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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Friday, 24 *June* 2005.

DÁIL ÉIREANN

Dé hAoine, 24 *Meitheamh* 2005.
Friday, 24 *June* 2005.

Chuaigh an Ceann Comhairle i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Investment Funds, Companies and Miscellaneous Provisions Bill 2005 [*Seanad*]**: Report and Final Stages.**

An Ceann Comhairle: Amendment No. 1 is in the name of the Minister and I ask him to propose that we recommit the Bill to Committee Stage for discussion on it.

Minister of State at the Department of the Taoiseach (Mr. Treacy): I move:

That the Bill be recommitted in respect of amendment No. 1.

An Ceann Comhairle: Is that agreed?

Mr. Howlin: I received a note from the Chair regarding amendment No. 11 in my name. It is a technical amendment that corrects what I believe to be an error. I ask the Minister of State to accept the recommittal of the Bill at that stage also so that the defect can be debated. I have no objection to the recommittal on amendment No. 1.

An Ceann Comhairle: We will deal with that when we come to it.

Mr. Howlin: I thought it good to give the Chair notice of it.

An Ceann Comhairle: I will hear the Deputy on it when we come to it.

Question put and agreed to.

Bill recommitted in respect of amendment No. 1.

Mr. Treacy: I move amendment No. 1:

In page 8, between lines 5 and 6, to insert the following:

"(2) Without prejudice to the generality of *subsection (1),* an order or orders under that subsection may appoint different days for the coming into operation of *section 31* so as to effect the repeal provided by that section of an enactment specified in it on different days for different purposes.".

As the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Michael Ahern, mentioned on Second Stage, the European Union has adopted a new directive on market abuse covering insider dealing and market manipulation on regulated markets. Part 5 of the Companies Act 1990 contains the existing law on insider dealing which implemented an earlier EU directive. These provisions apply where share dealing facilities are provided by a recognised stock exchange. Currently, the Irish Stock Exchange is the only such recognised stock exchange.

Part 4 of the present Bill paves the way for the transposition of the new EU market abuse regime. Section 30 enables the Minister to make regulations to transpose the relevant EU directives. Section 31 provides *inter alia* for the repeal of Part 5 of the Companies Act 1990. Section 37 allows for the Minister to apply the new Irish market abuse law to non-regulated markets. Any such application must be by way of provisional order that must be confirmed by an Act of the Oireachtas.

Currently, the Irish Stock Exchange operates the official list — the regulated market — on the recently launched Irish enterprise exchange, IEX, which in EU terms is not a regulated market for the purposes of certain EU directives emanating from the EU financial services action plan. It was always the intention to apply the market abuse regime to the IEX using the powers in section 37. However, it will be necessary to examine the proposed transposing regulations to be made under section 30 to see what modifications may be necessary in the application of the full market abuse regulations in the IEX. This will take some time.

In the meantime, it is considered undesirable to have no statutory prohibition on insider dealing applying to the IEX market. This amendment to section 2 will allow for the deferment of the repeal of part 5 of the 1990 Act in its application to the IEX market until the section 37 order can be made. The amendment is practical and sensible and I ask the House to accept it.

Amendment agreed to.

Bill reported with amendment.

Mr. Treacy: I move amendment No. 2:

In page 12, lines 10 to 12, to delete all words from and including "under" in line 10 down to and including "1942" in line 12.

As the Minister of State, Deputy Michael Ahern, mentioned on Committee Stage, it is the intention that the Central Bank and Financial Services Authority of Ireland, which is defined in section 6 of the Bill and is referred to throughout Part 2 as "the Bank", will designate its functions in Part

[Mr. Treacy.]

2 to one of its constituent bodies — the Irish Financial Services Regulatory Authority, known by its initials as IFSRA.

As currently worded, the annual report referred to in section 10(7) is that required pursuant to section 6 paragraph (i). This is the report of the Central Bank and Financial Services Authority. However, since it is IFSRA that will be required to present the annual report in this case, it is preferable that the text be amended for accuracy. This text now reads the same as section 3(6) of the Unit Trusts Act 1990. I would be grateful if the House accepted this amendment.

Amendment agreed to.

An Ceann Comhairle: Amendment No. 3 in the name of the Minister arises out of Committee proceedings. Amendment No. 4 is an alternative. Amendments Nos. 5, 6 and 7 are related and amendment No. 8 is an alternative to amendment No. 7. Amendments Nos. 3 to 8, inclusive, will be discussed together.

Mr. Treacy: I move amendment No. 3:

In page 21, line 28, to delete "filed" and substitute "lodged".

On Committee Stage, the Minister of State promised to consider amendments equivalent to the current amendments Nos. 4 and 5. Following the advice of the Office of the Parliamentary Counsel, amendments Nos. 3 and 5 now address the points raised and amendment No. 8 is, therefore, a consequential amendment. I do not intend to accept amendment No. 6 as I am advised that the current formulation in the Bill is satisfactory. It would be noted in particular that this already contains a requirement that the appeal must be lodged within five days. On amendment No. 7, we would prefer to keep the two-day timeline where it appears and, therefore, I do not intend to accept that amendment. I trust this puts the matter in context for the House.

Mr. Howlin: Thank you, we always get clarity from the Minister of State. These amendments basically relate to procedures with regard to the appeals mechanism to the Supreme Court. I used not know much about the Supreme Court and its appeals mechanisms, but of late, as the Chair will appreciate, I am learning more about them through personal experience.

Mr. Treacy: We wish the Deputy well.

Mr. Howlin: Unfortunately, I could not attend the Committee Stage debate because I was involved in an important committee sitting at the same time and my colleague, Deputy Burton, dealt with amendments for me. The Minister of State dealing with the Bill at the time undertook to consider the amendments and come back on Report Stage and has done so. What happens when one makes a coherent technical argument from the Opposition side of the House, never ceases to amaze me. One such argument was made with regard to, for example, in line 28, the deletion of the word "filed" and its replacement with the word "served". My colleague effectively argued on Committee Stage that the version in the original Bill is based on a misunderstanding of the procedure of the Supreme Court. It is based on a belief that one files the appeal first and then one serves it. In fact, the opposite is the case — the appeal is made when it is served. It is only after it has been served and a copy of it has been endorsed with the particulars of service that the Supreme Court will accept it for filing. That is the actual procedure. It would be extraordinary and unique if we were to decide that the mechanism for this Supreme Court appeal procedure was to be different. I have proposed the replacement of the word "filed" with the word "served" for that reason. When I win an argument on Committee Stage, I am always amazed on Report Stage to discover that the Minister is unwilling to accept the amendment I propose as a consequence. In this case, the Minister of State, Deputy Treacy, proposes the insertion of the word "lodged" rather than the word "served", which I have suggested.

Amendment No. 5 proposes the deletion of the word "delivered" and its replacement with the word "perfected". This change is necessary so that the provisions of the Bill are in line with the procedure used in the Supreme Court. An order is not "delivered" by the Supreme Court. I am awaiting a decision of the Supreme Court on matters in which I have a direct interest. My understanding of the procedure of the Supreme Court is that it does not deliver an order to anybody. When the Supreme Court makes a decision, the registrar who draws up the "perfected" order after the judge has made the verbal announcement in the court administratively creates the order of the decision of the Supreme Court. As I have said, the order is not "delivered" by anyone. The parties to the action make a formal request for the order.

I have also learned that in all cases between parties, the time for appeal to the Supreme Court of a High Court decision does not begin until the order has been "perfected". The perfection of an order can take months in some instances. The advice I have received from my legal adviser is that the word "perfected" is the appropriate word in this instance. The word "delivered" has no meaning within the understanding of the manner in which the superior courts operate.

Amendment No. 6 states that notice of an appeal to the Supreme Court "shall be filed in the Office of the Supreme Court within 5 days" of the order being served by the court. It seems to me that the amendment is appropriate because service comes before filing. I consider that five days is an appropriate timeframe within which to operate. I have not heard the Minister of State give any reason for any resistance to the use of such a mechanism for handling appeals.

A coherent argument was made on Committee Stage for the amendments I have tabled on Report Stage. The Minister of State seems to have accepted the essence of the amendments but he has not, for reasons that may be regarded as perverse, accepted the words I have suggested. I have been advised that they are the appropriate legal words, but the Minister of State has chosen different words. I hope he has not chosen his alternative words for the sole reason that they are not the words offered by the Opposition. I await a coherent argument from the Minister of State in explanation of why the amendments tabled by Members on this side of the House do not propose words appropriate for inclusion in the Bill. I ask him to explain why his words are preferable.

Mr. Treacy: I have listened with great interest to the remarks of Deputy Howlin, who is a very eminent legislator. I had the pleasure of his company and that of the former Deputy, Ivan Yates, on Committee Stage of the Child Care Bill 1988, which lasted 15 months.

Mr. Howlin: I remember.

Mr. Treacy: All the Deputies on that committee helped to create very good legislation. My rule is simple — I do not believe anybody has a monopoly on wisdom. We need to listen to the views of everyone if legislation is to be strong, solid, focused and all embracing.

Mr. Hogan: The Minister of State must intend to leave soon because he is reminiscing.

Mr. Treacy: I will not leave for years. I will not leave until the people of Galway East decide that it is time for me to do so.

Mr. Hogan: It is a bad sign when the Minister of State is reminiscing.

Mr. Treacy: No. One must look back at history to pinpoint the way forward, but one must not be a prisoner of that history.

