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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

SEANAD ÉIREANN

Dé Céadaoin, 9 Nollaig 2015

Wednesday, 9 December 2015

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Machnamh agus Paidir.
Reflection and Prayer.

Business of Seanad

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

The need for the Minister for Health to explain why an individual (details supplied) diagnosed with cancer has been refused a medical card.

I have also received notice from Senator Averil Power of the following matter:

The need for the Minister for Agriculture, Food and the Marine to ensure Howth Harbour is dredged in order to ensure its long-term viability as a commercial fishing port, leisure harbour and tourist destination.

I have also received notice from Senator Gerard P. Craughwell of the following matter:

The need for the Minister for Justice and Equality to review the preservation of pension benefits for a group of former gardaí who left the force for various reasons before 1 October 1976 having had the five years required service.

I have also received notice from Senator Catherine Noone of the following matter:

The need for the Minister for Education and Skills to outline the position on the provision of a special needs assistant for Scoil Oilibhéir, Coolmine, Clonsilla, Dublin 15.

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

The need for the Minister for Jobs, Enterprise and Innovation to introduce a salary scale for workers in the child care industry to ensure that, in the interests of quality, qualifications are reflected in the salary achieved for workers.

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 provide the necessary funding for Cuan Mhuire to enable it to provide accommodation for 35 homeless persons in its premises which it purchased in 2007 on Western Road, Cork city and in Farnanes, County Cork and which have remained vacant since owing to the lack of funding.

I regard the matters raised by Senators Mary Moran, Averil Power, Gerard P. Craughwell, Catherine Noone and Lorraine Higgins as suitable for discussion. I have selected the matters raised by Senators Mary Moran, Averil Power, Gerard P. Craughwell and Catherine Noone and they will be taken now. Senator Lorraine Higgins may give notice on another day of the matter she wishes to raise. I regret that I have had to rule out of order the matter raised by Senator Colm Burke on the grounds that the Minister has no official responsibility in the matter.

Commencement Matters

Medical Card Eligibility

An Cathaoirleach: I welcome the Minister of State, Deputy Kathleen Lynch.

Senator Mary Moran: I thank the Minister of State for coming to the House to take this Commencement matter. Once again I am raising the issue of medical cards. I understand the task force has stated eligibility must be assessed on the basis of financial means, but I deal with the issue of discretionary medical cards every week. People who have been diagnosed with terminal or very serious illnesses are coming to me. They have never claimed from the State, have always paid their taxes and have children in college without a grant or any form of assistance from the State, yet when they are extremely ill, having been diagnosed with cancer, and look for support to cover their medical expenses, their applications are refused. I have raised the case of one family in my area. The person concerned has been diagnosed with stage 3 cancer. This person applied for a medical card earlier this year and the application was refused. Additional and pertinent information was submitted and the application was again refused.

The person concerned applied for a medical card as an individual. The application was not on behalf of an additional member of the family, a spouse or anyone else, yet when the response came back, the whole family was ruled ineligible. The point being made was that the application was not in respect of the family but rather the individual and that, please God, when the person recovered, that would be it. The medical card was wanted for the duration of the illness alone.

We should be examining the issue. There was a time when things were examined at a local level, when people knew the genuine cases and when they were looked at favourably. It is an additional source of stress for people who have been diagnosed with terminal or very serious illnesses that a medical card is not afforded to them. The circumstances as such do not matter, but it is particularly stressful for people who have worked all their lives, paid all their taxes and done everything for the State. They have never claimed anything. Several of the families concerned have pointed out to me that if they had never worked and spent their lives on the dole, they would automatically be entitled to a medical card.

Will the Minister of State re-examine the matter? Also, when medical cards are being applied for, what exactly is being applied for should be examined. This case did not involve an application for a family medical card. The application was made on behalf of an individual, yet every time that was pointed out, a letter was received stating it was family related.

Minister of State at the Department of Health (Deputy Kathleen Lynch): I thank the Senator for raising this issue. We have the details of the particular case to which she refers, but it would be inappropriate to discuss an individual's circumstances in public in the Seanad. I know that the Senator agrees with this. However, I understand from the HSE that this application was unsuccessful as the means were in excess of the qualifying threshold for a medical card or GP visit card. I have been advised by the HSE that additional information has been provided and that the case has been referred for a discretionary review.

The Senator will be aware that, in accordance with the Health Act 1970, as amended, full eligibility and a medical card are awarded to persons who are, in the opinion of the HSE, unable without undue hardship to arrange GP services for themselves and their dependants. That is the reason the letters received by the individual refer to dependants. In accordance with the Act, the assessment for a medical card is determined primarily by reference to the means, including the income and expenditure, of the applicant and his or her partner and dependants. Where deemed appropriate in particular circumstances, the HSE may exercise discretion and grant a medical card, even though an applicant exceeds the income guidelines but faces difficult financial circumstances such as extra costs arising from an illness.

The Senator is aware of the Keane report, to which she has referred on several occasions, on the expert panel on medical need for medical card eligibility, published in November 2014. A key recommendation made in the report was that a person's means should remain the main qualifier for a medical card. That was the main issue of contention. It has been repeatedly stated one cannot issue medical cards or GP visit cards for condition-specific reasons alone. It also recommended that it is neither feasible nor desirable to list conditions in priority order for medical card eligibility. The rationale behind the recommendation will be clear to the Senator. On foot of the report, my Department and the HSE are undertaking a suite of measures to improve the operation and administration of the medical card scheme. A number of those are already in place and are having a positive impact on how the scheme operates.

A key element of the programme is the work of the clinical advisory group on medical card eligibility which was established by the director general of the HSE. The group has been tasked with developing a framework for assessment and measurement of the burden of disease and appropriate operational guidelines for the medical card scheme. The clinical advisory group made an interim recommendation to award medical card eligibility to all children under 18 years of age with a diagnosis of cancer. The director general of the HSE accepted that recommendation and it has been implemented since 1 July 2015. The clinical advisory group is continuing its work on the development of guidance on assessing medical card applications involving a significant burden due to an illness.

I am pleased to advise the Senator that, on foot of these reforms, the HSE is exercising greater discretion. That is evident in the number of discretionary medical cards in circulation which increased from approximately 52,000 in mid-2014 to nearly 96,000 at the beginning of November this year. Until we have universal health care and everyone has eligibility for health services, one will always have anomalies. There will always be someone who is just above the means threshold, who does not have the prescribed disease or whose condition is not suffi-

ciently severe and, as a result, these individuals will not meet the assessment criteria. Universal health care, to which I am committed, is the only solution to address this issue. However, as the Senator can see from the reply, we are taking another look at this application.

Senator Mary Moran: I am pleased to hear the Minister of State will look at the matter again. The Irish Cancer Society's figures show that when a person has cancer, it can cost up to €10,000 extra a year. It has been pointed out to me that in some cases, after expenses for treatment are taken into account, some people would be better off on welfare. That should not be the case. Given the additional expenses in the case I have outlined, including for heating, transport to consultant appointments and treatment, I am very pleased with the Minister of State's response. I hope the outcome is favourable.

Deputy Kathleen Lynch: I understand the value of a medical card. Sometimes it is not a case of what it can provide but the security it represents in terms of a person not having to worry about medical expenses. People have enough things to worry about, but when they have a medical card that is one less thing to worry about. I read the Irish Cancer Society's report on additional costs. Most costs related to cancer treatment are met by the State, whether one has a medical card, because the treatment is provided in a hospital setting. That is right and proper, which is why we have such success in terms of treatments and outcomes. I hope the Senator's friend will have an equally good outcome. The security element of the medical card is really what it is about.

I accept that there are additional costs for transport and being out of work. That is understandable when one has an illness that impacts as much as cancer. I also understand the security of not having that particular worry is essential in terms of how one faces the illness. We are taking another look at the case. The Senator is aware that I do not promise anything. The number of discretionary cards in the system is incredible, rightly so, because there are people who do not meet the criteria and probably never will, but we must take other elements into consideration.

Harbours and Piers Maintenance

An Cathaoirleach: I welcome the Minister of State, Deputy Tom Hayes.

Senator Averil Power: I have tabled the matter to highlight the urgent need for Howth Harbour to be dredged in order to ensure its long-term viability as a commercial fishing port, leisure harbour and tourism destination. The harbour has silted up to such an extent in recent years that the situation in Howth is bordering on being dangerous. Even medium-sized fishing trawlers cannot enter the harbour at low tide, whereas a few years ago the harbour was accessible in all but the worst of weather conditions. Now boats have to lie off before entering the harbour for fear of catching the bottom and their vessels being damaged. Also, movement around the trailer basin at strong low tides is impossible. Groundings are now more commonplace and can result in serious engine damage.

The silting has also created problems for the Dublin Bay ferry service which has found it cannot keep to its schedule because it is restricted in terms of entering the harbour at Howth. The ferry also uses Dublin Port and Dún Laoghaire Port and does not have such problems there. Leisure boats encounter difficulties, which is likely to have a seriously detrimental effect on Howth Yacht Club's ability to hold major national and international sailing events. I have also

been told that it is now a regular occurrence for visiting boats, in particular, to run aground in the entrance channel and within the harbour. I have been warned that it is only a matter of time before the harbour is blocked by grounded vessels, compromising safety and potentially preventing the operation of emergency services, including the lifeboat.

I understand that, even after a decision to dredge the harbour has been made, it may take two to three years to carry out the dredging programme as the necessary permits and licences will have to be obtained. In the meantime, the crisis will get worse, with more groundings and greater risk to harbour users. The annual accumulation of silt may cause some harbour activities to completely cease within two to three years. Potential future business opportunities and proposed leisure activities and events will not be given a chance without a scheduled commitment to dredge the harbour. For these reasons and others, it is essential that the Department of Agriculture, Food and the Marine now commit to dredging Howth Harbour as a matter of priority and immediately set aside funding for this.

Minister of State at the Department of Agriculture, Food and the Marine (Deputy Tom Hayes): I thank the Senator for raising this important issue. The Department of Agriculture, Food and Marine is responsible under statute for the six fishery harbour centres located at Howth, Dunmore East, Castletownbere, Dingle, Rossaveel and Killybegs. All six fishery centres are, first and foremost, working fishery harbours, which provide essential services and facilities for the fishing industry around the coastline of Ireland. Each fishery harbour centre has unique features which facilitate a broad range of other diverse activities which are important from both an economic and social perspective. The Department is conscious of the need to facilitate and further develop the fishing and non-fishing activities at the harbours. This involves day-to-day operational support by harbour staff and management and development and repair of infrastructure subject to available financial resources.

I am happy to advise the House that, notwithstanding the prevailing economic environment in which we operate, in excess of €4.2 million has been invested in maintenance, development and upgrading works at Howth as part of the Department's annual fishery harbour and coastal infrastructure development programme from 2011 to 2014. For 2015, the Minister for Agriculture, Food and the Marine, Deputy Simon Coveney, approved funding of €1.79 million for the maintenance and development of Howth Fishery Harbour Centre. Major works for 2015 include the continued upgrading of the electrical system, provision of a small craft pontoon and traffic management works.

Siltation in Howth is recognised as an issue, as the Senator rightly pointed out, and being kept under review. It has been discussed with various stakeholders and officials from the Department attending the Howth Harbour Users Forum on 29 January 2015 used the occasion to have a number of meetings with users, where the issue of dredging was discussed. A further meeting with Howth Yacht Club was held on 17 July where again the question of dredging was the main item of discussion.

As part the 2015 fishery harbour centre development programme, the Minister sanctioned €150,000 to carry out site investigation works in Howth for the west pier pontoon and the middle pier upgrade. The site investigation contractor commenced work on site in early November and that is expected to be substantially completed by the end of this year. It is anticipated that the report on the site investigation will be issued in early 2016. This report will include information on the nature of the material to be dredged and the extent of contaminated material within the dredge footprint. This information is required to prepare a dumping at sea licence

application, which will be necessary for the commencement of any dredging project that is needed in the area. It will also provide the basis for an informed estimate of the cost of dredging the harbour at Howth.

As with all other developments in the six fishery harbour centres, a dredging project at Howth Fishery Harbour Centre will be considered under future capital programmes on the basis of available Exchequer funding and competing priorities. The suite of projects for inclusion in the 2016 programme is being considered and the Minister will make an announcement on these in due course taking into account what has been said here and the value of Howth Harbour, particularly given its location on the east coast. I would be confident that it would be included because it stands up as a project.

Senator Averil Power: I welcome the Minister of State's confirmation that Howth Harbour stands up as a project and that dredging is needed. As I said, there is evidence to support this. The Minister of State has said the 2016 programme is still being considered; therefore, as it has not yet been finalised, there is still time for Howth Harbour to be included in it. That is essential and consideration of it should not be deferred until the investigation is complete. As the Minister of State said, the case for dredging is already clear.

With regard to the scope of the works and what exactly needs to be carried out, the investigation will be helpful in determining that, but we all know that Howth Harbour needs to be dredged. I can give the Minister of State visual evidence of trawlers that have run aground in the harbour. I have photographs of such trawlers. It is very clear that the work needs to be done. The key issue is to get a commitment to get the work started as soon as possible because things are getting worse all the time.

From the perspective of the yacht club, some major international sailing events have been held in Howth in recent years, including Etchells sailing competition which is a major international prestigious competition. As matters stand, the yacht club is concerned about pitching for future events to be held in two, three, four or five years time because until there is a commitment in place that the harbour will be dredged it does not know if it will able to host such events. Leisure boats are constantly running aground, especially when manned by people who are not familiar with the area. It is very important that a commitment be given now. I urge the Minister of State to talk to his officials and make sure Howth Harbour is given serious consideration for inclusion in the 2016 programme and that this is progressed as soon as possible.

Deputy Tom Hayes: I will bring back to the Department the points the Senator has made. I agree with her; we are at one on the need for this work to be done. It comes down to the availability of funding. Howth Harbour has very strong case. It is the only harbour in this category on the east coast and it has great potential. It would be great if they could all be done together and if we had endless resources but we do not. The case has been made for Howth Harbour and the strong case the Senator has made this morning will also help. I will relay what she said to the officials and also to the Minister, Deputy Simon Coveney, who is certainly very committed to dealing with this issue. It is one of the priorities and we want to have this work done as quickly as possible.

Pension Provisions

An Cathaoirleach: I welcome the Minister of State, Deputy Lynch, back to the House.

Senator Gerard P. Craughwell: The Minister of State is welcome to the House. I am aware that this issue has been raised by colleagues on both sides of the House in other forums, but as it remains unresolved, it is necessary to again ask for a review of the issue. When speaking last summer, the Minister, Deputy Brendan Howlin, was quoted as saying: "Under our Constitution pensions are preserved property rights. I can no more take somebody's pension than I can arbitrarily decide to take their house." That comment was published in *The Irish Times* in June 2015. While this may be true, for some, it is not true. Some 80 former gardaí who, despite having the required five years minimum service, did not have their pensions preserved until the age of 60 years because they were dismissed or resigned from the service prior to 1976. The members of this group, the majority of whom are now aged over 70 years, with many of them now partners or widows of former gardaí, are naturally very aggrieved at this injustice and are seeking an immediate legislative remedy.

The background to this issue is that in 1978 the Garda Representative Association, GRA, reached an agreement with the Departments of Justice and Finance that members of Garda rank who resigned from the force on or after 1 October 1976 would have their pensions preserved to the age of 60 years. This is in the agreed report No. 218 of the Garda Conciliation Council. It was followed by agreed reports Nos. 530 and 543 which provided for the preservation of pension entitlements for members who left the force for any reason after 1 October 1976. At the heart of the injustice is the fact that the details of the agreed reports, to which I referred, only came to light when members of the pre-October 1976 group approached the age of 60 years and were informed by letter from the Department that they had been excluded without their knowledge. A group, led by councillor Pat Hynes from Galway, has since been actively engaged in seeking justice and has made innumerable representations to the Department of Justice during the years but to no avail. It is further notable that, since 1976, these agreed reports have operated on an administrative basis only and have not been incorporated into a statutory instrument or underpinned by any amendment to the primary legislation, the Police Forces Amalgamation Act 1925. It is, therefore, easy to revise them via legislation. In the opinion of Mr. Gerard Hogan, then a senior counsel, "members of the Oireachtas, ought in justice, to rectify this wrong by means of the enactment of legislation to cater for the very discrete category of pre-1976 members of An Garda Síochána".

11 o'clock

Mr. Justice Hogan also reminded us that there was a precedent as legislation had been passed retrospectively to enable a former Minister to apply to preserve his ministerial pension entitlements, even though he had not done so on time in the past. This refers to the case of the former Minister for Education and Science Dr. Michael Woods who missed out on applying for a pension entitlement by the date provided for in the Ministerial and Parliamentary Offices Act. It appears that where there is a political will, there is a way.

I do not believe there is a citizen in the country who would begrudge the men in question their pensions. To have their pensions restored to them would be viewed favourably by all as an indicator of a compassionate, paternalistic Government. When one considers that €7 billion was taken from the National Pension Reserve Fund to bail out two banks, the sums involved are a drop in the ocean. In terms of administration, resolution of this issue does not have to be on a case by case basis. It is more than an administrative issue; it is a constitutional right issue for which there is legal precedent. In Lovett *v.* Minister for Education, 1997, Mr. Justice Kelly held that the right to a statutory pension was a property right protected by the Constitution. In the past the former Minister Deputy Alan Shatter and others have defended the Government's decision to stand over the agreed reports, saying they were decisions reached through negotia-

tions between the Garda representative body and the Department of Justice and Equalith. In the light of the Lovett case, this defence no longer holds water as the fundamental constitutional rights of citizens cannot be negotiated away through union or any representative association. The agreed reports amount to an unreasonable and unjustified interference in the rights of 80 people affected by this decision. They are seeking nothing more than the justice they deserve. They did not voluntarily agree to forfeit their pensions. Most of them were not even aware that this had occurred.

In the course of the judgment in Cox *v.* Ireland, 1992, Chief Justice Fennelly referred to certain property rights protected by the Constitution such as the right to a pension gratuity and other emoluments already earned. The pensions to which I refer have already been earned and it is unreasonable to withhold them any longer. I respectfully ask the Minister of State to revisit this issue as a matter of urgency. It is a matter of dignity and due respect to those who have served the State as members of An Garda Síochána for many years. The Government is to be complimented on the number of long-standing injustices that have been addressed in the past five years. Will the Minister of State give a commitment to bring legislation before the Oireachtas in the next session to deal with this as many of those affected are well over 70 years old and have waited long enough for justice? It is not only former gardaí, most of whom are men, that are missing out. Their widows are also missing out on this entitlement.

Deputy Kathleen Lynch: I will stick rigidly to the script because it is an issue with which I am not familiar. As the Senator is aware, I am taking this Commencement matter on behalf of the Minister for Justice and Equality. I will not be making any comment other than what is contained in the written reply, but I am sure the Senator's remarks will be duly noted.

On behalf of the Minister for Justice and Equality who, unfortunately, cannot be here, I thank the Senator for raising this matter. The issue was addressed in this House by the Minister's predecessor in April 2012, but I am happy on her behalf to set out the position to the Senator. The terms and conditions of pension schemes have evolved over the years and continue to do so. New terms and conditions are introduced with effect from a specific date and apply to members of the scheme from that date onwards. Prior to 1 October 1976, where a member of An Garda Síochána resigned or was dismissed before reaching the age and service at which he or she could retire on pension, that member forfeited all superannuation benefits under the then Garda superannuation scheme. This situation was changed following discussions at the Garda Conciliation Council, the industrial relations machinery for members of An Garda Síochána. It was agreed at that time by both sides - the official side and the Garda representative associations - and endorsed by the then Minister for Finance that the new arrangements should apply to members of the force serving on or after 1 October 1976. By extension, these new terms did not and cannot apply to members who had left the force prior to that date. These discussions concluded in what are known as agreed reports. Generally, these agreed reports provide that a garda who resigned or was dismissed on or after 1 October 1976 can have the superannuation benefits that had accrued to the date of resignation or dismissal preserved until they reached 60 years of age. There was no provision for the preservation of superannuation benefits in the case of members who resigned or were dismissed prior to 1 October 1976.

The then Department of Finance and now Department of Public Expenditure and Reform which continues to have overall responsibility for public service pension matters agreed with the proposals for a cut-off date for eligibility for preserved benefits. This date varies depending on the particular organisation involved and the conclusion of negotiations between management and the relevant staff interests. The cut-off date for civil servants was agreed by all par-

ties to be 1 June 1973 and the cut-off date for members of An Garda Síochána was agreed by all parties to be 1 October 1976. I must stress that this was an agreed date between all of the parties involved in the discussions and was not imposed. It is an inevitable consequence of the introduction of improvements in pension schemes that members of that scheme who had left it prior to the effective date cannot avail of that benefit.

Senator Gerard P. Craughwell: I accept that the Minister of State is speaking on behalf of the Minister for Justice and Equality and can give no commitment. I know that the Minister of State to be a fair-minded person and think she will agree with me that to deny a small number of people a constitutional right is totally unacceptable. There is some cynicism on this issue in so far as the relevant parties are aware that these elderly people who are over the age of 70 years are in no position to mount a constitutional challenge to a denial of their entitlement. I would like the Minister of State to relay the matter back to the relevant Department. As pensions are something I hold very dear to my heart, I will not leave the matter alone. If I need to find somebody to raise this as a constitutional issue for the people in question, I will do it. I would much rather see it resolved than see people suffer the loss of what they paid into and what they were entitled to. Will the Minister of State relay this back to the Minister? I do not expect her to make any comment.

Deputy Kathleen Lynch: In the circumstances, I will ensure the Senator's argument and the passion with which it was expressed are relayed to the Minister for Justice and Equality. It appears that right now the Departments of Finance and Public Expenditure and Reform are not for turning but circumstances change.

Special Educational Needs Staff

Senator Catherine Noone: This is a fairly straightforward Commencement matter on the need for the Minister for Education and Skills to outline the position on the provision of an SNA for Scoil Oilibhéir in Dublin 15. I have been contacted by a constituent who is a former SNA in that school. In addition to being given an idea about the situation at the school, I would be grateful for an indication of the Department's policy on SNAs and how we now stand when it comes to that issue.

Deputy Kathleen Lynch: I am taking this Commencement matter on behalf of the Minister, Deputy Jan O'Sullivan, who is somewhere else. She thanks the Senator for raising this matter and wishes to assure the House that the education of children with special educational needs remains a key priority for the Government. She welcomes the fact that, even in the constrained economic circumstances faced in recent years, we have been able to continue to meet the needs of children with special educational needs attending schools and to increase provision to address emerging needs in this area. The SNA scheme, in particular, has been a major factor in ensuring the successful integration of children with special educational needs into mainstream education and in providing support for pupils enrolled in special schools and special classes. I hate that term. It should be changed to "specialist schools" - that is a personal view. In July last, the Minister secured Government approval for an additional 610 SNA posts to the end of 2015, in addition to the 365 SNA posts provided in 2015, to take into account increased demand and demographic growth and to ensure children could continue to have access to additional supports in school. There is now provision for 11,940 SNA posts in 2015 - the highest level of SNA provision that we have ever had - an increase of 13% on the number of posts available

since 2011.

The Minister assures the House that schools which have enrolled children who qualify for support from an SNA will continue to be allocated SNA support in a manner appropriate to their needs. The National Council for Special Education, NCSE, through its network of local special educational needs organisers, SENOs, is responsible for allocating resource teachers and SNAs to schools to support children with special educational needs. The council operates within the Department's criteria in allocating such support and these criteria are set out in the Department's Circular 0030/2014. All schools were asked to apply to the NCSE for resource teaching and SNA support for the 2015-16 school year by 18 March 2015. Of course, the NCSE continued to accept applications after this date in recognition of the fact that enrolment may not have been completed or where assessments were not completed. Details of SNA allocations to schools for 2015-16 is available on the NCSE website at *ncse.ie*. Each school's allocation of SNA support can change from year to year and may be increased or decreased as students who qualify for SNA support enrol or leave a school. New students with care needs may enrol to replace students who have left, for example, or SNA allocations may be decreased where a child's needs have diminished over time.

The Senator's specific query relates to the allocation of support to an individual school. The Minister can confirm that the NCSE has advised the Department that the school currently has an allocation of 0.5 SNA for the 2015-16 school year. This represents no change over the SNA allocation to this school in the previous school year. The NCSE has also advised the Minister that this allocation to the school was not the subject of an appeal and it has received no new applications for additional SNA support for this school. On this basis, the council is happy that the school has the appropriate level of SNA support to meet its needs

The Minister would like to thank the Senator once again for giving her the opportunity to clarify the position. From time to time, the information the Department has is different from the information public representatives receive.

Senator Catherine Noone: Indeed. I thank the Minister of State for her response. I have a fuller understanding of how the system operates. The school has an allocation of 0.5 SNA, which is not what I understood. That has not changed since last year and I am, therefore, satisfied with the response.

Deputy Kathleen Lynch: Commencement matters and Topical Issue debates in the Dáil are often important for clarification purposes because sometimes what we hear as public representatives is not always the same as the information the Department has on file. I have clarified the position.

Sitting suspended at 11.15 a.m. and resumed at 11.35 a.m.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Finance Bill 2015 [*Certified Money Bill*] - Committee Stage, to be taken at 12.45 p.m. and adjourned not later than 2.55 p.m., if not previously concluded; No. 2, Gradam an Uachtaráin Bill 2015 - Second Stage, to be taken at 3 p.m., with the time allocated for the debate not to exceed two hours; and No. 3, Assisted Decision-Making (Capacity) Bill 2013 - Committee Stage, to be taken at 5 p.m. and adjourned

not later than 10 p.m., if not previously concluded.

Senator Marc MacSharry: We cannot agree to the Order of Business. I, therefore, propose an amendment that the relevant Minister come to the House for an emergency debate on the flooding issue. As we know, the forecast this evening for counties Clare and Kerry, all counties in Connacht, County Donegal and other parts of the country is again very bad. In 2012 the Taoiseach spoke about the need to have much more sophisticated early warning systems and a system that would operate to best advantage for everybody. After 2013, during which we saw the worst storms for 143 years, we heard the first calls from Met Éireann for additional staff. I see that, as part of the Government's announcements in recent days, the extra staff needed can be recruited by Met Éireann, but it is too little too late. An allocation of €14.5 million for flood relief schemes for this year alone remains unspent. While we welcome the provision of €15 million to aid communities under siege because of recent floods, it is truly disturbing to listen to communities throughout the country, including in Athlone and Bandon and farmers along the western seaboard. Last evening I spoke to somebody in Sligo whose house was completely flooded and who was in urgent need of somewhere to rent in order that they and their family could begin preparations for Christmas. We are not ready for this and never have been. Despite a series of measures announced by the Government in 2012 and specifically in 2013 when we witnessed the worst storms for 143 years, it seems we are as unprepared as ever.

The Minister of State, Deputy Simon Harris, said there had been unanticipated delays in providing the funding required to deal with this issue. What is the reason for the delays? The Army needed to be called out much quicker to prepare by providing sand bags and making other preparations to mitigate the effects of the disaster that has taken place. It is our contention that an urgent debate is needed. The House is entitled to know that all hands are on deck and what measures will be taken in the coming days as conditions continue to worsen. As we know, many families do not even have insurance because of what happened in 2012 and 2013. Following very bad floods in the United Kingdom in 2013, the Government there undertook to sign a memorandum of understanding with the insurance industry in order that people who had experienced flooding in the past would still be in a position to take out insurance on their homes at affordable rates. That is not the case here and one of the questions we want to put to the relevant Minister is whether there has been such contact with the insurance industry and whether a scheme is being prepared to ensure families will have this protection into the future.

We will push the amendment proposed to the Order of Business to a vote and I hope the Leader will be in a position to bring the Minister to the House to reassure us on what is taking place to mitigate the effects of a disaster that may get worse if the forecast as outlined is true.

Senator Ivana Bacik: I am sure the Leader will respond on the flooding issue. However, I welcome the allocation of €5 million announced by the Government this week to assist small businesses that have suffered damage as a result of the flooding. I also welcome the clarification from the Department of Social Protection of the scope of the humanitarian assistance scheme. I note that the Government has not set a limit on the amount that can be paid to individual households under the scheme, again in respect of flood damage. All Members will be watching with great concern to see what happens regarding the predictions of rainfall and flooding across the midlands and along the River Shannon today. While it is clear a great deal of work has been done to try to minimise any damage, it is certainly a matter of grave concern. However, I welcome the measures which are already in place and which have been announced this week.

I also welcome the announcement made yesterday evening by the Minister for Education

and Skills, Deputy Jan O'Sullivan, that she intended to delete Rule 68 for primary schools. This is the rule that enables religion to permeate the school day, which has been a huge issue for many parents across Ireland in the schooling of their children and which may not be in accordance with their conscience and lawful preference. This change is long overdue and the deletion of the rule was recommended by the national forum on patronage and pluralism in the primary sector established by the former Minister, Deputy Ruairí Quinn. I welcome the announcement made by the Minister that she will do this in the new year. I also note the passage through the Dáil last week of the Private Members' Bill that had started as a Labour Party Private Members' Bill in this House to amend section 37 of the Employment Equality Act to ensure schools would no longer be able to discriminate against teachers on the basis of lifestyle or because they offended or were seen to offend their ethos. This is hugely welcome, particularly for lesbian, gay, bisexual and transgender, LGBT, teachers and I am glad that it has been done. The deletion of Rule 68 is a further step in making the school system more reflective of the reality of pluralism in society. I ask the Leader for a debate on this matter in the new year because the Minister also has stated she recognises that an amendment will be necessary to equal status legislation to ensure schools will no longer be able to discriminate against pupils or prospective pupils on the grounds of religion. I will be speaking this Saturday at the launch of a new campaign, Education Equality, which has been established by a group of parents who have been relatively prominent in the media in recent weeks, that is seeking to ensure this change will be made and that schools will no longer be able to discriminate on the basis of religion in their admission policies. I also note that the Minister has stated, regretfully, the likelihood is she will not be able to get the admission to school legislation through in the lifetime of the Government. This is a reform that must happen. I commend the organisers of Education Equality for putting together a campaign in which it will seek to bring it about early in the lifetime of the next Government, if not before.

Senator Darragh O'Brien: I second the amendment proposed to the Order of Business by my colleague, Senator Marc MacSharry. It is absolutely appropriate that the Minister of State, Deputy Simon Harris, come into the House as a matter of urgency to explain what measures have been taken. Government Members may not be aware that the amount of capital funding for flood defences this year is being cut from the amount allocated last year. There was a reduction in the funding allocated prior to the storms and Members need to know what is happening. I assure the Leader that there has been a cut in the budget and the figures are available.

I wish to deal with a couple of items. First, on 29 November I referred to three cystic fibrosis drugs that had been approved by the European Medicines Agency, EMA, on 20 November. As I wrote to the Minister for Health, Deputy Leo Varadkar, on 1 November, in advance of approval by the EMA, I was on top of this issue before the recent issues arose in the funding of these drugs. The Minister issued a statement yesterday that he was considering funding these drugs, which I welcome, but all Members should remember the nature of cystic fibrosis. It can be a highly debilitating and life-shortening illness. These three drugs offer enhanced quality of life and extended life expectancy and if the figure is €92 million, it would be €92 million well spent. There should be no further delay on the part of the Department of Health in approving them to make sure they will be available to the thousands of cystic fibrosis patients and sufferers in Ireland, many of whom are children. I, again, ask the Leader to use his good offices. I have written to the Minister, but I have not had a response since 6 November. However, I intend to follow up on the matter.

In the light of Senator Ivana Bacik's remarks, while some people in Ireland believe religion

might be an offence, may I remind Members that it is an entitlement of educators to protect their religious ethos? On foot of the proposed deletion of Rule 68, I ask Senator Ivana Bacik and others how Church of Ireland schools will protect their religious ethos in what is a minority religion? How will the single Jewish school in the State be able to protect its religious ethos? I remind colleagues opposite that in the most recent census 82% of Irish people declared themselves as Catholic, while a further 8% declared themselves as Protestant. There are people with religious beliefs which also must be respected. While I am all for equality in this regard, I do not desire to have a situation such as obtains in the United States of America or Britain where those who want their children to be educated within a certain religious ethos must choose private schools. I do not want that to happen. Has the Government agreed to the deletion of Rule 68? Senator Ivana Bacik, as leader of the Labour Party in this House, has welcomed the proposed deletion of the rule, but that is a serious step forward. I agree with Archbishop Diarmuid Martin in that under no circumstances do I believe children should be baptised or included in any faith community simply to obtain a school place. That absolutely should not be done. However, what about the millions of people who hold fast and firm and respect their religious ethos? The Labour Party, in particular, appears to think anyone who holds a religious belief is inferior to its members and their views.

Senator Ivana Bacik: We never said that.

Senator Darragh O'Brien: I refer to respecting people in a republic. The Senator used the word "offend", that is, that religion would offend - she should check the record - that it would be offensive.

An Cathaoirleach: The Senator is over time.

Senator Darragh O'Brien: I will conclude on this point. I am not offended by anyone's religion and I am not offended if someone decides not to hold any religious belief. However, I must tell the Leader that any proposed deletion of Rule 68 must be debated fully and must not be a knee-jerk reaction to a few hundred parents who have found themselves in a difficult position. What about the millions of people, the hundreds of thousands of parents who want their children to be brought up and educated in a religious ethos school, as I do with my daughter, to give them a good grounding in life?

An Cathaoirleach: The Senator is way over time.

Senator Darragh O'Brien: As for this idea of welcoming the proposed deletion of Rule 68, I have a final question.

An Cathaoirleach: The Senator is not availing of leaders' time today.

Senator Darragh O'Brien: Has the Government agreed to the deletion of Rule 68?

Senator Martin Conway: I also ask the Leader to facilitate a debate, either today or tomorrow, with the Minister of State, Deputy Simon Harris, on the flooding issue. It has finally come to people's realisation that we have a serious problem with flooding, be it coastal flooding or rivers bursting their banks. I wrote about this extensively after the flooding that took place in 2014 along the coast of County Clare and all along the west coast. Up until a few years ago, approximately €30 million to €40 million per year was being spent on flood defences. While, thankfully, this figure has increased, it is now necessary to engage with the European Union to have an aggressive flood defences mechanism and programme under which the investment of

hundreds of millions of euro is envisaged. The same approach must be taken to flood defences in Ireland as was taken to building motorways during the era of the Celtic tiger. Ireland has a fantastic road network because billions of euro was invested, rightly, to ensure its provision. It is now necessary to spend billions of euro on flood defences. We are an island nation surrounded by water and people live in coastal communities nationwide. The homes of people in Clonlara, County Clare and other counties are being flooded and the people affected will be in a worse position in a few hours time. Members must up the ante and there must be a realisation of the necessity to spend billions of euro on flood defences. Moreover, such a programme must be put in place urgently. While the State does not have the money to do this, we are a member of the European Union. As an island nation at the extremity of Europe, we have as many rights as citizens of Germany, France, Italy and every other member state. We must exercise these rights and apply for billions of euro in EU capital funding to ensure our citizens will not, from one month to the next, be fearful of inclement weather.

Senator Trevor Ó Clochartaigh: Aontaím le cuid mhaith den mhéid atá ráite maidir leis na tuilte ar fud na tíre atá ag déanamh an t-uafás damáiste. I support the call for a debate on flooding which is serious in the west, in particular, and the south. It has come to light that many of the issues arising in local areas are due to a lack of maintenance work being done during times when the weather is not bad.

During recent briefings given by the local authorities in Galway city and county, we heard about the frustration of the management of both authorities at the lack of resources and funding as a result of all the changes introduced by the Government under the Putting People First policy of the former Minister for the Environment, Community and Local Government, Mr. Phil Hogan. I have never seen local managers as agitated as they have been in the past two to three weeks. For example, there are huge issues around housing and a lack of forward planning in terms of the hand-over of the administration of the housing assistance payment, HAP, scheme. We are told that owing to inadequate numbers of staff to handle the transfer of thousands of applicants from the Department of Social Protection to the local authorities, serious issues will arise after Christmas.

Many of the flooding issues arising in local areas are due to blocked drains and work in that regard not being done during the summer. Owing to the reduction in the number of staff on the ground and a lack of funding for maintenance work such as drain unblocking and road-sweeping and fixing, this work is not being done. When we approach local authorities about these issues, we are told there is no money available to do the work. We are also told that Irish Water is putting pressure on the local authorities to cut job numbers and that this is likely to occur in the next couple of months. Instead of increasing staff numbers, there is a huge push to get rid of people who are working on contract for Irish Water in the local authorities.

There has been much debate in recent times about housing and so on. We need to continue that debate because of the lack of social housing, the homelessness crisis and so on. Following the terrible tragedy in Carrickmines, we heard that many local authorities had returned unspent allocations for Traveller accommodation. This was refuted last week by Galway County Council. According to that council, its applications for funding under the Traveller accommodation programme were turned down. We need clarity on this issue. Somebody is not telling the full truth on these matters and we need to address that issue. A debate on the issues related to storm damage and the need for ongoing maintenance work to be carried out between storms and for the requisite resources to be provided is vital.

Senator John Kelly: Like previous speakers, I would welcome a broad debate on the issue of flooding throughout the country. Global Flood Solutions, a company based, in part, in Athlone, County Roscommon - ironically, one of the worst hit areas in terms of flooding - sells flood relief products all over the world, yet the Government will not do business with that company in the interests of solving the problems being experienced in places such as Athlone and Athleague. It beggars belief that nobody from the Government is willing to engage with this company which could assist us in solving the problems - albeit temporarily - of the many families and businesses throughout the country that are suffering because of flooding. I would welcome a debate on this issue as soon as possible.

Senator Terry Leyden: I support the call for a debate on the current flooding crisis. I also support the call made by Senator John Kelly for the Government to engage with Global Flood Solutions, Athlone, of which Mr. Shane Curran is the director. I understand this company has been seeking engagement with the Office of Public Works for many years on its products and that its requests have been refused thus far. In 2009 I spoke in this House about the village of Athleague which was under water at the time. Three public houses in the village remained closed until after Christmas that year because they were under water. Two of those pubs have since ceased trading, which is illustrative of the effect of flooding on an area. Athleague village is now under water again. While local people are assisting each other in the clean-up of houses and so on, the local pub remains closed. The local butcher shop, a chemist's premises and other shops are also closed. It is distressing. The proposed budget to address the crisis is inadequate. One fifth of the money being allocated could be spent in County Roscommon alone, where Golf Links Road and Lanesboro Road are, for a second time in six years, flooded. The Government has stood idly by since 2011 and not made any investment to address this issue.

Senator Maurice Cummins: The Senator is wrong.

Senator Paul Coghlan: Fianna Fáil did a lot.

Senator Terry Leyden: In 2014 it abolished the drainage board which could have assisted in alleviating the flooding in Athleague by widening the outlet there.

Senator Maurice Cummins: Fianna Fáil was going to drain the River Shannon 100 years ago.

Senator Terry Leyden: No action has been taken in this regard. This Government of Teflon kids seems to get away with everything.

Senator Trevor Ó Clochartaigh: That was Bertie Ahern.

Senator Terry Leyden: Nobody appears to be able to pin them down. During the flooding experienced in 2009, the then Taoiseach, former Deputy Brian Cowen, and the then Minister for Agriculture, Food and the Marine, Deputy Brendan Smith, visited many of the areas that were flooded, including Athlone and Cortober, to inspect the damage caused.

(Interruptions).

Senator David Cullinane: That solved the problem.

Senator Terry Leyden: Nobody from the Government is assessing the damage caused by the current flooding. I do not think the Irish Red Cross is the right organisation to distribute the money being provided. It should be distributed through the Department of Jobs, Enterprise and

Innovation in the context of the impact on jobs or through the Office of Public Works. This is not charity work; it is business. I call on the county councils in the areas affected, particularly Roscommon County Council, to refund part of the rates paid for this year to assist affected businesses. It is distressing to see individuals such as Gerry McNulty, Alan Neilan and other young business people in Roscommon being wiped out for the second time since 2009.

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

Senator Terry Leyden: Some of these businesses will not be able to reopen in their current locations owing to the lack of proper drainage there. Nothing is being done in Roscommon town. Also, the beautiful building which it is proposed to construct in Roscommon town on behalf of the Office of Public Works - I welcomed the announcement in this regard when it was made - will lead to a further raising of water levels in the town. I have inspected many outlets in Roscommon town. I am convinced that major remedial works are required to assist in reducing the potential levels which future flooding might reach. We need to have a debate on this issue as soon as possible.

An Cathaoirleach: I presume a debate in the Upper House will suffice.

(Interruptions).

Senator Colm Burke: I agree with the remarks made by Senator Darragh O'Brien about the drug for cystic fibrosis patients. It is important that this issue be resolved. It is also important, in the context of the negotiations on the drug, that we get value for money. There has been much coverage in the past couple of years about the availability of particular drugs and the fact that it comes down to the bargaining positions adopted by those involved, which is unfortunate. I accept that a great deal of time and money has been spent on researching and producing the drug in question, but it is important that we get value for money from the process. I agree with Senator Darragh O'Brien that this drug should be made available at the earliest possible opportunity.

Two recent requests by me for a Commencement debate on the issue of two facilities in Cork that can cater for 35 homeless people but which have been lying vacant for four or five years were ruled out of order. These properties were purchased by Cuan Mhuire and were to be used to provide accommodation for people who had completed treatment for alcohol addiction and were on the road to recovery. It is sad that these facilities remain vacant. I sought to have the relevant Minister address this issue in a Commencement debate in order that these facilities could be brought into use at the earliest possible opportunity at a time when we needed them. It is unfortunate that my requests were ruled out of order. While I fully respect the Cathaoirleach's ruling on this matter, given the urgent need for these facilities, the relevant Minister should come to the House to explain why they remain idle. I ask the Leader to inquire from the Minister why there has been no co-ordination between the Department of the Environment, Community and Local Government and the relevant local authorities in this matter. One of the units is located in Cork county and the other in Cork city. As I said, these facilities which can cater for 35 people remain vacant. We need them up and running as soon as possible. Given that my requests for a Commencement debate on this issue have been ruled out of order, I ask the Leader to raise the matter with the Minister on my behalf.

12 o'clock

Senator Feargal Quinn: I have just come from the launch of the document on low pay, decent work and the living wage produced by the Oireachtas Joint Committee on Jobs, Inno-

vation and Enterprise. We should find time to debate this document as it is quite a balanced report. Our colleague, Senator David Cullinane, was the rapporteur for it and balanced it very well. One of the concerns is that in attempting to bring the living wage up to a level that would be acceptable, we could damage jobs. Employers might find that if they had to pay an awful lot more, they would not be able to do what they would like to do. I believe this discussion did take place in organising the report and it would be very valuable to have a debate on the topic in this House in the new year.

I am stunned that, although some time has passed since the last floods took place in 2009, very little has been done to attempt to solve the problems. Is it possible to get help from abroad? I think particularly of the Netherlands which lies very low, below sea level. The people there do not have this problem as they solved it many years ago. There must be expertise around the world, not just in Athlone, as Senator John Kelly has said. We should have a debate on this issue quite soon.

Senator Cáit Keane: I would like to comment on Rule 68. The forum on patronage and pluralism reported two years ago and recommended dissolving Rule 68. That report went to the Minister back in 2012. It is not throwing out the baby with the bathwater. The rules for national schools, of which Rule 68 is one, were devised 50 years ago. The language used in all of the rules should and will be revised, presumably, along with Rule 68. We would not have any problem at all with reviewing the language used in another piece of legislation from 50 years ago. One of the rules states junior infants should be taught by the mistress - a woman. Perhaps that was a good idea or a bad idea. I would go along with looking at all of the rules. When we are doing so, we must pay attention to what we put in their place. There is a new articulation of language recognising that there are many types of children, as Archbishop Martin said. Baptising a child just to get him or her into a school is not the way to do it. I would go along with retaining a lot of Rule 68 but under a new guise. It has good things like charity, justice, inculcating truth, patience, obedience - there are lots of good things in it and it is not all bad. We want to ensure we include all children of no religion and some.

I call for a debate on the Growing Up in Ireland survey, particularly on one aspect of it. Some 28% of all deaths among children under three years of age in the European Union are due to injuries. A particular report in Ireland targeted accidents involving children between the ages of one and three years and asks for a review of education of parents and how to avoid accidents. The percentage of children in Ireland who are hospitalised is very high. The Growing Up in Ireland study called for a review. I would like a debate on how we are going to address this issue. Accidents are also higher among boys than girls. Recklessness comes to mind. Perhaps we should be thinking about politics also in that regard.

Senator Gerard P. Craughwell: I ask the Leader to amend the Order of Business to bring the Minister for Justice and Equality to the House to discuss the practices of companies registered as private investigation companies. Last night I was contacted by a citizen and I am absolutely appalled by what I learned which is backed up by evidence. It is absolutely outrageous that there are companies employed by the pillar banks that are breaking into people's private property, accessing social welfare records and putting that information into the public domain. I heard this on radio once or twice, but now I know that these banks are hiring thugs - not reputable private investigation companies - who are climbing over people's back walls and filming and photographing them in their houses and bedrooms. These thugs will threaten people and access private social protection records, which are criminal offences. These companies are supposed to be registered. If that is the behaviour being engaged in, the Private Security Authority

is falling down in its duties. This is a matter that needs urgent attention. We have innocent citizens trying to negotiate with their banks who are being threatened and intimidated by these thugs. I ask that we have the Minister come here today at some stage to discuss this matter. I will not ask for it to be the first item on the agenda, but I ask that we have the Minister here at some stage.

Senator Máiría Cahill: I had not intended to speak today, but I ask Senator Darragh O'Brien to withdraw his remark. I think you said the Labour Party felt that people with religious instruction were inferior. I take offence at that statement.

Senator Darragh O'Brien: I certainly will not withdraw it.

Senator Máiría Cahill: I think you should withdraw it.

Senator Darragh O'Brien: I just go by the proof of what I see.

An Cathaoirleach: Senator Máiría Cahill to continue, without interruption.

Senator Darragh O'Brien: I will not withdraw it. She made a charge against me. I am not withdrawing any remark.

Senator Máiría Cahill: You should withdraw it because quite clearly I do not feel people with religious beliefs are inferior.

Senator Darragh O'Brien: Talk to your hierarchy. Talk to your leader.

Senator Máiría Cahill: My daughter attends----

Senator Maurice Cummins: I cannot respond because I cannot hear what is going on.

An Cathaoirleach: Senator Máiría Cahill to continue, without interruption.

Senator Darragh O'Brien: She is addressing me directly.

An Cathaoirleach: Senator Máiría Cahill to continue, without interruption.

Senator Darragh O'Brien: She should address the Chair.

An Cathaoirleach: She is speaking through the Chair.

Senator Darragh O'Brien: She is not; she is speaking to me.

Senator Diarmuid Wilson: In fairness to Senator Máiría Cahill, she is not long in the Labour Party.

An Cathaoirleach: We cannot hear what Senator Máiría Cahill is saying.

Senator Máiría Cahill: Gabh mo leithscéal; I think Senator Darragh O'Brien should withdraw the remark. Rather than coming from a place of religious conviction, his remark is coming from a place of political prejudice. I have a daughter who attends a Catholic school----

Senator Darragh O'Brien: I ask that the Senator withdraw that remark.

Senator Máiría Cahill: I am not withdrawing it.

Senator Darragh O'Brien: The Senator has made a political charge against me of political prejudice.

Senator Máiría Cahill: You are here to defend yourself and have done so. In respect of Rule 68----

Senator Darragh O'Brien: On a point of order, the remarks should be addressed through the Chair. If I cannot respond, the Senator should be addressing the Chair. She should withdraw the political charge against me of political prejudice----

Senator Ivana Bacik: On a point of order, the Senator made much more serious allegations against me. They were so ludicrous I did not even bother responding.

Senator Darragh O'Brien: The Senator has jumped up now also. It is like whack-a-mole.

An Cathaoirleach: Senator Máiría Cahill to continue, without interruption. She is quite entitled to call for what she is calling.

Senator Darragh O'Brien: I am not withdrawing anything.

Senator Máiría Cahill: I am not withdrawing the remark. Rule 68 is archaic. Children have a human right under the European convention to a neutral studying environment and that is clearly not the case in this country. There is a lack of choice for parents who do not wish for their children to receive religious instruction. We have seen the difficulty this country has had during the years with how religion can take precedence over instruction and education. We have seen the abuses which followed as a result. No parent or child should be forced into a situation in which religious instruction underpins their day. Having said that, the Labour Party and I respect entirely the choice of parents and families to have religious beliefs. Should the Senator wish to have a debate on this issue, it probably could be useful as I am not quite sure he understands exactly what Rule 68 means.

Senator Paschal Mooney: I ask the Leader to indicate when he intends to take the bankruptcy Bill which has been promoted by Deputy Willie Penrose. My understanding is the Bill is to be published next week. Will it be a Seanad Bill or a Dáil Bill? I would like to think that we in the Seanad could facilitate a speedy passage of this very important legislation.

I ask that the Minister for Health come before the House and propose a further amendment to the Order of Business that he do so. I had an experience in the past few days in regard to an applicant for a medical card, a lone parent who had a very sick child and who had applied for a medical card. That person was told the time limit had expired, although I was not even aware there was a time limit, and they will now have to make a fresh application, which requires a voluminous amount of documentation. This is a lone parent on social welfare with a sick child, but the number of documents required in order to be considered is shocking. Not only has the person now been advised to apply again, three or four months after they applied, but they have to supply more up-to-date documentation and a repeat of everything they supplied before because the centralised medical card agency in Dublin lost the documents. Not only that, but when I asked, on this person's behalf, if they could have the documents returned, given that they included a P45, of which there was only one copy, I was told the only way they could get the documents returned was by submitting a freedom of information request. What sort of inhumane system have we, as legislators, created? When the medical card system operated at local level, it was a very simple matter, as anybody in this House who has experience of it will know,

in that one could get through to the person involved in the local office and he or she was able to sort it out. There were never difficulties surrounding medical card applications. I am appalled at the manner in which this applicant has been treated. A very inhumane system has been put in place. As a result, I have initiated through the Oireachtas Library and Research Service a full review of how these regulations were put in place, who put them in place, what statutory regulations have been put in place and what are the legal requirements that mean a person has to go through the freedom of information process to get documents back. I want the Minister for Health to come to the House. The buck has to stop with him because he is the person in charge, although he likes to think and tell the general public that he is not in charge at all, that he is only passing through and that he is a commentator. Here is a situation-----

An Cathaoirleach: Will the Senator clarify the amendment?

Senator Paschal Mooney: I am asking that the Minister for Health come into this House to explain the regulations surrounding medical card applications and whether he is going to improve them to make them more humane and more efficient than what is in place.

Senator Paul Coghlan: I share the concern of other Members about the flood damage in many parts of the country, including my own county. However, we should not get over-dramatic about it. We are aware of the failings of past Administrations, but we do not want to go down that road. I very much welcome the fund that has been set aside and that will be administered on behalf of the Government by the Irish Red Cross for businesses that have suffered in towns recognised to be at flood risk and which are unable to get flood risk insurance, which is very important.

It was said the OPW was not involved. Of course, it is involved; it is monitoring the situation and will continue to do so. The matter is being attended to and dealt with. I recognise that Senator Marc MacSharry likes to be dramatic, coming as he does from the Sligo school of amateur dramatics. Let us be calm and reflect on this matter. It is being dealt with and, please God, it will be dealt with satisfactorily, or as satisfactorily as it can be dealt with. We cannot totally drain the River Shannon and cannot redirect it. There will be a further debate about siphoning off some of the water for the east, an issue which will be resurrected again. As these matters are being dealt with, let the show go on without getting overly or falsely concerned.

Senator Rónán Mullen: It is time we had a debate on flooding and the measures to compensate those affected by the winter storms. We have all seen the footage of the floods, ruined homes and businesses and the Christmas plans that have been destroyed. There have been four Atlantic storms this year. However, there are two things that are predictable - severe weather and the pathetic response from the Government. Each time it happens, we get too little, by way of a response, and it is too late. It seems to have come as a revelation to the Minister, Deputy Simon Coveney, that legislation prevents flood relief compensation to businesses and that only households may benefit. This is a Government that prides itself on getting the economy going again and getting people back working. How can it be jobs-friendly if businesses are allowed to suffer in this way?

When this crisis happened last year, with others, I called on the Government and the then Minister, Mr. Phil Hogan, to take concrete steps to mitigate the harmful effects of future storms. The Government should have applied to the EU solidarity fund, but it did not. It should have aided small businesses with a Government-subsidised insurance scheme where people are not able to get private sector cover, but it did not bother to do that either. It has chosen to do nothing

for small businesses impacted on by flooding. It is too little, too late to be talking about frustration on the eve of a general election. People are rightly frustrated at the lack of emergency funding for individual home owners and the lack of financial cover for businesses. Any further delay is inexcusable. Like others, I have been driving in east Galway where the flooding has been extremely difficult and frustrating for people. It is time the Government realised it is in government and did something about this matter.

Many of us grew up enjoying the romanticised versions of private investigators' lives - I think of "Magnum PI" and others. When we look at the reality of what private investigators get up to, however, it can be more sordid and grubby. Senator Gerard P. Craughwell's amendment which I second calls on the Minister for Justice and Equality to come to the House to tell us what she knows and what she is going to do in about the necessary investigation not just of the activities of private investigators but also of officials in the Department of Social Protection. This is an important issue. It is yet another example, perhaps, of the creep that goes on where banks and officials of State collude to subtract from people's rights, in particular, the right to privacy and the privacy of their data. I second Senator Gerard P. Craughwell's amendment.

