



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Máirt, 15 Nollaig 2015

Tuesday, 15 December 2015

Chuaigh an Cathaoirleach i gceannas ar 11.30 a.m.

Machnamh agus Paidir.
Reflection and Prayer.

Business of Seanad

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

The need for the Minister for Health to liaise with the HSE to secure the appointment of a director of research, which would boost the profile of medical research in this country and ensure it was given the priority it needed.

I have also received notice from Senator David Cullinane of the following matter:

The need for the Minister for Social Protection to outline the process in place to support former Waterford Crystal workers who are not members of Unite, who left Waterford Crystal prior to 1992 and previously settled with the Irish Pensions Trust in 2009 but who believe they are due compensation following the recent EU ruling on accessing compensation.

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

The need for the Minister for Justice and Equality, in view of the perception that there is an increased threat to Ireland from within the Middle East, to outline the security arrangements that have been made in Ireland.

I regard the matters raised by the Senators as suitable for discussion. However, as they have all withdrawn their Commencement matters, the sitting is suspended until 12.30 p.m.

Sitting suspended at 11.35 a.m. and resumed at 12.30 p.m.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Appropriation Bill 2015 [Certified Money Bill] - all Stages, to be taken at 1.45 p.m. and brought to a conclusion not later

than 2.45 p.m. by one question which shall be put from the Chair and which shall, in relation to recommendations, include only those set down or accepted by the Government, with the time allocated for Second Stage contributions by group spokespersons not to exceed six minutes, the contributions of all other Senators not to exceed four minutes and the Minister to be called on to reply for five minutes not later than 2.40 p.m.; No. 2, motion for earlier signature of the Appropriation Bill 2015, to be taken without debate at the conclusion of No. 1; No. 3, Private Members' business, Seanad Electoral Reform Bill 2013 - Committee and Remaining Stages, to be taken at 3 p.m. and brought to a conclusion not later than 3.30 p.m. by one question which shall be put from the Chair; No. 4, Health Insurance (Amendment) Bill 2015 - Committee and Remaining Stages, to be taken at 3.30 p.m. and brought to a conclusion not later than 4 p.m. by one question which shall be put from the Chair; No. 5, Legal Services Regulation Bill 2011 - amendments from Dáil Éireann, to be taken at 4 p.m. and conclude not later than 4.30 p.m.; and No. 6, Assisted Decision-Making (Capacity) Bill 2013 - Report and Final Stages, to be taken at 4.30 p.m. and brought to a conclusion not later than 7.30 p.m. by one question which shall be put from the Chair and which shall, in relation to amendments, include only those set down or accepted by the Government. On No. 1, we have allocated one hour for the debate on the Bill as all Stages were completed in the other House in less than 40 minutes.

Senator Paschal Mooney: It is an understatement to say the ongoing images being transmitted on our television screens on the flooding of the River Shannon, from Lough Allen right down to, and more acutely on, the third lake on the Shannon, Lough Derg, are raising considerable concern. One has only got to look at the images coming out of Athlone and further down river, and in south Galway, at the devastation that has been caused. The IFA yesterday indicated that a further 10,000 acres of farmland have now been flooded. It is past time that the Government took remedial action. The multi-agency approach should be abandoned immediately. My party would propose that there would be one co-ordinating agency set up, similar to what has happened in Holland where they got rid of all the agencies involved with their flooding problems, and that the Taoiseach should chair that co-ordinating body as a matter of urgency. I am, therefore, proposing an amendment to the Order of Business that the Minister for the Environment, Community and Local Government, Deputy Alan Kelly, come before the House to outline exactly the Government's proposals. The message, whatever it is in Government Buildings, is not getting through to the general population and it certainly is not getting through to the business people and residents of Leitrim village, Carrick-on-Shannon, Athlone and all down along the river as a result of what is happening with the ESB and the weir at Parteen. All of this is affecting the entire country - this is not a sectional issue - and in any other country, it would be deemed a national crisis. It is heartbreaking to see the interviews with residents in the most beautiful of homes and the water damage that is being done that will probably result in the houses never being restored to their former glory.

I want to get some indication from the Leader as to when the Minister for Justice and Equality will come before the House because it would afford an opportunity to highlight the dramatic increase in crime in Dublin, coupled with the Government's policy of slashing Garda numbers which has resulted in many living in fear in their own homes, in businesses under continuous threat of theft and anti-social behaviour on the streets. The most recent crime statistics show burglaries in Dublin were up almost 15%, year-on-year, rape and sexual assaults up 15.4% and public order offences up 8.4%.

We, on this side of the House, would submit that this cannot continue. In fact, Dublin has almost 700 fewer gardaí this year compared to 2010. Fianna Fáil will reverse this unimaginable

tive and dangerous policy of the Government over the past five years. We will not only restore the totality of the Garda force to 14,000 but also establish a dedicated Garda public order unit for the city centre to combat drug dealing and anti-social behaviour on the capital's main commercial streets. When will there be an opportunity for us to outline these policies in more detail in the House before the Minister for Justice and Equality?

Senator Ivana Bacik: We have had the Minister for Justice and Equality in this House on a wide variety of legislation in the past few weeks, and this week is no exception. The Leader will respond in terms of the justice debates, but I merely note that we will have the Minister in tomorrow on the Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill, the Prisons Bill 2015 and the Criminal Justice (Burglary of Dwellings) Bill, all of which are being taken tomorrow. In light of the recent study showing the 70% recidivism rate for burglary offences, our debate on the burglary Bill will be even more welcome. Many of us spoke on that Bill last week when it came before the House on Second Stage.

Senator Paschal Mooney: The Government is making it easier.

Senator Ivana Bacik: It is a targeted Bill aimed, in particular, at tackling high recidivism rates for burglary offences. It is ironic to hear Fianna Fáil speaking about reversing Government policy. Government policy is to recruit more gardaí. There is more recruitment now for gardaí. Let us not forget it was Fianna Fáil in government that stopped recruitment.

Senator Paschal Mooney: Was the Senator listening to me? I stated there are 700 fewer gardaí in Dublin than there was last year.

Senator Ivana Bacik: A Leas-Chathaoirligh, I did not interrupt Senator Paschal Mooney.

Senator Paschal Mooney: I am interrupting Senator Ivana Bacik because she is not listening. The Senator is merely doing the Government's spin.

An Leas-Chathaoirleach: The Senator should allow Senator Ivana Bacik to address the Chair.

Senator Paschal Mooney: There are 700 fewer gardaí on the streets of Dublin where the Senator lives.

An Leas-Chathaoirleach: Senator Ivana Bacik to continue, without interruption.

Senator Ivana Bacik: It is Fianna Fáil which began the practice of putting a freeze on Garda recruitment. Let us not forget that.

Senator Paschal Mooney: Why does the Senator not answer that?

Senator Ivana Bacik: I commend the incredible work being done by so many, both in a professional capacity and in a voluntary capacity, in terms of the flood defences around the country. It is very moving to see the incredible work being done by local councils, the Defence Forces, local businesses and local communities in seeking to lessen the impact of the flooding. I know that all would wish to join me in commending their great work.

It is welcome that the nurses strike has been called off. I welcome also the jobs announcements - an issue we often overlook - of recent days. Hundreds of jobs have been announced this morning and yesterday morning.

I welcome the news that at today's Cabinet meeting a change was agreed to the current marriage exemption for children under the age of 18. This change has been agreed on foot of a motion raised in this House by me, on behalf of Labour Party Senators, proposing the motion, and seconded by Senator Jillian van Turnhout who had also raised the issue. We had tabled this motion because of concerns arising that a large number of exemptions were being granted to the general rule that children cannot enter marriages in Ireland. We asked the Minister on 25 June 2014 to look at sections 31 and 33 of the Family Law Act 1995 with a view to ending the practice of allowing exemptions from the rule that parties to a marriage must be over the age of 18 years. On that date we set out our serious concerns about the possibility of coercion or of children being forced into marriage at a young age. We noted that approximately 30 weddings had been contracted in Ireland in 2012 where either or both parties were under the age of 18 years.

Quite a number of exemptions are being granted in the High Court. These applications are carried out *in camera*. We do not have any data on who is applying or the context of the applications but we did refer to a High Court judgment from 2013 where Mr. Justice McMenamin had referred, with concern, to the practice of young people being coerced in some way into marriage contracts. I am delighted the Minister for Social Protection, Deputy Joan Burton, who, on foot of our motion, set up an interdepartmental working group, has brought before the Cabinet a proposal to end the practice. It is a good day for the Seanad to see a change in policy as a result of a motion tabled in this House. I commend Labour Women who first raised this as an issue with me and, Senator Jillian van Turnhout, who had also raised the issue. It is an important child protection issue and a good step forward for children's rights.

Senator Katherine Zappone: On my way to work this morning I passed Firhouse, an area of Tallaght, and I thought that is where Ibrahim Halawa should be still celebrating his 20th birthday with his family. Instead Ibrahim Halawa spent his 20th birthday in the notorious Wadi Al-Natrun prison in Egypt in a squalid, overcrowded cell where he is locked up in inhuman conditions. He lacks medical treatment. Letters from him describe regular beatings, being stripped naked in front of inmates and guards and being hit with metal chains. There is insufficient access to daylight and exercise, and journalists report that a recent letter stated that he is merely waiting in a queue for "my turn" on death row. His family claims he has fainted on four occasions in recent weeks as his condition weakens. The Irish citizen, Ibrahim Halawa, has spent more than 800 days in pre-trial detention in Egypt for allegedly taking part in an anti-Government protest in Cairo, though his lawyers say there is a lack of evidence on these charges. I spoke with them this week.

In the past 800 days there have been continual adjournments of Ibrahim Halawa's trial. Today was the tenth time he was to be brought to trial. On the ninth time the trial was adjourned due to a judicial ruling that all 494 defendants must be present for the trial to proceed, a couple of them were not present due to illness. Today we have just received word that they have adjourned the trial again. It is reported that this is because one of the 494 defendants was not in court today. It has now been postponed until next Saturday, 19 December.

I ask the Leader to convey to the Minister for Foreign Affairs and Trade, Deputy Charles Flanagan, that I and no doubt many other Senators are deeply concerned for Ibrahim Halawa's welfare and that more must be done now to secure his release. Further action is required. It is time to secure Ibrahim Halawa's freedom and bring him home.

Senator Jim D'Arcy: I welcome the €1 million investment in Ireland's Ancient East to complement what has already been allocated and, in particular, the €50,000 for Louth Ad-

ventures. Ireland's Ancient East stretches from Carlingford to Cork and, much like the Wild Atlantic Way, it seeks to give visitors a unique experience with 5,000 years of Irish history. In the next round of funding, I would like to see the Táin saga of Cúchulainn, the greatest saga in Europe, and the images it evokes developed. Cúchulainn, who was from the Castletown area of Dundalk and known as Setanta as a young man, is Ireland's greatest hero. Funnily, Deputy Peter Fitzpatrick, who was born and bred in Castletown and, like Cúchulainn, is a great sportsman and legend, is hoping to keep his seat. He has worked hard to assist in bringing more than 2,000 jobs to Dundalk through foreign direct investment.

Senator Paschal Mooney: Is this a party political speech?

(Interruptions).

Senator Paschal Mooney: The Senator is abusing his position in the House with a party political speech.

Senator Jim D'Arcy: Other parties with high-tax policies are trying to destroy those jobs in County Louth.

Senator Terry Leyden: Did the Deputy not take the Senator's seat?

Senator Jim D'Arcy: Deputy Peter Fitzpatrick will stand up for County Louth and ensure that those jobs are kept in Dundalk.

Senator Paschal Mooney: This is a terrible abuse.

An Leas-Chathaoirleach: Senator Jim D'Arcy's point is well made.

Senator Terry Leyden: I heard that the Deputy took his seat.

(Interruptions).

Senator Diarmuid Wilson: The Senator must have got another letter from the Deputy.

An Leas-Chathaoirleach: Ciúnas, le do thoil.

Senator Paschal Mooney: The Cathaoirleach should have a word with Senator Jim D'Arcy.

An Leas-Chathaoirleach: Order for Senator Feargal Quinn, please.

(Interruptions).

Senator Terry Leyden: Senator Jim D'Arcy is a gentleman.

Senator Diarmuid Wilson: There are only eight-----

An Leas-Chathaoirleach: The Senators are delaying proceedings.

Senator Feargal Quinn: It is not easy to get in, but Senator Katherine Zappone spoke from the heart when referring to a crisis about which we must do something. Ibrahim has been in that jail for 800 days and there is no sign of a fair trial.

The crisis that Senator Paschal Mooney mentioned was that of the Shannon and the floods. After last weekend, we know that no single body is responsible for the Shannon. A Shannon

river basin authority is necessary. It should be able to handle everything for the relevant local authorities, including flood relief, in the years ahead. Last week, I mentioned the Netherlands. That country is below sea level but has no problems with that because it took the step of setting up a single authority to do something about it. Let us ensure that the Government does not sit back and, as we did six years ago, hope that this does not happen again.

I wish to draw the House's attention to the World Bank's annual report, *Doing Business*, which was issued recently. Ireland has moved up to 17th place out of 189 countries. That is not very good, but it is still much better than others. Britain is No. 6. We have slipped back six places under the heading of starting a new business. We have been aware of this, yet we have done nothing about it despite something being possible. In Ireland, starting a business takes four procedures and six days and costs €130. In New Zealand, which is the top ranked country in terms of the ease of starting a business, it takes just one procedure and half a day, and costs less than €100. We can do this, but we need to set our minds to it and determine what to do. The job creation of recent years has been successful, but this needs a determined effort. One approach would be to encourage entrepreneurship and make it easier to start a new business. If we can do this, we will be able to rise to the top and beat countries like New Zealand and Singapore, which are way ahead of us and able to attract attention and business.

Senator Aideen Hayden: Over the weekend, I was watching the ongoing reports on what was happening at the Paris climate change conference. The moment the green hammer came down - I think it was at 6.07 p.m. - to say that 196 of the world's nations had reached an agreement on how to regulate climate change was incredible. It has been hailed as one of the greatest diplomatic successes of this century and, indeed, the last, particularly after the Copenhagen talks collapsed in bitterness and disarray. At the end of the day, the answer to what we are seeing in terms of the Shannon and all the other issues, such as flooding, rising sea levels, heat-waves and so forth, lies in international co-operation.

I would also like to raise two points about what is happening, particularly on the River Shannon. It is appalling to see people's homes and their lands being flooded. I took the train back from Galway the weekend before last and the level of flooding was unbelievable. It was shocking. There are impacts on people's farmland and animals as well, not just on people's homes. The first issue is that for too long we have allowed people to build on floodplains, and that is clearly something that has to stop. Second, even where successive Governments have taken measures to tackle flooding, in the Dargle area in Dublin, for example, people in those homes still cannot get insurance. There is no obligation on insurance companies to take into account any of the flood defence mechanisms that have been put in place. I have done some investigation into this with Dublin City Council, which confirmed what I had been told by residents: they cannot get insurance, despite the fact that millions of State money has been spent on putting in place very effective flood defences.

There is a need to have some type of State-backed insurance policy for people who have been the victims of flooding. This is the situation in many other countries, but in Ireland, the insurance industry is purely commercial. The bottom line is that people whose homes have been flooded even once have a duty to declare it and may never get insured. That is an appalling situation, and one that needs to be addressed.

Senator David Cullinane: I call for a debate on health care. The Leader arranged for a debate a few weeks ago. Unfortunately, that was only 45 minutes long and it was not sufficient to critique the Government's failed health service plan and policies. Even top officials in the

HSE over the weekend were talking about a lack of vision, a lack of resources and a lack of capacity. We saw from the now-averted nurses' strike that we have very real problems on the front line in the health service. None of that happened by accident. It happened through five budgets supported by all the Members on the Government benches who took money and capacity out of the health services. Hospitals, primary care, mental health services and supports for people with disabilities were all stripped of resources and hacked away at in the past five years.

Today, Sinn Féin launched its Better for Health policy document, which is the first time any party has set out a costed plan for universal health care. Obviously during the course of the election campaign, we will go toe-to-toe with the Government parties and others on that. The Government has now abandoned its policy of universal health insurance, and very senior officials in the HSE are now saying what many of us in the Opposition had been saying for a long time, namely, that the Government and the country is rudderless when it comes to health care and that there is no leadership coming from the Government, the Minister or the Department. It is very serious and is having an impact on patient care. The crisis has driven up waiting times in many specialties, including in Waterford, the Leader's own area, where key services, such as ophthalmology, ENT and others, are at crisis point. People are waiting two years and more to see an orthopaedic consultant. That is the direct outworking of the failed policies of this Government and the five budgets the Leader and his colleagues supported over the past five years. I call for a debate on these issues

Senator Colm Burke: Sinn Féin will lower the salaries.

Senator David Cullinane: If the Leader supports the debate, we can debate all these issues. Shouting back across the Chamber will not achieve anything.

Senator Colm Burke: Sinn Féin will lower the salaries.

Senator David Cullinane: We should have a constructive debate-----

An Leas-Chathaoirleach: Address the Chair.

Senator David Cullinane: -----and we should allow people then to have their say. Obviously during the election campaign, that will happen, but there is a crisis now that needs to be dealt with.

The 45-minute debate we had a couple of weeks ago was insufficient to deal with the real crisis we face.

Senator Colm Burke: I would love to have a debate on health with Sinn Féin, which does not want anyone in the health service to be paid more than €100,000 at a time when one of the biggest problems in the health service is the difficulty recruiting consultants..

Senator David Cullinane: That is not our policy. The Senator must not have read our policy.

Senator Colm Burke: The policy of the Senator's party is that it wants to cut salaries.

Senator David Cullinane: The Senator is wrong.

Senator Colm Burke: The Senator's party might clarify its salary position-----

Senator David Cullinane: We have done that.

Senator Colm Burke: -----before it starts mouthing off about what it will do. Sinn Féin has made out that consultants are being paid too much. We have a big challenge in this country with the recruitment of medical staff. One of the challenges we are going to have to face in the next four or five years is the appropriate remuneration for people who have worked to get to the grade they are in and who can provide the expertise that is required in areas like orthopaedics and ear, nose and throat. The whole transplant area is of particular concern. Approximately 150 kidney transplants are done in this country each year, whereas more than 300 such procedures are done annually in Norway, which has a similar population. The reason for this discrepancy is that we cannot get the consultants we require to provide the service we want to provide.

I want to speak about last week's incident when two Members of the Oireachtas were conveyed to Limerick Prison to avoid having to pay fines. It is important to outline for the public that the attachment of earnings legislation comes into place on 11 January next. The day when those who fail to pay the fines imposed on them for committing crimes are carted off to prison will be behind us from that date because the courts will have the power to make an order to have the payment come from the earnings of such people. This is a welcome development, particularly at a time when over 50% of those admitted to our prisons are admitted for non-payment of fines. Approximately 89,000 warrants are with the Garda to be executed for non-payment of fines. We should have implemented this significant change a long time ago. I am delighted this measure is coming into place on 11 January next. Members of the Oireachtas who want to break the law from now on have to realise that the fines imposed on them will be taken from their earnings. This will prevent the time of the Garda, the Irish Prison Service and the Courts Service from being wasted as it was last week. It is a welcome development. We will see it put in place on 11 January.

Senator Terry Leyden: I second the proposal on the Order of Business that has been made by Senator Paschal Mooney.

I do not think the Minister for Health is doing his job. He has been a complete failure since he was appointed. I know he was put in there to bury his political ambition to become the leader of Fine Gael. The Taoiseach's decision to appoint him to the Department for Health has been very successful from that perspective because he has proven to be a complete and utter disaster in that role. This was evident once again last night when it was decided to postpone elective surgery that was due to take place today. People were waiting and ready to have their operations, but they were all cancelled because the HSE and the Minister would not make an agreement with Liam Doran and the nurses. They subsequently got a great deal, and now there are claims coming in. I heard Mr. Bell of SIPTU on the radio today saying that the ambulance drivers, attendants, doctors and everyone else he represents who is involved in accident and emergency all want whatever the nurses are getting.

I will put this into context. The former Minister for Health, Deputy James Reilly, and the Taoiseach closed the accident and emergency unit at Roscommon acute general hospital. If that unit were available now - it was very successful when it was open - it would take pressure off Galway. Its closure is one of the greatest failures of the Government. The people of County Roscommon were lied to and betrayed by those who gave a commitment prior to the 2011 general election. The commitment in question resulted in the election of two Fine Gael Deputies in the Roscommon-South Leitrim constituency. Given the chaos that will ensue in the future in the whole hospital system, the Minister would be better engaged going to the accident and emergency department at University Hospital Galway and other such departments throughout the country to study what is happening on the ground and to see how things can be improved.

There is no reason a patient who needs attention and immediate treatment cannot be brought directly to a bed in a hospital if a doctor feels that person should qualify. That is happening without going through the accident and emergency process in some hospitals where there is a relationship between the consultants and the general practitioners. This is an old system which needs to be changed but the Minister will certainly not change anything. It is a complete failure on his part to have allowed the strike to be settled last night when so many people were waiting for surgery today. It is an absolute disaster and will lead to further damage to the health service.

Senator Gerard P. Craughwell: I wish to be associated with Senator Katherine Zappone's comments this morning. Cúchulainn was born in County Galway and, for Senator Jim D'Arcy's information, moved to Dundalk later.

At the weekend, the newspapers carried a further report on the "Prime Time" programme. I have had a number of calls from county councillors who feel they have been totally undermined and that their honesty and integrity have been called into question. I ask that this House take a vote of confidence in the good people who are out there trying to serve their communities and do the best they can. Some individuals are now saying that the houses being flooded throughout the country are the result of some councillors taking backhanders to give planning permission for building on flood plains. I do not believe that is a fair comment in respect of those who have tried to serve their communities well over the years.