Mr. Hogan: We should always learn from history. Fair play to the Minister of State.

Mr. Treacy: Every elected Member has a role to play in the formulation of legislation.

Mr. Howlin: But——

Mr. Treacy: Like the Minister of State, Deputy Michael Ahern, and our eminent officials, I do not have a desire to frustrate any quality contributions. I would not propose an alternative word for that reason. The words in the amendments I have tabled have been recommended by the Office of the Chief Parliamentary Counsel, following a great deal of examination on the part of that office. I have taken on board the advice of the office. I am sure the Deputy was pleased to learn that one of his amendments was accepted in his absence because it was considered to be meritorious.

Mr. Howlin: That is right.

Mr. Treacy: Amendments Nos. 3 and 5 have been tabled on the basis of the advice of the Office of the Chief Parliamentary Counsel. We agree with that office's recommendation of the word "perfected". We are totally guided by that advice in this instance. I listened with great interest to Deputy Howlin's comments about the Supreme Court. I am worried that justice delayed is justice denied. It is obvious that the decisions delivered by judges do not become operative until the perfection is carried.

Mr. Howlin: Yes.

Mr. Treacy: I can understand all of that. Based on the eminent legal advice and taking into account the totality of the contributions made, in writing and otherwise, I regret that the amendments I have proposed are the best I can do today.

Mr. Howlin: I was waiting for an erudite explanation from the Minister of State of the legal correctness of the words he has proposed, as opposed to the words I have proposed. It is not good enough to explain it to the House on the basis that it is the opinion of the Office of the Chief Parliamentary Counsel, as it is now known. I suppose "draftsman" is too pedestrian a term for such an eminent person.

Mr. Treacy: A counsel advises.

Mr. Howlin: Matters could be hastened by putting the advice of the counsel on the record. I invite the Minister of State to do so.

Mr. Treacy: I do not have written advice. This has been a process of consultation, advice and discussion with the Office of the Chief Parliamentary Counsel. I do not have any written advice from the counsel, apart from the notes taken by the great officials while in his eminent presence. The final documentation is proposed on that basis.

Mr. Howlin: So we have to buy a pig in a poke.

Mr. Treacy: No. We are operating on the basis of the consensual conclusion of great people in their intellectual capacity, taking into account their experience and their understanding of the documentation before them and the words proposed.

Amendment agreed to.

Amendment No. 4 not moved.

Mr. Treacy: I move amendment No. 5:

In page 21, line 30, to delete "delivered" and substitute "perfected".

Amendment agreed to.

Mr. Howlin: I move amendment No. 6:

In page 21, line 30, after "court" to insert the following:

"and shall be filed in the Office of the Supreme Court within 5 days after such service".

I did not hear any response from the Minister of State to my proposal that notice of an appeal to the Supreme Court "be filed in the Office of the Supreme Court within 5 days" of the order being served by the court. Is there any reason the time-frame suggested in this amendment cannot be accepted?

Mr. Treacy: I have been advised that the present formulation of the Bill in this regard is satisfactory. It will be noted that the proposed new section 256D(2) of the 1990 Act, to be inserted by section 25 of this Bill, requires that the appeal be lodged within five days.

Mr. Howlin: Is the provision proposed in my amendment already encompassed within the Bill?

Mr. Treacy: I think so. I have been assured that it is.

Mr. Howlin: Very good.

Amendment, by leave, withdrawn.

Mr. Howlin: I move amendment No. 7:

In page 21, to delete lines 31 to 41 and substitute the following:

"(3) Notice of appeal by the umbrella fund shall be served on the Central Bank and on the relevant creditor who made the application pursuant to section 256C, and notice of appeal by the party that made the application pursuant to section 256C shall be served on the Central Bank and the umbrella fund.".

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Mr. Treacy: I move amendment No. 8:

In page 21, line 31, to delete "filed" and substitute "lodged".

Amendment agreed to.

Bill recommitted in respect of amendments Nos. 9 to 11, inclusive.

An Ceann Comhairle: As amendments Nos. 9 and 10 are related, they may be discussed together, by agreement.

Mr. Treacy: I move amendment No. 9:

In page 30, line 43, after "€2,500,000" to insert the following:

"(and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under *section 46* in relation to analogous limits specified by those regulations for any purpose)".

Since the definition of "local offer" was drafted for inclusion in this Bill, drafting of the regulations to transpose the Prospectus Directive has been progressed alongside the progression of this Bill through the legislative process. Arising from that exercise, there is a mismatch between what section 38 and the draft regulations say about the manner in which the limit of €2,500,000 is calculated. Amendments No. 9 and 10 will remove the mismatch and clarify the situation *de facto*.

Amendment agreed to.

Mr. Treacy: I move amendment No. 10:

In page 31, to delete lines 41 to 46.

Amendment agreed to.

Mr. Howlin: I move amendment No. 11:

In page 32, to delete lines 32 to 34 and substitute the following:

"(2) Article 2 of the Companies (Recognition of Countries) Order 1964 (S.I. No. 42 of 1964) is amended by the substitution of 'section 250' for 'sections 250 and 367'.".

I have been given legal advice on this matter and I propose that Article 2 of the Companies (Recognition of Countries) Order 1964, S.I. 42 of 1964, be amended by the substitution of "section 250" for "sections 250 and 367".

The 1964 order recognises Northern Ireland and British company decisions for the purposes of four separate sections of the parent Act, the Companies Act 1963. The sole relevant sections of that Act to which I refer to are sections 250, 367, 388 and 389. As currently promulgated, this Bill in section 37(1) repeals one of these sections, namely, section 367, but leaves the other three sections in place. I asked my adviser to check the other three section and was informed that following a check of the Attorney General's index, the other three sections have not been repealed by any other Act of the Oireachtas. Since the Attorney General's index is clear only up to the end of 2003, there may be some enactment since then of which I am unaware, but that is the position as I ascertain it from the available infor-

mation. Accordingly it is not prudent to revoke the 1964 order, either to a specific extent or at all. One does not revoke the order. The correct course would be to delete the reference in the order to section 367, which is the import of my amendment.

Mr. Treacy: The current version of the Bill would regard this as section 40(2). I will quote from it:

> The Companies (Recognition of Countries) Order 1964 (S.I. No. 42 of 1964) is revoked to the extent that it is for the purposes of section 367 of the Act of 1963.

I accept the validity of the amendment proposed by Deputy Howlin. However, I am advised that the present formulation of this Bill is satisfactory and that it is unnecessary to make any further changes in this regard. Consequently, I regret I am unable to accept the amendment.

Mr. Howlin: In parliamentary drafting terms, since the order is in place, sections of it will remain law under the Companies Acts of 1963, subsequent to the enactment of this provision. My understanding is that in practice one is not therefore revoking the statutory instrument but deleting a section of it. The formulation of the words "to revoke" in that context is not correct procedure. The Minister of State has made no argument in that regard. This is my strong advice arising from my experience. The formulation I suggest achieves what the Minister of State wants to do but in a manner consistent with normal parliamentary procedure.

Mr. Treacy: The Bill refers to Article 2 of the Companies (Recognition of Countries) Order 1964, so there is a recognition of that order, SI 42 of 1964 which, as the Bill says, is amended by the substitution of "section 250" for "sections 250 and 367". This proposal, as contained in the Bill — obviously having come through the due process of legal advice, the Office of the Attorney General, Parliamentary Counsel and so on — along with Deputy Howlin's amendment was put back for advice to the Parliamentary Counsel who, in discussions with our team, accepted the validity of the amendment proposed but advised that the formulation as proposed in this Bill is fully satisfactory and that it was unnecessary to accept the proposed change. That is the legal advice available to us and I am obliged to be guided by it. Is dona liom, but sin é.

Mr. Howlin: The Minister of State is not obliged to do any such thing. This is Parliament. If we want the legal advisers to create law, we will then simply meet annually to rubber-stamp the drafts put before us by the Parliamentary Counsel. If the import of my amendment is right, if it is consistent with normal practice in legislation to date, if it is not in any way deficient and if it achieves the purpose which the Minister of State intends, why is he resisting it?

Mr. Treacy: If an amendment brought forward from the Opposition has a legal import, we are obliged to take legal advice on it. We did so in this instance and the legal advice is that it is unnecessary to make this change. However, in view of the case made by Deputy Howlin, I will ask the eminent officials present to have further discussions with the Parliamentary Counsel, and if any further change is necessary when the Bill goes to the Seanad, we will consider it.

Mr. Howlin: I am obliged to the Minister of State.

Amendment, by leave, withdrawn.

Bill reported with amendments.

Mr. Treacy: I move amendment No. 12:

> In page 51, lines 3 to 10, to delete all words from and including "State" in line 3 down to and including "2A." in line 10 and substitute the following:
>
> "State"—
>
> (I) the only securities of which for the time being are authorised (or during the period of 5 years referred to in paragraph (b) were authorised) to be traded by a recognised stock exchange on a market regulated by that exchange are those specified in section 2A, and
>
> (II) which is not a company prescribed for the purposes of paragraph (c).'.".

This is a further amendment to that agreed on Committee Stage. The takeover panel considered that the wording of the new paragraph 3 may allow a company that listed only equities or securities in London, and listed only debts or securities in Dublin to fall outside the scope of being a relevant company for the purposes of the Takeover Panel Act. The amendment now proposed will have the effect of preventing a company avoiding being treated as the relevant company by dividing its debt and equities between two separate locations.