Senator Michael Mullins: Given that business is scheduled to continue until 10 p.m., the Leader is unlikely to be able to accede to a request that the Minister of State, Deputy Simon Harris, come to the House to discuss the flooding issue. I made a request yesterday that we try to organise it late this week or early next week. Obviously, communities are going through great hardship, with people throughout the country trying to get to work when roads are closed. We need to give this very serious attention.

I reject some of the criticism being made of the Government. Investment has taken place in flood alleviation measures in recent years. I cite Ballinasloe as a case in point, given the significant investment made there since 2009 which has worked to a significant extent.

Senator Fidelma Healy Eames: Exactly. The work has been done.

Senator Michael Mullins: Phase one of that project has been very successful, but we want to get to the next phase of the investment. We need an update on the CFRAM study which will be the blueprint for flood alleviation measures and investment into the future. I would like a detailed debate on the progress of that study and what funding is likely to be put behind it. We cannot praise enough the local authority staff who are working flat out and the wonderful work being done by the Army in helping to protect homes. The next 36 hours are going to be critical, but I know everything that can be done is being done to make sure as many homes as possible are protected from flooding. It is a time for everybody to pull together and to leave aside party-political squabbling on this issue. I am very encouraged by the wonderful work being done in communities by people coming together with public representatives and local authority staff, with everybody trying to ensure business gets back to as normal a position as possible in the lead-up to Christmas. I hope we will have a debate with the Minister of State who can update us. I very much welcome the fact €5 million has been made immediately available to help small business and that €10 million has been set aside to provide humanitarian aid. I hope the drawing down of this aid will be as simple as possible and that bureaucracy will be kept to a minimum.

An Cathaoirleach: We are not having the debate today.

Senator Darragh O'Brien: It would be useful if the Minister of State, Deputy Simon Har-

ris, were to come into the House to answer those questions.

Senator Diarmuid Wilson: We would have a very harmonious House if some Members had their way; if we could not discuss religion or politics. I second the amendment to the Order of Business proposed by my colleague, Senator Paschal Mooney. I support everything that my leader, Senator Darragh O'Brien, said about Rule 68. Educators should be entitled to protect their religious ethos. I agree that it is unacceptable that people cannot get places in schools, but perhaps that is because the Government has not provided enough school places and it has very little to do with religion.

I wholeheartedly support the comments of Senators Gerard P. Craughwell and Rónán Mullen on private investigators. The issue has been raised for a number of years. It was raised previously by Senator Michael D'Arcy, the Leader and me. On one occasion I brought to the attention of the House a situation involving a young man who had paid 75% of a loan he had on a truck to provide employment for himself and a number of other colleagues. He fell on hard times as a result of the recession and missed two payments. While he was attending an interview to seek employment, thugs arrived at his house, intimidated his mother - an ill elderly lady - stole his truck and sold it for a pittance. That is the type of activity that was going on a number of years ago, but, unfortunately, it is continuing. So-called reputable financial institutions - I hesitate to use the word "reputable" owing to their history - continue to use such practices and are getting away with it. That is totally unacceptable. We must have a debate on the issue. I call on the Leader to facilitate a debate with the Minister for Justice and Equality. She is due in the House on Friday and perhaps she might stay on for an extra few minutes to discuss this very serious issue. It is well known that private investigators are going around snooping, as Senator Gerard P. Craughwell said, on private individuals and leaking information to media outlets in order to embarrass them. It would be worth examining the matter to find out what the State-sponsored banks were paying such individuals.

It is welcome that the Government has handed the €5 million in emergency aid to the Irish Red Cross to distribute. It is a most appropriate organisation for that purpose. I hope the red tape will be cut out because the last time such a crisis occurred and financial aid was provided, 95% of people received nothing because of the hoops they had to jump through and the red tape they had to deal with.

Senator Lorraine Higgins: Once again, I call for a debate on the need to introduce time limits for An Bord Pleanála decisions. This is very pressing, none more so than for the people living in east Galway who have been subjected to such an unmitigated disaster in recent days with the flooding. It is clear that families' lives are being destroyed along the Dunkellin river and the Aggard stream all because we are awaiting a decision on planning for flood relief works to be carried out on the rivers. I visited Craughwell and Athenry in recent days and met families affected by flooding. I am dismayed at what they have gone through. Pensioners had to be saved and transported from their homes by fire and rescue services, four-wheel drives and buses. It is the second time in six years that they have been rendered homeless because of flooding.

Senator Trevor Ó Clochartaigh: The Government has had five years in which to do something and it has done nothing.

Senator Lorraine Higgins: It is wrong and unacceptable. I was told the last time the Dunkellin river-----

Senator Trevor Ó Clochartaigh: The Government had five years in which to do it.

Senator Lorraine Higgins: I ask the Senator to allow me to finish my contribution.

An Cathaoirleach: Senator Lorraine Higgins should be allowed to speak without interruption.

Senator Lorraine Higgins: This is a very serious issue and I would like to finish my contribution.

Senator Trevor Ó Clochartaigh: Absolutely, yes.

Senator Lorraine Higgins: The Dunkellin river was dredged in 1907 by the British Government. That is the last time it was dredged. Frankly, that is ridiculous.

Senator Darragh O'Brien: Who is representing the area?

Senator Lorraine Higgins: If we do not dredge it quickly, we will contribute to bigger flooding issues in the future. The situation is much the same in the case of the River Clarin in Athenry which burst its banks for the same reason and destroyed several homes in the Caheroyan area.

While I have no intention of interfering with the planning process, I call for a little bit of reality to attach to proposals to deal with flooding in south Galway. We must focus on families who are enduring extraordinary hardship and will not be in their homes for Christmas because of environmental concerns. They are all very well and good, but when one sees big companies throughout this country, elsewhere in Europe and around the world which use a carrot and stick approach to offset their pollution distribution, why can we not have the same for people living along rivers and let environmental considerations take second place? Not only would that help to resolve issues related to flooding, it would also safeguard people's basic human right to safety in their homes.

Senator Trevor Ó Clochartaigh: The Government had five years in which to address the issue.

Senator Lorraine Higgins: We need flesh on the bones of commitment when it comes to providing flood relief. The time for talking is over. We need decisions. We need a legislative timeframe within which decisions from An Bord Pleanála will be delivered. That is the only way we can bind them in order that the people of east Galway will not have to wait an eternity for decisions which are affecting their lives in such a catastrophic way. On that basis, I call for a debate on the matter.

Senator Fidelma Healy Eames: I support Senators Darragh O'Brien and Colm Burke on the urgent need to provide the life-saving drug for cystic fibrosis sufferers. We are talking about lives which must come first. The Government must, please, wake up to the issue. I would appreciate if the Leader could communicate the issue to the Minister for Health.

I agree with Senator Lorraine Higgins on the issue she raised. The flooding is most serious in Craughwell, a little south of where I live. It is in east Galway but the very same issues arose in Carnmore, Claregalway and Oranmore. Why are we not flooded now? It is because we got the work done. An Bord Pleanála time limits must be looked at in cases of flooding emergency. People's homes are ruined. They are out on the street. The very special project at Thoor Bal-

lylee in which I was involved and which reopened this year to mark the 150th anniversary of the birth of W. B. Yeats has been flooded again. We opened it on the understanding that it could be flooded again, but it is wrong that the Government does not look at cases of repeated flooding. I am not being overly dramatic.

My final point is about the "RTE Investigates" programme. I completely agree that using public office for private gain is wrong; it is unlawful and it is a disgrace, but some of the techniques used by RTE were also less than honourable. I question practices such as offering confidentiality. One does not guarantee confidentiality if one does not give it. It showed the reporter, Nina, promising confidentiality. That is wrong. Neither did the programme offer balance. The reason I know that is I understand from *TheJournal.ie* that Councillor Tom McHugh from Tuam was on record as saying to the journalist that he would not take anything for private gain, but that was not shown. Why was there no balance? This was a disgraceful practice, but it brings every politician's reputation into disrepute. RTE has questions to answer about its practices. Equally, what is good for the goose is good for the gander. If that was an acceptable technique, when pro-life groups brought undercover proof to the floor of this House that the Irish Family Planning Association and other abortion agencies were recommending-----

Senator Ivana Bacik: On a point of order, I ask the Senator to withdraw that comment about the Irish Family Planning Association.

Senator Fidelma Healy Eames: Gabh mo leithscéal, pro-choice agencies were recommending the abortion pill, but that was not taken as bona fide proof.

An Cathaoirleach: The Senator is way over time.

Senator Fidelma Healy Eames: There are many questions to be answered. If those are lawful and good practices to be approved by the Minister for Communications, Energy and Natural Resources for use by the public service broadcaster, they can be used by every other agency in the country. I do not believe they are honourable practices.

Senator Eamonn Coghlan: It is appropriate that we have some young students in the Visitors Gallery this morning. They are very welcome. I understand we have had numerous references to religion, politics and education this morning. I welcome the announcement made today by the Minister for Education and Skills, Deputy Jan O'Sullivan, that she will repeal Rule 68 in the Department's rules for national schools.

Senator Darragh O'Brien: The Senator can welcome it all he likes, but I do not have to agree with it. What is his point?

An Cathaoirleach: Senator Eamonn Coghlan should be allowed to speak without interruption.

Senator Eamonn Coghlan: The document dates back some 50 years. It is quite a long time. This rule states religious education is by far the most important part of the school curriculum. Currently, children spend 30 minutes per day, or two and a half hours per week, studying religion, which is incredible when one compares it with some other core subjects. Pupils engage in physical education for less than one hour per week. The National Council for Curriculum and Assessment is reviewing the national school curriculum, with recommendations to be published some time next year. I call on the Minister to ensure the time allocated to physical education is increased and that the manner in which it is delivered changed in line with the

Points for Life initiative that was introduced in the Seanad and delivered in a pilot programme in 2013 and 2014 under the guidance of the Professional Development Service for Teachers. It is not just me who is requesting this. There are teachers, parents, coaches and many people in the community who unanimously agree that it should be done. We all know about the value and importance of physical education in a child's development and overall well-being. It is now time to do something about it and this is the way we can go forward. I call for a debate on the issue at some time in the near future.

Senator James Heffernan: A Private Members' motion tabled by the Social Democrats was moved in the Dáil last night calling for the establishment of an anti-corruption agency. This is most timely. It is something we announced a number of weeks ago. What was shown on the "RTE Investigates" programme was only the tip of the iceberg. Corruption is endemic in public life and includes more than just three county councillors. It stretches to the heart of what we do. We have seen it in the past in various tribunals such as the Mahon and Moriarty tribunals and issues related to land rezoning. There could have been a tribunal for each local authority in the country. If one scratches the surface in respect of many of the land banks that could no longer be financed by local government, were bought at a premium price during the boom years and are now under the Local Government Management Agency, essentially a NAMA for local government, and if one saw the deals that were done in acquiring these sites, one would draw some very interesting conclusions. From issues related to Anglo Irish Bank which has become IBRC to the sale of Siteserv and NAMA properties, one can see that it is rotten. Some parties are decrying it when they have been complicit in it for many years. Some of the newer Members in Leinster House have been giving out about corruption. Parties that cover up other matters such as child abuse and sex offences cannot have any credibility when it comes to issues such as corruption.

Senator Fidelma Healy Eames: Will the Senator clarify what he means by that? To what parties is he referring?

Senator James Heffernan: I will clarify what I mean. I consider Sinn Féin and the Provisional IRA to be groups that have covered up instances of rape and child abuse.

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

Senator James Heffernan: I do.

Senator Trevor Ó Clochartaigh: Where is the Senator's evidence?

Senator James Heffernan: My evidence is sitting not too far away from me.

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

Senator James Heffernan: I do. I ask Government Deputies and my Senatorial colleagues to call on Government Deputies to support the motion to establish an anti-corruption agency. This is essential if we are to restore confidence in public life. It is a very timely measure and one the public demands from politicians.

Senator Maurice Cummins: Senator Marc MacSharry proposed that the Minister of State, Deputy Simon Harris, come to the House to debate the issue of flooding which was covered in most of the contributions on the Order of Business this morning. I have a comprehensive document that I could read to the House, but I have no intention of doing so this morning as in

the other House yesterday the Minister of State gave a comprehensive reply to a Topical Issue debate on the issue which I suggest Members should read. However, as so many Members have asked for a debate and the Minister of State will attend the House for two and a quarter hours to deal with the Finance Bill 2015, I suggest that, with the consent of the House, we give him 15 minutes at the end of that debate to make a statement on flooding, what has happened and is about to happen. In this way I am trying to facilitate the House.

Senator Darragh O'Brien: That is appreciated. Will the Leader allow 15 minutes for questions also?

Senator Maurice Cummins: I cannot allocate 15 minutes.

Senator Darragh O'Brien: We will take-----

Senator Maurice Cummins: I propose that we amend the Order of Business to take Committee Stage of the Finance Bill at 12.45 p.m. to be adjourned not later than 2.45 p.m., if not previously concluded, and allow the Minister of State to make a statement on flooding at that time or immediately after Committee Stage has concluded. I am doing my best to facilitate the House. Therefore, I do not propose to address the question of flooding which was raised by so many Members. We will leave it to the Minister of State to deal with.

Senators Ivana Bacik, Darragh O'Brien, Cáit Keane, Eamonn Coghlan and Máiría Cahill spoke about Rule 68. I hope we will have a debate on that matter early in the new year. Certainly, respect must be given at all times to people's religious beliefs. Everybody will go along with this. The right of people to send their children to the schools to which they wish to send them is sacrosanct. On repealing Rule 68 and all other related matters, the Minister for Education and Skills stated last night that she intended to do it some time in January. We might, therefore, have an opportunity to discuss this and other education matters when we come back in January.

Senators Darragh O'Brien, Fidelma Healy Eames and Colm Burke spoke about the new drug for cystic fibrosis sufferers. I will bring the matter to the attention of the Minister for Health. I do not know whether the Senators have raised the issue in the Commencement debate. If they have not done so, I suggest they do so to receive a full reply on it from the Minister. One of the good things about this House is that we can call in a Minister to deal with a Commencement matter. Therefore, if a Senator is not receiving a reply from a Minister, I suggest he or she raise the matter in the Commencement debate.

Senator Trevor Ó Clochartaigh spoke about staffing in local authorities to deal with the HAP scheme, the provision of housing and Traveller accommodation. I agree with him that if Galway County Council has stated it applied for funding for the provision of Traveller accommodation but could not obtain it, the issue should be investigated as a matter of urgency because we have been told money is available for that purpose. There is no question that there is more than sufficient money available for local authorities that wish to draw down funding for the provision of housing.

Senator John Kelly spoke about companies involved in flood relief works in his constituency. Again, this may be a matter for the Minister of State to deal with.

Senator Colm Burke spoke about the provision of accommodation for homeless persons in Cork city and county and asked that some properties not in State ownership be funded. It is a matter for the local authorities and the agency which owns the properties, but I am sure that if

they were to apply to the Government for funding, it would be seriously considered by it.

Senator Feargal Quinn called for a debate on a report compiled by the Joint Committee on Jobs, Enterprise and Innovation entitled, Low Pay, Decent Work and a Living Wage. I agree with him that we should debate the document. The Minister is due to come to the House when we resume in the new year to discuss innovation and research, another matter on which we heard statements recently, as well as Government policy. I hope the Minister will discuss both issues.

Senator Cáit Keane called for a debate on the findings of the Growing Up in Ireland survey. We will try to facilitate her request, but it will not be taken before the end of next week.

Senators Gerard P. Craughwell, Rónán Mullen and Diarmuid Wilson mentioned the appalling way private investigation companies treated people. The Minister for Justice and Equality was in the House practically all of last week and will be here both this week and next. If Senators want her to come to debate the practices of private investigation companies, I suggest tabling a Commencement matter would enable them to receive answers from her.

Senator Gerard P. Craughwell: With due respect, the issue needs to be debated.

Senator Maurice Cummins: If anyone has information on criminal activity engaged in by any of the people in question, he or she should notify the Garda as a matter of urgency. I am sure it would deal with the matter.

Senator Gerard P. Craughwell: It is the overall level of regulation that is unacceptable.

Senator Maurice Cummins: Senator Paschal Mooney inquired about the bankruptcy Bill. I have no information as of yet on the timing of the Bill and I am not sure whether it has been passed by the Cabinet. It will probably be brought before the Dáil first, if it is introduced before Christmas.

Senator Paschal Mooney: Will the Leader make time available to debate the legislation before Christmas, if possible?

Senator Maurice Cummins: If necessary, we will certainly make time available, as I always do when legislation is brought before the House.

Senator Paschal Mooney: I believe the legislation has received clearance.

Senator Maurice Cummins: I am sure we will have the full co-operation of the Opposition on any legislation that is brought before the House

Senator Paschal Mooney: Absolutely; the Leader always receives it. I understand the legislation has been passed by the Cabinet.

Senator Maurice Cummins: The Senator referred specifically to a medical card application and the loss of documents. It is unacceptable. I suggest he table a Commencement matter. The Cathaoirleach will have a long list of Commencement matters and will have a difficult job in making his selections in the next few days.

Senator Darragh O'Brien: The Cathaoirleach is more than capable of making selections.

Senator Maurice Cummins: Senator Diarmuid Wilson mentioned private investigators, a

matter I have dealt with. He also welcomed the fact that the Irish Red Cross would administer the flood relief fund.

I agree with Senator Lorraine Higgins and other Senators that the time limits for decisions by An Bord Pleanála should be reviewed. We debated the Planning and Development (Amendment) Bill last week and again yesterday. Unfortunately, on both occasions I did not hear any Senator raise this point. The debates provided them with an opportunity to do so, but I am sure the matter will be addressed by the Government in the context of an overview of the activities of An Bord Pleanála.

Senator Fidelma Healy Eames mentioned the programme "RTE Investigates". The matter was dealt with comprehensively on the Order of Business yesterday.

Senator Fidelma Healy Eames: Will the Minister for Communications, Energy and Natural Resources come to the House to address these practices?

An Cathaoirleach: The Leader to continue, without interruption.

Senator Maurice Cummins: Senator Eamonn Coghlan called for the time allocated to physical education in schools to be increased.

Senator Fidelma Healy Eames: On a point of order, will the Minister for Communications, Energy and Natural Resources come to the House to address the practices involved?

An Cathaoirleach: That is not a point of order.

Senator Fidelma Healy Eames: That is my question.

An Cathaoirleach: I ask the Senator to, please, resume her seat. She has interrupted the Leader's contribution.

Senator Fidelma Healy Eames: I asked my question.

Senator Maurice Cummins: I was not asked that question. I replied that the matter had been dealt with yesterday.

Senator Fidelma Healy Eames: Is it all over?

An Cathaoirleach: Will the Senator, please, allow the Leader to respond to the questions raised today?

Senator Paul Coghlan: The Leader has made his points comprehensively.

Senator Fidelma Healy Eames: Is it all over?

An Cathaoirleach: Will the Senator, please, allow the Leader to respond to the questions raised?

Senator Maurice Cummins: This is repetition. If Senator Fidelma Healy Eames had been here yesterday when I replied, she would know that I dealt with the issue comprehensively.

Senator Fidelma Healy Eames: With respect, the Leader did not hear my question until today.

Senator Maurice Cummins: Obviously, the Senator was not here yesterday.

Senator Eamonn Coghlan called for an increase in the time allocated to physical education in schools. I agree totally with him. We should have a debate on the importance and value of physical education. I assure the Senator that I will try to arrange the debate early in the new year.

Senator James Heffernan said a motion calling for the establishment of an anti-corruption agency had been tabled in the Lower House. I am sure that if a similar motion is tabled in this House, we will have an opportunity to discuss the matter comprehensively as corruption is an issue we should discuss. The Government has a very good record in terms of the amount of legislation it has brought forward-----

Senator Paul Coghlan: Yes.

Senator Maurice Cummins: -----including on the registration of lobbyists, as well as several Bills to deal with corruption.

An Cathaoirleach: The Leader has proposed an amendment to the Order of Business that the debate on No. 1 be adjourned at 2.40 p.m. and that the Minister of State, Deputy Simon Harris, make a 15 minute statement on flooding. I ask Senators to bear this in mind.

Senator Marc MacSharry has proposed an amendment to the Order of Business, "That a debate be taken today on plans to address the causes and consequences of flooding."

Senator Darragh O'Brien: We withdraw the amendment on the basis of the Leader's comments.

Senator Paul Coghlan: Well done.

An Cathaoirleach: Is that agreed? Agreed.

An Cathaoirleach: Senator Gerard P. Craughwell has proposed an amendment to the Order of Business, "That a debate with the Minister for Justice and Equality on the practices of companies registered as private investigation companies be taken today." Is the amendment being pressed?

Senator Gerard P. Craughwell: Yes.

An Cathaoirleach: Is there a seconder?

Senator Gerard P. Craughwell: Yes.

Senator Rónán Mullen: I second the amendment.

Amendment put:

The Seanad divided: Tá, 18; Níl, 25.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Craughwell, Gerard P.	Brennan, Terry.
Cullinane, David.	Burke, Colm.

Daly, Mark.	Cahill, Máiría.
Healy Eames, Fidelma.	Coghlan, Eamonn.
Heffernan, James.	Coghlan, Paul.
Leyden, Terry.	Comiskey, Michael.
MacSharry, Marc.	Conway, Martin.
Mooney, Paschal.	Cummins, Maurice.
Mullen, Rónán.	Gilroy, John.
Norris, David.	Hayden, Aideen.
O'Brien, Darragh.	Henry, Imelda.
Power, Averil.	Higgins, Lorraine.
Quinn, Feargal.	Keane, Cáit.
Reilly, Kathryn.	Kelly, John.
White, Mary M.	Moloney, Marie.
Wilson, Diarmuid.	Moran, Mary.
Zappone, Katherine.	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegarde.
	Noone, Catherine.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Sheahan, Tom.
	van Turnhout, Jillian.

Tellers: Tá, Senators Gerard P. Craughwell and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

An Cathaoirleach: Senator Paschal Mooney has proposed an amendment to the Order of Business, "That a debate with the Minister for Health to explain the regulations governing the issuing of medical cards and the need for improvements in the system be taken today." Is the amendment being pressed?

Senator Paschal Mooney: Yes.

Amendment put:

The Seanad divided: Tá, 18; Níl, 26.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Craughwell, Gerard P.	Brennan, Terry.
Cullinane, David.	Burke, Colm.
Daly, Mark.	Cahill, Máiría.
Healy Eames, Fidelma.	Coghlan, Eamonn.
Heffernan, James.	Coghlan, Paul.

Leyden, Terry.	Comiskey, Michael.
MacSharry, Marc.	Conway, Martin.
Mooney, Paschal.	Cummins, Maurice.
Mullen, Rónán.	Gilroy, John.
Norris, David.	Hayden, Aideen.
O'Brien, Darragh.	Henry, Imelda.
Power, Averil.	Higgins, Lorraine.
Quinn, Feargal.	Keane, Cáit.
Reilly, Kathryn.	Kelly, John.
White, Mary M.	Moloney, Marie.
Wilson, Diarmuid.	Moran, Mary.
Zappone, Katherine.	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegarde.
	Noone, Catherine.
	O'Donnell, Marie-Louise.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Sheahan, Tom.
	van Turnhout, Jillian.

Tellers: Tá, Senators Paschal Mooney and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

An Cathaoirleach: The Leader has proposed an amendment to the Order of Business, "That No. 1 be adjourned at 2.40 p.m. and the Minister of State at the Department of Finance make a 15-minute statement on flooding." Is the amendment agreed to? Agreed.

Order of Business, as amended, agreed to.

Finance Bill 2015 [Certified Money Bill]: Committee Stage

Acting Chairman (Senator Hildegarde Naughton): I welcome the Minister of State.

SECTION 1

Question proposed: "That section 1 stand part of the Bill."

Senator Sean D. Barrett: Should the system under which all of a person's income is liable to USC when they pass the exemption limit be reconsidered?

Acting Chairman (Senator Hildegarde Naughton): The Senator should start again. We could not hear him because the microphone was not turned on.

Senator Sean D. Barrett: I welcome the Minister of State. The system under which USC

becomes payable on every cent earned once a person goes over the limit is quite unusual in the tax code. Usually an exemption is an exemption, as it is in the case of exemption from PAYE. When people go over the exemption limit, has consideration been given to just applying the tax to the amount by which they exceed the limit rather than to the very first cent of money that they earn?

Minister of State at the Department of Finance (Deputy Simon Harris): The Senator highlights a real difficulty with USC. It is a very crude instrument of taxation, which is why we are committed to removing the burden of USC from hundreds of thousands of people and reducing all the rates of USC in this Finance Bill. Ultimately, we are also committed to the abolition of USC. The priority of the Government and Minister for Finance, Deputy Michael Noonan, is to abolish USC over time. His preference for the moment with the limited fiscal space available to him is to reduce the various rates. The Bill provides for an increase in the entry point to USC from €12,012 to €13,000 from 1 January 2016. It is estimated that over 700,000 income earners will not be liable for any USC at all in 2016. The entry point to USC was €4,004 when we entered government and this will be the third occasion on which the Minister will have increased the entry point.

The number of income earners exempt from USC is affected by the condition of the economy because as the economy continues to improve, more people will be earning more than the entry point to USC. The increase in the minimum wage from €8.65 to €9.15 per hour will increase the hourly income of minimum wage workers by over 5.7%. It is preferable for an individual to pay some USC and have a higher net income than to be exempt from USC and have a lower net income. The changes announced in the budget will mean that all income earners who pay USC will see a significant reduction in their USC bill from 2016 for the same level of income.

I take the broader point that the Senator is making, but it is the policy preference of the Minister to work towards the abolition of USC. He is targeting the fiscal space available to him with that very aim of taking more people out of the USC net and reducing the three rates in order that we can have a tax system post-USC within a matter of years.

Senator Sean D. Barrett: I thank the Minister of State. In the literature that is called a poverty trap. If somebody has an income above that limit and all of the earlier income is taken into the tax net, it gives a very high marginal tax rate, which should be avoided. I agree with the Minister of State's emphasis.

Question put and agreed to.

Section 2 agreed to.

NEW SECTION

Acting Chairman (Senator Hildegarde Naughton): Recommendation No. 1 is in the names of Senators Kathryn Reilly, Trevor Ó Clochartaigh and David Cullinane.

Senator Kathryn Reilly: I move recommendation No. 1:

In page 11, between lines 20 and 21, to insert the following:

"**3**. The Minister shall, within one month of the passing of this Act, prepare and lay before Dáil Éireann a report on options available for removing the USC liability for all workers earning less than €19,572 a year.".

The Minister of State has mentioned that the Minister's commitment is to abolish USC over time. We can only make recommendations. The purpose of this recommendation is to reduce taxation on low income earners who earn less than €19,752 a year. We came to that figure by way of our own proposal to raise the minimum wage by €1.50. At that level, we believe it would be at the threshold of a normal week's work for a worker. The €13,000 figure that the Minister has selected falls too short. Those on minimum wage in the State are hit hardest with regard to the challenges of rent, education costs and the different expenditures people have in day to day living. We believe there is a necessity to move towards a living wage and seek to ensure there is space available for people to be able to live on that wage. Taking anyone earning less than €19,572 a year out of the USC net would allow for this.

Deputy Simon Harris: I thank the Senator for her recommendation. It appears from the wording of the proposed recommendation that it is the Senator's intention that all those earning up to €376 per week, just over the earnings of a full-time worker on the new minimum wage of approximately €357 per week, should be exempt from the charge to USC entirely. It is unclear whether the Senator also intends that this recommendation would consider all income earners with income of less than €19,572, rather than just workers. I do not think that is what she is trying to do, but it is a little vague in that regard. Such a group would also include pensioners and people with income from their investments.

The Senator will be aware that the budget contained a number of measures specifically targeted at supporting those on lower incomes. With regard to USC, the changes proposed to the Finance Bill include the extension of an exemption threshold to €13,000 per annum. This measure alone removes an estimated 40,000 low-income earners from liability to the charge entirely. It is now estimated that over 700,000 individuals - 29% of all income earners - will not be liable to USC from 2016. In addition to this, as a result of a reduction of the two lower rates of USC and the extension of the ceiling for the second rate of USC from €17,576 to €18,668, all those earning the increased minimum wage with an average working week of 39 hours will remain liable to the two lower rates of USC, notwithstanding the increase in their gross income. Senators may also be aware of the new PRSI credit which was introduced in the budget in order to address the PRSI step effect, which otherwise would have negatively impacted on workers on the increased minimum wage. This is a further measure aimed at supporting those on lower incomes, by smoothing entry into the PRSI system.

With regard to the proposal from the Sinn Féin Senators who would like a report prepared on options to increase the USC exemption threshold to €19,572, it should be noted that this would increase the entry point above the current entry point to income tax, which stands at €16,500 per annum for a single employee. As a result, such an individual would pay no tax, no USC and would have a minimal liability to PRSI. Doing this would seriously undermine the original rationale for the introduction of USC; therefore, we need to look at it in the context of how one phases out USC in a fair manner. In addition, USC was intended to ensure that for as long as it lasts most individuals would make some contribution towards the provision of services and towards assisting in restoring the public finances. The removal of individuals earning up to €19,572 would obviously not achieve this.

When the Government considers options for a budgetary tax package, it must take account of all the parts of the package and, therefore, single measures could not be contemplated in isolation. Taking these factors into account, the Minister is not minded to expend resources of the Department on the production of the report requested by the Senator and cannot, therefore, accept the recommendation.

On the issue of a living wage and how we ensure people earn a decent wage, there will obviously be different policy proposals from all parties. I fear that increasing the minimum wage by the rate that Sinn Féin proposes would have the unintended consequence of stalling job creation. We can debate that issue at another time.

Senator Kathryn Reilly: I thank the Minister of State for his response. We will not get into the living wage argument here, but the Joint Committee on Jobs, Enterprise and Innovation just published a report on the issue with cross-party agreement. Perhaps the Minister of State might look at it.

Deputy Simon Harris: I have it.

Senator Kathryn Reilly: I thank the Minister of State for his response.

Recommendation put and declared lost.

Sections 3 to 14, inclusive, agreed to.

NEW SECTION

Senator Kathryn Reilly: I move recommendation No. 2:

In page 16, between lines 32 and 33, to insert the following:

"**15.** The Minister shall, within one month of the passing of this Act, prepare and lay before Dáil Éireann a report on options on introducing a third rate of tax payable at 47 per cent on income over €100,000.".

We are used to doing the dance on this recommendation. It has been made in this and the other House on numerous occasions and we are all very familiar with the arguments for and against it. The Minister of State knows what I will say and I know what he will say but God loves a trier. At the heart of the recommendation that a report be produced on options to introduce a third rate of tax, payable at 47% on income over €100,000, is the question of how to have an income tax rate that would allow people to work hard and take home more money that would allow them to live comfortably, while contributing more. It would put a brake on the growth of the income chasm between the rich and the poor that we discussed on Second Stage. We need to ask ourselves how this could be done in a way that would not penalise people on middle incomes who might be squeezed. On every €1 over €100,000 we suggest an extra 7 cent should go into the State's finances which would have the effect of creating a more equal society, putting a brake on the growing disparity in incomes and bringing hundreds of millions of euro into the State's finances to address some of the problems being experienced by those in the lowest third of the population's earners.

On Committee Stage in the Dáil my colleague, Deputy Peadar Tóibín, related this to the concept of price elasticity saying there was not necessarily a linear relationship between tax or price and behaviour. He said if people were asked if they would be happy to pay a little more tax in order to have a health service in which patients would not wait on trolleys, 90 year olds would not have to wait days and children would not be forced to take painkillers for tooth pain because they had been waiting months for dental surgery, most would say they would be willing to pay a little extra if necessary and if they could afford it. This recommendation proposes that those on high incomes could contribute 7 cent more.

Deputy Simon Harris: As the Senator said, we have this exchange regularly in this House and the Dáil and know one another's positions clearly. I do not buy into the logic that if taxation was increased on something, it would yield more. While accepting that everyone has to pay his or her fair share and that the system has to be progressive, there is significant evidence to suggest that if we want more of something, we should tax it less. If we want more jobs and productivity in the economy, we should not hike up taxes, particularly when living on an island with two jurisdictions. If the Senator is in favour of a united Ireland and having an all-Ireland economy, having two very different marginal tax rates, whereby somebody in Northern Ireland pays a much lower rate than somebody in the Republic, would not be good for investment in the Republic and would not make much sense in the promotion of an all-Ireland economy. It is important to note that the top 1% of income earners pay 22% of the total income tax and universal social charge take. That is up from 21% last year and 19% the year before that. I am absolutely in favour, as is everyone in this House, of progressivity and people paying their fair share, but we need to ensure there are no unintended consequences.

The basis for the recommendation is having a report laid before the Dáil on the options for introducing a third rate of income tax of 47% on individuals' income in excess of €100,000. The Government's commitment is not to increase top marginal tax rates. A third rate of tax of 47% would increase the top rate of tax by seven percentage points. It would also have the effect of increasing the top marginal tax rate to 59% for employees and 62% for the self-employed. The Minister for Finance, Deputy Michael Noonan, discussed this proposal at length with Deputy Peadar Tóibín on Committee Stage in the Dáil. He expressed his concerns, supported by research from the Organization for Economic Cooperation and Development, OECD, that tax rates at such levels would be anti-competitive and could drive skilled workers out of the country at a time when we needed to battle to attract skilled workers and talents into the country and to stay here. His view is that this recommendation would damage rather than support the economy. Marginal tax rates influence individuals' decision to work more or work at all. Higher marginal tax rates for earners might also incentivise a greater level of tax evasion and contribute further to the development of a shadow economy. As the Minister stated in his Budget Statement, it is his desire to have every worker progressively moving to a point where the marginal tax rate will not be more than 50% for all workers. We think this would make Ireland more attractive for mobile foreign investment and skills, including for returning emigrants and attracting and keeping skills in the country.

Recommendation put and declared lost.

Sections 15 and 16 agreed to.

SECTION 17

Question proposed: "That section 17 stand part of the Bill."

Senator Sean D. Barrett: I tried to research the estimate of €70 million per production and found completely contradictory estimates, some as low as €4.5 million and some much higher. It is a 40% increase, from €50 million to €70 million, when money is not exactly growing on trees. How did we get to the figure of €70 million and do we know whether we will get value for that money? Are we subsidising very expensive movies? Why has the figure gone up by 40% in a 12 month period?

Deputy Simon Harris: Last year the Minister for Finance said he would keep the cap on

eligible expenditure on the film tax credit under review, as well as considering other possible amendments to improve the operation of the scheme. In recognition of the importance of Ireland's film industry to the cultural economy he announced an increase in the cap on eligible expenditure to €70 million in the budget. This arose from a proposal within the Government from the Minister for Arts, Heritage and the Gaeltacht. The Minister's aim in doing this, based on his advice from that Department, is to try to attract higher budget films to Ireland. He does very much intend to monitor the measure closely to ensure it has the intended effect. The Minister for Arts, Heritage and the Gaeltacht had indicated that the current cap made the scheme less attractive to big budget films and that a sizeable increase was needed to encourage film studios to invest in increased studio capacity. I recently visited several film studios in my constituency and this issue came up - that they needed to attract more big budget films. We are trying this on the advice of the Department of Arts, Heritage and the Gaeltacht, but the Minister for Finance will monitor it to make sure it has the intended effect of attracting more film productions and an expansion of film studios.

Senator Sean D. Barrett: I thank the Minister of State. I thought €70 million was for the lot for the year. It is a gamble. We hope it will work, but it seems to be very generous.

Question put and agreed to.

Section 18 agreed to.

NEW SECTION

Senator Darragh O'Brien: I move recommendation No. 3:

In page 26, between lines 1 and 2, to insert the following:

"**19.** The Minister shall, within 1 month of the passing of this Act, prepare and lay before the Oireachtas a report on the operation of the Employment and Investment Incentive in particular in how it relates to companies more than seven years old.".

On Second Stage I gave the Minister of State a specific example to highlight my concern. Without the insertion of this recommendation, companies more than seven years old are disadvantaged under the provisions under which there is access to the employment and investment incentive, EII, scheme because of the amount of finance they must raise. Will the Minister of State's officials look into this matter? It appears from research conducted by Fianna Fáil that this is the case. If that is the case, the purpose of inserting this recommendation would be that within one month of the passage of the Bill the Department would come back with a report on how the EII scheme was operating for companies seven years old or older.

Senator Feargal Quinn: We discussed this issue on Second Stage. I do not quite understand it because if the Government is aiming to encourage people to invest, it should also aim to maintain investments, but this does not apply to anything older than seven years.

Deputy Simon Harris: I thank the Senators for raising this point on Second Stage. It is an important point and I asked officials in the Department to liaise further with them. They corresponded by e-mail with the Senators to explain the rationale behind this measure. It is not a case of the Government or Ireland deciding on a measure but of recognising the EU rules around it. It is not entirely clear from the wording proposed in the recommendation what the specifics are that the Senator wishes to be contained in the proposed report. We can engage

on that matter and, I hope, provide him with whatever information he needs between now and Report Stage.

The EII scheme is targeted at job creation and retention and available to the majority of small and medium-sized trading companies. However, as it is a state aid scheme, the Irish authorities were required to make changes to the qualifying company criteria in order to comply with the new guidelines that came into effect recently. The alternative could have resulted in the scheme being in breach of state aid rules. In such a scenario, the Commission could have requested the suspension of the scheme in its entirety and launched a full investigation regarding its compatibility with the internal market rules.

In allowing for state aid for risk finance investments the Commission has moved away from qualification criteria based on whether an enterprise is in seed, start-up or expansion phase and has now set new criteria on the type of companies that can qualify. These new European rules stipulate that a qualifying company must not have been operating in any market; have been operating in any market for less than seven years following their first commercial sale; or require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding five years. That is how we arrived at that position.

In addition, regarding follow-on investments, the following three criteria must all be met: the lifetime limit of €15 million is not exceeded; the possibility of follow-on investments was foreseen in the original business plan; and the company has not become linked with another company such that it would no longer be an SME. The revised guidelines from the Commission take account of the fact that SMEs may face difficulties in gaining access to finance, particularly in the early stages of their development. The Commission notes that business finance markets may fail to provide the necessary equity or debt finance to newly created and potentially high growth SMEs resulting in a persistent capital market failure, which negatively affects SMEs growth prospects.

The Commission, therefore, made the changes to the qualifying company criteria in recognition that newer SMEs found it more difficult to raise funding via traditional routes. Such companies typically create more employment than companies that have been operating for longer periods and this furthermore justifies the targeting of the relief. Regardless of whether I agree with the recommendation, the hands of the Government are tied in this regard. We need to make sure an investment scheme put in place to support start-ups and SMEs is compliant with EU rules. If it is not compliant, we risk jeopardising the scheme. The Commission had been monitoring this and its view is clear to the Department.

We published the detail of the changes in the financial resolution on budget day. I am sorry I cannot accept the recommendation, but that is the rationale behind my decision.

Senator Darragh O'Brien: I thank the Minister of State for his response. He stated the new EU rules or guidelines were recently introduced, but I wonder when that was. With regard to their transposition, were they rules or guidelines? The Minister of State mentioned both words. Were they transposed into Irish law by way of statutory instrument or was a report submitted? How was it assessed by the Minister? Were they referred, for example, to the Joint Committee on European Union Affairs, the Joint Committee on Jobs, Enterprise and Innovation or the Joint Committee on Finance, Public Expenditure and Reform? Has there been legislative scrutiny of these changes? Will the Minister of State provide the detail?

Deputy Simon Harris: I will give the Senator all the details I have available and we can engage further between now and Report Stage. My understanding is that these guidelines are from 2014. The Commission has made it clear Ireland needs to make sure it is in compliance with them and we do not want to jeopardise the scheme. I also understand the action needed to be taken by the Minister requires reference in tax law to the existence of the guidelines and, therefore, the Minister did not need to sign a statutory instrument.

I am not aware of a discussion by an Oireachtas committee. I do not have that knowledge.

Senator Darragh O'Brien: I appreciate that, but this highlights the issue of how we deal with EU guidelines. While I do not question the fact that the issue was raised by the Commission and it has sent guidelines to the Department, in legal effect guidelines are guidelines. They do not derive from an EU directive. Who made the decision in the Department? I acknowledge that this is a niche issue which will not affect a vast number of people overnight. It appears there has been no scrutiny of this and if had not been brought to my attention and that of Senator Feargal Quinn and a few others by an Irish company, we would not have known about it. Perhaps that is also down to us. More than 80% of our laws emanate from the European Union and the scrutiny of EU legislation and directives is a broader issue. What is the difference between a Commission guideline and a directive and what we must do in respect of each? Must the Government follow a guideline?

Deputy Simon Harris: The Senator has made a fair point. While a directive is something Ireland, with every other member state, commits to transpose and implement in various ways through national parliaments, we do not have to implement a guideline, but if we want Commission officials to approve our scheme from a state aid point of view, we have to be in compliance with the rules. This did not need to be transposed into domestic law in the sense that it did not require a statutory instrument, legislative change or even pre-legislative scrutiny. This is the Commission stating it is the policeman on state aid and if we want to have our scheme approved, we need to be in compliance with state aid rules. It is the approving body and these are its guidelines. That is the difference.

The Commission has raised the importance of being in compliance a number of times and the Minister and the Department have left it as late as possible to bring in these further restrictions to ensure we are in compliance, but we have to do it now or we run the risk of jeopardising the entire scheme.

Senator Darragh O'Brien: Before Report Stage, will the Minister of State furnish Senator Feargal Quinn and me with the relevant correspondence between the Commission and the Department? If that is fair enough, I would like to read it. At least I have clarity now on where this has come from. If we had no choice but to do this, I understand it. The Minister does not want to jeopardise the scheme on the basis of not following a guideline, but again there is the distinction between a guideline and a directive. I will withdraw the recommendation and table it again on Report Stage.

Deputy Simon Harris: In an effort to be helpful, I will ask my officials to engage with Senators Darragh O'Brien and Feargal Quinn on making available any information available that it is appropriate to make available.

Senator Feargal Quinn: I thank the Minister of State for the explanation. I agree entirely with Senator Darragh O'Brien. We do not want to jeopardise the scheme because it is worth-

while, but we would like to investigate the history behind this and I appreciate the offer he has made.

Recommendation, by leave, withdrawn.

Sections 19 to 31, inclusive, agreed to.

Question, "That section 32 stand part of the Bill," put and declared carried.

SECTION 33

Senator Kathryn Reilly: I move recommendation No. 4:

In page 71, between lines 11 and 12, to insert the following:

"(2) The Revenue Commissioners shall then make this country-by-country report available to the public on their website.".

We welcome the move towards country by country reporting, as it will lead to increased transparency. However, this also misses out on public transparency. It is interesting that the public is not allowed to know what is happening. In England, for example, when it was discovered that large multinationals operating there were paying low corporation tax rates, the public became annoyed and political pressure on these companies began to increase.

These organisations then began to consider the necessity of maintaining good public relations with customers and, therefore, stepping up to the plate in respect of having a better corporation tax regime.

All Members are aware that society is a powerful leverage with regard to tax justice. If the information is not made public, consumers are not making full decisions on the justice behind the behaviour of those companies and it is not good for the public not to have such power and knowledge. Although we live in an information society, the information is largely withheld and that neutralises citizens' ability to effect change on these companies. As such public transparency is important, I ask the Minister of State his opinion as to whether he considers it right there should be transparent public knowledge on country by country reporting. Does he think it is important that people are not kept in the dark with regard to their expenditure and the tax justice behind it?

Deputy Simon Harris: I share the Senator's desire for as much transparency as is possible, which is a desire shared by all Members. However, I also greatly respect taxpayer confidentiality. Where should one draw the line? Do people want to see the Senator's tax affairs or mine? While it is important that the Revenue authorities should see them, they are confidential and the Revenue Commissioners are independent and held in high regard by the public.

While understanding the rationale behind the Senator's recommendation, the main reason I am not in a position to accept it is the Organisation for Economic Co-operation and Development, OECD, base erosion and profit shifting, BEPS, process is a highly positive step forward in that our tax authority and every other tax authority signed up to the OECD BEPS process will be able to receive this country by country reporting. That means tjat not only will the Revenue Commissioners in Ireland know about the level of tax paid by certain companies here, they will also know about the level of tax paid in other OECD countries. This can only be good in tackling aggressive tax planning, tax evasion and various other concerns that are shared by Senators

on all sides of the House.

I acknowledge this is an issue Senator Sean D. Barrett raised in the Chamber yesterday. However, were we to do anything that went further than the OECD BEPS process, we would be giving a reason, an excuse or a way out to other countries not to share that information with our tax authority. In other words, the agreement on the BEPS process is that there will be country by country reporting and tax authorities will share the information. The agreement is, however, that such information remains confidential to tax authorities. What I do not wish to do - I respectfully suggest the Senator does not want me to do it either - is to undertake to do anything that would jeopardise receiving additional information which the Revenue Commissioners do not possess today but will have as a result of the OECD BEPS process.

That said and in fairness to the Senator, it is a matter the European Commission is examining separately. The Commission is examining the issue of public country by country reporting. This would require companies to make publicly available information on their operations, activities and profits in each country in which they operate. As I am sure the Senator is aware, the Commission recently held a public consultation on the issue and has now commissioned an impact assessment. The Government awaits the outcome of its impact assessment, which I consider to be the prudent thing to do.

One must ascertain the impact of any of these measures on jobs and investment, but the Government will continue to engage actively in the debate on this issue at a European Union level while proceeding, through this Bill, with the introduction of country by country reporting to tax authorities, as agreed at the OECD as part of the BEPS process. In general, on this issue and all international tax issues, it is important to have a kind of global consistent approach. That is what has been agreed to in respect of country by country reporting. It is a significant step forward and will provide a lot more information for our tax authority and many others. However, the Government cannot take the next step the Senator proposes it should take for the reasons I have outlined.

Senator Kathryn Reilly: Briefly, does the Minister of State have an idea as to when the European Commission's impact assessment will be published? Is there a timeline for its publication?

Deputy Simon Harris: I do not have a precise timeline. I know that the Commission has taken the decision to commission the impact assessment which has started and is under way. Our guesstimate is that it will take a number of months but it is under way.

Recommendation, by leave, withdrawn.

Section 33 agreed to.

Section 34 agreed to.

NEW SECTION

Senator Kathryn Reilly: I move recommendation No. 5:

In page 71, after line 36, to insert the following:

"35. The Minister shall, within nine months from the passing of this Act, prepare and lay before Dáil Éireann a report on the effective rates of corporation tax paid by companies

in the State.".

This obviously relates again to the discussion on country by country reporting. The basis for many of the changes is that Ireland has been regarded as an outlier in respect of corporation tax, which some people state has cost us dearly in respect of the amount of tax we should have been receiving for many years. While the changes that have been made are welcome, as is country by country reporting, when people such as the Trinity College academic Professor Jim Stewart, using information from the US Bureau of Economic Analysis, estimates the effective corporate tax rate paid by foreign firms is 2.2%, the damage caused by this shocks to the bone and affects people's human experiences.

I acknowledge that the Minister of State has observed that a change from the agreed negotiated position would reduce the ability of that to function properly. While there is logic to that position, it would be important in this regard that public information be given and for this report on the effective rates of corporation tax to be provided. Some people would contest the figures that have been put forward. I believe the Minister previously has used a figure of 10.7% as being the effective rate, but Members of the other House have contested some of the figures. The introduction to some of the papers set out a broad spectrum of different effective rates, depending on how someone chooses to calculate it. However, it is important to have a report on the effective rates of corporation tax, which would go a long way towards dealing with the issue of transparency. It is a highly topical issue that has been raised in recent months, in particular.

Senator Darragh O'Brien: I have certain reservations about the recommendation tabled on the effective rates. There are many valid reasons the rate might be lower than the standard rate. This probably will be my only opportunity to make this point but in respect of the €2.47 billion in additional tax revenues up to the end of October, I note that more than 80% of it was made up of corporation tax receipts. While this is certainly welcome, I read further in details published in *The Sunday Times* last Sunday that ten of Ireland's largest foreign direct investment companies were responsible for approximately 80% of corporation tax revenue.

I need not tell the Minister of State that previously, there was an over-reliance on one-off taxes. While these are not one-off taxes, the Department of Finance must pay close attention to over-reliance on certain multinational companies that are located in Ireland. These companies are transient and if someone else offers them something better, they will consider it and will move. I believe what is being done disproportionately, in this year in particular by way of the budget, the Finance Bill and the way in which money is being spent pre-election, is the use of a sizeable chunk of corporation tax receipts, which depend mainly on ten large companies.

We must be extremely careful in this regard, which is why there must be careful consideration of reporting, not necessarily on the effective rates of corporation tax, but the quarterly reports that will come from Revenue and the Department. I will conclude on this point, but I simply ask the Department to give careful consideration to the top ten corporation taxpayers in this country, to how secure they are within the country and, therefore, how secure is that tax revenue into the future. When the State is dependent on such a small number of companies for such a disproportionately large amount of its corporation tax receipts, it is at risk to the possibility of any of them moving, which then would change everything.

Senator Sean D. Barrett: As the Minister noted on the last day, section 35 replaces the existing capital gains relief applying to disposals of qualifying business assets by individual entrepreneurs and business people with a simplified relief that will apply from 1 January 2016

and the new rate is 20% rather than 33%. The concern I expressed on the last day in respect of section 35 is that it is a subsidy to ex-entrepreneurs. Should there be some constraints that the money is reinvested in qualifying assets, not in property or other uses? Otherwise, it is a subsidy to people to get out of what all Members seek to promote, namely, entrepreneurship, new products and additional employment. Should constraints be placed on people qualifying for the 20% rate as to how the funds are used? While the aspiration was that one would sell one's first business to reinvest in subsequent businesses, as that is how entrepreneurs are formed and they get better each time, supposing they simply buy property?

Acting Chairman (Senator Marie Moloney): Let me interrupt the Senator. Would we not be better off disposing of recommendation No. 5 before speaking to the section?

Senator Sean D. Barrett: Should I speak later?

Acting Chairman (Senator Marie Moloney): We will dispose of the recommendation and then the Senator can speak to the section. I apologise, Members are confusing me today.

Deputy Simon Harris: While I am all in favour of efficiency, I had better make a few points. First, I always get nervous, I am sure it is not intended, when recommendations or amendments are tabled that appear to suggest the reason every multinational company is locating in Ireland has to do with corporation tax. That does this country a disservice. I am not suggesting Senator Kathryn Reilly is, but there are many reasons companies make a decision to locate in Ireland and, of course, taxation is one of them. The personal tax levels are also a reason and something we will debate in the coming months. Corporation tax is definitely one. We define the reasons as the three Rs - rate, reputation and regime. The rate matters. I am not referring to a party political regime the Senator will be glad to know-----

Senator Darragh O'Brien: I am.

Deputy Simon Harris: ----- but the regime we have in this country is around our business responsiveness. Let us also remember the reputation we have in the delivery of excellence across a range of companies. We have talent, a track record and tax - three Ts. Companies decide to locate here for lots of reasons and while tax is an important one, it is only one.

There are many figures bandied about regarding the effective rate of corporation tax. Senator Kathryn Reilly made reference to the United States BEA data, but we do not accept this as valid in the Irish context because the basic issue is that US data on the profits of subsidiaries of US companies were generally reported by reference to the place of incorporation of those subsidiaries, not by the place of tax residence of those subsidiaries. For that reason, the US data often overstate the profit made in Ireland by subsidiaries of US companies because significant profits arise to Irish registered companies which are tax resident elsewhere. Therefore, I do not accept it is as clear-cut as that.

There has been reporting on this issue. The Oireachtas finance sub-committee undertook quite a significant body of work on this topic. In April 2014 the Department of Finance published a technical paper on the effective rates of corporation tax in Ireland. The paper was jointly written by the Department of Finance and the well regarded economist, Professor Seamus Coffey of University College Cork, to ensure the work was as objective as possible. It was published in line with the budget around that time and contained a comprehensive analysis of the effective rates of corporation tax. It was prepared to provide clarity about the seemingly conflicting figures that were frequently quoted. It is fair to say it is an objective and excellent

resource for those who seek to understand this complex and technical issue.

In the past few years there has been a great deal of discussion about the effective rate of corporation tax. Much of this discussion has been confusing and unclear because, as Senator Darragh O'Brien said, there are many reasons for different rates. It is important to note that there is no single measure of effective corporate tax rates which can claim to be the best or the most accurate - different measures are relevant depending on the task at hand. The paper examined three methodologies used in the calculation of effective rates of corporation tax generally. The paper also analysed eight figures which were quoted in great detail regarding Ireland. Two of the rates often quoted are the EUROSTAT implicit tax rate of approximately 6% and the US Bureau of Economic Analysis, BEA, data of 2.2%. However, this paper by Mr. Coffey and the Department of Finance concluded that neither of these rates were adjudged to be the most appropriate rate of effective corporation tax. The EUROSTAT rate is based on national accounts which do not correspond to the actual or legal tax base in computing tax liabilities. This methodology can therefore skew the effective rate and I have already outlined the difficulties with using the BEA rate.

In attempting to assess the effective corporate tax rate applying to the total profits earned by companies in Ireland, the paper concluded that the approach based on the national aggregate statistics from the Revenue Commissioners and the Central Statistics Office was the most suitable. The paper found that the effective rates of corporation tax as measured according to statistics from these two sources were reasonably close to the headline rate of 12.5% and that the difference was mainly accounted for by double taxation relief and a small number of other reliefs, including the research and development tax credit.

The paper was based on the analysis of effective rates across a ten-year period and, therefore, I do not believe there is a need for it to be re-examined on an annual basis. It was only published in 2014. On the basis of this extensive analysis, we are comfortable that companies in Ireland are paying the appropriate rate of corporate tax on profits generated by those companies in Ireland. Given that a detailed report has previously been prepared by my Department and discussed at length by the Oireachtas finance committee, I do not believe there is a need to allocate scarce resources to conduct another report at this time.

