo this morning to come here to raise the issue, he was still not in a bed in the coronary care unit. If the reconfiguration of hospital groupings and the vision of the Minister amounts to something where people in their mid-80s are despatched on the same day they undergo a heart procedure on a rough road ride for three hours, to be put on a trolley in another hospital, the system is failing dismally. What protocols are in place to cover this type of situation? Are 80 year old patients being discharged randomly into ambulances and sent back to hospitals where there is no bed for them or does anybody take time to check these issues? Elderly people in the north west are sick of being treated like second class citizens. Why is it that when reports are released with much fanfare and trumpeted as progress in the health service, the reality is that an 84 year old man, following a heart procedure, is cast aside to lie on a trolley with no bed available for him? In such cases somebody somewhere is not doing his or her job. Will the Leader bring this issue to the attention of the Minister and arrange for him to come to the House to discuss it as a matter of urgency?

**Senator Ivana Bacik:** I join other colleagues in sympathising with Senator John Kelly on the death of his father. Senator Aileen Hayden and I attended the funeral in Roscommon this morning. I know the Senator appreciates the kind concerns of colleagues on his bereavement.



I again call for a debate on the issue I raised last week, namely, the recording of telephone calls in Garda stations, a serious issue which has been ongoing for the past 30 years. It is welcome that a commission of investigation will be established to investigate the extent and implications of this practice. This has been ongoing throughout the terms of office of different Governments and Ministers for Justice and different Garda Commissioners. The extent of the knowledge of all of these individuals has not yet been ascertained, but it would be worth hearing. It is also welcome that we will now have an independent policing authority and that, through the Oireachtas Joint Committee on Justice, Defence and Equality, we will see other reforms in regard to the oversight of An Garda Síochána. I hope we will at last see reform of the procedures and processes of An Garda Síochána to ensure we will not see a repeat of such practices in the future.

**Senator Aideen Hayden:** I, too, express sympathy to Senator John Kelly on the sudden death of his father, Kevin. I know he is very pleased with the support he has received from his colleagues on the death of his father.

I support Senator Ivana Bacik's call for a debate on the issue of the taping of telephone calls to a number of Garda stations. One of the advantages in travelling to Senator John Kelly's father's funeral was that we had the pleasure of listening to the debate on radio while travelling to and from Roscommon. It troubles me sometimes to hear Fianna Fáil supporters, in particular, talk out of both sides of their mouths. The bottom line is that a commission of inquiry will get to the bottom of what has been going on in the past 30 years. It seems that while we do not have MI7 here, we have MI27 which sits in some bunker somewhere in the centre of town listening to telephone conversations of which nobody else is even remotely aware. In 2008 the then Minister sanctioned new equipment for this service. He is now telling us that he was handing out money like snuff at a wake and did not notice he had spent €500,000 on this service. It is important that we have this debate and that we are not deflected from having a proper commission of inquiry.

In regard to the Minister for Justice and Equality, Deputy Alan Shatter, one must sometimes wonder what is going on in the public domain. It is a little like the situation in "The Importance of Being Ernest" when Lady Bracknell said, "To lose one parent may be regarded as a misfortune; to lose both looks like carelessness." I suspect that, rather than focusing on some of the real issues, somebody is sticking one too many banana skins in front of the Minister. We need to look a little further into this issue than the noses on our faces.

**Senator Maurice Cummins:** Senator Darragh O'Brien has proposed an amendment to the Order of Business that we bring the Attorney General to the House to account to it. Standing Order 56 states the Attorney General may be heard in the Seanad and that there can be no imposition. I am not acceding to the request.

**Senator Darragh O'Brien:** Of course not.

**Senator Maurice Cummins:** A commission of inquiry is about to be established, for which the terms of reference were under discussion at this morning's Cabinet meeting. It is grossly irresponsible of Fianna Fáil to try to impinge on such an inquiry. It is a desperate attempt to play politics with such a serious issue and I have no intention of acceding to the request.

**Senator Darragh O'Brien:** Fine. I did not expect anything different.

**Senator Maurice Cummins:** I note Senator John Gilroy's points on the crime figures he



mentioned and will endeavour to have the Minister for Justice and Equality come here to discuss them with the House.

Senators Jillian van Turnhout and John Crown referred to the Bill on smoking in cars with children. I gave a firm commitment that Report Stage of the Bill would be on the agenda on 2 April and it will be. If the Senators are suggesting it be deferred until next week, I will accede to their request, but I cannot give a commitment that the amendments will be ready. I will certainly table it for next week rather than this week and we will amend the Order of Business tomorrow in order that there will not be a gap.

Senator Jillian van Turnhout also referred to the Children First Bill. It is very near completion and will be brought to the Cabinet for approval to be published before the Houses rise for Easter.

I note Senator David Norris's points on the GAA and negotiations with Sky. It is a matter for the GAA to decide what it wishes to do, but I am sure many would share the Senator's opinion.

Senator Michael Comiskey referred to the allocation of €3 million for various projects in north Leitrim, while Senator Denis O'Donovan seconded the amendment to the Order of Business.

Senator Eamonn Coghlan spoke about Fingal County Council's decision on the question of a directly elected mayor in Dublin. That is a decision for the council. The matter will be referred back to the Minister who has said it may be discussed again after the local elections in May.

Senators Sean D. Barrett, Terry Brennan and Paul Coghlan mentioned the good news that the Government had reduced the travel tax from 10% to 3% and abolished it from yesterday, as announced in the budget. They also welcomed the move by Ryanair to open 20 new routes. This will result in many more tourists being brought to the country which can only benefit from it.

Senator Barrett proposed an amendment to the Order of Business, "That No. 11 be taken before No. 1." This is to allow him to publish his Bill which will be dealt with tomorrow. I have no problem in acceding to his request.

Senator Michael Mullins referred to the need to restore confidence in An Garda Síochána in order that we could get down to discussing the issues of the day, in particular job creation. On Thursday we will have a debate on small and medium-sized enterprises. I am sure we will have a large attendance to discuss the issue as in recent weeks many have asked for a debate on it.

Senator Ó Clochartaigh called for a debate on GP services. We will certainly ask the Minister to come to the House to discuss the issue. Quite an amount of progress has been made on primary care centres throughout the country. I am sure the Minister will be quite willing to come in and discuss GP services.

Senator Sheahan raised the need for vigilance when bringing money to banks and the difficulties with parking. It is certainly a serious matter which should be discussed by the banks and local authorities.

Senator Quinn raised the question of releasing moneys from personal pension funds. As he

rightly pointed out, the Government took a first step on this in last year's budget before Britain decided to take further action. I am sure the Minister will have it under review when the next budget comes up.

Senator O'Neill raised the fair fares campaign and the need to address the anomaly whereby students between the ages of 16 and 18 are charged more for public transport than those aged 18 who have student cards, and there is a huge difference in the amount of money charged. This should be addressed and I will certainly bring it to the attention of the Minister for Transport, Tourism and Sport.

Senator Daly raised the human tissue Bill. I have no news and, as he stated, it is unlikely the Bill will be addressed in this session. Whether it will be addressed before summer I am not sure. I do not think there has been significant progress on it.

Senator Paul Coghlan welcomed the announcement of the €1.1 million investment in Killarney House, a matter which he has addressed on many occasions.

To answer Senator Crown, I have given a commitment on deferring the legislation he mentioned. I note his points on children waiting for hearing tests. There is no question that the waiting list is unacceptable.

Senator Jim D'Arcy welcomed the announcement by the Minister of Education and Skills of €60,000 for the anti-bullying campaign for parents. This was very successful last year when 105 anti-bullying parent training sessions were attended by 3,300 people nationwide. It is a very serious issue and I am glad the Minister has announced further funding for it.

Senator Michael D'Arcy raised the difficulties between the HSE and St. Vincent's hospital with regard to consultants' pay and contracts, and called for the matter to be addressed as a matter of urgency. I am sure the Minister is well aware of it and I will certainly bring the matter to his attention.

Senator Mullen gave the findings of his commission of inquiry, which we note, but we will wait for the findings of the other commission of inquiry before having a discussion.

Senator Conway called for a debate on the ambulance service. I have sought such a debate from the Minister and I am awaiting a response in this regard.

Senator Ó Domhnaill raised the haulage charge in Northern Ireland. I do not accept his comments the Government has done little or nothing to seek an exemption. This is totally incorrect. The Government has made moves but legislation was introduced in the UK House of Commons. The issue was raised in the British-Irish Parliamentary Assembly in the past two days. The MPs from the United Kingdom agreed they would ask the relevant Minister to look again at that legislation.

Senator MacSharry raised the issue of 24/7 cardiology services in hospital groups. This is the case in Sligo Regional Hospital. It is also the case in Waterford Regional Hospital. One is unlucky if one gets a heart attack in the south east during the weekend as one must be moved to Cork. This has been an ongoing issue, and was the case long before this Government took office. The Government is trying to address the problem with the appointment of additional cardiologists in Waterford. I am sure the case is similar in Sligo. The issue will not be solved overnight. It is not a case of gillie, gillie and one has a 24/7 cardiology service. If only we

could do that. The Government is working on the issue in order to address the matter.

Senator Bacik raised the matter of the recording of telephone calls in Garda stations and the commission of inquiry. I understand the Taoiseach has outlined further information on the issue of telephone calls to prisoners, which is another very serious matter. This may have to be addressed by the commission of inquiry also. The terms of reference of the commission of inquiry will make for interesting reading. Senator Hayden made similar points.

