Maire Geoghegan-Quinn, moving the Second Reading in the Dáil Eireann of the Bill to decriminalise homosexuality in the Republic of Ireland, 23 June 1993

I move, "That the Bill be now read a Second Time."

The primary purpose of this Bill, which forms part of a comprehensive programme of reform of the criminal law which I have under way at present, is to decriminalise sexual activity between consenting mature males. The Bill also contains a series of measures designed to protect the vulnerable; and to review and update the law on prostitution and related offences with particular emphasis on sanctions in relation to the clients of prostitutes and those who organise prostitution.

While it is the case that the main sections of the Bill arise against a background of the European Court decision in the Norris case, it would be a pity to use that judgment as the sole pretext for the action we are now taking so as to avoid facing up to the issues themselves. What we are concerned with fundamentally in this Bill is a necessary development of human rights. We are seeking to end that form of discrimination which says that those whose nature is to express themselves sexually in their personal relationships, as consenting adults, in a way which others disapprove of or feel uneasy about, must suffer the sanctions of the criminal law. We are saying in 1993, over 130 years since that section of criminal law was enacted, that it is time we brought this form of human rights limitation to an end. We are recognising that we are in an era in which values are being examined and [1972] questioned and that it is no more than our duty as legislators to show that we appreciate what is happening by dismantling a law which reflects the values of another time.

That process of change is not easy and, understandably, many people worry that the traditional values which they hold so dear, and many of which are fundamentally sound, are under siege from emerging modern realities. But, of course, it is not a matter of laying siege to all the old certainties, nor is it a matter of jettisoning sound values simply to run with a current tide of demand, which may or may not be a majority demand. It is, rather, a matter of closely looking at values and asking ourselves whether it is necessary, or right, that they be propped up for the comfort of the majority by applying discriminatory and unnecessary laws to a minority, any minority.

As a people we have proved our ability to adopt a balanced and mature approach in dealing with complex social issues. In this context I am particularly pleased to note that, by and large, the public debate which has taken place in relation to the area covered by the Bill has been marked by a lack of stridency and by a respect for the sincerity of the views held by others.

Because some of the issues raised by this Bill are ones on which many people have deeply and sincerely held opposing views, it is perhaps inevitable that in the public debate the reality of what the Bill actually proposes to do can sometimes be lost sight of in the context of wider issues which tend to be raised. For this reason it is important to emphasise that the House is not being asked to take a view as to whether sexual behaviour of the kind dealt with in the main sections of the Bill should be regarded as morally or socially acceptable. Instead, what is simply at issue is whether it is right in this day and age that the full force and sanctions of the criminal law should be available in relation to such forms of sexual behaviour.

Majority values do not require that kind of support and I believe this is something that each of us knows instinctively. [1973] We know in ourselves also that values which are truly

worthwhile in themselves are strengthened – not weakened – when we remove forms of apparent support which ignore the rights of others. In other areas of public concern and debate in this country we have come to appreciate the need to recognise, respect and value difference. This House needs no reminding of the tragedy which ensues when difference is deprived the right of expression and suppressed.

Returning specifically to the theme of the Bill, does anybody believe that if the laws from the last century which we are now seeking to repeal did not in fact exist, we would now be seriously suggesting that they would be enacted? How can we reconcile criminal sanctions in this area with the fact that there is a whole range of other private, consenting behaviour between adults which may be regarded by many as wrong but in which the criminal law has no part to play?

Some parents, in particular, may be uncomfortable about what is being proposed and I fully understand what gives rise to that discomfort. That is why it is so important that we understand precisely what is being proposed. It is the removal of discrimination in the case of consenting adults in respect of their sexuality, not the removal of protection in the case of children and other vulnerable members of society. In fact, the Bill seeks to protect the vulnerable where protection did not exist heretofore.

I know too that there are parents who will know what it means in practice to have a child whose very nature it is to be homosexual. Very few of them would, I believe, be likely to regard it as helpful if in later life one of their own children was an active homosexual, liable to imprisonment – under the present law up to life imprisonment – for giving expression to his sexual orientation.

