Dáil Éireann Debate
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Referendum Bill, 1998: Order for Second Stage.

Tuesday, 3 February 1998

Bill entitled an Act to enable the Minister for the Environment and Local Government to establish in relation to a referendum a commission to be known as a Referendum Commission having as its principal function the provision of information to the electorate in respect of the referendum and to provide for the matters connected with the matters aforesaid.

Minister for the Environment and Local Government (Mr. Dempsey): I move: "That Second Stage be taken today."

Question put and agreed to.

Referendum Bill, 1998: Second Stage.

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Minister for the Environment and Local Government (Mr. Dempsey): I move: "That the Bill be now read a Second Time." This is the third substantive Bill relating to referenda since the enactment of the Constitution. The Referendum Act, 1942, set out the basic law relating to the conduct of referenda, while the Referendum Act, 1994, consolidated and amended the law up to 1994. This Bill is a result of greater political awareness by the electorate and the need to provide information in relation to matters dealing with constitutional amendments.

We have much experience of referenda. In all there have been 20 since 1937 when a plebiscite was held on the Constitution. Of those, 15 were approved by the people and five were rejected. That demonstrates the people are very discerning on proposals to amend their Constitution. That is a welcome indication of the public interest in the most fundamental legal document of the State.

As we move towards a new millennium and in a period of rapid change when existing practices and procedures are under constant review, it is timely to consider how the electorate can be more involved and informed on important political issues. There is hardly a more important issue than amending the Constitution. We must start at the so-called "grass roots" and work upwards at central and local levels. However, in the case of the proposed referendum on the Amsterdam Treaty, time dictates that we must act quickly to inform the public about the treaty which is a difficult document to explain. The provisions of the Bill will achieve this for the forthcoming referendum but also for all future referenda. It will become part of the permanent referendum law.

Despite all the technology and multimedia facilities available today, it does not seem that the public are well informed on the contents of the Amsterdam Treaty. A recent public affairs television programme interviewed a sample of individuals who were asked what they knew about the Amsterdam Treaty. Only one respondent seemed to know about it, even though the treaty is the product of much work at EU level and its negotiation has been covered in the media for a few years. The treaty results from the Intergovernmental Conference which opened in Rome in March 1996 under the Italian Presidency and was continued further during the Irish Presidency when the first draft for a new treaty was submitted to the Dublin European Council in December 1996. The treaty

was agreed at the Amsterdam European Council in June 1997 and was signed in Amsterdam by member states last October. There have been frequent references to it in the media over recent months, but the public mind has not been focused on it. That is the information gap which we must try to fill.

In recent years most of the political parties represented in this House have been in favour of proposals put before the people in referenda. That is a good sign, but it has the downside that public debate has suffered. My predecessor, Deputy Howlin, and I give him credit for it, commenced the process of providing direct information on the advantages and disadvantages of a proposal in a referendum. To date we have had three *ad hoc* commissions on referendum information. Those commissions had responsibility for preparing statements with arguments for and against proposals for the divorce referendum in 1995, the bail referendum in 1996 and the Cabinet confidentiality referendum in 1997. The commissions engaged two senior counsel, who were nominated by the chairman of the Bar Council to set out both sets of arguments. A leaflet was produced on the divorce referendum and delivered by An Post to each household. Because of time constraints, advertisements in respect of the other two referenda were placed in the national and local newspapers. Criticism was expressed after the most recent referendum that the advertisements were not the best method of communicating simple factual information to the electorate. This, some claim, was the reason for the high incidence of spoiled votes in that referendum.

Notwithstanding the criticism, the *ad hoc* commissions were a step forward in attempting to bridge the gap in the provision of information. I pay tribute to the people involved, especially the members of the *ad hoc* commission and their staff who, at short notice, had to carry out a difficult task. However, it is time to advance the matter further.

When I was in Opposition I introduced a Private Members' Bill in June 1996 to provide for the establishment of an independent referendum commission having the function of preparing and presenting to the public information in an objective, impartial and informative manner in order to assist the process of enabling the electorate to make an informed decision at constitutional and ordinary referendums. I am glad to have this opportunity to give expression to the main function contained in my Private Members' Bill in the Bill before the House.

This matter was also considered by the All Party Committee on the Constitution following a recommendation in the Constitution Review Group report that:

There ought not be a constitutional barrier to the public funding of a referendum campaign provided that the manner of equitable allotment of such funding is entrusted to an independent body such as the proposed constituency commission. The total sum to be allotted should be subject to legislative regulation. Article 47.4 should be amended accordingly. Such a constitutional safeguard meets the principal objection to the old funding arrangements identified in the McKenna case by ensuring the Government does not spend public money in a self-interested and unregulated fashion in favour of one side only, thereby distorting the political process.

The All-Party Committee on the Constitution in its first progress report last April concluded that:

The Committee agrees with the Constitution Review Group that an independent body should be established to regulate the funding and conduct of referenda. It feels, however, that it would be tidier to provide in the Constitution for a commission to carry out not just those functions but also those undertaken by the Constituency Boundary Commission, the Public Service Ethics Committee under the Ethics in Public Office Act, 1995, and any commission which might be proposed to regulate election funding.

I am aware that the all-party committee is currently reconsidering the matter and I would welcome its views. However, in view of the short time available before the referendum on the Amsterdam Treaty, I must proceed with the Bill and I will consider any recommendations the committee may make for future legislation.

The Constitution Review Group recommended a constitutional amendment to enable a commission to be established which would allocate funds to political parties and interest groups to ensure a thorough sustained debate on a referendum proposal. That option has yet to be considered. I am not convinced and I am not aware of any evidence available that providing funds directly to political parties and interested groups would provide simple factual information to the electorate. We would probably see much more disjointed information about different facets of a proposal which might leave the electorate even more confused. Funds would have to be given to all groups with a bona fide interest in a referendum and unless the overall amount of funds available was very large, the impact each group could make would be minimal. It would be extremely difficult to set down criteria for approving funding and for public accountability of its use.

For instance, take the hypothetical example of a referendum where it is clear that 90 per cent of public representatives and the public are in favour of the proposal. If we assume that the Government decides to allocate £1 million to be distributed to political parties and interested groups, how is the allocation to be divided —*pro rata* to the size and representation of parties or groups or 50 per cent to both sides? Either of these approaches is open to challenge on the grounds of unfairness.

I am not satisfied that the taxpayer would be in favour of the Government issuing large sums of its money, together with the extra administrative costs of administering a scheme, to political parties and interested groups to try to persuade them to vote either "for" or "against". The potential for the wastage of public funds would be enormous, especially if the electorate is bombarded with conflicting, and perhaps inaccurate, propaganda paid for with its own money. The Government considers the Bill will provide a better option for supplying information to the electorate in a manner that is fair to all the interests concerned.

An amendment to the Constitution to provide for the commission envisaged by the all-party committee may be unnecessary but a decision on that point does not arise now. I am not saying that a single commission should not be set up which would encompass the present separate commissions — the Public Offices Commission, Constituency Commission and, when this Bill is enacted, the Referendum Commission. Much could be said in support of such a proposal and my colleague, the Minister for Finance, is drawing up proposals which could include such a single body, rather than several individual commissions.

The purpose of the Bill is to establish an independent statutory Referendum Commission to prepare and disseminate information on the subject matter of a referendum and to foster and promote public debate in a manner that is fair to all interests concerned at a referendum. It will also consider and rule on applications from bodies for a declaration that they be approved bodies, whose sole function will be to appoint agents at a referendum.

Section 1 provides for interpretation of some definitions. It is not exhaustive as the Bill will be read with the Referendum Act, 1994. Section 2 provides for the establishment, by order of the Minister, of an independent Referendum Commission not earlier than the date on which the Bill to amend the Constitution is initiated in Dáil Éireann or, in the case of an ordinary referendum, not later than the date of the order appointing polling day at such a referendum. Where the commission is established before the passing of a Bill to amend the Constitution by both Houses of the Oireachtas, it will be prohibited from publishing any statements or incurring any expenditure without the consent of the Minister for Finance before the passing of the Bill.

The section provides that the commission will be independent in the performance of its functions and, subject to the provisions of the Bill, will regulate its own procedure. This is an important point especially when read with the specific directive in the Bill that the commission carry out its functions in a manner that is fair to all interests concerned. This will allay any fears on the part of public representatives, interest groups and individuals that the funding to be provided by the Government may not be spent in a fair manner to both sides of the debate at a referendum.

The section also provides that a member of the commission shall not advocate or promote a particular result at the referendum in respect of which the commission has been established. While it may not be necessary to provide for this matter, given the membership of the commission, I consider it important to demonstrate explicitly that the commission will be neutral in its attitude to the proposal in the referendum.

Because of the time constraints and the complexities of the Amsterdam Treaty, the Government has approved the setting up of the commission on a non-statutory basis on this occasion pending enactment of the Bill. This will assist the commission in setting about its task of preparing a work programme to carry out its functions. I have written to the five members of the proposed commission and I expect the secretariat to contact them this week to arrange their first meeting. I am pleased to inform the House that the former Chief Justice, Mr. Thomas Finlay, has agreed to be chairperson of the first commission.

The section also sets out the membership of the commission. The members will be a former judge of the Supreme Court or a serving or former judge of the High Court nominated by the Chief Justice, who will be chairperson, the Comptroller and Auditor General, the Ombudsman, the Clerk of the Dáil and the Clerk of the Seanad. The section makes provision for substitution where there is a vacancy in the office of one of the ordinary members of the commission and where the chairman or another member of the commission is temporarily unable to act. A member of the commission, who ceases to hold the relevant office, such as on reaching retiring age, will normally continue as a member until the commission reports.

The Minister for Finance is required to make available to the commission such services, including staff, as the commission may require. Consultations are taking place between the Office of the Ombudsman and the Department of Finance about the provision of extra staff. As the commission will be dealing with submissions from a variety of sources relating to many different aspects of the proposal in the referendum, the section provides that documents of the commission and of its members and reports of and submissions to the commission will be privileged. Section 3 sets out the principal functions of the commission. It provides that it will prepare statements containing a general explanation of the subject matter of the proposal, the subject of the referendum. It will also prepare a statement or statements of the arguments for and against the proposal having regard to any statements received under section 6.

The commission will be required to publish and disseminate these statements to the electorate. I am leaving it open to it to decide the best way of communicating with the electorate. It can use television, radio and other electronic media in addition to printed matter in brochures, leaflets, pamphlets and posters. It will also be a function of the commission to foster, promote and facilitate public debate on the proposal, the subject of a referendum. In carrying out these functions the commission will be required to be fair to all interests concerned. This is the essential part of its role and is designed to meet the point in the McKenna judgments on the use of public money in a fair and even handed manner.

Section 4 provides that the commission may engage such consultants and advisers as it considers necessary for the performance of its functions. It will be a matter for it to engage professionals such as public relations experts, publicists, advertising agencies and other professional services to ensure it gets its messages across to the electorate in the most useful way. This is important to ensure that the electorate is fully informed and funds are not wasted on ineffective publicity.

Section 5 provides that the prohibition in the Broadcasting Authority Act, 1960, and the Radio and Television Act, 1988, on the acceptance of political advertisements will not apply to advertisements to be broadcast at the request of the commission in relation to its principal functions at a referendum. The importance of the commission's work, which is governed by the concept of fairness to all interests concerned, warrants the departure from the prohibition on political advertisements for the purposes of conveying balanced information on a referendum proposal to the electorate.

Under the section the commission may, after consultation with the RTÉ authority or the Independent Radio and Television Commission and having considered any proposals on their broadcasting plans in connection with a referendum, request the Minister for Arts, Heritage, Gaeltacht and the Islands, to direct the RTÉ authority or the Independent Radio and Television Commission to arrange to make broadcasting time available to facilitate the commission in the performance of its functions.

I would see this power, to request the Minister to direct the two authorities to provide broadcasting time to the commission, being used only in very exceptional circumstances. The commission will be obliged to consult both RTÉ and the Independent Radio and Television Commission and to consider the programmes and coverage relating to a referendum proposed by stations under the aegis of both bodies before exercising this power. I would expect to see a commonsense approach by the three bodies, especially as the three of them are required to be fair to all interests concerned in carrying out their respective functions. Nevertheless, the commission must be given the necessary powers to carry out its functions. Television and radio are probably the most used and effective means of communicating today. I consider that the commission must have the option of using these methods of communicating information to the electorate, so that the latter will be able to make an informed decision on polling day.

Section 6 provides that the public can make submissions to the commission relating to a proposal, the subject of a referendum. The commission will have regard to the submissions received when preparing statements under section 3. That is not to say every submission will have to be reproduced by the commission. It will be a matter for the commission to decide the contents of its statements provided they are fair to all interests concerned.

Section 7 provides that a body may apply to the Referendum Commission for a declaration that it is an approved body for the purposes of the referendum. The only function of an approved body under the Bill will be to appoint agents at various processes at the referendum. The right of such bodies to appoint agents will be in addition to the right currently conferred on Members of both Houses of the Oireachtas to appoint agents. This provision is included to take account of a High Court judgment in 1997 which held that the Minister has jurisdiction to rule on requests made to him by persons or groups to appoint such agents at a referendum.

A body will have to apply for a declaration at each referendum at which it wishes to appoint agents. The requirements are kept to a minimum. The body must have an interest in the referendum, it or a branch of the body must be established in the State, have at least 500 members, have a constitution, memorandum of association or other such document approved by the members, and a name which is not identical or does not closely resemble the name of a political party registered in the Register of Political Parties. The commission must be satisfied the applicant body has a bona fide interest in the subject matter of the referendum.

While some may criticise these minimal requirements, I stress that the role of an agent at an election or referendum is a serious and important one. It is a task which must be done correctly and is not a matter to be taken lightly.