**An Cathaoirleach:** Senator Darragh O'Brien has moved an amendment to the Order of Business, "That time be made available today to allow the Attorney General attend the Seanad in accordance with Standing Order 56 to answer questions on her management of the taping of phone calls in Garda stations". Is the amendment being pressed?

**Senator Darragh O'Brien:** Yes, it is.

Amendment put.

The Seanad divided by electronic means.

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

Amendment put:

| The Seanad divided: Tá, 19; Níl, 21. |                          |
|--------------------------------------|--------------------------|
| Tá                                   | Níl                      |
| Barrett, Sean D.                     | Bacik, Ivana.            |
| Byrne, Thomas.                       | Brennan, Terry.          |
| Crown, John.                         | Burke, Colm.             |
| Cullinane, David.                    | Coghlan, Eamonn.         |
| Daly, Mark.                          | Coghlan, Paul.           |
| Heffernan, James.                    | Comiskey, Michael.       |
| Mullen, Rónán.                       | Conway, Martin.          |
| Norris, David.                       | Cummins, Maurice.        |
| Ó Clochartaigh, Trevor.              | D'Arcy, Jim.             |
| Ó Murchú, Labhrás.                   | D'Arcy, Michael.         |
| O'Brien, Darragh.                    | Gilroy, John.            |
| O'Donovan, Denis.                    | Hayden, Aideen.          |
| O'Sullivan, Ned.                     | Henry, Imelda.           |
| Power, Averil.                       | Keane, Cáit.             |
| Quinn, Feargal.                      | Mullins, Michael.        |
| Reilly, Kathryn.                     | Noone, Catherine.        |
| Walsh, Jim.                          | O'Donnell, Marie-Louise. |
| White, Mary M.                       | O'Neill, Pat.            |
| Wilson, Diarmuid.                    | Sheahan, Tom.            |
|                                      | van Turnhout, Jillian.   |
|                                      | Whelan, John.            |

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

Amendment declared lost.

**An Cathaoirleach:** Senator Barrett has proposed an amendment, “That No. 11 be taken before No. 1”. The Leader has indicated that he is prepared to accept this amendment. Is the Leader accepting the amendment?

**Senator Maurice Cummins:** Yes, I am accepting that amendment.

**An Cathaoirleach:** Is that agreed? Agreed. Is the Order of Business, as amended, agreed to?

**Senator Darragh O’Brien:** No.

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

### **Higher Education and Research (Consolidation and Improvement) Bill 2014: First Stage**

**Senator Sean D. Barrett:** I move:

That leave be granted to introduce a Bill entitled an Act to consolidate the Irish higher education and research sector so as to ensure a more efficient, responsible and effective structure for delivering quality education, research and knowledge resources to the Irish people.

I thank the Leader for agreeing to this. I request that leave be granted to introduce a Bill to provide for the development of a consolidated, legislative framework for higher education and research in Ireland to create a more modern approach to public expenditure management for funding higher education, to place all universities, institutes of technology and the new technological universities under one single regulatory structure and to create a clearer definition of academic tenure and academic freedom. The Bill does not change or modify any existing resource demands. All the proposals contained within it use existing resources and aim to more efficiently direct those resources.

Question put and agreed to.

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

**Senator Sean D. Barrett:** At 3 p.m. tomorrow, Wednesday, 2 April.

Second Stage ordered for Wednesday, 2 April 2014.

## **Fines (Payment and Recovery) Bill 2013: Committee Stage**

**An Cathaoirleach:** I welcome the Minister of State, Deputy Fergus O'Dowd, to the House.

Section 1 to 5, inclusive, agreed to.

### **SECTION 6**

**An Cathaoirleach:** Amendments Nos. 1 and 2 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 1:

In page 9, line 37, to delete “Subject to *paragraph (b)*, the option” and substitute “The option”.

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Fergus O'Dowd):** I am standing in for the Minister, Deputy Shatter, who has to attend to other business this afternoon. He sends his apologies.

I propose to take amendments Nos. 1 and 2 together. In the Bill, as it stands, only fines greater than €100 in value can be paid by instalments. However, under section 6(5)(b) where more than one fine is imposed at a court sitting, these fines can be added together and if the total exceeds €100 they can also be paid by instalments. The Minister has considered this provision further in consultation with the Courts Service and has decided to replace the provision in subsection (5)(b). Amendments Nos. 1 and 2 provide instead that where a number of fines are imposed which do not qualify to be paid by instalments, the judge can take this into account in fixing the due date for payment. This could result in the judge fixing a later due date for payment for three €50 fines than he or she would have fixed in the case of one fine of €150, which could be paid by instalments, had been imposed.

Amendment agreed to.

Government amendment No. 2:

In page 10, to delete lines 2 to 4 and substitute the following:

“(b) Where 2 or more fines are imposed on a person at a court sitting and the option to pay any one or more of those fines by instalments is not available because of the operation of paragraph (a), the court may, in its order specifying the date by which such a fine is required to be paid in respect of which such option is not available, specify, if it thinks it appropriate in all the circumstances, a date that is later than the date it would have specified if that option had been available in respect of that fine but not taken by the fined person.”.

Amendment agreed to.

Section 6, as amended, agreed to.

### **SECTION 7**

**Acting Chairman (Senator Michael Mullins):** Amendments Nos. 3, 4 and 8 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 3:

In page 10, to delete lines 16 to 21 and substitute the following:

“(a) subject to subsection (2)\*, make a recovery order,

(b) make an attachment order, or

(c) make a community service order if section 4 of the Act of 1983 has been complied with.

(2) The court shall not make a recovery order in respect of the fined person (not being a body corporate) unless the fine or, as may be appropriate, that part of the fine that remains unpaid—

(a) exceeds such amount greater than €500 as may be prescribed, or

(b) if no such amount stands prescribed, exceeds €500.”.

**Deputy Fergus O’Dowd:** These amendments address a number of issues. In the first instance, the Minister has considered again the orders to be made in default and is proposing a change from what is currently in the Bill. In the Bill as it stands, a court can make any one of an attachment order, a recovery order or a community service order in default. The Minister proposes to change this so that the court will under amendment No. 4 first consider making an attachment order. In the event that the court decides not to make an attachment order, it can then make either a recovery order or a community service order.

The Minister is also proposing in amendment No. 3 that recovery orders will only be made where the fine exceeds €500 in value, unless the fined person is a company. This is to avoid the appointment of receivers to recover small fines. Accordingly, except where companies are concerned, recovery orders may only be made where the court decides that it is appropriate to do so and the fine is greater than €500.

Amendment No. 8 is consequential to amendment No. 3 in relation to the making of recovery orders where the fined person is a body corporate. Under section 2(2) of the Courts (No. 2) Act 1986, where a company defaults on a fine, the fine is to be recovered by the seizure and disposal of the company’s assets. Amendment No. 8 repeals this provision in the 1986 Act so that companies will now be dealt with in accordance with the provisions in section 7, which allow for the appointment of a receiver to recover the fine.

**Senator Jillian van Turnhout:** Were the concerns expressed by the Irish Penal Reform Trust about the use of community service orders under section 7 taken into account in these amendments? While I admit that the Bill provides useful safeguards against the automatic use of community service orders, their inclusion could none the less have a broadening effect. The use of community service orders for the non-payment of fines may undermine judges’ confidence in the suitability or appropriateness of making an order as an alternative to a custodial sentence of up to 12 months, as provided for in the Criminal Justice (Community Service) (Amendment) Act 2011. The Irish Penal Reform Trust argues that consideration should be given to clarifying the use of community service orders under section 7 of the Bill, as distinct



from their use under the Criminal Justice (Community Service) Act 1983. I recognise that the Minister of State, Deputy O'Dowd, has been handed this brief but I ask that that the issue be clarified on Report Stage.

**Deputy Fergus O'Dowd:** A priority is established beginning with the attachment order, which is attached to earnings rather than the individual. I presume that a recovery order would be made where assets are available to be disposed of and that a community service order would be used where it is not possible to recover assets. A community service order provides for discretion in that context and that is probably why it has been included in the Bill.

Amendment agreed to.

Government amendment No. 4:

In page 10, to delete lines 35 to 38 and substitute the following:

“(4)(a) The court shall, after considering a statement provided to it pursuant to *subsection (3)* in deciding what order to make under *subsection (1)*—

(i) first, give consideration to making an attachment order in respect of the fined person, and

(ii) second, if it is satisfied that it would not be appropriate for it to make an attachment order in respect of the fined person, give consideration to making, subject to *subsection (2)*, a recovery order or community service order in respect of the fined person.

(b) Where the court is satisfied that it would not be appropriate for it to make an attachment order, recovery order or community service order in respect of the fined person, it may commit the person to prison in accordance with section 2 or 2A of the Act of 1986.”.

Amendment agreed to.

Section 7, as amended, agreed to.

## SECTION 8

Government amendment No. 5:

In page 11, line 25, to delete “*subsection (4)*” and substitute “*section 7(2)*”.

**Deputy Fergus O'Dowd:** In this Bill, there is an incorrect cross-reference to subsection (4) at the start of section 8(1)(a). This amendment corrects the reference which should be to section 7(2).

Amendment agreed to.

**Senator Feargal Quinn:** I move amendment No. 6:

In page 11, to delete all words from “receiver,” in line 35 down to and including “amount of—” in line 38 and in page 12, to delete lines 1 to 4 and substitute the following:

“receiver.”.