I do not believe that it is any answer to say that in practice these laws are rarely if ever implemented and we would be best to leave well enough alone. Such an approach would be dishonest, could bring the law generally into disrepute and, it seems to me, would be grossly [1974] and gratuitously offensive to those who happen to be homosexual. Genuine tolerance is not achieved by the turning of a blind eye. The social acceptability of homosexuality is not something which by our laws we can decree; the hurt which homosexuals feel at their treatment as outcasts by some members of the community is not something which we can dispel by the use of some legislative magic wand. What we can do under the terms of this Bill is leave those of homosexual orientation free to come to terms with their lives and express themselves in personal relationships without the fear of being branded and being punished as criminals.

There is also, of course, the concern expressed by those who feel that removal of the criminal sanction in effect may be seen as a form of encouragement to engage in homosexual activity, that removal will in practice have this result and that this, in turn, will lead to the spread of disease. There is nothing to support the proposition that removal of the criminal sanction in the case of consenting adults – I repeat that what we are talking about are consenting adults – will lead to an increase in promiscuity. Nor is there any evidence that it inevitably follows that removal of the criminal sanctions will foster the spread of disease.

I have no doubt that the disease issue, specifically the question of AIDS, will be raised in the course of the debate on the Bill. For now, I will confine myself to two comments. First of all, the right course in dealing with the possible spread of disease through sexual intercourse is to encourage safe sexual practices, not criminalise one form of sexual activity. Secondly, there is no doubt that disease can be, and is, spread by unsafe heterosexual activity but nobody seriously suggests that the right course, therefore, is to

criminalise heterosexuality. I am not being dismissive of the AIDS issue — the subject is far too serious for a dismissive approach — what I am saying is that the solution is not a ban on homosexual activity.

I hope that in stating the case in these terms I will have been able to go some [1975] way towards allaying the concerns of those who feel uneasy about what is being proposed. Our social fabric is not going to be eroded as a result of these measures. People will remain entitled to retain their moral beliefs in relation to homosexual behaviour and to seek to convince others of the correctness of those beliefs. All that will change is that the criminal law will have no part in attempting to enforce those beliefs.

There is, of course, the wider European dimension which I have already mentioned. Every Deputy will be aware that in October 1988 the European Court of Human Rights found in an application to it from Senator David Norris that our laws on homosexuality were in breach of the European Convention on Human Rights. The Court found that the impugned legislation interfered with Senator Norris's right to respect for his private life under Article 8.1 of the European Convention. The argument has been put forward that Ireland should seek a derogation from our obligations under the convention in respect of the Norris judgment. In answer to that I would refer not only to the terms of the judgment itself but also to the terms of the European Convention on Human Rights which Ireland ratified in 1953 — we were, in fact, one of the first signatories.

Article 53 of the convention provides that: “the High Contracting Parties undertake to abide by the decisions of the Court in any case to which they are parties”. Under Article 54 of the Convention judgments of the Court are transmitted to the Committee of Ministers of the Council of Europe which supervises their execution. It is for the party concerned, and in the case under discussion the party is the Government of Ireland, to give effect to the judgment and, should it fail to do so, it would be for the Committee of Ministers to decide what action should be taken. The Committee does not have power to force states into compliance but it would, if the need arose, have strong persuasive authority backed, in the last resort, by the power of suspension from the Council of Europe. We [1976] in this country have always played a very full and active role in the Council and I am sure most Deputies will agree that it would be wrong if we now put our continued membership of the Council in jeopardy.

The terms of the decision of the court put the possibility of a derogation from our obligations under the Convention out of the question. The Court found that the reasons put forward as justifying the interference in respect of Senator Norris's private life were not sufficient to satisfy the requirements of paragraph (2) of Article 8 of the Convention. That is the paragraph that deals with such matters as the interests of national security, public safety or the economic wellbeing of the country, prevention of disorder or crime, protection of health or morals or the protection of the rights and freedoms of others.