Amendment agreed to.

Bill recommitted in respect of amendment No. 13

Mr. Treacy: I move amendment No. 13:

> In page 54, after line 42, to insert the following:
>
> "87.—(1) Section 33AN of the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2004) is amended by inserting the following definitions after the definition of 'contravene':

[Mr. Treacy.]

‘ “designated enactment” does not include *Part 4* or *5* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005;*

“designated statutory instrument” does not include the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. of 2005) or the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. of 2005);’.

(2) Schedule 2 to the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

(*a*) in the item relating to the Postal and Telecommunications Services Act 1983, in column 3 of Part 1, by substituting ‘Sections 67 and 104’ for ‘Section 104’,

(*b*) in the item relating to the Dormant Accounts Act 2001, in column 3 of Part 1, by substituting ‘The whole Act’ for ‘Part 3 and section 17’,

(*c*) by inserting in Part 1 the following item after the item relating to the Assets Covered Securities Act 2001:

‘

No. 28 of 2001	Company Law Enforcement Act 2001	Section 110A
No. 2 of 2003	Unclaimed Life Assurance Policies Act 2003	The whole Act
No. — of 2005	Investment Funds, Companies and Miscellaneous Provisions Act 2005	The whole Act

’,

and

(*d*) by inserting in Part 2 the following items after the item relating to the European Communities (Cross Border Payments in Euro) Regulations 2002 (S.I. No. 335 of 2002):

‘

S.I. No. 211 of 2003	European Communities (Undertakings for Collective Investments in Transferrable Securities) Regulations 2003	The whole instrument
S.I. No. 198 of 2004	European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004	The whole instrument
S.I. No. 727 of 2004	European Communities (Financial Conglomerates) Regulations 2004	The whole instrument
S.I. No. 853 of 2004	European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004	The whole instrument
S.I. No. 13 of 2005	European Communities (Insurance Mediation) Regulations 2005	The whole instrument
S.I. No. — of 2005	Market Abuse (Directive 2003/6/EC) Regulations 2005	The whole instrument
S.I. No. — of 2005	Prospectus (Directive 2003/71/EC) Regulations 2005	The whole instrument

’,”.

Under the 1942 Central Bank Act, as amended by the Central Bank and Financial Services Authority of Ireland Act 2003, the Irish Financial Services Regulatory Authority, IFSRA, in respect of Acts specified in Schedule 2, discharges the function of the Central Bank and Financial Services Authority of Ireland. In Parts 2, 3, 4 and 5 of the present Bill, certain functions are being given to the Central Bank and Financial Services Authority of Ireland. It was always the intent that these would be discharged by IFSRA.

No difficulty arises in Part 3 as this Part amends Part XIII of the 1990 Act. However, in respect of Parts 2, 4, and 5, we have now been advised by the Office of the Attorney General and the Parliamentary Counsel that the necessary designation should be done by way of primary law. Separately, the Department of Finance already had under consideration some changes to the Second Schedule and was proposing to add other statutory provisions to the Schedule. The purpose of the amendment in subsection(2) is to make all the changes needed to the Second Schedule in primary law. The amendment in subsection(1) is required to ensure that the administrative sanction regime set up in the Central Bank and Financial Services Authority of Ireland Act 2004 does not apply to the market abuse and prospectus provisions. Consequent on that, I would be grateful if the House were to accept this proposal.

Mr. Hogan: Will the Minister of State clarify what section of the Bill he is proposing to amend?

Mr. Treacy: I am speaking of a new section after section 86. We are proposing to add a new section.

Mr. Hogan: I have some concerns about the miscellaneous provisions attached to this legislation. I can make my argument on this amendment now or wait until later.

An Ceann Comhairle: It might be preferable to wait until the final Stage of the Bill, when the Deputy will have more scope to talk about everything in the Bill.

Mr. Hogan: Yes.

Amendment agreed to.

Bill reported with amendment.

Bill, as amended, received for final consideration.

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

Minister of State at the Department of the Taoiseach (Mr. Treacy): My ministerial colleague, Deputy Michael Ahern, has asked me to convey his appreciation for the valuable input of Members to the debate on this technical and complicated legislation. He is appreciative of the co-operation he has received in ensuring the Bill passes all Stages in a relatively short time. Part 2 introduces a new contract fund structure, the common contractual fund, CCF, which is non-UCITS CCF to distinguish it from a CCF authorised under the UCITS regulations.

11 o'clock

Mr. Howlin: That is clear anyway.

Mr. Treacy: Part 3 introduces investment fund segregated liability and cross-investment, facilitating the ring-fencing of liability at subdued level and allowing for cross-investment between subfunds and an umbrella structure. Parts 4 and 5 facilitate the implementation of the EU market abuse and prospectus legislation. Part 6 makes a number of amendments to the Companies Acts that have arisen from difficulties with the operation of existing provisions, facilitates operators using electronic technology and rectifies an incomplete cross-reference in existing law.

Part 7 makes necessary amendments to consumer law, mainly increasing the maximum level of fines that can be imposed on conviction for breach of consumer protection legislation. It also amends the Competition Act 2002, the Irish Takeover Panel Act 1997 and the Industrial and Provident Societies legislation. Arising from amendments made earlier, it also amends the Central Bank Act 1942.

I thank Members for their valuable contributions and their co-operation. I also thank the staff of the Office of the Parliamentary Counsel and the Attorney General's office for their assistance in the drafting of the legislation and the excellent staff in the Department of Enterprise, Trade and Employment, whom I had the pleasure of working with for almost five years.

Mr. Hogan: I welcome the Minister of State's remarks. I support the investment fund amendments, which are required to implement an EU directive that will provide for an expanded financial services sector and enhance its administrative potential and the prospects for high value added employment. The success of the IFSC and its companies is testament to the need to amend the Acts mentioned to ensure they will continue to expand.

However, I am not satisfied the Minister has decided to make a small number of changes to consumer and financial services regulation at the tail end of the Bill, which, ultimately, transposes a technical EU directive. The lack of a consumer policy in the State has been brought to the attention of every Member. The consumer strategy group was established by the Tánaiste with the purpose of addressing this issue. The group attended a meeting of the Oireachtas Joint Committee on Enterprise and Small Business recently and my colleague, Deputy Howlin, and I had an opportunity to discuss the important recommendations made by it with the chairperson. We were disappointed with the lack of conviction on the part of the interim board representatives regarding the direction of consumer policy. The focus is on one market segment, namely, the grocery trade.

If the Minister felt it appropriate to do so, the legislation presented an opportunity to put the national consumer agency on a statutory footing. The interim board has been established without a representative of the Consumers Association of Ireland, which had a member on the group established to review consumer policy. The association has made a major voluntary contribution to the promotion of information and good ideas to amend consumer law to make it more palatable to the consumer.

All of us have been lobbied about the over-regulation that applies to a number of facets of company law. The Minister of State at the Department of Enterprise, Trade and Employment, Deputy Michael Ahern, has recommended a number of proposals for discussion by the company law review group arising from the audit and accountancy Bill, which both Deputy Howlin and I warned on its proposal was a sledgehammer to break a nut rather than a more balanced approach appropriate to the small business sector.

[Mr. Hogan.]

The issues of compliance statements, the regulatory environment, the changes to the Groceries Order and the need to establish an independent national consumer agency are important but all the Minister of State has done is provide for a modest amendment to the fines appropriate to the Restrictive Practices Act 1982 and the Sale of Goods and Services Act 1978. I welcome the increases, which update fines set 30 years ago. However, the Minister has missed an opportunity to implement an appropriate consumer protection policy and establish a national consumer agency, which would have meant that we did not have to wait another 18 months or for another election to put it on a statutory footing. For that reason, I oppose that segment of the legislation, which does not go far enough to address issues of concern.

Mr. Howlin: The Minister of State may need another right to reply. This is a technical Bill, which I have no difficulty in supporting, but I agree strongly with Deputy Hogan that had it been introduced as an investment funds Bill to deal with the directive, it would have been acceptable to address our requirements under the directive. The Minister of State added on a companies — miscellaneous provisions — Bill and made modest amendments to company law, particularly the 1964 Act, but the impression was created that an opportunity had been presented to do something in the area of company law, which is crying out to be addressed.

Deputy Hogan mentioned the consumer area. We began our detailed discussion with the consumer strategy group this week at the Joint Committee on Enterprise and Small Business. None of us left the meeting enthusiastic that the focus of the group was in the best interest of the proper balanced development of our country. The globalisation agenda is narrow and issues such as regional development, spatial planning, the core of towns and access of the vulnerable to commercial activity and so on should be included. None of these issues is one-dimensional and the Minister of State, Deputy Michael Ahern, would have a great deal of sympathy with this argument.

However, Ireland, which is a vulnerable economy because it is open and needs to be extremely competitive, has slipped in the competitive stakes in the past two annual assessments. We should not be complacent if we are to maintain the prosperity of the past decade. Last night, reference was made to the decline in manufacturing jobs and the increasing dependence on the service sector, to which we should be alert. High value jobs are needed. During the Reagan era, 1 million new jobs were created but one US citizen said, "I know Ronald Reagan created 1 million new jobs, but I have to have three of them to live." It must be ensured new jobs are high value. The framework of company law must be conducive to flexibility, competitiveness and high standards. Recently we passed health and safety legislation to ensure people are safe at work.