The ability of a court to seize a person's property and to sell it in the event of non-payment of a fine is going overboard, is not necessary and goes too far. With this provision, the receiver shall be able to seize a person's home and gain the proceeds of the sale of the person's home.

The amendment proposes to "delete all words from "receiver," in line 35 down to and including "amount of—" in line 38 and in page 12, to delete lines 1 to 4 and substitute the following: "receiver." When we examine legislation, we must remember what we are trying to do, which is something that is often forgotten. The Government is saying people's properties should be protected in the context of banks seizing them when they do not keep up with mortgage payments but in this legislation, it is saying a person's property could be seized and sold. On top of that, the proceeds of the sale would be given to the receiver for the relatively small offence of not paying a fine. That is a massive disparity.

How can the Government promise citizens that their homes will be protected from banks while at the same time drawing up legislation where a receiver can seize a person's house in the event of non-payment of a fine? Let us treat people like the adults they are. I also see one's home as part of one's fundamental rights.

The Minister may argue this is a last resort, which I think was the case made on Second Stage, but let us be a sophisticated country and not some banana republic as the legislation almost implies. Irish people have a particular reason for being property owners and this part of the legislation, which infringes on much of this right, is not in the right spirit. Do people know that in the legislation, there is another way for their property to be seized? How many home owners know that?

If we are to be reasonable as legislators, then this provision should be removed. We should not impose this sort of medieval legislation on citizens. I urge the Minister of State to accept this amendment and to show some common sense. The legislation relates to fines and not murder. How on earth does a person's property come into this legislation? This is over the top.

When we talked about this on Second Stage, it was said that this would not happen but it was just giving the power. I think we are all of the opinion that if somebody does not pay a fine, we should find some way to make him or her do so. However, to have the right to go as far as this is going much too far.

**Deputy Fergus O'Dowd:** I thank Senator Quinn for raising this issue. The amendment, if accepted, would have the effect of allowing for the appointment of a receiver under section 8(1)(a) but would prevent the receiver from seizing property and selling it. This would greatly reduce the efficacy of the receiver provisions in the Bill.

I do not think the definition of property here is a house. Subject to correction, I understand the average fine is €300. It is an appalling vista that 8,000 people went to jail last year for not paying fines of around that amount. This is progressive social legislation in that people will not be sent to prison. The property is not the home but property amounting to the value of the fine. If the property is not their home, it would be to the value of the fine. The average fine is €300 and if property is involved, it will be a much smaller item than a person's home, which is critical to them. The court is required to take the person's financial circumstances into account. When the fine is being fixed, notwithstanding the provision for same in statute, the court must take into account the person's income. The fine may under the terms of the Bill be paid in instalments over 12 months. It is only if the person fails to pay the fine in full and the court

decides that it is not appropriate to make an attachment order that the receiver provisions are engaged. Even then, the court can choose at its sole discretion to make either a recovery order or a community service order. Following the acceptance of amendment No. 3, it may only make a recovery order where the fine exceeds €500.

These receiver provisions are balanced and fair. They are on the Statute Book in a less nuanced form in the Fines Act 2010. They fit with the overall architecture of the Bill and the Minister is not prepared to amend them as the Senator suggests. I hope the issues as I have outlined them may put the Senator's mind at ease.

**Senator Feargal Quinn:** My mind is not put at rest at all because if somebody's home is not going to be taken from him or her, the legislation should state that. I acknowledge the fine may be €300, €400 or €500 and a house is more valuable than that but if that is so, constraint should be provided for in this section. It is said an Englishman's home is his castle but it is going too far in Ireland that somebody can invade one's home for non-payment of a fine. There must be some other way we can address this.

**Senator Jillian van Turnhout:** I support the Senator who has raised a valid point. I take the Minister of State at his word but the Bill states "seize and sell property belonging to the fined person and recover from the proceeds of the sale of that property a sum equal to the amount...", and the amount is not specified. We are taking an extreme example but Senator Quinn's comments are valid. Perhaps a definition of "property" is needed to clarify that we are not talking about a family home.

**Deputy Fergus O'Dowd:** The provisions relating to recovery orders are the same as those in the Fines Act 2010. While the issue of a person's home is not addressed, it is difficult to conceive of a situation where a court would permit the seizure and disposal of a person's home to recover a fine. It would have to act proportionately. Under the legislation, the fine should be set at a level that takes account of the person's financial circumstances. Presumably, if the person has no account or assets other than his or her home, the fine would be set at a low level. I could not imagine a judge permitting the seizure of a house to pay a €300 fine. Even if such an order was made, I am sure it would be challenged quickly in a superior court. Assuming the small fine is not paid, the case would then come back before the court. Assuming the person is not working, the judge will then proceed to consider either making a recovery order or a community service order. If the fine is less than €300 and the person has no money or assets, it cannot be the subject of a recovery order following the acceptance of amendment No. 3. The person will either have to do community service or be sent to prison.

If the fine is more than €500, the court has the choice but it must act judiciously. It is difficult to see how a decision to permit the seizure of a family home to satisfy a small fine would survive a challenge to the validity of the order of the court. In these circumstances, the Minister is satisfied that the legislation will not result in the seizure and disposal of family homes.

**Senator Martin Conway:** The issue Senator Quinn has raised has validity to be examined in greater detail based on the Minister of State's reply that this could happen under the Fines Act 2010 anyway. It is an excellent point but perhaps the Fines Act 2010 needs to be rectified. I ask the Minister of State to revert to the Minister for Justice and Equality on studying the possibility of changing that Act. Somebody's home need not necessarily be made of bricks and mortar. For example, it may be a mobile home worth only €1,000 or €1,500. Therefore, we must be careful about our definitions of "home" and "principal primary residence". Senator

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Quinn should note the point made was excellent and that the issue was extremely well spotted. We may need to go further than the Bill before us in dealing with it. I suggest that some work be done on the 2010 Act as opposed to delaying this Bill.

**Deputy Fergus O'Dowd:** I will bring the comments of the Senators to the attention of the Minister for Justice and Equality for due consideration. I take the points they have made, particularly the last one. I will ask the Minister to re-examine the issue.

**Senator Feargal Quinn:** I will withdraw the amendment for the time being and we will have a look at it again on the next Stage.

Amendment, by leave, withdrawn.

Progress reported; Committee to sit again.

### **Business of Seanad**

**Senator Feargal Quinn:** On a point of order, the Order of Business today refers to Committee Stage of the Fines (Payment and Recovery) Bill 2013. I am now told we are planning to take Committee and Remaining Stages. Is that correct? This certainly is not on the Order Paper.

**Senator Martin Conway:** My understanding is that the Leader proposed on the Order of Business this morning that we take Committee and Remaining Stages.

**Senator Feargal Quinn:** That is a change from what is on the Order Paper. I did not realise that.

**Senator Martin Conway:** I stand to be corrected. Perhaps a direction from the Chair is required. I believe that if the Leader makes a proposal on the Order of Business, it supersedes what is on the Order Paper. Is that the case?

**Acting Chairman (Senator Michael Mullins):** By agreement of the House.

**Senator Feargal Quinn:** I accept that; I misread it.

**Senator Sean D. Barrett:** There is an item that we are not taking tomorrow. The Order of Business for tomorrow had to be changed because amendments from the Department of Health on the smoking in cars legislation are not ready. Therefore, we do have a slot if there is willingness on the Government side to take Report Stage of the fines legislation tomorrow. This would allow us to consider these matters overnight rather than have the House suspend. This is a possibility and I leave it to the judgment of the Cathaoirleach and the Leader. At least, we have the option of using the slot.

**Acting Chairman (Senator Michael Mullins):** I understand the House has ordered that all Stages be taken today.

**Senator Feargal Quinn:** I accept that; the point I made was that I did not realise it. It was not on the Order Paper. I missed the statement that all Stages would be taken today. Senator

Barrett has outlined an option. I would like these matters debated today and to give the Minister a chance to consider them overnight. Perhaps Remaining Stages could be dealt with tomorrow.

**Senator Jillian van Turnhout:** On a point of order, perhaps we could ask the Leader to consider changing the order before we conclude Committee Stage. There are two points to which we said we would return on Report Stage. Perhaps there is a reason for postponement. I ask that a call be made to the Leader to consider taking Report Stage tomorrow or on another date on which the Minister will be available.

**Acting Chairman (Senator Michael Mullins):** I will check that with the Office of the Cathaoirleach.

### **Fines (Payment and Recovery) Bill 2013: Committee Stage (Resumed)**

Question proposed: “That section 8, as amended, stand part of the Bill.”

**Senator Feargal Quinn:** I am opposed to section 8 in its entirety. The whole section, including subsection (3), sets out the powers of the receiver in regard to the seizure, holding and disposal of the property of a person in respect of whom a recovery order is made by the court — for instance, in respect of the non-payment of a fine. The receiver has the power to enter a premises, including a dwelling, alone or accompanied by a member of the Garda Síochána and to demand and take possession of the property of the person who has not paid the fine. I am concerned by this part of the Bill, which has the potential to worsen how our fines system operates, as it increases fear. We could have a situation where people have no income and cannot pay their way. The next thing they know, a stranger with a legal right is entering the property and demanding, and taking away, something that could be precious to them. With the legislation, it will be an offence to stop the person from taking away property. That is extraordinary and must be, at the very least, contrary to the basic human rights of any citizen. At worst, it may be anti-constitutional, particularly in respect of Article 40 of the Constitution. Article 40.5 of the Constitution reads: “The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.” We are now creating such a law. We are allowing people other than the Garda Síochána to enter a person’s home by force.