I will give some background to the appointment of agents and what the agents can do at a referendum. Section 26(1) of the Referendum Act, 1994, provides that a Member of the Dáil for the constituency and any Member of the Seanad may appoint agents at a referendum to be present at the issue of ballot papers to postal voters, the opening of postal ballot boxes and the counting of votes. Any Member of the Dáil for the constituency and any Member of the Seanad may appoint one person to be present in each polling station at a referendum for the purposes of assisting in the detection of personation.

In November 1995, prior to the referendum on divorce, an anti-divorce activist wrote to the then Minister requesting him to redress what she referred to as a deficiency in the Referendum Act, 1994. The person claimed that groups opposing the then proposed constitutional amendment were

excluded from appointing personation agents and agents to attend the count without obtaining an appointment from Members of the Oireachtas. The person indicated that most if not all the parties in the Oireachtas supported the proposed amendment and requested the then Minister to make provision by way of emergency regulations to allow anti-amendment groups to appoint such agents. As that request was not acceded to, legal action was initiated.

The High Court, in March 1997, granted the plaintiff a declaratory relief and made a declaration that the Minister has jurisdiction to consider whether there exists circumstances of special difficulty arising from the operation of the power of appointment contained in the section. Should he decide circumstances of special difficulty arise, he may modify section 26 by providing by ministerial Order that the power of appointment should be exercised by persons or groups in addition to the persons mentioned in that section. The powers available to the Minister under section 164 of the Electoral Act, 1992, were intended to deal with unforeseen difficulties or emergencies. It has been used to deal with problems with the delivery and or return of postal voting documents during a postal strike, robbery of postal deliveries and the continuation of a poll on a second day on islands where confusion led island electors to believe that polling stations were not open on the original day appointed. Examples of other situations in which it was envisaged that the provision could possibly be used were a prolonged widespread evening power cut on polling day during the winter or extreme weather conditions, for example, a severe blizzard.

The practical arrangements to be put in place at a referendum where there is no political party in the Dáil opposed to a constitutional amendment must take account of any group opposed to the amendment. The Minister could, by difficulty order, determine which groups could appoint agents or he could designate that this function should be performed by the referendum returning officer or each local returning officer. It would not be the most satisfactory arrangement that the Minister adjudicate on who should have authority to appoint agents at a referendum as refusal by the Minister of a particular person or group to appoint agents would be likely to lead to allegations of bias or conflict of interests on the part of the Minister and could result in a referendum petition. Assigning the duty to the referendum returning officer or local returning officer to determine which bodies should be entitled to appoint agents is not considered appropriate as it could embroil impartial election officials in charges of partiality.

The section 164 order procedure is not an appropriate mechanism for authorising bodies to appoint agents. Instead, section 7 provides that interest groups which are declared to be approved bodies by the referendum commission will be entitled to appoint agents. This will avoid any allegations of unfairness or partiality.

Under section 8 a commission is required, as soon as possible after its establishment, to publish a notice in at least two national newspapers inviting submissions in relation to the proposal the subject of the referendum. The public notice must also refer to the procedure for declaration of approved bodies for the referendum. It must also specify the latest date for receipt of submissions and for applications to the commission for declarations as approved bodies in respect of the referendum. This public notice will alert individuals, groups or political parties of the right to make a submission which must be considered by the commission in preparing its statements.

The commission may require further information or documents from a body which applies for declaration as an approved body under section 9. It may require the authorised officer of a body who furnishes such further information to make a statutory declaration in support of the information so supplied. The section provides that it will be an offence to knowingly provide false information following a request for further information from the commission. Provision is also included in this section to enable a commission to revoke a declaration made by it in relation to a body where it is satisfied that false information has been furnished to it.

The commission will be required by section 10 to notify the referendum returning officer of details of each body declared to be an approved body under the Bill or where any declaration is revoked by it. The referendum returning officer is required to notify such details to each local returning officer.

Each approved body at a referendum will be empowered under section 11 to appoint agents to attend at the issue and opening of postal voters' ballot papers, at polling stations and at the counting of votes. Members of both Houses of the Oireachtas who currently have the right to appoint such agents will continue to have this right. The conditions relating to the appointment of agents in relation to Oireachtas Members as set out in the Referendum Act, 1994, will apply to agents appointed under this section.

Section 12 provides for the amendment of the Referendum Act, 1994, to provide that the result of a referendum may not be questioned on the grounds of non-compliance by the referendum commission with any provision of the Bill or any mistake made by the commission if it appears to the court that the general principles laid down in the Bill were complied with and the non-compliance or mistake did not materially affect the result of the referendum.

Under section 13 the expenses of the referendum commission will be paid out of moneys provided by the Oireachtas from the Vote of the Minister who initiates the relevant Bill containing the proposal, the subject of the referendum. The Government has approved funding of £2.5 million for the commission's promotional work in the Amsterdam Treaty referendum.

The commission will be required under section 14 to furnish a report to the Minister as soon as practicable but not later than six months after the completion of its functions at a referendum. The Minister is required to cause a copy of the report of the commission to be laid before each House of the Oireachtas. Where the Minister so directs, the report of the commission must include information on any particular aspect of the commission's functions as may be specified by the Minister. A commission will automatically be dissolved one month after presentation of its report.

Section 15 provides for the amendment of the Referendum Act, 1994, consequential on the extension of the right to appoint agents at a referendum to approved bodies. Section 16 provides that where an offence under the Bill, which has been committed by a corporate body, is proved to have been committed with the knowledge of a director or other employee of the body, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against. Proceedings for an offence under the Bill shall not be instituted without the consent of the Director of Public Prosecutions. Section 17 is a standard provision relating to the Short Title and construction of the Bill with existing Referendum Acts.

This is short but important legislation. It will put in place a mechanism to provide information to the electorate in a way that is fair to all interests concerned. The forthcoming referendum on the Amsterdam Treaty is an important national event. The commission will have a difficult task on this occasion in carrying out its functions due to the complexities of the treaty. The commission can only provide information; it cannot make the electorate read or consider it. The commission cannot force the electorate to vote. I hope the information provided will increase public awareness which will result in the electorate being in a position to make an informed decision and express that decision by coming out on polling day to cast its vote. However, politicians of all parties also share a responsibility to generate public interest so that we will have a large turnout on polling day.

I commend the Bill to the House.

Mr. Dukes: Fine Gael will oppose this Bill on Second Stage and will seek to amend it on Committee Stage. We have serious reservations about the Government's approach to the handling of referenda, to the establishment of the commission provided for in this Bill and to the handling of the Amsterdam Treaty.

I agree with some of the Minister's points, including his statement that “it is timely to consider how the electorate can be more involved and informed on important political issues”. However, the Government is not doing much to live up to that in the present context. It is regrettable and worrying that the Government handled its announcements about this referendum last Thursday and Friday week and treated some of the issues in the White Paper published last week in a way which has allowed fears to gain ground outside this House, and it now appears among some people in this

House, for which there is no foundation in fact and no justification in the text of the Amsterdam Treaty. The Government has not done anything significant to counter that.

The Government appears to have allowed the impression to gain ground that the flexibility provisions of the Amsterdam Treaty apply to provisions relating to a common foreign and security policy. The Government has advice to the effect that they do not. Members of this House, who are not in Government now but who were involved in the negotiations, know that link is not there.

Mr. Howlin: It is not quite as clear as that.

Mr. Dukes: Yet that is being stated and fears are being expressed for which there is no foundation and the Government is not dealing adequately with it. In the White Paper the Government states categorically and correctly that it would not be possible to provide for the integration of the Western European Union into the European Union without an amendment to the treaties and consequently a constitutional referendum here. The Government does not state clearly and categorically that the same would apply if any move was made to adopt a common defence policy. Paragraph 549 of the White Paper does not deal properly with that. That is a defect in the way the Government has been handling this, that will cloud the debate. I hold the Government directly responsible for that.

My party believes in the right of a Government to advocate a point of view in a referendum. Whatever our feelings about the current Government, or indeed any Government at any given time the Government in office is there as a result of electoral choices by the people and as a result of political choices by the parties to which the elected members belong. It is a proper part of the function of a duly elected Government in a democratic system to act and negotiate on behalf of the people and, where an issue has to be put to the people in a referendum, to give the people its views on the issues before them, to state its convictions in the matter, to state why it believes the matter being put to the people is one they should approve, to state what benefits it thinks it may bring the people and to state also what reservations, if any, it has about any part of the issue that arises. It is not outside the ambit of democracy for the Government to use the available machinery of Government, which is there for all of its activities, to express those convictions, to advocate its views, even in the case where a question has to be put before the people, because in our system Governments can be and are voted out of office. We have elections, in our case, more frequently than is provided for in either our Constitution or our law. To pretend the advocacy by any Government of this State of a point of view in a referendum campaign is oppressive or unfair is utterly absurd and, as a citizen, I regret that our Supreme Court has accepted utterly specious arguments in this matter and given rise to a part of the debate which underlies this Bill.

If there is any role in a referendum for a commission it should surely be to judge whether the Government's advocacy is fair. A commission set up to do that job would consist of persons eminent in the fields of law and international affairs, European affairs, political science and other relevant disciplines and even, perhaps, politics. We will hear how important it is that commissions should be outside of politics, but whatever commission is set up as a result of this will deal with an intensely political issue, and we are being told it should be run, staffed and composed of people who are not politicians. I do not know whether there is any other area of life where we would adopt that approach. Would we set up a commission to deal with a medical problem composed exclusively of non medical people? Would we set up a commission to deal with a legal problem composed exclusively of non legal people? I do not think so. We are allowing dictates of political correctness — which is only a passing fad anyway — to cloud our judgment in all of these things. I will come back to that in a moment.

Mr. Dempsey: The Constitution requires it.

Mr. Dukes: The Constitution does not require us to be politically correct. It requires us to have downright commonsense.

Mr. Dempsey: It requires us to abide by decisions of the Supreme Court.

Mr. Dukes: I will come to the Constitution in a minute. This is more important than the Minister's feelings on the matter. Parties to the debate, if they felt the Government was being unfair in any aspect of its advocacy, should be entitled to appeal to the commission for a ruling as to whether the Government was being fair, and if that commission found the Government's advocacy was unfair, it could order the Government to desist from its line of argument. If, on the other hand, the commission found the Government's advocacy was fair in the light of what it was saying, in the light of the circumstances, in the light of the argument being made, the objectors would simply have to put up with it. That would be a fairer way of going about it than the kind of Byzantine complexity into which we are now descending. The Government should approach this issue by having legislation along these lines, and that such legislation should be tested in the courts to ensure its validity. This would be a far better approach than to establish a commission to operate within the framework set out in this Bill, a framework which has proved itself to be already unsatisfactory. This was the procedure, after all, which gave us the most unsatisfactory Government contribution in the debate on the referendum on Cabinet confidentiality.

I have no criticism of the expertise or the objectivity of the eminent persons who drew up the pro and anti statements which the Government published in the course of that referendum campaign, but I have not heard anybody say a good word about the way in which the material was presented in newspaper advertisements. What came out was illegible, incomprehensible and indigestible in two languages. This is not the way to go about providing information to the public, yet that procedure is what the Government is now proposing for the referendum on the Amsterdam Treaty. The Minister referred to the fact that this was used in two other referenda — the bail referendum and the divorce referendum that went before it. The Minister said there was a bit more time on the occasion of the divorce referendum and that the commission set up at that time distributed widely throughout the country a leaflet that dealt with the issues.

With great respect to the people who prepared that — I mean that; I am not just saying it — I was actively involved in that referendum campaign as was Deputy Howlin and my colleague, Deputy Jim O'Keeffe. I am not misrepresenting the case when I say that my experience of that referendum campaign was that the leaflet presented in that way counted for rather little in the whole debate. I do not say that to criticise the people who prepared it, or their motivation or their objectivity. However they were not people who were involved in the debate. They were not people who understood the atmosphere of the debate, and they carried out an exercise which was divorced from the way people think about debates, from the way people feel in debates, and from the way people see the issues. It is not possible to sit in a place apart from the rambunctiousness of an argument like that and prepare a document that will be of much illuminative value — such documents are not intended to be persuasive — in the context of such a debate.

We will again put a number of eminent people into a very difficult position. Certain persons are proposed in this Bill to be members of this commission. I hope none of them will be offended by what I am about to say, because it is not my intention to offend them. I can assure each and every one of them there is nothing personal in my remarks. It is not my purpose to reflect on their competence in their present positions, on their dedication to their duties, on their integrity or on their qualities of imagination or understanding. I refer to them only because they have the misfortune to be proposed as members of the commission. They are the officeholders designated by this Bill to form this commission.

It is not obvious to me that any member or former member of the High Court, former member of the Supreme Court, the Comptroller and Auditor General, the Ombudsman, the Clerk of Dáil Eireann, or the Clerk of Seanad Eireann have, by virtue of their office, any particular insights or experience that fit them to be members of a commission charged with the job that this commission is proposed to be given by this Bill. There is no reason to believe these people are any more fitted for this job than other officers or citizens of the State or that there is anything which distinguishes them as being particularly suitable to carry out the functions set out for the commission. They are proposed in the Bill simply because the Government wants to find people who are apart from the political

process and who happen to hold offices which all of us respect. This does not equip them to carry out the job being given to the commission. It is not enough to simply say these are all persons of great probity and integrity. This is accepted, but it is not all that is required. They have to do a job with probity and integrity, as I am sure they will endeavour to do, but are they fitted for this job? There is nothing obvious to say they are.