Senator Terry Brennan: Like my colleague, Senator Jim D'Arcy, I welcome the additional funding for the Ireland's Ancient East project announced by the Minister for Transport, Tourism and Sport, Deputy Paschal Donohoe, with the Minister of State, Deputy Michael Ring. There is a total of €1 million in a further phase of funding for capital projects. The funding is being provided through Fáilte Ireland's "new ideas in ancient spaces" capital grant scheme. It is for a further 13 projects within the Ireland's Ancient East initiative. It begins in the medieval town of Carlingford, my home town, and extends through Meath and the midlands to Kilkenny, Waterford and finally Cobh in County Cork. The second phase of investment brings the total funding under the "new ideas in ancient spaces" initiative to a total of €2.26 million and comes ahead of a new signage scheme to brand the region, which is due to be rolled out early next year. A further phase of funding in capital support for the initiative is expected again next year. I welcome this initiative. It will enhance the tourism potential of the east coast and will create more jobs.

Senator Sean D. Barrett: I welcome the climate change agreement reached by 195 countries. It will require compliance and quantification, not just having regard to the legislation. Both of those elements were missing from the climate change legislation we debated in this House. I also welcome the support from all sides to the effect that the Seanad should have a role in these matters. The original Bill specified the Dáil only.

On climate change and flooding, we need to debate hydroelectric power. We have had the incident in which Cork was flooded extensively by the ESB, which was judged in one court case to be 70% responsible. It is extremely strange to see a man from the ESB announcing the amount of flooding he intends to cause every day by opening the Parteen Weir. How did we get into that situation? The Shannon scheme and other hydroelectric schemes were of huge benefit to the country. I do not know how they are being managed such that they have now become a source of fear among people in respect of the flooding of their houses and farms.

Judge William Hamill wrote in *The Irish Times* on Saturday that there are now 142,521

motoring-related warrants not executed. He sees honest people being punished while those who act dishonestly usually escape. Some 8,000 warrants refer to drink driving and 3,000 of those to drink driving charges for which people did not appear in court. We need a debate on the implications of what the learned judge said about the non-enforcement of road safety measures at a time when we are all trying to reduce from 160 or so the number of people who are killed on Irish roads every year.

Senator Cáit Keane: I support Senator Katherine Zappone's call for the release of Ibrahim Halawa. It has got to a stage now where everyone in Ireland supports that call, which has been made by many politicians. It seems to have fallen on deaf ears, however. I wish the House to be aware that Seán Kelly, MEP, will table a motion in the European Parliament this week proposing a resolution calling for Mr. Halawa's release. The proposed resolution cites article 10 of the Universal Declaration of Human Rights, which considers that everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal in the determination of his or her rights. Ibrahim Halawa has not got that but he deserves it. I hope the European Parliament will pass the resolution this week and be listened to. The Minister for Foreign Affairs and Trade, Deputy Charles Flanagan, is blue in the face going back and forth trying to resolve this matter. Led by the Minister, the Government made representations only this month. The EU-level resolution aims to further strengthen our calls for fairness and a resolution. Only two weeks ago, Seán Kelly, MEP, welcomed Egypt's facilitation of consular access which Mr. Halawa did not have to that time. He was denied even that much. He now has consular access to the Irish Government and access to his own legal representation. His family lives very close to me in Firhouse. I support Senator Katherine Zappone's call, which I know is not the first of its kind. Hopefully, it will be the last and Seán Kelly, MEP, will be listened to in the European Parliament and things will work out from there.

Senator Jim Walsh: I agree with my colleague, Senator Terry Leyden, that there are manifest failures in the health service whereby we had a Minister who was unfit to be put into the position in the first instance and we now have a Minister who is running the service from the commentary box and is not actually dealing with the issues. However, it is not the only area in which the Government is in serious dereliction of its duty. Last Thursday, the Master of the High Court highlighted an area where the failure to address the concerns of people who find themselves before the courts, brought there by the banks, is a scandal. The Master did the State some service by highlighting the case of a person whose house could have been sold for €90,000 but was subsequently sold off as part of a bulk lot to an equity fund. It transpires that only approximately €60,000 was obtained and the person is responsible for the difference. Therefore, the failure of the State to address this is adding to the crises people are experiencing. It is indicative of the Personal Insolvency (Amendment) Act, under which a veto was given to the banks, and the bankruptcy legislation, in respect of which the former Minister, Deputy Alan Shatter, spent two to three years vacillating before introducing an inadequate Act which we argued against in the House. It has now taken Deputy Willie Penrose to prompt the Government into doing what it should have done four or five years ago, namely, introduce a one-year bankruptcy period to meet the current unprecedented situation.

That is not to mention homelessness at all. Every Member could speak about the housing situation in his or her own county. In my home town, New Ross, there are more than 600 people on the local authority waiting list. I spent 30 years on the local authority and it was never within an ass's roar of that number. The maximum number we ever had was between 100 and 150. This year, the Government has not allocated a single house to the town, which is an

absolute disgrace. People working in low-paid employment cannot qualify for council houses. We are creating a situation in which the few houses that are being built are being occupied either by people on social welfare or elderly individuals. Everybody recognises that there is a social necessity to have a good social mix in public housing schemes. It has been a failure of the Government, and while it might create controversies about rent and rent controls, these are minuscule compared with what needs to be done. Houses need to be built and, unfortunately, the Government has refused to do it. I hope it will not be returned to office and that the next Government will make it a priority.

Senator Mark Daly: I join colleagues regarding concerns about the health service. The HSE director general, Mr. Tony O'Brien, gave a comprehensive account of what is wrong with it and the Minister agreed with him. That is great. As Senator Jim Walsh has pointed out, he is the commentator in chief on the Government's behalf.

Senator Terry Leyden: Yes.

Senator Mark Daly: From the way he talks about the health service, one would swear he was not a player. He seems to get an easy time on radio, as if he were just one of the talking heads who are invited into studios to discuss the health service and not the man in charge of it.

I, too, raise concerns about Ibrahim Halawa. This is the tenth time his court case has been postponed. Some 493 other people are on trial with him at the same time. It is a mass trial. He has been held in captivity for over 852 days and has not been afforded a fair trial. The concern is about the Irish Government's activities, or lack thereof. As I have said many times before, Egyptian Law 140 allows for a prisoner to be repatriated to his home country before a trial. Although the Government and Minister said it could not be done, they silently supported a Law 140 application in February. They forgot to tell anybody about it. During the summer, they repeatedly said they could not enforce Law 140 or ask the Egyptian President to invoke it until after a trial. Now, they have admitted it could be done but have said it would not be the best possible course of action. Given the trend of what the Government has said about the case during the past 12 months, it is shocking that it has been inconsistent.

The Minister was here last week. The fact that the case is to be heard next Saturday is a cause of concern. There is grave concern that a death sentence could be passed, as has happened in other cases. The Government seems unaware that, unlike in the case of Peter Greste, an Australian national whose release was secured by the Australian Prime Minister before his trial, if Ibrahim Halawa is found guilty and sentenced to death, Law 140 may not be applicable, given that it applies only in cases in which the sentence can be carried out in the jurisdiction to which a person is repatriated. The Government does not seem to be concerned about it or aware of it. Ibrahim Halawa has been tortured and kept in detention for a long time. Last Sunday was his 20th birthday and he has been in jail since he was 17. The myriad UN declarations and conventions the Egyptian Government has breached is astonishing. More astonishing is the fact that the Irish Government has been so silent.

Senator Michael Mullins: I join Senator Katherine Zappone and other colleagues who have deplored the fact that Ibrahim Halawa is still in detention and that his trial has been postponed yet again. He went into prison as a 17 year old and has reached his 20th birthday. However, I deplore the political football Senator Mark Daly is attempting to make of the issue. The Government is doing everything possible at the highest level. The Taoiseach has spoken to the Egyptian President and the Minister for Foreign Affairs and Trade is in regular contact with his

opposite number.

Senator Mark Daly: It is clear that the Government is not doing everything possible. The Members opposite voted against hearing from Ibrahim Halawa's legal team at the foreign affairs committee last week. For the committee not to want to hear the legal team's opinion is unprecedented.

Senator Michael Mullins: Our embassy staff and diplomatic team in Egypt are giving every possible assistance to Ibrahim. We all want to see him home in Dublin, back in education and with his family, quickly. I hope the trial will go ahead next Saturday. However, we also have to be concerned about what will happen after the trial. For that reason, I believe the Government has done everything right by not burning all of its bridges. It is fine for an Opposition spokesman to castigate the Government, but it has to deal with the Egyptian Government on this case and the proper line is being taken. I hope there will be a very successful outcome in the very near future.

I join colleagues in paying tribute to everybody who has helped the many flood victims throughout the country in the past couple of weeks. However, we need to get the message out that towns and villages are open for business. Unfortunately, many people stayed away from shops in towns over the weekend because of a perception that every place was flooded. Traders throughout the country want to get the message out that, in the main, businesses are open.

There is a lot of work to be done when the floods recede. We need the 300 schemes in line for funding under the CFRAM programme to be expedited. As Senator Aideen Hayden said, we also need to have a discussion on the issue of flood insurance. It is an absolute shame that, where major moneys have been expended and good defences put in place, insurance companies have not recognised this. I was pleased when the Minister of State, Deputy Simon Harris, spoke extensively about this over the weekend and welcome his determination to address the issue.

Senator Maurice Cummins: Senator Paschal Mooney said the multi-agency approach to dealing with flooding had not worked and should be abandoned in favour of a single agency approach. Senator Feargal Quinn agreed and also called for the establishment of a Shannon river basin authority. The Minister of State, Deputy Simon Harris, spoke comprehensively about the issue and said the Government was doing everything possible to deal with the problem. The money required, some €430 million, is in place in the capital plan for flood defences.

Senator Feargal Quinn mentioned the success of Holland and is quite right. In Holland €1 billion per annum is being spent on flood defences. Whether we could afford to spend anything like that sum is very questionable and to compare Ireland to Holland is a little unfair. We should join Senator Ivana Bacik and others in complimenting all of the volunteers, local authority workers and the emergency services on the work they are doing in the communities throughout the country which have been hit so badly by flooding.

Senator Paschal Mooney also spoke about the fact that there were fewer gardaí, with over 700 fewer in Dublin. We will have the Minister for Justice and Equality in the House to take a number of Bills this week, with particular reference to the burglary of dwellings Bill, Second Stage of which has been completed. We will take Committee and Remaining Stages this week and there will be ample time to debate the issue with the Minister. It is, however, a bit rich for Senator Paschal Mooney to talk about there being 700 fewer gardaí in Dublin when his party closed the Garda Training College in Templemore and there was no further recruitment of

gardaí.

Senator Paschal Mooney: That was then; this is now. The increase in the crime figures has happened on the Government's watch.

Senator Maurice Cummins: Is it not natural, therefore, that there would be fewer gardaí?

Senator Paschal Mooney: The Leader should not go back into history. I am talking about what has happened in the past five years under the Government.

Senator Maurice Cummins: If one closes the Garda Training College in Templemore, how can one expect to have more gardaí? Let us be fair about it and look at the facts rather than dealing with extraneous issues.

Senator Paschal Mooney: It is a fact that there are 700 fewer gardaí.

Senator Maurice Cummins: That is because of the policies the Senator's party pursued in government-----

Senator Paschal Mooney: Last year there were 700 fewer gardaí.

Senator Maurice Cummins: -----which included closing the Garda Training College in Templemore and stopping recruitment. We have recruited 1,100 gardaí and will do a lot more in the coming years because we have rectified the economy. However, it is still fragile.

Senator Paschal Mooney: Try telling that to people in my part of the country because they have not yet got the message. They are still waiting for the new Jerusalem under Fine Gael.

Senator Maurice Cummins: The Government will do everything possible on the issue of law and order.

Senator Paschal Mooney: That has to be the great cliché of the Government - "everything possible".

Senator Maurice Cummins: We will have more gardaí on the streets. We have introduced legislation to assist the Garda in its efforts to combat crime.

Senator Jim Walsh: The Government did not do it this time and will hardly get a chance to do it the next time.

Senator Maurice Cummins: Senator Ivana Bacik said the minimum age for marriage would be 18 years following a Cabinet decision today, which she welcomed. She also complimented all of the volunteers involved in dealing with the floods.

Senators Katherine Zappone, Feargal Quinn, Cáit Keane, Mark Daly and Michael Mullins referred to Ibrahim Halawa. Last week the Minister for Foreign Affairs and Trade gave a comprehensive update on his case. The Government is doing everything possible to secure his release. As Senator Michael Mullins mentioned, it is most regrettable that Senator Mark Daly, as he did last week, is trying to make a political football of the issue.

Senator Mark Daly: It is not a political football. It is simply the case that the Government is not doing enough.

Senator Maurice Cummins: We should all be united in our efforts to secure the release of

this Irish citizen, which is what the Government is doing.

Senator Mark Daly: It is not repeating what the Australian Government did in the case of its citizen, Mr. Peter Greste.

An Leas-Chathaoirleach: Please allow the Leader to respond.

Senator Maurice Cummins: The Government is doing everything possible to secure Mr. Halawa's release.

Senator Mark Daly: The Australian Government invoked Law 140 and exerted all of its diplomatic pressure to do so. It secured Mr. Greste's release.

Senator Maurice Cummins: To listen to a political charge being made by the Senator is reprehensible.

Senator Mark Daly: The Government has clearly failed to do the same thing in the case of an Irish citizen who has spent his 20th birthday in jail.

An Leas-Chathaoirleach: Please allow the Leader to respond. I allowed the Senator an extra one minute of time. It is unfair not to let the Leader to respond. The debate will take place tomorrow.

Senator Mark Daly: If the Leader wants to make political charges, I will respond.

Senator Maurice Cummins: The Senator is the one who made the political charges and I am responding to them.

Senator Mark Daly: I made statements of fact.

An Leas-Chathaoirleach: Political charges are allowed in the Chamber.

Senator Maurice Cummins: Was Senator Mark Daly here to listen to the Minister last week? I hope he was.

An Leas-Chathaoirleach: Perhaps the Leader should not goad the Senator too often either.

Senator Maurice Cummins: There is no need to goad him. He goads everybody else each time he stands up.

An Leas-Chathaoirleach: Let sleeping dogs lie.

Senator Maurice Cummins: Senators Jim D'Arcy and Terry Brennan spoke about the €1 million in funding allocated for Ireland's Ancient East. Senator Jim D'Arcy hoped the Táin saga would feature in the second tranche of funds to become available. It is welcome that €145,000 has been allocated for Waterford's Viking Triangle and interpretative centre. It has been welcomed by everyone.

Senator Feargal Quinn spoke about the establishment of a Shannon river basin authority. He also mentioned that Ireland was 17th of 189 nations when it came to starting one's own business. There is a need for improvement in that regard. The Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, has a tremendous record in dealing with the issue of job creation. There was another announcement today of the creation of hundreds of jobs. It is proposed to create 500 jobs in PricewaterhouseCoopers. There have been many other jobs an-

nouncements in the past few weeks.

Senator Aideen Hayden welcomed the conclusion of the climate change talks, as did Senator Sean D. Barrett. She also outlined the need for a State-backed insurance scheme for flood victims.

Senator David Cullinane produced Sinn Féin's proposals on universal health care. I look forward to reading the document. I hope it will be better than the fictional budget policy document that he produced earlier in the year and that he usually produces before the budget.

Senator Mark Daly: It is like the Government's health policy - another work of fiction.

Senator Maurice Cummins: Senator Colm Burke spoke about consultants' pay and Sinn Féin's policy on the issue. He questioned how we could recruit consultants. He also referred to the attachment of earnings and the Fines (Payment and Recovery) Bill. Under that legislation which will come into force on 11 January 2016, moneys may be deducted from salaries and social welfare payments instead of sending people to prison for the non-payment of fines.

Senator Terry Leyden welcomed the deal with nurses, while warning it might cause problems in the future in other areas. He also outlined the need for reform of emergency departments.

Senator Gerard P. Craughwell referred to the RTE programme broadcast last week in which corrupt practices engaged in by public representatives was investigated. I agree with him that the vast majority of councillors are decent, hard-working people who wish to help their communities. The actions of certain individuals, as revealed on the programme, are regrettable.

Senator Sean D. Barrett referred to the revelation that a large number of motoring warrants were not executed and called for a debate on the issue of road safety. The Minister for Transport, Tourism and Sport has outlined a number of road safety measures which include new provisions on drug driving which he proposes to bring before the Houses in January. We will debate all of the issues raised at that time.

Senator Cáit Keane again referred to the case of Ibrahim Halawa. I understand Mr. Seán Kelly, MEP, with the support of all other Irish MEPs, has tabled a motion in the European Parliament calling for Mr. Halawa's release from prison in Egypt.

Senator Jim Walsh commented on views expressed by the Master of the High Court, a man who has opinions on many issues. On the law on bankruptcy, the Government has already reduced the discharge period from seven years to three. The Bankruptcy (Amendment) Bill which is making its way through the Dáil will reduce it further to one year.

The Senator referred yet again to his time as a local authority member. I do not know how things operate at all in New Ross without him. He might have to consider going back.

Senator Jim Walsh: That is not an adequate response.

Senator Maurice Cummins: Senator Michael Mullins spoke about the towns and villages affected by flooding in recent days and emphasised that they remained open for business. The people living in these places deserve our support. It is an issue that should be highlighted.

I do not propose to accept the amendment to the Order of Business.

An Leas-Chathaoirleach: Senator Paschal Mooney has proposed an amendment to the Order of Business, “That a debate with the Minister for the Environment, Community and Local Government to outline his proposals to deal with flooding in the Shannon Basin be taken today.” Is the amendment being pressed?

Senator Paschal Mooney: Yes.

Amendment put:

The Seanad divided: Tá, 12; Níl, 24.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Craughwell, Gerard P.	Brennan, Terry.
Cullinane, David.	Burke, Colm.
Daly, Mark.	Cahill, Máiría.
Leyden, Terry.	Coghlan, Eamonn.
Mooney, Paschal.	Coghlan, Paul.
Ó Murchú, Labhrás.	Comiskey, Michael.
O’Brien, Darragh.	Conway, Martin.
O’Donovan, Denis.	Cummins, Maurice.
Reilly, Kathryn.	D’Arcy, Jim.
Walsh, Jim.	Gilroy, John.
Wilson, Diarmuid.	Hayden, Aideen.
	Henry, Imelda.
	Higgins, Lorraine.
	Keane, Cáit.
	Kelly, John.
	Moloney, Marie.
	Mullins, Michael.
	Naughton, Hildegard.
	Noone, Catherine.
	O’Neill, Pat.
	Sheahan, Tom.
	van Turnhout, Jillian.
	Zappone, Katherine.

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

Amendment declared lost.

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

Appropriation Bill 2015 [Certified Money Bill]: Second and Subsequent Stages

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

An Cathaoirleach: I welcome the Minister of State, Deputy Simon Harris.

Minister of State at the Department of Finance (Deputy Simon Harris): The Appropriation Bill 2015 is an essential element of financial housekeeping that, as Members of the Seanad are aware, must be concluded by both Houses of the Oireachtas this year. The Bill serves two primary purposes. First, it is necessary to authorise in law all the expenditure that has been undertaken in 2015 on the basis of the Estimates that already have been agreed during the year. The amounts included in section 1 and Schedule 1 to be appropriated for supply services all relate to amounts included in the Estimates set out in the Revised Estimates Volume 2015 of €41.7 billion in aggregate, as well as the Supplementary Estimates of €1.4 billion. Second, the passage of the Appropriation Bill 2015 is essential to provide a legal basis for all existing voted expenditure to continue into 2016 in the period before the Dáil votes on the 2016 Estimates.

Under the rolling multi-annual capital envelopes introduced in budget 2004, Departments may carry over from the current year to the following year unspent capital up to a maximum of 10% of voted capital. The multi-annual system is designed to improve the efficiency and effectiveness of the management by Departments and agencies of capital programmes and projects. It recognises the difficulties inherent in the planning and profiling of capital expenditure and acknowledges that capital projects may be subject to delay. The carryover facility allows for a portion of unspent moneys, which would have been lost to the capital programmes and projects concerned under the annual system of allocating capital, to be made available for spending on programme priorities in the subsequent year. The Appropriation Act determines definitively the capital amounts that may be carried over to the following year. The aggregate amount of proposed capital carryover is just under €112 million, which represents less than 3% of the total capital programme of €3.8 billion. The proposed amounts to be carried over by Vote are set out in Schedule 2 to the Bill. The 2016 Revised Estimates volume, to be published in the coming days, will set out detailed financial and key performance information for Departments and offices. In Part II of the Estimates, for each Vote availing of the capital carryover facility, a table will be included listing the amounts to be deferred by subhead.

The first payroll payments of 2016 are to be paid to staff and pensioners on 1 and 4 January 2016. Departments and offices must have the funds for these payments in their commercial bank accounts before the end of this year to ensure that staff and pensioners have access to their money by the due dates. In addition, An Post makes certain payments on an agency basis on behalf of the Department of Social Protection. To disburse payments to social welfare recipients in the first week of January 2016, An Post needs to be pre-funded before the end of 2015 to be in a position to convert electronic fund transfer payments from the Department of Social Protection into real cash and physically transfer it to its network of post offices throughout the country. These Exchequer pay and pension and social welfare payments will form part of the supply services for 2016 and, consequently, the funds to cover these costs will be included in amounts disbursed from the Central Fund to the Paymaster General's supply account as part of the 2016 supply issues and will come under moneys voted by the Dáil in 2016, in respect of which the usual processes and mechanisms for voted moneys in 2016 will apply. However, as the funds need to be available in the Paymaster General's supply account before the end of the year to facilitate timely payment, section 3 of the Appropriation Bill includes a specific provi-

sion to allow for an advance from the Central Fund to the Paymaster General's supply account of the appropriate amounts of money. Any amount advanced to the supply account will be repaid to the Central Fund in January.

The signed Act is required by the Comptroller and Auditor General for clearance of the end-of-year issues from the Exchequer. Under Article 25.2.1° of the Constitution, the President may not sign a Bill earlier than the fifth day after the date upon which the Bill is presented to him. However, there is provision in Article 25.2.2° whereby, at the request of the Government and with the prior concurrence of Seanad Éireann, the President may sign a Bill on an earlier date. In view of the urgency of this Bill, the provision in Article 25.2.2° is sought and a motion to this effect is placed before the Seanad. Such an earlier signature motion has been sought in relation to the Appropriation Bill in previous years.