Have legal experts or experts on policing been consulted on the legislation? I am sure the Government may say that the provision to enter a person’s home and seize property is nothing to worry about. The Minister of State gave the impression that it is not the intention, but I do not agree. The provision should be taken out as it may be anti-constitutional. Can the Minister of State comment on whether any study has been carried out to examine whether this is compatible with the Constitution? It seems to be open to challenge. Should we pass the legislation if there is the slightest doubt? I do not think we should. Legislation should be watertight, as the Minister of State knows well.

I draw the attention of the Minister of State and other Senators to section 6(2) of the Criminal Law Act 1996, which allows entry and search of any premises, including dwellings, for the Garda Síochána to make an arrest in certain circumstances; that is, to enter on a specific criminal matter. Non-payment of a fine does not have any relation to those clauses. Indeed, by enacting the legislation as it stands, it is eroding the power of the Garda Síochána, as it gives other

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actors more power to enter property, which is something that is also worrying. I do not think we should interfere in this delicate matter. We should not be adding to the list of people who can enter a person's home and seize his or her property. It is an extraordinary development.

Evictions of people from their houses are stirring up controversy, and there is an obvious difficulty with sheriffs entering people's homes for the purpose of repossession. Ireland, with its history in the 19th century, should not find this acceptable. Why is the Government introducing legislation that gives receivers the right to enter by force? Senators, and the general public, will see this obvious and massive discrepancy. As the Seanad, we must stand up against this. It is not correct to confer these massive powers on someone for the small offence of non-payment of a fine. This part of the Bill should be significantly changed or, if that is not possible, deleted in its entirety. In this country, thankfully, it is quite difficult for a Garda to enter a person's property, and he or she usually needs a warrant. That provision is there for a reason: to protect a person's basic human rights. The Bill changes that situation and it means a receiver now has the right to violate the dwelling of a citizen for a comparatively trivial matter. I am sure those who fought for the foundation of the State would be wholly opposed to this move. For this and many other reasons, I object to this provision in the Bill, and my amendment aims simply to ensure a person's fundamental rights are not infringed. I repeat that I do not think anyone should be allowed to enter premises and seize property without the presence of a member of the Garda Síochána. This is something that is unprecedented and, worse than a police state, it is the privatisation of police powers legalised by the Government. That is the black and white of the situation.

Subsection 5 provides that the receiver may delegate the function to enter a person's house and seize property. This is not compliant with a functioning rule of law. To sum up, my amendment is specifically concerned with the rights of the receiver outlined in this part of the Bill, namely, to enter a person's property by "reasonable force" potentially without a member of the Garda and to demand and take possession of a person's property. However, given that there are so many references to the powers of the receiver in section 8, my amendment proposes to delete the entire section.

I call on the Minister of State to delete this part of the Bill and accept this amendment. I do not think that many people are aware of this part of the Bill and we as legislators have to stand up. At the very least, I want citizens to know about this quite extraordinary development and put this on the record for everybody to see. I urge the Minister of State to do the sensible thing and remove this corrosive part of the Bill.

Progress reported; Committee to sit again.

### **Business of Seanad**

**Senator Martin Conway:** I wish to amend the Order of Business to the effect that we take only Committee Stage of the Bill today and take Report Stage next week.

**Senator Feargal Quinn:** I thank the Acting Leader for that. It puts my mind at rest. It is very considerate. We will not oppose the Bill now but can debate it between now and next week.



**Acting Chairman (Senator Michael Mullins):** Is that agreed? Agreed.

### **Fines (Payment and Recovery) Bill 2013: Committee Stage (Resumed)**

Question again proposed: “That section 8, as amended, stand part of the Bill.”

**Senator Sean D. Barrett:** Social thought and studies about imprisonment in Ireland, and the damage it does to people, show that imprisoning people who have trouble paying a television licence, for example, is an extremely expensive and disruptive way of dealing with matters. I liked the Minister of State’s emphasis on the attachment of earnings and deductions from social welfare payments.

I am concerned about the provisions in this section for “imprisonment for a term not exceeding 12 months” and “imprisonment for a term not exceeding 5 years”. I thought we were trying to move away from debtors’ prisons. Why retain such lengthy sentences when the emphasis in modern criminology is on getting in the money and avoiding the cost to the State of imprisoning people, many of whom are allowed out remarkably quickly?

I support the bona fides of the Minister for Justice and Equality, Deputy Shatter, and of the Minister of State at the Department of the Environment, Community and Local Government, Deputy O’Dowd, in that regard. Are these such serious items that we still envisage non-payment can have one jailed for five years or 12 months? Is there a general view in the Department of Justice and Equality we should be moving away from imprisonment? I thought, in line with popular opinion, the Oireachtas would no longer wish to imprison people for owing relatively small sums of money.

**Senator Martin Conway:** I appreciate what Senator Barrett says. Sometimes, however, prison needs to be used as a deterrent. Unfortunately, all too often the first response was to send someone to prison. In recent years, 8,000 people have been imprisoned, even just for a day, for non-payment of fines. This Bill is reforming in that it will dramatically reduce that number and make alternatives available, such as collecting the money at source from someone’s workplace. I would like to see this method extended to social welfare and pension payments. I cannot understand why it is not done. It should be equitable. The sharing of information between State agencies is welcome and should have happened years ago, and should happen more than it does. On the contrary, I suggest that this piece of legislation will dramatically reduce the revolving door within prisons as a result of non-payment of fines. There will be sensible ways of collecting fines, including the likes of community service.

To be fair to the Minister for Justice and Equality, Deputy Shatter, he is committed to alternatives to prison, as evidenced by his support of the Private Members’ motion on community courts that I tabled three or four weeks ago, and the commitment to set up a pilot community court between Store Street and Pearse Street Garda stations in Dublin by the end of this year. They are testament to his commitment to ensuring that prison is a last resort. Nevertheless, there must be last resorts, and in the final analysis, courts should have the option available to them if nothing else works.

**Acting Chairman (Senator Michael Mullins):** How stands the section?

**Minister of State at the Departments of the Environment, Community and Local Government (Deputy Fergus O'Dowd):** I thank the Senators for their comments and views and I understand the concerns. I suppose the proportionality of the action is key, and the Senator is concerned that if the action is not proportionate to the initial offence, there will be a significant adverse impact.

Section 8 provides for the appointment of receivers under a recovery order made by the court. Recovery orders will be made under section 7(1) and receivers will be able to recover the fine or seize and dispose of assets to recoup the fine. Section 8(3) sets out the powers and duties of the receiver, with section 8 allowing the receiver, assisted if necessary by the Garda Síochána, to enter a person's premises, including the dwelling, to take possession of property. The Senator opposes section 8 and the recovery order provisions. It is worth recalling that these provisions are already on the Statute Book and the provisions contained in this Bill are not as onerous as those which already exist.

Under the 2010 Act, recovery orders were to be made every time a fine was imposed and activated once a person defaulted on paying a fine. This meant that, had the Minister commenced the relevant provisions of the 2010 Act, every fined person risked the appointment of a receiver to recover the fine. Under this Bill there is a less onerous provision. Instead, recovery orders will only be made after a person has had a year to pay a fine and where the court decides that it would not be appropriate to make an attachment order. Even then, the court has a free hand to make either a recovery order or a community service order, and following amendment No. 3, it can only make a recovery order if the fine exceeds €500.

I appreciate the Senator's concerns regarding the question of entry into a premises. These provisions relating to receivers are similar to those relating to sheriffs of the Revenue Commissioners. Receivers must be appointed by the Government and, critically, they will operate in accordance with a recovery order made by the court. Nobody can act without the orders of a court and only after due and proper consideration.

We must not lose sight, however, of what we are talking about. We are dealing with people who have the cash or other assets to pay a fine and have refused or failed to do so. The court would have formed the opinion that these parties have the required assets. They would have provided the court with a statement of their financial circumstances and the court would have decided it was appropriate to make a recovery order and appoint a receiver. This is not a draconian provision, as it would be used after due consideration and after a fine of more than €500 had not been paid for at least a year. The provision is balanced and fits with the overall tenor of this Bill. The approach is to set fines at a level that people can afford to pay, and it is to make it as easy as possible for them to pay by making instalments available to everyone. Where a person fails to pay the fine, this puts in place alternatives to imprisonment. As has been noted, more than 8,000 people went to jail last year for reasons that could have been avoided. The Minister's intention is to ensure there are alternatives in place so as to avoid such imprisonment. The Government believes it has a role to play in a comprehensive approach to the recovery of fines, through recovery orders, albeit a lesser role than that provided for in the 2010 Act. Therefore, its view is that section 8 should stand part of the Bill.

Senator Barrett made a point earlier to which I would like to respond. It has been drawn to my attention - I stand corrected by the Senator's superior knowledge - that where the receiver makes or causes to be made an entry into a record, if that record is false or misleading in any material respect and if he or she knows it to be false or misleading, he or she shall be guilty of an

offence. It is the receiver who goes to jail in this case. On summary conviction, a receiver will be subject to a class A fine, imprisonment for a term not exceeding 12 months, or both, or on conviction on indictment can face a fine of €50,000, imprisonment for a term not exceeding five years, or both. This refers to the receiver, not the offender. I hope this is helpful to the Senator.

Question put and agreed to.

Sections 9 to 13, inclusive, agreed to.

#### SECTION 14

Question proposed: "That section 14 stand part of the Bill."