It is intended that the commission proposed will commission the preparation of statements on the issues arising in the referendum. From whom will they commission such statements? I counsel against relying only on eminent legal persons because they produce legal documents unreadable by the general public. The Amsterdam Treaty is a perfectly legal document but it is totally indigestible to the general public. It has to be that way. We cannot produce the simplest Bill in this House without using a rather complex text which is beyond the normal experience of the average citizen. I am not sure that sending out presentations prepared by legal people will necessarily be an addition to public comprehension of the issues which will face us in the referendum.

Will academics, experts and lobbyists be asked to prepare statements? Anyone who is asked to prepare a case for or against a referendum can be criticised. Lawyers can be criticised for producing unreadable statements, while everyone else can be criticised for some kind of partiality. Is the commission being set up because the Government believes that as a result of the McKenna judgment we must have a parallel debate commissioned by people who are beyond reproach? This is supposed to be of more value and more illuminating than a debate which takes place among people who are not beyond reproach because they are up to their oxters in political mud and up to their eye balls in political argument. Is there something wrong with a debate which involves people in the political process? Is there something about it that needs the sanitisation of having some other group who are beyond that kind of reproach involved in the preparation of information for the public? I do not blame the Minister for this as the real problem goes back to the Supreme Court which seems to believe there is something essentially wrong with the political process because it is political.

It is intended that the commission shall prepare and publish brochures, leaflets, pamphlets and posters and shall distribute them to each presidential elector or household. It is not obvious that this commission will have any particular expertise in the preparation, publication or distribution of any of these documents. We had a bad experience on the last occasion and I wonder how people who are not engaged in the argument can produce or assess material relevant to the debate in a way which is responsive to what is going on in the mind of a public which does not really want to read much tedious and detailed documentation.

The commission will also be charged with fostering, promoting and, where appropriate, facilitating debate or discussion in a manner which is fair to all interests concerned. I do not see anything in the qualifications of the proposed members of the commission which fits them to foster and promote debate or discussion in this way. The Minister dealt with this when he commented on the functions set out in section 3. He said the commission will have access to the broadcast medium. It is important that there should be a lively debate in the broadcast media given that it seems to have a greater impact on a larger part of the population than the printed medium. I do not see anything in the qualifications of these people which gives me confidence they can handle this matter which is so completely outside the ken of their normal activities that it is like a foreign country to them.

The commission will have a budget of £2.5 million. This is a very substantial budget and much information can be given out and much facilitating can be done with it. However, if it is badly done then a large part of the expenditure will be wasted. If the Government is bent on setting up a commission, on having information distributed and on ensuring that debate is facilitated then surely the commission should be given powers to turn to organisations which have a track record in these matters and then decide which of those organisations should be entrusted with such tasks, the criteria which should be applied to them and their methods of work and the accountability required of them.

Mr. Dempsey: There is nothing to stop it from doing that.

Mr. Dukes: The Minister said we could consider this but that it is too complicated to do it now.

Mr. Dempsey: No.

Mr. Dukes: I will quote what the Minister said later. I remind the Minister that the Danish Parliament has a model for such a system and it operates successfully for referenda in Denmark. The Government appears to have paid no attention whatsoever to that model.

Mr. Dempsey: We did. I advocated allocating funding to both sides of the argument.

Mr. Dukes: I am not making a case for a particular body. One option which was available was to give funding to organisations on both sides of the argument but the Minister ruled it out and said it would be too complicated to work it all out now.

Mr. Dempsey: The Deputy should take a good look at what I said.

Mr. Dukes: The Minister referred to the recommendation in the report of the All-Party Committee on the Constitution that there ought not to be a constitutional barrier to the public funding of a referendum campaign provided that the manner of equitable allotment of such funding is entrusted to an independent body. He went on to say, in essence, that he is too bothered and pressed and in too much of a hurry at this stage to give that any consideration, although, by implication, it might be considered at a later stage. Having quoted the All-Party Committee on the Constitution, he said: "I am aware that the all-party committee is currently reconsidering the matter and I welcome its views but I must proceed with the present Bill." This is outrageous. He said his attention has been drawn to another way of doing this but he is in too much of a hurry and does not have time to think about it and he will bash ahead with what he proposes. This is entirely unsatisfactory and it is not the way a Government should go about dealing with an important issue such as this one. The Government should now consider allowing the commission to farm out work on the advocacy in the way I suggested, satisfying itself as to the bona fides, standing and capacity of organisations which could carry out the work.

On the dissemination of information, my understanding is that the Government will publish separately the overview section, chapter 3, of the White Paper as a stand-alone public information document, and that will be useful. The Government intends to print 200,000 copies of that document. In a rather old-fashioned and charming way, members of the public were invited yesterday by notice in the public press to apply for a copy of the document, which will be as Gaeilge agus as Béarla and will be placed in public libraries and so on. There will be 200,000 copies of that document for more than one million households, which is not an adequate circulation list for that material.

There are many ways of ensuring wider distribution, one of which would be to give a large stock to every Member of the House to send to our constituents together with the multitudinous letters we send every day. Every Department has a comprehensive network of contacts with bodies such as community development groups, voluntary agencies, non-governmental organisations and so on which are involved with people who would like to have information on this treaty. Will the Government consider making stocks of the document available to such bodies, many of whom have members who at some stage in their activities will ask each other what they are going to do about the Amsterdam treaty. There is no difficulty in finding ways to disseminate the document much more widely than is intended by the Government. For example, political parties could mail it to their members. It would not be difficult to ensure the document goes to every household.

The ban on political advertising currently in force is to be lifted in regard to advertisement taken out by the commission, and that is welcome. If the Government took a different view of the work of the commission and agreed it should commission organisations to carry out work on its behalf in the campaign, equally the ban on political advertising should be lifted for those organisations acting in a way that is approved by the commission.

I welcome the provision in section 7 to approve bodies for the purpose of the referendum for the various functions the Minister has indicated. That section is entirely appropriate.

The Minister raised the question of fairness during the course of his comments. As an observer and a participant in the political scene for a long time, I have found there are a few dodges that are frequently used. One of the best ways of getting publicity is to complain loudly that the media are being unfair. If one complains loudly enough one will get much exposure in the media, and appearing on television or radio one does not have to say the media are being unfair but simply put forward one's message. Many people who have taken issue with my views on treaties up to now have used that dodge to very good effect.

Another good dodge is to say that there are very few people who are active on one side of the argument, that one is oppressed by the fact that everybody else is against. That ensures much publicity. It scares the media so much that the few people who take that view and are clever enough to make that contention get about half the media space in a referendum campaign. They spend part of their time complaining they do not get as much attention as everybody else. We have talked ourselves into a position where time after time the media have been persuaded it is fair that people who seem to represent the views of considerably less than half the population get at least half the media exposure. Regardless of the way this Bill turns out, the media should wake up to that fact this time around and not fall for the old dodge of people who say they are not getting fair coverage in the media, that they are oppressed by the number of people against them, and therefore they get half the coverage. We should not fall for that in the way we have previously.

This Bill is not an answer to the various issues that have arisen in recent years about the fairness of the referendum procedure. It is a half-baked Bill based on an incomplete, pseudo-sophisticated reflection of the issues that arise. I regret very much the Minister, who has indicated there are other ways of handling this matter, cannot be bothered with them or has not enough time. The present course is the wrong way to proceed. It will do serious disservice to the democratic rights of the public to information and to an informed debate in a referendum on an important issue.

The Minister concluded his remarks by urging politicians to accept their share of responsibility to generate public interest. I agree with that sentiment and hope all of us in this House seriously takes on that task. I appeal not as a politician but as a citizen to our politicians and the media not to forget that every citizen has a duty to take steps to inform himself or herself on this matter. If we operate on the basis that people will vote in an informed way only if they are spoon-fed with information, we are insulting the people. I bet my bottom dollar that about two weeks before referendum day — this illustrates the problem — people will say that not enough information has been made available on the matter and there has been no debate on it. I predict that in the print and broadcast media most of the people who make that remark will be those who have extensively covered the reflection group, the intergovernmental conference and all the public debates on the issue. I warn the public not to be put off by that nonsense.

Mr. Howlin: Rather than be dragged into debate on the merits or otherwise of the specific proposal which imminently will be put to the people to validate the Amsterdam treaty, I will focus on the Bill before us which deals with how we will conduct referenda in the future. I am a little disconcerted in that I am much more in agreement with the comments of the Minister than the comments of the spokesman for the Fine Gael Party. On the proposition we are faced with — I have clear views on electoral law and the way we should deal with it — a decision by four of the five judges of the Supreme Court, with Mr. Justice Egan dissenting, clearly interpreted the Constitution. There is an obligation on all of us to address that Supreme Court judgment. It seems there are three options. We may decide the Supreme Court should be overturned and advocate a constitutional referendum to do that. The second option would be to accept the Supreme Court judgment and produce a Bill on the lines of the one the Minister has produced. The third option would be to decide to do nothing, not to advocate one side or another or any case in any future referendum and if we do not spend public money we are clearly within the confines of the Supreme Court judgment. However, we cannot

simply say we do not like the Supreme Court judgment without being determined to overturn it.

It is an important landmark judgment. There were many aspects of the judgment I did not like and some with which I did not agree, but we are obliged to address the issue of fairness in conducting referenda.

As Deputy Dukes stated, many countries have looked at this issue. The Danish experience is one I would not favour. I do not agree with the notion of handing funding to political groups or political advocates of an issue, and this could be very difficult in our context. I could envisage, for example, a referendum on Articles 2 and 3 of the Constitution and there are some organisations who might be actively involved in that campaign for whom I would not be anxious to provide funding.

We must be realistic and decide there will be an acceptance of the Supreme Court decision which means we must have some balanced way of advancing the case for and against a measure to be put to the people by way of referendum. We have looked at this over a period of years. An *ad hoc* arrangement was in place for three referenda. I was responsible for devising that arrangement in response to the initial Supreme Court judgment and I accept readily that it was not an ideal mechanism. Ironically, I also believe the first referendum we dealt with in an *ad hoc* way, the divorce referendum, was dealt with best. The production of a pamphlet, delivered to every household, was much more informative, constructive and helpful to people deciding on their views than placing an advertisement in the print media, which was the mechanism used in the two subsequent referenda. Incidentally, it was also, by a significant measure, the cheapest way of doing it. I understand the insertion of an advertisement in the print media in each case cost in the region of £400,000 whereas the production and dissemination of a pamphlet in the divorce referendum cost in the region of £143,000, so one got a much better impact for the expenditure of moneys.

It is important that we look at this measure in the context of referenda generally rather than how we will deal with the issue of the Amsterdam Treaty referendum. I draw to the attention of the Minister an important issue. We gave the task of looking at the conduct of referenda to a committee reviewing the Constitution. We asked it to look at international best practice, the Constitution and the judgment in the McKenna case, and to come up with recommendations. To say that it is a discourtesy to produce legislation in the absence of the committee's final conclusions is to put it extremely mildly. We are given tasks and we take them on with enthusiasm — the All-Party Committee on the Constitution undertook its work in a constructive non-partisan way — and we are all fed up to find that the work of the committees is basically irrelevant to the thinking of the Executive working in parallel with scant regard to the conclusions of the committees. It is not good enough for the Minister to come into the House today and say that the All-Party Committee on the Constitution is currently reconsidering the matter and he would welcome its views. What good are the views of the committee if we have enacted legislation? Is there an urgency about this legislation that it could not wait for the views of the committee? The Minister says “yes”, and refers to the Amsterdam Treaty debate. However, the Minister today and originally in his press release announcing this Bill on 27 January said that, because of the time constraints and the complexities of the Amsterdam Treaty, the Government has approved the establishment of a commission on a non-statutory basis pending enactment of the Bill. Therefore, the Bill is irrelevant to the Amsterdam Treaty because the commission will already be established on an *ad hoc*, non-statutory basis. I have no difficulty with that, but at the same time the Minister should give us time to reflect on how best to deal with the rather complex issues involved in allowing a fair debate on the amendments being proposed to our basic law.

The Constitution is the fundamental law of the land. It is the preserve of the people who make the decision. They are entitled to be given the broadest possible base of knowledge on which they can make a decision. Certainly, every political party has a responsibility to present its case to its supporters, and there is no prohibition, good, bad or indifferent, on that happening. There is, however, a prohibition on the expenditure of public moneys by the Government in advocating one side. That is a good thing. It is important. It is a nuisance and an irritant for Government, but it is an

important principle of democracy that there be advocacy of issues on a balanced basis.

I listened carefully to the case put forward by Deputy Dukes and there is merit in his argument, that a consensus among 80 per cent or 90 per cent of the Members of the House should be reflected in the campaign. It is a moot point. There is always a requirement for a balanced debate so that all the issues can be teased out and that balanced debate should not include the direct funding of any advocate group. The notion of an independent commission handling the dissemination of that information is a safer, better and, ultimately, more democratic proposal.

I have clear strong views on the proposal before us. They were touched on in passing by the Minister when he talked about the current work being undertaken by the Minister for Finance in considering the establishment of a single commission. Let us look at the commissions currently in place and the functions the Oireachtas assigned to them. The Registration of Political Parties Appeals Board was established by section 25 of the 1992 Act and it consists of a judge of the High Court nominated by the President of the High Court, the Ceann Comhairle and the Cathaoirleach. The Constituency Commission was established by Part II of the Electoral Act, 1997, and it consists of a judge of the Supreme Court or of the High Court nominated by the Chief Justice, the Ombudsman, the Secretary General of the Department of the Environment and Local Government, the Clerk of the Dáil and the Clerk of the Seanad.

One will find, when we go through all these various commissions, that the same characters and officer holders appear in more than one slot. The Public Offices Commission, established by part V of the Ethics in Public Office Act, 1995 — it is also referred to in the Electoral Act, 1997 — consists of the Comptroller and Auditor General, the Ombudsman, the Ceann Comhairle and the Clerks of the Dáil and Seanad. As we discovered recently, these bodies have a range of onerous responsibilities that are set out in the legislation to which I referred.