If we are to drive the Lisbon Agenda and provide flexibility in company law, particularly for small and medium sized companies, which are increasingly becoming the bedrock of indigenous employment in the manufacturing sector, we need to constantly update and revise legislation, not by putting an ever heavier hand on enterprise but with a light touch that will safeguard the interests of workers and ensure people in this economy can compete with the best elsewhere.

I agree with Deputy Hogan. Parliamentary time is difficult to secure, as the Minister for Justice, Equality and Law Reform knows. When important legislation from his Department went through the House last night only a fraction of the amendments to the Bill had been debated. Given that parliamentary time is a scarce commodity, when there is an opportunity such as today to consider important changes in company law in a calm atmosphere it is a pity there was not a more substantial Bill before us.

Mr. Treacy: I concur with many of the sentiments expressed by my colleagues. I respect their personal commitment to this area. I agree it is important that we give as much time as possible to parliamentary discussion. Nothing is more important than legislation and it is important that legislators can devote their time to creating good legislation. That is our primary role and it should be our main focus. Obviously, there are many other distractions that put pressure on Members but I hope we can continue to work together to produce the best legislation.

The recommendations of the consumer strategy group are under consideration by a high level interdepartmental committee that will report back to Government with a detailed implementation plan within three months.

Mr. Howlin: Will Parliament have a role in that?

Mr. Treacy: I hope so. I am sure an Oireachtas committee can consider the response.

Mr. Howlin: We wish to have an input rather than just discuss the conclusions.

Mr. Treacy: When the high level interdepartmental committee reports to the Government and proposals are put forward there is no reason they cannot be discussed in a committee. That would be the appropriate place to consider them.

Part 7 was drafted to update the provisions for breaches of existing legislation that remain on the Statute Book as one of the measures of consumer

protection legislation which is implemented by the Office of the Director of Consumer Affairs. A major reform of company law is currently under way arising from the recommendations of the company law review group. Work on drafting the new principal Act is under way and the company law review group is assisting the Department of Enterprise, Trade and Employment in the necessary reform of the Companies Acts.

Deputy Howlin and Deputy Hogan referred to competitiveness and Deputy Howlin recalled the Reagan years in the United States. From a European perspective, it is critical that we focus on this issue. The Lisbon Agenda is critical at this time for ensuring that Europe is competitive and enjoys economic growth. This country is fortunate in that it has managed its affairs in a way that stimulates economic growth. Competitiveness is always a challenge and we must be mindful of that and work towards ensuring that we sustain our competitiveness. If it is not sustained, it will have serious implications for economic growth in the future.

Between the domestic management of competitiveness, the requirement to update the legislation on a continuous basis and the Lisbon Agenda at European level, there is plenty to be addressed. However, it is important that this legislation is passed and that, where possible, we improve our legislation. Some of the changes we have made today will be of benefit to the consumer. On that basis, we have done a good day's work.

Question put.

The Dáil divided: Tá, 50; Níl, 27.

Tá

Ahern, Noel.
Brady, Johnny.
Brady, Martin.
Browne, John.
Callanan, Joe.
Callely, Ivor.
Carey, Pat.
Carty, John.
Cullen, Martin.
Curran, John.
de Valera, Síle.
Dempsey, Tony.
Dennehy, John.
Ellis, John.
Fitzpatrick, Dermot.
Fleming, Seán.
Gallagher, Pat The Cope.
Grealish, Noel.
Hanafin, Mary.
Hoctor, Máire.
Keaveney, Cecilia.
Kelleher, Billy.
Kelly, Peter.
Kirk, Seamus.
Kitt, Tom.
Lenihan, Brian.
Lenihan, Conor.
McDowell, Michael.
McGuinness, John.
Moloney, John.
Moynihan, Donal.
Moynihan, Michael.
Mulcahy, Michael.
Nolan, M. J.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Dea, Willie.
O'Donnell, Liz.
O'Donoghue, John.
O'Keeffe, Ned.
O'Malley, Fiona.
O'Malley, Tim.
Power, Peter.
Sexton, Mae.
Smith, Brendan.
Treacy, Noel.
Wallace, Dan.
Walsh, Joe.
Wilkinson, Ollie.
Woods, Michael.

Níl

Boyle, Dan.
Costello, Joe.
Cuffe, Ciarán.
Deasy, John.
Durkan, Bernard J.
English, Damien.
Enright, Olwyn.
Gilmore, Eamon.
Harkin, Marian.
Hogan, Phil.
Howlin, Brendan.
Kehoe, Paul.
McCormack, Padraic.
McGrath, Paul.
McHugh, Paddy.
McManus, Liz.
Mitchell, Gay.
Mitchell, Olivia.
Murphy, Catherine.
Murphy, Gerard.
Naughten, Denis.
Neville, Dan.
Pattison, Seamus.
Perry, John.
Stagg, Emmet.
Stanton, David.
Timmins, Billy.

Tellers: Tá, Deputies Kitt and Kelleher; Níl, Deputies Kehoe and Stagg.

Question declared carried.

An Ceann Comhairle: As the Bill is considered by virtue of Article 20.2.2 of the Constitution to be a Bill initiated in the Dáil, it will be sent to the Seanad.

Air Navigation and Transport (Indemnities) Bill 2005 [*Seanad*]: Second Stage.

Minister for Transport (Mr. Cullen): I move: "That the Bill be now read a Second Time."

I thank the House for agreeing to deal with this important emergency legislation at such short notice. The Seanad was similarly supportive. Following the appalling terrorist attacks in the United States on 11 September 2001, insurers withdrew cover for third party war and terrorism risks at short notice and it was necessary for Governments to provide cover so that civil aviation could continue to operate. In Ireland we enacted the Air Navigation and Transport (Indemnities) Act at short notice in December 2001. That Act was designed to expire after 12 months unless motions were passed by both Houses of the Oireachtas keeping it in place. This was due to the significant liability undertaken by the Exchequer under that Act, and because of the perceived temporary nature of the insurance problem at that time.

Thankfully, commercial insurance became available by the second half of 2002 and it was possible to allow the Act to lapse in December 2002, one year after its enactment. Unfortunately, however, the problem has not gone away. During 2004 it became clear that insurers were worried about potentially ruinous claims in the event of a terrorist attack involving the detonation of what is referred to as a dirty bomb, or an electromagnetic pulse. A dirty bomb is one that has been deliberately contaminated with chemical, biological or radioactive material to cause widespread damage to people and property. An electromagnetic pulse is a device that sends out a broadband, high-intensity, short-duration burst of electromagnetic energy — essentially a high-powered pulse of radio waves. Such a bomb could disable or permanently destroy all the electronics and computers in an airport, including those of all the aircraft at that airport, and interfere with radio links for air traffic control. The problem for insurers is that an event involving one aircraft or airport would almost certainly give rise to claims under several, and perhaps dozens, of insurance policies. Cover for "dirty bomb" risks is not normally provided in other areas of insurance, such as marine and property insurance. The international insurance industry believes that such a risk cannot be covered by insurance and must be dealt with at a Government level, in the same way as natural catastrophes.

The matter was discussed on several occasions at meetings of the European Commission's *ad hoc* group on aviation insurance. As might be expected, neither the Commission nor member states were anxious to give any premature signal to the insurers that they would be prepared to take over any part of the insurance risk, and consequently no overt action was taken while it was not clear that insurance cover would actually be withdrawn. A key part of the strategy in 2001 had been to encourage the commercial insurers to go back to providing the cover that had been withdrawn.

At the most recent meeting of the *ad hoc* group, on 2 June 2005, member states were informed that insurers have now begun to withdraw cover for "dirty bomb" and electromagnetic pulse risks for aircraft hull insurance as renewals fall due. This has already affected Spain's Iberia Airlines, and my Department has been advised that it will also apply to an Irish cargo airline when its policy is renewed on 1 July. That airline has been in regular contact with the Department of Transport since it was alerted to this issue, and the Department is exploring with it what kind of assistance it may need in light of the change to its insurance cover.

As a result of that information from the European Commission, my Department immediately set about drafting new legislation to enable the Government to provide indemnities. The Bill that I now present is very closely based on the 2001 Act. However, some changes have been necessary to reflect our experience with that Act and to take account of developments in the intervening period. The most significant change arises because this is expected to be a permanent change in insurance conditions. Insurers do not intend to go back to covering "dirty bomb" and electromagnetic pulse risks in future. Therefore, it is not appropriate for the new Act to have a provision for it to lapse automatically.

Since that insurance withdrawal will be permanent, the new Bill will allow Government orders and ministerial indemnities to be issued for 12 months at a time. That should significantly reduce the administrative burden on aviation companies as well as on my Department. The fact that the Bill cannot lapse automatically is balanced by the 12-month time span for indemnities, which means that indemnities cannot be put in place and then simply left there indefinitely. The Bill also provides that indemnities can be terminated at any time, should that become appropriate. It is possible that the aviation industry in Europe will establish a mutual insurance fund that will eventually eliminate the need for Government support, and I understand that European legislation will be initiated by the European Commission soon to deal with the issue.

However, that will take several years and may need further legislation when the exact form of the scheme becomes clear. The other important change is that, in 2004, a new European regulation was adopted requiring all but the very smallest aircraft to have insurance, including insurance for war and terrorism risks. That regulation came into effect on 30 April 2005. In 2001,

only licensed airlines were required to have insurance and the 2001 Act did not allow the issue of indemnities to private or corporate aircraft operators.