I remarked at the outset that the Appropriation Bill is an essential element of housekeeping which those of us in both Houses of the Oireachtas are required to undertake. The passing of the Bill will authorise in law all of the expenditure that has been undertaken in 2015 on the basis of the Estimates debate and voted on by the Dáil during the year. Of fundamental importance to those who depend on our essential public services, and to those on public sector pay, pensions and social welfare payments, the passage of the Appropriation Bill will allow the payments required to deliver these public services to continue into 2016 in the period before the Dáil approves the 2016 Estimates. I commend the Bill to the House.

Senator Labhrás Ó Murchú: I welcome the Minister of State and compliment him on doing a fine job. Every time we have emergency situations he is certainly doing a good job. The big debates in this House in recent months were on issues such as health, law and order, legislation on burglaries, home care for the elderly and child care. Those are the big issues. We all appreciate that the books must be balanced, and it is very easy to get up on a soapbox and make a speech, but I do not think that is what it is about. However, there are areas that need to be examined as priorities. We did not expect the recent terrible flooding. I do not know how people are able to put up with that, and some of the stories are heartbreaking. Some of these people have been hit repeatedly and flooded on two or three occasions. Whatever is decided financially for the future, we have to deal with the flooding as an emergency in the same way that any other country would. I was very impressed to see the UK Prime Minister, David Cameron, lay aside the European rules during the flooding events in the United Kingdom and order the rivers to be dredged. I know there is a fisheries element there which needs to be looked at. Compensation has to be realistic, because even though money has to be found quickly, €5,000 or any money like that is not going to be sufficient to repair the affected properties.

Regarding An Garda Síochána, I do not think there is any value in asking who closed this station or who closed that station. Burglary is a big issue. It is not an exaggeration to state that people are petrified in their homes. We all agree with Mr. Justice Hardiman that, apart from the theft of property involved, breaking into a person's home is an act of aggression. Having listened to all the arguments, I believe gardaí are still needed at local level. Neighbourhood Watch and so forth should also be funded.

On the issue of health, which was raised by several Senators, no right-thinking person would agree to allow someone to lie on a trolley for an excessive period. However, when we see a person of 80 or 90 years on a trolley it strikes at the heart of our compassion. I am not sure money is always the reason. There are vested interests in the health service and everyone involved in the system must be prepared to co-operate. If money is needed to ensure people are given

proper care and maintain their dignity, it must be provided.

There is much to be said for providing assistance to allow elderly people to remain in their homes. I have never met an elderly person who wanted to move into a nursing home because this is invariably viewed as marking the end of their lives. There are some wonderful nursing homes and Senators will have seen how well they look after elderly people. If an elderly person can remain at home with a degree of independence, we must ensure resources are provided to support him or her to do so. The elderly have worked and paid taxes throughout their lives and their loved ones would like them to remain at home. Many supports, including in the area of security, are available to them. We should help elderly people who wish to remain at home and live mobile, independent lives.

The issue of children has been discussed in the Chamber on many occasions. Children are the most vulnerable group in society and we must help parents, whether they are single or married, in whatever way possible. All Senators will have heard stories about giving with one hand and taking away with the other. If we are genuinely concerned about the welfare of children and the opportunities afforded to them in life, we must provide them with assistance and support.

All of these issues form part of the budgetary process and it is not easy to prioritise one issue over another. The least well-off and most vulnerable must be given priority at all times. It is interesting that these are the people who very often do not have a voice. The well-off - I am not being anti-capitalist in this matter - are generally well able to make a case for themselves and often do well in budgets. We have to give the most vulnerable hope and show them that we respect them and want them to retain their dignity. We must also ensure they are always given priority when finances are being distributed. Has this been done?

2 o'clock

A significant degree of poverty persists. One need only consider the number of meals and other assistance provided to the poor. Many people are still going to bed hungry, while others cannot afford to heat their homes. Unfortunately, because we do not experience poverty ourselves, it often remains below the radar. The House should discuss the reality on the ground in a non-partisan manner. I would hate to have people trying to win votes out of people's problems and difficulties.

Some people are too proud to admit that they do not have a single euro to spend.

One may blame the economy or world situation, but Ireland is a country that has been so good when people in other countries needed help. We are still good at that and we should continue it. However, I still think there is goodwill there. Funnily enough, I cannot talk for Fianna Fáil on this one. I would not say anything about pushing up tax a little if it would help those people because we cannot feel good ourselves - it is not good for our morale - when we see this is happening and we are unable to do anything. At the end of the day, it is only the legislators who can do this. We should be discussing specifics, but we cannot really go into specifics at this time. However, I hope that any time we have funding to dispense we will always keep the vulnerable in society at the top of our priority list.

Senator Tom Sheahan: I welcome the Minister of State.

Effectively, the Appropriation Bill is an accounting exercise to balance the books and ensure that there is capital in place for issues or emergencies that may arise. The Comptroller and Auditor General has sought this and nobody wants to see Ministers go cap in hand. From my point

of view, it is purely an accounting exercise. It is essential that any payments required to deliver public services will be continued. For that reason, I will be supporting it.

Senator Sean D. Barrett: I welcome the Minister of State, Deputy Simon Harris, back from Bandon, Skibbereen and the places where he was featuring. It was valuable for the Minister of State to be with people and hear from the shopkeepers themselves. We saw him on television going in and accumulating all of that information.

There are some interesting points in the Appropriation Bill. The Minister of State stated that the Supplementary Estimates of €1.4 billion is about 3.3% of the €41.7 billion that the Minister was spending. In the older days of the public finances, Supplementary Estimates were looked upon askance and regarded as something one should not do. I suppose we might get worried if it went much over 3.3%, but, in general, we learned the hard way how to run the public finances in Ireland. We do not wish to unlearn those lessons so there is a serious onus on those seeking Supplementary Estimates to justify what they entail.

The Minister of State mentioned that the carryover on capital projects is 3% of the value of those projects. That is a margin, but I suppose the danger would be if the Departments doing the spending begin to regard it as theirs and do not return it to the Department of Finance. One must keep an eye on that aspect.

I welcome initiatives such as the Irish Government Economic and Evaluation Service which will put the evaluation of capital projects on an independent and sound basis as distinct from merely advocating projects and providing crude figures, such as that investment as a percentage of GDP is lower than it used to be. It is the case that GDP is lower than it used to be in the period when the public finances were getting into trouble but one must have sound prudent management of the public finances and proper appraisals of the projects involved. I would prefer those to be done independently and published well in advance so that they can be discussed in the Houses of the Oireachtas and elsewhere.

That brings me to the Comptroller and Auditor General, the value-for-money officer under the Constitution. That is a valuable post in seeking to keep the finances in order so that we do not get back into the troubles and problems of the past. The Comptroller and Auditor General deals with a €6.6 million budget and €5.9 million in appropriations-in-aid out of a €43.1 billion supply grant and the €3.1 billion carryover. It is an important post and I often think the Comptroller and Auditor General should be involved more. Sometimes he waits until what we need is the State Pathologist. Perhaps he should intervene earlier to state projects are going off the rail. The Comptroller and Auditor General did intervene, I think, with the agreement of all members of the Joint Committee on Transport and Communication, on the issue of the seven-digit non-sequential postal addresses. I have yet to receive any correspondence on that issue. We anticipated that it was unlikely to be a system that would catch on and it did cost us, as we pointed out, €38 million.

The other issue the Minister of State raised is the earlier signature motion. I have always felt that mechanism should be used sparingly. The President holds an honoured position under the Constitution and he or she deserves the full time necessary to read Bills. I appreciate that the Bill before us is different and I am not criticising what is being done here today. In general, however, there should be an amber light in the context of pushing the President to sign legislation before he or she has had a good chance to read it and, perhaps, to either point out some things which the Oireachtas might need to consider or refer it to the Council of State or

the courts.

The current Oireachtas is nearing the end of its lifetime. This has been a period in which the public finances have been well managed and that is reflected in the accounts before the House today. I will certainly be supporting the Bill and I hope it sets the tone for the next Oireachtas to be equally careful in its stewardship of the national finances.

Senator Aideen Hayden: The usual practice before 2013 was that the Appropriation Bill went through without debate. I do not think there is any harm in giving us a couple of minutes to debate this Bill. While the Seanad is limited in terms of its domain over financial matters, there is nothing wrong with taking a look occasionally at some of the financial issues that come before Government. I agree with my colleague that the Bill is technical in nature. I would make two observations. One relates to the aggregate amount of the capital carryover which as the Minister of State said is €112 million, which represents less than 3% of the total capital programme of €3.8 billion. That is an incredibly low amount of money to carry over. Coming up to the end of the year, I hope Departments do not spend their time trying to hasten across the line certain projects, particularly as the limiting factor of time would have the potential to impact on cost. A larger amount of capital carryover would be more reflective of the realities relating to capital projects. In the context of overall Government expenditure in the region of €43 billion - including the €1.4 billion - we still have an incredibly small capital programme. I am aware we will be addressing that in the coming years but it is important to reflect on where we have come from in terms of the difficulties in repairing the country's economy and finances. We need to acknowledge that, from a capital perspective, we have taken a very significant hit in recent years in terms of the capital programme. As a Government, we have taken steps to address that but it will have to be a priority for this or any future Government in the years to come.

In the context of the purpose of the Bill, it is obviously a sensible measure designed to allow for a carryover into the early week of the new year, from 1 to 4 January 2016. I wonder whether our accounting measures could be adjusted in order that we are not obliged to put in place an Appropriation Bill to cover such a short period and having to go through the earlier signature motion and so forth. We have managed to change the tax date from, I think, 5 April back to 31 December and then to 31 October. Surely there must be a way of changing the way we set out appropriations where it is possible to have a residual sum carried over into the following year without the need to enact specific legislation on the matter.

Acting Chairman (Senator Terry Leyden): As there are no other contributors, I call on the Minister of State to respond.

Minister of State at the Department of Finance (Deputy Simon Harris): I thank all Senators for their constructive contributions to what is a technical item of legislation. To pick up where Senator Aideen Hayden left off, I agree that it is worth giving time to scrutinise this legislation because that would be a useful overview of where we find ourselves in terms of the public finances. Undoubtedly, the economic crisis had a profound impact on those finances. When the Government was elected, the budget deficit stood at 12.5% of GDP. This year, it is on track to be below 2%. General Government debt has reduced from a peak of 120% of GDP and is forecasted to decline to close to 90% in 2016. That is still much too high, but is back in the realm of the European average and is something that we can reduce further in the coming years.

Sustainable public finances are required if the Government is to provide the necessary infrastructure to encourage economic growth and job creation and deliver essential public ser-

vices to citizens. The fiscal adjustment implemented in order to exit the EU-IMF programme of support successfully and return sustainability to the public finances required significant tax increases and expenditure reductions. Gross voted expenditure was reduced from its peak of just over €63 billion in 2009 to €54 billion in 2014. In implementing expenditure reductions, the Government's priority was to ensure that a targeted approach was adopted in order to protect key public services and social supports to the greatest extent possible at a time of increasing demand. It is fair to say that budget 2015 marked a turning point in our recovery, when expenditure reductions were no longer required to meet our fiscal targets and we were in a position to provide targeted increases for front-line services.

Against a background of Exchequer tax receipts being almost €3 billion ahead of profile this year, additional funding has been made available through Supplementary Estimates of €1.4 billion to support key services and social supports. While the bulk of the additional revenue has gone to pay down debt, the key sectors of health, social protection and education have been prioritised. These are issues of importance to Senators on all sides of the House and account for more than 80% of gross current expenditure. The Government has protected core social welfare rates and, under budget 2016, the State pension will be increased by €3 per week. Though small, this is the first increase in the State pension since 2009. Our commitment to protecting society's most vulnerable is found in data published by EUROSTAT this year, which showed that Ireland's system of social transfers - the redistribution of wealth and income to those most in need - is among the most effective in Europe at reducing the risk of poverty.

Aside from social transfers, the Government's fundamental reforms to labour market activation represent a significant modernisation of Ireland's tackling of unemployment through a two-pronged approach. Pathways to Work ensures the unemployed are given a chance to upskill and rejoin the workforce while the Action Plan for Jobs has directed its efforts towards boosting labour demand through key reforms. Unemployment has decreased from a peak of over 15% to below 9%. While that remains too high, it is moving in the right direction towards full employment, which must be our collective relentless pursuit. I am not just referring to headline full employment, but real full employment, in which we tackle issues like long-term unemployment and people with disabilities wanting to access the workforce but not being afforded the supports to do so. I challenge the next Oireachtas to do that.

One of the Government's first acts was to reverse the cut to the minimum wage. From January, the new statutory minimum wage will rise to €9.15 per hour. Our investment in the health sector has ensured that key front-line services have been maintained and will be enhanced further through initiatives such as extending free general practitioner, GP, care to children under six years of age, which is due to be extended next year to children under 12 years of age. The additional funding provided to health this year has allowed staffing levels within the sector to be increased by more than 3,700 in the first ten months of 2015, with this increase primarily and rightly concentrated in our hospitals. The amount to be allocated to health next year will bring funding back to pre-crisis levels, but I take Senator Labhrás Ó Murchú's point that it is not all about funding and must be about continuing to reform. I welcome the initiative taken by the Irish Nurses and Midwives Organisation today in deferring industrial action and considering a number of the proposals that it discussed at the Workplace Relations Commission last night to address the important issues being experienced by front-line nurses in accident and emergency services on a daily basis.

Since the beginning of 2012, we have invested more than €1.25 billion in school buildings, sought to protect DEIS expenditure, which prioritises the educational needs of children and

young people from disadvantaged areas, protected the pupil-teacher ratio and, in budget 2016, reduced the ratio from 28:1 to 27:1 at primary level and from 19:1 to 18.7:1 at second level. The allocation set out in next year's budget will provide for more than 2,260 new teaching posts, including 600 resource teachers. The expansion of the early childhood care and education, ECCE, programme announced in budget 2016 will provide a second free preschool year to 75,000 children and support children with special needs in accessing those preschool years. The social housing strategy aims to deliver 3,100 social housing units in 2016, with 3,000 units to be delivered in 2015. An additional 10,000 households will receive housing assistance payment in 2016.

I want to return to the issue raised by Senator Labhrás Ó Murchú regarding the recent flooding. This issue is very close to my heart and to my ministerial responsibilities. The recent flooding has clearly highlighted the need for the Government to do exactly what it wants to do, which is to increase significantly our investment in flood risk management in this country. We cannot get away from the fact that we are seeing more and more severe weather events and we are likely to continue to see that. We are all aware of the consequences of climate change. Through our capital plan, we intend to spend more on flood relief in the next five years - €430 million - than has been spent in the past 20 years. That cannot be lost on people. While I very much welcome the generous remarks of Senator Labhrás Ó Murchú, it is important that people do not play politics with this. People have gone through a very difficult few weeks. We have had a national weather crisis. We have seen over a month's worth of rainfall in 24 hours in parts of this country.

Yesterday, I met the people in Bandon and Skibbereen. I met people whose shops had been flooded again. This is a situation we all have to resolve, but we must also be honest with people. Major flood relief schemes take about five years to deliver. We have to get them right. There is only one chance. One cannot retrofit a flood relief scheme. We have to get the consensus of the community. One often has to try to acquire land or go through landowners' property. We have to go through procurement and planning. These are difficult procedures, but the important thing is that we get on with the job. We now have the funding scheme and we have the national policy, through CFRAM, where people can now see 300 areas in this country on *cfram.ie* that are at risk of flooding, and by this time next year we will have solutions and options to rectify those problems and to put flood relief schemes in place. It will take a significant amount of time to deliver this programme, but the OPW will move from delivering, on average, six flood relief schemes per year to 20 flood relief schemes per year. This is a major increase in capacity.

We have done exactly what Senator Labhrás Ó Murchú has suggested. We have put in place supports for business, which is something we have not been able to do in the past. We have put in place supports for businesses that have been flooded and that do not have flood insurance. I heard very clearly from business owners in Bandon that they did not want a complicated, bureaucratic scheme wrapped up in red tape. They have been through enough and they want a simple scheme. We have put in place a Red Cross scheme. Claimants self-declare up to €5,000 worth of damage, we take them at their word, they get their form stamped by the local authority and they get payment before Christmas. There is a further €15,000 for each business that has experienced more significant damage. In the interest of the taxpayer, that is vouched and does take longer, but we can get initial payments of up to €5,000 to every business with up to 20 employees that has been flooded and does not have flood insurance.

As I have also made clear, the Government is examining the policy area of flood insurance, looking at what other countries do. Through an interdepartmental group on flooding, the De-

partment of Finance is examining this and will report to the Cabinet in the spring. Whoever is in Government in the spring will be faced with policy choices in this area. People are going to have to face up to these choices if we want to ensure we are proactive and not reactive to the issue of flooding.

I thank the emergency services, the Red Cross, Civil Defence, the Garda, local authority workers and the communities that have worked day and night. We always hear, and rightly so, about the towns, the businesses and the homes that have been flooded, but I know from my briefings with the national emergency co-ordination committee that there are so many homes and businesses that were not flooded as a direct result of their heroic efforts. More than 700 members of the Defence Forces have been deployed and 20,000 sandbags were filled in County Clare alone. That is a testament to the inter-agency and community response to this crisis.

Senator Aileen Hayden is right that there is a balance to be struck between avoiding what used to happen in the past, before 2004, when at the end of the year Ministers would rush to spend because they had to get rid of the money or lose it into an apparent black hole, and spending the money required. They can now carry over that money. The sum of money Ministers have been given is an estimate of what they expect to spend this year, but there has been criticism, including of the OPW, when a Minister does not spend all his or her capital in one year. The prudent thing to do is to ensure that one can only spend the money when it is legally right to do so, when schemes are right. The capital carryover allows people to do that. I agree with Senator Aileen Hayden on the capital programme. I do not think anyone in government would disagree. We could do with a larger capital programme, but we now have one. Cleverly, the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, has built into that programme a review in 2017, in order that if the country continues on this track - that cannot be taken for granted - we will be able to look at further expanding the capital programme at that stage.

This Bill is important. While technical in nature, it will ensure that people on jobseeker's allowance, disability allowance, and the State pension, with public servants such as nurses, gardaí and teachers, get paid, and that all other pay and pensions funded through voted money, along with pay to suppliers of goods and services across a range of SMEs, is provided. It is to authorise our supplementary expenditure and to approve the expenditure that is incurred during 2015. I commend the Bill to the House.

Question put and agreed to.

Bill put through Committee, reported without recommendation, received for final consideration and ordered to be returned to the Dáil.

Appropriation Bill 2015: Motion for Earlier Signature

Senator Tom Sheahan: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Appropriation Bill 2015 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put and agreed to.

Sitting suspended at 2.25 p.m. and resumed at 3 p.m.

Seanad Electoral Reform Bill 2013: Committee and Remaining Stages

SECTION 1

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

Senator John Crown: Ba mhaith liom buíochas a ghabháil leis an Aire Stáit. I thank the Minister of State for coming to the Seanad today. I am conscious of the fact that, at a busy time in the dying embers of the current Oireachtas, the Government has generously made 29 minutes available to me to discuss Committee and Final Stages of this legislation, legislation which would cause a fundamental reform of one of our two Houses of Parliament. When I was elected in 2011, I made a promise and a commitment in my speech at the count centre in the RDS that I would never run again for the Seanad under the electoral system which then applied, a system which I described then, and still describe, as an affront to democracy. Among the few other reforming actions I have attempted to make in my few years here, I have put a fair bit of effort, with the very able assistance of Shane Conneely, Aoife Casey, Benjamin O’Hara, Aoife O’Toole and others, into crafting a fundamental reform Bill for the Seanad, as I promised I would do. As the Minister of State is aware, Ireland has had a problem in recent years. While I do not limit this to the present Government, we found ourselves in some difficult situations five or six years ago that largely could be ascribed to bad governance. While people were happy to blame banks and the real estate sector, the country had a problem with governance and the reason Ireland had inappropriate governance was because it did not have a good system for electing the people who applied the power and the principles of government to the Republic. In the Dáil, the principal objection that can be raised is people are elected who are greatly focused on local issues. In the Seanad, the principal problem is people are elected in a bizarre, elitist, unbalanced and anachronistic electoral system. Within the confines of Bunreacht na hÉireann, the Constitution, there is a limit to how much reform can be achieved without a referendum and Members of this House are not in a position to effect a referendum. Consequently, I put together the maximum reform package possible within the strictures of the current Constitution. This addresses the core deficit in the Seanad, which is the democratic deficit, that is, the fact that few people in Ireland have the opportunity to participate directly in the election of the representatives in Seanad Éireann.

In line with the reforms I have put forward, this opportunity would be extended to each citizen of the country, including those citizens who live outside the country. This is important because the ravages of emigration have taken a disproportionate toll in Ireland and it seems only appropriate to have a vehicle of some kind, as do many other countries, for electoral representation for Irish citizens who, through circumstances that are not of their own making, have found themselves forced to live without the Republic. The argument has been advanced that were the reforms outlined in this Bill to be made, the Seanad would become a mini-Dáil. I believe that what would happen is the Dáil would become a mini-Seanad. There would be a single Chamber, based on universal suffrage and nationally based constituencies, in which any citizen could run with limited interference from the possibility of political parties blocking their appointment. In this context, Members have all seen how much difficulty that has caused nationwide in this particular electoral cycle. Any citizen could vote in such a constituency and

would not be voting for a local or sectional representative. Instead, he or she would be voting for somebody as part of a national constituency or as part of a number of national constituencies, namely, those based loosely on the existing panels. The only difference would be that one could declare one's intention to vote only for one panel and one could declare one's intention to run in only one panel, thus ending the present position in which individuals in Ireland have up to eight votes at the time of a general election because of their multiple votes in the Seanad, as well as their vote for the Dáil.

While this may appear to be a rather quixotic ideal, I believe it is entirely feasible. It is entirely possible within Bunreacht na hÉireann, would not subvert the Constitution and would not lead to gridlock. The Taoiseach's constitutional lock on appointing 11 Members to the Seanad would be retained because it is set out in the Constitution and no part of this Bill challenges the Constitution. What it would provide is a different kind of Chamber, that is, one in which Members are not focused on local issues. Incidentally, I do not for a second belittle the importance of local issues. As has been noted, all politics is local and I understand that. Local issues affect local people, who need to know they have representation in the halls of power and of Parliament. It would, however, allow for the possibility of having two different kinds of representative in the national Parliament, namely, those in the Dáil, who still would be able to look after local issues, and a collection of Senators who would be focused on, shall we say, the big picture.