Section 2 envisages the establishment of a referendum commission, the membership of which will comprise a former judge of the Supreme Court or a former or current judge of the High Court nominated by the Chief Justice, the Ombudsman, the Comptroller and Auditor General, the Clerk of the Dáil and the Clerk of the Seanad. It seems the commission will be made up of the same group of people wearing different hats and carrying out different functions and it will involve itself in areas of electoral law and policy which overlap or dovetail into each other. In addition, a number of functions reserved for the Minister for the Environment and Local Government are improperly conferred on a political personage.

If Deputy Dukes was present, I am sure he would fundamentally disagree with my last statement. I react in the same way to people who state that politicians are the only people who cannot be trusted completely when it comes to politics. However, it is improper that there are specific roles assigned to the Minister for the Environment and Local Government in respect of matters of electoral law. For example, the Minister or his nominee act as returning officer for referenda. In presidential elections, he can make orders in respect of special difficulties which may arise. In his contribution the Minister offered the example of a blizzard on polling day. I recall such an order being made when problems arose in respect of an offshore island.

Are such decisions appropriate to a partisan person? I raise this in the context of the presidential election when the Minister for the Environment and Local Government, who had functions to perform in respect of the election, served as director of elections for the candidate who subsequently became President. I do not believe there was any impropriety on the part of the current officeholder at the Department of Environment and Local Government, but it was wrong that such a situation should arise.

The time is ripe to establish, on a permanent basis, a single commission which would have all the functions currently farmed out to various commissions, boards and the Minister. This simple proposition would be more rational and much better. Will the Minister reflect on that proposal and not pursue the Bill to a conclusion? There is no urgency about the Bill because the Minister can

establish, on a non-statutory basis, the commission to deal with the Amsterdam Treaty. As far as I am aware, there is no referendum imminent other than that dealing with the Treaty. In a matter of weeks we could discuss, design and publish a consolidation Bill which would encompass the powers the Minister envisages will be given to the new referendum commission and the various other powers given, under the Electoral Acts, to the committees, commissions and boards to which I referred. He could also rid himself of the residual electoral powers he retains. I strongly urge the Minister to do this.

I considered tabling an amendment in order that the House would divide on Second Stage. On balance, I thought it would be more constructive and more likely to be successful if I made the case logically to the Minister. I am aware the Minister was obliged to leave the House but I hope the Minister of State will put my views to him. The Minister should reflect that there is no urgency on this matter and he should consider a more fundamental consolidation of electoral law than adding a further commission to the plethora which already exist.

I will tease out a number of other matters at the Select Committee on Environment and Local Government before the Bill is brought to a conclusion. How will the mechanism governing the expenditure of money work? For example, £2.5 million is to be allocated to the commission to deal with the Amsterdam Treaty. Will the commission decide how much of this money is to be spent or must it spend the entire amount? Will the commission decide how much RTÉ should be paid in respect of advertisements or are these expected to be offered free of charge? Is the divide between the expenditure on television, radio and the print media to be set in any way or will it be at the commission's discretion? Will a large part of the £2.5 million be spent on the services of the consultants to whom the Minister referred earlier? Will guidelines be put down? Will the commission be able to decide that its work should only cost £500,000 and return the remaining £2 million to the Exchequer? How will the mechanism work and on what basis was the figure of £2.5 million decided?

There are clear accounting measures which cover every shilling spent. I know from experience that if a person seeks £100,000 for a project the accountancy measures put in place are extremely arduous, and rightly so. However, there seems to be no mechanism to control the expenditure of the £2.5 million to be given to the commission. This will be an invitation to some consultants to make a small profit from the pool of £2.5 million which must be expended so that the perception of fairness can be seen to exist.

In terms of our experience to date, in the three referenda where the *ad hoc* arrangements applied, the most effective communication of the issues took the form of individual pamphlets delivered to each household. This cost less than half the amount spent on newspaper advertisements, which, as Deputy Dukes stated, were largely a waste of effort. Those advertisements, which appeared in two languages, were crammed into one page and proved illegible because of the minuscule print used. They were almost designed to discourage people reading them. I do not suggest there was an ulterior motive behind this but the advertisements were illegible to most people.

This argument forms a value for money caveat to my contribution and I am interested to hear the Minister's views on it. I hope he will express those views in a dispassionate way at the Select Committee on Environment and Local Government over a period of time rather than rushing the Bill to a conclusion in a matter of days on foot of the artificial argument that it must be in place in advance of the Amsterdam Treaty debates. The Minister acknowledged this is not necessary because he intends to proceed on an *ad hoc* basis.

I welcome a number of sections of the Bill. The notion of establishing a clear legislative way of deciding who can appropriately appoint agents at referenda is an important development. I am familiar with the difficulties which arose in November 1995 when application was made by outside groups and bodies to have the right to nominate agents. I was surprised by the High Court decision in respect of the special difficulty order under section 164 of the 1992 Act. Most people did not envisage that a special difficulty would encompass the right to appoint agents. Since the High Court

decided the Minister had such a power, it does not rest comfortably with him to be the referee in deciding what group has an interest and should appoint agents. In any referendum there could be a number of people on the same side of the argument for very different reasons. It is right and proper that there be a statutory mechanism for dealing with that and I understand the Minister's requirement that his role be modified so that he is taken out of such a bind.

I understand Deputy Dukes' views on European integration which are well stated, understood and knowledgeably articulated, but his views on how the Amsterdam Treaty should be conducted should not be mixed with general issues which will be put to the people over the next ten or 15 years by way of referendum. There was a blurring of those distinctions in his contribution. I am surprised he said Fine Gael believe the Government should be allowed to use its resources and public money to advance its point of view because that was not the view the party put to me when I devised the *ad hoc* mechanisms subsequent to the McKenna judgment.

There was no clamour from Fine Gael at the time to amend the Constitution to allow an advocacy role using public money by the Government. It is an honourable position but it was never argued or articulated to my knowledge until now. One cannot have it both ways. One cannot say there should not be a mechanism to provide a balance if one does not believe the Supreme Court decision should be overturned. If one advocates that, one should put forward a constitutional amendment.

This is a short Bill, clear in its intent. By and large, it puts on a statutory basis the arrangements we have explored on an *ad hoc* basis over the past three referenda. It advances some and is extraordinarily wide and discretionary on how the commission should work. That is a great cause of concern and I wish to tease it out. The Bill basically says the commission will be established, given a wad of money and may use consultants, the broadcast and print media and even organise meetings. This is too broad a remit for the commission. If there are difficulties arising from the commissions established to examine electoral law, it is that their remits were not specific enough and they found difficulties in understanding specifically what the Oireachtas wanted them to do.

There should be a single commission charged with these electoral functions. Time should be taken to debate it and we should try to build a consensus in the House on such matters which affect our democracy and how we conduct one of the most important aspects of it — the decision making power of the people in regard to basic law. I hope the Minister of State will put the case for a consolidated commission to his senior colleague and that the Bill will remain on hold until that sensible suggestion can be acted on.

Mr. J. O'Keeffe: The Bill is a major disappointment as in many ways it is just a warmed up version of the Private Members' Independent Referendum Commission Bill circulated by the Minister for the Environment and Local Government, Deputy Dempsey, in 1996. It puts on a statutory basis the work being done by the current *ad hoc* commission in dealing with information about referenda. It is a Pontius Pilate type Bill which does not deal with the essential issues that confront us.

We need to have a well informed electorate — informed by fact and not emotion — dealing with proposed constitutional amendments. We are concerned with the low turnout in recent referenda and the fact that people complained about not having been sufficiently informed. One informs in two ways, by providing basic information and advocacy. The Bill does nothing about advocacy and it merely puts in statutory form what already exists on an *ad hoc* basis with regard to disseminating basic information.

It is not informed by the detailed discussions taking place at meetings of the All Party Committee on the Constitution chaired by the Minister's colleague, Deputy Brian Lenihan. I cannot understand why there has not been rapport between both. As vice chairman of the committee, I know there has been very detailed discussion and research on matters in Ireland and internationally relating to the running of referenda. Why then was the Bill rushed without any reference to the committee? I have no doubt Deputy Lenihan will have a question or two for the Minister about that. The purpose of the research was to try and look at all issues so that ultimately we would produce, preferably on an all

party basis, a report that would cover a great deal of ground rather than this very simplistic, minimalist approach. The Bill deals with the question of approved bodies and the recognition of same to appoint personating agents. That is an irrelevant relic of a bygone day. What personation will take place during a referendum when hundreds of thousands are involved? Will the Minister have individuals in Ballydehob checking to see whether a person is voting "yes" or "no"? It is rubbish and should be considered as such.

The Bill is a timid response to the main problems created by the McKenna judgment. It deals solely with information and there is no need for any such Bill. Any Government is entitled to issue information on any issue. The McKenna judgment does not affect that in any way, provided the Government issues it fairly, and there is no reason it should not. What is the purpose of the Bill, what has it got to do with the Amsterdam Treaty and why the rush? The approach adopted by the Government is wrong because essentially the Bill does not tackle the main point as it does not resolve the issue of the entitlement of a democratically elected Government to advocate a point of view in a referendum.

A Government is answerable to the Dáil, which is answerable to the people, and a Government, provided it does not break the law, should be entitled to advocate a view in a referendum. We should try to see how that might be best done in compliance with the Constitution whether by way of a constitutional referendum or by way of a Bill which could be referred to the Supreme Court to ensure it is acceptable.

The issues to be addressed by referenda in the future include not only the Amsterdam Treaty, but are likely to involve decisions, for example, on Articles 2 and 3 of the Constitution and other constitutional changes which may arise from the Northern Ireland talks. We must take the long and not the short-term view adopted by the Minister in this Bill. This is apart altogether from the issue of the general programme of constitutional reform.

To evoke a vigorous democratic response and a reasonable turnout in a referendum it is necessary to work out how to underpin referendum campaigns with adequate promotional and informational resources. I do not accept that minority or *ad hoc* groups springing up overnight in reaction to a particular proposal are entitled to equal funding to the Government or the political parties represented in the Dáil. The philosophy in this regard must be based on fairness rather than equality and that should be our aim in examining the issue.

What can the Government do despite the McKenna judgment? The Government is not precluded by the Supreme Court from presenting information to assist in the exercise of informed choice by the people. It has rightly issued a White Paper on the Amsterdam Treaty. There should be an obligation to produce a White Paper as a forerunner for every Bill to amend the Constitution. If necessary such a provision should be in statute or incorporated in the Constitution.

The special status of a Bill to amend the Constitution should be recognised from the point of view of time. I recall debating the Bill on Cabinet confidentiality which was rushed through the House in about six hours of debate all told. That was a bad mistake. Debates in the Dáil are useful for informing the people. There should be a minimum time of six or eight weeks required by statute or by the Constitution to ensure that legislation on referenda cannot be rushed through the Houses of the Oireachtas. Special funding should be available for such legislation. There is no funding restriction in the McKenna judgment on referenda Bills prior to their being passed by the Oireachtas. Funding can and should be made available for research by the political parties or surveys to ascertain the views of the people. Thus, the Oireachtas may make an informed view on constitutional change.

With regard to any such procedures the committees of the Oireachtas should be used. Submissions could be sought and oral hearings held as part of a wider legislative process. Such measures would help ensure more information was available to the public so that they might be fully appraised of issues before a Bill is passed.

If these proposals were accepted the situation would be in stark contrast to that which pertained last September when the Cabinet confidentiality Bill was rushed through the House. I do not think there was one report in any of the newspapers the following day on that debate, although there were other well-publicised events taking place here on that day, in the form of a personal statement by a Minister. We need to use the system better so that by the time a Bill has been passed by the Oireachtas people know what it is about.

In this Bill the Government takes a restrictive view of the effect of the McKenna judgment. Funding for research by political parties and others prior to the passing of a Bill is not affected by the Supreme Court judgment. Thereafter, it is possible to provide funding if it is thought necessary. When a constitutional Bill is put to the people it is like the monarch of old exercising a right of veto. The people do not influence what goes into the Bill but it is presented to them having been passed by the Oireachtas and they have the right of veto. The people act in the role of a judge making a decision on the basis of the evidence put before them. Dry information on such matters will filter through to some people, but to stimulate debate and to get people engaged in the process it is necessary to promote the debate and fund that promotion.

In this regard the Government should not be compared to a small interest group under an impressive title. It is possible to discuss and arrive at procedures to achieve fairness if the Government wishes to fund the promotion of a particular point of view. It is possible that there may be a role for a commission to adjudicate on the fairness or otherwise of the campaign adopted by the Government. However, this Bill does not even touch on these issues, rather it ignores them. It is a disastrous failure which will lead to a low turnout in the referendum on the Amsterdam Treaty.

We do not wish a repetition of the debacle that was the referendum on Cabinet confidentiality and that is why I want a Bill which addresses the points I raise. I am trying to be constructive but this Bill does not advance the debate. If we incorporated these and other ideas into a decent Bill and it presented problems there would be two courses of action open. The House could make clear its desire for the President to refer the Bill to the Supreme Court to test its constitutionality or we could propose a constitutional amendment. It may be argued that there is a time constraint and we must rush the ratification of the Amsterdam Treaty. Why is that? We have a year in which to ratify it. The only other country which has fixed a date for a referendum is Denmark and that is for the end of May. Why are we rushing? We should deal with the matter properly rather than rush through a Bill which will not deal with the wider problem.

On the information issue, the *ad hoc* commissions had neither the time nor the mandate to distribute information in previous referenda. They put together advertisements giving the cases for and against and that was all they could do. They were not dealing with the provision of information. However information is disseminated, by the Government or by a commission, every polling card should be accompanied by a pamphlet explaining the issues in the referendum.