With regard to the important issue of corporation tax raised by Senator Darragh O'Brien, he is correct that it needs to be monitored closely. After all the State has been through it is important that we continue to very carefully monitor very the Exchequer figures, where tax is rising and where revenues are ahead of profile. The performance of corporation tax receipts has been unexpectedly strong in 2015. At the end of November, corporation tax receipts were €2.3 billion, or just under 60% higher than expected, at €6.4 billion, and up €2.2 billion, or 52% in year-on-year terms.

As the House may be aware, corporation tax is highly concentrated in Ireland, with approximately 80% of receipts received from the multinational sector. In addition, the top ten tax paying groups accounted for over one third of total corporation tax receipts. Revenue has advised that approximately 60% of the surplus against profile is from a small number of large multinational companies, hence the importance of continuing to attract multinationals and, importantly, it is primarily attributable to improving trading conditions. For example, at the end of October 2015 there was an increase of over 20% in the number of companies paying between €100,000 and €5 million compared with the same period last year. This was reflected in the receipts which are also up by over 20% for this cohort of companies.

Based on the information collected by the Revenue Commissioners, it appears the vast proportion, with the exception of around €300 million, of the increase in corporation tax payments is not one-off - they are not windfall taxes. They will enter the Revenue tax base for 2016 and beyond. Importantly, the chairman of the Revenue Commissioners wrote this letter on 20 November to the Minister of Finance which the Minister published on the Department of Finance website outlining that about €300 million might be exceptional payments but the remainder is expected to be part of our tax base for 2016 and beyond.

While corporation tax receipts are running significantly ahead of profile, it is also important to note that VAT receipts are ahead of profile, with almost €1 billion extra collected this year than last year which can only be due to people spending more money in the real economy. Income tax receipts are ahead of profile also. There are a number of areas in which receipts are ahead of profile. That is the rationale behind the corporation tax rate.

Recommendation put and declared lost.

SECTION 35

Question proposed: "That section 35 stand part of the Bill."

Senator Sean D. Barrett: I apologise to Senator Kathryn Reilly and the Minister of State for speaking prematurely during the previous debate.

Section 35 replaces existing capital gains tax relief applying to the disposal of qualifying assets by individual entrepreneurs and business people with a simplified relief of 20% rather than 33%. In the section the qualifying business refers to activities such as development land and the letting of land and so on. However, are there sufficient protections as to where the money goes after the business is sold? Does it go back into a productive activity? That is my concern.

Of course, we want entrepreneurship, products, employment and all of those, but are there protections that this money will not be spent on property? This was a concern of the Minister's when we discussed the Strategic Banking Corporation of Ireland - that it would not lend money for property purchase. That is what got the State into trouble before and is not something we want at this stage. Is there protection if the money was to be spent on something which was less dangerous to the economy; if someone was to take up gambling or bought a deck chair and pipe and slippers and exhibited no further entrepreneurship ever, why would we give someone an incentive to do this?

Deputy Simon Harris: I thank the Senator for his colourful suggestions and he makes a valid point. The relief will not apply to disposals of chargeable business assets by companies or to disposals of development land which I know is an issue raised by Senators in this House, or to a business dealing in or developing land, or to a business consisting of letting land or building or holding investments.

Where a qualifying business is carried on by a private company, individuals seeking to qualify for the relief must own not less than 5% of the shares in the company or at least 5% of the shares in a holding company the business of which consists wholly, or mainly, of holding shares in its 51% of subsidiaries and those subsidiaries are wholly, or mainly, carrying out the qualifying business.

The shareholder must also have been a working director or an employee of a qualifying

business company or group of companies for a continuous period of three years within the five-year period immediately prior to the disposal of the chargeable business assets. This entrepreneurship provision in the Bill is obviously replacing an earlier provision which only allowed relief on a second disposal. It was also subject to considerable restrictions and, it is fair to say from our engagement with entrepreneurs and the business community, was seen to be ineffective. The new provision allows relief in order that entrepreneurs can invest in a new venture. While there may be some who do not reinvest their gains, this in our view is not considered to be a significant issue for people who are clearly serial entrepreneurs.

2 o'clock

Senator Sean D. Barrett: I thank the Minister.

Question put and agreed to.

Sections 36 to 53, inclusive, agreed to

SECTION 54

Question proposed: "That section 54 stand part of the Bill."

Senator Darragh O'Brien: I draw the Minister of State's attention to a situation that has come to light in regard to VAT exempt education activities. I will probably table a recommendation on Report Stage to try to address this issue. A number of education facilities, particularly conference and retreat centres that provide accommodation on a bed and breakfast basis have been recently informed by Revenue that should revenues from their bed and breakfast activity exceed €37,000 per annum all other revenue above that threshold, in respect of other activities at the centres, will be subject to VAT. I thought that advice to be very strange. I am speaking in this regard of retreat centres that hold weekend activities, in respect of which they provide accommodation on a bed and breakfast basis, the income of which on that basis would exceed €37,000 per annum. I would have thought that once the threshold of €37,000 was exceeded only the bed and breakfast activity would become subject to VAT. According to the tax advice they have received, which could be wrong, once the €37,000 per annum threshold is exceeded all of the activities, including conference and education fees, are subject to VAT. I accept the Minister of State may not be in a position to respond to my query today.

Deputy Simon Harris: My officials will communicate with the Senator in advance of Report Stage to see if we can provide clarity on the matter.

Senator Darragh O'Brien: I thank the Minister of State.

Question put and agreed to.

Sections 55 to 66, inclusive, agreed to.

SECTION 67

Senator Darragh O'Brien: I move recommendation No. 6:

In page 95, line 33, to delete " "€280,000" " and substitute " "€300,000" ".

This amendment relates to the capital acquisitions tax inheritance threshold which the Government has set at €280,000. Most of us would be of the view that this is still too low. I am not presuming that the threshold can be raised overnight to an appropriate level, but the Minister of

State will be aware that in the context of the sale of a standard family home and the dispersal of a will, the sale price would be well in excess of the set amount. We believe that it is unfair on families to have to pay further tax, particularly when account is taken of the fact that payments on the house will in all cases have been made from net income. I am proposing in this recommendation that the Government go a little further and, in this regard, substitute "€280,000" with "€300,000". I do not think I need to say any more than that on the issue.

Deputy Simon Harris: While I do not disagree in principle with the Senator that there is a need to go further in this regard, the Minister adjudicated on how far he could go this year in the fiscal space available to him.

As we all know, the capital acquisitions tax threshold has been reduced a number of times in the past couple of years, while the rate has also been increased. These changes were necessary to maintain the yield from capital taxes in a period of falling asset prices in order that such taxes would continue to make a contribution to our efforts to consolidate the public finances. As part of budget 2016, the Group A threshold applying to gifts and inheritance from parents to their children was raised from €225,000 to €280,000. This represents an increase of approximately 25%. This was done in recognition of the improving state of the national finances and in the light of concerns expressed to the Minister by people making and receiving gifts and inheritance, particularly in the context of a rising property price market.

In allocating limited resources for the budget choices had to be made. If the Minister went further in this regard, he would have had to do something less elsewhere. As the economic recovery continues to take hold, available resources have been focused on reducing the burden of taxation on earned income and take-home pay, where high taxes impact on our competitiveness and economic growth and job creation. This was also the main focus of the last budget. The Minister has indicated that the change to the Group A tax-free threshold in the budget is only the start of a process. Subject to the outcome of the forthcoming general election and the consultation one must have with the people in that regard, this is an issue on which the Minister, if he is in a position to deliver another budget which I hope will be the case is willing to go further. The Minister will continue to examine the scope for further improvements in line with that suggested by the Senator as our economic recovery continues. There is a recognition among all of us that this is an area in which more needs to be done. That process was commenced this year. The Minister went as far as he could. Therefore, I cannot accept the recommendation.

Senator Darragh O'Brien: I appreciate the Minister of State's response, but I propose to press the recommendation.

Recommendation put:

The Committee divided: Tá, 15; Níl, 28.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Craughwell, Gerard P.	Burke, Colm.
Daly, Mark.	Cahill, Máiría.
Leyden, Terry.	Coghlan, Eamonn.
MacSharry, Marc.	Coghlan, Paul.
Mooney, Paschal.	Comiskey, Michael.
Mullen, Rónán.	Conway, Martin.

Norris, David.	Cullinane, David.
O'Brien, Darragh.	Cummins, Maurice.
Power, Averil.	D'Arcy, Jim.
Quinn, Feargal.	D'Arcy, Michael.
Walsh, Jim.	Gilroy, John.
White, Mary M.	Hayden, Aideen.
Wilson, Diarmuid.	Higgins, Lorraine.
Zappone, Katherine.	Keane, Cáit.
	Kelly, John.
	Moloney, Marie.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegarde.
	Noone, Catherine.
	O'Donnell, Marie-Louise.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Reilly, Kathryn.
	van Turnhout, Jillian.
	Whelan, John.

Tellers: Tá, Senators Paschal Mooney and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aideen Hayden.

Recommendation declared lost.

Section 67 agreed to.

Section 68 agreed to.

NEW SECTIONS

Senator Kathryn Reilly: I move recommendation No. 7:

In page 96, between lines 4 and 5, to insert the following:

"69. The Minister shall, within 3 months of the passing of this Act, prepare and lay before Dáil Éireann an analysis of the tax changes in this Act, and the total of tax changes and spending adjustments of Budget 2016, setting out the continuing impact on people based on their gender, income, age, marital and disability status.".

I acknowledge that on budget day the Department publishes budget booklets with tables showing how different families are affected by the budget measures. These measures focus on taxation, but there is no holistic measure of the impact of the budget on different family types or people in different circumstances, be that in the context of gender, income, age, marital or disability status.

The ESRI publishes a report on the distributional impact of tax, welfare and public service pay policy, but there has been an issue in that regard. To put it to bed, it is important that a comprehensive analysis of the impact of the budget be made after it is announced. This would go some way towards showing the full distributional impact. If the Department does not want to accept the ESRI's analysis, it would at least then have the responsibility of publishing its own, one it could stand over.

Equality budgeting is an internationally accepted method of dealing with inequality and poverty that is used in a number of countries. We are not asking the Minister of State to introduce a new dawn. There is this process which is used in other countries. Therefore, we are not asking the Department to do anything other than to use a process that has been tried and tested. One of the biggest benefits of adopting it would be that the Minister of State would not have to listen to me or my party colleagues bellyaching in the wake of a budget because he would be able to point out that equality budgeting objectives had been met. This should allay fears of having to listen to me or Deputies Pearse Doherty and Peadar Tóibín. Perhaps, therefore, the Minister of State might look at this recommendation.

Senator Darragh O'Brien: Tacaíonn mise agus mo pháirtí leis an mholadh seo freisin. I agree with Senator Kathryn Reilly on this recommendation. Fianna Fáil submitted an identical recommendation which is included in this proposal which makes sense. Not to repeat what Senator Kathryn Reilly said, promises were made previously about providing for transparency in the tax system. The Fine Gael Deputy, Deputy Eoghan Murphy, championed it for a number of years, as did many other colleagues. There is nothing to fear from it. I believe it would make the tax system more palatable if people could see the effects of changes on different groups, as outlined in the recommendation. Therefore, my party and I support it.

Deputy Simon Harris: I would not want to do anything that would short circuit our exchanges on Committee Stage of the Finance Bill as it is an enjoyable experience. The Senators will be aware that a similar amendment was proposed in the Dáil and that it was the subject of significant debate on Committee and Report Stages. During those debates both the Minister for Finance, Deputy Michael Noonan, and I highlighted that a substantial amount of the analysis sought by the recommendation had already been published. I brought a copy with me. On 4 November the Department of Social Protection published a social impact assessment of the welfare and income tax measures included in budget 2016. The social impact assessment was completed in consultation with the Department of Finance of the income tax elements of the budget and consistent with the Department's analysis of the impact of the budget package.

Using the ESRI's tax welfare simulation model, SWITCH, the social impact assessment includes a breakdown of the impact of tax and welfare measures, respectively, as well as presenting the overall distributional impact of budget 2016 by income group and family type. It also examines the impact of the budget on the at risk of poverty rate and work incentives, as well as the impact of the change in the minimum wage. Expansion of the SWITCH model has also enabled the incorporation this year of investment in the early childhood care and education scheme into the social impact assessment. The inclusion of the distributional impact by family type in the SWITCH model facilitates comparisons of the distributional impact of the budget on families with and without children, by employment or retirement status and for lone parents. All of these comparisons are presented in the social impact assessment.

At this time it is not possible to use the SWITCH model to assess the impact of budgets on groups of people based on their disability status, but that is something on which we should be

working together. As I have pointed out previously, there are significant efforts under way to further expand the capacity of this model. This is evidenced by the work done in the modelling of medical cards and the early childhood care and education scheme. For further information, the budget book also includes a range of material on distributional impact issues explaining the impact of the budget. It includes a series of tables showing the impact of budgetary measures at a range of income levels for different income earners, a variety of illustrative cases providing examples of change in net income, for example, household types, the extent to which income is redistributed through the tax and welfare systems and the progressivity of the income tax system.

That said, we have a SWITCH model which is delivering a social impact assessment. It was published on 4 November. We should be working to increase its capacity. A number of new measures have been added to it this year, including the early childhood and education scheme. This is the model we should continue to follow. Therefore, I am not in a position to accept the recommendation.

Recommendation put:

The Committee divided: Tá, 18; Níl, 27.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Craughwell, Gerard P.	Brennan, Terry.
Cullinane, David.	Burke, Colm.
Daly, Mark.	Cahill, Máiría.
Heffernan, James.	Coghlan, Eamonn.
Leyden, Terry.	Coghlan, Paul.
MacSharry, Marc.	Comiskey, Michael.
Mooney, Paschal.	Conway, Martin.
Mullen, Rónán.	Cummins, Maurice.
Norris, David.	D'Arcy, Jim.
Ó Clochartaigh, Trevor.	D'Arcy, Michael.
Ó Murchú, Labhrás.	Gilroy, John.
O'Brien, Darragh.	Hayden, Aideen.
Power, Averil.	Higgins, Lorraine.
Quinn, Feargal.	Keane, Cáit.
Reilly, Kathryn.	Kelly, John.
White, Mary M.	Moloney, Marie.
Wilson, Diarmuid.	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegarde.
	Noone, Catherine.
	O'Donnell, Marie-Louise.
	O'Keeffe, Susan.
	O'Neill, Pat.

	van Turnhout, Jillian.
	Zappone, Katherine.

Tellers: Tá, Senators Kathryn Reilly and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aideen Hayden.

Recommendation declared lost.

Progress reported; Committee to sit again.

Flood Risk Assessments: Statements

Minister of State at the Department of Finance (Deputy Simon Harris) (Deputy Simon Harris): I thank Senators for affording me the opportunity to address the Seanad on the severe weather which affected the country over the past weekend and into this week. I join all Members of this and the Lower House in conveying my deepest sympathy to all those who have been affected by the flooding. I have seen, at first hand, the devastating impact that flooding can have on people's lives and livelihoods and assure all those affected that the Government, the Houses of the Oireachtas and I will do everything we can to assist people in getting their properties and lives back to normal again as soon as possible.

Storm Desmond which affected the entire country but particularly the western seaboard and the River Shannon was a severe weather event dominated by record high-intensity, short duration rainfall, together with storm force gales. The greatest impact from the storm was experienced along the western seaboard from County Donegal to County Cork. Some parts experienced almost a month's worth of rainfall in 24 hours on the back on a November that was one and a half to two times as wet as November 2014. The short-term impact of this extreme rainfall was predominantly pluvial flooding of roads, transport networks and hard surfaces in urban and paved areas. As the road drainage and urban drainage systems became overwhelmed, the flooding extended to a fluvial event and affected properties in multiple urban centres of the north west, west and south, including, among others, places such as Ballybofey, Sligo, Crossmolina, Craughwell, Ballinasloe, Bandon, Skibbereen, Kenmare and Tralee.

The national co-ordination group for severe weather, which is chaired by the Department of the Environment, Community and Local Government, has been meeting on a daily basis since last Friday, initially to assess the forecast and the associated risks and later to deal with the aftermath of the storm. The rising levels in the lower Shannon are a particular concern and the group has met twice today to ensure it is kept fully informed of the evolving situation and can take whatever action is required in good time. The Minister for Agriculture, Food and the Marine, Deputy Simon Coveney, who has responsibility for the Office of Emergency Planning, and I will also be meeting the chairman of that group this afternoon.

All relevant agencies are fully engaged in monitoring the situation on the River Shannon and the relevant local authorities have emergency plans in place. The Defence Forces, to which I pay tribute, are assisting the local authorities, where, possible in mounting temporary flood defences and providing assistance to homeowners or helping to evacuate people. Members of the Defence Forces are on the ground in Counties Limerick, Clare, Galway and Westmeath with the towns of Clonlara, Castleconnell, Ballinasloe and Athlone being of particular concern due to the rising waters. I inform all Senators that the Defence Forces are on standby and willing

and ready to assist local authorities should they feel the need to request that assistance.

The ESB is also monitoring the situation and, under its responsibility for operating water levels on the River Shannon, has warned that it may have to increase flows from the Parteen Weir again. This will have an impact on properties and towns downstream. All local crisis management arrangements through local authorities were put in place last Thursday and the full services of Civil Defence and fire services, as well as local authority staff, were deployed at the weekend. All local authorities were informed last Friday to activate their severe weather protocols. I take the opportunity to extend my appreciation to all the emergency responders and volunteers in local communities who worked tirelessly over the weekend and commend them for their enormous efforts to deal with a very difficult situation. We are hearing about the very difficult flooding situation and it is right and proper that our attention is on that issue. However, I highlight the many potential incidences of flooding that were prevented or reduced owing to the hard work of the fire services, gardaí, the emergency services, mountain rescue personnel and volunteers all working together. I have heard many heartening stories. In County Donegal 97 Civil Defence volunteers were out working to help local communities, accompanied on occasion by the Northern Ireland fire service. There has even been a cross-Border dimension in providing assistance. I pay tribute to them for their tireless work and enormous efforts, which are continuing.

As I said in the Dáil yesterday, the Government is fully aware of the problems of flooding and attaches huge priority to the need to find effective and workable solutions to the problem on a national basis. In this regard, the Government is starting the final part of its proactive planning programme to develop feasible flood risk management solutions for those 300 areas across the country at most significant risk from flooding. Through the catchment flood risk assessment and management, CFRAM, programme, the Office of Public Works has completed extensive and systematic hydraulic modelling and hydrological examination for each of these 300 areas, including 90 coastal locations, and has produced approximately 40,000 individual flood risk maps. The OPW, informed by the draft maps, is currently and actively engaging with local communities towards developing feasible options for both structural flood defence schemes and non-structural solutions to address the known fluvial and tidal risks. It is important to point out that the CFRAM programme is not a report to sit on a shelf. The CFRAM process is about making sure Ireland complies with the EU floods directive and, most importantly, that in the context of the 300 areas in the country that our experts have predicted are at risk of flooding, engineering solutions are identified and published by this time next year in order that we can get on with the job of having a national flood plan for the first time. I will get to the issue of funding.

I assure Deputies that the following areas are being assessed by the CFRAM programme: Donegal town, Ballybofey-Stranorlar, Killygordan, Castlefinn, Lifford and Glenties in the north-western study; Charlestown, Swinford, Newport, Westport, Westport Quay, Castlebar, Ballina, Foxford, Oughterard and Clifden in the western study; Ballylongford, Moneycashen, Listowel, Banna, Abbeydorney, Tralee, Castleisland, Dingle, Milltown, Killarney, Glenflesk, Portmagee and Kenmare in the south-western study; and Castlerea, Ahascragh, Athleague, Ballinasloe and Portumna in the Shannon study.

The flood risk management plans will include a prioritised list of feasible measures to address flood risk in an environmentally-sustainable and cost-effective manner. Decisions on the best solution will be taken on an objective basis having regard to social and environmental factors as well as economic criteria. That is the plan. That is where we need to get to as a country. We do not want to find ourselves in this situation where we continually have an emergency

and are always one winter away from the next series of floods. I am not being partisan. It was started by the previous Government and progressed by the Government. We all need to drive it. If we do not have a national plan and are not proactive, we will find ourselves constantly reacting to situations as they arise.

Another central and key element of the Government's strategy to deal with flooding is the comprehensive flood projects capital investment programme which the OPW has been implementing since 1995. There is no point having plans if there is no money behind them. Since the capital programme began, over €400 million has been invested by the OPW in constructing flood defence schemes in some of the major urban centres in the country, including Dublin, Mallow, Clonmel, Kilkenny, Ennis and Fermoy. The OPW estimates that up to €1.2 billion in benefit has been derived from that investment to date in terms of properties protected and flood damages and losses avoided. This is a major achievement and it is the Government's intention to continue to build on this major achievement and to prioritise investment in flood defence schemes. On 29 September the Government and I announced details of a €430 million six-year programme of capital investment on flood defence measures as part of the Government's overall capital investment plan 2016 to 2021.

The country will spend more on flood relief capital plans in the next five years than it has in the past 20. That is right and proper as we are seeing more severe weather and know of the risk of climate change. We have to really invest; nor are we sitting on our hands waiting for the CFRAM process to be concluded. Work is continuing. There are up to seven flood relief schemes at construction or substantial completion stage. There are a further 27 schemes at various stages of design which includes such areas as Cork city -which will be the largest flood relief scheme ever undertaken in the State, Bandon, Skibbereen, Crossmolina, Claregalway, and Enniscorthy, among others. All these schemes must be subject to a rigorous consultation process and they need to be approved under planning legislation, whether under the Arterial Drainage Acts or Part 8 or Part 10 of the Planning and Development Regulations and may be referred to An Bord Pleanála for final approval, if required. We have got to level with people in telling them the truth about how long a flood relief scheme actually takes. There is a process and it is an arduous process because we have to get the schemes right. We get one shot at this. We cannot go back and retrofit a flood relief scheme. We have to carry out the studies and consultation, obtain the lands we need, obtain the planning permission and, often, deal with challenges that come from a variety of sources.

Most major flood relief schemes are carried out under the powers given to the Commissioners of Public Works in the Arterial Drainage Acts 1945 to 1995. In some cases, flood schemes are undertaken on behalf of the Office of Public Works by local authorities using their powers under the planning and development legislation. The consent authority for schemes carried out under this Act is my colleague, the Minister for Public Expenditure and Reform. These schemes and the associated environmental impact statement must go through a formal public consultation or exhibition process before they are finalised and submitted to the Minister for confirmation or approval. This usually takes place over a four-week period and allows people affected by the proposed scheme to make comments and observations on the scheme and raise any concerns they may have. The OPW then takes all such comments into account in the finalisation of the scheme and it must also consult a range of statutory consultees, including the National Parks and Wildlife Service and Inland Fisheries Ireland. Issues arise from time to time during the public and statutory consultation process but in general, the level of pre-consultation engagement, which is a credit to the OPW, minimises these lengthy delays at exhibition stage.

When a scheme is submitted for approval to the Minister, he is obliged to carry out an independent review of the environmental impact statement. This is a relatively new requirement arising from EU regulations and, to date, only two schemes have been submitted for approval under the new requirements. The first such scheme was that proposed for the Clare river and I acknowledge that the independent environmental impact statement review took a lot longer than expected. However, this was the first that had to go through the Department of Public Expenditure and Reform and it is not something of which it had experience before. I am confident that the Department has built up the expertise to ensure those processes can be carried out as quickly as possible.

Proposed flood relief schemes being carried out by local authorities are subject to the normal planning regime and where a scheme is referred to An Bord Pleanála such as in the case of the proposed scheme for Dunkellin, the process involved is no different from that which applies to any set of development works. The local authority must engage with and adhere to that process in the same way as any proposer for a development. I am aware that An Bord Pleanála has a heavy workload, but it is committed to determining the bulk of all planning cases within the relevant statutory objection period.

As Members are, no doubt, aware, we are in the aftermath of a storm and its consequent damage. There are options for funding available today to local authorities. The OPW operates a minor works scheme. under which any local authority can submit proposals, the cost of which amounts to less than €500,000. This could be of great assistance in the coming months in areas that have been badly affected by this storm. The local authorities are well aware of the criteria. I often receive representations from around the country seeking funding for certain projects for which funding has not been sought before. I encourage people to use the minor works schemes and engage with the local authorities. Councillors should engage with communities and where a scheme fits the criteria, as not all will do so, it can be used. The details are on the OPW's website and councils are aware of it. The OPW may grant-aid local authorities up to €500,000 per application to try to help complete relatively minor works that could make a very substantial impact in small towns, villages and communities around the country. That may be of significant assistance in the coming months to a number of towns and villages badly affected by Storm Desmond.

As Members are also aware, the Government agreed yesterday to establish a fund of €5 million to assist businesses that have suffered flood damage to their property. The fund will be administered by the Irish Red Cross according to criteria for payment and assessment being worked out under the auspices of my colleague, the Minister, Deputy Simon Coveney. I warmly welcome the creation of this fund and I am pleased we could get it through the Cabinet yesterday. It sends an important message to the business community. There is an existing humanitarian aid scheme that has been in operation for some years, operated by the Department of Social Protection, to assist householders with immediate needs and requirements. This has not been available to small businesses, however, many of which are small family-run enterprises in towns such as Bandon and Crossmolina which have been badly affected by the floods. The Government has now closed this gap in support and every effort is being made to get the fund up and running as quickly as possible, especially as we are so close to the busy Christmas period.

I welcome the comments of Mr. Tony Lawlor and the Irish Red Cross which I heard in the media this morning. He stated he hoped to have the criteria finalised in consultation with the Minister, Deputy Simon Coveney, in the coming days to ensure the scheme could be the least

bureaucratic it could be, while ensuring accountability for public funds. We need this in operation as quickly as possible, which is why the Cabinet made the decision yesterday. I thank the Irish Red Cross for the role it intends to play in that regard.

I conclude by assuring the House that the Government will continue to ensure that measures to deal effectively with flooding through the development of the proactive catchment flood risk assessment and management, CFRAM, programme and plans and the continued significant investment in flood defence capital schemes will receive the highest priority and attention now and into the future. We are not just talking the talk; we have put significant resources behind this.

The Taoiseach and I, with the Minister, Deputy Simon Coveney, and the rest of the Government are acutely aware that it is an extraordinarily difficult time for many towns and villages. The Minister and I will be briefed by the national emergency co-ordination committee at 4 p.m. today to see how things are currently. I would like to say the worst of the weather is behind us, but that is simply not the case and water levels on some rivers have not yet peaked. We are continuing to do what we can. I thank the Defence Forces, in particular, for the work they have done, with so many volunteers and local authorities to try to minimise the impact. I thank the people for their resilience and the efforts of individual home owners and business people to try to protect their property. The Government will do what it can to support them, which is why we took a number of decisions yesterday. The minor works scheme is available to local authorities. Although we cannot stop the rain, collectively and in a non-partisan sense, we can all pull together and do everything possible to help communities.

Senator David Norris: On a point of order, what is the purpose of this item on the agenda?

An Cathaoirleach: That is not a point of order. It was decided on the Order of Business.

Senator David Norris: The Minister of State addressed an audience of less than a dozen in the House. It is unlikely to be covered in the national media. I just wonder about the significance of making a statement to fewer than a dozen Members of the House.

Senator John Gilroy: That is not the Minister of State's fault.

Sitting suspended at 2.55 p.m. and resumed at 3 p.m.

Gradam an Uachtaráin Bill 2015: Second Stage

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

An Cathaoirleach: I welcome the Minister of State, Deputy Paul Kehoe.

Senator Feargal Quinn: The Minister of State is very welcome. I am pleased he is here to take this Bill because this is an issue about which I feel strongly. I was with Dr. T. K. Whitaker yesterday. He was 99 years old yesterday. I was congratulating him on that occasion and it dawned on me that he was the sort of man who had served the country well and that we should have been able to reward during the years.

The Gradam an Uachtaráin Bill proposes to introduce Gradam an Uachtaráin, an official award from the President, to recognise people of standing who have done exceptional work.

Unfortunately, the State does not have a formal mechanism for recognising the achievements of its citizens or others abroad who make a great contribution to the State or our society in general. The means currently utilised to recognise great achievements are a range of more informal measures such as the conferring of honorary citizenship or the granting of the freedom of the city, the conferring of an honorary degree, people of the year awards or the Presidential Distinguished Service Award for Irish abroad and so on.

While anybody should be privileged to receive such high accolades and they do, it is only right that Ireland as a mature state which is facing into the 1916 Rising centenary celebrations should have the ability to sparingly confer an honour which recognises exceptional achievement. When it comes to recognising the achievements of citizens, as well as the contributions of others, we should not be dependent upon the grace and generosity of other nations to award Irish people who do something exceptional, or people who do something exceptional for the State. The purpose of the Bill is to provide a mechanism in order that, in appropriate circumstances and using the very strict criteria laid down in the Bill, the State can, in a very public and dignified way, honour not only the achievements of its citizens but also the achievements of people from other nations.

I would like to touch on a number of issues regarding the conferral of degrees and the constitutional position. There is a myth that the Constitution does not allow for an honours system. The Constitution does not preclude the State from conferring an honour on a person. Article 40.2.1o provides that "Titles of nobility shall not be conferred by the State." This reference to "titles of nobility" is clearly not a reference to an honours system and an honours system does not necessarily mean a title of nobility.

It has been pointed out by Mr. Jim Duffy that the drafter of the Constitution, Mr. John Hearne, was careful, on Éamon de Valera's instructions, to leave open the possibility of the introduction of an honours system - that is totally unrelated to titles of nobility. Rather than ruling out an honours systems, the Constitution left the door open for a system and it could be argued that it was almost expected that an honours would be introduced at some point. This distinction between titles of nobility and an honours system is made clear in the subsequent article 40.2.2o which clarifies that, "No title of nobility or of honour may be accepted by any citizen except with the prior approval of the Government". One of the effects of this provision is to impose a restriction on the right of a citizen to accept an honour and it makes the acceptance of an honour subject to the Government's approval. Section 11 of the Bill gets over this constitutional hurdle by giving the Government the power to accept or reject, in full, the list of candidates proposed by the awarding council.

There is an argument that suggests a republic should not give honours. However, as other countries around the world have demonstrated, the public recognition of achievement does not compromise or dilute the values of a republic. There is nothing incompatible with the concept of a republic and an honours system. It is also not true to say the conferral of an honour on citizens is usually limited only to former Commonwealth countries. France, Italy and Austria are only some of the examples of European republics which confer honours. Many nations around the world recognise achievements through the conferral of honours and awards, including Canada, the United States, New Zealand and South Africa. It must be emphasised that we are almost alone in the world in not having a state honours system.

In 2007, prior to becoming Taoiseach, Deputy Enda Kenny offered immediate support for the idea of an honours system; it appear, therefore, that he is in support of the general principle.

Therefore, my hope is that in ironing out some details surrounding such an honours system we will achieve it. In this respect, I am very much open to my Bill being improved in order that we can come to a system that is acceptable to all.

I would like to outline some of the key aspects of the Bill. Section 1 states the first awards will not be conferred until January 2017. There is a mistake in the explanatory memorandum, as it states 2016 because I prepared the Bill some time back. I would like to change the year stipulated to 2017. The Bill provides that it will come into force three months after it is passed by the Seanad and the Dáil. This will allow sufficient time for the various preparatory steps envisaged to be taken well in advance. This has been set at January 2016 but which I now want changed to 2017.

The explanatory memorandum states:

Section 2 defines the terms "Awarding Council" and "Minister" which are used in the Bill.

Section 3 enables the Minister to make Regulations for a variety of purposes.

Section 4 provides for the establishment of an honours system, to be known as Gradam an Uachtaráin. The honours system will enable the State to recognise the exceptional achievements of its citizens and also the outstanding contributions of others to the State.

Section 5 provides that the recipients of the honour will be presented with a medal which may be worn on formal occasions, and also a lapel button.

Section 5 also provides that a person who has been awarded the honour of Gradam an Uachtaráin may use the letters "G.U." after their name so as to indicate that the honour has been conferred upon them. The section also provides that the medal and lapel button shall be of the design which has been selected by the Minister following the holding of a public design competition.

The explanatory memorandum goes on to state:

Section 6 states that the honour shall only be conferred upon a maximum of 12 people per year and that in any one year, a maximum of four of the awards may be awarded to persons who do not hold Irish citizenship.

Section 7 sets out the six broad areas of achievement in respect of which the award may be conferred, and those areas are as follows:

(a) social and community affairs,

(b) education and healthcare,

(c) arts, literature and music,

(d) science and technology,

(e) sport, and

(f) leadership and business.

Section 8 states that the decision to award the honour of Gradam an Uachtaráin shall be

solely at the discretion of the Gradam an Uachtaráin Awarding Council; no outside influence or interference will be entertained.

Section 9 provides that the Gradam an Uachtaráin Awarding Council will have seven members. Section 9 specifies the officeholders who are to be appointed by the President to the Awarding Council...

Section 10 states that the nomination of persons to receive the honour of Gradam an Uachtaráin may be made by members of the public ... In order to preclude the possibility of political interference, as well as perceived or actual bias in the selection of candidates to receive the honour of Gradam an Uachtaráin, section 10 states that a serving member of the Dáil or the Seanad must not engage with any member of the Awarding Council with the intention of influencing the making of a decision in relation to the selection of a candidate.

An appropriate offence is also provided in section 10 to ensure such unwelcome lobbying is minimised.

The explanatory memorandum continues:

Section 11 indicates the criteria which the Awarding Council will be required to apply when considering the nominations which it has received. The Awarding Council will be required to satisfy itself that a proposed recipient of the honour has demonstrated exceptional achievement at a high level, or has made a valued contribution and above what might be reasonably expected in respect of one or more of the six broad areas of achievement which are listed in section 7. In deference to the requirement contained in Article 40.2.2o of the Constitution, a list of the proposed candidates who have been selected by the Awarding Council to receive the award will be submitted to the Government for approval. The Government will not have the power to make or suggest amendments to the list of proposed candidates. Instead the Government will have the power to accept or reject, in full, the list of candidates proposed by the Awarding Council.

I would like section 12 to read as follows, although as explained, the explanatory memorandum refers to "2016":

Section 12 directs that, beginning in January 2017, and in January of successive years, the award of Gradam an Uachtaráin will be conferred by the President of Ireland on the candidates who have been selected by the Awarding Council.

To summarise, we are well aware that we have incredible people who have done a huge service to the State, both at home and abroad, who should be formally recognised by the State. I am sure every Member of this House could think of several people. It is somewhat ironic that exceptional Irish people are given awards for their work by other states but not by their home country. The idea of an honours system is not just to recognise achievement. It is something that could spur more people to do greater good for the nation. As mentioned, parties from across the political spectrum, as well as the Taoiseach, have previously expressed their support for the introduction of an honours system and, in the lead-up to the centenary of the 1916 Rising, I hope we can get consensus on the Bill. In this respect, I am open to my Bill being improved upon in order that we can agree to a sensible honours system that is acceptable to all and one that will reflect the modern and confident society we now have.

I urge the Minister of State to give the Bill every consideration. I am very confident that

an honours system is the right direction in which to go and one that will have the approval of the nation. Because of the manner in which it has been suggested and with any amendment proposed, the legislation will be improved upon in the years to come.

Senator Sean D. Barrett: I welcome the Minister of State. It is an honour to second what has been said by Senator Feargal Quinn.

On Monday, in Dublin Castle, the President presented 47 Gaisce awards to young people like those who are visiting us this afternoon and seated in the Visitors Gallery. They are very welcome. The Gaisce scheme applies to people aged up to 25 years. The recipients of the awards have performed 10,000 hours in which they helped communities, developed skills and achieved personal goals. This is the 30th anniversary of the scheme.

There are other awards such as the All Star awards and the Tidy Towns competition. All of these schemes celebrate success, effort, community and commitment. For example, various counties and associations host person of the year events, Aosdána honours artists, Comhairle na Mire Gaile acknowledges acts of bravery, the Scott Medal is awarded to members of An Garda Síochána for distinguished behaviour and, as mentioned, the Gaisce awards are for people aged under 25 years. We have an honorary Irish citizenship list which includes people such as Alfred Chester Beatty, Tiede Herrema, Tip O'Neill, Alfred Beit, Jack Charlton, Jean Kennedy Smith, Derek Hill and Don Keough. We are mature enough to have an honours system. As that list of distinguished people shows, an honours system will recognise merit, contributions to this society and demonstrate how much we value community efforts.

In the past there were fears that an honours system would, in some way, hanker after a colonial era - which we do not - or it would be liable to be influenced by party politics, jobbery or other considerations. We already have a distinguished record in granting awards. As an Irish phrase says, Mol an óige agus tiocfaidh sí. Bhuel, mol an duine meánaosta agus mol na seandaoine freisin. We should reward people for service to the community, something which has worked very well in the areas that I have mentioned such as honorary degrees and active citizenship awards.

In 1998, the All-Party Oireachtas Committee on the Constitution stated the honours system issue had been raised "in a desultory manner by governments since 1930". Various people have mentioned along the line that a system has always been pending. Mr. Michael Finucane suggested there should be an Irish honours system when Christina Noble received an award from Prince Charles. A number of Irish people have received British awards such as Daniel O'Donnell, Niall Quinn, Pierce Brosnan, Pat Eddery and Orla Guerin. Can we be as optimistic, happy and generous towards people who have been generous towards us and leave behind fears of cronyism or post-colonialism?

This society is comprised of many splendid people. I am sure, with all-party agreement in this House, that we will put a scheme together. Look at the various distinguished Presidents who have run the Gaisce awards in conjunction with the Duke of Edinburgh. For those from a different tradition on the island, we can extend it. President Hillery started it off and he was followed by Presidents Robinson and McAleese. I am sure President Higgins will continue the tradition if this House, on an all-party basis, supports Senator Feargal Quinn's Bill to establish an honours system. The idea has been around for a long while. Let us reward the distinguished service given on a voluntary basis in this society. The Bill must be commended and I am honoured to be the seconder.

Senator Eamonn Coghlan: I welcome the Minister of State. I also welcome the Bill presented by Senator Feargal Quinn. I agree with him that there should be a civic honours system in Ireland whereby we can recognise the merits of people who have achieved phenomenal things for this island of ours, not just at home but throughout the world. I cannot understand why we do not have an honours system, particularly when there is one in the United States, France and Italy, just to name a few countries. Why can we not have one? I have a few friends who received honours in their respective countries. Lord Coe and Sir Roger Bannister received honours for obvious and good reasons. Sir Paul McCartney, Sir Elton John and even the great Sir Ian Botham received awards of the highest calibre. Another great man, John Walker, a former Olympic champion in 1976, was honoured. He was a gold medalist and a great competitor of mine throughout the years. A number of years ago, at the same time I was fortunate enough to be nominated to the Seanad by the Taoiseach, which was quite a shock for me, John Walker was knighted in New Zealand and became Sir John. We had a brief conversation on the telephone. I congratulated him on being knighted and becoming Sir John and he congratulated me on becoming Senator Coghlan. I said I was only a Senator, but he said I was a Senator in the Irish Government and that that was a phenomenal achievement. I said to him that the bottom line was that I would only be a Senator for a very short time in my life but that he would be Sir forever. He proposed that perhaps Senators might keep their titles for life. He said he would always refer to me as Senator Coghlan.

Senator Feargal Quinn: That is a great idea.

Senator Gerard P. Craughwell: It is a brilliant idea.

Senator Eamonn Coghlan: This is the awards season. I have been at numerous sports awards and banquets in the past week and even today there are *The Irish Times* awards. Next week the *Irish Independent* awards will be announced. We will have the RTE awards and the BBC sports personalities awards. We will even have the Queen's list coming out in the new year. Only last week, we had the People of the Year awards in Dublin, which I watched on television. I was proud of the achievements of the people involved who made phenomenal contributions to the country.

Some of the higher awards that recognise people in this country include the freedom of the city, be it Dublin, Cork, Galway, Belfast or wherever else. A number of years ago, the Lord Mayor's award was initiated in Dublin. I was one of the first recipients of the award and very proud of the honour bestowed on me by the Lord Mayor. There are also the Gaisce awards. However, those awards come and go and people forget about them. I believe we need an awards or honours system in this country where people can gain tremendous recognition for their achievements. I accept that it will not be easy to do that because there will be many different views on who should receive such an award. People will also have different views on who will make the award and who will form the membership of a committee to establish a national awards programme.

I never paid much attention to a national awards *per se* until I had to speak on the subject today. I decided to carry out some research on why we did not have such an awards system in this country. It was easy to find the answer. All I had to do was google *Wikipedia* and the information was before my eyes. Irish republicans were opposed to the British honours system. Irish nationalists were opposed to its Britishness and there was republican opposition to its monarchist underpinnings. Now I know why. I searched further on *Wikipedia* and discovered Article 5 of the 1922 Constitution which states:

No title of honour in respect of any services rendered in or in relation to the Irish Free State (Saorstát Eireann) may be conferred on any citizen of the Irish Free State (Saorstát Eireann) except with the approval or upon the advice of the Executive Council of the State.

I began to wonder why that was the case, but I soon found out.

Senator Gerard P. Craughwell: *Wikipedia* again.

Senator Eamonn Coghlan: In the early 1920s a system was introduced relating to the Order of St. Patrick but that came to an end when in 1928 the council decided that the order being moribund should be allowed to completely disappear. Efforts were made by numerous people throughout the years to restore it. Éamon De Valera and Seán Lemass both considered reviving those awards, as did Brian Lenihan Snr. in the 1960s. Following the Belfast Agreement, the media reported suggestions that the order might be awarded jointly by the President and the British monarchy but nothing ever came of it.

Many attempts have been made to establish a national honours system but no conclusion has been reached and such a system has not progressed. I would like us to find a solution. The former Taoiseach, Mr. Bertie Ahern, wanted to award Pádraig Harrington a special honour when he won the British Open. I wonder why that win prompted him to bring up the matter again. The former Taoiseach also stated it was unfair that an Irish person should go abroad to receive an award rather than receive one at home. We need cross-party co-operation on the matter. Attempts to introduce a national honours system failed in the past. It is time to get the right people around the table to discuss the matter. It is important to identify who will decide on the system and what committee we can form. Should the President, the House or the Council of State decide whether we will have an honours system?

I thank the Minister of State, Deputy Paul Kehoe, for being present and I look forward to hearing his remarks. I congratulate Senator Feargal Quinn on introducing the Bill to the House today.

Senator Labhrás Ó Murchú: Cuireann sé an-áthas orm aontú leis an mBille seo agus molaim go hard an Seanadóir Feargal Quinn. Tá sé thar a bheith soiléir go bhfuil machnamh domhain déanta aige air. Mar dhuine a bhfuil clú agus cáil air cheana féin, tuigeann sé go maith díreach cad tá i gceist anseo. Tá seans againn anois sa Seanad agus ceapaim-se gur chóir an díospóireacht a bheith anseo againn sa Seanad. Ní fhéadfainn díospóireacht mar seo a shamhlú agus í ar siúl i nDáil Éireann.

With all due respect to Dáil Éireann, I just could not imagine this type of discussion taking place in that House because it would be overtaken by cynicism and partisanship. That is the reason the Seanad is the place where this matter should be discussed. Tá seanfhocal ann: "You are never regarded as a prophet in your own land". That is one of the reasons this Bill should be given careful consideration. It is very interesting the number of Irish citizens who have received Nobel peace prizes, for instance. People of Irish extraction appear on the Queen's list. One of the reasons for that is precisely we do not have the type of award which is being recommended in the Bill. It is also clear from the amount of detail in the Bill that Senator Feargal Quinn foresees what the negative reactions might be. He has covered all of them particularly well. There could be no question of letting this slip into a political mode.

Senators Eamonn Coghlan and Sean D. Barrett correctly outlined all of the other awards in the country. That is why this award must be different. It cannot be similar to a person of the

year award or anything of that nature. Like Senator Eamonn Coghlan, I too received the Dublin Lord Mayor's civic honour award, as did Gay Byrne, Jack Charlton and others. I felt a particular pride on the night precisely because it was happening in this country but even that in itself is a regional-type award, although we all welcomed it and saw it as some form of imprimatur or acknowledgement of the work we were doing. Small though it is, I cannot think of any country in the world that is more suited to the type of award being proposed. When one looks at our place in the world, whether in sport, literature, good works of charity or in education, we are among the top and certainly punch above our weight. There is no question about that.

An honours system is important not just for the person receiving the award but also because it designates role models for another generation. By doing that, the State, with all the apparatus behind it, agus an tUachtarán chomh maith, in addition to the selection committee which would act in an advisory role, would be indicating the respect we have for the service of the person who had been selected. At the end of the day, it is about service and achievement. I do not think Senator Feargal Quinn has omitted anything in the categories he has outlined. Again, that is an indication of the detail which has gone into this. I am delighted we in the Seanad have an opportunity to debate it. I have no doubt the Minister of State could name 20 people in Wexford who would be entitled to this award already because a huge body of people could be considered. How often has it been seen, when people are presented with an award that they are magnanimous and say, "I am accepting this on behalf of all those who have supported me" or, if it is a team, it is accepted on behalf of the whole team, and so on? That would be the ethos attached to an award like this.

Of course, fine tuning may be required with some of it but, graciously, the Senator has made that very point. It is the one area where we need consensus. If there is not consensus in initiating this award, then to some extent it is tarnished as it goes forward. Having examined it here and had the opportunity to make a presentation on it, and by putting it into a kind of gestation period, I have a feeling that, when it goes to Dáil Éireann, it will be debated in an entirely different way. Any of us here today could make smart remarks about what it might mean going into the future but that is not the spirit of the debate. Fianna Fáil and I personally fully support this Bill. I believe any Senator who comes in here, irrespective of party affiliation, will approach this in the spirit in which Senator Feargal Quinn approached it. I believe he is doing a great credit to this House by bringing it forward. While we will always have the cut and thrust of politics and different ideas on legislation, I cannot see us having any different opinion on the intrinsic element of this legislation. I hope it will be wholeheartedly accepted and embraced by the Government and that we act urgently on it. It is timely because of the commemoration of the centenary of the 1916 Rising next year.

Senator Máiría Cahill: I welcome the Minister of State. I thank Senator Feargal Quinn for initiating the Bill as it is great to be discussing something positive. There is a very interesting debate to be had around the merits of the system and I am glad to have the opportunity to contribute on the topic today. I recognise the positive intentions of Senator Feargal Quinn in proposing it. There are many Irish citizens who have made important contributions to society and the Irish have historically made a contribution to the world far above our relative size and these achievements should, of course, be celebrated. The idea that there could be an official system by which we recognise and celebrate these people and their achievements is noble and worthwhile.

Under the Government, an awards system for the achievements of the Irish abroad has already been established. This was announced in 2012 by my Labour Party colleague, the former

Tánaiste and Minister for Foreign Affairs and Trade, Deputy Eamon Gilmore. Since its establishment in 2012, it has honoured people such as George Mitchell for his important contribution to peace and reconciliation through his key work on the Good Friday Agreement, Chuck Feeney for his work with Atlantic Philanthropies and Sally Mulready for her tireless work with the Irish community in Britain, among others.

There are undoubtedly merits to extending such a system to the achievements of people in Ireland. However, I also have a number of concerns, which are not criticisms in any shape or form, as to how this is taken forward. There is a constitutional ban on the awarding of titles of nobility by the State. I appreciate the distinction that Senator Feargal Quinn makes between his proposed system and the awarding of titles of nobility. However, I suggest an honours system may be closer to this than he suggests. He proposes that awardees would be entitled to have the letters GU after their name, which of course brings the UK honours system to mind. The distinguished awards system for the Irish abroad is explicitly not an honours system. Perhaps it is by staying closer to this structure that we would better serve both the public and those who are to receive these awards.

I also have a slight concern about the dangers of populism in regard to such an award. There is a provision in the Bill for the awarding council to receive nominations from the public, which is welcome. However, I would need further reassurances from Senator Feargal Quinn about how frivolous nominations would be batted out of the process and prevented. I do not want to go down a road where we would celebrate awards for rock stars and personalities but that it would be solely for people who have made a key, lasting and proper contribution to shaping and changing Irish society. If those concerns are taken on board, it would be a very positive system.

I have some questions about the groups Senator Feargal Quinn proposes would make up the awarding council. Of course, they are all excellent organisations and I am not in any way suggesting they would not be entirely capable or that they would not perform the task to a very high standard. However, I suggest the groups are perhaps too narrow in terms of representing the true diversity of Irish society. I propose that groups such as migrant communities or councils be included and that sports organisations and community groups further round out the council. I also suggest that having some Northern representation would be very important.

It is also important to prevent such an honours system from becoming an outlet for political patronage. On that point, Senator Feargal Quinn and I completely agree and it is good to see he has a provision in the Bill in this regard. I hope he will consider the points I have raised, as well as the other very positive comments from Senators. I look forward to further debate on this issue as it advances to later Stages. I believe that, as Senator Quinn wishes, he will gain consensus on this Bill, which is a very positive contribution to the House.

Senator Gerard P. Craughwell: I welcome the Minister of State. As it is my first time to address him in the House, it is a particular pleasure. I think it highly appropriate that Senator Feargak Quinn is the person to bring this Bill before the House. Nobody anywhere could accuse him of being partisan in any way. He is one of the most independent, free-thinking people in this House and has crossed all party lines to facilitate Bills and to argue against Bills; therefore, there is nothing political in this. He has gone out of his way to ensure the awarding of the honours would be as far as possible removed from the political arena, on which I compliment him.

I believe the Bill is a great idea and it is high time we had this. Senator Eamonn Coghlan

should not worry as he will perhaps receive an award from the State which would in some way be superior to his senatorial appointment. I agree with Senator Máiría Cahill that one or two of the criteria might be changed. Senator Feargal Quinn's list suggests all of the fine things about Irish society, albeit that some of them are a little capitalist and we are missing the labour movement in there. I offer one or two amendments to the Bill to ensure we have a fair representation and in addition to having IBEC, I would like to see ICTU in there arguing its corner also.

I ask the Minister of State to accept the Bill. We can amend it on Committee Stage if there are serious amendments to be made. It is high time we put down the cross we have been carrying for our colonial masters for over 800 years. As they will be gone nearly 100 years next Easter, it is time to forget them. The Irish memory is too long; it is time to forget that. There is nothing in the Bill that suggests it is in any way associated with the monarchy we threw out of here 100 years ago, although I am hoping I might get an old knighthood myself at some stage. I ask the Minister of State to accept the Bill which is brought forward in the best and truest Irish spirit. I thank Senator Feargal Quinn for it.

Senator Paschal Mooney: I welcome the Minister of State. I am very happy to be associated with this initiative by Senator Feargal Quinn. During the years of serving with him, I have always admired his imaginative approach to legislation. We can always be assured that when he brings a Bill before the House, there will be plenty of meat and drink in it and that it will not be just a common or garden Bill.

I had the pleasure of taking part in the 1996 debate in this House on the National Cultural Institutions Bill. Interestingly, that debate was taken by the then Minister for Arts, Culture and Gaeltacht and the current President, Michael D. Higgins. Former Senator Joe Lee and I argued the toss about the merits or otherwise of merit systems. I was of the view, which I still hold to a certain extent, that it was a pity, as Senator Gerard P. Craughwell noted, that the revolutionary fervour of the Young Irelanders in the new State swept away all of what they believed to be the vestiges of colonial power. It was not just in the context of nobility awards. Some of the fine houses of Ireland were burned out and much of our heritage was lost in the immediate aftermath of 800 years of colonial rule. Perhaps, from this remove, one cannot be critical of the people and what they did at the time because they had their reasons. However, I always drew parallels with what happened in the immediate aftermath of the French Revolution when the revolutionaries - the *sans-culottes* - did not destroy anything of the nobility that was left. They kept the houses, the presidential palaces and many of the titles.

The Republic of Ireland is pretty close to being unique in the European context in not having a state merit system. The Fianna Fáil Government that took power in 1932 was full of revolutionaries who had a particular agenda and who were virulently anti-colonial. As a result, the 1937 Constitution reflects this. I am not sure if Senator Labhrás Ó Murchú referred to this, but in the debate surrounding awards in 1996, we argued that it was at least partly due to the 1937 Constitution that Ireland had no formal honours system. The explicit provision of Article 40.2.1o of de Valera's Constitution seems to have been at least partially motivated by calls at the time of the 1932 Eucharistic Congress that an official honour be conveyed on the papal legate to Ireland. The new Fianna Fáil Government was strongly opposed to the conveying of such titles of nobility based on the experience of such patronage titles under British rule. The initial draft of Article 40.2.2o of the 1937 Constitution stated that "Titles of nobility shall not be conferred by the State". However, it also stated "Orders of Merit may, however, be created". Unfortunately, that draft did not survive, which was probably due to the ideological approach Eamon de Valera and his Government took at the time. They wanted to remove any vestiges of

colonial power.

Even at this remove, I think that was a mistake. At the time of the debate we had on awards in 1996 in respect of the Cultural Institutions Bill, I said that there was an argument for restoring the Order of St. Patrick, a singular honour that was abolished in 1921 on the foundation of the State. Those who have an interest in it will find the family flags of those who were conferred with the Order of St. Patrick in St. Patrick's Hall in Dublin Castle. I thought we could have reintroduced that. The then Minister and current President, Michael D. Higgins, was not particularly enthusiastic about even that approach; therefore, we agreed to disagree on it. Matters have moved on. Senator Gerard P. Craughwell is right. It is almost 100 years since the British left Ireland. We are a sovereign independent republic. One of the highest civilian honours the US President gives to a civilian is the Order of Merit, while France has the *Légion d'honneur*. Many other countries have state honours.