Proceeding now to the details of the legislation, the first question, having made the decision to introduce legislation, was what should be the age of consent? Different possibilities were considered but in the end the Government could find no compelling reason for a different age of consent applying to homosexual acts and to heterosexual acts. Accordingly, the age of consent for homosexual acts will be 17 years. This common age of consent is quite high by European standards but I am satisfied that, both for heterosexual acts and homosexual acts, it is right for Ireland.

Section 11 of the Criminal Law (Amendment) Act, 1885, was one of the sections found to be in breach of Article 8 of the Convention on Human Rights. It proscribes acts of gross

indecency between men, either in public or in private. Section 4 of the Bill will replace section 11 of the 1885 Act. In future, it will be an offence for a male to commit an act of gross indecency with another male under 17 years of age. There is not, and never has been, an equivalent offence for females and I do not intend to introduce one. Gross indecency is a term that is well understood by the courts and by the prosecuting authorities. For that reason I am [1977] retaining the concept of gross indecency in the law. If the offence of gross indecency was abolished, boys between 15 and 17 years of age would have no protection against the commission of homosexual acts involving them. The indecent or sexual assault provisions of the law would offer protection only to boys in that age group where an actual assault took place, whereas gross indecency does not require an assault to have taken place. Boys and girls under 15 years of age will continue to have the protection of the 1935 Act provisions whereby the consent of such a young person is not a defence to a charge of sexual assault.

The Bill also protects mentally impaired persons against certain sexual offences. I have taken the opportunity afforded by this Bill to repeal section 4 of the Criminal Law (Amendment) Act, 1935. That is the section that protects women who are described in it as “imbeciles, idiots and feeble minded” from being unlawfully carnally known. I would regard these words as insulting and unacceptable and they have no place in legislation in this country at the end of the 20th century. Therefore, section 5 protects mentally impaired persons against both heterosexual and homosexual intercourse and mentally impaired males against gross indecency by a male.

The penalties for offences under section 5 are the same for both offences. The penalty in section 4 of the 1935 Act is a maximum of two years imprisonment, although this is increased to a maximum of five years by section 254 of the Mental Treatment Act, 1945, where the perpetrator has the care or charge of the victim. I regard that penalty of two years as too low and accordingly, I have taken the opportunity to substantially increase the penalty for having sexual intercourse or attempting to have sexual intercourse with a mentally impaired person.

Mental impairment is sometimes, particularly in a case of mild mental impairment, a difficult concept to quantify in the context of offences being committed against such persons. A very [1978] mildly mentally handicapped person may be able to give consent to sexual intercourse and I do not wish in this Bill to do anything that might be seen as unduly restrictive in relation to such persons. The definition of “mentally impaired” contains within it the objective concept of whether a person is capable of living an independent life. Also, as at present, the accused will have a defence; in section 5 (3) the accused will have the opportunity to show that at the time of the alleged commission of an offence he did not know and had no reason to suspect that the person in respect of whom he is charged was mentally impaired. In addition, proceedings against a person charged with an offence against a mentally impaired person shall not be taken except by or with the consent of the Director of Public Prosecutions. This will ensure consistency in prosecuting policy and will obviate inappropriate prosecutions being taken. The proposals in relation to the mentally impaired are generally in line with the recommendations of the Law Reform Commission in their report on sexual offences against the mentally handicapped.

Finally, on the aspects of the Bill I have been speaking about I would like to make the point that the proposals on homosexual offences are broadly in line with the recommendations of the Law Reform Commission in their report on child sexual abuse. The Second Commission on the Status of Women also recommended legislation to decriminalise homosexual acts between consenting adults.

I have also taken the opportunity in the Bill to revise and update the law in relation to prostitution and related offences. Section 6 creates a new offence of soliciting or importuning for purposes of the commission of a sexual offence. The offences comprehended by the section are those under section 3, 4 or 5 of this Bill and sections 1 or 2 of the Criminal Law (Amendment) Act 1935. This section will replace section 1 (1) of the Vagrancy Act, 1898, under which it was an offence for a male person in any [1979] public place to persistently solicit or importune for immoral purposes.