The report of the first all-party committee on the Constitution, which I chaired, dealt with the information issue. The committee felt there should be one electoral and ethics commission. There are far too many commissions. There is a public offices commission, a constituency commission and a commission set up under the Electoral Bill. There should be one commission instead of the plethora that exists.

We envisaged from the report that the commission would be set up on a constitutional basis and as such would have powers to deal with cases, such as the McKenna case, that arise under the Constitution. I have my own ideas on the powers it should have, but that cannot happen with a commission set up on a statutory basis unless a Bill is referred to the Supreme Court. Otherwise, we are bound by the current judgment of the Supreme Court.

Because of time constraints I can touch on only some of the issues involved. This is a serious matter. We are dealing with the question of reforming the Constitution for the years ahead. Therefore, we must ensure that proper procedures and funding are in place and that sufficient time

is allowed to discuss the legislation and to prepare documentation when it is passed. The commission will have no resources or staff. Who will deal with the documentation? Essentially, we are talking about people who know something about the Bill. The Minister did not deal adequately with that matter.

The Bill does not address the main issue. The Minister did not refer to the different approach adopted in Denmark. Did he examine the position in the states of the United States where a number of referenda have taken place? Did he examine the research carried out in those states on the different ways the public can be involved in a referendum debate? Did he examine the relative merits of advertising through the print media, the radio or by circulating pamphlets? There is ample evidence of the best way to disseminate information. There is also evidence on the best way to arouse a public debate on the matter. There should be advocacy on both sides and the necessary funds should be made available. A major defect of the Bill is the Minister's failure to address that issue.

The Bill should be viewed as a green paper and not rushed through the House. The commission has already been set up on an *ad hoc* basis. All it requires is the nod from the Minister for Finance that the Dáil has approved the necessary funding, which is not a matter for the Bill. I strongly recommend that we do not proceed with the Bill. There should be detailed discussion not only in the All-Party Oireachtas Committee on the Constitution but in the Select Committee on the Environment and Local Government. Experts should be consulted and submissions sought on the matter. The Government could then formulate a Bill that would have the support of the House and would be effective in dealing with the problems that confront us. Pending that, there is only one answer to this timid effort and minimalist approach — to vote against it.

Mr. B. Lenihan: I was surprised to hear the Fine Gael Opposition spokesperson indicate that his party proposes to oppose this measure. It represents a practical step in the right direction. While I accept a number of points have been canvassed by Deputies Dukes and O'Keeffe, the measure represents a practical advance on what preceded it. It is clear from what Deputy Howlin said on behalf of the Labour Party there will not be all-party agreement for the type of approach Deputy O'Keeffe advocated. In a matter that touches on the electoral system, the franchise, the rights of citizens and the proper conduct of a referendum, a measure of agreement between all parties is desirable.

The Bill represents a certain minimum, but I thought that minimum would be intrinsically acceptable, even to the principal Opposition party. Whether we as legislators should go beyond that minimum is a subject for further debate. The basic minimum provided for in the Bill is desirable. Therefore, it is curious that it is intended to force a vote on the matter at the conclusion of the debate. In forcing a vote on it, the principal Opposition party is opposing the merits of the proposal. Yet it has considerable merit and builds on some of the experience in this area to date and on some of the recommendations in the earlier progress report of the all-party committee on the desirable persons in the composition of a commission that should police a referendum.

The referendum is of great importance under our constitutional system. When the Constitution was repatriated to the people in 1937, and Mr. de Valera gave them an opportunity to pronounce on it, they adopted it. It remains the birthright of the citizens and since 1942 it cannot be amended without their expressed consent, freely given in a referendum. It is extraordinary that for many years our referendum legislation did not provide in great detail for the conduct of referenda or the dissemination of information. A section in the current and earlier legislation gives the citizen the right to purchase in the local post office, for the nominal sum of two and a half pennies, a copy of the Bill passed by the Houses of the Oireachtas. That is all that is provided for by way of information, apart from the polling information card which is also referred to in the legislation.

When formulating legislation in this area, the Government must respect the landmark decision in the case instituted by Patricia McKenna at the time of the referendum on the amendment to the Constitution that led to the introduction of a divorce facility. I have no doubt the Minister was

conscious of the obligations imposed on the Government in the McKenna judgment when formulating this legislation. However, there is a danger in taking too literally the judgment of the judges of the Supreme Court in that case. There is scope for development in the interpretation of that judgment. For example, it is clear the judgment prohibits the Government appropriating public moneys to promote a particular result and, therefore, behaving in a less than even handed way in the promotion of a result. It is not clear, however, that the McKenna judgment prohibits the Houses of the Oireachtas — the Houses which adopt a proposal to amend the Constitution — from proceeding to promote their point of view with the electorate. When a proposal to amend the Constitution is submitted to the House in the form of a Bill, it is discussed by Members.

Debate adjourned.

http://debates.oireachtas.ie/dail/1998/02/03/

Dáil Éireann Debate
Vol. 486 No. 4

Referendum Bill, 1998: Second Stage (Resumed).

Wednesday, 4 February 1998

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

Mr. B. Lenihan: Before the Adjournment of the House last evening I expressed surprise that the principal Opposition party, Fine Gael, had decided to divide the House on this Bill, the purpose of which is to provide the people with more information in the referendum. It is a peculiar Bill on which to divide.

Up to 1995 Governments funded referendum campaigns in favour of particular proposals through the Minister sponsoring the proposal. There was controversy during the years, for example, about the Minister for Foreign Affairs funding arrangements for the promotion of a “yes” vote in campaigns connected with our membership of the European Union. In 1995 the House voted £500,000 to the Minister for Equality and Law Reform to fund a promotional campaign in favour of a “yes” vote in the divorce referendum. As Members are aware, Patricia McKenna, MEP, took legal proceedings which were successful in the Supreme Court and restrained the use of public funds for the purposes of promoting a “yes” vote.

A careful analysis of the judgments of the judges of the Supreme Court on that occasion shows that there is no clear overall reasoning in the judgments of the majority of the court. The Chief Justice, Mr. Justice Hamilton, and Mr. Justice O'Flaherty took the view that in allocating funds to the Government for expenditure in promoting a “yes” vote this House infringed the equality which has to be maintained between the two sides in a referendum argument. In his judgment Mr. Justice Blaney emphasised the voter's right to fair procedures. What is important in the conduct of a referendum is not strict equality between the two sides — an almost mathematical concept which is impossible to achieve in a political contest — but basic fairness that must apply in the referendum procedure. That is the constitutional obligation on this House in looking at a measure of this kind.

The decision in the McKenna case was subsequently considered in a petition brought by 11 o'clock another public figure, a Member of the other House and of my own parliamentary party, Senator Des Hanafin, who instituted proceedings after that referendum which sought to impugn the result on

the basis that the result was affected by an interference with the conduct of the referendum caused by the illegal expenditure of moneys to promote a particular result. It was interesting to note that in the Hanafin decision, the Supreme Court indicated clearly that the Government was acting in accordance with its powers in giving factual information with regard to the proposal which is the subject of a referendum, in expressing its views thereon and in urging the acceptance of such views.

It is clear from the Hanafin decision the Government is not prevented from campaigning for an amendment or from advocating that the proposed amendment should be approved by the people. That is an important point in relation to the referendum, that there is no block on the Government engaging in a campaign and promoting a particular result. The Government established an *ad hoc* commission for the divorce referendum, the referendum on bail and the recent referendum on Cabinet confidentiality. The operation of that commission is described in the Minister's contribution.

I want to make one practical point which I hope the commission will take into account in exercising its functions on the Amsterdam referendum. It is interesting to note that in the divorce referendum the *ad hoc* commission prepared a pamphlet which cost £143,000 to circulate to every household in the State. On the other hand, in the bail and Cabinet confidentiality referenda the cost was £400,000 in each case and that cost was incurred in respect of taking out advertisements in the public press and in the press generally. That is not an effective way of conveying information to the voter. The information might as well have been included in a copy of Iris Oifigiúil as put in a notice in the national and local newspapers. A pamphlet attractively designed and presented would have the advantage of reaching every household and would set out a balanced set of arguments for the voter in that household.

There is some evidence from research available from Australia where an Australian electoral commission has to post an official pamphlet to every voter. A national telephone poll before a l988 referendum in Australia reported 87 per cent of respondents saying they had received the pamphlet and 62 per cent saying they had read it. That was a failure to reach 38 per cent of the electorate. Any politician would agree is quite a high success rate.

Surveys on ballot voting carried out in Massachusetts suggest that pamphlet distribution is the most effective information source for the voter followed by newspaper reports, television news reports and then radio news and talk shows. It is interesting that paid advertising on the ballot questions is very far down the list and in Massachusetts was found to be used by only 10 per cent of the electorate. That suggests the rather expensive newspaper advertisements used in the Cabinet confidentiality and the bail referenda were useless in that they reached 10 per cent of the voters. I hope the more inexpensive method of preparing a good pamphlet and circulating it to every household will be considered in relation to the Amsterdam referendum. Talking to voters after those referenda the general view was that inadequate information was provided in both of those referenda.

The voter receives a voting card and it seems sensible that the voter should also receive a document setting out the arguments for and against the referendum. Difficulties may arise in that but ideally the voting card could be included as a coupon on the information leaflet. When politicians are then told they have not circulated any information about this proposal it can be pointed out to the voter that it arrived with the coupon accompanying the voting card.

I would like the commission to examine that issue, although I realise time is limited. One of the difficulties the commission has faced in circulating information is that there is a limited amount of time available to it to assemble the arguments made during the debates in this House and those that may be made by other interested parties, obtain legal advice on those arguments, cast them into a form that is acceptable for rational digestion by the electorate and then physically prepare the documentation and circulate it. All of that takes time and I appreciate time may be limited for the commission but I urge it to try to reach each household in the course of this referendum.

Another question which has arisen in connection with the Referendum Bill is whether promotional

funds should be made available in the conduct of a referendum. The Minister has limited the Bill to the giving of information, and that is a real advance. Up to now the legislation merely provided that a person could visit the local post office and purchase the Bill for two and a half pence, but that was not of great assistance to the voter and I doubt very many voters had recourse to that procedure.

We are now setting up a commission which will have a positive obligation to inform the electorate about the merits and demerits of the proposal. That is a real advance but I understand the position of the Fine Gael Party is that we should go somewhat further and allocate moneys to promote a particular result in proportion, say, to the party's strength in this House. That comes back to the decision in the McKenna case and the question of whether that case obliges us to be strictly equal in funding which promotes a particular result in a referendum. If one takes the view that the decision requires that, then the Government, in funding the advocacy argument on a referendum, would then be obliged to give as much money to its opponents as it gave to its own side. No Government would be anxious to take up that proposal.

That raises the wider question of whether the McKenna decision requires the Government to observe that strictly drawn equality. On reading the judgments of the Supreme Court, it may be that the concept of fairness is more fundamental than the concept of equality in deciding how funds should be allocated for promotional purposes and, therefore, one could draw up a scheme rather like the schemes that obtain in Canada and in Denmark where in relation to the promotional side of a referendum, if money is allocated some element of proportionality is built into it to reflect the size and strength of the different interests represented in this House. This House has a direct democratic mandate from the people and it could be argued that element of proportionality should be built into any system for the allocation of funds for promotional purposes.

I understand why the Government has decided not to go down that route in connection with this Bill. We are facing a referendum soon and any such proposal would have to be referred by the President to the Supreme Court for its consideration were it to be mooted at this stage. It is an issue to which we will have to return because the judgment in the McKenna case is not wholly satisfactory. I do not wish to take from the fact that Patricia McKenna took the proceedings and established an important principle that the Constitution belongs to the people in fact as well as in legal theory and that there must not be an abuse of process by the Government in the expenditure of money during a referendum. I accept that establishing that principle through legal proceedings, where the risk of incurring costs was on her as a plaintiff, was a brave step and I salute her for that, but some of the judgments are less than satisfactory in their conclusions and their implications for the way we conduct our business in the State. We must examine the question of whether that strict equality must necessarily apply to funds available for the promotion of a particular result in every referendum.

There can be a referendum that is non-contentious. For example, a proposal was adopted in l972 to lower the voting age to 18. Currently there is an agitation to lower the age of entitlement to become a Member of this House to 18. Such a matter might not be very contentious. It seems anomalous that a person aged 18 can vote for a Member of Dáil Éireann but cannot be a Member before reaching 21 years of age. There are persons on the register who are not permitted to contest parliamentary elections. That is a matter we might examine in the future and if a referendum were held on it, it would not seem necessary to have a promotional campaign. A fairly minimal information campaign would suffice.

There could be other proposals to amend the Constitution, proposals in the not too distant future on Northern Ireland where the promotion of a particular result would be very much in the national interest. It would be disturbing if the Government in seeking to allocate funds for the promotion of a particular result found itself in a position where those promoting a “no” result would have to receive an equal amount of funding.

To some extent a similar problem can arise in connection with our membership of the European Union because there is an overwhelming degree of public support for the European Union among

public opinion and the political parties in this State. It has not been imposed by Brussels, it has arisen because of our experience of Community membership over more than 25 years. We are into our third decade of experience of membership of the Union and it has given great satisfaction to the bulk of our population. The Government is entitled to point out the obvious benefits and advantages of membership, but it seems absurd that if it wishes to use public money to do that, it would be obliged to disburse an equal amount of public money to a collection of individuals who are not representative of any substantial weight of opinion in this House or country. We must always be careful in this type of matter to safeguard the rights of minorities. That is why we had the McKenna decision. I welcome it but I question if it went too far in its conclusions.