For all these reasons, the Bill fixes the democratic deficit in the Seanad, which really is an affront. This was evident in the multiple and often correct objections to the Seanad raised at the time of the referendum on the abolition of the Seanad two years ago. People asked whether they got to vote in the Seanad and noted they did not. This Bill would extend that right to everyone. Consequently, as the people have spoken in the aforementioned referendum and have stated their wish to keep alive the Seanad, there is an absolute obligation to reform it. While it is not the fault of the Minister of State, it is awfully sad that a referendum was held in 1979 on a rather simple, technical issue to change the way in which one votes for Senators but 36 years later, it has not even been possible to implement it.

I made a promise in 2011 that I would not run again for the Seanad under the current electoral system. While maintaining me in this House is not necessarily a good enough reason for reform in the Seanad, it is a promise I intend to keep. There are other good and important reasons for which I urge the acceptance of this Bill, including fixing the democratic deficit in the Seanad and providing one Chamber in Parliament which is nationally focused.

Acting Chairman (Senator Jillian van Turnhout): I gave the Senator some latitude, but there are other speakers. I will be checking the section we are on.

Senator Mark Daly: I thank Senator John Crown for bringing this Bill forward. He is keeping a promise on reforming this House. The Government made a promise about the referendum and we have seen no reform or change since. This is important legislation which proposes to change the way in which this House is elected and who can elect people to the Oireachtas. One of the important provisions in the Bill is the right of members of the Irish community overseas to vote in a reformed Seanad election. There are 120 countries in the world facilitating this type of voting and yet Ireland does not allow its citizens overseas, bar a few diplomats, to vote in its national Parliament. It is simply not good enough. On the eve of the anniversary of the 1916 Rising-----

Acting Chairman (Senator Jillian van Turnhout): That is a different section.

Senator Mark Daly: I know, but let us be honest; we are not going to reach the rest of the sections. Senator John Crown sums up the need for reform and the need to ensure more people are allowed to vote in a reformed Seanad, which would allow them to have a stake in what this House does and the type of legislation it proposes. I know that Senator John Crown is not going to run again but it is heartening to see the legislation he put forward, and which the Cathaoirleach and I supported, dealt with in the regulations this week.

This House can do what the Dáil simply would not pursue. Senators are aware that the process is quite laborious, and legislation takes a long time to get through. A reformed Seanad could do more of that and be as dynamic as Senator John Crown and others have made it during the years. However, for that to happen the Government needs to want reform and not simply talk about it. I am unsure if it was in the five point plan but perhaps it was tucked in there somewhere. Again, the necessary reform has not happened. That is a regret for all the Members of this House and for the people who voted in that referendum who sought change and who voted for a better form of Government. This Government would tell us it did not get the reform it asked for in 2011.

Senator Cáit Keane: I commend Senator John Crown for keeping this issue on the agenda. This House agrees that change has to happen and going back-----

Senator Mark Daly: That is great.

Acting Chairman (Senator Jillian van Turnhout): The Senator should address the Chair.

Senator Cáit Keane: Do not talk to me. The last piece of legislation was waiting 17 years to go through.

Senator Mark Daly: Is that the reason the Senator is objecting to this one?

Senator Cáit Keane: The 1937 Constitution envisaged and enabled the expansion of the electorate for the vocational panels. When the current Seanad was established, the Leader made it a priority to ensure it would be done and there has been more than one reform. The Seanad university constituencies were widened. That was also on the agenda and passed by referendum for 17 years. Also, giving extra duties to this Seanad-----

Senator Mark Daly: The Senator would want to check her briefing notes on that one.

Senator Cáit Keane: -----and the procedural reforms have been working, as I am sure Members will agree. We have also seen community forums invited to the House. I would like to see more of that, and I know it is on the Leader's agenda. However, more needs to be done. It is our own policy. In 2009, it was proposed that every citizen would have a vote in the Seanad, as is proposed in the Bill. The issue is how to properly achieve this shared objective, which has been recommended in 11 reports. An election that excludes the majority of citizens from participation lacks popular legitimacy and we all agree that the issue must be addressed.

I am speaking to section 1, which sets out definitions and covers a multitude of issues. The nominating bodies are to be removed from the process and replaced with a requirement to have 1,000 signatures in support of a nomination. Senators nominated by various nominating bodies all have special interests, for example, disability and blind or deaf people. While it is good that bodies have an input in the nominating process, we must make the process broader and more representative.

I attended a meeting of the Joint Committee on the Environment, Culture and the Gaeltacht which discussed the electoral register. The Bill proposed by Senators Katherine Zappone and Feargal Quinn envisaged a role for the Northern Ireland Electoral Commission. The Bill before us does not appear to make such provision. People from Northern Ireland have made a contribution to the Seanad for many years and the Leader has invited representatives from Northern Ireland before the House on more than one occasion.

We hear a great deal about cloud computing and postal votes. The issue of cybersecurity has not been fully addressed. The centre for cybersecurity at University College Dublin is working with a group established by the Taoiseach to consider this issue. The Government has agreed a way forward in respect of registering people to vote. It will take time to implement, however, because the number of electors is large. We would have another mess on our hands if the register was not done properly.

We must be careful about proposals we make or agree to. While the spirit of the Bill is good, I do not like many of its provisions because they are unworkable. If the vote is extended to the diaspora, will we end up with more people from outside the country voting in Seanad elections than people inside the country?

Work is being done on the report on Seanad reform. I hope the Government will place Seanad reform at the top of its agenda when it has been re-elected. I was disappointed to learn that Senator John Crown has decided not to run for the Seanad again. He has made a good input in the House, including through this Bill. I will ask questions as we proceed through the sections.

Senator Feargal Quinn: I welcome the Minister of State. The Bill before us is especially welcome. While it is not the only proposal on how to reform the Seanad, it is a concrete one. I cannot get over the failure to do anything on foot of the 1979 referendum.

Senator Cáit Keane: The Senator is wrong. The House passed the relevant legislation.

Acting Chairman (Senator Jillian van Turnhout): The Senator should allow Senator Feargal Quinn to continue, without interruption. I also ask speakers to confine their remarks to the contents of the Bill.

Senator Feargal Quinn: Senator John Crown explained the Bill. On the day he and I were elected, he announced he would not stand again unless the voting system for the Seanad was reformed. The Senator has proposed this Bill to reform the House. It is exactly the type of legislation the Government should accept as it would make a statement that it intends to do something about Seanad reform. Nothing has happened since the referendum two years ago.

Section 1 will allow action to be taken without presenting constitutional difficulties.

I support Senator Crown in this. I believe the Minister of State should accept section 1 because it makes a great deal of sense.

Senator Diarmuid Wilson: I will be brief because, as Senator John Crown has said, the time is limited. I commend Senator John Crown for pursuing this Bill rather than leaving it lying on the Order Paper to die with the current Seanad.

While I appreciate this is only one proposal on Seanad reform that has been initiated during the course of this Seanad and since the referendum, Senators Feargal Quinn and Katharine Zappone had a proposal and my party had proposals, and, indeed, the Government had proposals in

this regard, and while there are sections and proposals in the Bill that I would not agree with, it is sending a signal that we are serious about wanting to reform ourselves.

Mention has been made of the 1979 referendum, which was initiated by an uncle of mine who was then Minister for Education and the arts. It is regrettable that nothing has happened in relation to extending the university franchise. However, it would be easy to do that and nothing else, and to do that in isolation would not be appropriate.

We need to address Seanad reform. I hope we will get an opportunity to come back into this House to work on that in the years ahead. While the Government, to go by what Senator Cáit Keane stated, will not be accepting this here today, my party will vote for it because we believe, flawed and all as it may be in certain respects, it is a start and we must move on from here. I would urge the Government to accept Senator John Crown's Bill.

Senator Gerard P. Craughwell: I welcome the Minister of State, Deputy Paudie Coffey.

I too support Senator John Crown. In fact, Senator Feargal Quinn's statement that Senator John Crown feels he will not be able to stand for election again if he does not see meaningful reform has saddened me somewhat.

Senators Feargal Quinn, John Crown and Katherine Zappone have all been pushing for reform. Many would argue that the referendum was based on the belief that there would be reform. I am not at all convinced that we will see any reform coming from the report that was done by former Senators Maurice Manning and Joe O'Toole and others, which was a great piece of work. Based on that, I add my voice and vote to the support for Senator John Crown's Bill.

I hope any notion that Senator John Crown might depart this House will leave him as quickly as he leaves the House today and that he will return. The Senator has been a significant spokesperson for legislative reform and, indeed, for the medical profession and the treatment of patients nationally. I hope that if the Government does not accept this Bill, it will not in any way deter him from returning.

In 1979, we passed a referendum. Two years ago, we passed a referendum. I honestly do not believe there will ever be reform unless some brave Minister - Deputy Paudie Coffey is brave - will take the step of adopting a Bill, and we can change it through legislation afterwards if need be. I ask the Minister of State to accept it.

Minister of State at the Department of the Environment, Community and Local Government (Deputy Paudie Coffey): Senators spoke on wider issues around the Bill, and I would appreciate some latitude in making my response.

Acting Chairman (Senator Jillian van Turnhout): Absolutely.

Deputy Paudie Coffey: I thank Senator John Crown for tabling the Bill and acknowledge the contribution he has made in general to this House. I regret to hear that he may not be standing for election, but that is everybody's personal decision.

Before I address section 1 in detail, the Government will be opposing this Bill, and I will outline why. I appreciate that the Bill before us specifically addresses electoral reform, but the stated objective of the Bill suggests an ambition to achieve a far wider Seanad reform. We all are in agreement - many Senators have said it, as have I, as a former Member of this House - that reform is needed. However, I am not convinced that this Bill can fully deliver on that as it

is currently drafted. The Government has agreed an approach to Seanad reform which is based on the implementation of procedural reforms and reform of the Seanad university constituencies, and also on advancing reform more generally through considering the recommendations of the working group on Seanad reform which was established by the Taoiseach. It is in that context that the Government has considered the content and stated purpose of this Bill and has decided to oppose it for a number of reasons that I would like to put on the record. First, administrative issues arise which compromise the ability of the Bill to be implemented in practice. The Bill, if implemented, could give rise to significant costs which do not appear to have been comprehensively analysed. That would have a huge impact on the Exchequer. The Bill would also reduce representation from the sectoral interests and agriculture, labour, industry and commerce in the Seanad. In the absence of any explanation for this change, the Government is not persuaded that it is justified or that it should be agreed.

The Bill also removes the nominating bodies entirely from the process of candidate selection for the vocational panels. The Government is not convinced that the Bill adequately replaces the existing arrangements or that the new arrangements for candidate selection would adequately meet the constitutional requirements in relation to the formation of the vocational panels. A key feature of the Bill is the extension of the franchise to all local government electors in the State and also to Irish citizens who are resident outside the State who are passport holders. This would create a second directly elected House of the Oireachtas with a significantly wider franchise which could be more than 5 million votes. As I have said previously when debating another Seanad reform Bill, if the Seanad was to be so configured and the right to vote in Seanad elections so provided for, the Constitution would then have been framed in this way. As we all know, it is not.

The Bill does not quantify the likely electorate, but we estimate that more than 5 million people would be entitled to vote under the Bill as drafted. Clearly, this would have serious cost and administrative implications which I believe are not adequately addressed in the Bill. On the matter of costs, the Bill provides for a novel way of paying for the running of the Seanad elections, which is that the costs would be met from the parliamentary activities allowance paid to Senators and to the political parties whose members are Senators. The Government will not be supporting the Bill, as currently drafted.

Question put and agreed to.

Sections 2 to 29, inclusive, agreed to.

Acting Chairman (Senator van Turnhout): As it is now 3.30 p.m., I am required to put the following question in accordance with the order of the Seanad of this day: “That section 30 is hereby agreed to in Committee, that each of the sections undisposed of, Schedules 1 and 2 and the Title are hereby agreed to in Committee and the Bill is, accordingly, reported to the House without amendment, that Fourth Stage is hereby completed and the Bill is hereby passed.”

Question put:

The Seanad divided: Tá, 17; Níl, 24.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Byrne, Thomas.	Brennan, Terry.

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Craughwell, Gerard P.	Burke, Colm.
Crown, John.	Cahill, Máiría.
Daly, Mark.	Coghlan, Eamonn.
Leyden, Terry.	Coghlan, Paul.
Mooney, Paschal.	Comiskey, Michael.
Norris, David.	Cummins, Maurice.
O'Brien, Darragh.	D'Arcy, Jim.
O'Donovan, Denis.	Gilroy, John.
Ó Domhnaill, Brian.	Hayden, Aideen.
Ó Murchú, Labhrás.	Henry, Imelda.
Quinn, Feargal.	Higgins, Lorraine.
van Turnhout, Jillian.	Keane, Cáit.
Walsh, Jim.	Kelly, John.
Wilson, Diarmuid.	Moloney, Marie.
Zappone, Katherine.	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegard.
	Noone, Catherine.
	O'Brien, Mary Ann.
	O'Donnell, Marie-Louise.
	O'Neill, Pat.
	Sheahan, Tom.

Tellers: Tá, Senators John Crown and Feargal Quinn; Níl, Senators Paul Coghlan and Aideen Hayden.

Question declared lost.

Health Insurance (Amendment) Bill 2015: Committee and Remaining Stages

Sections 1 to 7, inclusive, agreed to.

Title agreed to.

Bill reported without amendment, received for final consideration and passed.

Sitting suspended at 3.50 p.m. and resumed at 4.05 p.m.

Legal Services Regulation Bill 2011: Motions

An Cathaoirleach: On 2 December 2015, the Seanad sent the Legal Services Regulation Bill 2011 to the Dáil with 280 amendments to which the agreement of the Dáil was sought. The Dáil considered those amendments and agreed to amendments Nos. 1 to 60, inclusive, 62 to 75, inclusive, 77 to 88, inclusive, 91 to 94, inclusive, 96, 97, 99 to 192, inclusive, 194 to 256, inclusive, and 258 to 280, inclusive, but made changes to amendments Nos. 61, 76, 89, 90,

95, 98, 193 and 257. The amendments made in the Dáil are technical amendments and will be taken individually.

I will call on the Deputy Leader to move the motion suggesting the action to be taken by the Seanad and then on the Minister to explain the decisions taken by the Dáil. I remind Senators that each Senator may speak only once on each amendment.

Senator Ivana Bacik: I move:

That the Seanad do agree to the first amendment made by the Dáil to Seanad amendment No. 61.

Minister for Justice and Equality (Deputy Frances Fitzgerald): The proposed amendments are purely correctional relating to such matters as cross referencing, the reinstatement of omitted words, the removal of superfluous words or the slight restructuring of a section to ensure absolute clarity. In amendment No. 61, (7) should read (6) and (6) should read (5).

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the second amendment made by the Dáil to Seanad amendment No. 61.

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the amendment made by the Dáil to Seanad amendment No. 76.

Deputy Frances Fitzgerald: This amendment gives greater clarity to ensure that there is early resolution and that mediation is used. It is a clarifying amendment.

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the amendment made by the Dáil to Seanad amendment No. 89.

Deputy Frances Fitzgerald: This is a drafting correctional amendment to restore text which was omitted during the course of the amendment being made on Committee Stage in the Seanad.

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the amendment made by the Dáil to Seanad amendment No. 90.

Deputy Frances Fitzgerald: This is where a witness is called and the tribunal takes a decision that expenses should be given back. It is to insert after “Authority” the phrase “or the legal

practitioner”. The legal practitioner concerned would be subject to paying back the witness’s expenses.

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the amendment made by the Dáil to Seanad amendment No. 95.

Deputy Frances Fitzgerald: This is a drafting correctional amendment which corrects a cross reference.

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the amendment made by the Dáil to Seanad amendment No. 98.

Deputy Frances Fitzgerald: The words “or” and “and” were there, so this is to remove the word “and”.

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the amendment made by the Dáil to Seanad amendment No. 193.

Deputy Frances Fitzgerald: Instead of “cause” the word should have been “caused”.

Question put and agreed to.

Senator Ivana Bacik: I move:

That the Seanad do agree to the amendment made by the Dáil to Seanad amendment No. 257.

Deputy Frances Fitzgerald: This is the citation relating to the Solicitors Acts. One citation was omitted so it is being inserted.

Question put and agreed to.

An Cathaoirleach: A message will be sent to the Dáil to inform it of those decisions.

Sitting suspended at 4.10 p.m. and resumed at 4.30 p.m.

Assisted Decision-Making (Capacity) Bill 2013: Report and Final Stages

An Cathaoirleach: Before we commence, I remind members that a Senator may speak only once on Report Stage, except the proposer of an amendment who may reply to discussion on it. On Report Stage, each amendment must be seconded.

Amendments Nos 1 to 3, inclusive, amendments Nos. 73 to 75, inclusive, amendments Nos. 77 to 111, inclusive, and amendment No. 113 form a composite proposal and will be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 1:

In page 9, line 30, after “Minister” to insert “, after consultation with the Minister for Health,”.

Minister of State at the Department of Health (Deputy Kathleen Lynch): We are nearing the finish line in many respects but before I begin I will acknowledge some people in the Visitors Gallery today who have taken an incredible interest in this Bill, not just in terms of the Law Reform Commission. Ms Jean Spain is in the Visitors Gallery. Ms Spain and Ms Deirdre Carroll were two of the first people who ever approached me about capacity and this Bill is centrally about those who have contributed. I acknowledge their contribution.

Senator Martin Conway: Hear, hear.

Deputy Kathleen Lynch: The Government decided on 8 December that responsibility for the decision support service would be moved from the Courts Service to the Mental Health Commission. This is in response to concerns expressed at the proposal to locate the decision support service in the Courts Service. The original decision to locate the Office of Public Guardian, as it was then called, in the Courts Service was based on the view that the Office of Wards of Court could form the kernel of the staff of the new body. However, stakeholders have pointed to the desirability of moving away from the Office of Wards of Court to avoid the false impression that wardship could be perpetuated by another name. Instead, as I have made clear, wardship will be abolished for adults once existing wards have been discharged or migrated to the new support options.

The proposal to locate the decision support service in the Mental Health Commission will create a clear boundary between the old wardship system and the new options available for persons with capacity difficulties. The decision to choose the Mental Health Commission as the location for the decision support service is because the commission has expertise on key functions that will be undertaken by the new body. It has experience of providing information and of preparing codes of practice. It has experience of setting standards, performing regulatory functions and undertaking investigations. It approaches its current functions from a human rights-based perspective, which is what will be important for the new body. It has the necessary skills mix that is needed by the new body.

I am conscious that the Mental Health Commission’s current service users may be a different target group from the much broader client base of the decision support service. Some rebranding may be needed to make this distinction clear. This will need to be worked out with the Mental Health Commission over the next months. While logistics and timing will need to be worked out with the Mental Health Commission, this is a very good solution which draws on the experience of a very skilled organisation, yet allows a new architecture to be established.

The proposed amendments are consequential on the Government’s decision to move the decision support service to the Mental Health Commission. All references to the board of the Courts Service are proposed to be replaced by references to the Mental Health Commission. Many references to the Minister for Justice and Equality are proposed to be replaced by references to the Minister for Health as the Mental Health Commission comes within his or her

remit.

Amendment No. 1 proposes to amend the provisions concerning commencement of the Bill. It proposes that the Minister for Health be consulted on the commencement of the Bill in view of his or her responsibility for the Mental Health Commission. As the decision to move the decision support service to the Mental Health Commission was only taken on 8 December, the Mental Health Commission will need time to prepare for this new task. As a result, I envisage that the legislation will not be commenced immediately. It is anticipated that the Bill, if enacted, will be commenced in the second half of 2016 to coincide with the finalisation of preparations to ratify the UN Convention on the Rights of Persons with Disabilities. I never thought we would get to that day.

Amendment No. 2 proposes to delete the reference to the board of the Courts Service as it will now not be responsible for the decision support service. Similarly, the reference in amendment No. 3 to the Courts Service Act of 1998 is proposed for deletion as no change is now envisaged to that Act.

Amendments Nos. 73 to 75, inclusive, 77, 81, 82, 84, 87 and 89 replace the references to the Courts Service with the Mental Health Commission.

Amendment No. 78 proposes that the Minister for Health rather than the Minister for Justice and Equality will determine the terms and conditions of the director of the decision support service. This is because the Minister for Health has responsibility for the Mental Health Commission and the resources allocated to it.

Amendment No. 79 proposes that the director will be a member of staff of the Mental Health Commission rather than of the Courts Service, reflecting the transfer of responsibility to the Mental Health Commission. Similarly, amendment No. 80 proposes that the staff of the decision support service will be staff of the Mental Health Commission. It also proposes that the provisions of Part 3 of the Mental Health Act 2001, which deal with the terms and conditions of the staff of the Mental Health Commission, will apply also to the staff of the decision support service.

Amendment No. 88 proposes that any adviser engaged by the director will be subject to the prior agreement of the Minister for Health in view of his or her responsibility for the Mental Health Commission and the resources available to it.

Amendment No. 90 proposes that the Minister for Health would also have to give approval to the remuneration and allowances for special visitors and general visitors.

Amendments 91, 92 94 to 96, inclusive, 99, 100 and 103 propose to replace all references to the board of the Courts Service with the Mental Health Commission or the commission. It is proposed that the Mental Health Commission will have the same role as was foreseen for the board of the Courts Service to receive a copy of the annual report prepared by the director on the activities of the decision support service. It will also receive a copy of the report to be prepared by the director within two years of the commencement of Part 9 on the effectiveness of the functions specified for the director under this legislation. In addition, it will receive a copy of the report the director must produce after five years reviewing the performance of his or her office and on the functions set out under the Bill.

Amendments 93, 97, 98, 101, 102 and 104 propose that the commission will be obliged

to forward these reports to the Minister for Health in view of his or her responsibility for the Mental Health Commission. Amendment No. 105 proposes that the Minister for Health rather than the Minister for Justice and Equality will be required to send a copy of such reports to the Oireachtas. No change is proposed to the provision requiring the reports to be laid before the Houses of the Oireachtas.

The proposed transfer of responsibility for the decision support service from the Courts Service to the Mental Health Commission will require a series of amendments to section 86 which relates to codes of practice.