Under the new Bill, it will be possible to issue indemnities for private and corporate aircraft registered in Ireland, as well as for the airlines, airports, ground-handling and maintenance companies that received indemnities under the 2001 Act. If we did not extend the legislation in that way, it would be tantamount to a legislative decision to ban all private and corporate aviation. As a further consequence of that change, the Bill extends the scope of airports to include all licensed for public use by the Irish Aviation Authority. The 2001 Act included only airports with commercial scheduled services. The extension of the definition will include the aerodromes at Connemara, Inisheer, Inishmaan, Inishmore and Weston. It should be emphasised that the State would not simply be automatically subsidising the operation of corporate or executive jets. Indemnities will be granted only if essential to the continued operation of civil aviation, and anyone granted an indemnity will be required to pay a commercial rate.

The new Bill also deals with a problem that emerged under the 2001 Act. Under that legislation indemnities could be issued only to businesses that had commercial insurance policies before the cover was withdrawn. In other words, no provision was made for new airlines or other indemnified businesses that might commence operation after the withdrawal of insurance. As a result, it was not possible for the Minister to provide an indemnity for a new airline, Skynet. As it happened, Skynet was able to obtain sufficient insurance to allow it to commence operations. However, as a precaution, and in light of the fact that the withdrawal of cover for "dirty bomb" risks is expected to be permanent, the new Bill will allow indemnities to be given to new businesses that otherwise meet the criteria for qualifying for indemnities.

On the other side, to increase protection for the State, the new Bill contains examples of reasons the Minister may refuse to grant an indemnity or may issue a restricted one. In the 2001 Act, while the Minister was under no obligation to issue indemnities, it was not clear why he might refuse an application. The reasons for refusal now include situations where an applicant has not or will not comply with conditions, whether an applicant has paid amounts due to the Minister under the Act, whether the applicant has all the necessary operating licences, whether the risk is excessive, and whether it would not be in the public interest to provide indemnities for a particular class of activity, aircraft or applicant.

To avoid any future problems about collecting money, it is intended to require payment in advance for the indemnities to be issued under the new Bill. It is not clear at this stage how much revenue will be collected for indemnities under the Bill. Under the 2001 Act, about €5.4 million was collected and a further amount of about €2.6 million is the subject of a High Court claim between my Department and Ryanair.

I will now say a few words on each section of the Bill. Section 1 deals with interpretation. Three categories of aviation undertakings that will be able to obtain indemnities are identified: airlines and operators of private and corporate aircraft; airports and aerodromes licensed as public service aerodromes by the Irish Aviation Authority; and other companies that provide essential aviation services. Those include baggage handling, maintenance, refuelling and security.

Section 2 deals with making a state of difficulty order. That and section 3 are the fundamental sections of the Bill. Section 2 gives the Government power to make an order to declare that a state of difficulty affecting the supply of insurance relating to air navigation services exists. The requirement for the Government order reflects the enormous levels of indemnity required to provide enough cover to enable Irish aviation to continue in operation. The maximum period for such an order is 12 months. Further orders can be made.

It is anticipated that this change in insurance cover worldwide is permanent and that will mean that orders must be made for the foreseeable future. Section 3 empowers the Minister to give or renew indemnities during the course of an order under section 2. Section 4 provides that an indemnity may be issued only in a case where the undertaking requesting the indemnity had insurance immediately prior to the state of difficulty that gave rise to the order under section 2. However, where a new aviation undertaking starts business after the commencement of the state of difficulty order and if it would normally have required such cover, an indemnity can be issued for it too.

Section 5 makes it clear that the Minister is not obliged to give an indemnity and provides that no liability will attach to the Minister if an indemnity is not given, is delayed, or is in error. This section appeared as section 12 in the 2001 Act but has been moved in this Bill to make its order more logical. While the 2001 Act did not give any examples of reasons the Minister might wish to refuse to issue or to renew an indemnity, this Bill cites some issues that the Minister may take into account, including failure to pay for previous indemnities issued under this Bill; whether the conditions of previous indemnities have been complied with; whether the Minister is satisfied that conditions in an indemnity to be issued will be complied with; whether the undertaking holds all the necessary licences to operate; and if it would not be in the public interest to issue an indemnity having regard to the overall liability under the Bill.

Section 6 allows the Minister to impose conditions when issuing an indemnity. The Minister may declare an indemnity void if the conditions

[Mr. Cullen.]

are not complied with. It is expected that the conditions will include a requirement to comply with whatever conditions were in the original insurance policy and to notify the Minister if an event arises that might give rise to a claim. This section has one additional feature over the 2001 Act. It specifically states in subsection (2) that the Minister may impose conditions for the purpose of reducing the risk of claims arising in connection to the indemnity.

Section 7 limits the State's liability to whatever limit previously existed under the original insurance cover which was in force before the state of difficulty order came into operation. Furthermore, when all indemnities are taken together, the State's liability will be limited to €9 billion, the same as in the 2001 Act. The Bill proposes that if the total claims from indemnified undertakings were to exceed €9 billion, the payments from the Exchequer would be a proportion of the claims made. In addition to the provisions of the 2001 Act, this section also provides for valuation of the indemnities for undertakings which were not in business before the state of difficulty order came into force but which would have normally required this insurance cover were it available in the market.

Section 8 limits the period of any one indemnity to 12 months, although it may be shorter than that if considered appropriate. Under the 2001 Act, the period of validity was limited to 31 days because the indemnities were seen as a temporary measure. However, as this withdrawal of insurance cover is likely to be permanent, issuing indemnities every 12 months will lessen the administrative burden on both the aviation sector and my Department.

Provision is also made to cover the retrospective period back to 16 June 2005, the likely date of publication of this Bill, in the event that charges need to be applied to cover the period of validity of any letters of comfort that might be issued by the Minister for the period prior to the enactment of the Bill.

Section 9 allows the Minister to impose charges, analogous to insurance premiums, for indemnities. The charge to be applied for indemnities under this Bill has not been set. Guidelines were put in place by the European Council regarding charges for indemnities following 2001 and it is likely that the European Commission will review those guidelines in light of the current situation. Commission officials have indicated that the issuing of indemnities by Governments will not be deemed to contravene the restrictions on State aids, and legislation to that effect is expected to be initiated by the Commission, possibly before the end of July.

Section 10 provides that the Minister may only issue indemnities to Irish licensed airlines, private and corporate aircraft and to airports and service providers whose services are essential to support civil air services. The provision in this section which enables indemnities to be issued to private and corporate aircraft is new. This cover is required because recent European legislation requires these types of operations to have war and terrorism risk cover. Previously, this was not statutorily required but many had such cover in any case.

Section 11 gives the Minister all of the defences against claims that would have been available to the insurance company if the insurance cover had continued in place. Subsection (2) ensures the issue of an indemnity by the Minister does not give any additional rights to a person compared to those they would have had if the insurance had continued in force.

An additional feature over the 2001 Act is to provide for cases where indemnities are issued for undertakings which were not in business before the state of difficulty order came into force but which would have normally required this insurance cover were it available in the market. Those undertakings would not have had previous insurance on which to base the Minister's defences. In those cases, the Minister's defences are based on those that would be held normally by that type of undertaking in its policy.

Section 12 requires applications for indemnities to be in the form required by the Minister and to provide relevant information to the Minister. Section 13 provides that the Insurance Acts do not apply, so that the Minister does not have actually to become an insurance company under the Insurance Acts in order to issue indemnities. Application of the Insurance Acts would have meant that various statutory requirements could arise which would not be relevant or appropriate for the circumstances with which this Bill is concerned.

Section 14 allows the Minister to terminate or suspend indemnities at any time. However, an indemnity in respect of an aircraft in flight will not terminate until it lands. If indemnities are terminated, airlines must get their aircraft to land at the nearest airport as soon as possible unless they get specific permission from the Minister to fly to another airport. This is another key element in limiting the Exchequer's exposure.

Section 15 allows the Minister to re-insure all or part of the liabilities associated with the indemnities, if such re-insurance cover were to become available. Section 16 provides the power for the Minister to make payments in respect of claims under the indemnities. Some minor textual changes have been made to the 2001 Act to clarify how claims are to be presented to the Minister.

Section 17 provides for the Minister's expenses for the administration of this legislation to be met from the Exchequer. Section 18 provides for the payment to the Exchequer of moneys received under the Bill. Finally, section 19 provides for the Short Title of the Act. I commend the Bill to the House.

Ms O. Mitchell: I recognise the urgency of this legislation and appreciate the Minister and those who support the Bill, which received unanimous support in the Seanad, do so with the best motivation and in the belief it is essential the State should take action in the manner proposed. I also appreciate the briefing I received from the Minister's Department. I have examined the record of the debate on the Bill in the other House and acknowledge the arguments that trade, tourism and aviation in general depend on the State providing the indemnity for aircraft hulls from 1 January and later for airports and so on, when and if they are damaged by a dirty bomb.

Those arguments are persuasive and may be correct. However, we cannot know that for certain because all we have at this stage is unsubstantiated opinion. The Bill is being rushed through in the last days of the session with only an hour and a half set aside for a debate. I am loath to support legislation with such important ramifications on the basis of opinion.