Another main issue addressed as a matter of principle in this legislation is safeguarding the position of the minority. There was an anomaly in referendum legislation in that where there was unanimous support for a proposal in this House there was no approved body which could permit the appointment of agents at polling stations and at the count in connection with a referendum. I welcome the provision of machinery by the Minister in this legislation for the recognition of those approved bodies. The practice up to now has been that a member of the Oireachtas can appoint agents to be present at polling stations for opening postal ballots and at the counting of votes in a referendum. If all Members of the Oireachtas were in agreement with a particular proposal, those campaigning against it would not have any legal rights in relation to the referendum procedure. It is important to establish machinery for the recognition of approved bodies which can appoint agents and other necessary legal creatures of electoral procedure. They can safeguard and protect their interests at the various stages of the casting and counting of ballots. That is a welcome and necessary measure in the Bill. The Minister explained the rather curious and anomalous manner in which this matter had been regulated to date.

Mr. Gormley: I wish to share my time with Deputy Hayes.

An Ceann Comhairle: Is that agreed? Agreed.

Mr. Gormley: Much of the comment from the Opposition Benches on this Bill has been negative. Generally speaking I welcome the Bill. It is a step in the right direction and represents the democratisation of the referendum process. In looking back on the evolution of this process we should remember Mr Raymond Crotty, who went to court before Patricia McKenna and made it necessary for the State to hold referenda on important European issues. Referenda have been held on the Single European Act and the Maastricht Treaty. If it had not been for the persistence, integrity and courage of Mr. Raymond Crotty there would not be a forthcoming referendum on this. Were it not for the persistence, courage and zeal for democracy of Patricia McKenna this Bill would not be before the House. I thank Deputy Lenihan for saluting Patricia McKenna's achievement. I agree it was a milestone and a victory for democracy and smaller groups. I take issue with Deputy Dukes who yesterday dismissed the McKenna judgment and said it was based on specious arguments. It was a great victory for democracy. We often hear Members speak of transparency and democracy, yet those Members had to be dragged kicking and screaming to the altar of democracy. If it had not been for the courts we would not have had the McKenna judgment and those referenda. It is due to Patricia McKenna and Raymond Crotty that we have a little more democracy.

Previous referenda were held on the basis that people had not been fully informed on what they were voting. We saw that recently in the Cabinet confidentiality referendum, which was a debacle. In a real democracy we need diversity of opinion, but the Irish political landscape has become a barren place where there are five, not very different, parties. To use the analogy of a healthy ecosystem, it requires biodiversity and a healthy political system requires political diversity. We cannot have real democracy if we do not have diversity of opinion. Too often in previous referenda the so called five main parties sang from the same hymn sheet. That is regrettable. It has been left to the Green Party to offer a different point of view. I believe the commission that will be set up will do a good job and I hope it will present the arguments in a fair way. It states in the legislation that it is to be fair to the interests concerned. There has been much discussion lately about the public office

commission that has been set up to examine donations received by Members at election time. There has been much disquiet about that. People have said the commission has been too zealous and assiduous in its work, but I welcome the work it has done. It helps to level the playing field. It is no longer the case that people with money can buy votes. Donations have to be declared.

Similarly the new commission will have £2.5 million to divide equally among the various interests. That is in keeping with the spirit of the McKenna judgment. People can be properly informed about the arguments by the circulation of leaflets and the publication of advertisements. People did not read the boring and not very user-friendly advertisements in newspapers used to present the arguments on the bail referendum and Cabinet confidentiality referendum. It is hoped that television and newspaper advertisements setting out the arguments on this forthcoming referendum will enable people to consider those important arguments.

In an article in *The Irish Times* Mr. Patrick Smith referred to legislation in Denmark which provides for money to be given directly to the parties. I believe that is a bad idea and could lead to a good deal of disquiet. The public are cynical enough about parties and if money were given directly to them it would only increase that level of cynicism. A very large amount of money is involved here.

In relation to referenda, parties do not have any constitutional status. Referenda are about the people. The people must decide and they must be properly informed. I believe Ed Rollins, a political consultant in the United States, said: "you can fool all the people all the time if your advertising budget is high enough". Too often in the past we saw Governments put the money into propaganda and the promotion of a one-sided version of events. That distorted the arguments and led to an undemocratic process. When Governments could no longer do that because of the McKenna judgment, they decided not to give any — or very sparse — information. That led to many people complaining that they did not have enough information, particularly in regard to the Cabinet confidentiality referendum. That was evidenced by the large number of spoiled votes and a general lack of interest in it to the extent that I believe I was the only TD at the count of that referendum. It was an indictment of our democratic system that Members of this House did not bother to turn up for the count.

RTE plays an important role. Its record on referenda has been shameful in many instances. Mr. Bob Collins, the Director General of RTE, said the essence of balance is fairness. Where was the fairness in previous referenda when five political parties who represented the same point of view were given special broadcast time? This is unfair and undemocratic. RTE is the public service broadcaster and it has a duty to inform people impartially. Hopefully, because of this legislation, there will be fairness in RTE's broadcasting on this referendum.

Unfortunately, newspapers cannot be legislated for and we will see a distorted attitude from sections of the media. I saw it last Sunday in the *Sunday Tribune* where Mr. Stephen Collins, a responsible journalist on most occasions, said this referendum would be opposed by the Green Party and "other fringe groups". This is a nice way of immediately marginalising those opposed to this referendum. He also referred to those opposing it as "anti-Europe", which seems to equate Europe with the EU. Mary Banotti, the Fine Gael MEP, told a good story about a delegation from the Czech Republic visiting the European Parliament. One of the commissioners welcomed them to Europe to which one of the delegation rightly answered they had been there all the time.

Europe is much more than the European Union. Those of us who oppose various treaties are not Eurosceptics. I am a Europhile with every fibre of my body. If a treaty is flawed — and this one is — we need argument and debate on it. There was scarcely any debate in this House on EMU. There has been an abdication of political responsibility in that no one has had the courage to point out that it could be bad for our economy if Britain does not participate, which it is clearly not going to do. Our economy could overheat if we go in at the rate of DM 2.41, which many people want to happen. However, no one is calling for a halt. It is left to economists in universities to stimulate a good debate on this issue. The politicians have remained silent. I hope there will be informed debate on this Bill.

There are a number of flaws in the Bill. Spending should be capped, as is done in constituencies regarding general elections. There is nothing to stop organisations spending huge amounts of ecus on a one sided debate. I refer particularly to The New Treaty for Europe — A Citizen's Guide which is to be included in the latest issues of *Magill*, the *RTE Guide* and the *Sunday Tribune*. It is one-sided propaganda. The foreword is by Mr. Jacques Santer and it may be given to every household. It distorts the argument and there should be a cap on spending on such information. Deputy Lenihan referred to Canadian legislation, which places a cap on spending. The source of donations for referenda has to be declared. This should be included in this legislation. Outside interference should be stopped.

This Bill is heading in the right direction. We will put down amendments on Committee Stage. First, we need to restrict how and where finance can be sourced. Second, we need to restrict the total contributions which can be made by individuals and organisations not directly involved in the referendum process. Third, we need to limit the total amount of money each registered referendum committee can spend during the process. These are important aspects which were not addressed in this legislation and I hope we can do so on Committee Stage.

Mr. Hayes: I thank Deputy Gormley for sharing his time. The position of my party in opposing this legislation is a clear one. It is not good to rush this legislation through the House. It is not necessary at this stage and it flies in the face of the recommendation of the all-party committee on the Constitution that a single commission should incorporate the various commissions established recently. There is no point enacting legislation if there is a better vehicle to address the purpose of it.

Referenda are fundamentally important to our democratic process. Our Constitution derives from the people. When a Minister receives a seal from the President, it is given by the people. The people ultimately have the most important role in the democratic process. They must be encouraged to vote and express their view. I agree with my colleagues that we should enhance the referendum process.

Recent low turnouts in referenda demonstrate the widespread support for the measure being voted on. There may have been confusion on the issues of Cabinet confidentiality and bail. However, there was widespread agreement on these measures. People frequently decide not to vote because they are in agreement with the measure and know it will be passed. There is motivation to vote when an issue is contentious, such as the divorce or the abortion referenda. When the country is divided, it frequently leads to a bigger turnout. Polling for the divorce referendum was held on one of the worst evenings weather wise. This did not reduce the turnout because the issue was hotly contested.

People can exaggerate the issue of turnout in referenda for political reasons. A national debate must be generated to ensure a good turnout. Money will not do this. A national debate requires the issue to be hotly contested among various sections of the population. There is widespread agreement on the issues of Cabinet confidentiality, bail and Europe. This leads to a low turnout as the same level of motivation does not apply to those issues.

One of our major objections to this legislation is that we have seen a raft of commissions proposed in recent years — the Public Offices Commission, the Constituency Commission and the Independent Referendum Commission. With respect to those sitting on these commissions, it is time all their functions were brought together under one commission. The usual suspects such as the Clerk of the Dáil, the Clerk of the Seanad and the Ombudsman are brought together every time a new commission is established and a new function farmed out to it.

We need a much more realistic view of how we organise our electoral affairs. That is why the all-party committee proposed the establishment of a single commission to deal with, for instance, the issues of donations to parties, constituency reviews following a census, and referenda. There is no need for four separate commissions to observe and put into effect all these functions. By adding another commission we will not only confuse the issue but will also not use the relevant officials'

time to the maximum. There is no need for all these commissions, one specific commission would do the job quite well.

In many ways the proposal undermines the committee process of the House because an all-party committee could make a definite proposal for streamlining the commissions under one new commission. The Government seeks to oppose that. As Deputy Lenihan was chairman of that all-party committee at the time, the strength of support for that proposal should be heard by a plenary session of the House and by the Government.

I welcome any proposal that would overturn the anomalous situation whereby an agent of a "yes" or "no" side cannot attend the count or the opening of postal votes. That is a sensible measure. It could be amended quickly through legislation instead of linking it to the establishment of a new commission. If the Government re-examined the proposal it would find merit in it.

A sum of £2.5 million is being spoken of in terms of spending on the forthcoming referendum on the Amsterdam Treaty. If that is the case it will probably be the most expensive campaign in the history of the State for a turnout of 50 per cent or 60 per cent if we are lucky. We must begin to ask whether we are getting value for money. If the expenditure is £2.5 million and 1.5 million voters turn out, it might be easier to hand them all £1.50 each to get out to vote instead of putting leaflets through their doors. If this proposal goes ahead the Government can spend a huge sum of money which would make it a most expensive campaign. It is not something we should encourage.

Section 7(4)(a) is a curious element of the legislation and states that:

A Commission may refuse to make a declaration under subsection (1) if—

(a) in the opinion of the Commission, the body concerned does not have a bona fide interest in the proposal the subject of the referendum concerned.

We are inferring there that an independent commission will have to take a political decision about whether such a body applying to that commission for funding can be heard. In that situation we could be conferring a hugely contentious political objective on the new commission.

I can also see other problems concerning the establishment of the body in that it is only within the State. What happens on the issue of Articles 2 and 3 of the Constitution when we get to that stage of the Northern Ireland peace process? Will it be the case that 500 residents of Northern Ireland, who hold Irish passports, cannot apply to this commission because they are not resident in the State, which they are not? Has that matter been thought out?

We will oppose this on Second Stage for some of the reasons that have been mentioned in the course of the debate. I would encourage others to do so.

Mr. Gilmore: I welcome the opportunity of speaking on this Bill which is totally inadequate to deal with the problems that have arisen in the conduct of referenda following the McKenna judgment. The legislation before us is one of the most absurd provisions ever to come before this House. The conduct of referenda as pursued under this legislation will be highly artificial and probably undemocratic. For that reason, Democratic Left will oppose a second reading of this Bill.

We are told the Bill is necessary to deal with the McKenna judgment. It is worth revisiting the circumstances of that judgment. When the Green MEP, Ms Patricia McKenna, went to the courts to challenge the then Government's right to advocate a "yes" vote in the divorce referendum, she argued through her legal representatives that an equivalent amount of money should be made available to promote the "no" case. It would appear the conclusion arrived at by the courts has been interpreted by the present Government as meaning the Government cannot spend any money in promoting a referendum. That is a fundamental misunderstanding of the Supreme Court judgment.

As I understand it, that judgment was essentially about the question of fairness in the conduct of a referendum. If a fair opportunity and fair resources were being provided for both sides to present their cases in a referendum debate, then the difficulties the Government has been encountering since

that judgment in presenting its case on a referendum, would be met.

Since the McKenna judgment we have had an unsatisfactory experience in relation to referenda. The conduct of the referenda on bail and Cabinet confidentiality were nothing short of a disaster. We had a totally neutered debate with anodyne and turgid texts, arguing for both sides, being prepared for publication in newspapers and circulation to the public. Missing from the debates, both on the bail and Cabinet confidentiality referenda, was the normal passion and cut and thrust of political debate.

If anything, the McKenna judgment has worsened the conduct of referenda. One can look at what happened in the past and all the evidence is there. One thinks back, for example, to the 1960s when a Fianna Fáil Government attempted to amend the Constitution to change the proportional representation system of voting. The people threw that proposal out even though the Government strongly advocated it. There was a very robust debate in 1972 on our proposed entry to the European Community. In 1986, when the Government advocated a change in the Constitution in relation to divorce it was defeated by the people. It was something I was less than happy with but, nevertheless, that was the decision of the people. There was also a robust debate on the abortion referendum in 1983 and there were robust debates on the Single European Act and the Maastricht Treaty.

I agree with the principle that has been established in the McKenna judgment that fair resources should be provided to present both sides of a case. I am disappointed this Bill is being put before us at a time when the all-party committee on the Constitution has been considering this very issue. It makes one wonder about how serious the Government is about the work of the all-party committee, when it can introduce legislation not only ignoring the work of the committee but ignoring the very recommendations the committee has made.

Mr. Gormley: The Deputy said we had robust debates during the referendum to change proportional representation. However, he has forgotten that the Government at that time did not use public money to the extent it does now. We also had proper opposition in the past four referenda.