Amendment No. 106 proposes to delete paragraph (b) of subsection (3) as it is no longer necessary for the Mental Health Commission to be consulted on codes of practice since the decision support service will be located in the Mental Health Commission. This means that the Mental Health Commission will now be centrally involved in the preparation of these codes of practice.

Amendment No. 107 proposes that where the decision support service produces codes of practice on non-health care matters, these should be done in consultation with the Minister for Health in view of his or her responsibility for the Mental Health Commission. The Mental Health Commission would be consulted instead of the board of the Courts Service. The Minister for Justice and Equality's consent would continue to be required in view of his or her policy responsibility for the Bill.

Amendment No. 108 proposes that where the decision support service produces codes of practice on health care matters, these would be done with the consent of the Minister for Health in view of his or her policy responsibility for health care matters and for the Mental Health Commission. It is proposed that the Minister for Justice and Equality would be consulted in view of his or her policy responsibility for the legislation. The Mental Health Commission would be consulted instead of the board of the Courts Service.

Amendments Nos. 109 and 111 replace the references to the board of the Courts Service with the Mental Health Commission.

Amendment No. 110 proposes to delete section 87 of the Bill as the Courts Service will not have responsibility for managing the functions assigned to the director of the decision support service.

Amendment No. 113 proposes that the review of the functioning of the Bill when enacted would be undertaken in consultation with the Minister for Health in view of his or her responsibility for the Mental Health Commission. As the Commission will now have responsibility for the decision support service, the views of the Minister for Health will be crucial in determining how the Bill, when enacted, functions in practice.

Senator Jillian van Turnhout: On this grouping of amendments, I am trying to work out the implications and I would not mind being clear. I appreciate that concerns were expressed previously about the placement of the decision support service within the Courts Service. Principally, the concern was that the decision support service would not be sufficiently independent as a component of the Courts Service and there was a question whether its work would be open to scrutiny by the Ombudsman. I am trying to work through why moving the decision support service to the Mental Health Commission will resolve this problem because it places the service within the remit of the Department of Health rather than the Department of Justice and Equal-

ity. Since legal capacity matters should probably be regarded as a matter for the Department of Justice and Equality, I question this move. Could this lead to confusion because decision support issues might be confused with mental health issues? Since the remit of the decision support service is much broader than mental health, I wonder about establishing it under the Mental Health Commission.

I would have thought that this function would have been better to be established as an independent authority similar to the National Disability Authority with reporting responsibilities to the Department of Justice and Equality. I imagine it is because the move is being made now on Report Stage that there are questions from those who have not been consulted. There has been extensive consultation on the Bill. We are jumping the last hurdle and I wonder whether this is the right one that we should be jumping. I appreciate the placing of the function in the Courts Service was not right, but I do not know whether we are moving it to the right place. My concerns are echoed by many civil society organisations, persons with disabilities and their representatives. Why are we doing this now when the preference is to have an independent body that would be within the remit of the Department of Justice and Equality? Such an independent body would be more appropriate. It would be more in keeping with the spirit of the Bill. That is where my difficulties lie on this grouping of amendments.

Senator Trevor Ó Clochartaigh: Cuirim céad fáilte roimh an Aire Stáit arís. It is a good day to be debating the Bill and I hope we will get through it in an expedient manner. I concur with Senator Jillian van Turnhout on the issues she is raising because I note that a number of organisations, such as Inclusion Ireland, have raised this as a particular issue. The thought of placing the decision support service within the Courts Service was not one with which they were comfortable. The organisations that have been in contact with us have asked for an office with an independent function separate from the Courts Service with a director recruited through the Public Appointments Service. This would afford independence, transparency and an opportunity for a fresh start with the new support structure. If the Minister of State has taken this step, why did she go with the Mental Health Commission rather than set it up as an independent body in its own right, which is what was called for?

Senator David Norris: I welcome the Minister of State. It is a bit odd - I have commented on this before - that we have 113 amendments at this very late Stage, Report Stage, and all but two of them are Government amendments. That is astonishing. I hope the Minister of State will convey this to her colleagues and to those involved in the Civil Service in the drafting. It is both a drafting and a political matter. It is shameful that we have this kind of thing, a backlog or a furious push of legislation every Christmas. Why does it happen? It is bad management and it should be stopped.

With regard to the particular import of these amendments, they are not all drafting amendments. Some of them are and some of them are just changing words, that is, tinkering around. Even though there is quite a considerable number of them, I suppose that is fair enough although, God knows, one would imagine it would have been spotted before now.

One of the principal amendments in the entire range deals with taking the function out of the Courts Service and putting it into the Mental Health Commission. I have been contacted by some of the relatives and they are not particularly happy about this. They were not happy about it being part of the Courts Service because of their experience with wards being referred to as lunatics and all this unhelpful language.

I am asked if the Minister of State knows what she is doing. For many of these people it is not so much a question of mental health in terms of a disability, mental functioning or mental capacity. Many of these people are the way they are as a result of accidental injury. It is acquired brain damage and the relatives are fairly sensitive about this and do not feel it should come under the Mental Health Commission. It is not a question of mental health, depression or this, that or the other, it is acquired brain damage. One of these people said to me that all those who have family members who are wards of court have said that for them to have confidence in the new system, it would need to be delivered outside the Courts Service, preferably as an independent stand-alone service responsible to the Government directly. This person will be pleased that it is moved out of the Courts Service but I am not sure the person is terrifically chuffed by the idea of it being put into the mental health area. This person wonders if the Minister of State has looked at the question of the fully independent provision of this kind of service. This person welcomes the move away from the Courts Service but finds it difficult to understand why it comes under the remit of the Mental Health Commission. The premise of the Bill is that it would be delivered under the Courts Service with the director of the decision support service being appointed by the Courts Service and being responsible to the Courts Service. The person I referred to is concerned about that.

I have a bit of a grouse which the Minister of State need not bother to refer to because we have been through this. I point out again the enormous constellation of amendments, all but two of which are from the Government. The other issue is that I am concerned at the introduction, at this late Stage, of a move, without consultation with the relatives, as I understand it, from the Courts Service, which is welcomed. As somebody said to me years ago when they were talking about a translation of *Finnegans Wake*, “it is being translated into Japanese, but out of what?”. In the case of this service, it is going out of the Courts Service, but into what? Most of the relatives would like it to be a fully independent service.

Senator Martin Conway: Even though this legislation is groundbreaking, and that view is shared by everyone else in this House, I received a telephone call today from a lady whose name escapes me but who was very distressed about the transfer of this service from the Courts Service to the Mental Health Commission. I thought all non-governmental organisations were in support of that move. I do not doubt that the Minister of State will be able to reassure me with regard to two slight concerns. If the Mental Health Commission is enshrined in this legislation, will further legislation be required if a future Government decides to change the name of the commission? Language is important. The Title of this Bill has evolved over the years. It is now known as the Assisted Decision-Making (Capacity) Bill 2013. I do not doubt that the name of the Mental Health Commission could change in years to come. I do not think it matters as long as the job is done and done well. People can be too zealous about what bodies are called and what Departments they fall under. I suppose people have concerns, but sometimes it is better to go with a proposal on the basis that it is better than what is there at the moment. We could look for perfection, but I do not think perfection exists in life. As I said to the very nice lady who called me earlier today, this legislation can be amended. She did not seem to grasp where I was coming from. She said this is going to cover the whole legislation. The big story here is that we have moved from where we were coming from to where we are now with this legislation. I appeal to Members to get this legislation over the line. It will be six months before it is enacted. We need to get it over the line because people out there are waiting. We have been very careful with the use of language and all of that.

Senator David Norris: May I seek a little further information on foot of what Senator

Martin Conway has said? If it “will be six months before it is enacted”, will it fall with the Government? We need to have an election in the next six months.

Senator Martin Conway: It will be six months before it is commenced.

Senator David Norris: I see. The Senator said “enacted”.

Senator Martin Conway: That is the genesis of my point.

Senator Cáit Keane: I compliment the Minister of State on the work she has been doing for the past two or three years. Perhaps she has been working on this matter for even longer than that without my knowing about it. To say that this legislation is groundbreaking is an understatement because there is so much good in it but a worrying feature of the Bill has come to light today. I refer to the transfer of the decision support service to the Mental Health Commission. I was listening to the Minister of State on my monitor when I was upstairs. I know people think we are asleep when we are not in the Chamber. I did not hear a satisfactory explanation from the Minister of State and I would like to hear such an explanation now. I agree with the Minister of State most of the time because she comes forward with sensible solutions. I want to know the reason for this decision. It really changes the whole aspect from the justice system to the Mental Health Commission. Obviously, the Minister of State has a good reason for doing this and I want to hear that reason. I received a telephone call from a lady called Mary Farrell. She might have contacted Senator Martin Conway also. I have also been contacted by Tallaght Trialogue and various other individuals and groupings who are concerned that such a major change is being made at this late stage of the legislative process.

The Minister of State is to be congratulated because this Bill does a great deal to change what has been there since the 1800s. There are many people in wardship who do not have mental problems. We are lifting the stigma of mental health. We should all work towards that. Mental health should be like having a headache. No stigma or anything else should be attached to it. I know from the various e-mails and telephone calls I have received that people with brain injuries who have never had any mental capacity issues and their carers and representatives are not at all pleased. As Senator David Norris said, an acquired brain injury is not a mental illness.

I look forward to the Minister of State’s explanation. Like other Senators, I want the Bill to be passed. It is past time this was done. We have been waiting a long time for the Minister of State to come here and progress the Bill. While I would not like it to be delayed, I would appreciate a good explanation in respect of the issue of independence and the Courts Service. Are we looking at a worse scenario? The position regarding the Courts Service was not good. There is obviously a good explanation for the transfer and I want to hear it.

Senator Marie-Louise O’Donnell: I disagree with Senator Martin Conway. It is very important to reach some sense of perfection, given that human rights is about this. We must start at the top, not half way or three quarters of the way up. Heterosexual men were very good at perfection throughout my life. That is where I learned it. I had grave difficulty believing women were perfect. Men were telling me for years that they were.

Senator Martin Conway: I always believed they were.

Senator Marie-Louise O’Donnell: Given that the core of the Bill is about human rights, we start at a level of perfection and fall as fragile human beings. We do not start half way up a ladder.

I thank some of the experts in the Visitors Gallery and people such as Mary Farrell. Many of us can be educated and informed by those who live with what the Bill is trying to provide for and whose lives are caught between the devil and the deep blue sea. Mary Farrell is in her 70s and is caring for her 47 year old son who is not well. We must be very careful how we deal with this. As my colleague, Senator Jillian van Turnhout, said, it is not a simple amendment but a huge and odd one. The premise of the Bill was centred on the Courts Service. Why was it changed and moved to the Mental Health Commission? Who is going to report to whom and about what regarding discharge orders, orders for decision making and representatives? I thank the experts in the Visitors Gallery and people such as Mary Farrell, who keep us informed about the reality of life out there, where Bills must be changed. That is what we are here for, as a conduit to make their lives full of the promise of human rights, and the perfection of it, not half way up the ladder, as Senator Martin Conway suggested.

Deputy Kathleen Lynch: The ideal would be a stand-alone agency. There is no disagreement about it. Unfortunately, the Government has committed not to create any new agencies. Therefore, we had to find something more appropriate. What Senator Marie-Louise O'Donnell said about human rights is important. Those in the Mental Health Commission are the people who know the most about human rights. We are talking about a rebranding exercise whereby we will have the Mental Health Commission and the decision support service. While they will not be the one agency, they will have all the expertise and knowledge necessary. It is about a much wider group of people than those with mental health difficulties. That is why I am glad that Senator David Norris raised the issue of acquired brain injury.

The legislation has been long awaited. Although Senator Martin Conway said it had been 20 years, it has been much longer, albeit not in the guise which it takes now, but in terms of what is being spoken about and how we deal with people who, from time to time, perhaps not entirely, lack capacity. None of us here can say there have not been times when we lacked capacity. Regardless of whether they were self-inflicted, there clearly have been such times. Several weeks ago, some people came to me and said a person they loved very deeply had acquired a brain injury, although not a very substantial one. The greatest difficulty with brain injury is that while sometimes it does not look substantial, it can be a great imposition. These people were soon to return to court to decide whether the person would be taken in as a ward.

5 o'clock

The judge in the case, showing the wisdom of Solomon, asked whether they would not prefer to have an adjournment and wait for this legislation. It will cover everyone. In respect of reporting, information and supervision, it will be the director of the service that makes those decisions. From time to time the director may have to go to the courts to have the decision implemented but, whoever he or she is, the director will make the decisions. It is human-rights-based and that is vitally important. It would have been lovely to be able to tell Senators we were setting up an entirely independent agency-----

Senator David Norris: To whom did the Government give an undertaking it would not create any more stand-alone services?

Deputy Kathleen Lynch: It gave a commitment not to establish any further bodies. Does the Senator remember?

Senator David Norris: Is the Minister of State talking about quangos?

Deputy Kathleen Lynch: Yes.

Senator David Norris: That was an undertaking given to the media.

Deputy Kathleen Lynch: If it is happening here, it was clearly not just to the media.

Senator David Norris: Was it an election pledge?

Deputy Kathleen Lynch: No. It was decided afterwards.

Senator David Norris: Was it in the programme for Government? It was stated that no further independent bodies would be created.

An Leas-Chathaoirleach: Please allow the Minister of State to respond.

Deputy Kathleen Lynch: That will be for the next Government. Perhaps in the future somebody will make a different decision but, as it stands, we had to decide what the best fit was for this. We were told that the Courts Service was not the best fit because we were extinguishing wards of court. We had to see who had the expertise and who was committed to human rights with regard to capacity. This is about the ability to make decisions rather than not making decisions, so we had to look at the best possible fit. It will be about rebranding.

Senator David Norris: Will the Minister of State address the question of the role played by the Mental Health Commission? Will it have a directing role? Will it be responsible? How independent will it be?

Deputy Kathleen Lynch: I have four and a half years of experience with the Mental Health Commission and they are probably the most independent group of people I have ever come across. It is financed and resourced by Government but has no problem telling it exactly what is wrong, where something is wrong and what it should do to put it right. In the first instance the director will have to report to the Mental Health Commission and the commission will have to report to the Minister for Health. The Minister for Justice and Equality, whoever that may be, will also have an input because the legislation comes under justice and equality. The director, however, will be the person responsible for implementation and oversight. The people he or she employs or chooses to engage with will be responsible as decision makers, co-decision makers and assistant makers, as will the person who makes the appointment and the people who make the complaint. If the director suspects there is something to be investigated they will carry out an investigation, even if no complaint is made.

We have to find a home for this because we do not have the resources, or the agreement from the Government, to provide a stand-alone agency. This group sits before me regularly and tells me what they think is wrong and what is not wrong, unlike other groups who might not feel they can do so because of where their resources come from. They take their responsibility very seriously. They are there to protect a vulnerable group of people and, in respect of capacity, that is what we are talking about. Yes, it should be an independent agency. That would be great but we cannot provide that. In the future, another Government may make a different decision, but I have to make the call on it now.

Senator Martin Conway: Would it require legislation?

Deputy Kathleen Lynch: Yes, it would require a complete new section, but that is not an option for me. I understand the difficulties and I understand the perception, but in negotiating

this with the Mental Health Commission we need to ensure this particular area is separated out and is seen to be separated out while continuing to operate as a separate entity within the remit of the Mental Health Commission.

An Leas-Chathaoirleach: Is amendment No. 1 agreed to?

Senator Jillian van Turnhout: I had some specific questions about reporting. Will this have its own distinct funding? This is critical. We are all very aware of the pressures on the Department of Health in respect of funding. In moving from justice to health, I am very fearful about this issue. What is the timeline for the rebranding?

Deputy Kathleen Lynch: We have to give the Mental Health Commission time because it knows what we want it to do. That is why commencement will not take place for six months. The Mental Health Commission submits its budget every year in the same way as does any Department. It has done it for this year and the funding will be distributed accordingly. The additional funding will have to be negotiated but we know it will cost extra money and additional staff will be needed. When the Mental Health Commission submits its budget every year, that will be part of it, and the commission is good at this. There has been a significant change in respect of tribunals, which will be appreciated. We have to ensure the funding is in place in order that it works efficiently. I hope this will be an active section in terms of information, education and advice. I hope there will not be so much activity in the way of complaints but that it will be very active in the scrutiny of decision making and agreements. There is no question about the money being made available, as it is something we have to do if we are serious about this legislation.

Amendment agreed to.

Government amendment No. 2:

In page 10, to delete line 14.

Amendment agreed to.

Government amendment No. 3:

In page 10, to delete line 25.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 4, 9, 10, 12, 14 to 18, inclusive, 20 to 25, inclusive, 35 to 37, inclusive, 39, 43, 45, 56, 49, 51, 53 and 56 are drafting amendments and may be discussed together.

Government amendment No. 4:

In page 11, in the definition of “enduring power of attorney” inserted by amendment 7 at Committee Stage in the Seanad, to delete “*section 51*” and substitute “*section 51(2)*”.

Deputy Kathleen Lynch: Amendments Nos. 4, 9, 10, 12, 14 to 18, inclusive, 20 to 25, inclusive, 35 to 37, inclusive, 39, 43, 45, 46, 49, 51, 53 and 56 are all technical amendments to improve the drafting of the Bill and to make the intent of the provisions clearer.

An Leas-Chathaoirleach: There is a typing error. After No. 45 it should be No. 46, not

No. 56.

Deputy Kathleen Lynch: Thank you, a Leas-Chathaoirligh. Well done.

An Leas-Chathaoirleach: It is because it is consecutive. I apologise for intervening.

Deputy Kathleen Lynch: I have amendments Nos. 43, 45-----

An Leas-Chathaoirleach: As amendment No. 56 is included twice, I am just amending the numbers on the list.

Senator Trevor Ó Clochartaigh: It is corrected now.

Deputy Kathleen Lynch: It is corrected on my list also.

An Leas-Chathaoirleach: I will correct my document. If I do not correct it, the learned Clerk of the Seanad will ensure it is corrected.

Deputy Kathleen Lynch: That is true. These are all technical amendments to improve the drafting of the Bill and to make the intent of the provisions clearer. Amendment No. 4 proposes to tie the definition of “enduring power of attorney” to the provisions of section 51(2) as these provisions specify that the enduring power must be conferred in writing in an instrument that is in compliance with the requirements of Part 7.

Amendments Nos. 9 and 10 propose to move the phrase “to the court” within section 12(3) in the interests of greater clarity. Amendment No. 12 proposes to modify the penultimate line of section 16(8) to make the provision clearer.

Amendment No. 14 proposes, in the interests of clarity, to amend the provisions inserted on Committee Stage. The aim of the amendment is to make clear that the statement to be signed by the co-decision-maker must indicate that he or she undertakes to act in accordance with his or her functions as specified in the co-decision-making agreement. On review of the amendments proposed on Committee Stage, it was considered that the formulation proposed was not sufficiently tight to make clear to a co-decision-maker that he or she must act in accordance not only with the provisions of the Bill generally but specifically with the provisions of the co-decision-making agreement as they are the expression of the will and preferences of the appointer.

Amendment No. 15 proposes to delete the word “time” from section 21(3) as amended on Committee Stage. When reviewing the Bill, it was considered that the word “time” was not necessary in the provision.

Amendment No. 16 proposes to delete the reference to subsection (3) as subsection (3) was deleted in the amendments agreed on Committee Stage. As a result of that deletion, the court will now be able to make a declaration as to whether a person has or lacks capacity to create or revoke an enduring power of attorney.

Amendments Nos. 17 and 18 propose to amend subsections 35(3) and (4) as amended on Committee Stage. When reviewing the Bill for Report Stage, it was considered that it would be preferable to insert the phrase “ensure that” in order that the court is clear as to its obligations. It must ensure the functions of a decision-making representative are not inconsistent with an advance health care directive or with an enduring power of attorney where either is in place.

Amendment No. 20 proposes to correct a typographical error and to make the provision

more precise. Amendment No. 21 proposes to correct an error in the amendment proposed on Committee Stage to section 37(6). It is proposed to delete the phrase “to the court” as otherwise the court would notify itself of its disqualification of a decision-making representative.

Amendment No. 22 is intended to tighten the provisions which allow for the use of restraint in very exceptional situations. It proposes to delete the phrase “pursuant to this section” to make clear that the restrictions on the use of restraint apply to all instances of restraint used or authorised by a decision-making representative. The Bill requires that the decision-making representative must cease to use or authorise restraint when the restraint is no longer necessary to prevent an imminent risk of harm to the relevant person or to another person.

Amendments Nos. 23, 24 and 25 propose to amend section 40 as inserted by amendment No. 161 on Committee Stage to make the provisions more precise. No change of policy is envisaged. Amendment No. 25 corrects a typographical error in section 40 (4).

Amendments Nos. 35 and 36 are technical drafting amendments that delete the definitions of “attorney” and “enduring power” from the new section 50 which was inserted into the Bill by amendment No. 170 on Committee Stage. The definitions are not required in section 50 because they are defined in section 2, which is the general interpretation section of the Bill, as amended by amendments Nos. 2 and 7 on Committee Stage.

Amendment No. 37 replaces superfluous text with text that clarifies that a person who is to be appointed as an attorney of an enduring power must be over 18 years of age.

Amendment No. 39 is a technical drafting amendment. It clarifies the intent of the provision which is that the attorney must provide a statement in the instrument creating the enduring power stating that he or she understands and undertakes to act in accordance with his or her functions as specified in the instrument. It clarifies that the functions of an attorney are set by the donor in the instrument creating the enduring power.

Amendments Nos. 43, 45 and 49 are technical amendments proposing to delete unnecessary text. Amendment No. 46 is a technical amendment that clarifies the intent of the provision. Amendment No. 51 is a technical amendment to insert text that was omitted in error.

Amendment No. 53 is a technical amendment that clarifies the intent of the provision. It clarifies that the director is forming a view that the necessary criteria apply at the time of his or her review of the application to register an instrument creating an enduring power of attorney. Amendment No. 56 is a technical amendment that clarifies the intent of the provision.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 5, 7, 8, 11, 26 to 28, inclusive, 38, 40, 44, 47, 52, 54, 57, 66, 67, 72 and 76 are technical amendments and may be discussed together. Is that agreed? Agreed.