The main argument for me - I do not know whether Senator Feargal Quinn has reflected on this - is that we now have a plethora of awards in this country. They are all well-meaning. We have the Person of the Year award and various other awards. I saw on Google that various institutions had merit awards for their members. I am not suggesting there is anything wrong with that, but the bestowing of so many awards at a national level dilutes the impact of such awards. All of this could be addressed by the State - specifically in the person of the President - taking on the role envisaged and outlined in the proposals contained in Senator Feargal Quinn's Bill. I do not for one moment have any fear that it would be politicised.

If one considers the merit system in Great Britain - I am not suggesting we go down that road - one can see that it is not the Queen who decides. It is decided by a panel of mostly anonymous civil servants who proceed on the basis of submissions received from the general public. Anybody can write in and say that, for example, Senator Rónán Mullen is entitled to receive an award because of the great work he has done or that Senator Eamonn Coghlan should receive one because of his contribution to athletics and the arts. Members of the general public write in, all of the material is collated and the decisions are made by a group of people. I do not think there has ever been any suggestion in Great Britain that there is a political motivation behind it, even though it is a very complicated system. I know the Prime Minister awards his or her own titles but that is separate.

I thank the Acting Chairman for indulging me on this. I fully support the concept behind the Bill. I also support the detail of the Bill because it covers all the angles and I see no reason we should not proceed along the lines outlined in it. I give the Bill my full and enthusiastic support.

Senator James Heffernan: I welcome the Minister of State back to the House. I am delighted to see the Seanad progress this Bill and I hope we can get it through this Chamber and on the Statute Book in order that it does not die in the event of the Government not being returned. I see tremendous merit in this. It is something I called for in the wake of the retirement of Henry Shefflin this year. I argued for it on the international retirement of a great Limerick man, Paul O'Connell. It is needed. While we can confer honorary doctorates and degrees from universities, it does not quite equate to an honour given by the State. The non-political office of Uachtarán na hÉireann is exactly where the power to bestow such honours should be placed.

Senator Feargal Quinn is a recipient of honours from the Vatican and France. He may be putting himself in line for an honour here. I would not be surprised. There are so many people who would be deserving of such awards. I recall Christine Buckley when she came here to

meet us. She was somebody who had done tremendous work in uncovering the scandal of large-scale abuse in industrial schools. She was a terrific woman. Brother Colm O'Connell could be honoured for the work he has done for athletics in Africa. Fr. Charlie Burrows has not really been recognised by anybody in the State, but he does a huge amount of work in the area of social justice. He is somebody about whom we do not know much, but the work he does in Indonesia is remarkable. He has built roads, hospitals and schools. He runs his own social bank to give money to people who cannot afford to go to college and start a business. The contribution of the fiddle player, Martin Hayes, to traditional Irish music is second to none. The work done with the homeless in our cities by Sister Stanislaus Kennedy is another example. These people should be recognised for the very hard, dedicated and often voluntary work they do. This type of work highlights all that is good about being Irish. As has been said previously, it gives us role models. We need these very positive role models who have always fought the good fight and spoken about truth, justice and reconciliation. These are the types of people we should be putting up on pedestals and this is a great way of doing it.

I would have a small concern about the abbreviated title, GU, which brings to mind the first half of an acronym that is well known in Leinster House. All sorts of unwelcome images are conjured up when one adds the letters BU to the end. It is welcome that the awards will be secular and essentially rewarded by the Republic. The Bill is particularly timely, given that the centenary of the 1916 Rising is almost upon us and it is appropriate that the State should honour its citizens in this fashion.

Senator Paschal Mooney said it was 100 years since the British had left Ireland, but there are many people living on this island who would disagree with him and argue that there are still some British here who should go home.

It is welcome that the award will be non-partisan, secular, non-political and have an input from the public. I welcome the Bill in its entirety and thank Senator Feargal Quinn for putting it to the House. I hope it can become a reality with the blessing of the Minister of State.

Minister of State at the Department of the Taoiseach (Deputy Paul Kehoe): I am grateful for the opportunity to address the Seanad on this Private Member's Bill, Gradam an Uachtaráin Bill 2015, proposed by Senator Feargal Quinn. I thank the Senator for his work on the Bill and raising the issue. He has served with distinction in this House since 1993 on the National University of Ireland panel. In his 20 years of service he has always seen the role of a Senator as that of a legislator. This Bill is the latest in a long list of legislative proposals that he has brought before the Oireachtas. Since 1993, Governments involving different political parties and led by five Taoisigh have considered legislation proposed by him. Some Bills have passed into law and others have been opposed, but each Bill has highlighted an issue deserving of debate.

The House will be aware that Article 40.2.1˚ of the Constitution provides, *inter alia,* that titles of nobility shall not be conferred by the State. The purpose of the Bill is to provide a mechanism to facilitate the conferral by the State of an honour to be known as Gradam an Uachtaráin, to recognise the exceptional achievements of its citizens and the outstanding contributions of others and to provide for related matters. The Government is not opposing the Bill, although that should not be taken as implying acceptance of all the details of the Senator's scheme.

The Bill proposes the establishment of an honours system to be known as Gradam an

Uachtaráin, which will be marked by the presentation by the President of a medal which may be worn on formal occasions and a lapel button. The award recipient would be able to use the letters GU after his or her own name. An awarding council of seven persons would be nominated, comprising the Secretary General to the President, the serving presidents of the National University of Ireland, the Royal Irish Academy, IBEC and the ICA and two current lay serving members of the Council of State, nominated by the President. A maximum of 12 persons would be honoured per year and not more than four of the awards may be conferred upon persons of a nationality other than Irish. There would be six broad areas of achievement for which the award could be conferred: social and community affairs; education and healthcare; arts, literature and music; science and technology; sport; and leadership and business. The award would be conferred in January each year beginning in January 2016 and candidates to receive an award would be nominated by members of the public or the awarding council. The Bill would prohibit a serving Member of either House of the Oireachtas from engaging with any member of the awarding council with the intention of influencing the making of an award. Failure to comply with this prohibition will incur a class A fine.

The issue of an Irish honours system has been considered on a number of occasions in the past and efforts were made to reach a political consensus on it. However, none of these efforts were successful. As far back as 1963, the then Government approved in principle the idea that a State decoration of honour be instituted and subsequently, the then Taoiseach wrote to party leaders. However, general consensus was not reached and the matter was not pursued. The issue was revisited in 1991 when the then Taoiseach wrote to party leaders inviting them to exploratory talks. However, the talks did not take place as the political climate was not right at the time. Again in 1994, the then Taoiseach wrote to Opposition party leaders asking for their views on the introduction of an honours system. The issue was not progressed as it did not obtain all-party agreement.

The introduction of an honours system has been raised on a number of occasions since the Government took office in parliamentary questions in the Dáil on October 2011, May 2012 and November 2013. A further parliamentary question was tabled on 31 March this year by Deputy Derek Keating. Following that, the Taoiseach wrote to all party leaders to establish if all parties would be willing to engage in discussions on a national awards scheme. Only one party has responded. The Taoiseach has repeatedly said all-party consensus is required before considering an awards scheme. The timing of any such consideration would have to take cognisance of other political priorities.

It should be noted that there are already in existence a number of award schemes through which the State recognises and awards merit, distinction or bravery in particular areas. Gaisce which is also known as the President's Award is a scheme to challenge young people to use their leisure time for positive development and the betterment of their communities. Gold, silver and bronze medals are presented by the President as recognition of achievement. In 2012 the Presidential Distinguished Service Award for the Irish Abroad was introduced. The award is presented by the President to persons living abroad, primarily Irish citizens, those entitled to Irish citizenship and persons of Irish descent who have made a sustained and distinguished service to Ireland or Irish communities abroad. Ten awards are made each year.

Aosdána is a scheme to honour artists whose works have made an outstanding contribution to the arts in Ireland. The scheme offers a basic level of financial security to those who need it to enable them to devote their energies fully to their art. The National Bravery Awards are awarded for deeds of bravery. The Deeds of Bravery Council awards gold medals, bronze

medals and certificates. Another example is the Scott medal for bravery. This is in the gift of the Commissioner of An Garda Síochána and awarded by the Minister for Justice and Equality. The Volunteer Ireland Awards are presented to recognise people who are unsung heroes and have given time volunteering throughout Ireland. The President is patron of these awards. Nominations can be forwarded by members of the public and the categories for awards include arts, culture and media, sports and recreation, health and disability, children and young people, campaigning and awareness raising, community, education and training, social work, animals and environment, and international development.

In addition, as the House will be aware, there are commercially sponsored awards ceremonies which recognise contributions to sport, business and charities. Examples include the Rehab Person of the Year Award, the Irish Film and Television Awards, *The Irish Times* Intertrade Ireland Awards for young innovators and small businesses and the RTE Sports Person of the Year Award.

As I said, the Government will not be opposing the Bill. However, it should be noted that not opposing the Bill does not necessarily imply acceptance of all the details therein. As mentioned previously, the Taoiseach has made the point on several occasions that all-party support is required before considering an awards scheme.

I thank Senator Feargal Quinn for putting the Bill to the House. The Government will take on board its contents and will not oppose it.

Senator Diarmuid Wilson: My apologies for being late, but I was at a meeting. Unfortunately, I was not in the Chamber to hear the Minister of State's contribution in full, but I am delighted to hear that the Government is not opposing the Bill which I support because I believe the extraordinary contributions of ordinary citizens in this country to their communities, families and so on should be recognised. I understand the reason some people are reluctant to have an honours system, which I think is based on our history in terms of the abuses of nobility here in the past. However, that is not a reason, as a republic, we should not have here a mechanism, similar to that in place in other countries such as France, through which the outstanding contributions of ordinary citizens are recognised. For this reason, I am anxious that Senator Feargal Quinn's Bill be supported by this House.

4 o'clock

I commend the Senator for introducing this legislation and thank the Minister of State, on behalf of the Government, for not opposing it. I look forward to its speedy passage through the House.

Senator Mary Moran: I, too, welcome the Minister of State, Deputy Paul Kehoe. I support Senator Feargal Quinn's Bill which proposes the putting in place of a mechanism that should have been put in place many years ago. I agree that, like many other countries, we should have in place a mechanism to recognise the outstanding contributions of people to this country. I have no doubt that there are many Senators who have made outstanding contributions to it. Very often it is the unsung heroes who go without recognition and, sometimes, do not even seek it. I know of many such people within my own field of music, including Senator Labhrás Ó Murchú, who does terrific work for Irish traditional music in this country. While not wishing to single out particular people, I know that Senator Feargal Quinn has also done great work on behalf of the country.

It is welcome that the Bill provides that people will be awarded this distinction on the sole

authority of the appointing council, membership of which will not include political appointees. That is important. I agree that the use of the abbreviated title, GU, after a person's name warrants further consideration.

I congratulate Senator Feargak Quinn on bringing forth another excellent Bill. I am delighted that the Bill is not being opposed by the Government. Leaving aside the fact that there are a few issues with it that need to be ironed out, I wish it a swift passage through the House.

Senator Feargal Quinn: I appreciate the Minister of State's remarks and welcome that the Government is not opposing the Bill. I was anxious that we would have a good Second Stage debate on the Bill and that has been the case. It is welcome that there is all-party support for the Bill. I am confident that this is the right direction in which to go and I am pleased with Senators' contributions on the Bill.

I believe in honouring people who have given a lot to their country. I believe also that this recognition should not be limited to any one area, as in the case of the People of the Year and other awards. I would very much like to see the Bill complete its passage through the House prior to the forthcoming general election. The construction contracts Bill which I put forward in 2011 which is now the Construction Contracts Act, passed Final Stage in the Seanad 12 hours before the previous Government was dissolved. The incoming Government then took it on board and it has since become law. Given that this Bill has all-party support, I would very much like if it could be passed by this House between now and the calling of the next general election.

I accept that there will be some necessary changes to the Bill. Senators James Heffernan and Mary Moran have mentioned that the abbreviated title of GU after a person's name might not be popular, which I understand. However, that is a relatively minor issue. The title "An Post" was first proposed during my time as chairman of that organisation. Many people were totally against that change, but it has been very successful. I am a great believer in teasing out issues to see what can be achieved. In regard to the concerns around the giving of titles of nobility, we must ensure the impression is not given that we are giving such titles. What will be given are awards of recognition based on what people have achieved.

When I drafted the Bill some months ago, I referenced in it the date of 1 January 2016. As it is highly unlikely that it will be possible to do anything between now and 1 January 2016, that reference will have to be changed to 1 January 2017. I propose to table an amendment in that regard on Committee Stage. I accept that as outlined by the Minister of State, there may be a need for other amendments. I am open to them.

I am confident, based on the cross-party support expressed for the Bill, that this is the right direction for us to go. It is welcome that the Government does not propose to oppose the Bill and I thank all Senators who have contributed to the Second Stage debate and, in particular, the Minister of State, for their support for it. I urge the Minister of State to ensure all that is possible is done to ensure the Bill passes all Stages in the Seanad prior to the calling of the general election, following which it can be taken up by the new Government in the Dáil.

Question put and agreed to.

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

Senator Feargal Quinn: Next Tuesday.

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

Committee Stage ordered for Tuesday, 15 November 2015.

Sitting suspended at 4.10 p.m. and resumed at 5 p.m.

Assisted Decision-Making (Capacity) Bill 2013: Committee Stage

An Cathaoirleach: I welcome the Minister of State, Deputy Kathleen Lynch, back to the House. She is a very frequent visitor.

Section 1 agreed to.

SECTION 2

Government amendment No. 1:

In page 10, to delete lines 18 to 20.

Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch): I propose to delete the definition of "appointer". It is a consequential technical amendment that should have been made in tandem with an amendment made to the definition of "relevant person" on Report Stage in the Dáil. References to "appointer" were deleted from the definition of relevant person and, as such, a definition of "appointer" is no longer required in the general interpretation section.

Senator David Norris: This seems to be a fairly technical matter. As I understand it, the word "appointer" has been deleted from the main text of the Bill. Is that correct?

Deputy Kathleen Lynch: Yes.

Senator David Norris: Therefore, there is no need for a definition in the Bill for somebody who does not take part. That is fine. However, I will say this only once to the Minister of State. This whole Bill is dreadful in a sense. I do not blame the Minister of State. I blame the Department and the draftspeople. This is the third or fourth time we have had Government legislation with several hundred Government amendments after it has been passed by the Dáil. I never recall anything like this previously in nearly 30 years in Seanad Éireann. There is always a big rush coming up to Christmas, but I never remember anything like this.

There were more than 300 amendments to the Legal Services Regulation Bill, including amendments to amendments that were made a week previously. It is horrendously bad conduct of business. Here is another one with a couple of hundred Government amendments. I know that some of them just remove one word such as getting rid of "to" in "to appoint". For God's sake, those are such obvious drafting matters that they really should have been taken care of before the Bill was presented to the Dáil. If they were not, surely to God, they should have been amended in Dáil Éireann. However, on the other hand, of course, what a wonderful thing that we managed to preserve Seanad Éireann. Where would the Minister of State be without the Seanad? Where would her 200 and something amendments be? They would be floating around in mid-air and she would have to go back to the Dáil and do all kinds of high jumps and I do not know what else.

I am making a protest on behalf of doing good business. I ask the Minister of State to take it back to the draftspeople and her colleagues and all the rest of it. I see absolutely no reason for this Gadarene rush every single Christmas. That is bad enough, but to have three or four Bills with a couple of hundred Government amendments after being through the Dáil and, in the case of one of the others, through the Seanad and amended in committee to be followed by 300 Report Stage amendments is absolutely unheard of and scandalous.

That is all I shall say on the matter. I feel it very deeply. We should do our business in a proper and business-like manner that allows everybody participate and has the orderly progress of legislation through both Houses of the Oireachtas. I make it clear that I am not pinning personal responsibility on the Minister of State. It is a feature across Departments and seems to particularly hit the Department of Justice and Equality - for what reason I just do not know. I believe this is also a Department of Justice and Equality Bill. This is the third Bill we have had from the Department of Justice and Equality. I rest my case.

Senator Cáit Keane: Senator David Norris has tabled some good amendments to the Bill. However, I want to approach this matter from the other side. He is saying that if people come with good ideas after a Bill is published, the Minister cannot listen to anything after it is passed in the Dáil, end of story. Having the Seanad leaves the Minister open to accepting good amendments when they come.

Senator David Norris: Nonsense.

Senator Cáit Keane: That is a fact and I hope-----

Senator David Norris: It is not. Many of the amendments are drafting amendments.

Senator Cáit Keane: I hope some of the Senator's amendments will be accepted.

An Cathaoirleach: We are on amendment No. 1.

Senator Cáit Keane: That is putting the other side of the story that the Minister listens and the drafters have to listen to the Minister.

Senator David Norris: It is all fiction.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 2, 7, 19, 20, 69, 77, 143 to 146, inclusive, 148 and 170 to 193, inclusive, are related and may be discussed together, by agreement. Is that agreed?

Senator David Norris: No, it is not.

Senator Martin Conway: It is agreed.

Senator David Norris: It is not agreed because how could we possibly deal with that number of amendments. How many are there? Can you count them? It is about 25 amendments.

An Cathaoirleach: All of the amendments are related.

Senator David Norris: They are related, but how-----

An Cathaoirleach: This is Committee Stage, not Report Stage. The Senator will be given ample time to contribute.

Senator David Norris: We are still supposed to discuss them.

Senator Cáit Keane: May I come in on one amendment?

An Cathaoirleach: Are we agreeing to discuss all of them together?

Senators: Agreed.

Senator Diarmuid Wilson: The Minister of State will speak on behalf of the Government. There is no need for the Senator to-----

An Cathaoirleach: Is it agreed?

Senator David Norris: No, it is not.

An Cathaoirleach: Okay.

Senator David Norris: I want to have a vote on the issue.

An Cathaoirleach: We cannot have a vote on it.

Senator David Norris: What?

An Cathaoirleach: We do not want to divide the House on the issue of whether we should discuss a number of amendments that are related.

Senator David Norris: Therefore, you are separating them now.

An Cathaoirleach: If the House wishes to discuss all of them together, we will have to go with the wishes of the House.

Senator David Norris: Have you ascertained that the House wishes to do that?

An Cathaoirleach: That all of the amendments be discussed-----

Senator Martin Conway: Can you clarify something for me? I am a bit of a novice here and perhaps a slow learner. On Committee Stage, is it not still possible, even if amendments are grouped, for someone to speak to a specific amendment, if he or she so wishes?

An Cathaoirleach: The Senator can come in and out as often as he wants.

Senator Martin Conway: As I said, perhaps I am a slow learner.

An Cathaoirleach: I have made that case. Is it agreed that all of the amendments may be discussed together? Is Senator David Norris opposing that proposal?

Senator David Norris: I reserve my position. I will let it go, but it is utterly stupid to have so many amendments being discussed together.

Government amendment No. 2:

In page 10, to delete lines 23 and 24 and substitute the following:

" "attorney" has the meaning assigned to it by *section 51(1)*;

"attorney under the Act of 1996" means a person appointed under an enduring

power under the Act of 1996;".

Deputy Kathleen Lynch: I say to Senator David Norris that this is the Bill on which we have probably consulted the most widely. People in the Visitors Gallery will be conscious of that fact. It was a long time in drafting. It is reasonable to say it is an entirely different Bill from the one with which we started. It does not look anything like it did at the outset and even at this stage there are still amendments to be made. This legislation will affect each and every one of us in whatever position or circumstances we find ourselves at different stages of our lives and I hope it will be to our benefit.

Senator David Norris: I am sure it will, but I would like to make a point.

An Cathaoirleach: The Senator cannot come in.

Senator David Norris: There is a series of amendments where the word "the" is deleted and "an" is introduced. This should have been obvious from day one in the drafting of the Bill.

An Cathaoirleach: The Senator can make that point when he speaks to the amendment.

Senator David Norris: There is a rake of amendments to delete the words "to advise" and substitute "advise". Those are things which should have been observed at a much earlier stage.

An Cathaoirleach: Will the Senator, please, let the Minister of State respond?

Senator David Norris: I am not having hogwash delivered all over me to try to persuade me that this is an appropriate Bill.

An Cathaoirleach: Will the Senator, please, allow the Minister of State to respond?

Senator Marie Moloney: There is no need for the Senator to talk about it at all.

Deputy Kathleen Lynch: In addressing amendments Nos. 2, 7,19 20, 69, 77, 143 to 145, inclusive, 148 and 170 to 193, inclusive, as outlined by the Cathaoirleach, I am proposing a suite of amendments to Part 7 of the Bill which provides for enduring powers of attorney. The provisions on enduring powers of attorney have remained for the most part untouched since the Bill was published in July 2013. Part 7 largely restates the provisions of Part 2 of the Powers of Attorney Act 1996. The proposed amendments are required to align the provisions with the UN Convention on the Rights of Persons with Disabilities and current international best practice. The proposed amendments are also required for textual consistency and alignment with the rest of the Bill. The House will see that many of the proposed new sections mirror provisions already in other parts of the Bill.

The amendments will strengthen the safeguards against attorneys acting outside the authority given to them, address potential risks of abuse and exploitation of donors and increase protection for the rights of donors. The proposed amendments provide for attorneys to be accountable and held responsible for their actions. I am proposing to delete sections 50 to 64, inclusive, and replace them with a revised, simplified text and additional sections that provide for more detailed provision in relation to reports by attorneys, complaints against attorneys and offences relating to enduring powers of attorney.

Some of the new sections specify requirements such as notification requirements that would otherwise be left to regulations and were included in Schedules 1 and 2 to the Bill. Thus the

main requirements for executing and registering enduring powers of attorney are now contained in primary legislation.

One of the main substantive changes to Part 7 is that the director will not register enduring powers which have been created under the 1996 Act but have yet to be registered. I have received legal advice stating it would not be possible for the director to register these enduring powers under this Bill. They will have to be registered under the 1996 Act by the Office of the Wards of Court, which is the current system. However, the attorneys appointed under these enduring powers and all other powers registered under the 1996 Act will be subject to the new complaints and offences provision I am proposing to insert by way of amendments Nos. 188 and 192. I believe the number of executed but not yet registered enduring powers under the 1996 Act will be small.

Amendment No. 2 revises the definition of "attorney" in line with the amendments to Part 7.

Amendment No. 7 is similar to amendment No. 2 in that it revises the definition of "enduring power of attorney" in line with the proposed amendment to Part 7. It also inserts a definition for "enduring power" under the 1996 Act which is now required as a result of the proposed amendment to Part 7.

Amendments Nos. 19 and 20 propose to delete the cross-references to Part 7 and Schedules 1 and 2. This is to enable jurisdiction for enduring powers of attorney to be transferred from the High Court to the Circuit Court. The proposal to transfer jurisdiction to the Circuit Court is intended to enable cases relating to enduring powers of attorney to have the benefit of the specialist judges who will be dealing with the majority of matters arising under this Bill. It is also intended to reduce costs for applicants in the interests of encouraging more people to draw up enduring powers of attorney. These remain a good means for the person to express his or her will and preference in terms of who should take decisions on his or her behalf if he or she subsequently loses capacity.

Amendment No. 69 clarifies that a co-decision making agreement will be null and void if there is an enduring power of attorney in force, registered either under the Bill's provisions or the 1996 Act.

Amendment No. 77 clarifies that the disqualification of a co-decision maker if he or she has an enduring power of attorney registered in respect of him or her includes enduring powers of attorney registered under the 1996 Act.

Amendments Nos. 143 to 146, inclusive, amend subsections (9) and (10) of section 33 which allow a person who is the subject of an application to be assisted in court by a court friend if he or she is not legally represented or does not have a decision-making assistant, co-decision maker, decision-making representative, attorney, designated health care representative or other person willing to assist him or her with the proceedings. The amendments clarify that the attorney can be appointed under the Bill or under the 1996 Act.

Amendment No. 148 proposes to delete subsection 34(3) which provides that the court cannot make a declaration as to whether a person lacks capacity to make or revoke an enduring power of attorney. This subsection was inserted in the Bill in order to avoid a person having to go to court routinely to get a declaration of capacity in respect of the making or revoking of an enduring power. A statement from a medical professional and another health care professional on the capacity of the donor is deemed sufficient. However, in drafting the new provisions on

objections, complaints and offences under Part 7, it became apparent that the court may have to assess the donor's capacity in order to investigate an objection, complaint or offence and it could not do so if subsection 34(3) remained in the Bill.

Amendment No. 170 inserts a new section 50. The current section 50 is being deleted and replaced by revised text as part of the overall amendment of the enduring powers of attorney provisions. The interpretation section of Part 7 has been streamlined and provides a definition of key terms in the revised sections of Part 7.

Senator David Norris: I just want to make the point again-----

Deputy Kathleen Lynch: As this will take a while, might I just-----

An Cathaoirleach: An tAire Stáit to conclude.

Deputy Kathleen Lynch: Amendment No. 171 inserts a new section 51. The new section 51 sets out what is an enduring power of attorney, who may appoint an attorney, what authority can be conferred in an enduring power and how the authority must be conferred. It reflects provisions in sections 52(2) and (5), 54(2) and 55(1) of the Bill as passed by Dáil Éireann. Subsection (2) provides that an enduring power must be conferred in writing in an instrument which is compliant with the other provisions of the Part and regulations made by the Minister for that purpose. Subsection (3) provides that an attorney may, in the instrument creating the enduring power, appoint an alternate attorney should the original attorney die, be disqualified or is no longer able to carry out his or her duties as an attorney.

Subsection (4) provides that the enduring power will not come into force until the donor lacks capacity in one or more of the relevant decisions which are the subject of the power and the instrument that created the power is registered in accordance with new section 61. Subsection (5) equates to section 54(2) of the Bill as passed by Dáil Éireann and provides that where general authority is conferred by a donor on an attorney in respect of property and affairs, the attorney has the authority to do anything on behalf of the donor that the donor can lawfully do. Subsection (6) sets out who is suitable for appointment. The attorney must be capable of performing the functions of attorney as specified in the enduring power of attorney.

Senator David Norris: On a point of order, I think this section is grammatically inappropriate. The Minister of State actually said "capable of". In the amendment I have it reads that a person is suitable for appointment as an attorney if he or she is "able of performing". That is nonsense.

An Cathaoirleach: That is not a point of order. The Senator can amend the wording on Report Stage.

Deputy Kathleen Lynch: Is capable of-----

Senator David Norris: I beg your pardon.

An Cathaoirleach: It is capable of being amended on Report Stage.

Senator David Norris: I am saying there is a mistake in the amendment. It is a technical mistake. I always thought that was covered by a point of order.

An Cathaoirleach: It is not a point of order. The Senator can address the matter on Report

Stage through an amendment.

Senator David Norris: I would be interested to hear the Minister of State's comment because the amendment states clearly "if he or she is able of performing". That is nonsense.

Deputy Kathleen Lynch: Subsection (6) sets out who is suitable for appointment. The attorney must be capable of performing the functions of attorney, as specified in the enduring power of attorney. The Senator's amendment has a different wording. but I assume mine is correct.

Senator David Norris: The Minister of State is right. Why is it that the book of amendments submitted to us-----

Senator Martin Conway: As the Minister of State has read it, I imagine it should be-----

Senator David Norris: Why are the amendments as submitted to us-----

An Cathaoirleach: It can be amended on Report Stage.

Senator David Norris: Why are the amendments as submitted to us inappropriate?

Senator Martin Conway: The Minister of State has read the amendment.

Deputy Kathleen Lynch: Amendment No. 172 inserts a new section dealing with content of instrument creating an enduring power of attorney. The new section 52 sets out what has to be included in an instrument that creates an enduring power of attorney. Subsection (1) provides that the instrument must contain statements from the donor, a legal practitioner, a registered medical practitioner, a health care professional and the attorney in relation to various matters such as the capacity of the donor, that fraud of undue pressure was not used to create the enduring power and that the attorney is willing to undertake the functions of attorney under the power. The provisions were previously contained in section 52(4) which covered what might be included in regulations to be made by the Minister.

The new section 52 makes it obligatory to have such statements included in an instrument. It also provides for an additional safeguard by requiring statements by two different professionals as to the capacity of the donor to understand the implications of creating such an enduring power. One of the statements must be from a health care professional such as a social worker so as to not be too reliant on the medical assessment of capacity. Subsection (2) is a new provision specifying details that must be included in the instrument creating the enduring power of attorney that would otherwise be left to regulations.

Subsection (3) is a new provision which complements subsection (4). Subsections (3) and (4) mirror provisions introduced into the co-decision-making Part on Committee and Report Stages in the Dáil. The NDA advised that the Bill needed to provide for situations where, due to literacy issues, blindness, dexterity, etc., a person was unable to sign a document. The proposed provisions that will apply where a person cannot sign the document accords with advice that such a situation will require the combined input of the donor, the attorney, the substitute signatory and two witnesses.

Subsection (4) is a new provision which complements subsection (3). It tightens the provisions regarding the witnessing of an instrument creating an enduring power. Similar to section 14(7) in the co-decision-making Part, a further safeguard has been inserted which provides that

an employee or agent of the attorney may not be a witness to an instrument creating an enduring power of attorney. It also requires that at least one of the witnesses not be an immediate family member of the donor or the attorney. The requirement that at least one witness not be an immediate family member is to provide an additional safeguard in order that an independent person must be involved as a witness. This is to reduce the risk of a donor being pushed by family members into conferring an enduring power of attorney against his or her wishes.

Subsection (5) is a new provision that requires a donor to specify in the instrument creating the enduring power if the attorney is to be paid for performing the functions of attorney, what functions he or she is to be paid for and how much he or she is to be paid.

For the purposes of clarity, subsection (6) provides a definition of immediate family member to include a spouse, civil partner, cohabitant, child, parent, step-parent, a grandparent, an aunt, uncle, nephew, niece or immediate in-laws of the appointer or co-decision-maker. The same definition is found in the corresponding subsections in Part 4 on co-decision-making and Part 8 on advance health care directives.

Amendment No 173 inserts a new section dealing with notice of execution of an enduring power of attorney. The new section 53 sets out the notification requirements in relation to the execution of an enduring power of attorney. It is a new provision that requires the donor to give notice of the execution of the power to all close family members such as a spouse and children over 18 years of age and any decision-making supporters that the donor may have such as a decision-making assistant or co-decision-maker. It also allows the donor to name two other persons whom he or she wishes to inform of the execution of the enduring power. The provisions in new section 53 specify requirements that would otherwise have been left to regulations.

Amendment No. 173 inserts a section dealing with scope of authority - personal welfare decisions.

Senator David Norris: That is amendment No. 174.

Deputy Kathleen Lynch: I beg the Senator's pardon.

Senator David Norris: I point out that there are 24 pages of amendments. We have already been here for about ten minutes with the Minister of State explaining these sections. They are not all as closely related as people think. How can one possibly keep up-----

An Cathaoirleach: We are discussing amendments Nos. 170 to 193 together.

Deputy Kathleen Lynch: Once amendment No. 174-----

Senator David Norris: There are 24 pages of amendments all being discussed together. I have never come across this before.

An Cathaoirleach: They are all related.

Deputy Kathleen Lynch: In fairness, we have never had legislation like this before and the Senator should take that into consideration.

Senator David Norris: We had three examples last week.

Deputy Kathleen Lynch: It is legislation on which there has been extensive consultation. What we are doing is amending it again to make sure we get it right. Just because the Senator

and I have not done it before does not mean that it is not the right thing to do.

Senator Martin Conway: Correct.

Senator David Norris: Yes, but some of the amendments are grammatical amendments. It should have been utterly obvious whenever the thing was-----

An Cathaoirleach: On the amendments, please.

Deputy Kathleen Lynch: Amendment No. 174 inserts a section dealing with scope of authority - personal welfare decisions. The new section 54 replicates subsections (2) to (7), inclusive, of section 53 of the Bill as passed by the Dáil. It sets out the scope of authority of an enduring power of attorney in relation to personal welfare matters. Subsection (1) sets out the limited conditions where an attorney may restrain a donor. As with all other interveners restraint by attorneys is to be tightly regulated and only used in limited circumstances. The situation has to be an exceptional emergency in which there is an imminent risk of serious harm to the donor or to another person.

Subsection (2) defines ''restrains'' for the purposes of this section. It includes the definition of chemical restraint in that definition. Restraint is deemed to apply when a person administers a medication with the intention of modifying or controlling the relevant person's behaviour in order that the person will become compliant. This amendment was inserted on Report Stage in the Dáil.

Subsection (3) requires that the restraint be immediately ceased when no longer necessary to prevent the imminent risk of serious harm to donor. Subsection (4) provides that subsections (1) to (3) shall not constrain the generality of section 69 of the Mental Health Act 2001 or of rules made under that section.

Subsection (5) prevents a donor from authorising an attorney from making a decision relating to the refusal of life-sustaining treatment or from making a decision that is the subject of an advance health care directive by the donor. Subsection (6) provides that if an enduring power contains a relevant decision relating to the refusal of life-sustaining treatment or a decision that is the subject of an advance health care directive, the power is null and void to the extent that it relates to that decision.

Amendment No. 175 inserts a section dealing with the scope of authority relating to property and affairs. New section 55 replicates, with minor amendments, section 54(3) to (5), inclusive, of the Bill as passed by Dáil Éireann. It sets out the scope of authority of an enduring power of attorney in relation to property and affairs. Subsection (1) provides that the attorney may, if specific provision to that effect is made in the power, act for his or her own benefit or that of any other person's benefit to the extent provided for in the power. Subsections (2) and (3) cover the giving of gifts by the attorney on behalf of the donor. The donor must specify in the power that the attorney may give gifts, while subsection (3) limits these gifts to customary occasions and to persons, including the attorney, to whom the donor would have likely given gifts in the past. The value of the gifts must be reasonable, taking the circumstances of the donor into consideration.

Amendment No. 176 inserts a section dealing with the application of joint and joint several attorneys. New section 56 deals with the application of the Part to joint and several attorneys. The provisions in relation to joint and several attorneys were contained mainly in section 64

and the Second Schedule to the Bill as passed by Dáil Éireann. Subsection (1) allows a donor to appoint more than one attorney. The donor must specify in the enduring power of attorney whether such multiple appointments are made either jointly, jointly and severally, or jointly in some matters and severally in other matters.

Subsection (2) sets out what happens if one of the attorneys who was appointed to act jointly with another attorney is disqualified, dies or lacks capacity to carry out his or her duties as attorney. With regard to joint and several attorneys, where one dies, lacks capacity or is disqualified, the remaining attorney or attorneys may continue to act, unless the instrument creating the enduring power provides to the contrary.

Amendment No. 177 inserts a section dealing with persons who are not eligible to be attorneys. New section 57 equates to section 52(6) of the Bill as passed by Dáil Éireann. Section 52 deals with a number of issues relating to the characteristics of an enduring power and who may be appointed as an attorney. Subsection (1) sets out who is not eligible for appointment as attorney and replicates similar provisions in assisted decision-making, co-decision-making and advance health care directives. Subsection (2) replaces section 52(7) and prevents financial issues such as bankruptcy from being a barrier to being an attorney in respect of personal welfare matters.

Amendment No. 178 inserts a section on the disqualification of an attorney. New section 58 equates to section 52(7), (8), (10), (11) and (12). For clarity and consistency with other Parts of the Bill, the provisions relating to disqualification have been brought together in one section.

Amendment No. 179 inserts a new section on the functions of the court prior to registration. New section 59 replicates section 56. It enables the court, before the registration of the enduring power, to exercise powers it would have been able to exercise once a power had been registered, if it has reason to believe the donor may lack or shortly may lack capacity. An application to the court under this section may be made by any interested party whether the attorney has made an application for registration of the instrument.

Amendment No. 180 inserts a new section on application for registration of an instrument creating an enduring power. New section 60 replicates the existing section 57 and incorporates Schedule 1 to the Bill. However, additional text has been added to incorporate provisions that were to be provided for by way of regulations and to strengthen the safeguards against the premature or fraudulent registration of an enduring power. It sets out the obligations placed on the attorney when he or she has reason to believe the donor lacks capacity in relation to one or more relevant decisions which are the subject of the enduring power. Subsection (1) provides that an attorney must make an application to register the instrument creating the power of attorney as soon as he or she believes the donor lacks capacity.

Subsection (2) provides that the application for registration shall be made in a form that is to be prescribed by the Minister. The fee to accompany the application shall also be prescribed in regulations. Subsection (3) requires the attorney to notify specified persons of the fact that he or she is applying to the director to register the enduring power of attorney. The list of those who have to be notified mirrors the list contained in new section 53 which lists those who have to be notified of the execution of an enduring power. Currently, section 57 and Schedule 1 to the Bill replicate the provisions of notification found in the 1996 Powers of Attorney Act. The provisions and the accompanying regulations have been a source of confusion and conflict in recent years. In order to simplify and to provide protection against premature or fraudulent registra-

tion, I propose that all close family members be notified by the attorney that he or she intends to register the enduring power. Those notified will then have the opportunity to object to the registration if they are of the opinion that the attorney is not suitable or that undue pressure was placed on the donor to choose the appointed attorney. The amended notification provisions in this new section, coupled with the new notification requirements at execution stage, should, I hope, ensure all of those who need to be informed of an enduring power of attorney are notified.

Subsection (4) replicates section 57(3). It provides that the attorney may, before applying to register the enduring power of attorney, apply to the court for a determination in relation to the validity of the power. Subsection (5) replicates section 55(2). It allows an attorney, once he or she has applied for registration, to take action under the enduring power to maintain the donor, to prevent loss to the donor's estate, to maintain the attorney or other persons so far as the donor might be expected to do so or to make a personal welfare decision that cannot be reasonably deferred until the application has been determined.

Subsection (6) is a new provision that requires an attorney who has taken action under subsection (5) to report these actions to the director. Subsection (7) sets out what needs to accompany the application to register an instrument creating an enduring power. Similar to the requirement in relation to the execution of an enduring power of attorney, statements on the donor's lack of capacity will now be required from two different professionals, one of whom must be a health care professional such as a social worker.

Senator Mary Moran: On a point of order, it is very difficult to hear the Minister of State. This is extremely important legislation.

Senator Martin Conway: We are trying to get agreement on holding votes.

Senator Mary Moran: I know, but the time for talking was before the debate began.

An Cathaoirleach: The Minister of State should be allowed to speak without interruption.

Senator Martin Conway: We will not say anything more.

An Cathaoirleach: The Minister of State should be allowed to speak without interruption.

Senator David Norris: This shows the difficulty in dealing with so many amendments in this way. I am trying to understand the legislation as it goes through the House and it is extremely difficult because we are referring to sections not included in the Bill, as it stands. There are further proposed hypothetical amendments. I am trying to understand the Bill in order that I can do a good job as a legislator. I am sorry if my whispering distressed Senator thingamajig.

Senator Martin Conway: To be fair, a Chathaoirligh, we almost had agreement.

Senator Mary Moran: Excuse me, Senator thingamajig has a name.

Senator David Norris: I could not remember it. Tell me what it is.

An Cathaoirleach: The Minister of State should be allowed to speak without interruption.

Senator Mary Moran: I am sorry.

An Cathaoirleach: Members can speak as often as they wish.

Senator Mary Moran: My point is that the discussions could have been held previously.

Deputy Kathleen Lynch: Subsection (8) sets out what will happen in relation to registration if more than one attorney is appointed under an enduring power of attorney. To be of help to Senator David Norris, the entire section is about the enduring power of attorney.

Senator David Norris: Yes.

Deputy Kathleen Lynch: Unfortunately, because there is a possibility it could be challenged, we have had to ensure there are safeguards in place. Because we will be moving to a new system, it is important we get it right in order that we will not face a challenge. Perhaps it might have been better to explain this at the outset.

Senator David Norris: I completely accept that and understand the good intentions of the Minister of State. However, there are so many matters involved and differences between them.

Deputy Kathleen Lynch: The entire section is about the enduring power of attorney.

Amendment No. 181 inserts a new section - registration of an instrument creating an enduring power of attorney. The new section 61 replicates section 58(1) of the Bill and provides in more detail for how the director shall review an application for registration. It also provides additional provisions incorporating an appeals mechanism in relation to the decisions of the director on the registration of an enduring power. Subsection (1) lists the criteria that the director must consider when reviewing an application to register an enduring power.

Subsection (2) provides that, subject to any objection received, where the director is satisfied that the application is in order, he or she shall register the instrument creating the power.

Subsection (3) provides that, where the director is not satisfied that all is in order with an application, he or she shall notify the attorney and the donor of his or her view and give the attorney and the donor the opportunity to respond. This is a new provision that allows the attorney or donor to provide further material or evidence to back up the application for registration because we cannot rule out the possibility of vexatious complaints about who is chosen.

Subsection (4) is complementary to the new subsection (3). Following the receipt of further information or material as provided for in subsection (3), the director can do one of two things - register the instrument if he or she if satisfied that the criteria listed in subsection (1) have been met or refuse to register the instrument because the criteria are not deemed to have been met.

Subsection (5) is a new provision. It provides for an appeals mechanism for an attorney whose application to register is refused. The attorney has 21 days from the time he or she is notified that the application has been refused to appeal the decision of the director to the court.

Subsection (6) is a new provision and complementary to subsection (5). It sets out what the court may do upon an appeal under subsection (5). It may require the director to register the instrument, or affirm the director's decision to refuse to register it or make an order or declaration, as it considers appropriate.

Subsections (7) and (8) provide for the director to supply an authenticated copy of the instrument to the attorney and the donor. The copies authenticated by the director will be evidence of the contents of the instrument and the date it came into force. New section 60(3) provides that the attorney shall send them copies of the enduring power of attorney when notifying them of

his or her intention to register the power.

Amendment No. 182 inserts a new section – effect and proof of registration. The new section 62 replicates section 59(1) and (2). Subsection (1) provides that once an instrument has been registered, a revocation of power will not be valid unless it is confirmed by the court. A disclaimer by the attorney will not be valid except on notice to the donor and with the consent of the court. Once registration has taken place, the donor cannot extend or restrict the power, nor can he or she give a valid consent or instruction by which the attorney will be bound. Subsection (2) provides that subsection (1) applies for so long as the instrument is registered, regardless of whether the donor lacks capacity for the time being.

Amendment No. 183 inserts a new section – objections to registration. The new section 63 replicates and expands on section 58(2), (3), (4) and (5) of the Bill as passed by Dáil Éireann. It allows for objections to be made to the registration of an instrument creating an enduring power of attorney. It also provides for additional provisions that set out a mechanism by which the decisions of the director on whether an objection is well founded can be appealed to the court.

Subsection (2) sets out the grounds on which an objection to the registration of an instrument creating an enduring power of attorney may be made. It also allows for the possibility of a fee being charged which will help to filter out frivolous or vexatious objections. Section 46 of the Bill, as published, contains some similar provisions. Subsection (3) sets out the required actions of the director in regard to objections, while subsection (4) sets out the role of the courts in this regard. Subsection (5) provides that a person may appeal the decision of the director that his or her objection was not well founded to the court, while subsection (6) sets out the role of the court in this regard.

Amendment No. 184 inserts a new section – register of enduring powers. The new section 64 replicates section 60(1), (2) and (3) of the Bill as passed by Dáil Éireann. It mirrors similar revised provisions in regard to other registers maintained by the director. Subsections (1) and (2) require the director to maintain, in such form as he or she considers appropriate, a register of enduring powers of attorney that have been registered by him or her.

Subsection (3) revises the current provision that provides for the register to be open to inspection by the public. With a view to the need for data protection, particularly as enduring powers of attorney are essentially private arrangements between individuals, it is not considered appropriate to make the register open to the general public. Where it is necessary for a person or a body to know of the existence of an enduring power or to have access to some or all of its contents, the director will allow the appropriate level of access.

Subsection (4) allows the director to issue an authenticated copy of an enduring power or part thereof to a body or class of persons that shall be designated by regulation. Subsection (5) provides for the maintaining of a record of those who have had access to the register or who have been sent an authenticated copy of an enduring power.

Amendment No. 185 inserts a new section – revocation and variation of enduring power. The new section 65 replicates and expands on the current section 62 of the Bill. Additional subsections provide for provisions that were to be provided for by regulation. Subsection (1) clarifies that where a donor has capacity, an enduring power of attorney may be varied or revoked anytime prior to its registration. Subsection (2) provides that the variation or revocation must be done in such form as prescribed by the Minister. Subsections (3) and (4) set out the

administration requirements for the variation and revocation of an enduring power of attorney by a donor. It is not necessary for the donor to go to court to revoke an enduring power that has not been registered. Subsections (5) and (6) provide that a donor may revoke an enduring power that has been registered if he or she has the capacity to do so. However, the court must confirm the revocation for it to be valid.

Amendment No. 186 inserts a new section – disclaimer by attorney. The new section 66 replicates section 52(14). It provides that a disclaimer of an enduring power that has not been registered by the attorney will not be valid except on notice to the donor. A disclaimer of an enduring power that has been registered by the attorney will not be valid except with the consent of the court.

Amendment No. 187 inserts a new section – reports by attorneys. The new section 67 replicates and expands on section 60(4) of the Bill as passed by Dáil Éireann. It provides for greater oversight of attorneys by the director, especially in regard to the financial affairs of donors. Subsection (1) is a new provision that requires an attorney who has been given the authority by the donor to make decisions on his or her property and affairs to submit within three months of the registration of the enduring power a schedule of the donor's assets and liabilities and projected statement of the donor's income and expenditure to the director. This is good practice on behalf of the attorney because he or she will need to be aware of the donor's incomings and outgoings in order to effectively manage the donor's property and affairs. It also ensures the director is made aware of any substantial estates that may require closer oversight.

Subsection (2) requires the attorney to keep proper accounts and that such accounts be available for inspection by the director or special visitor.

Subsection (3) requires the attorney under a registered enduring power to submit a report as to the performance of his or her functions under the enduring power to the director within 12 months. Subsection (4) provides that reports submitted by the attorney must be in a form to be prescribed by the Minister and must include details of all expenses and remuneration paid or to be claimed by the attorney.

Subsections (6) to (8), inclusive, are new provisions that set out what must happen when an attorney does not comply with his or her reporting obligations. This includes a provision that allows the court to determine that the attorney should no longer act as attorney for the donor concerned. Subsection (9) defines the term "relevant period".

Subsections (10) and (11) are new provisions that apply the reporting obligations set out in this section to attorneys of enduring power that had been created under the 1996 Act but have not been registered yet.

Subsections (12) and (13) are also new provisions that provide that the functions of the director, the investigations of the director and the appointment of special and general visitors by the director in relation to the reporting obligations of an attorney include attorneys and owners under enduring powers created under the 1996 Act.

Amendment No. 188 inserts a new section 68 - complaints in relation to attorneys - into Part 7 of the Bill. The new section mirrors section 27 which deals with complaints against co-decision-makers. It sets out new provisions enabling complaints about the suitability or conduct of attorneys. Complaints against attorneys appointed under the Bill and attorneys appointed under the 1996 Act may be investigated by the director under this section. Provision is made

here for the director, having satisfied himself or herself that a complaint is well founded, to apply to court for a determination. An additional safeguard is provided by allowing the director to investigate a matter and bring it to court notwithstanding that no complaint has been received.

Amendment No 189 inserts a new section 6 - applications to court. Subsection (1) sets out what the court may do where the director makes an application to it in relation to whether he or she should register an instrument creating an enduring power of attorney. Subsection (2) sets out the criteria that the court must take into consideration when determining if an attorney is suitable for appointment as an attorney.

Subsection (3) replicates section 61(2). The court can determine the meaning or effect of the instrument. The court may give directions with respect to the personal affairs and the management or disposal of the donor's property or affairs. It can also decide on the rendering of accounts and the production of records kept by the attorney and the remuneration and expenses of the attorney and consent to a disclaimer by the attorney.

Subsection (4) replicates subsection (3) of section 61. It sets out the circumstances in which the court must notify the director of its directions, requirements, consent or authorisation made under subsection (3) and requires the director to monitor the giving of effect of such directions, requirements, etc., by the attorney.

Senator Marie-Louise O'Donnell: On a point of order, I know the work the Minister of State has put into this, but why did we not receive a copy of her notes? It is very hard for her to read them and it is very hard for us to take in the provisions outlined because we did not get time to read them. I accept almost all of what the Minister of State is saying, but is there a reason we did not receive her notes beforehand?

An Cathaoirleach: It would not be normal practice on Committee Stage to circulate a Minister's notes.

Senator Marie-Louise O'Donnell: It would not be normal practice to relate 100 amendments.

Deputy Kathleen Lynch: It would make life easier, but I do not make the rules on these matters.

Senator Marie-Louise O'Donnell: When the group goes over five or six amendments, we cannot take it in.

Senator Trevor Ó Clochartaigh: It is one group.

Deputy Kathleen Lynch: It is and we need to keep in mind that this is all on one particular issue but a very important one.

Senator David Norris: It is not really. One could make an argument for separating out the amendment dealing with complaints about attorneys.

Senator Marie-Louise O'Donnell: Perhaps we should have a rule that if a group includes more than a certain number of amendments, the notes should be circulated.

Deputy Kathleen Lynch: Amendment No 190 inserts a new section 70 - removal of instrument from the register. It mirrors provisions in section 26 that deal with the removal of

co-decision-making agreements from the register following revocation. Subsection (1) sets out the circumstances in which the director shall remove from the register of enduring powers an instrument that has been revoked or where the attorney has been disqualified. Subsection (2) sets out what happens in regard to the register when there is more than one attorney appointed under the enduring power of attorney or where the donor has nominated an alternative attorney.

Amendment No 191 inserts a new section 71 - regulations. The new section pulls together in one section the matters that must be prescribed by the Minister. These are currently scattered throughout the Part.

Amendment No. 192 inserts a new section 72 - offences in regard to enduring powers of attorney. It mirrors similar sections in the co-decision-making and the advance health care directives parts. A person who uses fraud, coercion or undue influence to force another person to make, vary or revoke an enduring power will be guilty of an offence. A person who makes a statement in connection with the creation or registration of instrument creating an enduring power which he or she knows to be false will also be guilty of an offence. This is an important protection for a donor.

Amendment No. 193 inserts a new section - transitional provisions. The new section 73 provides for the transitional arrangements between the Bill and the Powers of Attorney Act 1996. It provides that, following the commencement of this Part, no further enduring powers of attorney may be created under the 1996 Act. That is straightforward.

Senator David Norris: I am afraid I do not see any reason for applause. This is a bad evening's work.

Senator Fidelma Healy Eames: The Minister of State had to read through the amendments.

Senator Marie-Louise O'Donnell: We applaud her endurance.

Senator David Norris: Yes, on a human level, but what about the endurance of the House? It is not to be applauded on a legislative level. As Senators demonstrated by their comments, the Minister of State showed some signs of physical stress in reading all this and one's heart goes out to her. We have had nearly an hour of her. The amendments compose almost the heart of the entire Bill. They account for 22 pages out of 55. That is half the physical number of amendments. This is a huge swathe to take in one gulp. One could not really take it in. With the greatest respect, the Minister of State made a couple of errors in numbering and so on. What can we as ordinary Senators do about this? It is a real difficulty. I sincerely hope no legislation of this kind will be introduced again ever in the Seanad.

It is very important to consult people and it is welcome that the Bill has been amended in consultation, although not as fully as some of us would like, but there is no excuse for the kind of grammatical amendments being made two years later after it has been passed by the Dáil. They should have been spotted straightaway. It is a grotesque offence to Seanad Éireann that these kinds of drafting error are sustained in the Bill and have to be addressed at this stage.

I have some comments on the amendments as I followed them. I apologise to Senator Mary Moran if I interrupted her, but I was desperately trying to find out exactly where these things fitted in because some do not deal with sections in the Bill or the amendments.

They are all over the place and it is impossible to find out what section is qualifying another. I was trying to figure this out in order that I could do my job here.

Amendment No. 171 indicates "Subject to the provisions of this section ... a person who has attained the age of 18 years ... may appoint one or more suitable persons" to act as an attorney. What about people under that age? What about somebody who is 17 and a half yers, for example? Will the Minister of State reassure us that the guardian *ad litem* will be called into play for minors? They should certainly have some protection as they are more vulnerable than an adult. We are talking about people who have attained the age of 18 years but what about people who are under 18?

Amendment No. 184 deals with the register of enduring powers and subsection (2) indicates "The Register shall be in such form as the Director considers appropriate". I wonder what that means. Does it mean it should be in a ledger or in a computer? Does it give overwhelming power to the director to say that it can be done whatever way he or she likes? I would have thought that a register of enduring powers of attorney would be a factual matter. It is clear what it should include. I am not sure what it means by "in such form as the Director considers appropriate".

6 o'clock

This is an enormous bulk of material to consider and it means that virtually half of the Bill is to be discussed in one go.

Senator Marie-Louise O'Donnell: It is half the amendments.

Senator David Norris: Yes and they deal with a large swathe of the Bill. They could have been separated. For example, amendment No. 188 relates to complaints about attorneys. It seems there is a certain degree of separation in that issue and it deserves to be teased out separately. This is really pushing at the last minute to get legislation through. It is a very bad process as it minimises our capacity to concentrate our critical scrutiny on legislation and bring out points that need amending.

Senator Trevor Ó Clochartaigh: Cuirim fáilte roimh an Aire Stáit. I share the frustration of Senator David Norris. In fairness to him, we have had a number of Bills through the House in the past week and a half with hundreds of amendments coming at the last minute. As legislators, we can see amendments replacing sections and the discussion is on the new sections. It can be very confusing, especially as these numbered amendments only came to us at 11.59 p.m. last night. As none of us picked up our e-mails until this morning, it has been quite a challenge to try to get through the amendments.

I want to be specific about issues that have been raised, particularly with regard to advance health care directives. My understanding is these have been affected by the grouping of amendments to which we are speaking. They relate to changes to sections 59 and 60 of the Bill as passed by the Dáil. There are concerns being raised with me about advance health care directives and the provisions are causing a great deal of concern among mental health service users. They feel their human rights will not be respected on an equal basis with others if the treatment choices of those detained under mental health legislation are excluded from the Bill.