Acting Chairman (Mr. Browne: *Carlow-Kilkenny*): The Deputy has already intervened. I ask him to resume his seat.

Mr. Gilmore: I hope that inaccurate history lesson will be deducted from my time.

Mr. Gormley: I hope it goes on the record of the House.

Mr. Gilmore: It will but it is still wrong. As I recall, Fianna Fáil was serious in the 1960s when it wanted to change the Constitution to have single seat constituencies and a first past the post system.

Mr. Gormley: Did it use public money?

Mr. Gilmore: Yes. Fianna Fáil seems to be hankering after it yet, to judge by some of the comments made by the Minister for Environment and Local Government about the electoral system.

The recommendation was that the commission should have a function to mount an adequate information campaign and to allocate funds to political parties and interest groups to ensure a thorough and sustained debate on the proposal. That recommendation has been blithely ignored by the Government.

The Bill includes a provision that there will be an independent commission. I have no difficulty with the idea or the proposed composition of an independent commission. However, anyone who wants to get a pass for an election count, to be an agent at a polling station or to make an observation and have it considered by the commission must make a submission. Only those bodies with a membership of more than 500 members who can present their articles of association will be enabled to do so.

The late Mr. Raymond Crotty made an enormous contribution to debate on referenda. His court challenge to the Single European Act required successive Governments to present amendments to

the European treaties to the people in referenda. He was not a member of an organisation which had more than 500 members. Many of the people involved in referendum campaigns are not necessarily involved in organisations of more than 500 members. Many of the campaigns are driven by small groups of people who have an understanding of and a commitment to the Constitution and who put forward their case. This will result in all types of artificial membership and membership lists so that people qualify to make a submission.

The commission will have £2.5 million to spend putting forward the case for both sides of the referendum campaign. They will be entitled to hire advertising agencies to put each side of the argument. These will be attractive advertising contracts. The advertising agencies will know a great deal about how to advertise but they may know little about the issues at stake in the referendum or the conduct of politics. They will place advertisements in public newspapers and on radio and television. However, these might not relate to the issues which will arise during a referendum.

At the beginning of any referendum campaign one does not know what type of issue will arise. Who could have predicted when the Maastricht Treaty was signed that one of the issues which would be most loudly debated during the referendum campaign would be abortion? During the last divorce campaign people predicted that the central issues would be social welfare, property ownership, pensions, etc. By the time the campaign was well under way, the main issue was its wider implications for society. One cannot anticipate what issues will arise in advance of a referendum campaign.

We should also look at the way it might conduct its advertising campaign. It cannot, for example, produce a party political broadcast using the Taoiseach because that would be seen as the Government promoting a “yes” vote in the campaign. However, it might be entitled to use an actor who acts the part of a Taoiseach. This would give rise to the most absurd and artificial presentation of the campaign.

The press and media are quick to tell us the public has a right to know and its job is to tell the public about what is happening in public affairs. The effect of this independent commission and its budget of £2.5 million, however, will be to reduce the amount of press information about a referendum. I cannot see many editors, for example, deciding to ask correspondents to find out what is in a complicated constitutional proposal, to write feature articles on it and to present documentaries on radio and television explaining it to the people. They will wait until someone with £2.5 million of public money places an advertisement with them. An unwitting effect of this will be a reduction in the amount of press coverage and press information about a campaign.

There is no control on spending by groups outside the political process. The Government cannot spend anything independently, political parties will not be funded to pursue a referendum campaign and groups with a particular interest in the campaign must send their submission to the independent commission. Any group outside that, however, can spend all the money it likes to influence the people to change the Constitution. If, for example, the all-party talks in Northern Ireland are concluded in a number of months' time and there is a proposal to amend Articles 2 and 3 of our Constitution, one can envisage a situation where the Government will not be permitted to make its case for that change. Instead, the material will go through the anodyne process of the independent commission. However, a group might raise millions of dollars in the United States and mount a massive campaign in the referendum. We have already had evidence during referendum debates of highly resourced and financed groups, some from fundamentalist religious groupings in the United States, pumping money into campaigns in the State. There is nothing to prevent that from happening. A situation could arise where the Government is muzzled in its conduct of an election campaign but powerful interests inside or outside the State, such as media groups or well resourced fundamentalist groups who want to use the Constitution to make a point, as happened in the abortion referendum, could provide finance and proceed to make their case.

We could also have a situation where the government of another state is not prevented from spending money to influence the public on a referendum to change the Constitution. The

Amsterdam Treaty was negotiated by one Government but is being put to the people by another Government. If, for example, the next European Union treaty is negotiated by one Government and the referendum is set up, but a general election takes place before it is held and the new Government decides that it has gone too far on the issue of defence so it should be opposed and an alternative negotiated, it could be prevented from advocating its case to the people although it might have campaigned on that issue in the general election. It could happen that the government of another state which wants the treaty accepted would be enabled to spend money to influence the people of this country on the issue. Private interests outside Government could do this. Let us say, for example, that in the context of the conclusion of the talks on Northern Ireland an east-west body is established, and that east-west body between Ireland and the United Kingdom has a function in relation to transboundary pollution, and has powers which would curb the activities of the nuclear industry in the United Kingdom, and let us suppose that body has jurisdiction over the Irish sea. In such circumstances British Nuclear Fuels or any aspect of the British nuclear industry could conceivably, if it felt strongly enough, put money into a referendum campaign to persuade the Irish people not to pass it. There is nothing in the legislation which prevents that. The all-party committee draws attention to the situation where a Government might be elected on a programme of constitutional change but, once elected, would be effectively muzzled in pursuing its case during the course of a referendum campaign. This Bill is a recipe for muzzling the democratically elected Government of the people. It is a recipe for the not providing resources to the political parties and to people who are democratically elected and whose business it is to pursue public affairs here, or to groups who have a particular interest in the referendum campaign itself and for allowing *carte blanche* to any vested interest or anybody with sufficient money to attempt to influence the views of the people in a referendum.

There are alternatives available to the Government. I commend the arrangements being made in Denmark which seem very reasonable. There will be a referendum there on 28 May on the Amsterdam Treaty. Their Government is making £2.5 million available, the same amount of money our Government is making available, to be administered by an independent committee, but the Danish approach is different. The fund will be divided in two. Two thirds of one half will be divided among the political parties, based on their electoral support, to allow them to pursue the campaign. The remaining one third of that half will be divided among the European Movement and two organised groups opposing the treaty. The other half of the money will be made available to local organisations, grass roots committees, whether they are for or against the treaty, so that they can make information available to the public. In the meantime the Government will produce information explaining what is in the treaty. That seems a much better way of conducting a referendum campaign and providing fair resourcing and equality of treatment between the sides for and against, than the method being advocated by the Government at present. It would be preferable to have resources made available through political parties, through democratically elected Members of the House, perhaps through local authorities, through the various organisations that have an interest, for example, the social partners, and through local organisations who would be able to use those resources and have a better debate.

A very dangerous tone is developing in the conduct of public affairs here. It is as if the last people in the world who should offer an opinion on public affairs, or who should be resourced to inform the public about public affairs, are the people who have an electoral and a democratic mandate from the public. I am sick and tired of people who did not get an electoral mandate of any kind taking the view that people who have an electoral mandate, who have put their case before the people and who have had their case validated in one form or another, advocating that people involved in public affairs, who negotiate various issues that have to go before the people, who debate those issues and who are very often the most informed about them, should be muzzled when the issue goes before the public. That is bad for democracy. It will create a situation where the conduct of referenda will be totally artificial, totally anodyne and totally apolitical. It is no wonder the public show little interest in referenda, that the numbers of people turning out to vote are declining, and that the most

common comment on the day of a referendum is not that people are for or against it but that they do not know anything about it. The experience we have had over two referenda is that in campaigns where the conduct of debate is sterilised and distilled by independent people of one kind or another, without the passion, debate and argument that go with political debate, the public simply do not know what the issue is about, much less what position they should take on it.

Caoimhghín Ó Caoláin: I welcome this Bill and the establishment of the referendum commission which has the potential to make for much fairer referenda than we have had in the past. This Bill is a long overdue measure, and it has come about ultimately because the unfair practices of successive Governments in the conduct of referenda have become politically untenable. It was vigilant campaigners, whether groups or individuals, who swam against the tide of political and media consensus about the European Union who challenged this injustice. I pay tribute here to the memory of one of those people, the late Raymond Crotty, a courageous and patriotic citizen with whom I had the honour to share a platform on several occasions. Ray Crotty's constitutional challenge gave back to the people their right to decide on vital issues of sovereignty and neutrality which had been usurped by successive governments. It was necessary for another citizen, Patricia McKenna, a Dublin MEP — much respected in her native County Monaghan — to challenge the Government again after it resorted to unconstitutional practices in referenda by spending public money on one side of the argument only. Two major treaties, the Single European Act in 1987 and the Maastricht Treaty in 1992, had thus been ratified in an undemocratic fashion by means by which the McKenna judgment found to be unconstitutional.

This Bill goes a long way towards restoring the balance. I hope the new Commission will be allowed conduct its work thoroughly and impartially. It is required to be “fair to all interests concerned”, and that must be strictly adhered to in terms of allocation of resources. The letter and spirit of the McKenna judgment mean there must be equality for the “yes” and “no” sides so that the people can be allowed to make a balanced judgment.

I said that I hope the Commission will be allowed to do its work, and I stress the word “allowed”, because there are several ways in which it can be thwarted. Already the European Commission has been spending public money promoting the Amsterdam Treaty with its booklet “A New Treaty for Europe: A Citizen's Guide”, referred to earlier by another Member of the House. This partisan publication constitutes interference in the democratic process and is way beyond the remit of the Commission. This booklet has been distributed as a free enclosure in at least one Irish magazine. Public money is indirectly funding this project, and it is thus in breach of the McKenna judgment. This booklet should be withdrawn.

The second way in which the referendum commission can be thwarted is if RTE continues its unfair practices in the allocation of time for party political broadcasts. If the commission produces television advertisements giving fair and equal treatment to the “yes” and “no” sides, then surely its purpose will be nullified if RTE, as has been its practice, invites parties to do free broadcasts, the duration of which are determined by the electoral support for the party, regardless of whether they advocate “yes” or “no”. RTE's most recent practice also excluded parties with fewer than three Members of this House. If repeated, this practice will make a mockery of the commission's efforts to ensure impartiality.

Recent debate on this issue in the House focused on the unsuitability of newspaper advertisements in recent referenda. However, the reality is that such campaigns are won and lost on television and radio, from which most people receive news and information. The onus is on RTE to ensure that the fairness and balance required of it in the coverage of current affairs is not set aside once again in a referendum context.

The third way in which the referendum commission could be thwarted is if the Government persists with its proposed wording for the Amsterdam Treaty referendum. This incredible amendment would insert into the Constitution a blank cheque which would give future Governments the power to finally abandon neutrality by agreeing to participate in an EU military alliance. They could do this

without resort to a referendum, and the referendum commission would be made redundant in so far as EU matters are concerned. How would Fianna Fáil feel if a future Fine Gael led Government decided, without consulting the people, to bring us into NATO's Partnership for Peace, which Fine Gael is so anxious to do and which has been advocated by Deputies Bruton and Mitchell in recent weeks?

It seems the Government's blank cheque may have bounced given that we were to debate the amendment ratifying the Amsterdam Treaty this week. This debate has been postponed while the Whips are in conclave. Regardless of whether this blank cheque amendment survives, my party will oppose ratification of the Amsterdam Treaty. The people are being asked to write into the Constitution a commitment to a so-called common European defence and the dilution of our sovereignty and independent foreign policy.

Mr. Hayes: Rubbish.

Caoimhghín Ó Caoláin: When launching the Amsterdam White Paper last week, the Minister for Foreign Affairs, Deputy Andrews, promised a referendum on neutrality. The same promise was made by his predecessor, Deputy Spring, before the last election but we are still waiting for this referendum. Our neutrality should be safeguarded in the Constitution by way of an amendment which keeps the hands of future Governments off the people's sovereignty. The Government should be forced by the people in the upcoming referendum to hand back the treaty and renegotiate it on the basis of our true national interests. That, Sir, is not rubbish.

I have judged the referendum Bill on its merits and have concluded that it is a positive step forward. Accordingly, I support its adoption.

Minister of State at the Department of the Environment (Mr. D. Wallace): I thank the Deputies who contributed to the debate. I will deal with some of the points raised by them.

Deputy Dukes asked who will produce the leaflets and pamphlets containing the statements to be issued by the commission. He questioned the competence of the members of the commission to carry out their functions. In the forthcoming referendum on the Amsterdam Treaty it will be a matter for the commission to decide how it carries out its functions. However, given the complexities of the treaty, I expect it will get experts to draw up the statements. The commission will be responsible for ensuring that the statements are fair to all the interests concerned. It is not necessary for the members of the commission to be expert on all matters. They are being given the power to engage experts whose job it will be to produce leaflets etc., in simple and easy to understand language so that the problems encountered by the previous *ad hoc* commission will not be repeated.

One got the impression from Deputy Dukes that he believes the five member commission will do everything, but this is not so. Staff will be provided and the commission will have power under section 4 to engage any type of consultant it deems necessary. This will enable the commission to organise and fulfil its functions in the limited time available. My officials have brought the Deputy's suggestion on the distribution of the summary of the White Paper to the attention of the appropriate personnel in the Department of Foreign Affairs.

Several Deputies referred to politicians engaging in debate at a referendum. There is nothing in the Supreme Court decision or the Bill to prevent politicians from engaging in debate on a proposal at a referendum. The publication of material by the proposed commission should assist politicians and others in engaging in debate. The public will be given statements by the proposed commission which should assist them in engaging in debate.