Section 6 will protect young persons and mentally impaired persons from being solicited or importuned for sexual purposes, whether heterosexual or homosexual, and whether the person soliciting or importuning is a male or female. It does not matter whether the soliciting or importuning takes place in a public place or not as the type of offence that could be committed could well be committed in a private residence. We are all aware that some child sexual abuse is committed by neighbours or friends of the parents of children who are abused and quite often the potential abuser will solicit or importune the child in his own home or even in the child's home.

In dealing with prostitution in this Bill I am concerned only with updating and strengthening certain aspects of the present laws. It was not my intention to review in any comprehensive manner all the offences relating to prostitution. As the basis for what I propose to do in this Bill in relation to prostitution I have considered the relevant chapters of the Law Reform Commission's Report on Vagrancy and Related Offences which was published in 1985 and which recommended the repeal of a number of 19th century provisions as well as some provisions enacted in 1912 and in 1935. Sections 7 and 8 of the Bill replace the repealed provisions. Section 7 simply makes it an offence to solicit or importune another person in a street or public place for the purposes of prostitution.

I have decided not to make loitering for the purposes of prostitution an offence. Although it is an offence at present, in practice it is ignored because of the judgment of the Supreme Court in 1981 in King *v.* AG and DPP. I would regard the approach in section 8 as the proper approach. Under section 8 even though the person has not been seen to solicit or importune another person for the purposes of prostitution, if a garda suspects that the person is loitering for that purpose he or she can direct the person to immediately leave the street or public [1980] place. An offence will only be committed if the person without reasonable cause fails to comply with the direction by a garda under section 8 (1).

For the first time, a person who solicits or importunes from a motor vehicle for the purposes of prostitution will be committing an offence. The loitering provisions also extend to loitering in a motor vehicle. Thus, the garda will now be able to deal with kerb-crawlers. These new offences cover solicitation or importuning of either a male or a female person by a male or female person for the purposes of prostitution, whether it is male prostitution or female prostitution and are in line with a recommendation of the Second Commission on the Status of Women. They are generally in line also with the recommendations of the Law Reform Commission in the vagrancy report.

Section 9 and 10 which deal with exploitation of prostitutes are also based on recommendations of the Law Reform Commission in their report on vagrancy and related matters. Section 9 covers the situation where active “management” of prostitution is engaged in. It also gets over any difficulties there might be about showing that money received by a person controlling a prostitute or organising prostitution constituted “earnings of prostitutes” in cases where the pimp did not receive payment from the prostitute herself but from the client, for example.

Section 10, living on the earnings of prostitution, is aimed at the person who lives parasitically on a prostitute's earnings but without actively managing or controlling her activities. However, so that children or other dependent relatives of a prostitute could not be considered to be living on the earnings of prostitution the revised offence contained in section 10 can be committed only where the person living on the earnings of prostitution also aids and abets that prostitution.

Most of the legislation which it is proposed to repeal in this Bill is, by any standards, ancient. One glance at the Schedule of repeals will reveal references to Acts of 1842, 1847, 1861 and so on. Of [1981] course, just because legislation is old is not in itself a valid reason for repealing it. However, where it is outdated, or inoperable, or simply unacceptable because of the language used, being language of another age, we have a valid reason for repealing.

While inevitably much of the public attention which has been given to this Bill has concentrated on the issue of homosexuality, the other provisions which I have outlined – particularly in relation to the protection of the vulnerable and the emphasis on sanctions against clients of prostitutes and those who organise prostitution – will also be seen as worthwhile and substantial changes to our law. Overall the Bill is a balanced, measured and enlightened approach to the sensitive and difficult issues with which it deals. It is right that we should take the opportunity, now, of rolling back over 130 years of legislative prohibition which is discriminatory, which reflects an inadequate understanding of the human condition and which we should, rightly, see as an impediment, not a prop, to the maintenance and development of sound social values and norms. I am pleased, therefore, to commend the Bill to the House.