I note that the Minister of State is seeking to amend the mental health legislation around the issue of electro-convulsive therapy, ECT, and other harmful treatments, where people are found to be unable to consent, which is to be welcomed. It will only occur if there is a legally binding advance health care directive allowing patients to consent or refuse treatment in advance. It is

believed the changes suggested may affect the issue around advance health care directives. I note that Dr. Fiona Morrissey from the National University of Ireland, Galway, has raised the issue and she states:

> The impending legislative provisions discriminate against anyone who may experience mental distress. Given that one in four of us experiences some form of mental distress during our lifetime, any one of us could find ourselves in a position where we become emotionally overwhelmed due to some form of life event and end up in a crisis situation where we are excluded from making decisions in relation to our treatment under this legislation. The proposed legislation specifically excludes the use of legally binding advance health care directives for the treatment choices of those who may be subject to involuntary detention under the Mental Health Act 2001.

Dr. Morrissey believes this is clearly discriminatory under the UN Convention on the Rights of Persons with Disabilities, which the Government is planning to ratify in the near future. The use of differential standards in the legislation reinforces the notion that the preferences of individuals who may experience mental distress are not respected on an equal basis with others and reinforces stigma. In its general comment on Article 12, the Committee on the Rights of Persons with Disabilities has stated state parties have an obligation to require all health and medical professionals, including psychiatric professionals, to obtain the free and informed consent of persons with disabilities prior to any treatment. She also argues that advance health care directives are legally binding during involuntary detention in a number of other jurisdictions, including Germany, and a number of US states and Canadian provinces. Advocacy organisations have urged that laws on advance directives for mental health treatment decisions should operate in exactly the same way as other directives, subject only to legitimate emergency situations, such as when there is an imminent threat to life or others.

The question is about seeking clarification. As Senator David Norris stated, with the grouping and gamut of amendments, we need specific discussion of this issue of advance health care directives. People are concerned that these are being specifically excluded. Will the Minister of State clarify this? Will they be omitted and, if so, what is the rationale for leaving them out in the light of this international opinion?

Senator Martin Conway: It is very hard not to share the concerns of my two colleagues, Senators David Norris and Trevor Ó Clochartaigh, with respect to the sheer volume of amendments. The grouping of amendments might need examination in the context of parliamentary reform. There is probably a logic in having a maximum number that may be discussed in one amendment grouping. That said, it appears that these amendments are related, diverse as they may be. They deal with wards of court and that has never been dealt with. Long before any of us were around here, in the 1800s, the legislation governing wards of court was in place. I do not follow the royal family in England, but it was probably Queen Victoria who was in charge. People who needed assistive capacity did not have any money, resources, rights or dignity. This is ensuring people who need assistive capacity have all those rights and their money is treated with respect. It is about ensuring their rights are not impugned in any way. It is welcome that we have substantial amendments, as they are to improve the legislation. I am sure many issues were identified, not just by colleagues in the Dáil but by officials and people drafting the Bill, as it is such pioneering and ground-breaking legislation. No Government in Irish history has made an effort to tackle it.

With colleagues such as Senators Ivana Bacik and Denis O'Donovan, among others, I was a

member of the Oireachtas Joint Committee on Justice, Defence and Equality that held exhaustive hearings and made significant recommendations in this area. The Minister of State is correct. I am a novice in the Seanad. Senator David Norris has been here for 20 years or longer.

Senator David Norris: It is nearly 30 years.

Senator Martin Conway: In my very brief period I have not come across any legislation that has changed for the better, even in terms of language or the Title, more than this, with consultation with stakeholders and interested parties. We have seen an imperfect presentation tonight in terms of groupings and so on, but what we will have is legislation that is as close to perfect as is humanly possible to ensure dignity and rights are enshrined in law. We all know that money is the root of all evil. With respect to people who need assisted decision making, we must make sure their money is protected and respected by the State as much as it is possible for it to do that. While it is not perfect, I sincerely hope this House will not divide on these issues of great importance to citizens who need our support and assistance.

Senator Cáit Keane: I will be brief as it is important that we move on to deal with some of the very good amendments we want to ensure the Minister of State will accept.

An Cathaoirleach: We are on the amendments.

Senator Cáit Keane: I am referring to specific amendments and I hope many of them will be agreed.

Senator Mary Moran: I will be brief also. I agree with respect to the length of time involved. It is very difficult for everybody involved, but we are all here with a common aim to get this right. Like Senator Trevor Ó Clochartaigh, I read the article by Dr. Fiona Morrissey at the weekend and join in asking for clarification on some of the points made in it, particularly, as the Senator said, in regard to the mental health service users. I found it interesting that Dr. Morrissey reported that 60% of mental health service users felt that they had no control over future treatment. That is an important point. We are talking about a review in respect of wards of court and Part 6 of the Bill. I have had discussions with those involved in Inclusion Ireland who have expressed some concerns brought to their attention by family members. It is desirable we look at that category. It is always much better if the attorneys for wards of court are family members as opposed to a medical person. It is very important to ensure we do that.

Another aspect is funds for wards of court, even though this may not be the legislation under which to raise it. I do not know where that would come in, but with respect to funds in place for them that have been depleted as a result of the economic downturn, what is in place to ensure the people who were awarded money are not out of pocket?

An Cathaoirleach: Senator Cáit Keane has indicated that she wants to speak again.

Senator Cáit Keane: I have indicated again because I thought everybody was making a preamble, that everybody was going all over-----

Senator Marie-Louise O'Donnell: They still are.

An Cathaoirleach: No. Senators David Norris and Trevor Ó Clochartaigh spoke specifically to amendments.

Senator Cáit Keane: I will speak specifically to amendment No. 27 because it is grouped

with----

Senator Marie-Louise O'Donnell: We are not on that amendment yet. That is why some of us are sitting here.

Senator Cáit Keane: Will the Cathaoirleach specifically state which amendment we are on?

An Cathaoirleach: We are dealing with the first group of amendments.

Senator Cáit Keane: I am sorry, not everybody together, just the Cathaoirleach.

An Cathaoirleach: We are dealing with a group of amendments from amendment No. 2 together with the other amendments being discussed.

Senator Marie-Louise O'Donnell: The Senator should sit down.

Senator Cáit Keane: Amendment No. 2 and also amendments Nos. 7, 19, 20, 69, 77, as well as the others.

Deputy Kathleen Lynch: I have this awful feeling that we have got off on the wrong foot in dealing with this legislation which has been sought for 30 years. It is a difficult item of legislation to understand. I have been looking at it for two years and the officials have been working on it for even longer. I hope that we are not going to get off on the wrong foot and that this will head towards us doing something for people, including ourselves.

I point out to Senator David Norris that people under the age of 17 years cannot appoint an attorney. They have not reached the age of maturity. The Senator probably gathered that. Neither can they be a witness.

Senator David Norris: It is under the age of 18 years.

Deputy Kathleen Lynch: It is important that we understand that. This is about adults.

Senator David Norris: Yes, but I was asking if the guardian *ad litem* would come into play.

Deputy Kathleen Lynch: No, because they are not at that point. They are not covered by the Bill. With respect to the register to be maintained, I believe that will be done electronically, but it will be very much up to the director. When we come to expand on what that director's duties and role are and where the office will be-----

Senator David Norris: It should contain all the facts.

Deputy Kathleen Lynch: Yes. With respect to most of the amendments - I am sorry for racing through them but I was conscious that we did not want to be here until tomorrow morning-----

Senator David Norris: We did well.

Deputy Kathleen Lynch: -----the type of information that needs to be gathered, in the first instance, is extensive. When a complaint is made, it needs to be extensive. Therefore, it would cover all eventualities. I think the Senator will be happy enough with that. On the amendments we are proposing in regard to the enduring powers of attorney, we are simply aligning them with the reforms agreed by the Dáil, where there was exceptional co-operation around this area.

I advise Senator Trevor Ó Clochartaigh that we will be dealing with advance health care directives in Part 8 in which I believe his concerns will be dealt with.

Before I address Dr. Fiona Morrissey's article, I want to state we have met her. One of the meetings was with the officials and it was of three hours duration. I have also met her and she has put her case. It was an informal meeting. I do not want to mislead anyone; it was not the case that this was something we were discussing, but I knew her arguments because I had read her extensive e-mails on several occasions. I have explained to her and others - officials explained also in great detail during that three-hour meeting - that we intend to deal with the advance health care directives in regard to the mental health Bill when the general scheme is produced. We believe that is where it should be dealt with. As well as that, the expert group that has looked at the Mental Health Act for us has advised that is where we should deal with it. This legislation is about enabling people to make decisions and it relates to the general scheme of life events, but the specific area of mental health should be dealt with in the Mental Health Act. We are not opposed to that and have very much taken on board what Dr. Morrissey has said. She is very determined that this be stitched into this legislation, but we do not agree. That is the beauty of democracy. We have explained in great detail why it should be included in the Mental Health Act rather than this legislation.

Amendment agreed to.

Senator Jillian van Turnhout: I move amendment No. 3:

In page 10, between lines 24 and 25, to insert the following:

" "best interpretation" means the interpretation of the relevant person's past and present communication (using all forms of communication, including, where relevant, total communication, augmented or alternative communication, and non-verbal communication, such as gestures and actions) that seems most reasonably justified in the circumstances;".

The Minister of State is extremely welcome. Before I speak to the amendment, I congratulate her on her work on the mental health (amendment) Bill which seeks to remove the use of coercion in the application of ECT. I acknowledge that a Bill was published by former Senator Dan Boyle, as she knows, and would particularly like to pay tribute to my cousin John McCarthy, God rest him. I can almost hear him using wonderfully colourful language and including the words "about time," but it is great that the Bill will be progressing. I say, "Well done," to the Minister of State.

In association with my colleague, Senator Katherine Zappone----

Senator David Norris: And me.

Senator Jillian van Turnhout: -----I acknowledge the support of the NUIG Centre for Disability Law and Policy and Tallaght Trialogue. While most people simply require recognition of their legal capacity and support to express their will and preferences, there will still be a small minority of individuals who are not expressing a will and preference in a manner that others can understand. The Bill must establish the lawful response to such circumstances. However, I do not believe a functional assessment of a mental capacity and a subsequent denial of legal capacity is the correct response in these difficult situations. A person in a coma or a minimally conscious state, for example, will not be communicating his or her will and prefer-

ences to others and may not have made his or her wishes known in advance through an advance health care directive or granted a power of attorney to anyone for his or her relevant decision. In these circumstances decision making assistants, co-decision makers, decision making representatives, attorneys or designated health care representatives may need to make a decision on the relevant person's behalf in accordance with their best interpretation of his or her will and preferences. While the Bill does require all interveners to respect the person's will and preferences as part of the guiding principles included in section 8, further reference to the concept of best interpretation of will and preferences is needed for the hard cases in which it is very difficult to tell what a person's wishes are. The term "best interpretation" needs to be defined in section 2 of the Bill to guide those in the supportive roles I have outlined. Best interpretation of a relevant person's will and preferences means taking into account past express preferences, where known, and includes knowledge gained from family and friends and other evidence available. Best interpretation can also be arrived at in seeking to communicate with the person in every possible way, including by using, where appropriate, assisted and augmentative communication, facilitated communication, signs, gestures and total communication, all of which are noted in the regulations and code of practice.

The use of best interpretation will rarely be an easy task. However, the best interest determinations used currently are similarly difficult in these circumstances. The provisions of Article 12 of the UN Convention on the Rights of Persons with Disabilities are merely shifting these difficult decisions from focusing on judgments existing outside the individual to the individual's own will and preferences. That is why I am trying to insert a definition of best interpretation. We do need to deal with the hard cases, too.

Senator David Norris: I support Senator Jillian van Turnhout's amendment. It seems important that we have a concept of best interpretation and a definition of it. It should take into account the history and past expressed wishes of a patient who may now no longer be in a position to express them. We should take into account assisted methods of communication, be it nodding, by squeezing a hand or whatever else. One has to be careful, however, about the way in which the family is included because not all families are perfect. We do not want to have families pushing an interpretation that suits them but not the patient.

I was interested to see that the Mental Health (Amendment) Bill 2008 had been introduced in the Dáil, a Bill I had seconded in this House. I remember discussing it with former Senator Dan Boyle and a very nice Progressive Democrats Senator whose name I cannot remember. That was before they dumped them. It was an important move to have the Bill discussed and I was surprised and pleased to see it being introduced in the Dáil on Tuesday.

Senator Trevor Ó Clochartaigh: I echo the support for the amendment which is very important and on which there has been a lot of very good work done. This is obviously an incredibly complex issue, but the express will of the relevant person is certainly paramount. Any mechanism or means that can be used to find out what it is should be used, no matter what state the person is in. There are questions about somebody making an advance health care directive, for example. If he or she decides in an advance health care directive that there are certain treatments he or she does not want to have, surely that must be taken into consideration. It is not just an issue of what he or she would like to happen, but also what treatments he or she would not like to receive.

I commend the Senators involved and the work of the academics who have been supporting it. I lend our support to the amendment.

Senator Colm Burke: I thank the Senators involved for bringing forward the amendment. As a practising solicitor, I have some concerns about it from my own experience which includes attending a nursing home to have a document granting power of attorney signed, only to find that the person concerned was not at all happy about signing it. I did not get it signed but two days later in my office I found a signed document granting power of attorney which had been witnessed by the matron of the nursing home. I can assure Senators that the document went into the shredder, which was the appropriate place for it. That is going back many years. I, therefore, have some concerns about how this provision will be interpreted in the sense that different people will give different interpretations to it and the intentions of the person concerned. While I accept that a lot of work has been done on this matter by the Senators concerned and that the issue needs to be looked at, I have concerns.

Deputy Kathleen Lynch: I did acknowledge Senator David Norris in the Dáil when we got the electro-convulsive therapy Bill through last evening. It will be taken in the Seanad on Thursday, 17 December. I acknowledged the Senator's involvement with that of former Senators Dan Boyle and Déirdre de Búrca. They were the three named Senators.

Senator David Norris: Yes. Deirdre de Búrca was her name.

Deputy Kathleen Lynch: I also acknowledged Mr. John McCarthy. I am not certain if he would agree with our interpretation of where he is now, but I am sure that if he was still around, he would, at least, be half happy.

On amendment No. 3, as Senator Colm Burke outlined, it is hugely important that we be very clear about the interpretation of someone's will and preferences. I fully acknowledge that we can never get it entirely right and that there will always be circumstances where we will get it wrong. Mr. John McCarthy's book which is on my shelf constantly reminds me of the human condition. We are human and will get it wrong. I do not know why we are ever that surprised by this.

Senators Jillian van Turnhout and Katherine Zappone have proposed amendment No. 3 to introduce a definition of "best interpretation". I cannot accept the amendment because my entire focus in the Bill is on ensuring people have the ability and are helped as much as possible to make decisions for themselves, sometimes in very difficult circumstances. Section 3 provides that where a person's capacity is being assessed, he or she can be deemed to have capacity if he or she can communicate his or her decision by talking, writing, using sign language, assistive technology or any other means, including by means of a third party who knows him or her well and knows what his or her will or preferences would be in the circumstances. Again, I am not certain people will always get it right, but they can only do their very best in the circumstances.

The provision in section 3(2) encompasses much of what the Senators are seeking to achieve. The proposed definition is somewhat unclear in terms of who would interpret it. One issue about which I have concerns is the idea that gestures and actions should be included, without proper safeguards, in a definition of best interpretation. The decisions which need to be made will often have serious legal consequences for the person concerned or another party. The sale of a house, for instance, may leave the person concerned without a home. It is crucial, given the seriousness of the decision, that his or her will and preferences be absolutely clear. Communication through gestures and actions could be misinterpreted if they were not clearly understood. As Senator Colm Burke says, they could be misinterpreted deliberately. In some cases, non-verbal communication will work. We all know people who are non-verbal but who can

make their meaning very clear. We see this every day. In some cases, though, it may give rise to misunderstandings. Therefore, a general definition would need to be workable in all cases.

I suggest it would be more appropriate for the director to provide information on communication methods in a code of practice that would enable organisations to have clear information on how to approach communications which might involve the use of assistive technology or non-verbal communication. For these reasons, I cannot accept the amendment, while appreciating exactly what the Senators are seeking to do. I think we have covered as much as possible. The director will have a further part to play in terms of how non-verbal communication can be interpreted.

Senator Jillian van Turnhout: I appreciate the Minister of State's reply and her suggestion that the matter be included within a code of practice. I am conscious dthat this legislation is historic and that we are jumping forward. My amendment proposes a framework for these hard cases because without it, there will no framework. As I appreciate what has been said about safeguards, I will withdraw my amendment. I will retable it on Report Stage and perhaps address some of the issues raised. We need a framework to deal with these hard cases in order that we do not have the situation Senator Colm Burke suggested. In the absence of a framework, who will make the interpretation? Where is the guidance for that interpretation? Perhaps it is within a code of practice. I need to consider how best that can be done.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 4, 6, 10, 11, 13, 16, 55, 75, 134 and 213 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 4:

In page 10, to delete lines 28 and 29.

Deputy Kathleen Lynch: Amendments Nos. 4, 6, 10, 11, 13, 16, 55, 75, 134 and 213 propose to delete the current definitions in the Bill of an "approved nursing home", "care service", "relevant facility" and "nursing home or residential facility". Two new terms are proposed as more accurate terms to describe the facilities in which those encompassed by the Bill may be resident. The term "designated centre" is proposed to encompass residential facilities for older persons and persons with disabilities. It is a more accurate term than those currently included in the Bill. It is a term already defined in section 2 of the Health Act 2007. It is proposed that it will bring consistency to the terminology used in the Bill. The term "mental health facility" is retained to encompass residential facilities for persons with mental health illness.

It is not appropriate to retain terms, such as "approved nursing home", as they relate to the nursing home support scheme. The facilities encompassed by the Bill are broader than those which come under the nursing home support scheme. The change of terminology will require the consequential amendment of the definition of the "owner" of such facilities. Amendment No. 10 proposes a definition of "owner" which includes the new terms of "designated centre" and "mental health facility".

Amendments Nos. 55 and 75 are consequential on the streamlining of references to institutions. The references proposed are to "designated centres" to encompass nursing homes and residential facilities for people with disabilities and to "mental health facilities". The provision has been redrafted to make its intent clearer as our consultations with disability and mental

health stakeholders have suggested the provision had created confusion. What is proposed is that an owner, a person living with the owner or an employee are automatically disqualified from acting as interveners under the Bill, that is, acting as a co-decision-maker. The exception is where any of them are the spouse, civil partner, cohabitant, parent, child or sibling of the relevant person.

Amendment agreed to.

An Cathaoirleach: Amendment No. 5 is in the names of Senators Denis O'Donovan, David Norris, Fidelma Healy Eames, Jillian van Turnhout and Katherine Zappone. Amendments Nos. 5 and 245 are related and may be discussed together. Is that agreed? Agreed.

Senator Fidelma Healy Eames: I move amendment No. 5:

> In page 10, between lines 29 and 30, to insert the following:
>
> " "chemical restraint" is the intentional use of medication to control or modify a person's behaviour or to ensure a patient is compliant or not capable of resistance, when no medically identified condition is being treated, where the treatment is not necessary for the condition, or the intended effect of the drug is to sedate the person for convenience or for disciplinary purposes;".

I welcome the Minister of State. As this is very important and complex legislation, she has my support for the thrust of the Bill. I am glad that only two amendments - Nos. 5 and 245 - deal with chemical restraint. Accepting amendment No. 5 would really enhance the Bill. It states, "chemical restraint is the intentional use of medication to control or modify a person's behaviour or to ensure a patient is compliant or not capable of resistance, when no medically identified condition is being treated, where the treatment is not necessary for the condition, or the intended effect of the drug is to sedate the person for convenience or for disciplinary purposes;".

In a nutshell, by accepting the amendment, we will improve the human rights and quality of treatment for a person. Before any drug is given to restrain a patient, a clinical assessment should be carried out which means that staff would have time for the patient. For example, giving a patient with dementia and who is agitated a drug will quieten him or her, but it does get to the root of the problem. Staff need time, skills and resources. This is humane and it is what I am asking of the Minister of State by accepting the amendment.

I have heard of cases where patients with dementia who have been agitated have been given drugs instead of receiving talk therapy to take them through the condition. I have heard of a stroke patient being drugged instead of being taken to the toilet. All she needed was to be physically brought to the toilet. It is undignified to use drugs in this way. I am not saying there is no need for drugs; there is a place for drugs but only after a clinical assessment has been carried out which deems use of them as being the best and last resort.

The same applies to children with autism. Instead of staff being trained to talk to children in a meltdown situation, Ritalin is often administered. I know that because there have been children in that state in my classroom. One is not dealing with the real person but a person in a zombie-like state who has been incapacitated. One is not dealing with the person with whom one could be dealing in order to get the best out of him or her. I strongly encourage the Minister of State to accept my amendment. Sage, the support and advocacy service for older people, is

very appreciative and supportive of the amendment.

Amendment No. 245 reiterates what is in amendment No. 5 and states: "Nothing in this Act shall be construed as authorising any person to administer to a relevant person any medication for the purpose of controlling or modifying the relevant person's behaviour or to ensure that a relevant person is compliant and not capable of resistance when no medically identified condition is being treated, where the treatment is not necessary for the condition, or the intended effect of the medication is to sedate the relevant person for convenience or for disciplinary purposes". This reminds me of what went on in that horrific case in Áras Attracta.

Deputy Kathleen Lynch: There were no drugs-----

Senator Fidelma Healy Eames: In some cases, I understand there are. Amendment No. 245 further states: "Notwithstanding the provisions of *subsection (1)*, the appropriate use of drugs to reduce symptoms in the treatment of a medical condition does not constitute chemical restraint but the administration of such medication should be clearly documented on the relevant person's file and the reasons for the administration of such medication specified". In other words, there is a time and a place for medication but only after all of the appropriate human interventions, the face-to-face therapies and talking patients down and through the situation have been used.

Senator David Norris: The two amendments hang together clearly. The first one is a definition and I cannot see why it should be rejected. It states "chemical restraint" is the intentional use of medication to control or modify a person's behaviour or to ensure a patient is compliant" - in other words, to dose them down. It is an emergency fire department response.

Importantly, the amendment also indicates that this is in a situation where the administration of these drugs is not to treat any condition, in other words, the drugs are not medically necessary and their usage is simply a form of restraint. We have to be very careful, in terms of people's human rights, when there is restraint.

The amendment also states "the intended effect of the drug is to sedate the person for convenience or for disciplinary purposes". It is shocking to think that when somebody behaves badly because he or she suffers from that, as punishment, drugs are administered to shut him or her up, keep him or her quiet and keep him or her down.

Senator Fidelma Healy Eames: Exactly.

Senator David Norris: That would be dreadful. I have experience from 30 or 40 years ago of visiting the then Central Mental Hospital in Dundrum, where I witnessed staff going around with trays of drugs and allowing people pick up handfuls of them. Those patients were zombies: they were out of their skulls. I do not think this practice continues and would be very surprised if it did. The amendments deal with the last vestiges of that system and would ensure drugs were not inappropriately used. Drugs are for a specific purpose and should not be used to punish people. The idea of using medication to punish a mentally ill person is absolutely repugnant.

Amendment No. 245 makes it perfectly clear, following the definition in amendment No. 5, that the Bill will not be interpreted in such a manner as to allow the administration of drugs or medicines in such a way - either to restrain or punish. However, it makes provision in subsection (2) for the medical administration of drugs. In other words, in cases where they are being

administered to treat a particular medical condition, that is not to be considered as chemical restraint.

Senator Jillian van Turnhout: I support this amendment. I, too, was contacted by Mervyn Taylor of Sage, the support and advocacy service for older people, about this issue. Sage has noted the clear statement in the Department of Health policy document towards a restraint-free environment in nursing homes which unequivocally states, "Chemical restraint is always unacceptable". Chemical restraint is a violation of personal and bodily integrity. It constitutes inhumane and degrading treatment and in the experience of Sage, it is being used in certain circumstances to deprive people of their liberty rather than to address underlying clinical issues. As such, it is in breach of Article 3 of the European Convention on Human Rights and, therefore, should be prohibited.

It is health care professionals who are responsible for the administration of medicine to control behaviour, but rather than undertaking detailed clinical assessments to address the underlying reasons for agitation in some patients, for example, patients with dementia, they use chemical restraint as a first rather than a last resort. That is why I support the amendment and have put my name to it. We need to legislate and make it very clear that we should not normalise the issue of chemical restraint. It is a last resort and there should be an appropriate clinical assessment done if it is to be used.

Senator Cáit Keane: The fact amendment No. 245 uses the words "chemical restraint" means that it is not unreasonable to ask for "chemical restraint" to be defined. We spoke about interpretation earlier and about how one interpretation could differ from another. Obviously, drugs must be prescribed by a medical practitioner, but there could be different interpretations regarding how they are used. Nursing homes have guidelines on how to deal with this matter, but would it be possible to address the problem raised here through the use of guidelines? I understand the concerns of other Senators about the widespread use or any use of chemical restraint in nursing homes without a requirement for medical intervention.

Deputy Kathleen Lynch: I understand perfectly the concerns of Senators. We are always under the impression that restraint is physical, but chemical restraint is much more subtle and, probably, far more effective. Apart from this Bill, there are other areas that are protected in terms of chemical restraint. For example, HIQA always insists on reading patients' records to ensure medication is appropriate for people and that the amount and frequency of medication administered is registered. This provision is always part of HIQA's reporting process. This is one of the mechanisms we have as a safeguard. Mention was made of Áras Attracta and that example shows we are human and things do go wrong. However, we must accept that the majority of people working in the care industry and medical professionals take this issue seriously and do not administer drugs that are of no benefit to the health of patients.

Amendments Nos. 5 and 245 would introduce a definition of chemical restraint into the Bill and insert a new section stipulating that persons would not be authorised by the Bill to use chemical restraint. We are all in agreement that chemical restraint should be used as little as possible. I have already responded to this concern and this is not the first time it has been raised. I am sure the Senators proposing the amendment have been lobbied on this area. I have already responded to this concern through the amendments I introduced in the Dáil on Report Stage. I introduced an amendment which stipulates that chemical restraint can be used or authorised only by decision-making representatives or by attorneys. This is a significant safeguard. They can use chemical restraint only in very limited circumstances, where there is an exceptional

emergency situation which involves an imminent risk of serious harm to the relevant person or to another person. The use of such restraint must be proportionate to the likelihood of harm. Where chemical restraint is used or authorised, decision-making representatives and attorneys must include details of the use of restraint in their reports to the director of the decision support service.

My amendments give the strong message that chemical restraint should be used only as an exceptional measure. They are focused on instances in which individuals take decisions on behalf of a person with capacity difficulties as that is the focus of this Bill. The Bill is not intended to address all issues that may affect vulnerable people. Both HIQA and the medical profession have a role to play also.

On the issue of chemical restraint more broadly, the position is that chemical restraint is not currently defined in health legislation although, as previously stated, a definition is given in the national policy on the use of restraint in designated centres for older people - nursing homes. Regulations on designated centres for older people require that restraint only be used in accordance with that policy.

The Mental Health Act requires rules for the use of restraint to be drawn up by the Mental Health Commission. Rules have been in place since 2009. The recent review of the Mental Health Act has recommended that revised mental health legislation should be broadened to include all forms of seclusion and restraint, similar to in the capacity legislation. The group was satisfied that the details of how such policy should operate is best left to be provided for in rules and guidelines, which are to be revised by the Mental Health Commission when primary legislation is revised. At this point, it is intended that secondary legislation should include a provision ensuring that approved centres are obliged by law to follow national policy where seclusion and restraint are concerned.

Detailed provisions regarding the use of chemical restraint and other types of restraint are best set down in national policies and underpinned by secondary legislation. This has the advantage of allowing for changes to be made such as to improve safeguards, without the necessity of having to amend primary legislation. For this reason, while I sympathise with what the Senators are seeking to achieve and have considered the issues, I cannot accept the amendments. Again, we have included safeguards in this Bill in the context of who can authorise the administration of drugs and a reporting mechanism that should provide greater protection. There are times when that protection is needed.

The Mental Health Commission is also very active in this area. It is the HIQA of mental health services. In the context of older people and disability, HIQA is equally active in this area. I believe we have sufficient safeguards included in the Bill and further agreed definitions will be introduced in the revised Mental Health Act.

Senator David Norris: Am I correct in assuming that chemical restraint is referred to in the Bill, as it stands, even without these amendments?

Deputy Kathleen Lynch: I ask the Senator to repeat his question.

Senator David Norris: Am I correct in assuming that "chemical restraint" is provided for within the body of the Bill as a phrase?

Deputy Kathleen Lynch: Yes.

Senator David Norris: That is what I thought but it seems extraordinary that there is no definition for same. Whatever about amendments Nos. 2, 4 or 5, surely to goodness there should be the acceptance of a definition? If the Minister of State does not like our definition, she should present one of her own. It is astonishing that a major term employed in the Bill should not be defined. Everything else is defined. Decision includes "classes of decisions", for example. The Bill defines "decision", although many people believe they know what it means. Under the legislation, "Act of 1995" means the Civil Legal Act of 1995 and so on. There are so many definitions included. Why is there an absence of a definition in this instance? I would have thought that because chemical restraint was such a clear term, it would need a definition. The definition offered is: "the intentional use of medication to control, modify or a person's behaviour or to ensure a patient is compliant or not capable of resistance when no medically identified condition is being treated, where the treatment is not necessary for the condition".

Deputy Kathleen Lynch: My apologies. I am listening to the Senator and did not mean to turn my back.

Senator David Norris: I do not mind at all. I have no problem with the Minister of State turning away and taking advice, although I know that other Senators do not like it. I firmly believe there must be a definition in the Bill. A definition is needed and I cannot emphasise that point enough.

Senator Fidelma Healy Eames: I also believe a definition is vital because we must have agreement on what we are talking about. When Sage put its case to me, I had to ask what was meant by the term "chemical restraint" because I wanted to make sure we were talking about the same thing. The Bill, without a definition of chemical restraint, will not be strong enough to prevent the use of drugs to control behaviour for disciplinary or other purposes. The term must be defined and clearly understood throughout the text of the Bill. My thoughts go out to the poor, weak, vulnerable people who are being managed by drugs when talk therapy or other approaches would be more satisfactory.

I also ask the Minister of State to clarify what she means when she says chemical restraint should only be used in exceptional circumstances. I agree but ask where that assurance is laid out in the Bill.

Deputy Kathleen Lynch: That is what I was consulting the departmental official about because I knew I had read it somewhere. It is defined in the Bill and the definition is very similar to what is proposed in the amendment. It is covered in the section dealing with restrictions on decision-making representatives, namely, section 38. I will read the relevant-----

Senator David Norris: I ask the Minister of State to give us the page number.

Deputy Kathleen Lynch: It is on page 53. However, I am worried that the version I have may not be the same as the one the Senator is using, which is why I am being cautious about it.

Senator David Norris: What page and what line?

Senator Marie-Louise O'Donnell: Page 53, line 6.

Senator David Norris: I thank the Senator.

Deputy Kathleen Lynch: If the Senators turn to page 53, section 38(9)(c). they will see the definition, which is very close to that proposed in the amendment. It reads as follows: "ad-

ministers a medication, which is not necessary for a medically identified condition, with the intention of controlling or modifying the relevant person's behaviour or ensuring that he or she is compliant or not capable of resistance".

Senator David Norris: The difficulty with it is that it is not included in the definitions section.

Senator Fidelma Healy Eames: Yes.

Senator David Norris: It should be included in the definitions section and the definition provided for in the amendment is better. First, it is a definition. Second, it is very clear and, third, it introduces the fact that the drugs being administered are not necessary for a medical condition. That is absent from the subsection to which the Minister of State referred, which does not include a definition. I know that sometimes in Bills there are sections which contain definitions within them, in addition to the definitions in the first Part of the Bill. However, this-----

Deputy Kathleen Lynch: Perhaps we might take a little more time to read through this because the definition is actually included. The paragraph reads,"administers a medication, which is not necessary for a medically identified condition".

Senator David Norris: Yes.

Senator Fidelma Healy Eames: The paragraph does not refer to chemical restraint.

Deputy Kathleen Lynch: Will the Senator repeat what he said, please?

Senator Fidelma Healy Eames: The paragraph is not naming it as chemical restraint.

Deputy Kathleen Lynch: It does not need to name it as chemical restraint.

Senator Fidelma Healy Eames: Let us examine what we are saying. For the purposes of the section, "a decision-making representative for a relevant person restrains the relevant person if he or she...". There are a number of points, including the one read by the Minister of State. Let us say, for the sake of argument, we are talking about a nurse or a care giver. Is he or she actually called a "decision-making representative"? A nurse or care giver may just be following someone's orders. I would not be convinced at all about this, given the potential impact on the patient, sufferer or vulnerable person. I would not be at all convinced that a person who is following instructions from a third party is a decision-making representative.

Deputy Kathleen Lynch: The Senator is making a different point entirely.

Senator Fidelma Healy Eames: No, I am not because paragraph (c) of section 38(9) which the Minister of State read to reassure us is covered by the overarching opening sentence of the subsection which reads, "For the purpose of this section, a decision-making representative for a relevant person restrains the relevant person if he or she...". What I am trying determine is whether a care assistant, for example, is classed as a decision-making representative.

Deputy Kathleen Lynch: Yes, but that is not the point of the amendment. The point of the amendment is to define chemical restraint, but chemical restraint is covered in the Bill. If the Senator wants to propose an amendment relating to-----

Senator Fidelma Healy Eames: It is only covered subject to the opening sentence which

I have just read. A decision-making representative is not allowed to administer a medication, but I am asking if a care giver is a decision-making representative. Is a nurse, for example, a decision-making representative?

Deputy Kathleen Lynch: No.

Senator Fidelma Healy Eames: Then it does not work. It is not adequate.

An Cathaoirleach: We are now dealing with two amendments.

Senator David Norris: I asked earlier if the phrase "chemical restraint" was used in the Bill. As it does not appear in this section, I assume it is used elsewhere in the Bill.

Senator Fidelma Healy Eames: Does it?

Senator David Norris: That is the information I was given. The subsection does not refer to or define chemical restraint. I note that the Minister of State is nodding. Therefore, I am taking that to mean that the phrase does not appear elsewhere in the Bill. Her case is substantially weakened by virtue of the fact that subsection (9) of section 38 begins thus: "For the purposes of this section...". That limits it to this section, which means that it is not an adequate definition. It does not refer to chemical restraint as such. It gives a definition that approximates to chemical restraint, but it limits and confines it to this section. Therefore, where chemical restraint is mentioned elsewhere in the Bill, there is no definition.

7 o'clock

Deputy Kathleen Lynch: If it is inclued in the Bill, it covers every part.

Senator David Norris: No, that is not correct. What is the point in saying, "For the purposes of this section"? I know that it is a nicety, but legal points are niceties.

Deputy Kathleen Lynch: If it is included in the Bill, it forms part of the legislation.

Senator Fidelma Healy Eames: Perhaps the Bill might be amended-----

Senator David Norris: It states, "For the purposes of this section".

I do see a certain amount of agreement from the advisers. No, there is vigorous head-shaking.

Deputy Kathleen Lynch: They have minds of their own. I never interrupt them; they are well capable of making up their own minds.

An Cathaoirleach: Did Senator Martin Conway indicate?

Senator Martin Conway: I did, but the Minister of State clarified the point I was going to make.

Senator David Norris: The Minister of State cannot get away from the fact that it states "for the purpose of this section".

Deputy Kathleen Lynch: I believe the point made by Senator Fidelma Healy Eames concerns the chain of authority. Nowhere does the Bill authorise anyone else to medicate people for an identified medical problem. The Bill has taken a considerable time to draft. Do the Senators want to go into that level of detail to see what more we can add?

An Cathaoirleach: The points made by Senator David Norris are probably more relevant to the section, but the amendments are specific.

Senator David Norris: I am being very specific.

An Cathaoirleach: The section deals with restraints and restrictions.

Senator David Norris: I am being very specific because I am talking about a definition. I could not be more specific. I am talking about the language.

I have established that the words "chemical restraint" appear in other sections of the Bill. It would be very helpful if the Minister of State or her advisers could indicate where the words "chemical restraint" appear in the Bill. I know that is a bit of an "ask", as they say, but I would be very grateful if she could. That might help us to tease out whether a definition is required.

Senator Fidelma Healy Eames: I do understand the Minister of State is getting my point about the chain of authority. This is limited in two ways: first, the Government should amend the words "this section" because one could argue that it applies only in this section; second, a definition is vital and if the phrase "chemical restraint" appears elsewhere the Minister of State should give us the precise page references. Given that the Minister of State said a caregiver or a nurse would not be the decision-making representative prevented from administering a medication which is not necessary for a medically identified condition, who are the decision-making representatives? We need to know. Is it an attorney? About whom are we talking?

Deputy Kathleen Lynch: It is the whole point of Bill. Has the Senator not read it?

Senator Fidelma Healy Eames: Of course I have.

Deputy Kathleen Lynch: It can be someone that the person chooses or who is appointed by the courts. Am I now to go back and explain to the Senator who these people are?

Senator Fidelma Healy Eames: My question refers to a care setting.

Deputy Kathleen Lynch: It does not matter.

Senator Fidelma Healy Eames: Is the Minister of State reassuring me that a doctor, nurse or caregiver can never administer drugs that are not necessary?

Senator David Norris: The Minister of State used the words "in these circumstances".

Deputy Kathleen Lynch: It is used in exceptional circumstances where the person is in imminent danger of serious harm or someone else is in imminent danger of serious harm. I read it.

Senator Fidelma Healy Eames: I was just checking.

Senator David Norris: Is it possible to give the reference? I want to tease this out.

Deputy Kathleen Lynch: We will find the other section of the Bill for the Senator, I promise.

Senator David Norris: The Minister of State does not have it.

Deputy Kathleen Lynch: No. We are not that quick.

An Cathaoirleach: Is the amendment being pressed?

Senator David Norris: Yes.

Senator Fidelma Healy Eames: It is being pressed unless we know where we are going. We have to have a definition.

Senator David Norris: We need to know where the words "chemical restraint" appears in the Bill. If they appear in the Bill, it needs a definition that is broader than just "for the purpose of the section".

Deputy Kathleen Lynch: It is also included in section 53 and it is exactly the same amendment.

Senator David Norris: Is that the only other place where it is used?

Deputy Kathleen Lynch: That is my information.

An Cathaoirleach: We are not dealing with section 53 now.

Senator David Norris: It is included in section 53(5)(c) but the words used are not actually "chemical restraint".

Deputy Kathleen Lynch: Does the Senator accept that it is included by another name?

Senator David Norris: Yes. My point was that if the phrase "chemical restraint" was used in the legislation, as I was initially told, it needed a definition. It does not appear except in a section where it more or less defines itself.

Deputy Kathleen Lynch: I think we would have a serious difficulty if we were to include different types of definition. We would probably have five.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 6 was discussed with amendment No. 4.

Senator David Norris: I have made the point before that there is a huge number of amendments but when we come to an actual amendment, we are told it has already been discussed and that we cannot discuss it again.

An Cathaoirleach: We had a long discussion on that group of amendments.

Senator David Norris: I was misinformed by the Cathaoirleach because he said I could come in again.

An Cathaoirleach: Of course, the Senator can come in on the group of amendments being discussed.

Senator David Norris: Exactly, but I cannot come in when an amendment is before us. That is the point I was making and it is a very good and valid one.

An Cathaoirleach: All of the amendments were related to the one subject.

Senator David Norris: Not necessarily.

Government amendment No. 6:

In page 11, between lines 19 and 20, to insert the following:

" "designated centre" has the meaning it has in section 2 of the Health Act 2007;".

Amendment agreed to.

Government amendment No. 7:

In page 11, to delete lines 22 to 25 and substitute the following:

" "enduring power of attorney" has the meaning assigned to it by *section 51*; "enduring power under the Act of 1996" means an enduring power referred to in section 4 of the Act of 1996 which was created in accordance with the provisions of that Act;".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 8, 48 to 50, inclusive, 56, 73, 76, 82, 95, 106, 107, 116, 131 and 232 are related. These are technical amendments that may be discussed together, by agreement. Is that agreed?

Senator David Norris: No.

An Cathaoirleach: They are only technical amendments.

Senator David Norris: I know. I am just being awkward.

An Cathaoirleach: The Senator is being very awkward.

Senator David Norris: I do not agree with all this. In this kind of circumstance where there are 21 or 22 pages of amendments which have all been grouped together in a big group and we can discuss them only as part of a huge, amorphous bulk, we do not have the opportunity to consider them where they are relevant in the Bill. We are told they have already been discussed with the other amendments. It should be possible to come in again at that point.

An Cathaoirleach: We are not having a speech. Is the Senator agreeing to the proposal made?

Senator David Norris: I am not agreeing to it, but that does not mean they are not being grouped.

Government amendment No. 8:

In page 11, line 33, to delete "*paragraph (a), (b), (c), (d), (e)* or *(f)*" and substitute "paragraph *(a), (b), (c), (d),* or *(e)*".

Deputy Kathleen Lynch: I understand people are becoming a little jaded and frustrated by this.

Senator David Norris: The Minister of State can go on. I do not care.

Deputy Kathleen Lynch: Amendments Nos. 8, 48 to 50, inclusive, 56, 73, 76, 82, 95, 106, 107, 116, 131 and 232 are technical amendments to correct cross-references or typographical

errors. That will drive the Senator mad, but it has to be done.

Amendment No. 8 is a technical amendment to correct an incorrect cross-reference. Amendments Nos. 48 to 50 are technical amendments to specify the cross-reference more precisely. Amendment No. 56 is a technical amendment to include the necessary cross-references to all provisions relating to offences in the Bill. Amendment No. 73 is a technical amendment to provide for the correct reference to specific provisions in the Companies Act. Amendment No. 76 is similar to amendment No. 56 and a technical amendment to include the necessary cross-references to all provisions relating to offences in the Bill. Amendment No. 82 is a technical amendment to introduce the necessary cross-reference to the functions of a co-decision-maker as set out in section 16. Amendment No. 95 is a technical amendment that provides for the director, in reviewing a co-decision-making agreement, to check that the agreement is not null and void. Amendment No. 106 is a technical amendment to specify the correct cross-reference more precisely. It proposes that the court would make a determination pursuant to an application under subsection (4)(*b*) which provides that the director can apply to the court to determine whether a person should continue to be a co-decision maker.

Amendment No. 106 is a technical amendment to specify that the application to register a co-decision-making agreement is subject to the requirement of section 14(6). This specifies that a co-decision-making agreement may be signed on behalf of an appointer by a third party. This is permitted where the appointer is unable to sign the agreement. However, the appointer must specify the third party who will sign on his or her behalf.

Amendment No. 107 is a technical amendment to describe more clearly the first grounds on which a complaint can be made against a co-decision maker. This is when the co-decision maker has acted or is proposing to act outside of the scope of the functions of the co-decision-making agreement and no change of policy is proposed.

Amendment No. 116 is a technical amendment to specify the cross-reference more precisely. The court will make a determination on an application by the director under subsection (2)(a) where the latter believes a complaint to be well founded.

Amendment No. 131 is a technical amendment to make clear the court's determination on applications on co-decision making is limited to matters arising from this part and to co-decision making.

Amendment No. 232 clarifies that in any application to the court on an advanced healthcare directive, the applicant should inform the court of any enduring power of attorney regardless of whether it was registered under the Bill or the 1996 Act.

Senator David Norris: Some of these amendments are generated by the text of the Bill and are necessary but others should have been picked up at an earlier stage. There is no excuse for that.

Amendment agreed to.

Acting Chairman (Senator Paschal Mooney): Amendments Nos. 9, 15, 18, 22, 24, 28, 46, 53, 54, 57, 59, 60, 66 to 68, inclusive, 70, 72, 74, 78 to 80, inclusive, 83 to 91, inclusive, 94, 96 to 104, inclusive, 109 to 115, inclusive, 119 to 130, inclusive, 133 and 147 are drafting amendments and may be discussed together.

Government amendment No. 9:

In page 11, to delete lines 35 to 38 and substitute the following:

" "intervention", in relation to a relevant person, means an action taken under this Act, orders made under this Act or directions given under this Act in respect of the relevant person by—".

Deputy Kathleen Lynch: I will take this as slowly as possible because it is a huge group of amendments. I understand the Senator's frustration. We will do this as painlessly as possible.

Amendment No. 9 is intended to define intervention more accurately as the actions which directly have an impact on a relevant person. These can include an action by an intervener, a court order or a direction made by a court. It is not appropriate to include rules of court or ministerial regulations within the definition as their impact would be indirect in nature and would not be focused on an individual case. Accordingly, it is proposed to delete the references to rules of court or ministerial regulations from the definition of intervention.

Amendment No. 15 proposes to delete the words "in accordance with the provisions of this Act" from the definition of relevant person as the phrase is unnecessary to the meaning of the definition.

Amendment No. 18 proposes the deletion of a phrase which is unnecessary to the meaning of the provision. It is intended that the provisions of section 3 will apply for all of purposes of the Bill.

Amendments Nos. 22 and 24 propose to delete the word "relevant" from the provisions relating to the donation of an organ or the withdrawal of life-sustaining treatment. Amendment No. 28 proposes to delete the word "relevant" from subsection (9) of section 8. This is because the phrase "relevant person" means someone who lacks capacity. As these provisions explicitly state they relate to a person who lacks capacity, the reference to "relevant" is unnecessary.

Amendment No. 46 is a technical amendment to introduce the necessary cross-reference to the criteria as set out in section 15 that make a person ineligible to be appointed as a co-decision maker. Amendment No. 53 ensures the definition of immediate family relates to both the appointer and the co-decision maker, not just the appointer who is a relevant person.

The purpose of amendment No. 54 is to correct a grammatical error. Amendment No. 57 is a technical amendment to make the provision more precise. Amendment No. 59 is a technical amendment that clarifies the intent of the provision that the functions of a co-decision maker shall be specified by the appointer in the co-decision-making agreement. Amendment No. 60 is a technical amendment that clarifies the intent of the provision that the co-decision-maker shall assist the appointer with communicating his or her will and preferences.

Amendments Nos. 67 and 70 are technical amendments to specify that a co-decision-making agreement will be null and void if any of the circumstances specified in subsections (1) or (2) occur, that is, that a marriage or civil partnership is dissolved or the couple separate. Amendment No. 68 is a technical amendment to clarify that the reference is to the co-decision-making agreement. Amendment No. 72 is a technical amendment to specify that subsection (6) relates to a co-decision-making agreement which becomes null and void post-registration of the agreement.

Amendment No. 74 is a technical amendment to specify that the cross-reference should be to Chapter 5 of Part 14 of the Companies Act 2014. Amendment No. 78 is a technical amendment to specify that the disqualification of a potential co-decision maker occurs when the court makes a declaration under section 34(1), that is, a declaration which declares the co-decision maker to lack capacity, unless assisted by a co-decision maker or even with the assistance of a co-decision maker. Amendments Nos. 79 and 80 are drafting amendments to make the intent of the provisions clearer. Amendment No. 83 corrects a grammatical error. Amendment No. 84 clarifies that the application for registration of a co-decision-making agreement must include a copy of any notice given to specified parties.

Amendment No. 85 is a technical amendment to specify that the director's review of an application for a co-decision-making agreement will relate to establishing if the criteria set out in paragraphs (a) to (f) have been met. Amendment No. 86 is a technical amendment to specify that one of the criteria that needs to be fulfilled is that the co-decision-maker is eligible for appointment according to the eligibility grounds set out in section 15. Amendments Nos. 87 and 88 are technical amendments in the interests of consistency. They propose that specified actions will be taken where the director is of the view that criteria have been satisfied.

Amendments No. 89 and 90 are technical amendments to clarify that the capacity to make a decision is at issue rather than the decision in general. Amendment No. 91 is a technical amendment to specify more clearly that an objection can be made to registration of a co-decision-making agreement if the potential co-decision maker is not eligible on the grounds set out in section 15(1).

Amendment No. 94 is a technical amendment to specify more precisely that the director's review of a co-decision-making agreement should be against the criteria set out in paragraphs (a) to (e). Amendments Nos. 100, 102 and 103 are related amendments which propose that the director's view on the outcome of the review will be based on whether the criteria have been fulfilled.

The purpose of amendment No. 95 is to correct a typographical error. Amendments Nos. 96 and 97 propose to delete the word "effectively" as it is a subjective term and difficult for a director to assess. Amendment No. 98 is a technical amendment. Amendments Nos. 99 and 101 are related amendments which clarify that the director is forming a view that the necessary criteria do not apply at the time of his or her review of the co-decision-making agreement. The director is not making an assessment as to whether the criteria applied in the past. Amendments Nos. 100, 102 and 103 are technical amendments that clarify the intent of the provision.

Amendment No. 104 is a technical amendment to replace the term "notice" with "notification". The term "notification" is a more correct term in the provision that sets out the director's right to apply to the court for a determination, having notified the co-decision maker that he or she has failed to submit a report or has submitted an incomplete report. The term "notice" relates more to the serving of notice to specified parties of the creation of an enduring power of attorney, for example.

Amendment No. 98 follows on from the change to the heading in the subsection. Amendments Nos. 109 to 112, inclusive, are technical amendments changing the word "the" to "and". The amendment is needed because a relevant person does not have the status of "the" appointer if a co-decision-making agreement is potentially null and void.

Amendment No. 113 is a technical amendment to make clear that the director's investigation will be on the matters that are the subject of the complaint. Amendment No. 114 proposes a time limit of 21 days for a person to appeal a decision of the director that a complaint is not well founded.

Amendment No. 115 is to correct a typographical error. Amendments Nos. 119 to 130, inclusive, are a series of technical amendments intended to make clearer the provisions of section 28. Amendment No. 133 is a technical amendment to specify that the person commits an offence when he or she uses fraud, coercion or undue influence to force another person to make, vary or revoke a co-decision-making agreement. Amendment No. 147 is a technical amendment to make clear that the decisions for which the person needs a co-decision-maker will be those set out in the court's declaration rather than in an application, potentially by a third party, to the court.

Senator David Norris: Quite a number of the amendments should have been picked up in the past two years and there is no excuse for not doing so. Will the Minister of State elucidate on amendment No. 63 which purports to delete on page 26, lines 19 to 26:

(3) A co-decision-maker shall not—

(a) attempt to obtain information that is not reasonably required for making a relevant decision, or

(b) use relevant information for a purpose other than in relation to making a relevant decision.

(4) A co-decision-maker shall take reasonable steps to ensure that relevant information—

(a) is kept secure from unauthorised access, use or disclosure, and-----

Deputy Kathleen Lynch: From what page is the Senator reading?

Senator David Norris: Page 26 of the Bill. I am curious as to why the Minister of State wants to delete a provision indicating that people should not attempt to obtain information that is not required. It would be utterly wrong to use information for a purpose that was not appropriate. The other provision is that a co-decision-maker should take reasonable steps to ensure the information is kept secure. As I am sure that is appropriate, I wonder why it is to be deleted.

Deputy Kathleen Lynch: We are trying to tidy up the Bill. As the Senator has stated, it is difficult enough to get our heads around it. All of the information on the obligations of co-decision-makers and others will be included in section 8. We are trying to tidy it up.

Senator David Norris: Is it included in section 8 or will that be included in section 8 after further amendment?

Deputy Kathleen Lynch: They will be grouped in section 8 after the amendments. We are trying to tidy up the Bill. The powers of attorney section will have all of the provisions together, which is why there are extensive-----

Senator David Norris: I do not see anything in section 8 indicating that the people concerned "shall not obtain information" inappropriately or use it inappropriately, keeping it from unauthorised access. Is it included in section 8? I am sorry, but perhpas I am just being obtuse.

Deputy Kathleen Lynch: We have not yet come to that part, as the Senator might have gathered. It is page-----

Senator David Norris: It is page 14.

Deputy Kathleen Lynch: That is why there is a difference. My reference is to page 4. I want to be careful about the information I am giving. The amendment states:

In page 18, between lines 31 and 32, to insert the following:

"(10) The intervener, in making an intervention in respect of a relevant person—

(a) shall not attempt to obtain relevant information that is not reasonably required-----

Senator David Norris: That is an amendment.

Deputy Kathleen Lynch: Yes.

Senator David Norris: That is what I was asking. It is proposed to make an amendment to introduce that provision in another place.

Deputy Kathleen Lynch: It will be an amended section.

Senator David Norris: It is now clear. I thank the Minister of State.

Amendment agreed to.

Government amendment No. 10:

In page 12, to delete lines 17 to 21 and substitute the following:

" "owner", in relation to a designated centre or mental health facility, includes a person managing a designated centre or mental health facility, or a director (including a shadow director within the meaning of section 222 of the Act of 2014) of, or a shareholder in or an employee or agent of, a company which owns or manages such a centre or facility;".

Amendment agreed to.

Government amendment No. 11:

In page 12, line 30, to delete "nursing home or residential facility" and substitute "designated centre".

Amendment agreed to.

Government amendment No. 12:

In page 13, to delete lines 12 and 13 and substitute the following:

"(g) the discharge of the relevant person's debts, tax and duty liabilities and obligations or other obligations;".

Amendment agreed to.

Government amendment No. 13:

In page 14, to delete lines 12 and 13.

Amendment agreed to.

Acting Chairman (Senator Paschal Mooney): Amendments Nos. 14, 43, 63 and 240 to 243, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 14:

In page 14, between lines 13 and 14, to insert the following:

" "relevant information", in relation to a relevant person, means personal records relating to the relevant person or other information that the relevant person is entitled to and that is or are required in relation to a relevant decision;".