**Senator Feargal Quinn:** I would like to speak on sections 14, 15 and 16, as they all cover the area of deductions from earnings. I have concerns with regard to the State interfering directly in a person's personal finances. However, this has been done already in some areas - for example, where the State has imposed the pension levy.

My real concern is that the court may make an order directing the person's employer to deduct a fine from the person's earnings and to pay the sums deducted in that matter or specified in the order. The issue of fines is a private matter and should remain so, and I do not agree that a person's employer should become another party to the matter of a fine. The court should be allowed to make an order against the person to pay through his or her earnings, but should not be allowed to instruct the employer to deduct and pay the sums involved. This would be another burden and barrier for business and would increase costs, and I am totally opposed to it.

As an employer for many years, I was shocked to see more barriers being imposed on me as an employer. I have spoken on this issue quite a bit at the Oireachtas Joint Committee on Jobs, Enterprise and Innovation, and I believe we must remove these barriers. This may be seen as a small measure, but in business, particularly in the retail business, margins are very tight. A small or medium-sized business could well be pushed over the edge by these new rules requiring it to comply with attachment orders. I am sure Senators with business experience would understand my concerns in this area.

In addition, subsection (7) makes it an offence for an employer, without reasonable cause, to fail to comply with so-called attachment orders. I believe it is a backward step in our fines system to impose such an obligation on a business. Placing stringent and ridiculous obligations on businesses throughout the country at this time is extraordinary. This is a time of recession and we should be setting up conditions for businesses to grow and develop. This part of the legislation impedes this. I wonder what the Minister for Jobs, Enterprise and Innovation, Deputy Bruton, and the Minister of State, Deputy Perry, think of these parts of the Bill. Did the Minister consult them on this part of the Bill? My guess is they would not be happy with it.

If I was an employee and had a problem paying a fine, I would be upset to know that my employer knew my situation and that this could put my reputation and job in jeopardy. This would be the case if we pass the Bill as it stands. We should not drag all of these parties into the minor matter of a fine. Let us not air people's dirty linen in public. I believe sections 14, 15 and 16 should be deleted in their entirety if we are serious about business in this country.

*5 o'clock*

Let us not put more red tape on businesses for the purpose of fines. Let it be between the

court and the person who has to pay the fine. Do not bring the employer in as a third party; keep it simple for everybody.

As a business person with many years' experience of starting a business, running it on a day-to-day basis and creating jobs, I totally oppose these parts of the Bill. It is clear in my mind, and would be to any rational person, these parts of the Bill are not needed. I call on the Minister of State to remove these sections of the Bill and I believe that employers, especially in SMEs up and down the country, will have a major concern about these sections.

I have raised this part of the Bill with several business owners and they could not believe that this was included in it. They were shocked. For this reason I urge the Minister of State to accept the amendment to take these out. If somebody is charged to pay a fine that is his or her business but it should not also be the business of his or her employer to have to collect it for the State. I believe that should be opposed.

**Senator Martin Conway:** When Senator Quinn speaks on issues related to business he has to be taken extremely seriously because he created thousands of jobs in this country over many years. That said, I do not necessarily agree with his position on a third person. I believe it should be cost-neutral and should not end up being a negative cost to an employer if he or she has to deduct at source.

This Bill aims to prevent 8,000 people having to go through the revolving doors of Mountjoy and other prisons. It would be the lesser of two evils. There is perhaps scope to refine it and to include assurances to businesses and people that it will not impose a cost and unnecessary red tape. Perhaps some refinement of the sections that would go some of the way towards alleviating Senator Quinn's concerns. I do not share his views on the principle but it should be cost-neutral and without red tape, as much as possible. We have some breathing space between now and Report Stage so the Department, the Minister and his officials might consider including some assurances that it would at least be cost-neutral.

**Deputy Fergus O'Dowd:** Senator Quinn wishes to see this section removed from the Bill but the section provides for the making of attachment orders directing a person's employer to deduct a fine from the person's earnings and pay it to the Courts Service. The introduction of attachment of earnings is a commitment in the programme for Government and it is one that makes a lot of sense.

When the court imposes a fine the person on whom it is imposed is required to pay it, that is the law, after due process. If that person is in employment, with sufficient earnings to pay the fine, he or she should pay it. There is no doubt about that. If the person chooses not to pay the fine the State is entirely within its right to recover the fine from the person's earnings. As to the additional work that attachment orders will create for employers, attachment orders have been a feature of family law for almost 40 years and employers are also required to make other deductions from employees' earnings routinely. Payroll administration, as the Senator is aware, is well equipped to make all sorts of deductions, at the instigation of either the employee or the State. An employee can avoid all of this by paying the fine. This applies only at the end of a year-long process, if he or she has not paid. The attachment provisions have to be seen as part of an integrated approach.

As I understand it, the name of the employer is not mentioned in court. The judge makes the order. There is no publication of the employer's name. The 2010 Act allows for the publication

of the names of people who default on their fines. That has been omitted from this legislation. It will not continue. The privacy of the employer is not breached in this context.

The logic of the Senator's position is that, even though a person can afford to pay a fine the State should not make any effort to recover it. While I appreciate the Senator holds a view, I believe he errs, when the person has the income to pay the fine. I respect his views but the Government stands with the majority of people who pay their fines and will make every effort to recover them from those who can afford to pay them. We think, therefore, that this section should stand part of the Bill.

**Senator Feargal Quinn:** I understand what the Minister of State says, and the State should do its best to get back the money it is owed. I am trying, however, to avoid placing more burdens on businesses. Every big business starts as a small business. If we place more burdens, difficulties, barriers and red tape on businesses it is less likely they will get off the ground. The person fined should pay. We should find a way to do that but it should not involve the employer.

**Senator Martin Conway:** I forgot when commenting on the section to ask what is the logic for not including attachment orders to State pensions and social welfare payments? Surely it is reasonable, if the burden of attachment orders is imposed on SMEs and other businesses – and I sincerely hope that can be ironed out on Report Stage – the same logic should apply to the State and its payment sections? I am bemused by it.

**Deputy Fergus O'Dowd:** The maximum order that can be made where someone receives a social welfare payment is €2 per week. That would take a significant length of time. It is felt that the individual who must pay the fine should consider the three options, and one is therefore not being considered. The Senator could raise this on Report Stage next week.

**Senator Martin Conway:** It just does not make sense.

Question put and agreed to.

Section 15 agreed to.

Amendment No. 7 not moved.

Sections 16 to 19, inclusive, agreed to.

SECTION 20

Government amendment No. 8:

In page 24, between lines 27 and 28, to insert the following:

“(iii) by deleting subsection (2),”.

Amendment agreed to.

Section 20, as amended, agreed to.

Sections 21 and 22 agreed to.

SECTION 23

**Senator Feargal Quinn:** I move amendment No. 9:



In page 27, lines 5 and 6, to delete all words from and including “Protection,” in line 5 down to and including line 6 and substitute the following:

“Protection.”.

This section provides for the sharing of data and exchange for the “purposes of assisting the courts in the collection of fines.” It details how the Revenue Commissioners, the Minister for Social Protection and “such person as may be prescribed . . . shall provide the courts with any information in their possession or control which the court may require in order to fulfil its functions in relation to the payment and recovery of fines.”

I am concerned by the provision which includes the words “such person as may be prescribed”. I am not sure what it means. It is massively open to change and even interpretation. As all public representatives should be concerned with the protection of citizens’ data, the Bill should strictly limit the sharing of information, in this case on fines.

I am particularly concerned about the sharing of information which could impact on a person who must pay a fine. Some information, for example on his or her personal possessions, could be shared with the court which would then share it with the receiver. For example, a person’s personal details of, say, his or her property, which could then be seized by someone entering his or her house, should never be shared in this way. It is unfair, unjust and an infringement on a person’s purely private life. Section 23 needs to be amended and the phrase “such persons as may be prescribed” deleted in order that “relevant person” will be limited to the Revenue Commissioners and the Minister for Social Protection. That makes common sense. As legislators, we must protect a person’s basic rights in terms of his or her private business and data protection and not leave a very ambiguous phrase in legislation, which is always dangerous. With this amendment, the limits would be much more strictly defined, meaning that a person’s basic rights would be much better protected. Only the Minister for Social Protection and the Revenue Commissioners should provide information of relevance on a person. In broad terms, that would mean a person’s tax status or if he or she was receiving social welfare payments. In the legislation we should aim to limit it to this. I, therefore, urge the Minister of State to accept this very sensible amendment which would result in a much better definition of terms and the better protection of personal data. I am concerned about the term “such person as may be prescribed”. It is too wide and open and should not be left as vague and wide as this.

**Deputy Fergus O’Dowd:** The Senator wants to delete section 23(2)(c). Section 23 deals with data sharing and data exchange. It is intended to allow the Courts Service to obtain information from the Revenue Commissioners or the Minister of Social Protection to assist in the recovery of fines. As the Senator points out, paragraph (c) allows for a person or body other than Revenue or the Minister for Social Protection to be prescribed. It is included to avoid having to amend the Bill, if necessary, in the future to apply these provisions to another body. For the time being, the Minister is satisfied that only the Revenue Commissioners and the Minister for Social Protection are concerned and has no plans to prescribe any other body. It would, however, be remiss of him to exclude the possibility of data sharing or data exchange with another body in the future. For that reason we cannot accept the amendment. As any such future prescription would have to be made by regulation that would have to be laid before the Houses of the Oireachtas, the Senator’s reasonable concerns could be addressed at that time. The legislation would be discussed in the future if a new body was to be prescribed as one with which data could be shared.