Deputy Dukes said this Bill is not the answer. However, we will not know this until we have seen how it operates. If changes are needed I will consider the matter further. I stress that the commission is not responsible for the turnout of voters. The work of the commission will assist voters in coming to an informed decision but it cannot be blamed, as suggested last night, if there is a low turnout on

polling day.

Deputies referred to the work being undertaken by the All-Party Committee on the Constitution in relation to referendum information. The Bill is not an attempt to gazump the committee, as recently suggested by one committee member in the press. It is anticipated that the referendum on the Amsterdam Treaty will be held at an early date. Everyone agrees that it will be difficult for the commission to explain the treaty in simple language. The Bill is being taken now so that the commission will have the necessary statutory powers to carry out what will be a difficult task in a short period.

I will consider any recommendations made by the committee. The enactment of the Bill does not mean recommendations will not be implemented for future referenda. Further electoral legislation will be introduced in the months and years ahead in which recommendations can be considered. The Bill does not include some elements of the recommendations made by the Constitution Review Group and the All-Party Committee on the Constitution in its first progress report. The question of a further constitutional amendment to give a constitutional basis to an all-embracing commission to include the constituency commission and the public offices commission, together with the proposed referendum commission, will have to be further considered. However, this should not be a reason to delay the enactment of the Bill.

Deputies referred to the Danish proposals on referendum information. An essential part of the Danish proposals is the division of the funding made available by the Danish Government. As I understand it, the fund will be divided in two halves, with one half being paid to grass roots groupings both pro and anti the proposal and the other half disbursed as follows: two thirds divided among the political parties in proportion to their electoral support and the balance divided equally among three groups — the European Movement and two organised groups which are anti-EU.

With respect to the Danish proposals, this scheme would not work in this country. If we proposed the introduction of a similar scheme we would probably find ourselves in the High Court. In any event the Government favours giving funds to the proposed statutory commission so that it can carry out the functions set out in section 3 in a manner which is fair to all concerned.

I note the support by Deputy Howlin to a single electoral commission. A similar proposal is contained in the report of the All-Party Committee on the Constitution with the provision that it be given a constitutional basis. This matter might be considered further by the Joint Committee on Environment and Local Government but it should not be used to delay the enactment of the Bill. If such a proposal is eventually agreed then the Bill can be incorporated in new legislation, at which stage we will have the benefit of practical experience. If it needs strengthening, such amendments can be included in the new legislation.

Deputy Howlin asked about the accounting arrangements for the proposed expenditure. The commission and its staff will be bound by all existing public accounting rules and procedures applicable to the public service, especially procurement procedures in the case of engaging consultants. The proposed members of the commission will be fully conversant with public accountability requirements from their responsibilities in their respective offices. It is not considered necessary to include in the Bill every detail of such normal accounting requirements. Section 4 refers to guidelines issued from time to time by the Minister for Finance.

The money provided by the Oireachtas will be included in the Estimates of the sponsoring Department and Deputies will be able to raise concerns on consideration of the Estimate. The expenditure will also be reviewed in the annual audit of the Department concerned. The Committee of Public Accounts can query the respective accounting officers on the expenditure. Deputy Howlin wondered whether £2.5 million is too much. As this is the first statutory commission with expanded functions dealing with a very complex treaty, it is difficult to gauge precisely the amount of funding required. I have no doubt the commission will use the funds wisely and prudently and if it succeeds in not spending all the £2.5 million, so be it. Like all public sector Estimates, it is not imperative

that the total sum is expended.

Deputy Howlin expressed concern at the wide discretion the commission will have. While the commission will have wide discretion on how it implements its mandate, it will be bound by the rules and procedures of the public service. The members of the commission will be fully aware of the norms involved. We cannot have it every way. The commission is given discretion to decide not what its functions are but how to implement what will be a difficult task. The range of options open to it is not very wide because the commission will normally work within a limited timeframe. It must be allowed flexibility. If the Oireachtas decides to enact the Bill, it should have confidence that the persons proposed as members of the commission will carry out their duties in a competent manner within the norms expected of the public sector.

Deputy O'Keeffe said the Bill does no more than put the former *ad hoc* commission on a statutory basis. If the Deputy reads section 3 he will see that the proposed commission has much broader powers than the single-function *ad hoc* commissions. The Bill will give certainty to the commission in carrying out its functions in a manner that is fair to all concerned. The Deputy asked why the Bill is necessary. The answer is obvious. It will put the former *ad hoc* commission on a statutory basis with much broader powers and functions. That is necessary because of the importance of the subject matter involved. Legislation is necessary to amend the broadcasting legislation to enable the commission to carry out its functions. The changes proposed for the appointment of agents by groups follows from a High Court decision. I note most Deputies welcome those aspects of the Bill.

Deputy O'Keeffe made interesting suggestions about funding research, better use of existing structures, the issuing of White Papers and so on. Those matters should be considered but not at the expense of holding up the Bill. The Deputy suggested the Bill could lead to a low turn out at the referendum, but I cannot accept that point. The commission will not be responsible for the turnout on polling day, which is determined by a host of factors. The commission's function is to prepare and disseminate information to the electorate in an understandable format which will lead to a more informed electorate. Whether people decide to exercise their democratic right cannot be laid at the door of the committee.

Deputy O'Keeffe asked about staff and resources for the commission. The Minister informed the House last night that the Government has decided to make £2.5 million available to the commission for its promotional work. The Government has also agreed to the provision of extra staff to the office of the Ombudsman for secretarial work for the commission. Discussions are ongoing at the moment on the provision of extra staff and resources for the commission.

Deputies Dukes and O'Keeffe indicated they will oppose the Bill. They expressed the view that the Government is entitled to campaign for a “yes” vote using public funds notwithstanding the McKenna judgment and that if there is a role for the referendum commission it should be to determine whether the Government is impartial in the expenditure of public funds at a referendum. They envisaged that legislation should provide accordingly, with its constitutionality tested in the courts. I find this line of thinking rather strange. In the period of more than two years since the McKenna judgment it has been generally accepted that the Government may not spend public funds on advocating a result at a referendum to the detriment of those on the other side of the argument. I do not see how the views put forward by the Deputies can be squared with the McKenna judgment. While the judgment acknowledges that the Government may advocate a result at a referendum they make it clear it may not incur expenditure of public funds in doing so.

In his judgment, Mr. Justice Blayney said:

The Government has not held the scales equally between those who support and those who oppose the amendment. It has thrown its weight behind those who support it.

Mr. Justice O'Flaherty, in his judgment, said: “. it is impermissible for the Government to spend public money in the course of a referendum campaign to benefit one side rather than the other”. Those extracts from the judgment make it clear the Government cannot spend public funds in

advocating a result at a referendum. It is acknowledged in the judgment that the incidental use of Civil Service facilities do not come within the ambit of the judgment.

I agree with Deputy Howlin's summing up of the available options resulting from the McKenna judgment, which are to overturn the McKenna judgment by way of a constitutional amendment, accept the judgment and legislate for an arrangement under which information is made available, as in the Bill, or do nothing. In bringing forward this Bill the Government has chosen the second option identified by Deputy Howlin.

Deputy Howlin suggested that of the three *ad hoc* commissions established at previous referenda, the experience at the first such referendum, the divorce referendum, was the most satisfactory. I agree with that point. The reason for this was that the statements prepared by that commission were distributed to each household by An Post in the form of a leaflet. Due to time constraints at the bail and Cabinet confidentiality referenda, the commission had no choice but to insert statements in national newspapers in the form of a notice. I accept that the distribution of the statement to each household at the divorce referendum was a more cost effective method as compared with newspaper notices at later referenda.

Deputy O'Keeffe suggested that as part of the process of providing information there should be an obligation on the Government to prepare and publish a White Paper before each referendum. I would have no problem with the idea of a White Paper being published elaborating on a proposal at a referendum — a White Paper has already been published relating to the Amsterdam Treaty. I do not agree, however, there should be a statutory obligation on the Government to publish a White Paper at each referendum. By its nature, a White Paper is a document which is time consuming to prepare. There may be instances where, for example, arising from a court ruling an urgent amendment may be necessary and it would not be practicable to have a White Paper published without unduly delaying the referendum. There is also the question of a fairly simple straightforward amendment, possibly of a technical nature, where a White Paper would not be warranted.

Deputy O'Keeffe was a little contemptuous of the provisions of the Bill providing for an arrangement for authorising interest groups to appoint agents at a referendum. He seemed to suggest that personation agents are unnecessary in modern political circumstances. The Bill provides for the appointment by approved bodies of agents at all processes at a referendum — at the issue and opening of postal ballot papers, in polling stations and at the counting of votes. I remind the House that the provisions of the Bill relating to the appointment of agents are necessary due to a High Court ruling in a case brought by an anti-divorce activist who sought to appoint agents at the divorce referendum. The Minister could not ignore the implications of that judgment and took the opportunity afforded by this Bill to legislate for an appropriate procedure for the appointment of agents by interested bodies.

Deputies Gormley and Gilmore referred to the lack of limits on expenditure. Under existing law, there are no limits on expenditure by bodies or individuals on a referendum campaign. The McKenna judgment held that while the Government may advocate a result at a referendum, it could not use public funds to do so to the detriment of the side that opposed the referendum.

The Bill does not propose to limit expenditure by participants in a referendum campaign. The point made in the McKenna judgment was not that either or both sides were spending too much on the campaign, but that the use by the Government of public funds to fund the campaign to influence voters in favour of a “yes” vote to the detriment of those opposed to the amendment of the Constitution was not permissible.

The Bill does not propose the expenditure of public funds on either side of the campaign, or to allocate public funds to groups campaigning on either side. It is not necessary, under the McKenna judgment, to control spending of either side at the referendum. To do so could result in a limitation on the debate in which interest groups are an integral part. It could also run the risk of a petition

being taken against the result of a referendum on the grounds that it was an interference with the conduct of the referendum. A limitation on expenditure could also have constitutional implications for freedom of speech.

The objective of the Bill is to ensure that the information which is fair to all interests concerned is made available to the electorate. This includes a statement of the points for and against the proposal the subject of the referendum. The Bill also confers on the Commission the functions of fostering and promoting and, where appropriate, facilitating debate or discussion on the subject matter of the referendum.

Question put.

The Dáil divided: Tá, 71; Níl, 44.

Tá

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Ardagh, Seán.
Aylward, Liam.
Brady, Johnny.
Brady, Martin.
Brennan, Matt.
Brennan, Séamus.
Briscoe, Ben.
Browne, John (Wexford).
Byrne, Hugh.
Callely, Ivor.
Carey, Pat.
Collins, Michael.
Cooper-Flynn, Beverley.
Coughlan, Mary.
Cowen, Brian.
Daly, Brendan.
de Valera, Síle.
Dempsey, Noel.
Dennehy, John.
Doherty, Seán.
Fahey, Frank.
Fleming, Seán.
Flood, Chris.
Foley, Denis.
Fox, Mildred.
Gormley, John.
Gregory, Tony.
Hanafin, Mary.
Haughey, Seán.
Healy-Rae, Jackie.
Jacob, Joe.
Keaveney, Cecilia.
Kelleher, Billy.
Kenneally, Brendan.
Kirk, Séamus.
Kitt, Michael.
Kitt, Tom.
Lawlor, Liam.
Lenihan, Brian.
Lenihan, Conor.
Martin, Micheál.
McCreevy, Charlie.
McDaid, James.
McGennis, Marian.
McGuinness, John.
Moffatt, Thomas.
Molloy, Robert.
Moloney, John.
Moynihan, Donal.
Moynihan, Michael.
Ó Caoláin, Caoimhghín.
Ó Cuív, Éamon.
O'Dea, Willie.
O'Donoghue, John.
O'Keeffe, Batt.
O'Keeffe, Ned.
O'Malley, Desmond.
O'Rourke, Mary.
Power, Seán.
Ryan, Eoin.
Smith, Michael.
Wade, Eddie.
Wallace, Dan.
Wallace, Mary.
Walsh, Joe.
Wright, G.V

Níl

Barnes, Monica.
Belton, Louis.
Bradford, Paul.
Currie, Austin.
D'Arcy, Michael.
De Rossa, Proinsias.

Browne, John (Carlow-Kilkenny).	Deasy, Austin.
Bruton, John.	Deenihan, Jimmy.
Bruton, Richard.	Durkan, Bernard.
Burke, Ulick.	Finucane, Michael.
Clune, Deirdre.	Fitzgerald, Frances.
Cosgrave, Michael.	Flanagan, Charles.
Coveney, Hugh.	Gilmore, Éamon.
Crawford, Seymour.	Hayes, Brian.
Creed, Michael. Hogan, Philip.	Higgins, Jim. O'Keeffe, Jim.
Kenny, Enda.	Owen, Nora.
McCormack, Pádraic.	Perry, John.
McGinley, Dinny.	Rabbitte, Pat.
McGrath, Paul.	Ring, Michael.
McManus, Liz.	Shatter, Alan.
Mitchell, Jim.	Sheehan, Patrick.
Mitchell, Olivia.	Stanton, David.
Neville, Dan.	Timmins, Billy.
Noonan, Michael.	Yates, Ivan.

Tellers: Tá, Deputies S. Brennan and Power; Níl, Deputies Sheehan and Rabbitte.
Question declared carried.

Referendum Bill, 1998: Referral to Select Committee.

Wednesday, 4 February 1998

Minister of State at the Department of the Environment and Local Government (Mr. D. Wallace): I move:

That in accordance with Standing Order 112 (1) and paragraph (1)(a)(i) of the Orders of Reference of Select Committees the Bill be referred to the Select Committee on the Environment and Local Government.

Question put and agreed to.

http://debates.oireachtas.ie/dail/1998/02/04/