Deputy Kathleen Lynch: Amendments Nos. 14, 43, 63 and 240 to 243, inclusive, are intended to insert provisions to ensure information is sourced, used and stored correctly and in compliance with data protection obligations.

The proposed amendment No. 14 is intended to bring the Bill into compliance with the Data Protection Act by including a definition of "relevant information". This definition will enable interveners, such as decision-making assistants, for instance, to know the categories of information that they can and cannot access. Including the definition should also make clearer to an institution which categories of information can and cannot be given to an intervener.

Amendment No. 43 proposes to delete subsections (3) and (4) of section 16 as the obligations arising for co-decision-makers are now set out in section 8. The obligations now relate to all interveners rather than specifically to decision-making assistants. Similarly, amendment No. 63 proposes to delete subsections (2) and (3) of section 11 as the obligations arising for decision-making assistants are now set out in section 8.

Amendments Nos. 240 and 241 propose to introduce additional provisions to section 82 concerning the obligations that will apply to general visitors and special visitors if they seek records relating to a person with capacity difficulties as part of their role to support the director. They will need to have access to such records mainly when they are examining a complaint received by the director relating to a person with capacity difficulties. The proposed amendments retain the provision allowing them to examine and take copies of records. It specifies that these can be health, personal welfare and financial records pertaining to the person with capacity difficulties. It also retains the provision for the general visitor or special visitor to interview the person.

The amendments propose a series of additional obligations to bring the provision into line with data protection obligations. It requires the general visitor or special visitor to seek the consent of the person with capacity difficulties prior to seeking the records in question. It proposes that the consent requirement can be dispensed with where the person has a decision-making representative or an attorney under an enduring power of attorney. This is for the reason that if the special visitor or general visitor is examining a complaint, it may often be against a decision-making representative or an attorney. It would not be appropriate, therefore, for the person against whom a complaint is potentially being made to have the possibility to refuse access by the special visitor or general visitor to the records in question.

The amendments would impose the following restrictions in terms of the records that can be sought. These are limited to the records needed for the purposes of carrying out the task required by the director. They would also require the special visitor or general visitor to keep the records secure from unauthorised access, use and disclosure. They would require the special visitor or general visitor to dispose of the records when no longer needed. To ensure these restrictions are complied with, they would require the director to carry out an annual check to ensure special visitors and general visitors are complying with these obligations.

Amendments Nos. 242 and 243 propose the same provisions and obligations on court friends as are specified in respect of general visitors or special visitors. They require the court friend to seek the consent of the person with capacity difficulties prior to seeking the records in question. They also propose that the consent requirement can be dispensed with where the person has a decision-making representative or an attorney under an enduring power of attorney. This is for the reason that if the court friend is supporting a person with capacity difficulties in a court hearing, the interests of the incapacitated person may be at odds with those of a decision-making representative or an attorney. It would not be appropriate to give them the power to refuse access to such records.

Amendment agreed to.

Government amendment No. 15:

In page 14, lines 17 and 18, to delete "in accordance with the provisions of this Act".

Amendment agreed to.

Government amendment No. 16:

In page 14, to delete lines 35 to 39, and in page 15, to delete lines 1 to 8 and substitute the following:

"(a) one or both residing in or entering a designated centre or mental health facility, or

(b) one or both residing in or entering an institution (of whatever kind) for purposes relating to—

(i) a physical or mental condition of the person concerned, or

(ii) the imprisonment, or the taking into lawful custody, of the person concerned.".

Amendment agreed to.

Section 2, as amended, agreed to.

SECTION 3

Amendment No. 17 not moved.

Government amendment No. 18:

In page 15, lines 10 to 12, to delete all words from and including "(including" in line 10 down to and including "directive)" in line 12.

Amendment agreed to.

Section 3, amended, agreed to.

SECTION 4

Government amendment No. 19:

In page 16, line 4, to delete "*Parts 6, 7*," and substitute "*Parts 6*,".

Amendment agreed to.

Government amendment No. 20:

In page 16, lines 4 and 5, to delete "and *Schedules 1* and *2*".

Amendment agreed to.

Amendment No. 21 not moved.

Government amendment No. 22:

In page 16, line 23, to delete "relevant".

Amendment agreed to.

Amendment No. 23 not moved.

Government amendment No. 24:

In page 16, line 26, to delete "relevant".

Amendment agreed to.

Section 4, as amended, agreed to.

Sections 5 and 6 agreed to.

NEW SECTION

Government amendment No. 25:

In page 17, between lines 2 and 3, to insert the following:

"**Repeals**

7. (1) The Marriage of Lunatics Act 1811 is repealed.

(2) Subject to the provisions of *Part 6*, the Lunacy Regulation (Ireland) Act 1871 is repealed.".

Deputy Kathleen Lynch: This is a technical amendment. It is considered good drafting practice for the legislation which is to be repealed to be included in the same section. No change of substance is involved. The Bill proposes to repeal, as previously agreed, the Marriage of Lunatics Act 1811, which seems so ridiculous now. The Lunacy Regulation (Ireland) Act 1871 will be repealed with the exception of the transitional arrangements of Part 6 to allow

all adult wards to be discharged from wardship and-or migrated to the new options. That should get a round of applause.

Amendment agreed to.

Section 7 deleted.

SECTION 8

Acting Chairman (Senator Paschal Mooney): Amendments Nos. 26, 27 and 29 and will be discussed together.

Senator Marie-Louise O'Donnell: I move amendment No. 26:

In page 17, to delete line 30 and substitute the following:

"and to reside in the place of his or her choice in so far as that is practicable,".

Section 8 sets out the guiding principles, inherent in which is the minimisation of the restrictions on relevant persons. The principles include respect for the right to dignity, bodily integrity, privacy, autonomy and control of financial affairs. These are important rights but a fundamental right that should be included as a guiding principle is the right to reside in a place of one's own choice where that is practicable. This right for older persons is included in section 2 of the Council of Europe recommendations 2014 on the promotion of the human rights of older people and provides that older persons are entitled to lead their lives independently in a self-determined and autonomous manner. This encompasses, *inter alia*, the taking of independent decisions with regard to all issues which concern them, including those regarding their property, income, finances, place of residence, health, medical treatment or care. Older persons, in principle, should only be placed in a residential institution or psychiatric care with their free and informed consent and any exception to this principle must fulfil the requirements of Article 5.43 of the European Convention on Human Rights, in particular the right to liberty and security.

With regard to people with disabilities, the right to choose a place of residence is set out in Article 19(a) of the UN Convention on the Rights of People with Disabilities 2007, which provides, "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement". Too often, current practice is not to afford the opportunity to a person to exercise his or her right to make a choice as to where he or she would like to reside and not to consider what options and support are available and could be put in place in respect of the choice being made. The spirit of the legislation requires us to do this and I would like the Minister of State to accept the amendment. The inclusion of this right in the guiding principles will at least prompt the interventor to consider this right before making arrangements that are contrary to the wishes and preferences of the relevant person. Each person's well-being and happiness, which we continually forget, should be the standard to which society aspires.

I know that the Minister of State understands this better than anybody, but we seem to think that as one gets older, one becomes a bigger economy. Although they are necessary and do good work, too many care and residential homes are being built and not enough is being done to keep people in their own homes if that is what they wish and if it is practicable. There is such a concept as the appropriateness of a home. More residential settings or residential beds

for the elderly are not needed because we have enough. The Minister of State will be aware of residential institutions that are a home within a home all over Ireland. Older people have to be free and should never be incubated.

I mentioned the last time we discussed this topic in the House that if one left a dog on its own for three days, the ISPCA would be rapping on the door to find out why one had done that. Older people do not bark enough for attention, but we accept that they are deserving of more than one hour's human contact a day. We should stop segregating them. There is a kind of apartheid in how we treat older people. That is why I tabled the amendment which I hope the Minister of State will accept. It proposes the inclusion of the words "to reside in the place of his or her choice in so far as that is practicable". It is not always medically practical or possible, but it should be a choice. We have the money to keep people in homes that cost a €1,000 a week for their care, but we do not have the same amount of money to keep them within the community. I do not understand this and that is the reason I tabled the amendment.

I know that the Minister of State understands this point, but the fair deal scheme should start in the home. People should be able to stay in their homes to which the fair deal scheme should apply. It should not only apply if people go into a care home or an institutionalised setting. The Minister of State is very aware of my views on this issue which has become very apparent to me. Sometimes things do not become apparent until they hit one right between the eyes with ageing parents. One of the findings from a small study I carried out recently of the Civil Service is that the mean age of the staff is 46 years and many of them spend a great deal of their lives caring for elderly parents. We will all do it and will all face our own mortality and grow old.

I would like the Minister of State to consider including this amendment. Inherent in that guiding principle section is the bodily integrity of the human being and the protection of finance, but we must protect people in their homes and their decision-making on the place in which they want to reside. This brings up the point other Senators made about ensuring people are not being cared for by strangers who make decisions on the hoof. I would like the Minister of State to consider this genuine amendment.

Acting Chairman (Senator Paschal Mooney): A word of advice-----

Senator Marie-Louise O'Donnell: I am only speaking to that amendment.

Acting Chairman (Senator Paschal Mooney): The Senator is only speaking to one amendment, even though she is entitled to speak to the others.

Senator Marie-Louise O'Donnell: Unfortunately, I am not speaking to the others. This is the only amendment in my name and it is the only one to which I am speaking.

Acting Chairman (Senator Paschal Mooney): That is fair enough. I call Senator Cáit Keane.

Senator David Norris: Acting Chairman-----

Acting Chairman (Senator Paschal Mooney): I saw the Senator indicating but Senator Cáit Keane indicated first.

Senator Cáit Keane: I will speak only to amendment No. 26 which is a reasonable one and states "in so far as that is practicable". What it proposes is the direction in which the health service should be moving and what it should be aiming to do. Increasingly, more rather than

less care should be given in the home. I will speak to amendment No. 27 after Senator David Norris has spoken, as it is his amendment.

Acting Chairman (Senator Paschal Mooney): It was my error. My apologies to Senator David Norris. Amendment No. 27 is in his name.

Senator David Norris: That is no problem. I was called out of the Chamber to say hello to a group I had missed and which I was supposed to meet at 6.30 p.m. I apologise to the House.

Amendment No. 27 should not to be discussed with amendments Nos. 26 and 29, as it has not the remotest connection to either of them. There is no connection whatever. There is a reference in amendment No. 27 to section 121, but that section does not appear in the Bill, as it stands. It is amendment No. 244. Therefore, they could not have a clearer connection. As one amendment refers to the hypothetical new amendment, they should be grouped together, but amendment No. 27 should not be grouped with two amendments with which it is not related. The groupings are completely daft. I ask that we deal with amendments Nos. 26 and 29 now and that amendments Nos. 27, 239 and 244 be discussed together. That is the logical thing to do when the three amendments refer to each other.

Senator Cáit Keane: I agree. Amendments Nos. 27, 239 and 244 refer to finances. If the Minister of State is agreeable, Senator Marie-Louise O'Donnell's amendment No. 26 should be discussed with amendment No. 29.

Senator Marie-Louise O'Donnell: It is sitting there as it were.

Senator David Norris: It is daft. I ask for the indulgence of the House.

Senator Cáit Keane: I think we are all in agreement.

Acting Chairman (Senator Paschal Mooney): If there is not agreement on the groupings, the proposal falls, but we can discuss the amendments individually.

Senator David Norris: I suggest amendments Nos. 27, 239 and 244 be grouped.

Acting Chairman (Senator Paschal Mooney): That is agreed. We are dealing with amendment No. 26 now and that is all.

Senator David Norris: Yes. We will discuss amendments Nos. 27, 239 and 244 together.

Senator Cáit Keane: That is agreed.

Acting Chairman (Senator Paschal Mooney): That is agreed.

Senator David Norris: A victory for common sense.

Senator Jillian van Turnhout: I apologise for not being here for the taking of amendment No. 17 which I will resubmit on Report Stage. I am fully supportive of amendment No. 26 tabled by Senator Marie-Louise O'Donnell. The Minister of State is very aware that the Senator tabled a motion in recent months on this very issue, on which we had an excellent debate in the House. What the Senator is trying to achieve is the principle and the right of people to have such a choice. She has appropriately added the words "in so far as that is practicable". She has included a safeguard appropriately and I support her proposal.

Senator Gerard P. Craughwell: While I am very sympathetic to Senator Marie-Louise O'Donnell's amendment, I have one concern which the Senator might address. Her amendment includes the words "in so far as that is practicable". I recall the turmoil of my elderly mother who wanted to live independently long after she was able to so do. At one stage, we had a nurse caring for her and over a period of six months, €54,000 was consumed. What caused us to make the final decision was finding her lying on the floor of her apartment, where she had been lying for several hours. We were confronted with the moral question as to whether we should make a decision for her. My mother was very lucid and was most of the time. It is that practical issue that I am trying to address. While I would like to support what the Senator said, I need that issue to be teased out a little more.

Acting Chairman (Senator Paschal Mooney): I want to clarify that we are discussing amendments Nos. 26 and 29 together.

Senator Marie-Louise O'Donnell: I take Senator Gerard P. Craughwell's point. I am making a more general argument about the way we are "processing" older people. That is the word for it in the sense that we will not consider having the fair deal scheme applying to the home in the same way that it operates in care settings, but it would be helpful if could start there. In the Senator's case, it was not a practical option for his mother. Sometimes the decision is made. I have aged parents and there is nothing that teaches one how to proceed as quickly and as well as the human being in front of one. It is a more general look at how we should treat older people. We all talk about the dignity of protecting finances, bodily dignity and the dignity of the self, but people want to reside in their homes. This is not the only legislation which sought to bring this about, we are trying to do it from a community, social and health point of view. If I was standing in the next election for the Government, it would be an issue on which I would be standing, that people would have the right to stay in their home where it was practical and where it was medically and psychologically feasible. I understand the Senator's point, but I was talking about it as a generality. I believe that is the way we should be going. We should be looking at the home as the best place. I understand also that if the fair deal scheme applied in the home, the Senator might not have had to make the financial gift he had to make every week for care.

Acting Chairman (Senator Paschal Mooney): We would like to hear the Minister of State. The Senator has already made her case.

Senator Marie-Louise O'Donnell: I apologise to the Minister of State.

Deputy Kathleen Lynch: I will speak first to amendment No. 29.

Acting Chairman (Senator Paschal Mooney): Amendments Nos. 26 and 29 are being discussed together.

Deputy Kathleen Lynch: Amendment No. 29 seeks to ensure the Bill complies with the Data Protection Acts - it is a technical amendment - by prescribing the data protection obligations that will arise for all interveners under section 8. All interveners will be obliged not to attempt to obtain or to use information acquired on a relevant person other than for the purposes of the decision. Interveners will also be required to ensure the relevant information is safely stored to prevent unauthorised access, use and disclosure. Furthermore, a requirement is proposed which would require an intervener to dispose of the information when that information is no longer required. I think that covers Senator David Norris's point on the deletion of text from

another section; it is simply transposed and made stronger.

Senator David Norris: Yes.

Deputy Kathleen Lynch: On amendment No. 26, tabled by Senator Marie-Louise O'Donnell, we have had this discussion over and over again and are at one about what should happen, but the difficulty is that this is the wrong legislation. As the Senator rightly pointed out, there are many pieces of legislation into which these types of safeguard on will and preference should be inserted. Unfortunately, this Bill is not the appropriate place because none of us has a right to decide where we are going to live or how we are going to live in many ways. Of course, we can decide if we have loads of money and that is possible, but the Senator's general point is that in the event that someone is already in situ in a home and they do not want to move from there, they should be afforded the opportunity to address that issue.

It is nothing to do with this Bill, it is to do with the fair deal scheme. We did look in the review at whether it was possible to offer the fair deal scheme in the home. What we discovered is that if one were to apply it to a home, while it would be beneficial in certain circumstances it would not suit other people who do not have family to contribute because the fair deal scheme is very much based on a contribution from the person. Despite the fact that one would be quite willing to make such a contribution for care, one would still have to heat one's home, eat and provide for all of the other needs. There must be a different mechanism for doing that. What we must do is build up community services. Most of the factors that keep us well in our own community are issues outside of the remit of the Department of Health and the Minister of State with responsibility for older people.

The next Government should create a new Department of social care, which would bring all of those related issues together to ensure that people at a later stage in their life who might need to dip in and out of services and require additional health care or support would be allowed to stay in their own homes. Equally, we need additional nursing home beds because there are people such as Senator Gerard P. Craughwell's mother who are at a particular stage in life and no matter what one would put in place they cannot safely stay in their own homes.

I accept Senator Marie-Louise O'Donnell's point, but, unfortunately, I cannot accept the amendment. I hope that in another piece of legislation we might be able to make a more reassuring and secure commitment to ensuring people can make choices about what they want. This Bill will allow people to make choices, but, first, there is a big learning curve to address in terms of telling people who need to make decisions now and for them to get those who agree with their point of view, which is important, to make decisions with them.

Senator Marie-Louise O'Donnell: That is a very reasonable rebuttal. We spend €1,000 every week on one person in a nursing home.

Deputy Kathleen Lynch: That is cheap in some cases.

Senator Marie-Louise O'Donnell: If families had that €1,000, under governance, would they not be prepared to provide care? Perhaps that is too creative. One could ask if there is a right place for legislative measures. I accept the point that the Bill concerns decision making and that if older people want to stay in their homes they cannot be forced out, if they have the capacity and wherewithal. However, where does one start with legislation? A measure such as the one I proposed should be enshrined in social, community, health and education legislation. I am in two minds as to whether to press the amendment. I appreciate the work that has been

done on the Bill and that one cannot always have everything one wants.

Deputy Kathleen Lynch: I seek to reassure the Senator again. What we seriously need to do is start to create different types of community in order that one would not have circumstances whereby a person is in a home that is way too big for him or her, as a big house is difficult to heat and stairs are difficult to negotiate among other matters. Perhaps we need to start from the perspective of the Department of the Environment, Community and Local Government in terms of creating different types of housing. I do not mean different types of community because I do not want people to be segregated. Members know my views in that regard. We must ensure we start to build more appropriate settings within communities for us as we age.

Senator Marie-Louise O'Donnell: We continue all the time to create fragile environments and we put older people into them which makes them even more fragile. It is done in the name of health and safety, but, in fact, it is the closing down of their freedom. Some of them are so healthy and safe they are treated like babies and they are not allowed to think for themselves. In effect, their liberty is taken away from them, for example, because they broke their arm and there is nobody to make their dinner on a Saturday. I know the Minister has read the book by Atul Gawande, *Being Mortal*, and knows what we do to people when they get older. The model is outrageous. That is where politics should start - at the community level where people, if they want and can, stay in their towns and villages.

Acting Chairman (Senator Paschal Mooney): I think-----

Senator Marie-Louise O'Donnell: Manners will now be put on me by the Acting Chairman.

Acting Chairman (Senator Paschal Mooney): I just think the debate has gone on for some time and, in fairness to Senator Gerard P. Craughwell and others, we must move on with the Bill because of the number of amendments tabled.

Senator Marie-Louise O'Donnell: I just-----

Acting Chairman (Senator Paschal Mooney): I am not in any way inhibiting the debate; I am just making a suggestion that the Minister of State has spoken and responded.

Senator Gerard P. Craughwell: May I make a very brief contribution?

Acting Chairman (Senator Paschal Mooney): I ask the Senator to be brief.

Senator Gerard P. Craughwell: I will be very brief. Having listened to Senator Marie-Louise O'Donnell, I support her position because I recall seeing one elderly lady in a nursing home who did not want to be there, who was perfectly capable of looking after herself and who cried every day.

Senator Marie-Louise O'Donnell: It is called passive suicide.

Senator Gerard P. Craughwell: As I advance in years, this measure would give me some degree of security that I might not be dumped at some stage, although why they would do it, I do not know.

Amendment, by leave, withdrawn.

Acting Chairman (Senator Paschal Mooney): Amendments Nos. 239 and 244 are re-

lated to amendment No. 27 and may be discussed together. Is that agreed? Agreed.

Senator David Norris: I move amendment No. 27:

In page 17, between lines 34 and 35, to insert the following:

"(7) In respect of financial affairs managed by the court, particular consideration of management and oversight in accord with the principles herein are stated in *section 121*.".

Amendment No. 27 deals with the question of the special visitor to be appointed to supervise the affairs of a ward of court. One of the items that gives particular difficulty is the question of financial management. This has been a real thorn in the past. I know that it has been said that, taken overall, the results have not been as bad as might have been expected but in some cases they have been spectacularly horrible and we want to ensure that the financial interests of somebody who is not capable of directing those financial interests themselves is properly addressed.

Amendment No. 239 also deals with the qualifications of this particular person. The suggested wording is: "is a person who, although not a registered medical practitioner, is, in the opinion of the Director, a person who has particular knowledge, expertise and experience of financial matters,". In other words, we want somebody who is actually qualified, who has a knowledge of the markets and who will be able to give advice. There is no point in having a medical quack there. They may very well know what to prescribe in terms of medication, but they do not know what to prescribe in terms of investments in stocks, shares and bonds. What is required is a person who has financial expertise. The amendment includes a reference to "selected under *paragraph (c)*, will be a representative of the NTMA,". The National Treasury Management Agency has a terrific record, a superb record in safeguarding the interests of the country. It is one group on which we can rely. The amendment also makes reference to the ability to "provide expert guidance on reinvestment of the financial portfolio to sustain costs necessary to the relevant person,". That is the whole point. One invests in order to get the money to provide for the sustenance, well-being and financial security of the person who is a ward of court. In addition, there is a requirement to "provide annual reports to the relevant person".

8 o'clock

There was a period of many years during which no reports were provided, which meant there was no account whatsoever of stewardship. It is necessary that annual reports be provided in order that trustees or families can urge that a decision be made.

Amendment No. 244 deals with financial powers of oversight and management by the court and provides for what would happen in the absence of a suitable person to act as co-decision maker, or any other condition under which the court retains or assumes responsibility for the relevant person's funds. In other words, where a question arises about the investment of the funds of a ward of court, the primary purpose of court management of the relevant person's funds would be the provision of adequate financial support to provide for medical and sundry expenses, which is more or less what I have said. We need to ensure the correct personnel are put in place, which is the purpose of the first two amendments. We then need to set out what they will be required to do, which is the purpose of the third amendment, in ensuring the provision of adequate financial support in the investment of funds.

Subsection (3)(a) of amendment No. 244 is extremely important. It reads, "Assets must be invested in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio as a whole, so far as is appropriate, having regard to the nature and duration of the

expected liabilities". In other words, there would be a requirement for prudent investment. In the past this was not done and investment portfolios collapsed. There was an almost arbitrary and care-free approach to investment of the funds of persons who were not in a position to do it themselves.

Subsection (3)(b) provides that assets would have to be invested predominantly in regulated markets and so on. In other words, they would have to invested in safe areas. It would also provide that "investment in assets which are not admitted to trading on a regulated market must in any event be kept to a prudent level". I do not know to what exactly this refers. Perhaps it might relate to property folio investments such as investment in a block of apartments and so on. However, such investments would have to be kept to a prudent level. In other words, all of the eggs should not be put in the one basket.

Subsection (3)(c) reads, "Assets must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration". In other words, where possible, risk would have to be avoided. The average person in the street can be as careful as he or she likes and invest on speculative grounds, in which case he or she may make a killing or lose everything. That is his or her decision, but a person who is incapable of making these decisions is reliant on another person to invest prudently and diversify in such a way as to avoid excessive reliance on a particular asset.

Subsection (3)(d) would constrain those making investments, in most circumstances, from investing in derivative instruments. It was derivatives that caused the collapse of western European economies and the collapse started in the United States. The toxic bundles were put together by the clever stockbrokers and financial advisers who are still being consulted by the Government and appointed as advisers. Nobody knew what was in the bundles: they were just derivatives. The amendment would provide for constraint against excessive investment in such instruments which could only be made in so far as they would contribute to a reduction of investment risks or facilitate efficient portfolio management.

Subsection (4) reads, "Annual financial reports on the condition, progress, and management of relevant person's funds; both liquid funds and investments; will be made available to (a) the court, and (b) relevant persons". Accountability is important.

Subsection (5) reads, "If an endowment as individual principal value falls by 10%, or more, within one financial quarter, the portfolio will be liquidised into cash...". I would like to give an example of where this would come into play, but I will, first, make some general remarks on the question of wardship. Where the High Court approves an award for personal injuries suffered and a plaintiff who is deemed to have a capacity deficit is made a ward of court because he or she does not have the capacity to make appropriate decisions for himself or herself, in respect of which he or she has no choice, funds are not released to meet his or her needs until such time as the process has been completed.

There have been many difficulties with ward of court funds which are held in investments by the Courts Service. Following a Committee of Public Accounts review in 2000, it was determined that no audits had been carried out for two decades. The Bill seeks to address that issue. The amendments to which I am speaking seek to strengthen and reinforce what is provided for in the Bill in that regard. Even after it was discovered that there had been no audits for 20 years,

there was no look-back or review carried out. The Courts Service was then established and the accounts of the courts were computerised. The management of funds was put out to tender. The new structure provided for four strands of investment, some of which involved greater exposure to equities and bonds than others. Those that were heavily exposed fared poorly during the financial crisis and some wards' funds suffered serious losses. The Courts Service states the funds have performed well overall compared to similar funds. In this regard, key is the word "overall" because not all funds performed well and there are no similar funds. We are speaking not about regular investors but about vulnerable people under the protection of the State. There were no cash reserves held for wards of court to meet emergencies. It is extraordinary that a person would gamble on the Stock Exchange and not hold back a little to look after people in this position. There is a concern about the management, investment, auditing and accountability of funds. Funds were audited internally, but errors were not always picked up. An audit is instigated by the Courts Service, but as funds are not audited by the Comptroller and Auditor General, there is no accountability. There is a sum of €1.5 billion in the funds.

I would like to outline a specific case which was brought to my attention by parents whose son, as far as I can recollect, had been injured, in respect of which he received compensation. In a two year period between May 2007 and April 2009 the fund diminished from €510,685.02 to €280,145.71; in other words, it was halved, but that is not the end of it. The last statement the parents received showed that the value of the fund at the end of 2014 was €186,490.85. This means that the fund had decreased from almost €511,000 to €186,000, which was an astonishing collapse and worse than the cut in my income as a Member of Seanad Éireann. According to the parents, a further €40,000 can be deducted from this amount for expenses in 2015. With little earnings, the fund will be down to almost €150,000 by the end of the year. The officials say the ward's fund will only last a few years. If it had been managed appropriately. he would not be in this position. In other words, the fund will have reduced from €510,000 to €150,000. In view of what it costs per year to care for this young man, €46,000, the money will be gone in less than four years. What is he to do then?

Quite apart from understanding the complex nature of these investments in unitised funds which have a strong exposure to equities, if one does simple maths, one will see that these funds have not recovered. When one takes the figure of €510,685, the value of the fund in May 2007, and deducts from it €186,490, the amount at the date of the last statement, one is left with a figure of €324,194.17. When this figure is divided by seven, the seven year period 2007 to 2004, one gets a figure of €46,313 per annum. The moneys drawn down during these years would not have reached this amount every year, but the point the parents of this young man make is that if they had kept the money in a drawer and drawn down only what was needed, their son would not be any worse off, yet the funds are in the Courts Service for their protection. In other words, had they kept the money under a mattress, they would be in at least as good, if not a better, position than they are having had the money invested. For this reason, the safeguards contained in the three amendments are vitally necessary to protect the welfare and interests of wards of court.

Our contention is that the Courts Service has failed in its duty of care to those vulnerable people and has been covering this up by saying overall funds have performed well. It is no excuse and it is not good enough. We need good governance for these funds. I am sorry if I have taken a while, but it is a complex matter and is at the kernel of the welfare of wards of courts because they are financially vulnerable. If we do not ensure best practice is followed for the people concerned, we are abandoning them to their fate. I urge the Minister of State to take on

board the content of the amendments.

Senator Cáit Keane: I wish to speak to amendment Nos. 27, 239 and 244. I support amendment No. 27 and the rest of the amendments. We have discussed the matter in detail for the past three weeks. I contacted the Minister of State's office about it when I saw this amendment. As Senator David Norris noted, the current situation has allowed the funds to dwindle. I have a graph showing how funds dwindled for one ward of court. The people around this individual knew nothing about it. It was all gone. They woke up in the morning and asked where it had gone. That is not good enough. We must ensure we do not let that happen. The funds are not nice collections of money. They are needed for the care of vulnerable citizens. As the economy changes - I grant we must be open - the funds invested will change. The least we are asking is that when they are dwindling, the people around wards of court are informed annually. As Senator David Norris noted, two decades passed without any audit of funds. That is not right. The amendments would change that and make the investment of funds transparent in respect of oversight and management.

In other areas, the Bill introduces a lot of transparency to the protection of the most vulnerable. In respect of managing money, we all know money sometimes attracts people who may not have the best interests of the person at heart. At least, everybody needs to know what is going on when the funds are managed by the courts. Amendments Nos. 27, 239 and 244 aim to bring about three changes that are crucial to making the Bill one that will work for the vulnerable person. They assert that the purpose of court management of funds is the support of the welfare of the relevant person, provide for annual reports on the funds for the court and the relevant person and establish a safeguard against the freefall of funds. Having spoken to people who speak for very vulnerable people, I know that the changes proposed in these three amendments are necessary and I ask the Minister of State to support them.

When we look at amendment No. 244, are we looking for something that is too certain? I would be prepared to reintroduce this amendment on Report Stage with sections 121(1)(a), 121(1)(b), 121(4)(a), 121(4)(b) and section 121(5) retained and sections 121(2), 121(3)(a), 121(3)(b), 121(3)(c) and 121(3)(d) removed. Section 3(a) states:

> Assets must be invested in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio as a whole, so far as is appropriate, having regard to the nature and duration of the expected liabilities.

This section might be looking for too much security. How does one ensure security? We would all love to know that in respect of every share we invest. I urge the Minister of State to accept amendments Nos. 27 and 239. We will be pressing the matter because we have discussed it previously. If Senator David Norris is in agreement, I would be prepared on Report Stage to look at retaining sections 121(1)(a), 121(1)(b), 121(4)(a), 121(4)(b) and 121(5) and removing 121(2),121(3)(a), 121(3)(b), 121(3)(c) and 121(3)(d) in respect of amendment No. 244. I am being more realistic in making a bit of a deal with the Minister of State in this regard. Senators Martin Conway and Maurice Cummins and I would like to support Senator David Norris in this regard. I thank Senator David Norris for carrying out a lot of research on it. I also thank the groups we met.

Senator Mary Moran: I probably came in a little too early when I raised this issue earlier. I also support what I referred to at the beginning of the debate. I support Senator David Norris. As Senator Cáit Keane so eloquently put it, it is important we ensure the most vulnerable people

have money that is being invested. I add my support in that regard. I also ask the Minister of State to accept the amendment.

Senator Martin Conway: As the Fine Gael spokesperson on justice and equality, I commend Senators Cáit Keane and David Norris because this is the type of constructive-----

Senator David Norris: To be fair, Senator Cáit Keane initiated them.

Senator Martin Conway: This type of collaboration and discourse is what Seanad Éireann should be about. It is our responsibility to challenge the Government and this means Members on the Government side also. I am criticised because I probably do it too much. The money of the most vulnerable should not be subject to boom and bust, from which the rest of society suffers enough. I would probably have gone a step further than Senator David Norris and insisted that the investment be in blue chip Government bonds because I certainly would not trust the banks. We saw what happened to the banks and all that went with it.

Senator David Norris: I agree with the Senator. I would have excluded the diversified funds or whatever they call them - the derivatives. I would have kept them out altogether.

Senator Martin Conway: Perhaps there is justification for insisting on Report Stage that any new moneys that come in for any new people who find themselves in this situation be invested in guaranteed Government bonds and products. The only way we as citizens can offer blue chip assurance is by investing in Government bonds and products. We have a duty to do everything we can and to make sure this legislation underpins that to ensure it is guaranteed because, ultimately, we do not have the right to gamble with this set of resources.

Senator Diarmuid Wilson: I will not repeat what has been said, but I commend Senator David Norris for tabling these very important amendments. I mean no disrespect to the Parliamentary Counsel, but the amendments are very well drafted. I agree with colleagues on the opposite side that they should be accepted. The case outlined by Senator David Norris concerned an unfortunate individual who ended up in dire financial straits because of the manner in which his money had been invested by the Courts Service. I would go further and suggest he might have a legal case against the Courts Service because I consider it to have been completely irresponsible in the manner in which it invested that money. Moreover, as Senators David Norris and Cáit Keane have pointed out, it is totally unbelievable that in respect of an arm of the State, no audit has been conducted for more than two decades. I urge the Minister of State to accept the amendments. Perhaps, as Senator Cáit Keane suggested, too much financial security is being sought, but when one is dealing with wards of court and vulnerable people, I do not think one can have too much security. Consequently, if the Minister of State cannot accept the amendments now, I urge her to agree to consider them again on Report Stage.

Deputy Kathleen Lynch: I listened with interest because as public representatives, this issue has come to the attention of all Members, namely, the awful devastation when people receive a statement and make a discovery about money they believed to be absolutely secure and people will ask how much more secure can it be than when the courts are minding it for them. However, we are moving away from a courts system, which is why the amendments are not relevant. While I understand perfectly what the Senator is saying, as soon as the Bill is enacted everyone will be out of wardship within a three-year period. Their funds will be returned to them to manage as they please, in some cases with co-decision-makers, and with the advice of people such as their bank manager, a financial adviser, their parents or perhaps a friend who has

knowledge of these matters.

I commend the Senator's foresight because the Government is moving away from a court-based system. While the Bill was being debated in the Dáil, one amendment proposed the extension of wardship should be done within six months and the argument was put to the Government that this could not be done because some people are ready right now to exit wardship. Some people will not be ready even at the end of the three-year period. I refer to the need to put together the security package that gives them the freedom to make those decisions for themselves, but on exiting wardship, their funds will be returned to them. The Government has asked for advice on the three amendments and, in particular, sought advice from the National Treasury Management Agency, NTMA, because its staff, as Senator DAvid Norris rightly observed, have more expansive knowledge in this regard and they worry that perhaps it might not be beneficial to the individuals involved, except for people who receive enormous sums. Moreover, even this will change in the future, in terms of how payments will be made.

Senator Diarmuid Wilson: Yes.

Deputy Kathleen Lynch: In the case of such repayments, for instance, where a child is damaged at birth, the Government is changing to a more progressive funding model whereby people will be paid through their lives rather than expecting to invest. Even though it is an enormous sum, as the Senator noted, one has no indication as to what can happen in respect of stocks, bonds and all those things unless one puts it into the drawer at the bottom of the bed and does nothing with it. That is the only protection, but I am not certain it would last very long. However, the Government is moving away from wardship and moving away entirely from a court-protected system and people then will be empowered, with protections and advice from whomsoever they choose in respect of those matters. Everyone then must trust that the right decisions will be made; people sometimes do not but then again, that is what the Bill is about, namely, the right to make the wrong decision for oneself, because we all make wrong decisions. While I commend the Senator's foresight, the Government is moving away from what she is proposing and I know that she will appreciate that.

Senator Cáit Keane: While I recognise we are moving away from it, in so doing provisions are being inserted in Chapter 3 of Part 9 regarding special visitors and general visitors.

Deputy Kathleen Lynch: Yes.

Senator Cáit Keane: That is what amendment No. 239 is about, namely, a person who is a special visitor and designated to advise is a person who has financial expertise. As Senator David Norris noted, there is no point in such a person having medical expertise. It will be necessary to have financial "expertise and experience of financial matters, as respects the capacity of persons", even though that person might not be a medical practitioner. While I grant to the Minister of State that we are moving away from the courts, this is why such a provision is still needed. However, in moving away from the courts, I note the Bill contains absolutely nothing in respect of the special visitor or the person put in care to specify there should be an annual report or financial statement to that person. This is absolutely relevant for transparency and is necessary.

Senator Mary Moran: I was about to raise that point mentioned by Senator Cáit Keane on the special visitor and advice for a person when he or she comes out of wardship of court. This must be specific and, as Senator Cáit Keane stated, it must be someone with financial expertise.

In addition, adequate advice ought to be on hand for the relevant family members who perhaps are not *au fait* with the worlds of banking, finance or investment. It can be daunting for such people to be obliged to manage money also.

Senator David Norris: The Minister of State is inclined to be helpful, albeit only up to a limited point. She has stated we are moving away from wards of court and while that may be true, the Bill addresses wards of court. That is what it is about and its central plank pertains to wards of court.

Deputy Kathleen Lynch: Extinguishing it.

Senator David Norris: Yes, but it still deals with it and makes provision for it as it stands. As for the period of three years or whatever it is, what about a person who is severely disabled mentally and has no relations? What happens to him or her?

Deputy Kathleen Lynch: The court will appoint.

Senator David Norris: Wait one minute. The Minister of State has stated the funds will be given back to the people.

Deputy Kathleen Lynch: Yes.

Senator David Norris: She then went on to say they should be allowed to make mistakes like everybody else. Is it responsible on the part of society to hand somebody who is brain-damaged a huge bunch of money and tell him or her to go off and make mistakes? That is Reaganomics; it really is western capitalism at its worst to let people have their pensions and then to allow them rot in the gutter. I do not believe in letting people who are so disadvantaged make mistakes. Proper safeguards are needed to ensure they do not make mistakes. One cannot project what will happen three years into the future. There always will be people who will be reliant on guidance of whatever kind and to include this amendment, even if it is guidance for future legislation, is absolutely necessary. I am proposing an annual report in the light of the fact that there were no audits of any kind and no account given for two decades. This appears blindingly obvious to me and even were it only for the next three years, it would be absolutely necessary in the light of the history of these funds.

Senator Cáit Keane: I support Senator David Norris's comments on cases in which there is nobody-----

Deputy Kathleen Lynch: We are not throwing people into the gutter.

Senator Cáit Keane: No, no one is throwing anybody into the gutter.

Senator David Norris: Creating the financial circumstances to put them in the gutter-----

Senator Cáit Keane: No, I am saying-----

Senator David Norris: ----- if one lets them make their mistakes.

Senator Cáit Keane: No, there will be circumstances in which nobody will be there to take care. The court then will appoint and the court will be responsible. That is what this is about, that is, in any situation in which a person is not available or deemed unsuitable to act as a decision-maker, the court retains this responsibility. While the court retains responsibility, Members are trying to ensure that within that responsibility, there must be safeguards for the

people themselves. Such responsibility will come out through an annual report to the court and the person appointed, to make that quite clear. While a court may appoint a person, I refer to the elapse of two decades without an audit and it is to be hoped this kind of thing would not happen again. The purpose of the amendment is to try to bring greater transparency to the process.

Deputy Kathleen Lynch: There will be enough concern in respect of this legislation among families who have somebody with a disability. I now am speaking directly to the people with that experience because I acknowledge there is concern that this somehow is going too far or that it is giving a level of discretion to certain people who do not have capacity. While I accept this, the type of language expressed by the Senator really is not helpful. Clearly, if someone does not have capacity, which is very rare, and does not have relations or a circle of friends to call on, the court will appoint. It will do so on the basis that the person it is appointing will have responsibility for the well-being of the person concerned, including his or her financial property and welfare. That is essential.

Everyone has the right to make a wrong decision. We hope to have people around us who love and respect us, who will be charged with caring for us and directing us. This is something we need to get our heads around. The director of the decision support service will be obliged to give financial information. It would not be appropriate for a special visitor to give that advice. For instance, what would happen if it did not work out? Would the person concerned be held liable? The director can give advice on financial matters and the possibilities in that regard rather than directing someone to invest. We all make these decisions every day. With enough support and decision makers around us, even people with limited capacity will be able to make them.

The courts will appoint a suitable person and the director will accommodate this by ensuring it is someone from a panel who will be an accountant or a fund manager and will have the expertise required to manage extensive funds. It is important that Senators realise we have made provision to cover all possibilities. We have been formulating the Bill for three years and there is not a single issue we have not come across or addressed. It is not the first time we have come across this issue. We all have. The special visitor would not be the appropriate person to do this as his or her remit is entirely different; it is to ensure the person concerned is properly looked after and, where there is an investigation to be held, that it takes place. The co-decision maker or person appointed to support the person who lacks capacity has to make a statement every single year, not to the courts but to the director. If he or she is appointed to advise on financial issues, he or she will have to make a statement to the director on those financial affairs. If the issue concerns health, welfare or other aspects, that is different. He or she has to make a return every single year to the director and, if the director finds that this has not happened, he or she will have the power to either remove the person or investigate the matter. There are extensive powers for the director and extensive safeguards for the relevant person. This needs to be understood.

There is not a single element in terms of amendments, suggestions or contributions of which we have not thought. Where we had not thought of something and where it was new and possible, we brought it forward by way of an amendment.

Senator David Norris: The Minister of State says it is the responsibility of the visitor to ensure the ward of court is properly looked after. How can the visitor do this if he or she does not have the money to do so? I cited the case of somebody whose principal asset had been reduced in value from €510,000 to €150,000.

Deputy Kathleen Lynch: The Senator and I both know that that has absolutely nothing to do with the Bill.

An Cathaoirleach: I call Senator Cáit Keane.

Senator David Norris: No. I was only allowing the Minister of State to interrupt me because I am very courteous. There has to be some engagement on financial matters on the part of the visitor. It is very difficult for people with limited mental capacity. There are lots of people of complete sound mind who are useless in dealing with stocks and shares. What hope does somebody with reduced capacity have? I simply do not know the answer. I am in direct contact with people who are not happy and will not be happy with the Minister of State's response either. Is she is prepared to give any consideration to the amendments?

Senator Cáit Keane: The Minister of State has spoken about the annual financial reports going to the director. Amendment No. 244 reads:

> Annual financial reports on the condition, progress, and management of relevant person's funds; both liquid funds and investments; will be made available to—
>
> (a) the court, and
>
> (b) relevant persons.

The Minister of State has said there will be a report to the court, which is fine. She is saying subsection (a) is satisfied by the report going to the director, while subsection (b) refers to relevant persons. Perhaps I might be helpful by suggesting we all put our heads together and look at the matter again before Report Stage. I want to see openness, transparency and responsibility in dealing with funds.

An Cathaoirleach: Is the amendment being withdrawn?

Senator David Norris: I await the Minister of State's reply.

Deputy Kathleen Lynch: I would be quite prepared to look at the issue before Report Stage if that would be helpful.

Amendment, by leave, withdrawn.

Government amendment No. 28:

> In page 18, line 27, to delete "relevant".

Amendment agreed to.

Government amendment No. 29:

> In page 18, between lines 31 and 32, to insert the following:
>
> "(10) The intervener, in making an intervention in respect of a relevant person—
>
> (a) shall not attempt to obtain relevant information that is not reasonably required for making a relevant decision,
>
> (b) shall not use relevant information for a purpose other than in relation to a

relevant decision, and

(c) shall take reasonable steps to ensure that relevant information—

(i) is kept secure from unauthorised access, use or disclosure, and

(ii) is safely disposed of when he or she believes it is no longer required.".

Amendment agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

Senator Martin Conway: I propose that the sitting be suspended until 8.45 p.m.

Senator David Norris: Why?

An Cathaoirleach: The Minister of State needs a break.

Senator David Norris: The Minister of State needs to pee.

Sitting suspended at 8.40 p.m. and resumed at 8.45 p.m.

SECTION 10

Government amendment No. 30:

In page 19, line 14, to delete "person" where it firstly occurs and substitute "person who has also attained that age".

An Cathaoirleach: Amendments Nos. 30 to 42, inclusive, and amendments Nos. 44 and 45 are related and may be discussed together.

Deputy Kathleen Lynch: Amendments Nos. 30 to 42, inclusive, and amendments Nos. 44 and 45 propose to align the provisions relating to decision-making assistants with those already agreed for co-decision makers. Amendment No. 30 is intended to clarify that a person must be 18 years or over to be appointed as a decision-making assistant, reflecting the responsibility involved in supporting decision-making by a vulnerable person. I propose amendment No. 31 arising from the consultations held with disability groups last month. A request was made that a relevant person should be able to have more than one decision-making assistant. I explored the feasibility of the request and I am pleased to propose an amendment which will allow a person to appoint more than one decision-making assistant. This will enable an elderly mother to appoint all of her children to act as decision-making assistants and to have the right to source information on her behalf.

Amendment No. 32 proposes to delete subsections (6) to (12), inclusive. This is to align the provisions on assisted decision-making with those already agreed for co-decision-making. Amendment No. 33 proposes to align the categories of persons who will not be eligible to be decision-making assistants with those agreed for co-decision-makers. The provisions are largely similar to those already in place in regard to decision-making assistants.

Amendment No. 34 proposes that a decision-making assistant's agreement will be null and void if there is a decision-making order, decision-making representation order, advanced health

care directive or a registered enduring power of attorney already in place in respect of the decisions encompassed by the decision-making assistant agreement. The reason for this amendment is if a person has a decision-making representative to take decisions on these matters it confirms that the relevant person lacks capacity to make these decisions.

Amendment No. 35 proposes to insert a new section 13 to align the categories of persons disqualified from being decision-making assistants with those already agreed for co-decision-makers; for example, a spouse or civil partner will be disqualified if they separate from the relevant person and if the marriage or civil partnership is dissolved. Similarly, a cohabitant will be disqualified if they separate from the relevant person. These provisions are intended to protect the relevant person against a former partner seeking to use the person's incapacity to gain control over the person's property and affairs. The provisions are largely similar to those already set out in the Bill in regard to decision-making assistants. As a new provision they provide for the situation in which a civil partnership is annulled or dissolved in a State other than Ireland. The ex-civil partner would be disqualified from acting as a decision-making assistant in these circumstances.

Section 13 retains the provision which disqualifies persons from being decision-making assistants if they have had, for example, safety or barring orders issued against them in respect of the relevant person. The existing provisions preventing a person from acting as a decision-making assistant on property and affairs, if convicted of fraud, etc., is also retained.

Amendment No. 35 seeks to make clear that the functions of a decision-making assistant will be as specified in the decision-making agreement. It is intended to underline the control that will continue to be exercised by the relevant person over the agreement. As previously indicated, he or she will be free to revoke the agreement at any time.

Amendment No. 36 is intended to make clear that the decision-making assistant's role will be to assist the appointer in accessing relevant information. Relevant information is defined as information to which the appointer is entitled and that is needed for the purposes of the decision. The objective is to ensure a decision-making assistant does not seek to use the role to source other information that is not relevant to the decision. Amendment No. 37 is a technical amendment to clarify the intent of the provision. Amendments Nos. 38 to 42, inclusive, are drafting amendments to make the provisions clearer. Amendment No. 44 inserts a new provision to clarify that a relevant decision is the appointer's decision, even if taken with a decision-making assistant.

Amendment No. 45 proposes to insert a new section 12 dealing with complaints in relation to decision-making assistants. The new section mirrors section 27 of the Bill which deals with complaints against co-decision-makers. The proposed new section sets out new provisions enabling complaints to be made about the suitability or conduct of decision-making assistants. Provision is made for the director, having been satisfied that a complaint is well founded, to apply to court for a determination. An additional safeguard is provided by allowing the director to investigate a matter and bring it to court notwithstanding that no complaint has been received.

Senator Jillian van Turnhout: I welcome amendment No. 31, in particular, which provides for flexibility in the terms and number of decision-making assistants that an individual can choose. I welcome also amendment No. 45. We will get to amendment No. 162. These amendments provide for safeguards in the form of clarifying how complaints can be made about co-decision-makers and decision-making representatives, especially those who may be

acting beyond the scope of their authority or failing to respect the individual's will and preferences. They are welcome additions to the Bill.

Senator Mary Moran: I, too, welcome amendment No. 31. It is important that decision-making can be shared among siblings, relations, friends or whoever and that it is not all placed on one person. That one can appoint more than one person is welcome.

Deputy Kathleen Lynch: In respect of people with an intellectual disability, in particular, the advice when appointing people to various committees has always been that one should appoint two people in order that the person with the intellectual disability would have somebody to rely on, somebody to act as a friend and adviser because he or she can feel isolated, as we heard.

Amendment agreed to.

Government amendment No. 31:

In page 20, to delete lines 11 to 18 and substitute the following:

"(5) An appointer may, in the decision-making assistance agreement, appoint more than one person as a decision-making assistant and may

specify that the decision-making assistants shall act-

(a) jointly,

(b) jointly and severally, or

(c) jointly in respect of some matters and jointly and severally in respect of other matters.".

Amendment agreed to.

Government amendment No. 32:

In page 20, to delete lines 19 to 42, and in page 21, to delete lines 1 to 32.

Amendment agreed to.

Section 10, as amended, agreed to.

NEW SECTIONS

Government amendment No. 33:

In page 21, between lines 32 and 33 to insert the following:

"Persons who are not eligible to be decision-making assistants

11. (1) A person shall not be eligible for appointment as a decision-making assistant if he or she-

(a) has been convicted of an offence in relation to the person or property of the person who intends to appoint him or her,

(b) has been the subject of a safety or barring order in relation to the person who intends to appoint him or her,

(c) is an undischarged bankrupt or is currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted

of an offence involving fraud or dishonesty,

(d) is a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a

declaration by virtue of Chapter 5 of Part 14 of that Act,

(e) is a person who is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of

2014, by virtue of that Chapter or any other provisions of that Act,

(f) is a person who is -

(i) the owner or registered provider of a designated centre or mental health facility in which the person who intends to appoint him or her as decision-making assistant resides, or

(ii) residing with, or an employee or agent of, such owner or registered provider, as the case may be,

unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the person who intends to appoint him or her as decision-making assistant,

(g) has been convicted of an offence under *section 31, 72, 73* or *128*, or

(h) previously acted as decision-making assistant for the person who intends to appoint a decision-making assistant and there was a finding

by the court under this Part that he or she should not continue as decision-making assistant for that person.

(2) *Subsection (1)(c), (d)* and *(e)* shall not apply where it is proposed to give the person functions relating to personal welfare only.".

Amendment agreed to.

Government amendment No. 34:

In page 21, between lines 32 and 33, to insert the following:

"Nullity

12. Where an event specified in any of *paragraphs (a)* to *(c)* occurs, a decision-making assistance agreement shall, with effect from the date on which the event occurs, be null and void to the extent that the decision-making agreement relates to a relevant decision where there is, in respect of the relevant decision -

(a) a decision-making order, a decision-making representation order or a co-decision-making agreement in relation to the appointer,

(b) an advance healthcare directive made by the appointer and the appointer lacks capacity, or

(c) an enduring power of attorney or enduring power under the Act of 1996 made by the appointer that has entered into force."

Amendment agreed to.

Government amendment No. 35:

In page 21, between lines 32 and 33, to insert the following:

"Disqualification as decision-making assistant

13. (1) A decision-making assistant shall, with effect from the date on which an event specified in *paragraphs (a)* to *(c)* occurs or, in the case of an event specified *in paragraph (*d), at the expiry of the period referred to in that paragraph, and unless the decision-making assistance agreement provides otherwise, be disqualified from being a decision-making assistant for the appointer where the decision-making assistant is the spouse of the appointer and subsequently -

(a) the marriage is annulled or dissolved either-

(i) under the law of the State, or

(ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,

(b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,

(c) a written agreement to separate is entered into between the spouses, or

(d) subject to *section 2(2),*the spouses separate and cease to cohabit for a continuous period of 12 months.

(2) A decison-making assistant shall, with effect from the date on which an event specified in *paragraph (a)* or *(b)* occurs or, in the case of an event specified in *paragraph (c),*at the expiry of the period referred to in that paragraph, and unless the decision-making assistance agreement provides otherwise, be disqualified from being a decision-making assistant for the appointer where the decision-making assistant the civil partner of the appointer and subsequently -

(a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either-

(i) under the law of the State, or

(ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the

State,

(b) a written agreement to separate is entered into between civil partners, or

(c) subject to *section 2(2),* the civil partners separate and cease to cohabit for a continuous period of 12 months.

(3) Subject to *section 2(2),* a decision-making assistant shall, at the expiry of the period referred to in this subjection, and unless the decision-making assistance agreement provides otherwise, be disqualified from being a decision-making assistant for the appointer where the decision-making assistant is the cohabitant or the appointer and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.

(4) Subject to *subsection (6),* where, subsequent to the appointment of a decision-making assistant -

(a) the decision-making assistant is convicted of an offence in relation to the person or property of the appointer or the person or property of a child of the appointer,

(b) a safety or barring order is made against the decision-making assistant in relation to the appointer or a child of the appointer,

(c) the decision-making assistant becomes an undischarged bankrupt or subject to a debt settlement arrangement or personal insolvency arrangement which is current or is convicted of an offence involving fraud or dishonesty,

(d) the decision-making assistant becomes a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,

(e) the decision-making assistant becomes a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter or any other provisions of that Act,

(f) the decision-making assistant becomes-

(i) the owner or registered provider of a designated centre or mental health facility in which the appointer resides, or

(ii) a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the decision-making assistant is a spouse, civil partner, cohabitant, parent, child or sibling of the appointer,

(g) the decision-making assistant is convicted of an offence under *sections 31, 72, 73* or *128* or

(h) the decision-making assistant-

(i) enters into a decision-making assistance agreement as a relevant person,

(ii) enters into a co-decision-making agreement as a relevant person,

(iii) has an enduring power of attorney or enduring power under the Act of 1996

registered in respect of himself or herself, or

(iv) becomes the subject of a declaration under *section 34(1),*

the decision-making assistant shall be disqualified from being a decision-making assistant for the appointer with effect from the date on which the decision-making assistant falls within any of *paragraphs (a)* to *(h).*

(5) *Subsection (4)(c), (d)* and *(e)* shall not apply insofar as the decision-making assistant's functions under the decision-making assistance agreement relate to personal welfare.".