**Senator Feargal Quinn:** I thank the Minister of State for that explanation, but I am not at all happy, in particular with the concept that it is not the intention to use this provision but that the Minister wants to include it because we may use it at some point in the future. The Minister of State is correct that a regulation would have to be presented to both Houses of the Oireachtas, but we never see them, as they are included in a list. They are not presented as Bills that are brought before us for discussion. It would, therefore, slip through without being examined. We should, therefore, remove paragraph (c) - “such person as may be prescribed” - for the very reason given by the Minister of State, that it is not intended to use it but that at some point in the future we might want to do so. That is not what we should be doing.

Amendment, by leave, withdrawn.

Section 23 agreed to.

Section 24 agreed to.

Title agreed to.

Bill reported with amendments.

**Acting Chairman (Senator Michael Mullins):** When is it proposed to take Report Stage?

**Senator Martin Conway:** Next Tuesday.

**Senator Feargal Quinn:** I appreciate the fact that the Minister of State and the Acting Leader have delayed the taking of Remaining Stages to give us a chance to look again at the Bill.

**Senator Martin Conway:** Such co-operation happens in the Seanad; it does not happen in the other House.

Report Stage ordered for Tuesday, 8 April 2014.

**Acting Chairman (Senator Michael Mullins):** When is it proposed to sit again?

**Senator Martin Conway:** Ar 10.30 maidin amárach.

## **Adjournment Matters**

### **Schools Amalgamation**

**Senator Cáit Keane:** I welcome the Minister. This is a very important issue in my area, Greenhills-Limekiln, involving the proposed amalgamation of three schools into one. The schools in question are St. Peter's boys' national school, St. Paul's junior girls' national school and St. Paul's senior girls' national school. There is a lack of information on the ground about the proposed amalgamation. Nobody, including the parents, seems to know anything about it. I contacted the Department of Education and Skills about the matter in recent weeks and while I appreciated the response, it gave me no further information. A considerable number of concerned

parents want me to express their views and see if I can obtain any further information.

The archdiocese has been in touch with the three school principals to inform them about this issue. The Minister informed me in writing that while his Department was aware of the patron's proposals - the proposal has not come from the Department of Education and Skills - it had not received any proposal. I do not know if the Minister can provide further clarification. Will the Minister of State inform me when he receives the exact proposals? I raised this matter with him a short time ago, perhaps two or three weeks ago. He previously told me that any proposals on the amalgamation must involve consultation with the relevant stakeholders, parents and so on. There has been no consultation as yet.

Will the Minister of State outline the process of consultation, who initiates it, and whether the Department of Education and Skills has a role, if it is not initiated on the ground, to ensure that all the parties are consulted? Many parents have expressed concern about the process of consultation. I have not encountered much negativity to the proposal as a whole. Not everyone would be against it, as many parents would like the choice of a co-educational school. They express the desire for parental choice and involvement, rather than a dictatorial announcement. The lack of consultation and the haste of the decision really frustrated people. Many people, including myself, had asked that the amalgamation be postponed because of the lack of information.

An issue that was brought to my attention was with regard to the autistic spectrum disorder special class in St. Peter's boys' national school. Parents wondered if this special class would be retained with the same facilities in the proposed new school. The HSE Beechpark service gives a very good service in providing the school with clinical support in the area of psychology, behaviour management and speech and language. The girls' schools do not have a similar special class. Parents want to ensure that all of the existing services will be retained and are anxious to learn what additional facilities will come on stream when the boys' and girls' schools are amalgamated. Will the Minister of State please comment on this point when responding to the questions?

What is the timeframe for the commencement and the procedure for the amalgamation? Is there a process for consultation with all the parents? Will the current facilities and building be used to accommodate the amalgamation? Will individual classes be amalgamated? The boys' national school is amalgamating with the girls' junior and senior national schools. Some parents welcome co-education but others may not. Will parents have a choice of single-sex education? Will a costing of the proposal be available from the Department of Education and Skills and will there be a comparison with the current cost of funding three schools? When will a project team be appointed to oversee the amalgamation? What will happen to the redundant school building when the amalgamated school is in operation? Will the redundant school building be available for educational purposes in the area? At present one of the schools has a parents' room, and the parents really want to ensure that such a facility will be available in the amalgamated school.

I have asked a great many questions, which I am prepared to put in writing if the Minister does not have all the answers for me this evening.

**Minister of State at the Department of Education and Skills (Deputy Ciarán Cannon):** I thank the Senator for raising the matter as it provides me with the opportunity to clarify the current position in relation to the proposed merger of St. Peter's boys' national school and

St. Paul's girls junior and senior primary schools.

I wish to advise the Senator that the initiative for any amalgamation may come from a variety of sources, such as parents, staff, board of management and patron or patrons of each school. Any such proposal to amalgamate schools must involve consultation with all of the relevant stakeholders. Following the consultation process, a decision taken at local level will follow. Let me stress that the decision will be taken at local level. In that regard, any proposed changes must be well planned and managed in a manner that accommodates the interests of students, parents, teachers and local communities and contributes to an inclusive education system.

Every amalgamation case needs to be considered by all involved on its individual merits. In many cases, there will be a strong case for progressing with an amalgamation. For example, in the case of very small schools with decreasing numbers, parents and the local school community may themselves see benefits in amalgamation opportunities. In areas of mature population where enrolment numbers are decreasing over time and school buildings are not being utilised to full capacity, or where there is separate single-sex provision and a local parental preference for co-educational arrangements, there can also be strong merit in such proposals. Equally, it has to be recognised that there can be significant sensitivities involved. These are best addressed through a process of local-level dialogue and consultation aimed at ensuring that any proposal meets the interests of the communities concerned.

The decision-making authority for the amalgamation of any school is the patron of the school concerned, and the decision is then subject to the final approval of the Minister for Education and Skills. In that regard, I wish to advise the Senator that while my Department is aware of the patron's proposals to merge the three schools concerned, to date the Department has received no proposal from the patron or trustees in the matter. On receipt of any such proposal, the Department will consider the matter, taking into account factors including the current provision and the future demand for primary school places in the Greenhills-Limekiln area, the future use of any buildings and any capital funding implications.

It is not necessarily the case with all amalgamation proposals that capital investment would be needed to support amalgamation. However, each case is assessed on an individual basis to determine the extent and type of accommodation required, taking into account the condition of buildings, site capacity, etc.

My Department would also generally advise the patron and any relevant stakeholders to check out their position with the relevant sections of my Department in relation to the implications of any amalgamation for school funding, school staffing and school transport so that an informed decision can be made about any amalgamation proposal.

Senator Keane raised the issue of the significant additional special needs services provided by HSE. One would assume that in any amalgamation the special needs provision would be continued on the basis that the needs arise from within the community and would consequently have to be accommodated in the process of amalgamation.

I wish to thank the Senator again for giving me the opportunity to clarify the current position with regard to amalgamations and the proposed amalgamation of St. Peter's boys' national school, St. Paul's junior girls' national school and St. Paul's senior girls' national school.

**Senator Cáit Keane:** I thank the Minister of State for his response and acknowledge that at present he has no information. The Department of Education and Skills, not the patron, is

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responsible for education. As the Minister of State stated, the initiative of amalgamation can come from many sources. There has been no consultation on the ground. As I am trying to facilitate the process of consultation, I would like to be guided on who should initiate and facilitate the consultation. Will the Minister of State come back to me with a response on that issue? Perhaps he could make himself available when all the bodies in the community come together. I understand a new principal will be appointed in one of the schools.

I rang the office of the Archdiocese of Dublin to elicit information and found it open. The person with whom I spoke told me what he or she knew. It is important for the community that consultation is initiated to get the process off the ground. I have not mentioned the role of the teachers, who are a very important element in the process of amalgamation. Their needs have to be taken into consideration as well.

**Deputy Ciarán Cannon:** The Senator is well aware that each school is an independent autonomous entity, managed by a board of management, primarily appointed by the patron and representatives drawn from within the school community. The process of consultation must be initiated by the boards of management of each respective school. One would expect that when the consultation process begins there will be ample opportunity for parents, teachers and members of the wider community to have a role in determining the shape of the process of amalgamation. Once the significant process of consultation has been completed and a firm proposal is ready to be submitted to the Department of Education and Skills, the Department has a role in the amalgamation process. It must be the decision of the community and the respective boards of management as to how the proposed amalgamation will take place. At present, it would be premature for the Department to be involved because the significant process of consultation has not taken place.

### **Obesity Strategy**

**Senator Martin Conway:** We have a problem with obesity. There has been significant research that shows that if children up to the age of 12 years are obese the likelihood of being obese into adulthood ranges from 80% to 90%. We all know the health implications and challenges that presents to the health service. I understand that based on this research the Government is planning to produce a task force report on the measures to be taken by it to reduce the incidence of obesity.

Many thousands volunteer with sporting organisation that engage children in sporting activity. Many teachers and parents take children at weekends, evenings and so on. While there is engagement at that level we need a coherent strategy and a coherent plan. I believe something will be published this year but what is the timeline and at what stage is it? When is it likely that an announcement will be made? I would welcome any insight into what is being proposed.

**Deputy Ciarán Cannon:** I am happy to take this debate on behalf of the Minister for Health and thank Senator Conway for raising this very important issue.