Government amendment No. 5:

In page 11, line 28, to delete “(9)” and substitute “(10)”.

Deputy Kathleen Lynch: These are technical amendments to correct incorrect cross references or typographical errors. Amendments Nos. 5 and 7 propose to correct incorrect cross-references. These follow from the Seanad’s agreement to include an additional guiding principle

on Committee Stage on the information obligations on interveners.

Amendment No. 8 proposes to correct an incorrect cross-reference, as do amendments Nos. 26, 27 and 28. Amendments Nos. 11, 38, 40, 44, 47, 52, 54, 67 and 76 are technical amendments to correct typographical errors. Amendment No. 57 is a technical amendment to correct an incorrect cross-reference in the new section 63.

Amendment No. 66 is a technical amendment to restructure paragraph 2 in subsection (2) of new section 66 to clarify the intent of the provision. The amendment also provides for the court to be satisfied that coercion was not used to force the donor to execute the power before it makes a determination whether an instrument creating an enduring power should be registered.

Amendment No. 72 proposes to address a typographical error, while amendment No. 76 proposes to correct a punctuation error.

Amendment agreed to.

Senator Jillian van Turnhout: I move amendment No. 6:

In page 15, to delete lines 10 to 36 and substitute the following:

“3. (1) Legal capacity may be exercised:

(a) by the relevant person with decision-making supports as needed (including a decision-making assistant) and/or reasonable accommodation; or

(b) by the relevant person and their co-decision maker, acting jointly; or

(c) in a situation of last resort, where all efforts to ascertain the relevant person’s will and preferences have been made and the relevant person’s will and preferences remain not known, legal capacity may be exercised by the person(s) selected to represent the relevant person in exercising the relevant person’s legal capacity (i.e. decision-making representative, attorney, or patient-designated healthcare representative in advance healthcare directive).

(2) Where legal capacity is exercised with the support of a decision-making assistant, codecision-maker, or is being made by a person selected to represent the relevant person (decision-making representative, attorney, or patient-designated healthcare representative), and where the relevant person’s will and preferences are not known, the decision shall be guided by the individual’s best interpretation of the relevant person’s will or preferences and how these are to be applied to a specific decision(s).

(3) In applying subsection (2), decision-making assistants, co-decision-makers and persons selected to represent the relevant person must be able to provide a reasonable account of how this interpretation was arrived at.”.

I propose this amendment to change the definition of “capacity” in the Bill and to move away from a functional test of mental capacity which is used in the current text of the Bill to deny the legal capacity both of adults with disabilities or mental health experiences and of older people. The amendment would replace the definition of “mental capacity” in the Bill with a recognition of the legal capacity which all adults enjoy.

This amendment is based on the explicit recognition of legal capacity and the principle set

out by the UN Committee on the Rights of Persons with Disabilities that a functional assessment of mental capacity should never be used to restrict or deny a person's legal capacity, even in respect of a single decision. The amendment draws on a proposal contained in A Statutory Framework for the Right to Legal Capacity and Supported Decision-Making by the Canadian Association for Community Living, CACL, which was published in 2012. The CACL was a key actor in the reform of Canadian adult guardianship law in the 1990s. It resulted in innovative statutory mechanisms such as co-decision-making and representative decision-making agreements, which influenced the Assisted Decision-Making (Capacity) Bill here.

Functional assessments of mental capacity are now understood to violate human rights. In the terms of the United Nations Committee on the Rights of Persons with Disabilities, functional assessments of mental capacity are “discriminatorily applied to people with disabilities”. In April 2014 the committee stated:

[The] functional approach is flawed for two key reasons. The first is that it is discriminatorily applied to people with disabilities. The second is that it presumes to be able to accurately assess the inner-workings of the human mind and to then deny a core human right – the right to equal recognition before the law – when an individual does not pass the assessment. In all these approaches, a person's disability and/or decision-making skills are taken as legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before the law. Article 12 does not permit such discriminatory denial of legal capacity, but rather requires that support be provided in the exercise of legal capacity.

Instead of requiring a person who needs support with decision-making to undergo an assessment of his or her mental capacity, these supports should be provided for the person to avail of at his or her own discretion. The availability of supports should also be combined with a parallel process to explore the person's will and preferences, something we have debated quite a lot on the floor of the House, in order that the decision the person wishes to make becomes clear. This approach avoids any need for an assessment of mental capacity.

Section 3 makes a person's ability to enter into different support arrangements contingent on the individual's mental capacity. This is quite a high standard for an individual to reach and will mean that some people will not be found eligible to make assisted decision-making agreements and co-decision-making agreements, even where this is the form of support the individual and his or her supporters would most likely use.

Under the Bill in its current form, the term “presumption of capacity” is used to try to prevent discriminatory application of functional assessments of mental capacity. However, two international human rights scholars, Oliver Lewis and Michael Bach, stated at a meeting in Belfast in April 2014 that a presumption of mental capacity is meaningless as it does not help to protect the individual's human rights. They argue that the right to equal recognition before the law, from which the right to legal capacity stems, is a guarantee, not a presumption. In contrast, a presumption can be rebutted if evidence is provided to demonstrate that a certain individual is not worthy of equal recognition before the law.

This amendment is required to ensure Ireland meets its obligations under international human rights law and will, upon ratification, comply with Article 12 of the UN Convention on the Rights of Persons with Disabilities, which we all wish to do. That is why I have tabled the amendment.

Senator David Norris: I second the amendment. Through the Chair, I ask Senator Jillian van Turnhout or the Minister of State whether the term “legal capacity” is defined in the Bill already.

Senator Jillian van Turnhout: No.

Senator David Norris: Well then the amendment also needs a definition of “legal capacity” because, as I understand it, Senator Jillian van Turnhout is moving in certain circumstances away from mental capacity towards legal capacity, and she cites in support of her evidence two human rights scholars who have described mental capacity in these instances as being meaningless. The amendment requires also a definition.

It seems to be a reasonable amendment because it is only with regard to a situation of last resort, in other words, where everything else has failed and we have a situation where the individual centrally concerned does not have the capacity, whether legal or mental, to make a decision, so no decision is made and the person is left in limbo. We obviously need somebody to be able to make that decision. This is where the phrase “legal capacity” comes in. The history of the patient and his or her past decisions and attitudes is used to assess what type of decision he or she might have made in the circumstances. In addition to this, under subsection 3 people must be able to provide a reasonable account of the reasons they arrived at a decision. This seems to be a reasonable amendment. It covers a situation where no decision involving the person can be arrived at.

This deals with legal and mental capacity and assisted decision-making, and I have some remarks on what the Minister of State said about the independent agency. Let the record show the Minister of State said of course it should be an independent agency. This is a very honest point and I salute the Minister of State for making it, but in legislation and in the Seanad, what we need is to hold the Government to what is best for the citizen and not what was said in a radio interview as a result of a media blitz on quangos. People say they will never establish another one. Really? Not even if it is necessary? Not even if it is in the best interests of patients? The Minister of State said it was the best interests of patients. I do not think this is proper; we should have what is best for the individual. The Minister of State also failed to give what, to my mind, was adequate reassurance about the funding. She said it would happen if people believed in this, and there is an element of conditionality already. Not everybody, presumably, does believe in this. I am a little concerned. The amendment goes a long way towards strengthening the Bill and I certainly support it.

Deputy Kathleen Lynch: Senators Jillian van Turnhout and Katharine Zappone propose in amendment No. 6 to change the approach to capacity in section 3. The Bill is based on the premise that a person has capacity unless otherwise determined. We did not think it needed to be explicitly spelled out. Legal capacity, as I previously indicated, is implicit. I agree with most of what Senator David Norris said, except that the amendment is necessary. Section 8 provides for a series of important principles which require interventions to intrude as little as possible on a person’s rights. It also provides that the intervener must pay due regard to the person’s will and preferences. They are placed at the heart of the Bill. In a situation where someone cannot clearly make a decision, it must be made by someone who has known the person, or can presume what the person’s will and preference would have been in certain circumstances.

The Bill is intended for a large potential target audience. It includes a range of support options for people who have capacity difficulties but who can still exercise capacity. It proposes

the assisted decision-making option to support them in taking their own decisions. The co-decision-making option has been moved out of the courts, and is a second option whereby the person can take decisions jointly.

The Senators' intentions in their amendment are already encompassed in the architecture of the Bill. However, the capacity test, which they propose to delete, is a vital part of that architecture. If a person's right to the presumption of capacity is to be guaranteed, it follows that the appointment of a decision-making representative, an attorney or a designated health care representative can be undertaken only when the person has been found to lack capacity. This is an essential point. There has to be a solid legal basis if one person is taking decisions on behalf of another person. We have had this discussion here on many issues in the past. This cannot be done lightly. I agree with the Senators that, as they say in their amendment, this is a situation of last resort.

It is not feasible to limit the decisions needing to be taken on behalf of a person lacking capacity to those on which the person's will and preferences are known. I will use the same example as I gave last week. A man who is in a persistent vegetative state since the age of 20, for instance, may have expressed no views on the sale of a property that has come to him on the death of a family member. There may be absolutely no way of ascertaining his will and preferences. A similar set of circumstances may apply for some people with dementia.

The existing provisions strike the right balance between the assertion of the person's presumption of capacity and the decisions needing to be taken as a last resort when the person has lost capacity. The capacity test is a key part of that process. It has been refined to make clear that the test is time specific and issue specific. This is essentially where we have gone further than anywhere else. We do not expect people in these circumstances to have capacity across a range of areas; we are talking about particular decisions that need to be made in particular circumstances. That is essential and a key component of this Bill. It is about enabling people to make decisions for themselves on particular issues at a particular time. That is considerably important, but we cannot remove the capacity test and presume capacity when people may not have it in certain circumstances. As the removal of the capacity test could create many unintended consequences, I cannot accept the Senators' amendments. I hope my explanation rings true for her.

Senator Jillian van Turnhout: This amendment recognises that everyone can have legal capacity, regardless of his or her decision-making ability but that some may need support in that. I tabled it in order that we would comply with Article 12. I feel it was needed. I am very conscious that there is continual change in this area. I was trying to push the train further down the tracks because I believe the matter of legal capacity will become increasingly significant. We do not define "mental capacity" in the Bill. In answer to Senator David Norris, I did not see the necessity to define "legal capacity" because I felt the amendment dealt with it comprehensively.

I will not press my amendment because I want the Bill to be passed. However, this is a hurdle we still have to go over. It is part of the journey of understanding people's will and preferences, and of finding an appropriate mechanism for legal capacity. That is what I was trying to achieve with my amendment but I appreciate where we are.

Amendment, by leave, withdrawn.

Government amendment No. 7:

In page 17, line 8, to delete “*subsections (2) to (9)*” and substitute “*subsections (2) to (10)*”.

Amendment agreed to.

Government amendment No. 8:

In page 21, in subsection (4) of the section 13 inserted by amendment 35 at Committee Stage in the Seanad, to delete “*subsection (6)*” and substitute “*subsection (5)*”.

Amendment agreed to.

Government amendment No. 9:

In page 22, in subsection (3) of the section 12 inserted by amendment 45 at Committee Stage in the Seanad, to delete “to the court”.

Amendment agreed to.

Government amendment No. 10:

In page 22, in subsection (3) of the section 12 inserted by amendment 45 at Committee Stage in the Seanad, after “founded” to insert “to the court”.

Amendment agreed to.

Government amendment No. 11:

In page 24, line 24, to delete “of” where it secondly occurs.

Amendment agreed to.

Government amendment No. 12:

In page 27, in the subsection (8) inserted by amendment 65 at Committee Stage in the Seanad, to delete “an action pursuant to *paragraph (a) or (b)*” and substitute “such acquiescence or signature, as the case may be,”.

Amendment agreed to.

Government amendment No. 13:

In page 27, in the subsection (8) inserted by amendment 65 at Committee Stage in the Seanad, to delete “harm” and substitute “serious harm”.

Deputy Kathleen Lynch: I have responded to the concerns raised by Senator Jillian van Turnhout. I am sure she was thinking at one stage that none of her remarks would ever penetrate. On Committee Stage I responded by proposing to insert the word “serious” in the provision. As proposed, a co-decision-maker now has to agree to the decision of a relevant person unless it would cause serious harm to the person or to another person. This amendment respects the right of the relevant person to take his or her own decisions, where at all possible. It will make it more difficult for a co-decision-maker to refuse to agree to a particular decision.

Senator Jillian van Turnhout: Of course, I would have preferred the words “imminent” and “grave harm” but I thank the Minister of State for this amendment. I appreciate that she has included the word “serious” and thank her for doing so.

Amendment agreed to.

Government amendment No. 14:

In page 30, lines 20 and 21, to delete “the functions of a co-decision-maker under *section 16*” and substitute “his or her functions as specified in the co-decision-making agreement”.

Amendment agreed to.

Government amendment No. 15:

In page 33, in the text inserted by amendment 93 at Committee Stage in the Seanad, to delete “time”.

Amendment agreed to.

Government amendment No. 16:

In page 44, line 4, to delete “Subject to *subsection (3)*, the” and substitute “The”.

Amendment agreed to.

Government amendment No. 17:

In page 45, in the subsection (3)(b) inserted by amendment 150 at Committee Stage in the Seanad, to delete “that” and substitute “ensure that”.

Amendment agreed to.

Government amendment No. 18:

In page 45, in the subsection (4)(b) inserted by amendment 150 at Committee Stage in the Seanad, to delete “that” and substitute “ensure that”.

Amendment agreed to.

Government amendment No. 19:

In page 47, to delete lines 8 to 17.

Deputy Kathleen Lynch: Amendment 19 proposes to delete subsection (14) of section 35. Subsection (14) allows the court to revoke the appointment of a decision-making representative or vary the terms of the decision-making representation order if it considers that the representative is behaving in a manner outside the scope of authority conferred on him or her by the court. The deletion is required because new section 41(5), which deals with complaints against decision-making representatives and which was inserted by amendment 162 on Committee Stage, allows the court to make a determination that a representative shall no longer act as a decision-making representative. The review of the Bill for Report Stage has indicated that subsection (14) is unnecessary as subsection (13) of section 35 already allows the court to vary or discharge a decision-making order or representation order.

Amendment agreed to.

Government amendment No. 20:

In page 47, in subsection (2) of the section 36 inserted by amendment 151 at Committee Stage in the Seanad, to delete “decision-making representative for” and substitute “a decision-making representative in respect of”.

Amendment agreed to.

Government amendment No. 21:

In page 47, in subsection (6) of the section 37 inserted by amendment 152 at Committee Stage in the Seanad, to delete “and the court”.

Amendment agreed to.

Government amendment No. 22:

In page 53, lines 11 and 12, to delete “the relevant person pursuant to this section” and substitute “a relevant person”.

Amendment agreed to.

Government amendment No. 23:

In page 53, in subsection (2) of the section 40 inserted by amendment 161 at Committee Stage in the Seanad, to delete “as is” and substitute “than those”.

Amendment agreed to.

Government amendment No. 24:

In page 53, in subsection (3) of the section 40 inserted by amendment 161 at Committee Stage in the Seanad, to delete “period to which the report relates” and substitute “relevant period”.

Amendment agreed to.

Government amendment No. 25:

In page 53, in subsection (4) of the section 40 inserted by amendment 161 at Committee Stage in the Seanad, to delete “relates”.

Amendment agreed to.

Government amendment No. 26:

In page 53, in subsection (7) of the section 40 inserted by amendment 161 at Committee Stage in the Seanad, to delete “*subsection (5)*” and substitute “*subsection (5) or (6)*”.

Amendment agreed to.

Government amendment No. 27:

In page 53, in subsection (8) of the section 40 inserted by amendment 161 at Committee Stage in the Seanad, to delete “*subsection (6)*” and substitute “*subsection (7)*”.

Amendment agreed to.

Government amendment No. 28:

In page 53, in subsection (9) of the section 40 inserted by amendment 161 at Committee Stage in the Seanad, to delete “*subsection (7)(b)*” and substitute “*subsection (8)(b)*”.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 29, 30 and 112 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 29:

In page 55, between lines 19 and 20, to insert the following:

“(a) in section 1 by inserting the following definition:

“ ‘relevant person’ has the meaning it has in the *Assisted Decision-Making (Capacity) Act 2015*;”.

Deputy Kathleen Lynch: I propose to discuss amendments Nos. 29, 30 and 112 together.

Amendments Nos. 29 and 30 propose to amend the Civil Legal Aid Act 1995 with key new provisions on legal aid for relevant persons. The Bill, as published, eased the criteria for legal aid by disapplying the merits test that currently applies in the Civil Legal Aid Act 1995. This provision ensures that the Legal Aid Board will not refuse legal aid just because it believes a case has no chance of success.

Amendment 30 adds crucial new provisions. It proposes to insert a new subsection 3A into section 28 of the Civil Legal Aid Act 1995. This will have the effect of ensuring a relevant person who faces a court hearing to assess his or her capacity under Part 5 of the Bill will automatically qualify for legal representation regardless of his or her financial means. This provision will ensure a relevant person will have the right to legal representation from the Legal Aid Board where an application is made to the court concerning the person’s capacity.

The Legal Aid Board will assign a legal representative from a panel of specially qualified solicitors. This is a crucial new provision that will significantly enhance the rights of a person with capacity difficulties in terms of access to legal representation when his or her capacity is at issue. Amendment 29 is consequential on this proposal.

The key objective is to ensure that a vulnerable person has quick and automatic access to legal representation to defend their interests when his or her capacity is in question. This is what will be achieved by the provisions proposed. However, some of the relevant persons who will benefit from the provisions will have considerable assets and means. It is appropriate that they should pay for the cost of the service that is being provided to them if they have the necessary means. Accordingly, it is proposed to insert a new subsection 7A into section 33 and a paragraph (fc) into section 37(2) of the 1995 Act to provide for the possibility of recoupment.

These provisions will enable the Legal Aid Board to recoup its costs if the relevant person

is over the income threshold. However, even where the relevant person may subsequently have to pay for the costs of legal representation, that person will still benefit from access to the services of specially trained solicitors and from the fee limits imposed by the Legal Aid Board. As a result, the person will have access to a specialist legal service for potentially lower costs than would apply if the person were to select legal representation independently. Obviously, a person in this situation will continue to be able to use his or her own solicitor if he or she chooses. There will be no obligation to use the services of the Legal Aid Board. The final amendment proposes to insert a new paragraph (e) in the 1995 Act to transfer responsibility for legal representation of persons appearing at mental health tribunals from the Mental Health Commission to the Legal Aid Board. Amendment No. 112 also proposes to insert a new section into the Mental Health Act 2001 to achieve this objective. If these amendments are approved, the Legal Aid Board will assume responsibility for legal representation of those appearing at mental health tribunals. As under the current arrangement, the Legal Aid Board will assign legal representation from a panel of specially qualified solicitors. It is considered appropriate that the Legal Aid Board should take on this role because of its expertise in managing panels to provide legal representation for a range of legal aid schemes. The same protections and rights will apply for persons appearing at mental health tribunals as under the current system operated by the Mental Health Commission.

While we are transferring the decision support services to the Mental Health Commission we are transferring the legal representation element to the Legal Aid Board which has been looked for as long as I can remember. It is really necessary to move it into a more grounded and more appropriate space. In this case we are talking about people whose capacity is being challenged or who have to appear before a tribunal in respect of their mental health. It should not be the case that one is treated differently. As I said before, this is a significant move. I know Senator David Norris can get annoyed with us about changes at this late stage, but there are some changes that are very beneficial.

Senator Jillian van Turnhout: The changes, particularly in amendment No. 30, in regard to eligibility for legal aid are welcome, especially the acknowledgement that where the applicant is a relevant person he or she should not have to meet the requirements for financial eligibility in order to receive legal aid. This is vital to ensure effective access to justice under the Bill for people who are at risk of having their legal capacity denied.

I have one concern in regard to paragraph (d) of the amendment. Some guidance needs to be set out by which the board may seek to recover costs. I am not necessarily suggesting the Bill be changed but recovery of costs should only be done if the interests of justice so demand. For example, a person may not meet the criteria of financial hardship normally required to qualify for legal aid but if the board seeks to recover costs, this action might then financially cripple the relevant persons, especially if some of their main assets, such as the family home, would have to be mortgaged or sold to meet the retrospective costs of legal aid. I ask the Minister of State to consider guidance to the Legal Aid Board in relation to the recovery of costs.

Senator Cáit Keane: A number of amendments have been tabled. My question goes back to an amendment tabled by Senator David Norris on the previous day on legal representation afforded to people if their funds are dwindling and have dwindled without their notice. I asked about the financial reports. The Minister of State said they would now be given to the director. Obviously, the director will hand them on to the Mental Health Commission. Does the Bill provide that if a ward of court is awarded a fund or a certain amount of money, that money can be invested and dwindle?

We had a long debate here the last day on how the funds can dwindle while the person concerned knows nothing about it until he or she is told there is no more. Is there a facility for persons to take a legal case saying they want to know their business and want an annual report put in front of them? An annual report is a small thing to ask for. Is this provision written into the Bill and, if so, where is it? If not, it should be in it.

The Bill should provide that persons who are awarded the money and the persons assisting them are given an annual report by the director and the Mental Health Commission to let them know the wherewithal of their funds. If it is not there, do they have the right, given that it is under the Legal Aid Board, to take a case, because persons should have a right to know this?

Senator Trevor Ó Clochartaigh: In principle, this group of amendments make a lot of sense. The only concern I would raise is that as we have seen with the Legal Aid Board, there is a huge backlog and the resources available for free legal aid are grossly underfunded. There is a huge waiting list and people find it very hard to access. The principle is good but the resources have to be made available if it is to work. There is no point, mair, a chapail, agus gheobhair féar as one would say in Irish, in having the facility if people cannot access free legal aid because there are not enough solicitors, or there are not people available or the waiting list is far too long. That can be very frustrating.