Amendment agreed to.

SECTION 11

Government amendment No. 36:

In page 21, line 34, to delete "The functions of a decision-making assistant shall be-" and substitute the following:

"In exercising his or her functions as specified in the decision-making assistance agreement, the decision-making assistant shall-".

Amendment agreed to.

Government amendment No. 37:

In page 21, to delete lines 35 to 37 and substitute the following:

"(a) assist the appointer to obtain the appointer's relevant information,".

Amendment agreed to.

Government amendment No. 38:

In page 21, line 38, to delete "to advise" and substitute "advise".

Amendment agreed to.

Government amendment No. 39:

In page 22, line 1, to delete "to ascertain" and substitute "ascertain".

Amendment agreed to.

Government amendment No. 40:

In page 22, line 2, to delete "to assist" and substitute "assist".

Amendment agreed to.

Government amendment No. 41:

In page 22, line 4, to delete "to assist" and substitute "assist".

Amendment agreed to.

Government amendment No. 42:

In page 22, line 5, to delete "to endeavour" and substitute "endeavour".

Amendment agreed to.

Government amendment No. 43:

In page 22, to delete lines 6 to 14,

Amendment agreed to.

Government amendment No. 44:

In page 22, between lines 15 and 16, to insert the following:

"(5) A relevant decision taken by the appointer with the assistance of the decision-making assistant is deemed to be taken by the appointer for all purposes.".

Amendment agreed to.

Section 11, as amended, agreed to.

NEW SECTION

Government amendment No. 45:

In page 22, between lines 15 and 16, to insert the following:

"Complaints in relation to decision-making assistants

12. (1) A person may make a complaint in writing to the Director concerning one or both of the following matters:

(a) that a decision-making assistant has acted, is acting, or is proposing to act outside the scope of his or her functions as specified in the

decision-making assistance agreement;

(b) that a decision-making assistant is unable to perform his or her functions under the decision-making assistance agreement;

(c) that fraud, coercion or undue pressure was used to induce the appointer to enter into the co-decision-making agreement.

(2) Following the receipt of a complaint under *subsection (1),* the Director shall carry out an investigation of the matter which is the subject of the

complaint and-

(a) where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to a matter

specified in the complaint, or

(b) where he or she is of the view that the complaint is not well founded, notify the

person who made the complaint of that view and provide

reasons for same.

(3) A person who receives a notification under *subsection (2)(b)* may, not later than 21 days after the date of issue of the notification, appeal to the court a decision of the Director that the complaint is not well founded.

(4) The Director may, notwithstanding that no complaint has been received, on his or her own initiative carry out an investigation and make an

application to the court for a determination in relation to any matter specified in *subsection (1)*.

(5) The court may-

(a) pursuant to an application to it under *subsection (2)(a)* or *(4),*or

(b) pursuant to an appeal under *subsection (3),*

make a determination in relation to a matter specified in *subsection (1)* and may, if it considers it appropriate, determine that a decision-making

assistant shall no longer act as such in relation to the appointer concerned.".

Amendment agreed to.

Section 12 deleted.

Section 13 agreed to.

SECTION 14

Government amendment No. 46:

In page 23, line 23, after "section" to insert "and *section 15"*.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 47, 51, 58, 61, 62, 64, 65, 71, 81, 92, 93, 105, 108, 117, 118 and 132 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 47:

In page 23, to delete line 33 and substitute the following:

"(b) is able to perform his or her function under the co-decision-making agreement.".

Deputy Kathleen Lynch: Amendments Nos. 47, 51, 58, 61, 62, 64, 65, 71, 81, 92, 93, 105, 108, 117, 118 and 132 are essentially technical points to address some issues needing to be resolved in the provisions on co-decision-making.

Amendment No. 47 proposes to amend the text that defines how a person may be considered suitable for appointment as a co-decision-maker. The person has to be "capable" of performing the role.

Amendment No. 71 proposes to amend the provisions relating to dissolution of civil partnership to encompass dissolutions occurring in other states. The former civil partner will be ineligible to act as a decision-making assistant or co-decision-maker.

Amendment No. 81 is intended to make clearer the remedies available to a third person if he or she unknowingly relies on a co-decision-making agreement which is later found to be null and void. My amendment proposes that the third party would not be prevented from recovering damages for any loss incurred as a result of unknowingly relying on a null and void co-decision-making agreement.

Amendment No. 92 proposes an additional ground for objection to the registration of a co-decision-making agreement, namely, that a false statement is included in the application to register the agreement. Amendment No. 93 is intended to specify more clearly that the director can take action only if an objection has been received within the time period of five weeks specified in subsection (1).

Amendment No. 105 proposes an additional provision that would allow the director to make inquiries where an incomplete report has been submitted and to be satisfied that the report is in order. This provision allows the director the flexibility to accept an incomplete report where the circumstances warrant it. The provision would benefit co-decision-makers who are caring for the relevant person and who may not have the time, because of that caring responsibility, to submit a report that is absolutely in line with the regulations but where the information submitted confirms that there are no issues arising with the operation of the co-decision-making agreement.

Amendment No. 108 clarifies that the basis for complaint against a co-decision-maker is that he or she is acting outside the scope of his or her functions. Senator Jillian van Turnhout clearly expressed her views in this regard.

Amendment No. 117 is intended to specify more precisely that the court can make a determination when an appeal has been made under the new subsection (3) and within the time limit of 21 days specified in that subsection.

Amendment No. 118 is a technical amendment to delete the phrase "which was the subject of a complaint to the Director". The reason for the amendment is that the court may make a determination both on an issue which was the subject of a complaint to the director and on an application made by the director where no complaint has been received. In the latter case, the director will make an application where he or she believes a serious issue has arisen in relation to the operation of the co-decision-making agreement which warrants consideration by the court.

Amendment No. 132 is a technical amendment to specify the cross-reference between the obligation in section 17(8) for an appointer or a co-decision-maker to notify the director of the nullity of a co-decision-making agreement and the corresponding provision in section 30 setting out the director's role when this notice has been received.

Senator Jillian van Turnhout: I have a concern about amendment No. 65. I ask the Minister of State to listen to what I have to say and perhaps consider revising it and coming back to it on Report Stage. Amendment No. 65 provides that a co-decision-maker may refuse to acquiesce with an appointer's decision where it is reasonably foreseeable that the decision will result in harm to the appointer or another person. This is too restrictive in terms of the autonomy of

the appointer. We all enjoy the dignity of risk to take decisions that can carry a risk of harm to ourselves. For example, if the appointer wishes to consent to a new surgery which she believes will benefit her condition but the surgery has a reasonably foreseeable risk of harm, would we really want a co-decision-maker to be able to prevent her from taking that decision? The amendment should be revised to ensure the harm, in addition to being reasonably foreseeable, should be imminent and of a grave nature.

That would bring the Bill closer to its goal of respecting the will and preferences of the person concerned. I ask the Minister of State to take another look at the amendment because I have a concern about offering choice. I argue all the time for what is in the best interests of the child. I realise we are all allowed to make decisions as adults that may not necessarily be in our best interests. That is what we want to do and we should be allowed to do so. This amendment is not in keeping with the spirit of the Bill. We should, therefore, consider inserting the words "imminent and of a grave nature". Who will have the power to make a decision about undergoing new surgery?

9 o'clock

Deputy Kathleen Lynch: I will look at the matter.

Senator Jillian van Turnhout: I thank the Minister of State.

Amendment agreed to.

Government amendment No. 48:

In page 24, line 10, to delete "*subsection (7)*" and substitute "*subsection (7)(a)*".

Amendment agreed to.

Government amendment No. 49:

In page 24, line 13, to delete "*subsection (7)*" and substitute "*subsection (7)(a)*".

Amendment agreed to.

Government amendment No. 50:

In page 24, line 17, to delete "*subsection (7)*" and substitute "*subsection (7)(b)*".

Amendment agreed to.

Government amendment No. 51:

In page 24, line 26, to delete "(or the person signing on his or her behalf)" and substitute ", or the person signing on his or her behalf,".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 52 and 109 are cognate and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 52:

In page 25, line 2, to delete "step-child,".

Deputy Kathleen Lynch: Amendments Nos. 52 and 109 are technical amendments to remove the reference to "step-child" in the definition of "immediate family" that will apply under the Bill. That is because a step-child is considered to be a child of the family and does not need to be referenced separately in the definition.

Amendment agreed to.

Government amendment No. 53:

In page 25, line 7, to delete "of the relevant person".

Amendment agreed to.

Section 14, as amended, agreed to.

SECTION 15

Government amendment No. 54:

In page 25, line 16, to delete "or" where it firstly occurs and substitute "or is".

Amendment agreed to.

Government amendment No. 55:

In page 25, to delete lines 25 to 31 and substitute the following:

"(f) is a person who is—

(i) the owner or registered provider of a designated centre or mental health facility in which the person who intends to appoint him or her as co-decision-maker resides, or

(ii) residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the person who intends to appoint him or her as co-decision-maker,".

Amendment agreed to.

Government amendment No. 56:

In page 25, line 32, to delete "*section 128*" and substitute "*section 31*, *72*, *73* or *128*".

Amendment agreed to.

Government amendment No. 57:

In page 25, line 37, to delete "contains only" and substitute "relates only to".

Amendment agreed to.

Section 15, as amended, agreed to.

Government amendment No. 58:

In page 26, lines 2 to 5, to delete all words from and including "(1) A" in line 2 down to and including line 5.

Amendment agreed to.

Government amendment No. 59:

In page 26, line 6, after "functions" to insert "as specified in the co-decision-making agreement".

Amendment agreed to.

Government amendment No. 60:

In page 26, line 11, to delete "them" and substitute "the appointer's will and preferences".

Amendment agreed to.

Government amendment No. 61:

In page 26, to delete lines 12 to 14 and substitute the following:

"(c) assist the appointer to obtain the appointer's relevant information,".

Amendment agreed to.

Government amendment No. 62:

In page 26, to delete line 15 and substitute the following:

"(d) discuss with the appointer the known alternatives and likely outcomes of a relevant decision,".

Amendment agreed to.

Government amendment No. 63:

In page 26, to delete lines 19 to 26.

Amendment agreed to.

Government amendment No. 64:

In page 26, to delete lines 34 to 39, and in page 27, to delete lines 1 to 3 and substitute the following:

"(7) Where—

(a) after an application has been made under *section 18* to register a co-decision-making agreement but before registration of the agreement, or

(b) after registration of a co-decision-making agreement, the co-decision-maker or any person specified in *section 18(3)* has reason to believe that the appointer's capacity has—

(i) deteriorated to the extent that he or she lacks capacity in relation to the relevant decisions which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker, or

(ii) improved to the extent that he or she has capacity in relation to the relevant decisions which are the subject of the co-decision-making agreement, he or she shall promptly inform the Director of that belief.".

Amendment agreed to.

Government amendment No. 65:

In page 27, to delete lines 4 to 8 and substitute the following:

"(8) In this Part, a reference to a relevant decision being made jointly means that a co-decision-maker—

(a) shall acquiesce with the wishes of the appointer in respect of the relevant decision, and

(b) shall not refuse to sign a document referred to in *section 20(3)*, unless it is reasonably foreseeable that an action pursuant to *paragraph (a)* or *(b)* will result in harm to the appointer or to another person.".

Senator Jillian van Turnhout: Is the Minister of State willing to reconsider moving the amendment?

Deputy Kathleen Lynch: The amendment can be moved on the basis that it can be recommitted on Report Stage, if needs be.

Senator Jillian van Turnhout: That is okay.

An Cathaoirleach: Amendment No. 65 is a Government amendment.

Senator Jillian van Turnhout: I appreciate that fact. I had suggested the matter be looked at again.

An Cathaoirleach: I ask the Minister of State to clarify the matter.

Senator Jillian van Turnhout: There is no need as she has agreed to look at it again.

Deputy Kathleen Lynch: I will take another look at the matter and we will come back-----

An Cathaoirleach: Is the amendment being agreed to?

Deputy Kathleen Lynch: Yes.

An Cathaoirleach: Is the Minister of State withdrawing the amendment, or does she want to have it agreed to?

Deputy Kathleen Lynch: No, I want it to be agreed to, but I will come back on it on Report Stage.

Amendment agreed to.

Government amendment No. 66:

In page 27, line 10, to delete "in relation to those specified in respect of him or her" and substitute "the relevant decisions specified".

Amendment agreed to.

Section 16, as amended, agreed to.

SECTION 17

Government amendment No. 67:

In page 27, line 16, after "in" to insert "any of".

Amendment agreed to.

Government amendment No. 68:

In page 27, line 18, to delete "it" and substitute "the co-decision-making agreement".

Amendment agreed to.

Government amendment No. 69:

In page 27, line 24, after "attorney" to insert "or enduring power under the Act of 1996".

Amendment agreed to.

Government amendment No. 70:

In page 27, line 26, after "in" where it firstly occurs to insert "any of".

Amendment agreed to.

Government amendment No. 71:

In page 28, to delete lines 7 and 8 and substitute the following:

"(a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—

(i) under the law of the State, or

(ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the State,".

Amendment agreed to.

Government amendment No. 72:

In page 28, lines 18 and 19, to delete "the appointment of a co-decision-maker" and substitute "the registration of a co-decision-making agreement".

Amendment agreed to.

Government amendment No. 73:

In page 28, to delete lines 27 and 28 and substitute the following:

"(d) the co-decision-maker becomes a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,".

Amendment agreed to.

Government amendment No. 74:

In page 28, line 31, after "Chapter" to insert "or any other provisions of that Act".

Amendment agreed to.

Government amendment No. 75:

In page 28, to delete lines 32 to 37 and substitute the following:

"(f) the co-decision-maker becomes—

(i) the owner or registered provider of a designated centre or mental health facility in which the appointer resides, or

(ii) a person residing with, or an employee or agent of, such owner or registered provider, as the case may be,

unless the co-decision-maker is the spouse, civil partner, cohabitant, parent, child or sibling of the appointer,".

Amendment agreed to.

Government amendment No. 76:

In page 28, line 38, to delete "*section 128*" and substitute "*section 31*, *72#*, *73* or *128*".

Amendment agreed to.

Government amendment No. 77:

In page 29, line 2, after "attorney" to insert "or enduring power under the Act of 1996".

Amendment agreed to.

Government amendment No. 78:

In page 29, line 4, to delete "an order under *Part 5*" and substitute "a declaration under *section 34(1)*".

Amendment agreed to.

Government amendment No. 79:

In page 29, line 6, to delete "shall" and substitute "should".

Amendment agreed to.

Government amendment No. 80:

In page 29, line 11, to delete "contains" and substitute "relates to".

Amendment agreed to.

Government amendment No. 81:

In page 29, to delete lines 12 to 23 and substitute the following:

"(8) Where a co-decision-making agreement which stands registered becomes null and void in whole or to the extent that it relates to one or more relevant decisions, the co-decision-maker or, in the case of nullity pursuant to *subsection (6)(h)(iii)* or *(iv)*, his or her attorney, decision-making-representative or the court, as the case may be, shall notify the Director of such nullity and the particulars relating thereto.

(9) The nullity of a co-decision-making agreement or of a relevant decision contained therein shall not operate to prevent a person who relied on the agreement or the relevant decision from recovering damages in respect of any loss incurred by him or her as a result of that reliance.".

Amendment agreed to.

Section 17, as amended, agreed to.

SECTION 18

Government amendment No. 82:

In page 30, lines 20 and 21, after "co-decision-maker" to insert "under *section 16*".

Amendment agreed to.

Government amendment No. 83:

In page 30, line 35, to delete "his or her" and substitute "their".

Amendment agreed to.

Government amendment No. 84:

In page 31, line 7, to delete "details of the notice given" and substitute "a copy of any notice given".

Amendment agreed to.

Section 18, as amended, agreed to.

SECTION 19

Government amendment No. 85:

In page 31, line 12, to delete "whether—" and substitute "whether the following criteria are met:".

Amendment agreed to.

Government amendment No. 86:

In page 31, to delete lines 15 and 16 and substitute the following:

"(c) the co-decision-maker is eligible for appointment within the meaning of *section 15*,".

Amendment agreed to.

Government amendment No. 87:

In page 31, line 25, to delete "satisfied" and substitute "of the view".

Amendment agreed to.

Government amendment No. 88:

In page 31, line 34, to delete "satisfied" and substitute "of the view".

Amendment agreed to.

Section 19, as amended, agreed to.

Section 20 agreed to.

SECTION 21

Government amendment No. 89:

In page 32, line 37, to delete "in respect of" and substitute "to make".

Amendment agreed to.

Government amendment No. 90:

In page 33, line 1, to delete "in respect of" and substitute "to make".

Amendment agreed to.

Government amendment No. 91:

In page 33, line 7, to delete "or falls under *paragraphs (a)* to *(h)* of *section 15(1)*" and substitute "or is not eligible for appointment by virtue of *section 15*".

Amendment agreed to.

Government amendment No. 92:

In page 33, between lines 7 and 8, to insert the following:

"(g) that a false statement is included in the application to register the co-decision-making agreement;".

Amendment agreed to.

Government amendment No. 93:

In page 33, line 10, after "*subsection (2)*," to insert "which has been made in the time period specified in *subsection (1)*,".

Amendment agreed to.

Section 21, as amended, agreed to.

Section 22 agreed to.

SECTION 23

Government amendment No. 94:

In page 34, line 28, to delete "whether—" and substitute "whether the following criteria are met:".

Amendment agreed to.

Government amendment No. 95:

In page 34, line 30, to delete "falls" and substitute "does not fall".

Amendment agreed to.

Government amendment No. 96:

In page 34, line 31, to delete "effectively".

Amendment agreed to.

Government amendment No. 97:

In page 34, line 32, to delete "effectively".

Amendment agreed to.

Government amendment No. 98:

In page 34, line 34, to delete "and".

Amendment agreed to.

Government amendment No. 99:

In page 35, line 9, to delete "the matters in" and substitute "the criteria set out in".

Amendment agreed to.

Government amendment No. 100:

In page 35, lines 9 and 10, to delete "does not, or no longer continues to, apply," and substitute "does not apply,".

Amendment agreed to.

Government amendment No. 101:

In page 35, line 16, to delete "the matters in" and substitute "the criteria set out in".

Amendment agreed to.

Government amendment No. 102:

In page 35, lines 16 and 17, to delete "does not, or no longer continues to, apply," and substitute "does not apply,".

Amendment agreed to.

Government amendment No. 103:

In page 35, lines 20 and 21, to delete "does not, or no longer continues to, apply," and substitute "does not apply,".

Amendment agreed to.

Section 23, as amended, agreed to.

SECTION 24

Government amendment No. 104:

In page 35, line 38, to delete "notice" and substitute "notification".

Amendment agreed to.

Government amendment No. 105:

In page 35, to delete lines 40 to 42 and substitute the following:

"(4) Where a co-decision-maker fails to comply with a notification under *subsection (3)*, the Director shall—

(a) in the case of the submission of an incomplete report and following any necessary enquiries to satisfy himself or herself that the report is substantially in accordance with this section and regulations made under *section 28*, accept the report as if it were in compliance with this section and the relevant regulations, or

(b) make an application to the court for a determination as to whether the co-decision-maker should continue as co-decision-maker for the appointer.".

Amendment agreed to.

Government amendment No. 106:

In page 35, line 43, to delete "*subsection (4)*" and substitute "*subsection (4)(b)*".

Amendment agreed to.

Section 24, as amended, agreed to.

SECTION 25

Government amendment No. 107:

In page 36, line 16, after "and" where it firstly occurs to insert ", subject to *section 14(6)*,".

Amendment agreed to.

Section 25, as amended, agreed to.

Section 26 agreed to.

SECTION 27

Government amendment No. 108:

In page 38, to delete lines 1 to 3 and substitute the following:

"(a) that the co-decision-maker has acted, is acting, or is proposing to act outside the scope of his or her functions under the co-decision-making agreement;".

Amendment agreed to.

Government amendment No. 109:

In page 38, line 7, to delete "the" where it firstly occurs and substitute "an".

Amendment agreed to.

Government amendment No. 110:

In page 38, line 9, to delete "the" and substitute "an".

Amendment agreed to.

Government amendment No. 111:

In page 38, line 11, to delete "the" where it firstly occurs and substitute "an".

Amendment agreed to.

Government amendment No. 112:

In page 38, line 14, to delete "the" where it firstly occurs and substitute "an".

Amendment agreed to.

Government amendment No. 113:

In page 38, line 18, after "investigation" to insert "of the matter which is the subject of

that complaint".

Amendment agreed to.

Government amendment No. 114:

In page 38, between lines 23 and 24, to insert the following:

"(3) A person who receives a notification under *subsection (2)(b)* may, not later than 21 days after the date of issue of the notification, appeal a decision of the Director that the complaint is not well founded to the court.".

Amendment agreed to.

Government amendment No. 115:

In page 38, line 25, after "to" to insert "the".

Amendment agreed to.

Government amendment No. 116:

In page 38, line 28, to delete "*subsection (2)*" and substitute "*subsection (2)(a)*".

Amendment agreed to.

Government amendment No. 117:

In page 38, to delete lines 29 and 30 and substitute the following:

"(b) pursuant to an appeal under *subsection (3)*,".

Amendment agreed to.

Government amendment No. 118:

In page 38, lines 31 and 32, to delete "which was the subject of a complaint to the Director".

Amendment agreed to.

Section 27, as amended, agreed to.

SECTION 28

Government amendment No. 119:

In page 38, lines 36 and 37, to delete all words from and including "make" in line 36 down to and including line 37 and substitute "prescribe by regulations the following matters:".

Amendment agreed to.

Government amendment No. 120:

In page 38, line 38, to delete "prescribing".

Amendment agreed to.

Government amendment No. 121:

In page 38, line 39, to delete "prescribing".

Amendment agreed to.

Government amendment No. 122:

In page 39, line 2, to delete "prescribing".

Amendment agreed to.

Government amendment No. 123:

In page 39, line 5, to delete "prescribing".

Amendment agreed to.

Government amendment No. 124:

In page 39, line 7, to delete "prescribing".

Amendment agreed to.

Government amendment No. 125:

In page 39, line 9, to delete "prescribing".

Amendment agreed to.

Government amendment No. 126:

In page 39, line 11, to delete "prescribing".

Amendment agreed to.

Government amendment No. 127:

In page 39, line 13, to delete "prescribing".

Amendment agreed to.

Government amendment No. 128:

In page 39, line 16, to delete "prescribing".

Amendment agreed to.

Government amendment No. 129:

In page 39, to delete line 22.

Amendment agreed to.

Government amendment No. 130:

In page 39, line 23, to delete "prescribing".

Amendment agreed to.

Section 28, as amended, agreed to.

SECTION 29

Government amendment No. 131:

In page 39, line 25, after "Where" to insert ", under this Part,".

Amendment agreed to.

Section 29, as amended, agreed to.

SECTION 30

Government amendment No. 132:

In page 39, lines 35 and 36, to delete "notice of the nullity of a co-decision-making agreement or of a relevant decision which is the subject of a co-decision-making agreement," and substitute "notification of nullity pursuant to *section 17(8)*,".

Amendment agreed to.

Section 30, as amended, agreed to.

SECTION 31

Government amendment No. 133:

In page 40, line 7, to delete "shall be guilty of" and substitute "commits".

Amendment agreed to.

Government amendment No. 134:

In page 40, lines 21 to 23, to delete all words from and including "a" where it secondly occurs in line 21 down to and including "disabilities," in line 23 and substitute "a designated centre or mental health facility,".

Amendment agreed to.

Question proposed: "That section 31, as amended, stand part of the Bill."

Deputy Kathleen Lynch: I wish to inform the House that I plan to bring amendments to this section on Report Stage. The amendments will involve the transfer of responsibility for legal representation, for those appearing before mental health tribunals, from the Mental Health Commission to the Legal Aid Board. This is something that we have been considering and were asked to do.

I also plan to bring forward amendments to provide for access to legal representation for persons facing capacity hearings under section 34 of the Bill. Again, this is an issue that we were asked to address in order to make sure people had access to legal aid.

Senator Martin Conway: Well said.

Senator Aideen Hayden: Well done.

Senator Martin Conway: Yes, well done.

Senator Aideen Hayden: That is brilliant.

Question put and agreed to.

Section 32 agreed to.

SECTION 33

An Cathaoirleach: Amendments Nos. 135 to 142, inclusive, are related and will be discussed together.

Government amendment No. 135:

In page 41, line 9, to delete "application," and substitute "application, and".

Deputy Kathleen Lynch: Amendments Nos. 135 to 142, inclusive, propose a series of amendments to the provisions regarding applications to court under Part 5. Amendments Nos. 135 to 137, inclusive, involve the deletion of the provision whereby the court can make a declaration in terms of a person's capacity to marry. As the Bill is not altering the existing law in terms of marriage, it is not appropriate that the court should have a role in making a declaration regarding a person's capacity to marry. The capacity to marry is governed by extensive statute law and common law which should more appropriately apply to it rather than this Bill.

Amendment No. 140 involves the deletion of provisions concerning costs for applications. It is appropriate that section 33(7)(a) should be deleted as the principle that the costs are borne by the parties who retain legal representation is a general one. There is no need to restate it in this legislation. It will apply to this Bill without having to be specifically referenced.

Similarly, with regard to section 33(7)(b), the Civil Legal Aid Act 1995 will apply to proceedings under this Bill and there is no need to reference it specifically. I am removing a provision that might be detrimental to a relevant person in section 33(7)(c). As it stands, a person or an organisation can take an application to have a person declared as lacking capacity and can have the legal costs borne out of the person's assets. That potentially creates the risk that a person might mischievously seek a declaration that another person lacks capacity to gain control of his or her assets. There would be no disincentive as the costs of the proceedings would be borne by the relevant person. I propose to remove this provision for this reason.

Amendment No. 142 is a technical amendment. As the Bill specifies the parties who are to be notified of applications, it is not appropriate for them to be determined by rules of court.

Amendment agreed to.

Government amendment No. 136:

In page 41, line 11, to delete "applicant)," and substitute "applicant).".

Amendment agreed to.

Government amendment No. 137:

In page 41, to delete lines 12 to 16.

Amendment agreed to.

Government amendment No. 138:

In page 42, line 16 to 18, to delete all words from and including "power" in line 16 down to and including "*section 58*)" in line 18 and substitute "enduring power of attorney or enduring power under the Act of 1996".

Amendment agreed to.

Government amendment No. 139:

In page 42, line 22, to delete "and which, to the applicant's knowledge, still has any force or effect" and substitute "of which the applicant has knowledge".

Amendment agreed to.

Government amendment No. 140:

In page 42, to delete lines 23 to 37.

Amendment agreed to.

Government amendment No. 141:

In page 42, to delete line 40 and substitute "commenced, and".

Amendment agreed to.

Government amendment No. 142:

In page 43, to delete lines 1 and 2.

Amendment agreed to.

Government amendment No. 143:

In page 43, line 9, after "attorney" to insert ", attorney under the Act of 1996".

Amendment agreed to.

Government amendment No. 144:

In page 43, line 11, after "attorney" to insert ", attorney under the Act of 1996".

Amendment agreed to.

Government amendment No. 145:

In page 43, line 21, after "attorney" to insert ", attorney under the Act of 1996".

Amendment agreed to.

Government amendment No. 146:

In page 43, line 23, after "attorney" to insert ", attorney under the Act of 1996".

Amendment agreed to.

Section 33, as amended, agreed to.

SECTION 34

Government amendment No. 147:

In page 44, line 10, to delete "application" and substitute "declaration".

Amendment agreed to.

Government amendment No. 148:

In page 44, to delete lines 20 to 22.

Amendment agreed to.

Section 34, as amended, agreed to.

SECTION 35

An Cathaoirleach: Amendments Nos. 149 to 162, inclusive, are related. Amendment No. 158 is a physical alternative to amendment No. 157. They will all be discussed together.

Government amendment No. 149:

In page 45, line 12, to delete "suitable person" and substitute "suitable person who has attained the age of 18 years".

Deputy Kathleen Lynch: Amendments Nos. 149 to 162, inclusive, propose a series of amendments to align the provisions on decision-making representatives with those agreed for co-decision-makers. The intention is that the more robust safeguards agreed for co-decision-makers would be applied to decision-making representation.

Amendment No. 149 seeks to make clear that a person must be 18 years or over to be appointed as a decision-making representative in view of the level of responsibility potentially arising from this role. Amendment No. 150 seeks to clarify the boundaries that will apply between the functions of a decision-making representative and the terms of an advance health care directive or an enduring power of attorney. The court will be required to ensure the order appointing a decision-making representative is consistent with the terms of an advance health care directive and with the powers of a designated health care representative. The order will also have to be consistent with the terms of an enduring power of attorney and with the functions of an attorney. The reason they take precedence is because an advance health care directive and an enduring power of attorney are direct expressions of the will and preferences of the person.

Amendment No. 151 proposes to align the categories of person who will not be eligible to be decision-making representatives with those agreed for co-decision-makers. The provisions are largely similar to those in place in respect of decision-making representatives.

Amendment No. 152 inserts a new section 37. The section proposes to align the categories of person disqualified from being decision-making representatives with those agreed for co-decision-makers. A spouse or civil partner will be disqualified if he or she separates from the relevant person and if the marriage or civil partnership is dissolved. Similarly, a cohabitant will be disqualified if he or she separates from the person. These provisions are intended to protect the person against a former partner seeking to use the person's incapacity to gain control over the person's property and affairs. They are largely similar to those set out for decision-making representatives. One new provision is that they provide for a situation in which a civil partnership is annulled or dissolved in a state other than Ireland.

Amendment No. 153 proposes two new subsections which seek to respond to the concerns of Senators that the duty to ascertain the relevant person's will and preferences be given priority. The first duty will be to ascertain, in so far as is possible, the person's will and preferences. The second amendment proposes to move the provisions of subsection (4) to become subsection (2) of this section. The provisions are as agreed. The intention is to highlight the duty on the decision-making representative to act as the relevant person's agent and in service to that person.

Amendment No. 154 moves the provisions, currently in section 38(5) into a new section. This is in the interests of clarity as the previous section 38 covered too many issues. No change is envisaged to the provisions as agreed.

Amendment No. 155 proposes to move the provision currently in section 36(8) into section 37 in the interests of structuring the Part more clearly. No change is envisaged to the provisions as agreed.

Amendment No. 158 proposes to modify the provisions of section 38(7) to specify that the scope available to a decision-making representative to make a decision on the carrying out or refusing of life-sustaining treatment is subject to the terms of an advance health care directive. Similarly, the amendment proposes that the decisions of a designated health care representative will take precedence over those of a decision-making representative on these matters. This is because the advance health care directive is the direct expression of the will and preferences of the relevant person on such matters. Equally, the designated health care representative will have been appointed specifically by the person to take these decisions if and when they arise.

Amendments Nos. 159 and 160 propose a new section 39 which set out the provisions that would apply in terms of the register of decision-making representatives. The provisions are in line with those agreed for co-decision-makers. It is proposed that the Minister would specify by regulation the bodies and classes of person entitled to access the register. In the interests of the person's privacy, it is not appropriate that a register would be accessible to the public. However, it is intended that anyone needing to know if a person has a decision-making representative will be able to apply to the director for that information.

Amendment No. 161 proposes a new section 40 setting out the provisions relating to the reporting obligations to be imposed on the decision-making representative. These are in line with the provisions agreed for co-decision-makers. They retain the provisions in subsections (6) and (7) of section 36 but add a number of key protections. They set out the procedures that will apply if a decision-making representative fails to submit a report or submits an incomplete report. The director will contact the decision-making representative on this issue. If the decision-making representative continues to fail to submit a complete report, the director will

have the power to apply to the court for a determination on whether the decision-making representative should continue in the role. It is important to add these provisions as a safeguard for the relevant person. Reporting is intended as the primary means by which the director will supervise the decision-making representative. The director will be unable to perform this supervisory function adequately if he or she does not have the possibility to engage with the decision-making representative on the reports or to seek the court's determination where the representative fails to comply with the obligations.

Amendment No. 162 proposes a new section 41 which sets out the complaints mechanism that will apply where complaints are made against decision-making representatives. A person will be able to make a complaint where the representative is acting or proposing to act beyond the scope of the functions specified in the court order. A person will be able to make a complaint where the representative is acting or proposing to act beyond the scope of the functions specified in the court order. A complaint will also be possible where the representative is not suitable such as where he or she is in conflict with the relevant person or not able to perform the role. It is proposed that the director will be able to investigate the complaint to see if it is well founded. If it is, he or she will be able to apply to the court for a determination. He or she will also be able to launch investigations on his or her own initiative. If a complaint is not well founded, the director will notify the complainant who will be able to appeal the decision to the court.

Senator Jillian van Turnhout: I have one concern about amendment No. 154 in this group. It provides that a decision making representative can not only be remunerated for expenses incurred in the performance of his or her duties but also if approved by the court. This payment will be made from the assets of the relevant person rather than by the State. I am concerned that this violates the constitutional right of the relevant person to private property. In addition to the human rights violation in having one's legal capacity to make decisions removed, the amendment ensures the person whose right to make decisions is being removed will also have to pay for the privilege of this violation through his or her own assets. I ask the Minister of State to reconsider the amendment.

Deputy Kathleen Lynch: If there is an issue with the amendment, we will definitely re-examine it.

Amendment agreed to.

Government amendment No. 150:

In page 45, to delete lines 17 to 20 and substitute the following:

"(3) In making a decision-making order or decision-making representation order in relation to personal welfare, the court shall have regard to the terms of any advance healthcare directive made by the relevant person and shall—

(a) ensure that the terms of the order are not inconsistent with the directive, and

(b) where a decision-making representative is appointed, that his or her functions are not inconsistent with the directive or the relevant powers exercisable by any designated healthcare representative under the directive.

(4) In making a decision-making order or decision-making representation order, the

court shall have regard to the terms of any enduring power of attorney made by the relevant person or enduring power under the Act of 1996 made by him or her and shall—

(a) ensure that the terms of the order are not inconsistent with the terms of the enduring power of attorney or enduring power under the Act of 1996, and

(b) where a decision-making representative is appointed, that his or her functions are not inconsistent with—

(i) the functions of an attorney under an enduring power of attorney, or

(ii) the duties and obligations of an attorney under the Act of 1996.".

Amendment agreed to.

Section 35, as amended, agreed to.

NEW SECTIONS

Government amendment No. 151:

In page 47, between lines 17 and 18, to insert the following:

"**Persons who are not eligible to be decision-making representatives**

36. (1) Subject to *subsection (2)*, a person shall not be eligible for appointment as a decision making representative if he or she—

(a) has been convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of that person,

(b) has been the subject of a safety or barring order in relation to the relevant person or a child of that person,

(c) is an undischarged bankrupt or is currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,

(d) is a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,

(e) is a person who is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, by virtue of that Chapter or any other provisions of that Act,

(f) is a person who is—

(i) the owner or registered provider of a designated centre or mental health facility in which the relevant person resides, or

(ii) residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of

the relevant person, or

(g) has been convicted of an offence under *section 31*, *72*, *73* or *128*.

(2) *Subsections (1)(c)*, *(d)* and *(e)* shall not apply as respects the appointment of a person as decision-making representative for relevant decisions concerning personal welfare matters only.".

Amendment agreed to.

Government amendment No. 152:

In page 47, between lines 17 and 18, to insert the following:

"**Disqualification as decision-making representative**

37. (1) A decision-making representative shall, with effect from the date on which an event specified in *paragraphs (a)* to *(c)* occurs or, in the case of an event specified in *paragraph (d)*, at the expiry of the period referred to in that paragraph, be disqualified from being a decision-making representative for the relevant person where the decision-making representative is the spouse of the relevant person and—

(a) the marriage is annulled or dissolved either—

(i) under the law of the State, or

(ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,

(b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,

(c) a written agreement to separate is entered into between the spouses, or

(d) subject to *section 2(2)*, the spouses separate and cease to cohabit for a continuous period of 12 months.

(2) A decision-making representative shall, with effect from the date on which an event specified in *paragraph (a)* or *(b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, be disqualified from being a decision-making representative for the relevant person where the decision-making representative is the civil partner of the relevant person and—

(a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—

(i) under the law of the State, or

(ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the State,

(b) a written agreement to separate is entered into between the civil partners, or

(c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.

(3) Subject to *section 2(2)*, a decision-making representative shall, at the expiry of the period referred to in this subsection, be disqualified from being a decision-making representative for the relevant person where the decision-making representative is the cohabitant of the appointer and the cohabitants separate and cease to cohabit for a continuous period of 12 months.

(4) Subject to *subsection (5)*, where, subsequent to the appointment of a decision-making representative—

(a) the decision-making representative is convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of the relevant person,

(b) a safety or barring order is made against the decision-making representative in relation to the relevant person or a child of the relevant person,

(c) the decision-making representative becomes an undischarged bankrupt or subject to a debt settlement arrangement or personal insolvency arrangement which is current or is convicted of an offence involving fraud or dishonesty,

(d) the decision-making representative becomes a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,

(e) the decision-making representative becomes a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter or any other provisions of that Act,

(f) the decision-making representative becomes—

(i) the owner or registered provider of a designated centre or mental health facility in which the relevant person resides, or

(ii) a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the decision-making representative is a spouse, civil partner, cohabitant, parent, child or sibling of the appointer,

(g) the decision-making representative is convicted of an offence under *section 31*, *72*, *73* or *128*, or

(h) the decision-making representative—

(i) enters into a decision-making assistance agreement as a relevant person,

(ii) enters into a co-decision-making agreement as a relevant person,

(iii) has an enduring power of attorney or enduring power under the Act of 1996 registered in respect of himself or herself, or

(iv) becomes the subject of a declaration under *section 34(1)*, the decision-making representative shall be disqualified from being a decision-making representative for the relevant person with effect from the date on which the decision-making representative falls within any of *paragraphs (a)* to *(h)*.

(5) *Subsections (4)(c)*, *(d)* and *(e)* shall not apply to a decision-making representative insofar as he or she exercises functions under the decision-making representation order in relation to the personal welfare of the relevant person.

(6) Where a decision-making representative becomes disqualified under this section, he or she or, in the case of disqualification pursuant to *subsection (4)(h)(iii)* or *(iv)* his or her attorney, decision-making representative or the court, as the case may be, shall notify the Director and the court of such disqualification and the particulars relating thereto.

(7) Where a decision-making representative becomes disqualified, a relevant decision made solely by him or her after his or her disqualification shall be null and void.

(8) *Subsection (7)* shall not operate to prevent a person who relied on a relevant decision referred to in that subsection from recovering damages in respect of any loss incurred by him or her as a result of that reliance.".

Amendment agreed to.

Government amendment No. 153:

In page 47, between lines 17 and 18, to insert the following:

"**Performance of functions of decision-making representative**

38. (1) In exercising his or her functions as specified in the decision-making representation order, a decision-making representative shall, insofar as this is possible, ascertain the will and preferences of the relevant person on a matter the subject of, or to be the subject of, a relevant decision and assist the relevant person with communicating such will and preferences.

(2) A decision-making representative shall make a relevant decision on behalf of the relevant person and shall act as the agent of the relevant person in relation to a relevant decision.".

Amendment agreed to.

Government amendment No. 154:

In page 47, between lines 17 and 18, to insert the following:

"**Remuneration and expenses**

39. (1) Except where the court otherwise orders, a decision-making representative for a relevant person shall be entitled to be reimbursed out of the assets of the relevant person in respect of his or her fair and reasonable expenses which are reasonably incurred in performing his or her functions as such decision-making representative.

(2) Where the court so directs in a decision-making representation order, the deci-

sion-making representative shall be entitled to reasonable remuneration in relation to the performance of his or her functions as such decision-making representative and which functions are carried out in connection with his or her trade or profession, or in other exceptional circumstances specified in the order, and such remuneration shall be paid from the assets of the relevant person.".

Amendment agreed to.

Section 36 deleted.

SECTION 37

Government amendment No. 155:

In page 51, between lines 27 and 28, to insert the following:

"(6) A decision-making representation order may provide for the giving of such security by the decision-making representative to the court as the court considers appropriate in relation to the proper performance of the functions of such decision-making representative.".

Amendment agreed to.

Section 37, as amended, agreed to.

SECTION 38

Government amendment No. 156:

In page 52, to delete lines 1 to 26.

Amendment agreed to.

Amendment No. 157 not moved.

Government amendment No. 158:

In page 52, line 27, to delete "A decision-making representative" and substitute the following:

"Subject to the terms of any advance healthcare directive made by the relevant person and subject to relevant powers exercisable by any designated healthcare representative appointed under the directive, a decision-making representative".

Amendment agreed to.

Government amendment No. 159:

In page 53, to delete lines 17 and 18.

Amendment agreed to.

Section 38, as amended, agreed to.

NEW SECTIONS

Government amendment No. 160:

In page 53, between lines 18 and 19, to insert the following:

"Register of decision-making representation orders

39. (1) The Director shall establish and maintain a Register (in this Part referred to as "the Register") of decision-making representation orders.

(2) The Register shall be in such form as the Director considers appropriate.

(3) The Director shall make the Register available for inspection by—

(a) a body or class of persons prescribed by regulations made by the Minister for this purpose, and

(b) a person who satisfies the Director that he or she has a legitimate interest in inspecting the Register.

(4) The Director may issue an authenticated copy of a decision-making representation order, or part thereof, on the Register on payment of a fee prescribed by regulations

made by the Minister to—

(a) a body or class of persons prescribed by regulations made by the Minister for this purpose, and

(b) a person who satisfies the Director that he or she has a legitimate interest in obtaining a copy.".

Amendment agreed to.

Government amendment No. 161:

In page 53, between lines 18 and 19, to insert the following:

"**Reports by decision-making representative**

40. (1) Subject to *subsection (2)*, a decision-making representative shall, within 12 months after the making of the decision-making representation order appointing him or her, and thereafter at intervals of not more than 12 months, prepare and submit to the Director a report in writing as to the performance of his or her functions as such decision-making representative during the relevant period.

(2) The court may direct that a report be submitted to the Director within such shorter period or within such shorter intervals as is specified in *subsection (1)*.

(3) Every such report submitted to the Director shall be in such form as may be prescribed by regulations made by the Minister and shall include details of all transactions relating to the relevant person's finances which are within the scope of the decision-making representation order and details of all costs, expenses and remuneration claimed by or paid to the decision-making representative during the period to which the report relates.

(4) A decision-making representative who has restrained the relevant person at any time during the relevant period relates shall include in the report details of each such restraint and the date on which, and the place where, such restraint occurred.

(5) Where a decision-making representation order authorises a decision-making representative to make decisions in relation to a relevant person's property and affairs, the decision-making representative shall within 3 months of his or her appointment as decision-making representative, submit to the Director a schedule of the relevant person's assets and liabilities and a projected statement of the relevant person's income and expenditure.

(6) Where a decision-making representation order authorises a decision-making representative to make decisions in relation to a relevant person's property and affairs, the decision-making representative shall keep proper accounts and financial records in respect of the relevant person's income and expenditure and shall—

(a) submit the accounts and records as part of a report to the Director under this section, and

(b) make available for inspection by the Director or by a special visitor, at any reasonable time, such accounts and records.

(7) Where a decision-making representative fails to submit a report in accordance with this section or submits an incomplete report or fails to comply with *subsection (5)*, the Director shall notify the decision-making representative of that failure or incompleteness and give the decision-making representative such period of time as is specified in the notification to comply or submit a complete report.

(8) Where a decision-making representative fails to comply with a notification under *subsection (6)*, the Director shall—

(a) in the case of the submission of an incomplete report and following any necessary enquiries to satisfy himself or herself that the report is substantially in accordance with this section and regulations made by the Minister, accept the report as if it were in compliance with this section and the relevant regulations, or

(b) make an application to the court for a determination as to whether the decision-making representative should continue as decision-making representative for the relevant person.

(9) Pursuant to an application to it under *subsection (7)(b)*, the court may determine that a decision-making representative who has not complied with this section shall no longer act as decision-making representative for the relevant person concerned.

(10) In this section "relevant period" means the period of time to which the report relates which shall be the period of time between the date of the decision-making representation order or the date of submission of the previous report, as the case may be, and the date immediately preceding the date of submission of the report concerned.".

Amendment agreed to.

Government amendment No. 162:

In page 53, between lines 18 and 19, to insert the following:

"**Complaints in relation to decision making representatives**

41. (1) A person may make a complaint in writing to the Director concerning one or more of the following matters:

(a) that a decision-making representative has acted, is acting, or is proposing to act outside the scope of his or her functions as specified in the decision-making representation order;

(b) that a decision-making representative is not suitable, having regard to the matters referred to in *section 35(4)*, to be a decision-making representative.

(2) Following the receipt of a complaint under *subsection (1)*, the Director shall carry out an investigation of the matter which is the subject of that complaint and—

(a) where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to a matter specified in the complaint, or

(b) where he or she is of the view that the complaint is not well founded, notify the person who made the complaint of that view and provide reasons for same.

(3) A person who receives a notification under *subsection (2)(b)* may, not later than 21 days after the date of issue of the notification, appeal a decision of the Director that the complaint is not well founded to the court.

(4) The Director may, notwithstanding that no complaint has been received, on his or her own initiative carry out an investigation and make an application to the court for a determination in relation to any matter specified in *subsection (1)*.

(5) The court may—

(a) pursuant to an application to it under *subsection (2)(a)* or *(4)*, or

(b) pursuant to an appeal under *subsection (3)*, make a determination in relation to a matter specified in *subsection (1)* and may, if it considers it appropriate, determine that a decision-making representative shall no longer act as such in relation to the relevant person concerned.".

Amendment agreed to.

Sections 39 to 44, inclusive, agreed to.

SECTION 45

An Cathaoirleach: Amendments Nos. 163 to 169, inclusive are related and will be discussed together.

Government amendment No. 163:

In page 56, line 10, to delete "An application for the review of the capacity of a ward" and substitute "An application for a declaration under *section 46(1)* in respect of a ward".

Deputy Kathleen Lynch: Amendments Nos. 163 to 169, inclusive, relate to the process by which wards of court will be discharged from wardship. Amendments Nos. 163, 165 and 166 provide that the wardship court shall not review the capacity of a ward but rather make a declaration under section 46(1). The amendments are necessary because the existing provisions do not correctly describe what is envisaged. Where a person has been admitted to wardship without reference to his or her capacity such as in the case of many minor wards, he or she can be discharged from wardship without reference to his or her capacity. The wardship court will not look again at the ward's capacity, which is what the previous provisions implied. Instead, it will review the ward's case and, where necessary, make a determination as to his or her capacity. No change of policy is envisaged by these provisions.

A new provision is proposed that will allow the wardship court to continue its jurisdiction, pending the discharge of a ward or the ward's migration to the new options foreseen under the Bill. The amendments will allow payments, for instance, to continue to be made, pending the court hearing on a ward's case. This is to ensure there will be continuity in the provisions in place for wards throughout the process of moving from wardship to discharge or the new options. The amendments do not change in any way the deadlines already set in the provisions. Wardship will be phased out for adults within three years of the commencement of Part 6. A minor ward will be entitled to a court hearing of his or her case no later than six months after his or her 18th birthday.

Amendment No. 169 proposes to replace section 47 with a new section. The provisions repealing the Marriage of Lunatics Act 1811 and the Lunacy Regulation (Ireland) Act 1871 have been moved to section 7. Some saving provisions are needed to ensure orders of the wardship court made before this Part is commenced will remain valid, even if the 1871 Act is repealed. This is to provide certainty in terms of payments to third parties and so forth.

It is proposed to delete section 49. The provisions of the Bill are essentially for adults. Adult wardship will be abolished over a three year period. It is important that boundaries not be blurred between the current arrangements and the arrangements foreseen under the Bill. To make this clear, the role of the director of the decision support service will relate exclusively to adults. He or she will not have a role in the case of minor wards. Any matter relating to minor wards will continue to be handled by the Office of the Wards of Court. The amendment makes clear the separation that will apply between the Office of the Wards of Court and the decision support service.

Senator Trevor Ó Clochartaigh: Amendment No. 164 reads:

> In page 56, between lines 13 and 14, to insert the following:
>
> "(b) a relative of a friend of the appointer who has had such personal contact with the appointer over such period of time that a relationship of trust exists between them,".

The UN Committee on the Rights of Persons with Disabilities has stated in general comment No.1 that under Article 12 of the convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity. Since the Bill is being developed as part of Ireland's preparations to ratify the UN convention, the functional assessment of mental capacity must be replaced with a process of interpreting the will and preferences of the individual. This will ensure that when people need help to make decisions, they will be supported in doing so, rather than have their legal rights to make decisions removed.

On a broader note, Inclusion Ireland has concerns about the review of the position of wards. I highlight these concerns and invite a response from the Minister of State. Inclusion Ireland argues that Part 6 of the Bill applies to people who are wards of court. The sections therein allow for a review by the ward or somebody who appears to the wardship court to have sufficient interest or expertise in the welfare of the ward. Inclusion Ireland has received communications from a number of concerned families in this regard. Many family members are concerned about the reference to the "welfare" of the ward and the broadness of the category, as preference in persons acting as co-decision makers and decision-making representatives is given to a relative or friend of the appointer who has had such personal contact with the appointer over a period of time that there is a relationship of trust between them. Inclusion Ireland is stating it would be preferable if this category was introduced before the aforementioned phrase "sufficient interest or expertise". I ask the Minister of State to comment on this suggestion.

Deputy Kathleen Lynch: I agree with the Senator that it is important to highlight in the Bill the fact that applications can be made by relatives or persons who have a relationship of trust with the ward. I am looking at the feasibility of the Senator's proposal and seeking legal advice on the matter. Given that the Bill is driven by consultation to ensure we get it right and subject to the legal advice being what we expect it to be, I will be tabling an amendment on Report Stage broadly along the lines of that proposed by the Senator. I hope that will satisfy him.

In terms of wardship, it is important that we be very clear in the Bill. Quite recently I had a visit from a very caring and very young family. They wanted to talk to me about an adult relative who was awaiting a court hearing about wardship. The adult in question was very worried about it and did not necessarily want it. The family wanted to support him in his decision. I am very anxious to get this legislation through because so many people are waiting on it. What I found quite interesting was that the judge in the case who was very enlightened because he knew that this legislation was coming advised them to look for an adjournment until the legislation was brought forward in order that they would not have to be subject to wardship. In the circumstances, this was the wisdom of Solomon. Sometimes we do not realise that when we are developing legislation, so many people will be affected by it in such a fundamental way. Sometimes we think that, apart from what we publicise, nobody else takes any notice of or interest in what we do in here. In this case, they rang the ward of courts office and when they asked the woman at the other end about this legislation, she told them that if they had said that to her last year, she would have told them that she had been listening to it for seven years but that the legislation was actually on the way. We sometimes forget this. The ward of courts issue is a serious one for people and it is not always necessary. There are other ways of managing our affairs other than by the court and that paternalistic approach. We are looking at the amendment and I would appreciate it if it was not pressed as I promise to come back on it.

Senator Trevor Ó Clochartaigh: I did not have a chance to say it, but I do recognise that there is a huge number of amendments. We were very critical of other pieces of legislation where amendments were being forward that had not been sought by an awful lot of people. It is important to acknowledge that a lot of the amendments have been sought by groups and I commend the fact that they are being taken on board. I am glad to hear the Minister of State say she is looking at this amendment. Therefore,I will withdraw it and reserve the right to bring it back on Report Stage if we do not see a suitable amendment that is to our liking.

Senator Mary Moran: I also welcome that fact. I know that Sarah and Fiona from Inclusion Ireland are here. I know that Sarah has been here from the beginning of the debate. As this is an issue she has raised with me, it is welcome that the Minister of State has said she is

seeking legal advice.

Amendment agreed to.

Amendment No. 164 not moved.

Government amendment No. 165:

In page 56, line 17, to delete "review the capacity of a ward" and substitute "make a declaration under *section 46(1)* in respect of a ward".

Amendment agreed to.

Government amendment No. 166:

In page 56, to delete lines 20 to 22 and substitute the following:

"(3) Where a ward reaches the age of 18 years after the period specified in *subsection (2) (b)*, the wardship court shall, within 6 months of the ward reaching that age, make a declaration under *section 46(1)* in respect of the ward.".

Amendment agreed to.

Section 45, as amended, agreed to.

SECTION 46

Government amendment No. 167:

In page 56, line 24, to delete "after reviewing the capacity of the ward" and substitute "on an application being made to it under *section 45(1)*, or pursuant to *section 45(2)* or *(3)*".

Amendment agreed to.

Government amendment No. 168:

In page 57, line 16, to delete ", following the review of the capacity of a ward,".

Amendment agreed to.

Section 46, as amended, agreed to.

NEW SECTION

Government amendment No. 169:

In page 57, between lines 21 and 22, to insert the following:

"Saver

47. (1) The repeal of the Lunacy Regulation (Ireland) Act 1871 by *section 7* shall not affect the validity of any order—

(a) made by the wardship court within its jurisdiction, and

(b) which was in force immediately before the commencement of this Part.

(2) Pending a declaration under section 46(1) the jurisdiction of the wardship court as set out in section 9 of the Courts (Supplemental Provisions) Act 1961 shall continue to apply.".

Amendment agreed to.

Section 47 deleted.

Section 48 agreed to.

Section 49 deleted.