Senators will be very aware of the worrying trend that 61% of adults in Ireland and one in four children is overweight or obese. Reliable contemporary and locally relevant figures show that the annual economic cost of weight-related ill health in adults is €1.1 billion. Overweight and obesity are a public health priority so the special action group on obesity, SAGO, was established by the Minister for Health. SAGO has progressed many actions, such as, for example,

the healthy eating guidelines, the report on recommendations to reduce consumption of high fat, salt and sugar foods and drinks from the top shelf of the food pyramid, calories on menus initiative, obesity treatment algorithms for those in primary care health services and a three year childhood obesity campaign.

The current phase of the childhood obesity campaign, which is being run in partnership between Heathy Ireland, the Department of Children and Youth Affairs, safefood and the HSE launched yesterday and urges parents to “bring back play” and encourage children to be more active every day. It suggests that parents make practical changes to everyday lifestyle habits which would make a big difference to their children’s future health. The campaign also reminds parents about the negative health impacts of excess weight in childhood and how this can impact on a child’s quality of life. Healthy Ireland, the Framework for Improved Health and Wellbeing 2013-25 contains a commitment to develop a national physical activity plan. The health and well-being programme in the Department of Health and the Department of Transport, Tourism and Sport are co-chairing a working group comprising representatives of a range of stakeholders with an interest and an expertise in physical activity to develop the plan.

Physical inactivity is the fourth leading risk factor for death worldwide and is a key risk factor for non-communicable diseases, NCD, such as cardiovascular diseases, cancer and diabetes. There is significant evidence that physical activity promotes well-being in physical and mental health, prevents disease, improves quality of life and has economic, social and cultural benefits. It is a concern that the majority of Irish people do not meet the levels of physical activity indicated in the existing national physical activity guidelines. The national plan in development will provide a strong focus for modifying unhealthy life habits and promoting awareness of the benefits of physical activity to both physical and mental health for all ages.

There are many organisations and individuals already working to promote physical activity. The attention is, therefore, focused on operational issues aimed at encouraging greater participation in, and greater recognition of, the importance of, physical activity. It is intended that the plan will be finalised as soon as possible. A comprehensive, multi-level approach is required to address the obesity epidemic and to raise the levels of physical activity in the country and the work of SAGO in conjunction with Healthy Ireland is ongoing in this regard.

Senators may also wish to note that an EU action plan to tackle childhood obesity was recently launched. This was a success story from the Irish Presidency. To facilitate implementation of the action plan an EU-wide joint action will commence in January 2015 with Ireland leading on “The cost of Childhood Obesity in Europe”. It is clear that addressing issues of overweight and obesity in children will help in developing generations of children who can lead healthier, happier lives.

**Senator Martin Conway:** I thank the Minister for a positive and appropriate response. Recently I heard a story about a school, I am not sure which one, where after each class students were taken out to do two laps of the school and, apparently, productivity has increased dramatically. That is one simple example of a school being proactive in terms of physical activity. I am on the board of directors of the CARA Centre in IT Tralee. It is developing techniques for physical activity for people with disabilities. Its work is groundbreaking and perhaps at some stage the Minister might have the opportunity to visit the facility and speak with the team. It works on a shoestring budget. It has been so successful that people are coming from all over the world to view its adapted physical activity programme. Its achievements in a small institute in Tralee are groundbreaking internationally.



**Deputy Ciarán Cannon:** I concur with the opinions expressed by the Senator. In the past ten or 12 years we have been exceptionally careful in certain instances to suppress the opportunity for children to play in our schools because of concerns around health and safety. We need to look at models that are emerging worldwide of very structured play opportunities for children during their break times that will allow them to play and engage in significant physical activity during lunch break. I was pleased to be able to work with Ashoka Ireland in launching a pilot of an initiative emanating from the US, entitled Playworks. The pilot is up and running in a number of schools throughout the country, including in Educate Together school in Newcastle in Galway, with which Senator Trevor Ó Clochartaigh will be familiar. The initial reports from teachers and parents in that school are exceptionally positive. As Senator Conway pointed out children are more productive. The classroom setting immediately after engaging in physical play and physical activity is much more calm and measured and children, once they get the opportunity to express themselves during formal play time, are more amenable to learning during the formal classroom session. There is much to be learned in this area and many benefits can accrue in the future from adopting a more enlightened approach to play and to structured play in the playground.

**Acting Chairman (Senator Pat O'Neill):** I thank the Minister of State at the Department of Education and Skills for taking the two matters on the Adjournment and the Senators for raising the issues.

### **Child Care Services Inspections**

**Senator Trevor Ó Clochartaigh:** Cuirim fáilte roimh an Aire. Tá mé thar a bheith buíoch go bhfuil sí tar éis an t-am a thógáil leis an gceist seo a fhreagairt.

I welcome the Minister for Children and Youth Affairs, Deputy Frances Fitzgerald, and thank her for coming in to take this issue. I raise an issue around the child care facility based in Tiernee, Lettermore, Naíolann na nOileán, which is under the auspices of Muintearas Teo. Muintearas Teo is a full subsidiary of Údarás na Gaeltachta. As I understand it, the three board members are employees of Údarás na Gaeltachta so it is fully under the control of Údarás na Gaeltachta. I understand all its programmes are State funded.

I raise this issue on foot of a report I received from the Minister's office, for which I thank her, which related to an audit conducted by Pobal in respect of the child care facility for the period 1 September 2010 to 31 August 2011. According to the report, in June Pobal visited the service operated by Muintearas to verify that the community child care subvention, CCS, programme was operating in accordance with the terms and conditions. I am informed that the facility had been visited previously in 2010 and at that time and was found to be non-compliant with CCS as it was not adhering to the approved fee policy. The report states that the service was again non-compliant as it was not adhering to the approved fee policy. On foot of that, there was an investigation visit by Pobal in October 2011 to conduct a more thorough investigation of the attendance records. It took a detailed record of the actual attendance at the service. This was compiled in order to ascertain the correct record for children registered and attending regularly. The report found that there were significant differences in the attendance patterns of the children attending the service from the attendance information submitted to the Department of Children and Youth Affairs by the service. That resulted in children attending the facility for significantly less time than had been indicated in the service's submission to the Department of



Children and Youth Affairs and that there were significant differences in the numbers of children attending the service from those listed in the parental returns submitted to the Department of Children and Youth Affairs by the service. Moreover, this resulted in significantly fewer children attending the service than had been indicated in the service's submission. The investigation further concluded that the community childcare subvention, CCS, programme is not being implemented in line with the requirements of the scheme and this resulted in a financial loss to the service. To put it in a nutshell, it is fair to state the report's finding was that children were mentioned on the list who were not attending the actual service itself. Moreover, while an application was made for funding to the Department of Children and Youth Affairs via Pobal, and while €197,466 was approved in funding, after the audit was concluded it was found that the amount the service should have got in reality was €25,193. This left a sum of €124,598 to be repaid. To recap, misleading information was sent to the Department of Children and Youth Affairs or to Pobal, which was administering the funds on behalf of the Department, and on foot of this, €124,000 was received by this organisation that it is now being asked to repay. Three recommendations were made - namely, that the repayment plan of €124,000 be put in place to repay the moneys, that a written undertaking to comply with the terms and conditions of CCS in the future be made and that immediate changes be implemented to its operations to ensure future compliance. This obviously raises a number of serious issues and I wish to ascertain whether these recommendations have been complied with completely. In addition, what, if any, recommendations were made by Pobal or by the Department on whether this issue should have been forwarded to the Director of Public Prosecutions, DPP, or the Garda Síochána? This is based on the seriousness of an organisation receiving €124,598 that, according to Pobal, it should not have received, based on information that apparently was not fully truthful.

**Minister for Children and Youth Affairs (Deputy Frances Fitzgerald):** I thank the Senator. The service referred to by the Senator is participating in the CCS programme, which is implemented by my Department. The objective of the subvention programme is to make child care accessible and affordable for disadvantaged and low-income families. Targeted payments are made to support parents who qualify on the basis of their social welfare status or income profile. Those who qualify for the maximum support under the programme can have a maximum of €95 deducted from the overall weekly charge for each eligible child. The balance of the weekly charge is expected to be contributed by the parent. The subvention payment and the parental contribution are intended to meet the overall cost of providing the service. To determine the level of subvention funding to be allocated to each service, parental returns are submitted annually following the commencement of the school year. It is important to point out that as the returns provide details of the PPS number of both the qualifying parent and the child enrolled in the service, these data are available as verification. These PPS numbers are verified by the Department of Social Protection to confirm the parent's and child's eligibility. If discrepancies arise at the verification stage, the issue is brought to the attention of the services and clarification is provided. Where no discrepancies arise, payments are made that reflect the level of service of which the child is availing and the profile of the parent. Obviously, there is considerable back-and-forth communication in this regard with many services during the course of the year.

To ensure the proper implementation of the child care support programmes, Pobal, which assists my Department with the implementation of the child care programmes, undertakes on-site compliance visits - inspections, really - with participating services. One objective of the visits is to ensure that eligible parents receive the correct cost reduction in their child care fees and that the terms and conditions that govern the child care programmes are adhered to. Pobal

also provides support and guidance to the services to promote their sustainability.