Deputy Kathleen Lynch: I will take the last point first because it is important in terms of reassurance. These are very specialist issues. These are not the typical burglary or car robbery incidents. This is a very specialist panel. One could take a serious look at what happens people in an acute unit who get a hearing before a tribunal. There is no waiting time because it is a very specialist panel and it will be the same in this case. As we are human we are inclined to foresee Armageddon and that the courts will be packed with people. God knows there would be days when one or two of us, including me, would cast doubts. This is not something that will happen in the same way that the courts hear ongoing cases of crimes that are committed. This is a very specialist area. There is no waiting list in terms of tribunals. I do not foresee a waiting list for capacity hearings.

Senator Trevor Ó Clochartaigh: It has more to do with the free legal aid service.

Deputy Kathleen Lynch: No, it is a specialist panel within the legal aid service. Following a request one is entitled to a tribunal hearing within 21 days. All the experts are present. That happens. It is not as if somebody says he or she cannot be there in 21 days and that one will have it in 30 days. It is a specialist area and people are available for it.

The Senator raised the issue of costs. Thankfully, I am not responsible for costs. Whenever I come across anything for which I am not responsible I always say, "Thanks be to God." The fees are set by the Legal Aid Board in consultation with the Department of Justice and Equality and will be no more or no less than for any legal service. Account would always be taken of the fact that one does not want to pauperise people by having expert representation. That is why the Legal Aid Board is in place. The fees will be exactly the same for everyone.

In terms of funds, as soon as the wardship is extinguished, whatever funds are available to people or those who are in the process of having an award made to them, it will no longer be the responsibility of the courts to invest. I hope people would have enough people to surround them to give them the type of advice that is necessary in order to have secure investments rather than taking risky investments. Nobody will hold those funds other than the persons or their

co-decision makers, assistants, families or whatever. I assume they will invest them, or not, as the case may be, in the way they wish. As with all investments, those investments are equally open to fluctuation. I think Senator Martin Conway said on the last occasion that people put their money into blue-chip investments which turned out to be as vulnerable as anything else.

Senator Cáit Keane: That is fine. I think it is better now. It is the performance when they are non-performing.

Deputy Kathleen Lynch: Who would the Senator sue?

Senator Cáit Keane: It is the reporting, that they are informed.

Deputy Kathleen Lynch: Who would inform them?

Senator Cáit Keane: The director or whoever, the co-decision maker.

Deputy Kathleen Lynch: No, the director will not-----

Senator Cáit Keane: That is what I am trying to find out. They have not been performed to date.

Deputy Kathleen Lynch: No, that is with the wardship. We are extinguishing wardship. The only people who will inform-----

Senator Cáit Keane: Would it all be open there?

Deputy Kathleen Lynch: In the same way any of us would be informed, by way of statement. We have all felt that awful drop in the pit of our stomach when it came out that a pension plan had gone south and so on. It will be exactly the same. One would hope they will get expert advice in terms of investment or protection, but it will be on an equal basis. It will not be that they just get a letter to say there are no more funds. It will not be in the remit of the State to do it any more, which is sensible and reasonable.

Senator Mary Moran: On that point about the funds, the Minister of State said that they would get expert advice. Is there something in the provisions that would specify this? We discussed this issue the last day. It would be imperative that people who have not been used to handling money on behalf of a family member who lacks capacity would be given advice. It could be enshrined and guaranteed.

Deputy Kathleen Lynch: That is not in this Bill and is not intended to be for exactly the reasons about which Senator Cáit Keane talked. What would happen in the event that someone gave that advice, even the special visitor, and it did not pan out? That is what we discussed last time. We hope that whoever is making those decisions with the relevant person would go to these people, whoever they are, financial managers or whoever else.

Senator Mary Moran: It is up to the family members to go to their own financial advisers.

Amendment agreed to.

Government amendment No. 30:

In page 55 to delete lines 28 to 36 and substitute the following:

“(b) in section 28 by inserting after subsection (3) the following:

“(3A) Where the proceedings the subject matter of the application under this section concern an application under *Part 5* of the *Assisted Decision-Making (Capacity) Act 2015* relating to the matter referred to in *section 34(1)* of that Act—

(a) paragraphs (c) and (e) of subsection (2) shall not apply, and

(b) where the applicant is a relevant person, paragraph (a) shall not apply.”,

(c) in section 28(5)—

(i) in paragraph (d) by deleting “aid.” and substituting “aid, and”, and

(ii) by inserting after paragraph (d) the following:

“(e) who is a patient, within the meaning of the Mental Health Act 2001, for the purpose of providing that person with legal representation before a tribunal in proceedings under that Act.”,

(d) in section 33, by inserting after subsection (7) the following:

“(7A) Where a legal aid certificate has been granted to an applicant who is a relevant person who does not satisfy the criteria in respect of financial eligibility specified in section 29, the Board may seek to recover some or all of the costs of providing the legal aid to the relevant person concerned.”,

and

(e) in section 37(2), by inserting after paragraph (fb) the following:

“(fc) make provision for the mechanism for recovery of the costs referred to in section 33(7A);”.”.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 31 to 34, inclusive, are related and may be discussed together. Is that agreed? Agreed. Amendment No. 33 is a logical alternative to amendment No. 32.

Government amendment No. 31:

In page 56, line 13, to delete “or”.

Deputy Kathleen Lynch: Referring back to the previous discussion, it will be up to the director to advise people on what services are available. Those services will not necessarily be delivered by the service itself, however.

Amendments Nos. 31 to 33, inclusive, arise from the amendment proposed by Senators David Cullinane, Trevor Ó Clochartaigh and Kathryn Reilly on Committee Stage. Their amendment, as is set out in amendment No. 33, provides that a relative or friend of the appointer could make an application on behalf of an appointer for a review of the ward’s case. I promised to look into their proposal and to revert with an amendment if legally feasible. This is a very technical and legal Bill.

I am now proposing amendment No. 32, which follows that put forward by the Senators. It

provides that an application for a review of a ward's case could be made by a relative or friend of the ward who has had such personal contact with the ward that there is a relationship of trust between them. There is one technical difference between the two amendments. I know the Senators will understand this point. My amendment describes the person who will be the subject of the application as a ward rather than as an appointer. This is because the applications in this Part relate to wards. The term "appointer" is used in the Bill only in relation to those appointing decision-making assistants or co-decision makers. It is more correct to use the term "ward" for the purposes of Part 6 as the person whose case will be reviewed by the wardship court will always be a ward. As I have now accommodated the Senators' amendment, I would appreciate if they did not press their amendment.

Amendment No. 31 is consequential on the acceptance of amendment No. 32. Amendment No. 34 is a technical amendment to include a reference to the wardship court's jurisdiction under section 22(2) of the Courts (Supplemental Provisions) Act 1961. The effect of the amendment is to provide for the wardship court to continue to have jurisdiction to enable payments to be made on behalf of wards on an interim basis, pending the review of their cases. No change is envisaged to the policy of abolishing wardship for adult wards within the time limits already specified.

Senator Trevor Ó Clochartaigh: I thank the Minister of State for her explanation. We were moving the amendment because the UN Committee on the Rights of Persons with Disabilities has stated in general comment No. 1 that "[u]nder 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 preparation to ratify that convention, the functional assessment of mental capacity must be replaced by a process of interpreting the will and preferences of the individual. We believe this would ensure that when people need help to make decisions they are supported to do so, rather than having their legal right to make decisions removed.

I must say that it is refreshing. Many Ministers come in and say they will listen to us and take things on board, but do not. We are grateful that the Minister of State has done so. It is an early Christmas present in one sense. It quite unusual for us on this side of the House, in these seats anyway, to have anything we put forward taken on board.

Senator Cáit Keane: When they are good, the suggestions are taken on board.

Senator Trevor Ó Clochartaigh: They are always good. The Senator just does not see the merit in them often enough.

Senator Martin Conway: They should be taking on an awful lot more.

Senator Trevor Ó Clochartaigh: I thank the Senator. It is a very important amendment and we appreciate that the Minister of State has taken it on board. We will not be pressing amendment No. 33.

Senator Jillian van Turnhout: I also welcome the amendment because it brings scope for potential applicants to review the situation of those who are in the wardship of the court at the time the Act is commenced. It is great to see the Minister of State taking it on board and I commend my colleagues on proposing the amendment on Committee Stage.

Deputy Kathleen Lynch: I feel it must be Christmas or something. There is a terrible

outbreak of goodwill. I thank the Senators.

Amendment agreed to.

Government amendment No. 32:

In page 56, between lines 13 and 14, to insert the following:

“(b) a relative or friend of the ward who has had such personal contact with the ward over such period of time that a relationship of trust exists between them, or”.

Amendment agreed to.

Amendment No. 33 not moved.

Government amendment No. 34:

In page 57, in the section 47 inserted by amendment 169 at Committee Stage in the Seanad, to delete subsection (2) and substitute the following:

“(2) Pending a declaration under *section 46(1)*, the jurisdiction of the wardship court as set out in sections 9 and 22(2) of the Courts (Supplemental Provisions) Act 1961 shall continue to apply.”.

Amendment agreed to.

Government amendment No. 35:

In page 58, in subsection (1) of the section 50 inserted by amendment 170 at Committee Stage in the Seanad, to delete the definition of “attorney”.

Amendment agreed to.

Government amendment No. 36:

In page 58, in subsection (1) of the section 50 inserted by amendment 170 at Committee Stage in the Seanad, to delete the definition of “enduring power of attorney”.

Amendment agreed to.

Government amendment No. 37:

In page 58, in subsection (1) of the section 51 inserted by amendment 171 at Committee Stage in the Seanad, to delete “one or more suitable persons” and substitute “another person who has also attained that age”.

Amendment agreed to.

Government amendment No. 38:

In page 58, in subsection (6) of the section 51 inserted by amendment 171 at Committee Stage in the Seanad, to delete “of performing” and substitute “to perform”.

Amendment agreed to.

Government amendment No. 39:

In page 58, in subsection (1)(e)(ii) of the section 52 inserted by amendment 172 at Committee Stage in the Seanad, to delete “the functions of an attorney” and substitute “his or her functions as specified in the instrument creating the enduring power of attorney”.

Amendment agreed to.

Government amendment No. 40:

In page 58, in subsection (4)(a)(iii) of the section 52 inserted by amendment 172 at Committee Stage in the Seanad, to delete “of” where it secondly occurs.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 41, 42, 48, 50, 55, 58 to 65, inclusive, and 68 to 70, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 41:

In page 58, in subsection (4)(b) of the section 52 inserted by amendment 172 at Committee Stage in the Seanad, to delete “enduring power of attorney” and substitute “instrument creating the enduring power of attorney”.

Deputy Kathleen Lynch: I propose to address amendments Nos. 41, 42, 48, 50, 55, 58 to 65, inclusive and 68 to 70, inclusive, together. These proposed amendments relate to the new enduring powers of attorney provisions that were inserted on Committee Stage. They are mainly technical in nature, seeking to rectify typographical errors or to clarify the intent of the provision. A number of them replace the term “enduring power of attorney” with the more correct term “an instrument creating an enduring power of attorney”. The review of these provisions in preparation for Report Stage revealed the amendments needing to be made to the provisions already agreed.

Amendment No. 41 is a technical amendment. It clarifies that the signatures of the witnesses to the creation of the enduring power are to be in the instrument that creates the enduring power and not within the enduring power.

Amendment No. 42 is a technical amendment that clarifies that the donor executes an instrument that creates an enduring power, not an enduring power.

Amendments Nos. 48, 55, 60 and 64 are technical amendments that clarify the intent of the provision. Amendment No. 50 is a technical amendment that clarifies the intent of the provision. The attorney must send a copy of the instrument that creates the enduring power, not just the enduring power, itself to all those listed in subsection (3) of the new section 60 when he or she applies to register the instrument.

Those being notified of the application to register an enduring power must have access to all the supporting documents, such as the statements from the medical professionals regarding the capacity of the donor, etc., that are necessary in order to create and register an enduring power. This is to ensure they have all the relevant material in case they have any reservations or doubts about the validity of the power and wish to object to the registration and the coming into effect of the power.

Amendment No. 58 is a technical amendment that clarifies the intent of the subsection. The director will establish and maintain a register of instruments creating an enduring power. The instrument will include the enduring power and all the relevant back-up material such as the statements by the donor, the attorney and the various professionals regarding the capacity of the donor.

Amendment No. 59 is a technical amendment to provide that the director may send a copy of the instrument creating the enduring power, not just the enduring power, to those who have a legitimate interest in obtaining a copy of the instrument. Amendment No. 61 is a technical amendment to provide for the deletion of subsection (2) of the new section 66 which was inserted on Committee Stage by amendment No. 186. The revised text takes into account that it is an instrument that creates an enduring power which is registered and not just the enduring power itself.

Amendment No. 62 inserts text into subsection (6) of the new section 67 which was inserted on Committee Stage by amendment No. 187. New section 67 deals with the reporting obligations of attorneys. The amendment provides that if an attorney fails to submit to the director a schedule of the donor's assets and liabilities and a projected statement of the donor's income and expenditure within three months of registration of the instrument creating the enduring power, or if he or she fails to keep proper accounts, the director must notify the attorney of his or her failure to comply and to give him or her time to comply or to submit a report.

Amendment No. 63 proposes the deletion of subsections (10) to (13), inclusive, in section 67 that were inserted by way of amendment No. 187 on Committee Stage. The new section 67 expanded the reporting obligations of attorneys of enduring powers, especially in relation to financial affairs, and it applied those obligations to attorneys of enduring powers that have been created under the 1996 Act but have not yet been registered. When I submitted amendment No. 187 on Committee Stage, I thought it was possible to include attorneys appointed in an enduring power created under the 1996 Act but not yet registered. However, I have received legal advice which sets out that imposing the new reporting obligations on attorneys who were appointed under a different law could carry constitutional risks.

In many cases the new reporting obligations will become apparent to the attorney only when the donor has lost capacity and when the attorney applies to register the power. There is a risk that an attorney might decline to take on the additional reporting obligations and might disclaim the enduring power, leaving a vulnerable person without the support of the attorney whom he or she had specifically chosen to take decisions on his or her behalf. Equally, it is not possible retrospectively to require a spouse, appointed as an attorney under the 1996 Act, to comply with reporting requirements that might involve reporting on his or her own assets and property. It should have been obvious, but it was not. While we may not be able to impose the new reporting obligations on the attorneys appointed under the 1996 Act, the new complaints mechanism in relation to attorneys will apply to all attorneys. The complaints mechanism will apply to those appointed under the provisions of the Bill and those appointed under the 1996 Act. This will be an important protection for all donors.

Amendment No. 65 is a technical amendment which clarifies that it is the instrument which is registered, not the enduring power. Amendment No. 68 is a technical amendment to insert additional matters that must be prescribed by the Minister. These were inadvertently omitted on Committee Stage. Amendment No. 69 is a technical amendment to correct an incorrect cross reference and is a consequence of amendment No. 63. Amendment No. 70 is a technical

amendment to add a cross reference.

Amendment agreed to.

Government amendment No. 42:

In page 58, in subsection (1) of the section 53 inserted by amendment 173 at Committee Stage in the Seanad, to delete “enduring power of attorney” and substitute “instrument creating the enduring power of attorney”.

Amendment agreed to.

Government amendment No. 43:

In page 58, in subsection (2) of the section 54 inserted by amendment 174 at Committee Stage in the Seanad, to delete “for a donor”.

Amendment agreed to.

Government amendment No. 44:

In page 58, in subsection (2) of the section 54 inserted by amendment 174 at Committee Stage in the Seanad, to delete “the” where it secondly occurs and substitute “a”.

Amendment agreed to.

Government amendment No. 45:

In page 58, in subsection (3) of the section 54 inserted by amendment 174 at Committee Stage in the Seanad, to delete “the donor pursuant to this section” and substitute “a donor”.

Amendment agreed to.

Government amendment No. 46:

In page 58, in subsection (6) of the section 54 inserted by amendment 174 at Committee Stage in the Seanad, to delete “it” and substitute “the power”.

Amendment agreed to.

Government amendment No. 47:

In page 58, in subsection (1)(g) of the section 57 inserted by amendment 177 at Committee Stage in the Seanad, to delete “*sections*” and substitute “*section*”.

Amendment agreed to.

Government amendment No. 48:

In page 58, in the section 59 inserted by amendment 179 at Committee Stage in the Seanad, to delete “on its registration” and substitute “on the registration of the instrument creating an enduring power of attorney”.

Amendment agreed to.

Government amendment No. 49:

In page 58, on the second line of subsection (3) of the section 60 inserted by amendment 180 at Committee Stage in the Seanad, to delete “(if any)”.

Amendment agreed to.

Government amendment No. 50:

In page 58, in subsection (3) of the section 60 inserted by amendment 180 at Committee Stage in the Seanad, to delete “a copy of the enduring power” and substitute “a copy of the instrument creating an enduring power of attorney”.

Amendment agreed to.

Government amendment No. 51:

In page 58, in subsection (3)(b) of the section 60 inserted by amendment 180 at Committee Stage in the Seanad, after “civil partner” to insert “(if any)”.

Amendment agreed to.

Government amendment No. 52:

In page 58, in subsection (6) of the section 60 inserted by amendment 180 at Committee Stage in the Seanad, to delete “the” where it secondly occurs and substitute “an”.

Amendment agreed to.

Government amendment No. 53:

In page 58, in subsection (1) of the section 61 inserted by amendment 181 at Committee Stage in the Seanad, to delete “whether—” and substitute “whether the following criteria are met:”.

Amendment agreed to.

Government amendment No. 54:

In page 58, in subsection (1)(a) of the section 61 inserted by amendment 181 at Committee Stage in the Seanad, to delete “is” and substitute “are”.

Amendment agreed to.

Government amendment No. 55:

In page 58, in subsection (1) of the section 62 inserted by amendment 182 at Committee Stage in the Seanad, after “registration of an instrument” to insert “creating an enduring power of attorney”.

Amendment agreed to.

Government amendment No. 56:

In page 58, in subsection (3) of the section 63 inserted by amendment 183 at Committee

Stage in the Seanad, to delete “in the time period which has been” and substitute “within the period”.

Amendment agreed to.

Government amendment No. 57:

In page 58, in subparagraph (3)(i) of the section 63 inserted by amendment 183 at Committee Stage in the Seanad, to delete “this section” and substitute “*section 61(1)*”.

Amendment agreed to.

Government amendment No. 58:

In page 58, in subsection (1) of the section 64 inserted by amendment 184 at Committee Stage in the Seanad, to delete “enduring powers of attorney” and substitute “instruments creating an enduring power of attorney”.

Amendment agreed to.

Government amendment No. 59:

In page 58, in subsection (5) of the section 65 inserted by amendment 185 at Committee Stage in the Seanad, to delete “an enduring power of attorney” and substitute “an instrument creating an enduring power of attorney”.

Amendment agreed to.

Government amendment No. 60:

In page 58, in subsection (1) of the section 66 inserted by amendment 186 at Committee Stage in the Seanad, to delete “which” and substitute “where the instrument creating it”.

Amendment agreed to.

Government amendment No. 61:

In page 58, in the section 66 inserted by amendment 186 at Committee Stage in the Seanad, to delete subsection (2) and substitute the following:

“(2) Where an instrument creating an enduring power of attorney has been registered, the enduring power created by the instrument may only be disclaimed by an attorney with the consent of the court.”.

Amendment agreed to.

Government amendment No. 62:

In page 58, in subsection (6) of the section 67 inserted by amendment 187 at Committee Stage in the Seanad, after “incomplete report” to insert “or fails to comply with *subsection (1) or (2)*”.

Amendment agreed to.

Government amendment No. 63:

In page 58, in the section 67 inserted by amendment 187 at Committee Stage in the Seanad, to delete subsections (10) to (13) inclusive.

Amendment agreed to.

Government amendment No. 64:

In page 58, in subsection (1)(a) of the section 69 inserted by amendment 189 at Committee Stage in the Seanad, to delete “the power” and substitute “the enduring power of attorney or the instrument creating it”.

Amendment agreed to.

Government amendment No. 65:

In page 58, in subsection (1)(b) of the section 69 inserted by amendment 189 at Committee Stage in the Seanad, to delete “an enduring power” and substitute “the instrument”.

Amendment agreed to.

Government amendment No. 66:

In page 58, in subsection (1) of the section 69 inserted by amendment 189 at Committee Stage in the Seanad, to delete subparagraph (ii) and substitute the following:

“(ii) fraud, coercion or undue pressure was not used to induce the donor to appoint an attorney,”.

Amendment agreed to.

Government amendment No. 67:

In page 58, in subsection (3)(b)(ii) of the section 69 inserted by amendment 189 at Committee Stage in the Seanad, to delete “donor,” and substitute “donor, and”.

Amendment agreed to.

Government amendment No. 68:

In page 58, in the section 71 inserted by amendment 191 at Committee Stage in the Seanad, to delete paragraph (b) and substitute the following:

“(b) the form of notice under *section 53* of execution of an instrument creating an enduring power of attorney;

(c) the class of healthcare professionals under *sections 52(1)(d), 60(7)(b) and 65(4)(d)*;

(d) the form of application under *section 60(2)* to register an instrument;

(e) the form of notice under *section 60(3)* of an application to register an instrument;

(f) the form of a report under *section 67* to be submitted by an attorney to the Director;”.

Amendment agreed to.

Government amendment No. 69:

In page 58, in subsection (1) of the section 73 inserted by amendment 193 at Committee Stage in the Seanad, to delete “67,”.

Amendment agreed to.

Government amendment No. 70:

In page 58, in subsection (1) of the section 73 inserted by amendment 193 at Committee Stage in the Seanad, to delete “68(6) and 68(7)” and substitute “68(6), 68(7) and 68(8)”.

Amendment agreed to.

Senator Jillian van Turnhout: I move amendment No. 71:

In page 78, to delete lines 13 to 22.

I outlined my rationale during the discussion on Committee Stage and I will not repeat it. I tabled the amendment again because I was not satisfied. I have had a series of engagements with the Minister of State and her officials in the Department of Health. While the Bill is bringing a significant group advance in the advance health care directives, those who are involuntarily detained and treated under the Mental Health Act 2001, approximately 10%, will not be included. Each individual is significant. As I outlined on Committee Stage, all the research tells us that it is not about people refusing treatment but about their preferences being backed up. It is at this precise moment that it is needed.