NEW SECTIONS

Government amendment No. 170:

In page 58, between lines 17 and 18, to insert the following:

"Interpretation - *Part 7*

50. (1) In this Part—

"attorney" has the meaning given to it in *section 51(1)*;

"disqualified", in relation to an attorney, means the attorney becomes a person referred to in section 58 or a person that the court determines under this Part shall no longer act as attorney for the donor concerned;

"donor" has the meaning given to it in *section 51(1)*;

"donor under the Act of 1996" means a person who has created an enduring power under the Act of 1996;

"enduring power of attorney" has the meaning given to it in *section 51(2)*;

"prescribed" means prescribed by regulations made by the Minister under *section 71*,

"trust corporation" has the meaning it has in section 30 of the Succession Act 1965 but shall not include a designated centre or mental health facility in which the donor resides.

(2) In this Part "person", in relation to an attorney, includes a trust corporation but only to the extent that the authority conferred under the enduring power of attorney relates to property and affairs.".

Amendment agreed to.

Government amendment No. 171:

In page 58, between lines 17 and 18, to insert the following:

"Enduring power of attorney - general

51. (1) Subject to the provisions of this section and *sections 52*, *54* and *55*, a person who

has attained the age of 18 years (in this Act referred to as "donor") may appoint one or more suitable persons (in this Act referred to as "attorney") on whom he or she confers either or both of the following:

(a) general authority to act on the donor's behalf in relation to all or a specified part of the donor's property and affairs; or

(b) authority to do specified things on the donor's behalf in relation to the donor's personal welfare or property and affairs, or both;

which may, in either case, be conferred subject to conditions and restrictions.

(2) The authority referred to in *subsection (1)* shall be known as an enduring power of attorney and shall be conferred in writing in an instrument which is in compliance with this Part and regulations made under *section 71*.

(3) A donor may, in an enduring power of attorney, appoint a person who shall act as attorney for the donor in respect of the relevant decisions specified therein in the event that an attorney on whom authority is conferred dies or is unable to act or is disqualified from acting as attorney.

(4) An enduring power of attorney shall not enter into force until—

(a) the donor lacks capacity in relation to one or more of the relevant decisions which are the subject of the power, and

(b) the instrument creating the enduring power of attorney has been registered in accordance with *section 61*.

(5) Where an enduring power of attorney is expressed to confer general authority in respect of all or a specified part of the donor's property and affairs, it operates to confer, subject to any restrictions provided in the power or in this Part, authority to do on behalf of the donor anything which the donor can lawfully do by attorney.

(6) A person is suitable for appointment as an attorney if he or she is able of performing the functions of attorney as specified in the enduring power of attorney.".

Amendment agreed to.

Government amendment No. 172:

In page 58, between lines 17 and 18, to insert the following:

"Content of instrument creating an enduring power of attorney

52. (1) An instrument creating an enduring power of attorney shall include the following statements:

(a) by the donor that he or she—

(i) understands the implications of creating the power,

(ii) intends the power to be effective at any subsequent time when he or she lacks capacity in relation to one or more relevant decisions which are the

subject of the power, and

(iii) is aware that he or she may vary or revoke the power prior to its registration;

(b) by a legal practitioner that, after interviewing the donor and making any necessary enquiries, he or she—

(i) is satisfied that the donor understands the implications of creating the power,

(ii) is satisfied that the donor is aware that he or she may vary or revoke the power prior to its registration, and

(iii) has no reason to believe that the instrument is being executed by the donor as a result of fraud, coercion or undue pressure;

(c) by a registered medical practitioner that in his or her opinion at the time the power was executed, the donor had the capacity to understand the implications of creating the power;

(d) by a healthcare professional of a class that shall be prescribed, that in his or her opinion at the time the power was executed, the donor had the capacity to

understand the implications of creating the power; and

(e) by the attorney, that he or she—

(i) understands the implications of undertaking to be an attorney for the donor and has read and understands the information contained in the instrument,

(ii) understands and undertakes to act in accordance with the functions of an attorney,

(iii) understands and undertakes to act in accordance with the guiding principles,

(iv) understands and undertakes to comply with the reporting obligations under *section 67*, and

(v) understands the requirements in relation to registration of the power.

(2) An instrument creating an enduring power of attorney shall include the following:

(a) the name, date of birth and contact details of the donor;

(b) subject to subsection (3), the signature of the donor and the date that he or she signed the power;

(c) the name, date of birth and contact details of the attorney;

(d) the signature of the attorney and the date that he or she signed the enduring power of attorney;

(e) the signatures of the 2 witnesses referred to in *subsection (4)(a)*.

(3) An instrument creating an enduring power of attorney may be signed on behalf of the donor by a person who has attained the age of 18 years and who is not the attorney or a witness referred to in *subsection (4)(a)* if—

(a) the donor is unable to sign the instrument,

(b) the donor is present and directs that the instrument be signed on his or her behalf by that person, and

(c) the signature of the person is witnessed in accordance with *subsection (4)(b)*.

(4) (a) The donor, or the person signing on his or her behalf in accordance with *subsection (3)*, and the attorney shall sign the instrument creating the enduring

power of attorney in the presence of each other and in the presence of 2 witnesses—

(i) each of whom has attained the age of 18 years,

(ii) of whom at least one is not an immediate family member of the donor or the attorney, and

(iii) neither of whom is an employee of or agent of the attorney.

(b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the donor (or the person signing on his or her behalf) and the signature of the attorney by applying his or her own signature to the enduring power of attorney.

(5) Where a donor proposes to remunerate an attorney for performing his or her functions as attorney, the instrument creating the enduring power of attorney shall specify the proposed remuneration and the functions to which it relates.

(6) In this section, "immediate family member" means—

(a) a spouse, civil partner, or cohabitant,

(b) a child, son-in-law or daughter-in-law,

(c) a parent, step-parent, mother-in-law or father-in-law,

(d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,

(e) a grandparent or grandchild,

(f) an aunt or uncle, or

(g) a nephew or niece.".

Amendment agreed to.

Government amendment No. 173:

In page 58, between lines 17 and 18, to insert the following:

"Notice of execution of an enduring power of attorney

53. (1) The donor shall, as soon as practicable after the execution of the enduring power of attorney, give notice, in such form as shall be prescribed, of such execution to the following persons:

(a) a spouse or civil partner of the donor;

(b) the cohabitant (if any) of the donor;

(c) any children of the donor who have attained the age of 18 years;

(d) any decision-making assistant for the donor;

(e) any co-decision-maker for the donor;

(f) any decision-making representative for the donor;

(g) any designated healthcare representative for the donor;

(h) any other attorney for the donor or attorney under the Act of 1996 in respect of

the donor;

(i) any other person or persons as may be specified by the donor in the instrument creating the enduring power of attorney as a person or persons to whom notice shall be given under this section and section 60(3).

(2) Where there are fewer than 3 persons to whom notice may be given pursuant to subsection (1), the donor shall specify 2 persons in the instrument creating the

enduring power of attorney as persons to whom notice shall be given under this section and *section 60(3)*."

Amendment agreed to.

Government amendment No. 174:

In page 58, between lines 17 and 18, to insert the following:

"Scope of authority - personal welfare decisions

54. (1) Where an enduring power of attorney confers authority in relation to personal welfare, the power does not authorise an attorney to do an act that is intended to restrain the donor unless there are exceptional emergency circumstances and—

(a) the donor lacks capacity in relation to the matter in question or the attorney reasonably believes that the donor lacks such capacity,

(b) the attorney reasonably believes that it is necessary to do the act in order to prevent an imminent risk of serious harm to the donor or to another person, and

(c) the act is a proportionate response to the likelihood of the harm referred to in *paragraph (b)* and to the seriousness of such harm.

(2) For the purposes of this section, an attorney for a donor restrains the donor if he or she—

(a) uses, or indicates an intention to use, force to secure the doing of an act which the donor resists,

(b) intentionally restricts the donor's liberty of voluntary movement or behaviour, whether or not the donor resists,

(c) administers a medication, which is not necessary for a medically identified condition, with the intention of controlling or modifying the donor's behaviour or

ensuring that he or she is compliant or not capable of resistance, or

(d) authorises another person to do any of the things referred to in *paragraph (a)* to *(c)*.

(3) An attorney who restrains the donor pursuant to this section shall cease the restraint immediately upon the restraint no longer being necessary in order to prevent an imminent risk of serious harm to the donor or to another person.

(4) *Subsections (1)* to *(3)* shall not be construed to prejudice the generality of section 69 of the Mental Health Act 2001 or of rules made under that section.

(5) A donor shall not, in an enduring power of attorney, include a relevant decision—

(a) relating to refusal of life-sustaining treatment, or

(b) which is the subject of an advanced healthcare directive made by him or her.

(6) To the extent that an enduring power of attorney includes a relevant decision specified in *subsection (5)*, it shall be null and void.".

Amendment agreed to.

Government amendment No. 175:

In page 58, between lines 17 and 18, to insert the following:

"Scope of authority – property and affairs

55. (1) An attorney may act under an enduring power of attorney relating to property and affairs for the attorney's benefit or that of other persons to the extent provided for in the power, where specific provision to that effect is made in the power and subject to any conditions or restrictions contained in the power.

(2) An attorney may not dispose of the property of the donor by way of gift unless specific provision to that effect is made in the enduring power of attorney.

(3) Where an enduring power of attorney authorises the disposal of the donor's property by way of gift, the attorney's power to make such gifts shall, in addition to being subject to any conditions or restrictions in the enduring power, be limited to—

(a) gifts made on customary occasions to persons (including the attorney) who are re-

lated to or connected to the donor and in relation to whom the donor might be

expected to make gifts, and

(b) gifts to any charity to which the donor made or might be expected to make gifts, provided that the value of the gift is reasonable having regard to all the circumstances and in particular the extent of the donor's assets and any financial obligations.".

Amendment agreed to.

Government amendment No. 176:

In page 58, between lines 17 and 18, to insert the following:

"Application to joint and joint and several attorneys

56. (1) A donor may, in an enduring power of attorney, appoint more than one attorney and may specify that the attorneys shall act—

(a) jointly,

(b) jointly and severally, or

(c) jointly in respect of some matters and jointly and severally in respect of other matters, and, in default of the power so specifying, the attorneys shall be deemed to have authority to act jointly.

(2) Where 2 or more persons have authority to act jointly as attorneys, then, in the case of the death, lack of capacity or disqualification of any one or more of them, the remaining attorney or attorneys may continue to act, whether solely or jointly, as the case may be, unless the enduring power expressly provides to the contrary.".

Amendment agreed to.

Government amendment No. 177:

In page 58, between lines 17 and 18, to insert the following:

"Persons who are not eligible to be attorneys

57. (1) A person shall not be eligible for appointment as an attorney under an enduring power of attorney if he or she—

(a) has been convicted of an offence in relation to the person or property of the person who intends to appoint an attorney,

(b) has been the subject of a safety or barring order in relation to the person who intends to appoint an attorney,

(c) is an undischarged bankrupt or is currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,

(d) is a person in respect of whom a declaration under section 819 of the Act of

2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,

(e) is a person who is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, by virtue of that Chapter or any other provisions of that Act,

(f) is a person who is—

(i) the owner or the registered provider of a designated centre or mental health facility in which the intending donor resides, or

(ii) residing with, or an employee or agent of, such owner or registered provider, unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the intending donor, or

(g) has been convicted of an offence under *sections 31*, *72*, *73* or *128*.

(2) *Subsection (1)(c)*, *(d)* and *(e)* shall not apply where it is proposed to confer authority only in relation to personal welfare matters."

Amendment agreed to.

Government amendment No. 178:

In page 58, between lines 17 and 18, to insert the following:

"Disqualification of attorney

58. (1) An attorney shall, with effect from the date on which an event specified in any of paragraphs *(a)* to *(c)* occurs or, in the case of an event specified in paragraph *(d)*, at the expiry of the period referred to in that paragraph, and unless the instrument creating the enduring power of attorney provides otherwise, be disqualified from being an attorney for the donor where the attorney is the spouse of the donor and subsequently—

(a) the marriage is annulled or dissolved either—

(i) under the law of the State, or

(ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the

State,

(b) a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,

(c) a written agreement to separate is entered into between the spouses, or

(d) subject to section 2(2), the spouses separate and cease to cohabit for a continuous period of 12 months.

(2) An attorney shall, with effect from the date on which an event specified in paragraph

(a) or *(b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, and unless the instrument creating the enduring power of attorney provides otherwise, be disqualified from being attorney for the donor where the attorney is the civil partner of the donor and subsequently—

(a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other)

either—

(i) under the law of the State, or

(ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law

of the State,

(b) a written agreement to separate is entered into between the civil partners, or

(c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.

(3) Subject to *section 2(2)*, an attorney shall, at the expiry of the period referred to in this subsection, and unless the instrument creating the enduring power of attorney provides otherwise, be disqualified from being an attorney for the donor where the attorney is the cohabitant of the donor and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.

(4) Subject to subsection (5), where, subsequent to the appointment of an attorney—

(a) the attorney is convicted of an offence in relation to the person or property of the donor or the person or property of a child of the donor,

(b) a safety or barring order is made against the attorney in relation to the donor or a child of the donor,

(c) the attorney becomes an undischarged bankrupt or subject to a debt settlement arrangement or personal insolvency arrangement which is current or is convicted of an offence involving fraud or dishonesty,

(d) the attorney becomes a person in respect of whom a declaration has been made under section 819 of the Act of 2014 or is deemed to be subject to such a

declaration by virtue of Chapter 5 of Part 14 of that Act,

(e) the attorney becomes a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of

2014 by virtue of that Chapter or any other provisions of that Act,

(f) the attorney becomes—

(i) the owner or the registered provider of a designated centre or mental health facility in which the intending donor resides, or

(ii) a person residing with, or an employee or agent of, a person referred in to *sub-paragraph (i)*, unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the intending donor,

(g) the attorney is convicted of an offence under *section 31*, *72*, *73* or *128*,

(h) the attorney—

(i) enters into a decision-making assistance agreement as a relevant person,

(ii) enters into a co-decision-making agreement as a relevant person,

(iii) has an enduring power of attorney or an enduring power under the Act of 1996 registered in respect of himself or herself, or

(iv) becomes the subject of a declaration under section 34(1), or

(i) the attorney is a trust corporation and the trust corporation is dissolved,

the attorney shall be disqualified from being an attorney for the donor with effect from the day on which the attorney falls within any of *paragraphs (a)* to *(i)*.

(5) *Subsections (4)(c)*, *(d)* and *(e)* shall not apply to an attorney insofar as authority is conferred on him or her under the enduring power of attorney in relation to personal welfare matters.

(6) Where an attorney becomes disqualified under this section, he or she, or in the case of disqualification pursuant to *subsection (4)(h)(iii)* or *(iv)*, his or her attorney, decision making-representative or the court, as the case may be, shall notify the Director of such disqualification and the particulars relating thereto.

(7) Where an attorney becomes disqualified, a relevant decision made solely by him or her after his or her disqualification shall be null and void.

(8) *Subsection (7)* shall not operate to prevent a person who relied on a relevant decision referred to in that subsection from recovering damages in respect of any loss incurred by him or her as a result of that reliance.".

Amendment agreed to.

Government amendment No. 179:

In page 58, between lines 17 and 18, to insert the following:

"Function of court prior to registration

59. On application to it by any interested party, the court may, where it has reason to believe that the donor of an enduring power of attorney lacks capacity in relation to one or more relevant decisions, exercise any power which would become exercisable under s*ection 69(3)* on its registration and may do so whether or not the attorney concerned has made an application to the Director for registration of the instrument.".

Amendment agreed to.

Government amendment No. 180:

In page 58, between lines 17 and 18, to insert the following:

"Application for registration of instrument creating enduring power

60. (1) Where an attorney has reason to believe that the donor lacks capacity in relation to one or more relevant decisions which are the subject of the enduring power of attorney, the attorney shall, as soon as is practicable, make an application, in compliance with this Part and regulations made under *section 71*, to the Director to register the instrument creating the enduring power of attorney.

(2) An application to register an instrument under *subsection (1)* shall be made in such form and accompanied by such fee as shall be prescribed.

(3) The attorney shall, at the same time as he or she makes an application under *subsection (1)*, give notice, in such form (if any) as shall be prescribed, of the

application and give a copy of the enduring power to the following persons:

(a) the donor;

(b) a spouse or civil partner of the donor;

(c) the cohabitant (if any) of the donor;

(d) any children of the donor who have attained the age of 18 years;

(e) any decision-making assistant for the donor;

(f) any co-decision-maker for the donor;

(g) any decision-making representative for the donor;

(h) any designated healthcare representative for the donor;

(i) any other attorney for the donor or attorney under the Act of 1996 in respect of

the donor;

(j) any other person specified by the donor under *section 53*.

(4) An attorney may, before making an application to register an instrument creating an enduring power of attorney, apply to the court for a determination on any question as to the validity of the power.

(5) Where an attorney has made an application to register an instrument creating an enduring power of attorney, then pending determination of the application, the

attorney, or if more than one attorney has been appointed to act jointly or jointly and severally, as the case may be, any one of them, may take action under the power—

(a) to maintain the donor or prevent loss to the donor's assets,

(b) to the extent permitted by the enduring power, to make a relevant decision which

cannot reasonably be deferred until the application has been determined, or

(c) to maintain the attorney or other persons in so far as that is permitted under the power.

(6) Following the taking of the action pursuant to *subsection (5)*, the attorney shall report to the Director—

(a) what action he or she took,

(b) the reasons as to why the action could not be deferred until after the registration of the instrument creating the enduring power of attorney,

(c) any measures he or she took to encourage the donor to participate in the action taken, and

(d) the outcome of the action.

(7) An application to register an instrument creating an enduring power of attorney shall be accompanied by—

(a) the instrument creating the enduring power of attorney,

(b) a statement by a registered medical practitioner and a statement by such other healthcare professional of a class as shall be prescribed that in their opinion the donor lacks capacity in relation to one or more relevant decisions which are the subject of the enduring power,

(c) details of any existing decision-making assistance agreement, co-decision-making agreement, decision-making order, decision-making representation order, power of attorney (whether an enduring power or otherwise and whether registered or not) or advance healthcare directive in respect of the appointer,

(d) a copy of any notice given pursuant to *subsection (3)*,

(e) a copy of any notice given pursuant to *section 53*, and

(f) the prescribed fee.

(8) Where there is more than one attorney appointed under an enduring power of attorney, any two or more of the attorneys may make a joint application to register the instrument.".

Amendment agreed to.

Government amendment No. 181:

In page 58, between lines 17 and 18, to insert the following:

"Registration of an instrument creating an enduring power of attorney

61. (1) On receipt of an application under section 60, the Director shall review the application and any objections received under section 63 and shall carry out such reasonable enquiries as he or she considers necessary in order to establish whether—

(a) the enduring power of attorney and the instrument creating it is in accordance with *sections 51*, *52*, *54* and *55*,

(b) the attorney is a suitable person within the meaning of *section 51(6)*,

(c) the attorney is eligible for appointment within the meaning of *section 57* or not disqualified by virtue of *section 58*,

(d) notice has been given in accordance with *section 53* and section *60(3)*, and

(e) the application is in accordance with *section 60*.

(2) Where, after reviewing an application under *section 60*, the Director is satisfied that the application is in order, he or she shall, subject to *section 63*, register the instrument creating the enduring power of attorney.

(3) Where, after reviewing an application under *section 60*, the Director forms the view that one or more of the criteria in *paragraphs (a)* to (e) of *subsection (1)* are not satisfied, he or she shall notify the attorney and the donor of his or her view, provide reasons for that view and give the attorney and the donor an opportunity, within a reasonable timeframe specified by the Director, to respond.

(4) Following a review of any response received pursuant to *subsection (3)*, the Director

shall—

(a) where he or she is of the view that the criteria set out in paragraphs *(a)* to *(e)* of *subsection (1)* are satisfied, register, subject to *section 63*, the instrument

creating the enduring power of attorney, or

(b) where he or she remains of the view that one or more of the criteria set out in *paragraphs (a)* to *(e)* of *subsection (1)* is not satisfied, refuse to register the

instrument creating the enduring power of attorney and notify the attorney and the donor of that fact and the reasons for his or her view.

(5) An attorney whose application under section 60 is refused may, not later than 21 days after the date of issue of the notification of refusal by the Director, appeal the refusal to the court.

(6) Upon an appeal under *subsection (5)*, the court may—

(a) require the Director to register the instrument creating the enduring power of attorney,

(b) affirm the decision of the Director, or

(c) make such other order or declaration as it considers appropriate.

(7) Following registration of an instrument creating an enduring power of attorney, the Director shall send an authenticated copy of the instrument to the attorney and the donor.

(8) A document purporting to be a copy of instrument creating an enduring power of at-

torney which has been authenticated by the Director shall be evidence of the

contents of the instrument and the date upon which it was registered.".

Amendment agreed to.

Government amendment No. 182:

In page 58, between lines 17 and 18, to insert the following:

"Effect and proof of registration

62. (1) The effect of the registration of an instrument is that—

(a) no revocation of the enduring power of attorney by the donor shall be valid unless the court confirms the revocation under *section 65(6)*,

(b) no disclaimer of the enduring power shall be valid except on notice to the donor and with the consent of the court, and

(c) the donor may not extend or restrict the scope of the authority conferred by him or her in the enduring power and no consent or instruction given by the donor

after registration of the instrument shall, in the case of a consent, confer any right and in the case of an instruction, impose or confer any obligation or right on or

create any liability of the attorney or other persons having notice of the consent or instruction.

(2) *Subsection (1)* applies for so long as the instrument is registered whether or not the donor has for the time being capacity.".

Amendment agreed to.

Government amendment No. 183:

In page 58, between lines 17 and 18, to insert the following:

"Objections to registration

63. (1) Any of the persons referred to in *section 60(3)*, or any other person who appears to the Director to have sufficient interest or expertise in the welfare of the donor, may, no later than 5 weeks from the date on which notice is given in accordance with that provision, notify the Director that he or she objects to the proposed registration.

(2) An objection under subsection (1) shall be in such form and shall be accompanied by such fee as shall be prescribed by regulations made under *section 71* and may be made on one or more of the following grounds:

(a) that the enduring power of attorney or instrument creating it is not in accordance with *section 51*, *52*, *54* or *55*;

(b) that the notice requirement of *section 53* or *section 60(3)* was not complied with;

(c) that the donor does not lack capacity;

(d) that fraud, coercion or undue influence was used to induce the donor to execute the instrument creating the enduring power of attorney;

(e) that a false statement is included in the instrument creating the enduring power of attorney or the application to register the instrument;

(f) that the attorney is not a suitable person within the meaning of *section 51(6)*.

(3) Where the Director receives an objection in accordance with *subsection (2)*, made in the time period which has been specified in *subsection (1)*, he or she shall—

(a) review the objection,

(b) consult with the attorney and, where the Director considers it is appropriate to do so, the donor, and

(c) consult with such other persons as he or she considers relevant,

and shall—

(i) where he or she is of the view that the objection is not well founded, notify the person who made the objection of his or her view, provide reasons for that view and proceed, subject to this section, to register the instrument concerned, or

(ii) where he or she is of the view that the objection is well founded, notify the person who made the objection of his or her view and make an application to the

court for a determination on the matter and for a determination as to whether the enduring power should be registered.

(4) The court, pursuant to an application made to it under *subsection (3)(ii)*, may—

(a) require the Director to register the instrument creating the enduring power of attorney,

(b) declare that the instrument creating the enduring power of attorney should not be

registered, or

(c) make such other declaration or order as it considers appropriate.

(5) A person who makes an objection under *subsection (1)* may, not later than 21 days after the date of issue of the notification by the Director under *subsection (3)(i)*,appeal a decision to register the instrument concerned to the court.

(6) Upon an appeal under *subsection (5)*, the court may—

(a) require the Director to remove the instrument concerned from the Register,

(b) affirm the decision of the Director, or

(c) make such other declaration or order as it considers appropriate.”.

Amendment agreed to.

Government amendment No. 184:

In page 58, between lines 17 and 18, to insert the following:

"Register of enduring powers

64. (1) The Director shall establish and maintain a register (in this Part referred to as "the Register") of enduring powers of attorney.

(2) The Register shall be in such form as the Director considers appropriate.

(3) The Director shall make the Register available for inspection by—

(a) a body or class of persons prescribed by regulations made under *section 71* for this purpose, and

(b) any person who satisfies the Director that he or she has a legitimate interest in inspecting the Register.

(4) The Director may issue an authenticated copy of an enduring power, or part thereof, on the Register on payment of the prescribed fee to—

(a) a body or class of person prescribed by regulations made under *section 71* for this purpose, and

(b) a person who satisfies the Director that he or she has a legitimate interest in obtaining a copy.

(5) The Director shall keep a record of any body or person that has inspected the Register or received an authenticated copy from him or her.".

Amendment agreed to.

Government amendment No. 185:

In page 58, between lines 17 and 18, to insert the following:

"Revocation and variation of enduring power

65. (1) An enduring power of attorney may be varied or revoked by the donor, where the instrument creating the enduring power of attorney has not been registered and where the donor has capacity to make the variation or revocation, as the case may be.

(2) A variation or revocation under *subsection (1)* shall be done in such form as shall be prescribed.

(3) Subject to *section 52(3)*, a revocation or variation of an enduring power of attorney shall be signed by the donor and his or her signature shall be acknowledged by 2 witnesses and *section 52(4)* shall apply with the necessary modifications.

(4) A variation or revocation of an enduring power of attorney shall be accompanied by the following statements:

(a) by the donor, that he or she understands the implication of varying or revoking

the enduring power, as the case may be;

(b) by a legal practitioner that, after interviewing the donor and making any necessary enquiries, he or she—

(i) is satisfied that the donor understands the implication of varying or revoking, as the case may be, the enduring power, and

(ii) has no reason to believe that the variation or revocation, as the case may be, is the result of fraud, coercion or undue pressure on the donor;

(c) by a registered medical practitioner that in his or her opinion, at the time of the variation or revocation, as the case may be, the donor had the capacity to

understand the implication of the variation or revocation;

(d) by such other healthcare professional as shall be prescribed that in his or her opinion, at the time of the variation or revocation, as the case may be, the donor

had the capacity to understand the implication of the variation or revocation; and

(e) by the attorney, that he or she is aware of the variation or revocation and undertakes to act accordingly.

(5) Subject to *subsection (6)* a donor may, after an enduring power of attorney has been registered, revoke the enduring power where he or she has capacity to do so.

(6) A revocation referred to in *subsection (5)* is not valid unless an application is made to the court and the court is satisfied that—

(a) the donor has done whatever is necessary in law to effect an express revocation of the enduring power of attorney and had capacity at the time of the purported revocation, and

(b) the donor has given notice to the attorney of the revocation.".

Amendment agreed to.

Government amendment No. 186:

In page 58, between lines 17 and 18, to insert the following:

"Disclaimer by attorney

66. (1) An attorney may disclaim an enduring power of attorney which has not been registered subject to his or her giving notice of such disclaimer, to the donor.

(2) An enduring power of attorney which has been registered may be disclaimed by an attorney only with the consent of the court.".

Amendment agreed to.

Government amendment No. 187:

In page 58, between lines 17 and 18, to insert the following:

"Reports by attorney

67. (1) An attorney under an enduring power of attorney which confers authority in relation to property and affairs shall, within 3 months of the registration of the instrument appointing him or her as attorney, submit to the Director a schedule of the donor's assets and liabilities and a projected statement of the donor's income and expenditure.

(2) An attorney under an enduring power of attorney which confers authority in relation to property and affairs shall keep proper accounts and financial records in respect of the donor's income and expenditure and shall—

(a) submit such accounts and records as part of a report to the Director under this section, and

(b) make available for inspection by the Director or by a special visitor, at any reasonable time, such accounts and records.

(3) An attorney shall, within 12 months after registration of the instrument appointing him or her as attorney, and thereafter at intervals of not more than 12 months, prepare and submit to the Director a report in writing as to the performance of his or her functions as such attorney during the relevant period.

(4) Every report submitted to the Director pursuant to this section shall be in such form as shall be prescribed by regulations made under *section 71* and shall include details of all costs, expenses and remuneration paid to and claimed by the attorney in the relevant period together with such other matters as are prescribed.

(5) An attorney who has restrained the donor at any time during the relevant period shall include in the report details of each such restraint and the date on which, and the place where, such restraint occurred.

(6) Where an attorney fails to submit a report in accordance with this section or submits an incomplete report, the Director shall notify the attorney of that failure or

incompleteness and give him or her such period of time as is specified in the notification to comply or submit a complete report.

(7) Where an attorney fails to comply with a notification under *subsection (6)*, the Director shall—

(a) in the case of the submission of an incomplete report and following any necessary enquiries to satisfy himself or herself that the report is substantially in accordance

with this section and regulations made under *section 71*, accept the report as if it were in compliance with this section and the relevant regulations, or

(b) make an application to the court for a determination as to whether the codecision-maker should continue as attorney for the donor.

(8) Pursuant to an application to it under *subsection (7)(a)*, the court may determine that an attorney who has not complied with this section shall no longer act as attorney for the donor concerned.

(9) In this section "relevant period" means the period of time to which the report relates which shall be the period of time between the date of registration of the instrument creating the enduring power of attorney or the date of submission of the previous report, as the case may be, and the date immediately preceding the date of submission of the report concerned.

(10) This section shall apply to an attorney under the Act of 1996 where, by the date of commencement of this Part, an application to register the instrument which appointed him or her under that Act has not been made under that Act.

(11) Insofar as this section applies to an attorney under the Act of 1996—

(a) the reference to "functions" in this section shall be construed as a reference to that person's duties and obligations as construed in accordance with that Act, and

(b) the reference to "date of registration of the instrument creating the enduring power of attorney" shall be construed as a reference to the date on which the

enduring power under the Act of 1996 was registered in accordance with that Act.

(12) The reference to "attorney" in *sections 78* and *79* shall, for the purposes of this section, be construed as including an attorney under the Act of 1996.

(13) The reference to "relevant person" in *sections 78*, *79* and *82* shall, for the purposes of this section, be construed as including a donor under the Act of 1996.".

Amendment agreed to.

Government amendment No. 188:

In page 58, between lines 17 and 18, to insert the following:

"Complaints in relation to attorneys

68. (1) A person may make a complaint in writing to the Director concerning one or more of the following matters:

(a) that an attorney has acted, is acting, or is proposing to act outside the scope of his or her functions as specified in the instrument creating the enduring power of attorney;

(b) that an attorney is not a suitable person within the meaning of *section 51(6)*;

(c) that fraud, coercion or undue pressure was used to induce a donor to appoint an attorney.

(2) A person may, in respect of an attorney under the Act of 1996, make a complaint in writing to the Director concerning one or more of the following matters:

(a) that an attorney under the Act of 1996, is acting or is proposing to act outside the scope of the enduring power under the Act of 1996;

(b) that an attorney under the Act of 1996 is unable, for whatever reason, to perform his or her duties and obligations as construed in accordance with that Act;

(c) that fraud, coercion or undue pressure was used to induce a donor under the Act

of 1996 to appoint an attorney under the Act of 1996.

(3) Following the receipt of a complaint under subsection (1) or (2), the Director shall carry out an investigation of the matter which is the subject of that complaint and—

(a) where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to a matter specified in the

complaint, or

(b) where he or she is of the view that the complaint is not well founded, notify the person who made the complaint of that view and provide reasons for that view.

(4) A person who receives a notification under *subsection (3)(b)* may, not later than 21 days after the date of issue of the notification, appeal a decision of the Director that the complaint is not well founded to the court.

(5) The Director may, notwithstanding that no complaint has been received, on his or her own initiative carry out an investigation and make an application to the court for a determination in relation to any matter specified in *subsection (1)* or *(2)*.

(6) The court may—

(a) pursuant to an application to it under *subsection (3)(a)* or *(5)*, or

(b) pursuant to an appeal under *subsection (4)*,

make a determination in relation to a matter specified in *subsection (1)* or *(2)* and may, if it considers it appropriate, determine that—

(i) an attorney shall no longer act as such in relation to the donor concerned, or

(ii) an attorney under the Act of 1996 shall no longer act as such in relation to a donor under the Act of 1996.

(7) The reference to "attorney" in *sections 78* and *79* shall, for the purposes of this section, be construed as including an attorney under the Act of 1996.

(8) The reference to "relevant person" in *sections 78*, *79* and *82* shall, for the purposes of this section, be construed as including a donor under the Act of 1996.".

Amendment agreed to.

Government amendment No. 189:

In page 58, between lines 17 and 18, to insert the following:

"Applications to court

69. (1) Where the Director makes an application to the court for a determination on whether the instrument creating an enduring power of attorney should be registered, the court may, notwithstanding that—

(a) the power does not comply with *section 51* or *section 52*, or

(b) the application to register an enduring power was not in accordance with *section 60*,

register the instrument where it is satisfied that—

(i) the donor intended the power to be effective during any period when the donor lacks capacity,

(ii) the power was not executed as a result of fraud or undue pressure,

(iii) the attorney is suitable within the meaning of *section 51(6)* to be the donor's attorney, and

(iv) it is desirable in the interests of justice to register the enduring power.

(2) In determining whether an attorney is suitable within the meaning of *section 51(6)*, the court, in addition to any other matters which it considers relevant shall have regard to—

(a) the relationship and degree of connection between the donor and the attorney,

(b) the degree of involvement which will be required on the part of the attorney in the care of the donor,

(c) the willingness of the attorney to carry out his or her functions under the enduring power, and

(d) any conflict of interest which may arise.

(3) Where an instrument creating an enduring power of attorney has been registered, the court may, whether on application by the donor, the attorney, the Director or an interested party—

(a) determine any question as to the meaning or effect of the power,

(b) give directions with respect to—

(i) a relevant decision relating to the personal welfare of the donor made or about to be made by the attorney,

(ii) the management or disposal by the attorney of the property and affairs of the donor,

(iii) the remuneration or expenses of the attorney, whether or not in default of or in accordance with any provision of the enduring power, including directions

for the repayment of excessive, or the payment of additional, remuneration,

and

(c) consent to a disclaimer by the attorney of enduring power.

(4) Where the court gives a determination under *subsection (3)(a)*, a direction under *subsection (3)(b)* or a consent under *subsection (3)(c)*, it shall cause the Director to be notified of such direction or consent and the Director shall monitor the giving of effect by the

attorney to such direction or consent as the case may be.".

Amendment agreed to.

Government amendment No. 190:

In page 58, between lines 17 and 18, to insert the following:

"Removal of instrument from the Register

70. (1) The Director shall remove from the Register an instrument creating an enduring power of attorney where—

(a) there has been a revocation in accordance *section 65(6)*, or

(b) subject to *subsection (2)*, the attorney appointed under the instrument becomes disqualified.

(2) Where there is more than one attorney appointed under an enduring power of attorney or where the donor has specified a person who shall act as attorney for him or her in the event that the attorney on whom the authority is conferred dies or is unable to act or is disqualified, then in the circumstances described in *subsection (1)*, the Director shall note on the Register in connection with the power concerned the revocation or disqualification, as the case may be.".

Amendment agreed to.

Government amendment No. 191:

In page 58, between lines 17 and 18, to insert the following:

"Regulations

71. The Minister, having regard to the requirements of this Part, shall prescribe by regulations the following matters:

(a) the form of an instrument creating an enduring power of attorney;

(b) the form of notice under *section 53* to register an instrument creating an enduring power of attorney;

(f) the form of an objection under *section 63(2)* to the registration of an instrument creating an enduring power of attorney;

(g) the form of variation or revocation under section *65(2)* of an enduring power of attorney;

(h) the bodies or classes of persons under sections *64(3)* and *(4)* who may inspect the Register and receive an authenticated copy of an enduring power of attorney;

(i) the fees to be paid in connection with—

(i) an application to register an enduring power of attorney,

(ii) an objection to an application to register an enduring power of attorney,

(iii) the issue of an authenticated copy of an enduring power of attorney.".

Amendment agreed to.

Government amendment No. 192:

In page 58, between lines 17 and 18, to insert the following:

"Offences in relation to enduring powers of attorney

72. (1) A person who uses fraud, coercion or undue influence to force another person to make, vary or revoke an enduring power of attorney commits an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.

(2) A person who, in an instrument creating an enduring power of attorney, in an application for registration of an enduring power of attorney, or in connection with

such an application, makes a statement which he or she knows to be false in a material particular commits an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding 2 years, or both.

(3) The reference in *subsection (1)* to coercion or undue influence includes any case where a person's access to, or continued stay in, a designated centre or mental health facility, is contingent (whether in whole or in part) on the person having to, or being led to believe that he or she has to, create, vary or revoke an enduring power of attorney.".

Amendment agreed to.

Government amendment No. 193:

In page 58, between lines 17 and 18, to insert the following:

"Transitional provisions

73. (1) Subject to *sections 67*, *68(2)*, *68(3)*, *68(4)*, *68(5)*, *68(6)* and *68(7)*, this Part shall not apply to—

(a) an enduring power of attorney under the Act of 1996,

(b) an attorney under the Act of 1996, and

(c) a donor under the Act of 1996.

(2) From the date of commencement of this Part—

(a) a person shall not create an enduring power of attorney under the Act of 1996,

and

(b) the Act of 1996 shall not apply to an enduring power of attorney created after that date.".

Amendment agreed to.

Sections 50 to 58, inclusive, deleted.

SECTION 59

Question proposed: "That section 59 be deleted."

Senator Trevor Ó Clochartaigh: This goes back to an issue we discussed earlier. It is about advance health care directives. The Minister said she would come back to this issue. I understand sections 59 and 60 relate to it. I do not know if the Minister of State wishes to discuss it now or later, but I want to raise it because it is proposed to delete the section that deals with it. I wish to raise those concerns that I expressed earlier about the provisions among health service users who believe their human rights will not be respected on the same basis as others. I understand there are up to 400 individuals who are lobbying on this issue and specifically affected by it. My understanding is that ten groups met the Department. I have raised this issue, which is the source of very serious concern.

I understand the Minister of State has said she might not agree with the issue, but as she has done with previous issues, I have noted that she has listened to almost all the amendments so far and is at least willing to take it on board. Without going over what I said earlier, there is the same issue. There are very serious concerns about advance health care directives to the effect that if somebody puts something in an advance health care directive about treatments they do not wish to have, it will be recognised in the competencies. I ask the Minister of State to take another look at this issue also.

Deputy Kathleen Lynch: The Senator and I have known each other for very long and I am not in the habit of saying I will do something when I will not. In this instance, we have listened very carefully. I have read material and the officials have engaged in extensive listening exercises. This is specifically about people with mental health difficulties. I still continue to assert that this is not the right legislation for it. We can have the debate as to whether we should have mental health legislation, although it is a little late in the evening for it because that is a different argument. Should it be combined with general health legislation? That is an issue for another day.

I am not saying people with a mental health difficulty should not have advance health care directives. Far from it, I have always believed they should have them, but that is very specific in respect of a particular condition and that condition is dealt with under different legislation. That is really the point I am making. I am not convinced by the arguments otherwise. It is not because I have not listened because I have. I have read everything that has come to us. The officials have met for an extensive period of time. All of the advice is that the issue should be dealt with under the Mental Health Act. We will deal with it under the revised Mental Health legislation. Advance health care directives will be included also.

Senator Trevor Ó Clochartaigh: I welcome the Minister of State's response, but there are

people who believe the Mental Health Act is being used as an excuse to exclude advance health care directives from the Bill. They believe the deletion of sections 59 and 60 should allow for that issue to be addressed. An election is pending and legislation has been coming through the Houses at a fast pace, but at the same time there are concerns that the change might not happen and this issue will not be addressed until further down the road. That is the reason I am being asked to raise the matter with the Minister of State. If sections 59 and 60 are being deleted, why can we not include the measure into this Bill to copperfasten it? If it is the Minister of State's belief that it needs to be addressed, it should be included in the Bill. I will not labour the point, but I have been asked to raise it.

Deputy Kathleen Lynch: I understand that. I know that there is an election coming. There is no avoiding it, but I do not think it is a good enough reason for doing something that I do not believe should happen. We have the general scheme of the new mental health Bill. There was a comprehensive review and the legislation will be introduced. I accept that it will not be done in this Government's term, but it will be addressed because it is being worked on. These things do move along. A change of Government does not change these things and they progress. I do not believe the measure should be included in the Bill. It could be more comprehensively dealt with in the mental health Bill. I might be wrong, but that is my belief.

Senator Trevor Ó Clochartaigh: We might consider this issue again. I reserve the right to table Report Stage amendments to that effect.

Question put and agreed to.

Sections 60 to 64, inclusive, deleted.

SECTION 65

An Cathaoirleach: Amendments Nos. 194, 196 to 198, inclusive, 200, 204 to 210, inclusive, 212, 214 to 231, inclusive, 233 and 234 are related and may be discussed together.

Senator Marie Moloney: Amendment No. 213 has already been discussed with the amendments in group 4.

An Cathaoirleach: In that case we will take amendment No. 213 out of the group. Is that agreed? Agreed.

Government amendment No. 194:

In page 73, line 22, to delete "*sections 67* and *68*" and substitute "*section 67*".

Deputy Kathleen Lynch: God bless Senator Marie Moloney's eyesight.

Senator Marie Moloney: I am following the debate.

Deputy Kathleen Lynch: Amendments Nos. 194, 196 to 198 inclusive, 200, 204 to 210 inclusive, 212, 214 to 231 inclusive, 233 and 234 are all related to the provisions on advance health care directives in Part 8. The proposed amendments do not involve any substantive change to the underlying policy of these provisions. Rather, they are all minor technical amendments to refine the language in the sections in question in order to clarify more precisely the intention of the relevant provisions on advance health care directives or to ensure greater consistency with similar provisions in other Parts of the Bill.

Amendment agreed to.

Section 65, as amended, agreed to.

Section 66 agreed to.

SECTION 67

An Cathaoirleach: Amendments Nos. 195, 201 to 203, inclusive and 211 are related and may be discussed together.

Senator Jim Walsh: I ask that amendment No. 211 be removed from the grouping. The other amendments cover constitutional matters, while amendment No. 211 deals with an issue of conscience. The amendments are in no way connected or related.

An Cathaoirleach: We will discuss amendments Nos. 195 and 201 to 203, inclusive. Is that agreed? Agreed.

Senator Rónán Mullen: I move amendment No. 195:

In page 74, line 34, after "directive" to insert the following:

"other than a request for the provision or continuance of artificially delivered nutrition and hydration".

I did not have an opportunity to welcome the Minister of State and I do so now. Perhaps the Cathaoirleach might assist me with a matter. Senator David Norris and I had intended to move Senator Feargal Quinn's amendment No. 23. We did not get to do that, but it does seem that the issues he raised are important in terms of the Irish Kidney Association or recognised donor registration bodies. Does my adverting to the issue at this point act in ease of his reintroducing the matter on Report Stage? I realise we did not move the amendment and I am anxious that it will not be impossible to move it on Report Stage for want of a discussion on Committee Stage. Do I understand the procedures of the House correctly? I am anxious that Senator Feargal Quinn not miss his opportunity to raise the issue on Report Stage.

An Cathaoirleach: To what amendment does the Senator refer?

Senator Rónán Mullen: Amendment No. 23. I had intended to move it on Senator Feargal Quinn's behalf, as had Senator David Norris.

An Cathaoirleach: The amendment was discussed.

Senator Rónán Mullen: I am aware of that.

An Cathaoirleach: It was not moved.

Senator Marie Moloney: We have been here since 5 p.m.

Senator Rónán Mullen: I have been following the proceedings carefully.

An Cathaoirleach: As the amendment was not moved, it cannot be introduced on Report Stage.

Senator Rónán Mullen: It may be. My understanding is that if an issue arises from a

discussion on Committee Stage, it can be raised on Report Stage. I hope what I have said will suffice as such a discussion because the issues Senator Feargal Quinn raised were very important and it is important that they be discussed. He raised the issues in the amendment and I raise them now.

An Cathaoirleach: Amendments Nos. 21 and 23 were not moved.

Senator Rónán Mullen: What I am asking you is, whether by virtue of adverting to it now, it will be possible for Senator Feargal Quinn to move the amendment on Report Stage because I am now bringing it into discussion on Committee Stage?

An Cathaoirleach: The section has been agreed to.

Senator Rónán Mullen: I know that the section has been agreed to, but I am bringing forward the issue at this point and asking whether Senator Feargal Quinn will be in a position to table the amendment on Report Stage.

Senator Marie-Louise O'Donnell: What page is it on?

An Cathaoirleach: Senator Rónán Mullen is too late in bringing up the amendment.

Senator Marie-Louise O'Donnell: What page is it on?

Senator Rónán Mullen: I am just asking the question whether, by virtue of raising it now and touching on the importance of the issue during Committee Stage, Senator Feargal Quinn will, therefore, be in a position to table the amendment on Report Stage.

An Cathaoirleach: The Senator cannot raise the amendments at this stage.

Senator Marie-Louise O'Donnell: He is not raising the amendment. He is referring back to it.

An Cathaoirleach: The amendments cannot be raised at this stage-----

Senator Rónán Mullen: I will move on.

An Cathaoirleach: -----but they can be tabled again on Report Stage.

Senator Rónán Mullen: It was amendment No. 23 on page 3 of the amendment list. It was not moved. My query-----

Senator Marie-Louise O'Donnell: The amendment was not discussed at any level and it was not even part of an adjacent discussion.

An Cathaoirleach: We have moved past that section when it could have been discussed.

Senator Rónán Mullen: I do not suggest we debate it, except to the extent I have now discussed it. What I am wondering is whether that will suffice for the purpose of Senator Feargal Quinn bringing it up again on Report Stage.

An Cathaoirleach: No, the Senator cannot discuss it now.

Senator Marie-Louise O'Donnell: I would like to go back to a Bill that was discussed four weeks ago. May I do that?

An Cathaoirleach: We are dealing with a group of amendments.

Senator Rónán Mullen: I thank all of the experts on Standing Orders present.

Amendment No. 195 amends section 67 on page 74 of the Bill which currently provides that an advance health care directive is legally binding only when it relates to the directive maker's refusal of treatment. Section 67(3)(b) states a request for a specific treatment is not legally binding. This means that every decision against life, so to speak, no matter how unwise or unsound - to use the terms employed in section 66(2) - is granted greater legal protection than every decision in favour of life, even where the directive maker simply seeks to have food and water provided through artificial means. Advance health care directives are inapplicable in the administration of basic care but, according to section 68, artificially-delivered nutrition and hydration do not constitute basic care.

Many Irish people very reasonably hold that the provision of food and water, regardless of how they are delivered, is part of basic care. No doubt at least some of those people would want their advance health care directives to reflect that very reasonable conviction on their part. While the decision in the 1996 ward of court case probably precludes basic care from being defined in the Bill as incorporating artificially-delivered nutrition and hydration, that is not really the point because it does not prevent the Oireachtas from treating advance health care directives which request the provision of food and water as legally binding. The Bill, as it stands, clearly favours life-ending wishes over life saving wishes. Denying citizens the right to make a health care directive requiring the provision of food and water, whether delivered artificially or naturally, undermines their right to life and freedom of conscience. This is not a constitutional claim as such - one might argue that it is a moral claim - but constitutionally there must be a question mark over the Bill on this point, however speculative it is to argue. It seems odd that people are not supported by the legislation in seeking to vindicate their right to life by the provision artificially of food and hydration. I would not claim to be definitive, but I argue that this is constitutionally questionable.

Some might argue that to provide an advance health care directive which mandates the provision artificially of food and hydration in a certain situation could put huge pressure on medical resources, but I do not think we want to go down the road of medical resource arguments.

Deputy Kathleen Lynch: Then why is the Senator doing that?

Senator Rónán Mullen: The amendment I propose is restricted to requests for artificially delivered nutrition and hydration. With regard to any possible objection that this would involve unnecessary burdens for the patient towards the end of his or her life, it would be entirely possible to add necessary qualifiers to the provision I propose. For example, it could be indicated that the guarantee to continue or provide artificially delivered nutrition and hydration would be inapplicable in the final stages of a terminal illness. The proposal is to have restricted application, but I would be grateful if the Minister of State would consider it.

Senator Jillian van Turnhout: I wish to speak to amendment No. 203 which proposes to delete section 68(7). Advance health care directives are a welcome addition to the Bill and will provide a way for people to articulate their will and preference for a later date in which their views may become unclear or unknown. This can be useful for treatment decisions in end of life cases, mental health crises and dealing with age related disabilities. A coalition of organisations in the fields of mental health, disability and older people have consistently called for

advance health care directives to apply equally in the general health and mental health contexts. Too often mental health issues are seen as separate and different and the same rights and protections are not extended to mental health service users as they are to others. The addition of section 68(7) to the Bill has, therefore, come as a surprise to me since it effectively excludes the use of advance health care directives when a person is involuntarily detained and treated under the Mental Health Act 2001. The provision is unfortunate because it is precisely when people-----

Senator Jim Walsh: On a point of order, the Senator is not speaking to the amendment.

Senator Jillian van Turnhout: I am speaking to amendment No. 203.

Senator Jim Walsh: The Senator is speaking to the section.

Senator Jillian van Turnhout: No, I am speaking to amendment No. 203.

An Cathaoirleach: Senator Jillian van Turnhout is speaking to the amendment.

Senator Jim Walsh: This would cause it to be two sections.

An Cathaoirleach: Senator Jillian van Turnhout is speaking to her amendment.

Senator Jillian van Turnhout: Perhaps if Senator Jim Walsh was to check, he would see that I am talking about section 68(7). I am speaking to amendment No. 203.

The provision is unfortunate because it is precisely when people are treated under the Mental Health Act 2001 that they will wish to have an advance health care directive to take effect. The use of differential standards for treatment decisions during involuntary detention perpetuates stigma and limits the use of advance health care directives in mental health care settings. Stigma and discrimination have been identified as the greatest barriers to recovery. Even if advance health care directives are legally binding during voluntary admission, the threat of coercion limits the impact of decisions.

A national study by Irish mental health service users has found an urgent need for legally binding advance health care directives during involuntary detention to promote respect for treatment preferences. Many clinicians assume that if advance health care directives are made binding in the mental health context, hundreds of people will make blanket refusals of all medical treatment, yet there is no evidence to support this. Advance health care directives can actually increase treatment engagement rather than increase refusals. In an Irish national survey the majority of mental health service users stated they would be more willing to adhere to treatment if they had an advance health care directive, suggesting the measure may lead to an increase in treatment engagement rather than refusals. The international evidence also suggests this. The fear that individuals would refuse all treatment, or be left untreated, often results in limitations on advance health care directives during involuntary detention. The research suggests mental health service users are more interested in using advance health care directives to express a preference for a particular treatment over others, rather than using the directive to refuse all treatments. To make a blanket denial of these preferences and concerns when a person is involuntarily detained, at precisely the moment such directives become important, is unjust. That is why I suggest amendment No. 203.

I will now turn to amendment No. 201. I am very surprised and concerned that an informed and considered decision to end life-sustaining treatment should be viewed as equivalent to a suicide attempt. To put these issues together is unbelievable and, having worked on the Joint

Committee on Health and Children's Report on End of Life and Palliative Care in Ireland and having looked at the issue extensively, I find it objectionable.

Senator Trevor Ó Clochartaigh: I support amendment No. 203 proposed by Senators Jillian van Turnhout and Katherine Zappone. I have outlined my reasons previously which are similar in vein to those in respect of advance health care directives. There are concerns that the impending legislative provisions on advance health care directives discriminate against anybody who may experience mental ill health. Given that one in four Irish people experiences some form of mental health difficulty during their his or her, this issue could apply to any of us. It is considered by a number of experts that the proposed legislation blatantly excludes the use of legally binding advance health care directives in the treatment choices of those subject to involuntary detention under the Mental Health Act 2001. These experts believe it is clearly discriminatory under the EU Convention on the Rights of Persons with Disabilities which the Government is planning to ratify in the near future.

The use of differential standards reinforces stigma and the notion that the preferences of individuals with mental health conditions are not respected on an equal basis with others. There were 80,457 admissions to Irish psychiatric units and hospitals in 2013, of which 11% were involuntary. Similar legislation in the United States was litigated as discriminatory under the Americans with Disabilities Act of 1990 in the case of Hargrave *v*. Vermont in 2003. After filing a legal challenge against differential treatment in the United States Court of Appeals Ms Nancy Hargrave asserted:

> It seems fundamentally unfair that I choose or refuse chemotherapy which is saving my life, but I do not have the same right to choose or refuse psychiatric medication.

The findings of a national study published in *The Journal of Ethics* on medicine and public health suggest there is an urgent need for legally binding advance health care directives for those who have been involuntarily detained under the mental health legislation in order to provide a sense of control over future treatment, tenhance recovery and promote trust and respect. There is a compelling argument. The Minister of State has said she has looked at the issue in great detail. There seems to be quite a body of evidence internationally that supports the call. There are many people in Ireland also making that call and it warrants further debate and thought before Report Stage. I support the call to have it looked at again.

10 o'clock

Senator John Gilroy: Senator Jillian van Turnhout's amendment has definite merit. I have worked with the mental health services for nearly 30 years.

It is anomalous to preclude a person suffering from major mental illness from the safety of a health care directive. Major, enduring and relapsing mental illnesses are often accompanied by loss of insight by the person suffering from the condition and it is at that very moment pre-planning by that person is a human rights issue. In all other areas of the mental health services we try to encourage a collaborative and team approach which includes the patient in decision-making. At a time when the patient is least able to collaborate in his or her own treatment we preclude him or her from the protection of the directive. I am very interested in hearing the Minister of State's response to Senator Jillian van Turnhout's worthy amendment.

Deputy Kathleen Lynch: I thank the Senators.

An Cathaoirleach: The Minister of State is in possession, but in keeping with the order of

the day, we must report progress.

Progress reported; Committee to sit again.

An Cathaoirleach: When is it proposed to sit again?

Senator Maurice Cummins: At 10.30 a.m. tomorrow.

The Seanad adjourned at 10.05 p.m. until 10.30 a.m. on Thursday, 10 December 2015.