On 1 July, a private Irish carrier's hull insurance for dirty bomb damage will be withdrawn. This seems to be the nub of the matter. I have spoken to a number of people involved in aviation and it seems quite common to have exclusion clauses in insurance contracts. For example, radioactivity damage as a result of a nuclear explosion or similar is already excluded. This exclusion has not prevented aircraft from flying and the consequent benefits for thriving business and tourism interests.

The Minister states that insurance for dirty bomb damage is an EU requirement. This seems extraordinary because the insurance industry has decided it is an uninsurable risk, in other words, there is no premium that could persuade it to provide insurance against this type of risk. However, the Government, with no proper debate or scrutiny in the House and without an opportunity for real research, has decided the taxpayer must provide for the €9 billion indemnity risk which the insurance companies are not willing to carry.

Most taxpayers have no idea what is going on here this morning but if they did, they would like to believe it would give us some pause for thought. I appreciate the efforts of the Minister and his officials who have tried, in the restricted timeframe, to brief Members on the import of this legislation. However, questions remain unanswered. Given the magnitude of the exposure for the taxpayer, no questions must be left unanswered and there can be no ambiguity.

Council Regulations Nos. 2407/1992 and 785/2004 require carriers to have insurance. However, Article 55 of Regulation No. 785 states that "in exceptional cases of insurance market failure", which is the case in the current situation, "the Commission may determine, in accordance with procedure of Article 9, the appropriate measures of obligation of an air carrier to provide an insurance certificate". I do not accept the EU can require that an uninsurable risk be insured. If it can do so, the onus in on the Commission to determine the appropriate measures. It has clearly not done so in this case.

Why must we rush in such unseemly haste to provide indemnity? The case in question relates to a private carrier's hull insurance. Why is it essential that the State must provide this type of insurance to a private carrier? It is not the case that lives are at risk. Are other EU member states rushing forward with similar gratuitous indemnity provisions? In the limited time available, I have looked at the websites of other states' transport departments. There is no sign, for example, of Britain providing indemnity insurance. The Minister mentioned Spain's Iberia Airlines has already been affected by this and perhaps such protection was afforded in that case. There is little point in providing dirty bomb cover for an Irish aeroplane over Frankfurt if we do not receive reciprocal cover for a German aeroplane over Mullingar or Tallaght. In short, we are rushing to provide something which is not necessary. At least, I cannot be certain it is necessary or required by the EU. Even if it is necessary, is it affordable or reasonable to require the taxpayer to do it?

As may be read in the small print when one or one's luggage takes a flight, airlines are capable of altering their contracts to exclude cover for certain risks. They already exclude radioactive damage. Of course, should a calamitous event occur, the State would step in. If an aircraft was damaged by a bomb and people were injured or property or the airport damaged, the State would give every possible relief to those affected. That is a different matter to providing an insurance guarantee which is compensatory rather than consisting of the relief which would be given by any human being or the State to its citizens.

The cover is limited to €9 billion for any claim which, in itself, represents an enormous sum. We may pay €9 billion but, seven or eight months later, might be exposed to a further €9 billion when another dirty bomb causes damage. It is conceivable, though I hope it will never happen, that the taxpayer would have to stump up €9 billion repeatedly. I have to ask whether it is wise that we are exposed to these sums of money. Is compensation and airline protection the best way to use taxpayers' money in what would be catastrophic circumstances in terms of insurance and security? It would make sense in one event but would not if such events recurred. Is it the kind of action which is reasonable for the State to take? I am unsure whether it is and I am not even sure the possibility of recurrence has been considered.

My final objection arises from the absence of a fund. The Bill envisages that premia similar to those of commercial insurance companies would be charged by the Government. That is perfectly reasonable, even if some companies do not think them worth paying. If the scheme was to be established, it makes sense that they should pay for it.

[Ms O. Mitchell.]

I realise it would be years before the fund would collect a sum approximating to €9 billion. Bizarrely, however, no provision is made in the Bill for any fund. Charges are simply to be swallowed by the Exchequer. My reading of it is that the money is to be used as the Minister for Finance sees fit. That is a flaw in the Bill. The Minister may not foresee the legislation remaining on the Statute Book forever but that Europe will take over the liability, as it should. That may be why a fund will not be established. I do not know that. It could be a result of the fact that, on the basis of a perceived rather than a real deadline, it is being rushed through without giving sufficient thought to the matter.

I do not want to be difficult on this issue because I am aware much effort has gone into it and a perceived need exists. The public does not have the slightest idea of what we are doing this morning and, I am sure, will not thank me for my comments on the matter, which may interfere with the legislative programme and cause inconvenience. However, the longer I considered this, the less choice I felt I had. I have to oppose it, at least to create time for its consideration. It represents, by any standard, a significant exposure to the State and deserves longer than an hour and a half of ill-informed scrutiny by this House. It is possible that I am being extremely cautious but we have a history of these matters. My memory is of rushed and largely misunderstand export credit insurance legislation. When that was rushed through, everybody considered it a great and essential idea. It came back to haunt us. That affair looms large and gives me pause for thought. For that reason, I want it noted that we made some attempt to give it the scrutiny required of the Opposition and by the House in general.

Ms Shortall: I do not intend to delay the House regarding this Bill. I will not use my allotted time on Second Stage. I accept the necessity of the Bill. The Labour Party supported the original Bill in 2001 and sees the current legislation as an extension of that. However, I am concerned we were not given adequate notice of this Bill. The Minister and his officials would have known for some time of the need for this legislation and I wonder why it was sprung on us at the last moment.

Mr. Cullen: We received word from Brussels on 5 June. That is when the matter became clear. I referred to that in my speech so as to provide a timeline.

Ms Shortall: That may have been when the decision was made in Brussels but it was known in advance for some time that new legislation would be required for this area, given that the earlier legislation had lapsed. I do not know why this rush exists at the European and domestic levels.

I would like information on the operation of the previous provisions in terms of whether airlines have complied with their requirements and premia are paid up to date. The Minister, when he sums up, might provide the House with this information. What proceeds have resulted from these premia? Have all airlines paid up to date and if not, what penalties are incurred? I am not satisfied that adequate safeguards are provided in this Bill to ensure airlines which do not pay their premia are sufficiently sanctioned. I would appreciate if the Minister provided information on that.

I am also concerned that the small number of amendments I tabled have been ruled out of order on the grounds they would give rise to a potential charge on the Exchequer. I appeal to the Ceann Comhairle not to be so strict. The Opposition must have some role in this House. Amendments we propose to legislation can be said to result in a charge, even if only an administrative one. It is unduly strict to rule out of order on that ground the amendments I have proposed to this Bill. It is unreasonable and I ask that the decision be reconsidered. No charge of substance is involved in any of these. The intention of the amendments was to improve the Bill. They are minor technical amendments. I hope to have an opportunity to speak to them.

I would like the Minister to indicate that this arrangement will be revisited in the future. This should have formed part of the Bill. Some may argue for a sunset clause, as was included in the previous one. Other than providing an opportunity to examine this and learn the operation of the scheme, there is undoubtedly a lack of choice in this matter. It has to be provided. While theoretical in many ways, potential exposure exists. There should be an opportunity to revisit the matter in, possibly, five years so as to see the scheme's operation. I would like to see that in the Bill.

I do not intend to delay the House further and will support the Bill.

Ms C. Murphy: Most people considering this Bill will think of major airlines and airports such as Dublin, Cork or Shannon. Those airports must be up to date in the type of security provided there to minimise risk. I know advances have been made in the type of machinery used and monitoring, and that will be important. I note the Bill extends to facilities that do not have the capacity to do that, such as smaller aerodromes. Three or four of those listed are in remote locations but one is not. Weston Aerodrome is situated between Lucan and Leixlip and has a sizeable number of movements, up to the levels of Dublin Airport, so it is not an inconsiderable aerodrome.

I have serious concerns about the way Weston Aerodrome operates, the profile of the owner and its non-compliance with just about every rule and regulation in the book. It is located in an area where 80,000 people live. Major international

companies sought — it was granted — to divert the way planes flew after the attack on 11 September 2001, and I understand why. Weston Aerodrome is beside the State laboratories where certain materials are kept — I will say no more.

This aerodrome is part of a marketing exercise by a large number of people for the Ryder Cup, which is a major event, so it is not an inconsiderable location. It is licensed for a runway of less than 800 metres on code one. I supplied video evidence to the Irish Aviation Authority showing that it uses an area beyond that designed as a stopway-clearway. It has laid tarmacadam on a total of 14,000 metres and uses or has used areas for which it does not have a licence. It does not have planning permission for buildings on the site. The proprietor has built a hotel and conference centre and ripped up archaeological sites to put in a golf course. He has absolutely no regard for the planning laws. It is advertised as Dublin's second airport with 24-hour cargo accommodation even though only daylight flying is allowed. I am drawing a picture of who we might indemnify. Over the years I have been in and out of, and on the phone to, the Irish Aviation Authority offices. The planning process is completely subverted in Kildare and south Dublin. Warning notices have been issued to the aerodrome with regard to the height of planes.

12 o'clock

Three Government Departments, Transport, the Environment, Heritage and Local Government and Defence, have a regulatory role in this. The Department of Defence has a problem with what Weston Aerodrome does, and is on record as such. It would be unconscionable for this type of facility to be indemnified when it is clearly non-compliant. I hope the provision in section 5 is used to crack down on this as I have no confidence in the Irish Aviation Authority to do so. If the practice at Weston Aerodrome is replicated in any other airport or aerodrome I would have serious concerns about the level of control we can have potentially on this type of facility. Either a blind eye is being turned or there is no intention to make it comply with the licence it has been given. I cannot see the point of having a licence if months go by before the authorities get back to someone who makes a serious complaint that includes giving video evidence to the Irish Aviation Authority, which was gathered by members of the public who sat in a ditch in the freezing weather. It is the role of the Irish Aviation Authority to gather such evidence.