As the Senator rightly stated, following a compliance visit by Pobal to the Muintearas service in 2010, the service was deemed to be non-compliant with the requirements of the subvention programme. In follow-up visits in 2011, Pobal investigated the attendance records and patterns at the service and subsequent to this, a detailed record of the actual attendance at the service was compiled to establish the correct record for children registered and regularly attending the service. When this record was checked against the information that had been returned to my Department by the service on the parental returns submitted, it was found that there was a significant discrepancy with regard to the actual profile of the children in attendance. It was clearly evident from the report that the subvention programme was not being implemented in accordance with the requirements. It was agreed, following discussions at that time in 2011 between my Department, Pobal and the management at the service, that the excess payments would have to be returned to the Department. A repayment plan was agreed whereby scheduled payments would be made to Pobal over a five-year period, ending in January 2016, with the annual repayment amount being transferred to Pobal in January of each year. Muintearas has been meeting the agreed timelines in the repayment plan.

In March this year, Muintearas approached Pobal to extend the period of the repayment plan to September 2016. The reason for this request is to ease the cashflow pressure on the service in the earlier months of the year and to spread the repayments more evenly over the year. Following consultation between Pobal and the Department, it has been agreed to permit this change to the repayment plan. This will see Muintearas making three equal payments each year in January, May and September to repay what it owes, as opposed to one larger annual payment in January of each year, which appears reasonable.

In response to the Senator's question on whether Muintearas is complying with the recommendations in the report, the answer is "Yes".

A key goal of my Department is to ensure that such community services remain sustainable in order that the local community has access to child care services. If issues can be dealt with, it is not the practice to refer matters to the Garda or the DPP. If, however, there were issues that it was thought warranted a Garda investigation or if there was a lack of co-operation with Pobal's actions, the matter would be looked at again. I am satisfied that Pobal's compliance activity continues to be an essential component of the operation of the child care schemes and that my Department and Pobal will continue to co-operate to ensure high standards of compliance and to support the sustainability of services, especially community services.

**Senator Trevor Ó Clochartaigh:** I appreciate both the Minister's comprehensive response and its clarity. This is an extremely serious issue, as I am sure the Minister will agree. A service essentially applied for €197,000 on foot of information that was incorrect and was found to be so by Pobal when it conducted its audit. I appreciate that a repayment plan is in place, which I believe raises other questions for the board of Muintearas and even for Údarás na Gaeltachta as to where the money that was paid to Muintearas went - and how is it paying it back, if all of its funding is in fact State funding for the project. This is an issue for another day.

On the legal issue, I asked someone who has a legal background to consider this matter on my behalf and that person thinks it is extremely serious in its nature. The person concerned even stated that it appears there was deception for the purposes of causing a loss to the Exchequer, which could be an offence under the Criminal Justice (Theft and Fraud Offences) Act

2001. That is the reason I raised the issue of legality and the normal role of the auditor in this regard. Are auditors conducting an audit not legally obliged to report any wrongdoing that could be illegal to the relevant authorities? This does not appear to have happened in this case, but perhaps it should have for further investigation.

**Acting Chairman (Senator Pat O'Neill):** Does the Minister wish to reply?

**Deputy Frances Fitzgerald:** Just to make the point that at the time, the service argued that a substantial number of parents who had enrolled their children in the service did not adhere to their attendance schedule. Clearly, this can happen with services, and that is the reason we have oversight by Pobal and the reason we revert to services to ask them for greater details. At the time, in 2010 and 2011, there was no follow-up with parents who had agreed an attendance pattern but whose children had not attended. Consequently, there was no structure to the hours of operation, resulting in overstaffing if the service could not predict attendance on a regular basis. I wish to inform the Senator that it is not believed that the non-compliance of this service resulted in any personal financial gain to any member of the group, and the group has been co-operative in meeting the repayment schedules.

**Acting Chairman (Senator Pat O'Neill):** I thank the Minister, Deputy Fitzgerald, for dealing with this Adjournment matter and thank Senator Ó Clochartaigh for raising it.

### **Planning Issues**

**Acting Chairman (Senator Pat O'Neill):** I welcome the Minister of State, Deputy Jan O'Sullivan, to the House.

**Senator Colm Burke:** I welcome the Minister of State and greatly appreciate her taking the time to deal with this Adjournment matter. I raise an issue that affects more than 250 houses in the constituency in which I live, Cork North Central. While some of them are one-off houses, some are being built in new housing estates. People are purchasing houses only to find they do not have land-line access, broadband or an Internet service. When one considers the issue of planning, there are all sorts of regulations with regard to services such as water, sewerage connection and many other matters, including road infrastructure. However, one issue in this respect is that no consideration is given to whether communication facilities will be made available to the house purchasers.

I have been dealing with this issue for the past six months in the area in question. I have been on to Vodafone, Eircom, Cork Community Broadband and three or four other organisations but there has been no progress on the matter. The issue was really highlighted a number of weeks ago when people could not contact emergency services after a number of car accidents owing to the icy roads. This is causing a great problem people for people who have bought houses in the area and who are trying to work from home. It is also causing a great problem for people who have children in secondary school or college in that they cannot gain access to Internet services. Access to Internet information to assist with projects for school or college is now part of student research.

I did not realise that this could be such a problem in an area. I was based in Brussels for two years, including 2009. At that time, there was a question about freeing up radio spectrum to ensure everyone could have access to Internet services. We seem to have made very little

progress in this area.

The other issue about which I am concerned is that approximately 67% of households in Ireland have access to broadband, whereas the average across Europe is approximately 76%. I am raising this issue in regard to planning. Can it be raised with local authorities so they will make telecommunications infrastructure a prerequisite when granting planning permission? The area to which I refer is stuck between three old telephone exchanges, one in Grenagh, one in Donoughmore and another in Blarney. The area is at the end of the land line from each of the three exchanges. I am making no progress on the matter. With a view to going forward, I ask that future development be taken into account when local authorities are considering the granting of planning permission. Communication services should be included as a condition.

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Jan O’Sullivan):** I thank the Senator for raising this issue. My reply is general but perhaps I will address some of the specific points at the end.

The priority the Government attaches to achieving greater integration between planning, housing and infrastructure provision is underpinned by the planning legislative and policy framework. It would be inappropriate for a planning authority to determine a planning application solely based on the standard of communications services in an area. In this regard, when making a decision on a planning application under section 34 of the Planning and Development Act, a planning authority is required to consider the overall proper planning and sustainable development of the area, as well as having regard to, *inter alia*, the provisions of the local development plan and, where relevant, the policy of the Government, Minister or any other Minister of the Government.

Local development plans provide the blueprint for the sustainable development of an area, including the co-ordinated provision of infrastructure and services, including communications. Planning authorities must respond to the circumstances of their local communities when formulating their development plans and identify the appropriate facilities required. Generally, appropriate policies and objectives for inclusion in plans will relate to the allocation and reservation of land for housing, commercial, industrial, agricultural, recreational and other uses, setting appropriate development control standards, and indicating the provision of specific infrastructure and facilities.

Section 10(2)(b) of the Planning and Development Act 2000, as amended, specifically requires a development plan to include objectives for the provision or facilitation of the provision of infrastructure including, *inter alia*, communications facilities. This objective ensures that planning authorities’ development plans can provide policies – for example, to facilitate the delivery and rolling out of broadband infrastructure in line with the Government’s national broadband plan, published by my colleague the Minister for Communications, Energy and Natural Resources in August 2012.

Section 11(3) of the Act requires a planning authority to take whatever measures it considers necessary to consult the providers of telecommunications, among others, in order to ascertain any long-term plans for the provision of infrastructure and services in the area of the planning authority.

My Department has issued guidelines to planning authorities on preparing and managing development plans that emphasise the need for the integrated provision of both infrastructure

and supporting services to facilitate the development of sustainable communities and provide for a better quality of life in working, home and leisure environments.

My Department has issued guidelines on development contributions to ensure that they appropriately promote the development of areas prioritised in core strategies, with an emphasis on reduced rates or waivers for certain categories of development. In this regard, development contributions – which are levied as part of a planning permission to contribute towards the funding of infrastructure necessary to support the proposed development – are waived to incentivise the construction of broadband infrastructure. In essence, planning authorities are specifically required to include waivers for broadband infrastructure, namely masts and antennae, in development contribution schemes to incentivise the provision of such infrastructure in local communities.

Taken together, this range of measures is designed to ensure that settlement patterns are sustainable and that development is sited in the appropriate place from an infrastructural and environmental perspective. I have no plans to review the planning regulations specifically in regard to communications infrastructure. However, this issue should feature strongly in the development plans of local authorities. The development levies should assist in providing the infrastructure. However, the point the Senator is making is that the infrastructure should be in place before development occurs. I hope my answer is helpful.

**Senator Colm Burke:** I have a major concern about planning authorities and planning contributions. I know of cases in which much development work that was to be carried out was not carried out five years after commencement despite the planning authorities having received planning contributions. There are 250 families affected directly. A new housing estate is being put in place and prospective residents are being told it is an ideal place to live. It is not ideal because people need access to services. We can force all the parties involved in development to come to the table on this issue. Considering that we are quite clear in making sure roads, an adequate water supply and sewerage services are in place, why can we not stipulate that there should be adequate communications services available?

**Deputy Jan O'Sullivan:** In the regional guidelines and the guidelines for development plans, all elements of infrastructure, including communications infrastructure, would be referenced. However, I take the Senator's point that if these are not provided for in a specific case, it presents a difficulty for householders. The relevant infrastructure should be included in the plans. If the Senator argues that planning permission should be refused because there is no broadband, for example, he should realise this might not be possible for the whole country. It is one of the issues that must be taken into account in terms of any planning decisions or development plans drawn up by the local authority.

The Seanad adjourned at 5.58 p.m. until 10.30 a.m. on Wednesday, 2 April 2014.