I am also very aware of the difficulties regarding the Mental Health Act, which is under review, and how we need to recalibrate and re-engineer it. I am very torn. While I am a pragmatic person, I am very concerned that we are leaving people behind in an approach that must be welcomed. While we can discuss the legislation up and down in the Houses, the practice and resourcing on the ground may not change. Will the professionals take a human rights approach centred on dignity, wills, preferences and listening in the different ways many of my colleagues have outlined? While we can have all the best and most precise legislation, will it make the difference we all want to believe in? Many of my colleagues in the Seanad have personally invested in trying to make this what it should be, as has the Minister of State.

Will the funding and resources be given to approaches that respect human rights, dignity and the will and preferences of the individual? I particularly cite open dialogue for those in acute distress, psychosis and mania, which is being used by Dr. Pat Bracken of the HSE in west Cork. In the United Kingdom the NHS provides a three-year training programme in the open dialogue approach with the Hearing Voices Network. We have not necessarily seen the engagement on the ground. We have seen some brilliant practice and some not so brilliant, to put it in the politest terms, since I am not allowed to use unparliamentary language and there are certain words I would like to use regarding that practice. I had a very deep discussion with the Minister on this and I will not press the amendment. I cannot say it is a head and heart decision because my head as well as my heart is torn on this matter, but I am also pragmatic. While this Bill will make a difference, I believe we are leaving some people outside the room, so to speak, and I am not happy about that, nor do I agree with it. I want a clear commitment from the Minister of State that in revising the Mental Health Act, those people who involuntarily undergo treatment

will not be excluded and that if any amendments are needed to the legislation under discussion, this would be done in a timely way. Perhaps the Minister of State would outline how that could be done.

Will the Minister of State clarify whether a person who fails the functional test will not be able to make a valid assessment agreement? I want to be sure I understand this.

Senator Trevor Ó Clochartaigh: I support Senator Jillian van Turnhout's comments. This mirrors a debate held on Committee Stage about advance health care directives being legally binding. I will not repeat all the comments but a strong argument was put forward and some of the organisations represented in the Visitors Gallery tonight are still calling for that. Senators have been contacted again by those groups in light of that debate on Committee Stage. I have been sent a copy of a petition from the Critical Voices Network of Ireland, a service user advocacy network, with 345 signatures and comments from health service users and other interested parties on the advance health care directive amendment. That is still on the table and the service users have not been assuaged by the comments made. They say the Minister of State is putting through the Bill to remove section 59 and 60 provisions where a person is unwilling to consent to ECT and medication under the Mental Health Act; therefore, they see no clear reason this cannot be done for people who, under the Mental Health Act, are found incapable of consenting. The call is still there and I am making one last gasp attempt to get the Minister of State to take it on board. She has accommodated many other changes, which is appreciated. This one is ongoing.

I also support the call by Senator Jillian van Turnhout for open dialogue and other methods being advocated. Will the Minister of State give a commitment on that and say whether she will take it on board, even if it cannot be included in the Bill? Will she also say whether the Government will take the needs and wants of the service users into consideration?

Senator Denis O'Donovan: I formally second Senator Jillian van Turnhout's amendment. I concur with the impassioned points she has made.

Deputy Kathleen Lynch: I said, on Committee Stage, that I have no objection in principle. It is important to say this. The capacity legislation covers everyone, including people who have mental health difficulties and advance health care directives. The legislation goes further because most countries do not include people with mental health difficulties in capacity legislation. There are two small exceptions which are very understandable. One is when a person is subject to a conditional discharge from the Central Mental Hospital. I was involved in the legislation when it went through under the previous Government. It allows people limited conditional discharge from the Central Mental Hospital, which is right and proper. I have always had an interest in mental health, and the fine detail and more severe end is sometimes lost in the debate. However, if the person on conditional discharge decided through an advance health care directive that he or she did not want to continue with their medication regime while outside of the institution, clearly that conditional discharge would be revoked and they would be brought back in. It is all dependent on the person complying with their medication regime. They could be hearing voices and I know that people who hear voices and I have a good relationship with some such people. I sometimes think those voices are probably more informed than the rest of us. However, I understand, as do they, that there are times when these people must have their needs protected more than anything else.

The other exception is for people who are detained involuntarily. Everyone is covered un-

der this legislation regarding advance health care directives, whether it involves mental health, acquired brain injury, disability and so on. There are just those two small exceptions. The exception of the person who is detained involuntarily will be dealt with in the Mental Health Act. I have had a discussion on this with people in this area whom I trust and who would not be conservative in their thinking. We cannot knowingly put a section into this legislation that contradicts section 4 of the Mental Health Act. However, this will be dealt with in the new Mental Health Bill. When I consulted Professor Brendan Kelly, whom I trust very much on this matter, he agreed that advance health care directives under the Mental Health Act must be legally binding, but in the event of imminent, serious harm or the possibility of such, the consultant would have to overrule that advance health care directive. However, he or she would have to explain the decision before a tribunal or before the courts. Professor Kelly explained that this is done all the time.

It is not an impossible task but we cannot do it in this legislation. If this Bill requires amending as a result of the new Mental Health Bill, which will involve 165 amendments, that will not be a problem and it will happen. This is not a principled exclusion. It is merely a practical method of doing it. I do not very often slap myself on the back, but if anyone thinks for one minute that I want to exclude people just because they have a mental health difficulty, they really do not know me. This is something we are going to do but we cannot do it in this legislation. In the event that we need to amend this legislation as a result of the new Mental Health Bill, that will happen. I hope that gives some degree of comfort to people. I understand that people want it to be included but it is possible to amend the Bill in the event that the Mental Health Bill contradicts it. There is a question about whether there should be mental health legislation at all, but that is a different story.

Senator Mary Moran: I thank the Minister of State for clarifying that. Every one of us in this House has had a discussion about this with her and with others outside the House. I get what she is saying and she has clarified it well. I appreciate that if the legislation needs to be amended in the Mental Health Bill, that will happen, which is good. We cannot allow this Bill to fall because of this matter. I appreciate the Minister of State's comments.

Senator Jillian van Turnhout: As the Minister of State will keenly appreciate, the difficulty is that if a person is involuntarily detained, he or she will already feel as though his or her rights are diminished. That is where the difficulty lies for me because we are excluding this group further and we are diminishing their rights further. I believe amendments will have to be made and that the situation will have to be changed. This should be a priority area because we are talking about a particularly vulnerable group of people given the situation they are in.

Amendment, by leave, withdrawn.

Government amendment No. 72:

In page 83, in the text inserted by amendment 230 at Committee Stage in the Seanad, to insert "so" before "commits".

Amendment agreed to.

Government amendment No. 73:

In page 85, line 12, to delete "Courts Service" and substitute "Mental Health Commission".

Amendment agreed to.

Government amendment No. 74:

In page 87, line 26, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 75:

In page 87, line 29, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 76:

In page 89, in the subsection (3) inserted by amendment 237 at Committee Stage in the Seanad, to delete “shall,” and substitute “shall”.

Amendment agreed to.

Government amendment No. 77:

In page 90, line 5, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 78:

In page 90, line 5, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 79:

In page 90, to delete lines 8 and 9 and substitute the following:

“(3) A person appointed to be Director shall be a member of the staff of the Mental Health Commission.”.

Amendment agreed to.

Government amendment No. 80:

In page 90, lines 13 to 15, to delete all words from and including “(1) A” in line 13 down to and including line 15 and substitute the following:

“(1) A person who is a member of the staff of the Director shall be a member of the staff of the Mental Health Commission and the provisions of Part 3 of the Act of 2001 shall apply to such staff.”.

Amendment agreed to.

Government amendment No. 81:

In page 90, line 17, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 82:

In page 90, line 24, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 83:

In page 90, line 25, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 84:

In page 90, line 29, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 85:

In page 90, line 29, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 86:

In page 90, to delete lines 31 to 34.

Amendment agreed to.

Government amendment No. 87:

In page 90, line 35, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 88:

In page 90, line 39, to delete “Minister” where it firstly occurs and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 89:

In page 90, line 40, to delete “Courts Service” and substitute “Mental Health Commission”.

sion”.

Amendment agreed to.

Government amendment No. 90:

In page 91, line 18, to delete “Minister” where it firstly occurs and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 91:

In page 93, line 14, to delete “Board” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 92:

In page 93, line 19, to delete “Board” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 93:

In page 93, line 20, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 94:

In page 93, line 20, to delete “Board” and substitute “Commission”.

Amendment agreed to.

Government amendment No. 95:

In page 93, line 23, to delete “Board” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 96:

In page 93, line 29, to delete “Board” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 97:

In page 93, line 30, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 98:

In page 93, line 31, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 99:

In page 93, line 32, to delete “Board” and substitute “Commission”.

Amendment agreed to.

Government amendment No. 100:

In page 93, line 34, to delete “Board” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 101:

In page 93, line 34, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 102:

In page 93, line 37, to delete “drawing to the Board’s and the Minister’s attention” and substitute “drawing to the attention of the Mental Health Commission and the Minister for Health”.

Amendment agreed to.

Government amendment No. 103:

In page 94, line 1, to delete “Board” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 104:

In page 94, line 2, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 105:

In page 94, line 3, to delete “Minister” and substitute “Minister for Health”.

Amendment agreed to.

Government amendment No. 106:

In page 95, to delete line 6.

Amendment agreed to.

Government amendment No. 107:

In page 95, line 29, to delete “Board” and substitute “Mental Health Commission and Minister for Health”.

Amendment agreed to.

Government amendment No. 108:

In page 95, line 31, to delete “Minister after consultation with the Minister for Health and the Board” and substitute “Minister for Health after consultation with the Minister and the Mental Health Commission”.

Amendment agreed to.

Government amendment No. 109:

In page 96, line 23, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 110:

In page 97, to delete lines 6 to 9.

Amendment agreed to.

Government amendment No. 111:

In page 97, line 25, to delete “Courts Service” and substitute “Mental Health Commission”.

Amendment agreed to.

Government amendment No. 112:

In page 110, between lines 35 and 36, to insert the following:

“Amendment of Act of 2001

128. The Act of 2001 is amended—

(a) in section 17(1), by deleting paragraph (b) and substituting the following:

“(b) arrange for the assignment of a legal representative to represent the patient concerned unless he or she proposes to engage one,”,

and

(b) in section 33(3) by deleting paragraph (c).”.

Amendment agreed to.

Government amendment No. 113:

In page 111, line 3, after “shall” to insert “, in consultation with the Minister for Health”.

Amendment agreed to.

Bill, as amended, received for final consideration.

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

Senator Jillian van Turnhout: I wish to say a final word because I tabled several amendments. Today is a great day because we have repealed the Lunacy Regulation (Ireland) Act of 1871. Even more important, we strove in this House, as have all of us with the Minister of State taking the lead, to stress the importance of assisted decision-making, how we look at people in very complex and human situations and ensuring we have a legal framework for them. We have highlighted the importance of choice, control and consent.

I took a keen interest in the Bill because of my experience with my father who died recently. As he spent his last few years in a nursing home, I have seen at first hand what happens in the nursing home setting. I have seen the pressures that not having advance health care directives put on individuals, families, health care professionals and everybody involved in the process. What we have done here is historic and must be applauded. It is wonderful but we must see our changes put into practice and ensure that change happens.

This legislation is not just about legal changes but a huge cultural shift. We need to sing out and ensure that this cultural shift happens. I applaud the Minister of State on the work she has done. This legislation is not the end line but a starting line and I say well done to the Minister of State.

Senator Denis O'Donovan: This Bill may not be perfect. As somebody who has been involved in the legal profession for years I know that one can never get a utopian or perfect scenario. As I said on the last occasion I spoke here, particularly on the issues raised by Senator Jillian van Turnhout, I concur with her that this legislation is a whole lot better than what we have had and is a big step in the right direction. Inevitably, legislation will be amended and changed. Perhaps the next Government or the one after might say, "Look, this isn't working so we can change it."

What has been achieved here today is historic and is an important step in the right direction. Some of the issues that have been reformed in this Bill date back 150 years so today's legislation is welcome. I thank the Minister of State and her officials for the work they have put into the legislation. I tabled many amendments on Committee Stage and my colleague, the Acting Chairman, Senator Diarmuid Wilson, in my absence last week due to personal reasons, helped to move them forward. We have had tough debates on some of the issues but the Bill is better for our debates.

This Bill is major legislation. To my knowledge, all legislation that has ever been enacted has been amended, changed and strengthened. This Bill is a significant achievement for this House, the Minister of State and her backroom people and advisers. It may not be inch perfect but it is a whole lot better than what existed ten, 20 and 30 years ago, which in itself is a huge step. All of the people seated in the Visitors Gallery have fought for this legislation and raised issues with us all. They deserve a particular bualadh bos for their tremendous efforts. They pushed the Minister of State, not that she has needed pushing on this issue, and pushed all of us to get this done. It is a wonderful achievement in the area of mental capacity. I am pleased we are in the position we are in tonight.

Senator Martin Conway: On behalf of the Fine Gael group of Senators, I, too, would like to pay special tribute to the Minister of State, Deputy Kathleen Lynch, on what is ground-breaking legislation. It took almost the lifetime of the Government. That simply shows us how

important the legislation is. My comments on perfection earlier were rebutted by one of my colleagues. Perfection was not achieved by the great Greek and Roman civilisations in practically anything they did. I do not think politics can ever achieve perfection. All we can do is strive to ensure we leave society and the processes within society in a better place than we found them.

We should strive to ensure the country, the nation, our democracy, the people and citizens, including vulnerable citizens, who are all citizens, ultimately, have a better deal than when we came to this House first. Certainly, in terms of this legislation, we have gone a long way to achieving that. Perhaps it is not perfection but we will get there. I hope the people who come after us in this Parliament can improve it to ensure their legacy will be far better.

I acknowledge the non-governmental organisations. Many representatives from these organisations are in the Visitors Gallery and many are looking in on television and the Internet. If it was not for NGOs and the vital role they play in society, I do not think we would be as advanced as we are today.

I had the great privilege of officially opening a centre of excellence in the University of Limerick for equipping and offering continuous professional development to NGOs and people working within NGOs to ensure the level of professionalism today in these organisations improves and increases. This will ensure they are among the most professional NGOs in the world. The commitment is in place and I firmly believe that as we move forward we will have a great little nation for people who are vulnerable. That is all we can achieve.

I wish to pay tribute to Ms Carol Baxter, her colleague and the other officials in the Department. Often their work is not appreciated but it is important for parliamentarians to acknowledge their work. If they did not prepare or deal with the various nuggets that cropped up, as well as the conflicts in the legislation and so forth, the Minister of State would not have been properly advised and, in turn, those of us in Parliament would not have been advised either.

It is a tribute to all Senators across the board that we have not divided on the Bill. It is not perfect but it is a significant step forward. It may not be a giant step for man, as someone said once in space, but it is a significant step for the people who really need it.

Senator Cáit Keane: I would like to be associated with the remarks of Senator Martin Conway.

Acting Chairman (Senator Diarmuid Wilson): Senator Trevor Ó Clochartaigh is next, without interruption, please.

Senator Trevor Ó Clochartaigh: Ba mhaith liom aontú leis an méid atá ráite roimhe seo. Is lá iontach tábhachtach go deo é seo, go háirithe dóibh siúd a úsáideann na seirbhísí seo agus atá ag fanacht na céadta bliain leis an lá seo. This is a wonderful day. It is a proud day for everyone in the House. We have to remember that the most important people are the service users and their families. They are the heroes today, in fairness. Other people have played a part also.

It has been a good example of democracy in action. All of us are aware that we have been lobbied, tweeted about and received messages from people who are very passionate about this topic. It is important that some of them are in the Visitors Gallery. It is great to see people in the Visitors Gallery sitting through a debate and listening to all that is being discussed. They have been nudging us a little further to do what we need to do with the amendments, etc.

The hashtag #creditwhereditisdue was used last week and I wish to give the Minister of State credit. It is important that we do so. My colleagues in the Seanad will be aware that I am very critical of Ministers with whom I do not agree. However, it is important that we give credit where credit is due today. If we did not have the political will from the Minister of State and her staff to bring in the amendments and take them on board, it would not have happened.

We will come back to other issues - the Minister of State has noted as much. That is for another day. Today is a day to be grateful that this legislation is going to be put through. It will make the lives of the service users, their families and all those in need of these services better in future. Who knows whether we could be in that category ourselves at some stage? It is important that this legislation is passed. Ba mhaith liom tréaslú leis an Aire as an obair atá déanta aici.

Senator Mary Moran: I join my colleagues in commendation. It is a proud and an historic day. It is also an emotional day for all the people involved. Like my colleagues, I am keen to commend the Minister of State on all her hard work. I know of the numerous discussions that she and her expert advisers have held. Not only have they sat through five hours of debates in one sitting as well as God knows how many hours elsewhere but they have been very communicative with information and advice on the part of the Department, for which I thank the officials.

It is not perfect and I know some people will be unhappy. However, as we have said, it is a major step forward. It is also a great sign that we are acknowledging that there is work to do on both sides when it comes to examining the mental health Bill. Any day spent working on our legislation when we can remove words like “lunatic” and “imbecile” from our legislation is a proud day.

It is also a great day for the Seanad. It is a day when we should all stand up and thank God the Taoiseach did not have his way and have the House abolished. It is also a great day because an early election was not called. That was a serious concern of mine - I said as much publicly. One thing many of us were focused on was getting this legislation through and I am delighted that this day has come.

Without singling anyone out, I know there are people in the Visitors Gallery who have sat through the debate on the Bill. I wish to thank Inclusion Ireland. I do not wish to name names, but I thank everyone in the Visitors Gallery. There are many others I wish to thank as well. I will conclude by referring to the self-advocacy group in Inclusion Ireland. I saw a video made by one of the advocates, Adrian, last week. I know he has tweeted and told me that he is watching this, as are many people who will be affected by this legislation. We have seen the videos people have put up and we know what this Bill means to them. It is a great day for us.

Senator Cáit Keane: My last interruption was not an interruption. It was simply to agree with everything Senator Martin Conway had said, rather than repeat it, in deference to the people who have been sitting in the Visitors Gallery for hours. I congratulate the Minister of State for a job well done. It has taken the Minister of State several hours and I thank her for the work she has put into this Bill, not only the hours she has sat in the House but all the time over the years since she was elevated to her position.

I thank the organisations we have met through the process. As Senator Marie-Louise O'Donnell said, they have educated us and I am grateful to them. In particular, I thank Ms Fiona Walsh from Tallaght trilogue group, Mary Farrell and the representatives from Inclusion

Ireland. It is a job well done. It has been long-awaited. I thank the Minister of State. It was not an interruption; it was a job well done.

Senator Mary Moran: I am sorry to come back in again, but I said earlier it was a good day for the Seanad. Moreover, I commend Senator Trevor Ó Clochartaigh also. It is great to see cross-party support and that we can work as a team in the Seanad.

Acting Chairman (Senator Diarmuid Wilson): I should have ruled that out of order.

Minister of State at the Department of Health (Deputy Kathleen Lynch): First, I thank everyone who has been involved in the formulation of this Bill. It has been a long time on the go. It is four years since we came to the Houses with it. Not only that, there have been two years of continuous consultation. I know they get embarrassed, but do Senators know how great these officials are? After five hours last week, they came out and said to me that the debate was very interesting. I know that was not what they were thinking, but they still said it. They would still say it. They are exceptional people, and sometimes we forget that they were the ones who held consultations and produced what we have passed. It bears no resemblance to the Bill as first published. The Title, contents and argument have changed. As people have said, things will change into the future. Surely the essence of what we are is that we will continue to learn, realise what we do, and do not do, well and what we should, and should not do, more of.

The first time this issue came to my attention was through Inclusion Ireland, represented by Ms Jean Spain and Ms Deirdre Carroll. I cannot but commend Ms Patricia Rickard-Clarke for her exceptional work. She promoted the Bill constantly and explained its purpose, consequences and all the rest.

I met a young woman with mobility problems who used a wheelchair. She explained to me that when her family was given respite care, she went into a nursing home. She asked me why she should have to leave her family home. That is the essential point of the Bill. Individuals have the right to make different decisions themselves, not others. Why could that young woman not say she would prefer to stay at home with support rather than having to leave what she is familiar with? That type of experience tells us we must do better.

I am straying into the area of report cards and all the rest, but we must do better and be more open. We must be like sponges, that is, open to the suggestions made by others. I only object to something when I am absolutely convinced that something is not the right thing to do at a particular time - it may be the right thing to do next year. The question is often posed as to when one should change one's mind, and the answer is when the evidence changes. That should be the position for everyone.

Before work on the Bill commenced, I referred to it as the "Does he take sugar legislation?". The phrase implies that a person with a mobility, disability or intellectual disability could not speak for himself or herself or engage with others. The Lunacy Regulation (Ireland) Act, the Marriage of Lunatics Act and other legislation will be repealed. I am sure such terms were perfectly normal at one time, but times change, things move on and we do different things. Our attitudes to others and society change.

Senator Trevor Ó Clochartaigh and I will never agree on economics.

Senator Trevor Ó Clochartaigh: We might. We are not that far apart.

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Deputy Kathleen Lynch: He knows what I am saying. Unless we are all on the one page about certain areas, the progress that is needed will not be made.

I do not think we are that far apart on most of the issues. When people become involved in politics, they do so in order to do the very best for everyone else. I do not think any party or individual is different in that regard.

This is a very historic day for all of us. When I discuss how we age, I always say that I do not intend to get old, rather, I just intend to keep on living. When the time comes, I want to be asked what I want to do, in terms of whether I want to remain living in the same place or need to move. I want my answer to be respected. The central elements of the Bill are respect, dignity and kindness.

I thank those in the Visitors Gallery, those outside of it and Members of the Seanad and the Dáil for their contributions. We have taken them on board. The Bill was always about being open. The changes we will have to make in the future will be very important. We can be proud of ourselves in terms of the Bill and other legislation, such as the Mental Health (Amendment) Bill which will be debated on Thursday. There are times when one does something that will make a significant difference to each and every person who lives in this country.

Question put and agreed to.

Acting Chairman (Senator Diarmuid Wilson): When is it proposed to sit again?

Senator Martin Conway: Ar 10.30 maidin amárach.

The Seanad adjourned at 6.45 p.m. until 10.30 a.m. on Wednesday, 16 December 2015.