I understand why we need to indemnify. I hope that in a year's time we can charge for that indemnity, as the Bill proposes, but the Minister must take serious note of the rules of compliance and ensure they are fully met. If the laws are broken, the taxpayer should not be asked to indemnify that type of behaviour in a further example of the State not intervening. The State must intervene and use every power available to stop this type of behaviour. It would be one thing if this aerodrome was used for the purpose for which it is licensed, but it is used for much more than is covered by the licence.

Mr. Boyle: The House was supportive of the original Air Navigation and Transport (Indemnities) Act and how it applied to civil aircraft, but the issues involved here are less to do with people and more to do with commerce. While we obviously have an interest in protecting commerce and protecting exports and imports, more information is required on who benefits from such legislation and how. In his speech, the Minister discussed a company whose insurance cover will not be in place from 1 July. The Bill is being treated in an urgent fashion to counteract that threat. As a Member of this House, I do not know the name of that company, the business in which it is involved, nor the extent to which it is involved in exporting materials.

Mr. Cullen: It is the largest Irish cargo exporting company. I will put the name on the record.

Mr. Boyle: That in itself is useful as we must be aware to what extent the economic threat a lack of indemnity may have in terms of failing to put legislation such as this in place. In general we must be ultra-cautious about the use of indemnities. We need look no further than the difficulties with the export credit scheme for beef to Iran as an example in our recent politics. An individual and a company tended to benefit most from that particular indemnity.

I also have concerns that outside of protecting the commercial interests of the Irish economy, the indemnity is extended, as Deputy Murphy stated, to aerodromes operating not for the transport of goods or only partially for the transport of goods, but more as locations for private and corporate aircraft. It is proposed that the indemnity be extended to such aircraft. In a sense it almost represents a subsidy to a privileged use of transport in this country. I do not see the same principle applied to cases where insurance does not apply to private car transport or the granting of such indemnity or cover to people who use public transport. The Minister must be clear as to why this cover exists in this circumstance when it would not be offered to other transport users.

Mr. Cullen: To be helpful, it is not our decision. We do not have a choice. It was decided within the European Commission as a European regulation so we must do it.

Mr. Boyle: Given that we still do not have a situation whereby Council meetings are fully open to the public in terms of the nature of the conversation that takes place, what arguments were made and who made them, I will take the Minister at his word on that. It is still a strange and bad principle because the effect of this indemnity is almost a further subsidy for a privi-

[Mr. Boyle.]

leged type of transport. We should not encourage that principle.

The only major point of contention touched on by previous speakers in the debate is to what extent this Bill should mirror the previous Bill in terms of having a sunset clause and passing out over a given time period. In his speech the Minister made the argument that it is not necessary because the Bill allows for ministerial orders that would have a timeframe. I put it to the Minister that that might need to be reviewed. Our experience of ministerial orders is that they are placed in the Library of the Dáil and unless the Opposition chooses to use its Private Members' time to challenge whether a ministerial order should be continued we rarely have an opportunity of approving or disapproving that ministerial order.

It is possible, perhaps by way of a Committee Stage amendment, to oblige the Minister for Transport of the day to put the ministerial order before the House for ratification. It is important that where a threat to the State exists in terms of a possible large payout that we do not have to go through the usual machinations of finding out if a ministerial order exists, whether it deserves to be challenged and if it can be challenged. The whole House should be involved. For that reason, more thought needs to be given to that aspect of the Bill.

The general principle of the Bill is acceptable and it will not be opposed by my party but we should be wary of getting into a situation where airline use in all circumstances must be protected as if it were some type of Holy Grail. In the same way that private cars might be used in an overextended way and people should be encouraged to use public transport or walk, the use of private and corporate aircraft is regarded at times as a status symbol that has very little to do with getting from A to B on time. If problems arise because of the rising price of oil and insurance difficulties for the people who use aircraft as a personal private plaything, I would not be upset about that. The Bill is about more important aspects, however, including the commercial threat to the Irish economy, and as the Minister said it is correct that it must meet the deadline imposed on the individual company. On those grounds, the Green Party will not oppose this legislation.

Mr. Crowe: On first reading there appears to be nothing wrong with this Bill. In fact, the Minister's officials are to be commended. They identified a problem, acted on it by formulating a strategy and legislation was prepared. The Government took up the baton and the Bill before us is the result. If other aspects of air transport were executed as efficiently we would have a second terminal at Dublin Airport, with the building of a third having commenced. We would have a long-term strategy, perhaps even an all-Ireland one, for the development of other airports and the long-term future of Aer Lingus would be secure. We can but dream that this is a new beginning for Government.

On reading the Bill a second time a number of crucial questions arise. There is an important principle in the Bill, namely, that when the chips are down and the private sector is running for the hills, the Government comes to the rescue. It is interesting that the Government's "sell it quickly to anyone" privatisation agenda is missing from this Bill. In bringing forward this Bill it is conceding an important point, that is, that the Government has a role to play in the economy and that it is the backstop when the private sector bolts.

This Bill should dictate terms to the insurance business and companies which receive the indemnities. For example, the Bill allows for charges to be levied for the proposed indemnities. That is essential. If Ryanair can charge the weakest in society for a wheelchair, we can charge it and other airlines for insurance cover.

Section 5 outlines the reasons for not issuing an indemnity. Why not add a clause allowing the Minister to refuse an indemnity to carriers and other companies which are either in dispute with their workers or refuse to recognise their unions or participate fully in the State's industrial relations machinery? I ask the Minister to examine that possibility.

In terms of setting down markers, why is the insurance industry being allowed to walk away from this risk? Is this the beginning of cherry-picking in that they decide the risks they will cover, knowing that somebody else will pick up the slack and leaving the vast profits those companies make untouched?

On the question of the source of the risks, I note from the Bill that the cover is extended to all carriers, suppliers and airports in the Twenty-six Counties. Has consideration been given to the increased exposure of Shannon Airport in terms of the type of war and terrorism cover envisaged in this Bill? That is a facility with daily flights of US military personnel and detainees and it appears to be the most exposed in terms of potential risk.

What contribution of the indemnity charges will be levied on Shannon Airport because of those flights? What insurance cover is the US Government providing for the flights in and out of Shannon in terms of the potential risk to the local population and the airport staff from what the Bill describes as dirty bombs or is that paid for by the Irish Aviation Authority? Is it another case of the Irish Government paying someone else's Bills?

Minister for Transport (Mr. Cullen): I thank all the Deputies for their contributions on Second Stage. Despite the fairly short notice of the Bill, it is clear Members took time to study its impact and raised various points in that regard.

Deputy Olivia Mitchell is correct. I do not disagree with her, and other Deputies made the same point. I would rather not be here — I am sure everyone here is of the same view — dealing

with this Bill but the problem arose in June out of the *ad hoc* group in Brussels and we were informed immediately. My officials briefed me on it immediately and we decided, as did other Governments in the same position, that we had to deal with it to protect Irish aviation, our airports and the other ancillary companies — baggage handling etc. — in airports.

To reply to Deputy Mitchell's point, the fact is that insurance will not be available. We are aware that Iberian Airlines has experienced serious difficulties in trying to get cover as a result of this decision and the Government had to step in. The company that a number of Deputies referred to — I have no difficulty putting it on the record — is Air Contractors. It is the largest Irish cargo airline with 200 employees and it will be affected from 1 July. That is partly the reason for this legislation.

From recollection, our main airlines — Aer Lingus, Ryanair etc. — renew later in the year, from about September or October, and the Dáil may not be in session to deal with some of them. Our main carriers would have been in difficulty also in that timeframe and it was decided to move quickly on the issue.

There are no subsidies involved. As I said earlier, we will charge the full commercial rate for the insurance, which is only right. On this occasion we will want payment before the cover will issue. I understand that was not the case under the previous Bill but on this occasion we will ensure we get full payment up-front for the cover.

In reply to Deputy Shortall, I gave the figures to the House earlier. She may have been attending another meeting at the time. On the last occasion the premiums amounted to €5.4 million. There is a further €2.6 million owed by Ryanair, which it disputes, and I understand that case is before the High Court. Deputy Mitchell smiled when I said I made the changes to ensure we do not end up in that situation.

In terms of the beneficiaries, they will be largely our own people who will be affected if a catastrophe occurs. We are doing this for families etc., mainly Irish families if it involved our own airlines.

I accept this is not a satisfactory situation. All governments would probably take that view. We will seek to ensure that a mutual scheme is set up, that will take governments out of the picture at a European level, to cover all European airlines. That is being examined by the European Commission and the sooner we can move to that position, the better from everybody's perspective.

In reply to Deputy Mitchell's question about a possible claim for €9 billion, if such a claim was made the Government would have to decide at that point what should be done. The Bill does not provide for such a possibility and it would have to be considered if such a catastrophe occurred. It would be a matter for all Governments as to how we would do that. If we are to protect Irish aviation from a commercial point of view, our passengers and our tourism industry, we must put this measure in place. Deputy Shortall made the point that the possibility of such a catastrophe was theoretical but the European Commission has decided we must provide these covers and extend them to other airports licensed by the Irish Aviation Authority. It is not just about the large airports but all airports and all airlines. The Commission also decided corporate and private aeroplanes must have this cover irrespective of the Government stepping in. Such cover was not mandatory previously, although a number of corporate and private airlines took it out. If we were not to do this, we would effectively ground all private and corporate airlines doing business in this country, which would create an untenable situation from an Irish perspective.

Mr. Boyle: In that case, they might stay and pay their taxes.

Mr. Cullen: Deputy Boyle might accept that much corporate activity is extremely legitimate in terms of foreign direct investment into this country. We rightly must take account of the situation.

Nuclear, marine and property insurance matters are excluded. However, war on terrorism cover has been provided for aviation activities and is a requirement of the new EU regulation, Regulation 785/2004. The Commission has not yet considered whether a change to the regulation is appropriate and we await its deliberations. The Bill is an enabling provision to allow the provision of cover. As an example, the United Kingdom has had legislation in this area for many years. I have given the name of the cargo airline company referred to by Deputies. Orders must be laid before the Oireachtas and either House may vote to annul them within 21 days, which is a normal arrangement.

On the points made with regard to Weston Aerodrome, the Bill does not deal with such matters. The Deputy raised serious matters with regard to airport security, which I am sure will be picked up during the debate. All appropriate laws which are already in place are being acted upon at whatever airport where this is necessary. We obviously want to ensure appropriate security arrangements are in place at every airport. As the Deputy rightly stated, the regulation and safety of flying at Weston aerodrome is a matter for the Irish Aviation Authority. I would be somewhat taken aback if the accusations made by the Deputy during the debate stood up. I hope they do not and would want to hear from the IAA that this is not the case. Section 5 allows the Minister to refuse an indemnity where licenses are not in place as required.

In reply to Deputy Shortall, the airlines complied with the requirements and all payments have been made, except in the case of Ryanair, which is the subject of a court case.

That is the overall position. We must move quickly in this regard. However, each case will

[Mr. Cullen.]

be considered very carefully. Companies will not come in and get cover without the fine detail being examined. The State will not necessarily take the entire insurance package. Cover will be specific and we will ensure that the State's exposure is minimal so as not to take cover from the commercial sector. The commercial sector will continue to cover a broad range of issues. We will be very precise on interpretations. We learned from the previous Bill in drawing up this Bill, with the result that some areas have been tightened up.

I accept we all have concerns about the need to enact the Bill in such a short timeframe. I appreciate the Dáil and Seanad's facilitation of the Bill because there is no choice if we are to keep Irish aviation flying. The Bill extends further than the previous Bill into areas concerning airports, baggage handling and other areas which would not have cover if the Bill were not passed. A great deal is at stake but, please God, we will not have to face the day where such a catastrophe would be visited upon our people in our aviation facilities or on our airlines.

Question put and agreed to.

Air Navigation and Transport (Indemnities) Bill 2005: Committee and Remaining Stages.

SECTION 1.

Ms O. Mitchell: I move amendment No.1:

In page 4, subsection (1), line 16, after "Act" to insert the following:

"and being one which is required to be covered by the registering state pursuant to EU Regulation 2407/92 and EU Regulation 785/2004".

My difficulty with the Bill is that I do not accept Irish aviation would be grounded if the Bill were not passed, which is a fairly fundamental difficulty. On Second Stage, I referred to the fact that exclusion clauses exist at present, for example, for radioactivity damage. I do not understand why that situation cannot continue. It seems this is being done because the EU requires us to do it. It seems perverse of the EU to bring in regulations requiring insurance that is not available and putting an onus on states to provide that kind of cover.

Having said that, I am not convinced that is what the EU is doing because, with regard to the caveat I referred to earlier, it requires in circumstances where commercial cover is not available that it will determine the circumstances in which insurance is required by the state, or where indemnity must be given by the State. As far I know, the EU has not determined the circumstances. The onus is on it. The purpose of the amendment is to make it specific that cover would only be given if the EU requires it, which I do not accept it does. It is a belt and braces approach.

Mr. Cullen: Regulation 2407/92 concerns requirements for the granting and maintenance of operating licences by member states in regard to air carriers established in the Community. It does not concern other aviation activities, such as the operation of airports or the provision of services at airports. Regulation 785/2004 establishes minimum third party and passenger insurance requirements for air carriers and aircraft operators.

Both regulations together do not encompass all the potential aviation activities that may need cover for Irish civil aviation to continue functioning, such as the operation of airports, service provision at airports and the provision of aircraft hull insurance for air carriers or aircraft operators. This amendment would mean that airports, for example, could not be indemnified should the need arise, which is now a major issue. It would not be appropriate to place this kind of limit on the type of activity that can be covered by an indemnity. It will be a matter for the Government, in the first instance, and the Minister for Transport, with the agreement of the Minister for Finance, to determine what undertakings and activities should be covered by indemnities to ensure Irish aviation continues to function. On that basis, while I understand the purpose of the amendment, I cannot accept it.

Amendment put and declared lost.

Section 1 agreed to.

Sections 2 and 3 agreed to.

An Leas-Cheann Comhairle: Amendment No. 2 is out of order.

Amendment No. 2 not moved.

Section 4 agreed to.

An Leas-Cheann Comhairle: Amendment No. 3 is out of order.

Amendment No. 3 not moved.

Sections 5 and 6 agreed to.

An Leas-Cheann Comhairle: Amendment No. 4 is out of order.

Amendment No. 4 not moved.

Sections 7 to 13, inclusive, agreed to.

SECTION 14.

Ms Shortall: I move amendment No. 5:

In page 10, subsection (5), line 40, after "effective" to insert the following:

"and likely to come to the attention of the recipient of the notice within a reasonable time".

This section allows the Minister to serve notice of termination of indemnity by e-mail. All of us know e-mails go astray and people say they did not receive them. It seems to be an informal method of notifying people of termination. The implications of termination are momentous for the operator concerned. There should be a more formal mechanism for doing that.

The intention of my amendment is to ensure that the notice is not just sent, but that there is some recognition of the need for the person to have received it. I propose the insertion of my amendment and it is a reasonable proposal. Sending an e-mail telling someone his or her insurance cover is terminated seems a casual way of doing it and there should be a mechanism to ensure it has come to the attention of the recipient.

Mr. Cullen: I did not realise all these amendments were ruled out of order. I was ready to deal with them. If I am permitted to raise the point of the amendment to section 7, the Deputy is correct. One may want to reduce or increase. It is not urgent now but it may well be in a year. This matter will have to be examined then. The Deputy was correct and we will probably take account of this later. The Deputy twigged something that covered one side of the coin but on the other hand we may want to reduce as much as raise the amount to account for inflation. It is not essential at the moment but in a year or two when we re-examine this Bill that issue will be raised again.

Ms Shortall: Is the Minister stating that the Leas-Cheann Comhairle's ruling may result in a charge on the Exchequer in so far as he will have to allow us more time here?

Mr. Cullen: I do not want to open up a debate on the matter. I was simply acknowledging the Deputy's point, which is not a bad one.

Ms Shortall: I ask the Leas-Cheann Comhairle to note this point.

Mr. Cullen: The Deputy's amendment No. 5 would mean there could be uncertainty about when an indemnity would terminate. If a condition of terminating an indemnity were that it must be transmitted in a manner likely to come to the attention of the intended recipient there could be a legal challenge on the meaning of the section. The current text of section 14 is absolutely clear that the latest a termination will take effect is one hour after the Minister issues the termination, regardless of how or when it is received by the air navigation undertaking. It is a matter for every undertaking to ensure it is in a position to receive and act upon an act of termination at very short notice.

The possible circumstances that could surround a termination of an indemnity could involve an incident with a dirty bomb or an electromagnetic pulse. If a decision were taken to suspend or terminate an indemnity there must be absolute certainty on when the termination takes effect. This amendment would introduce a significant element of uncertainty and therefore I do not propose to accept it.

The Deputy raised the point and we sought legal advice on the matter. The intent of the Government is clear. It is to protect the taxpayer and put the onus on the other side rather than on us, which could open up the possibility of legal challenges. We want certainty from the moment the termination isissued. Within one hour it has legal effect and that is the basis of it.

Amendment, by leave, withdrawn.

An Leas-Cheann Comhairle: Amendments Nos. 6 and 7 are related and may be discussed together.

Ms Shortall: I move amendment No. 6:

In page 10, subsection (6), lines 43 and 44, to delete paragraph (*a*).

I propose these lines be deleted because under section 14(6) notice of termination could take effect before it is received. This is unsatisfactory. We are trying to ensure that notice of termination is received first, before termination occurs.

Mr. Cullen: This is the same territory as the last amendment. The impact of this amendment would be to eliminate the one hour notice of termination or suspension. I will not read out the response I gave to the Deputy's last amendment.

As part of the conditions we will agree with the undertakings the method by which notice of termination will be made so that termination can take place immediately. We will agree with them a precise method of how we do that. There will be no uncertainty on what we will do with each undertaking to make sure it is the best arrangement from its perspective as well as from the State's perspective. It will be helpful to do that. For the same reasons as the previous amendment I will not accept this amendment.

Amendment, by leave, withdrawn.

Amendment No. 7 not moved.

Section 14 agreed to.

Section 15 agreed to.

SECTION 16.

Ms Shortall: I move amendment No. 8:

In page 11, subsection (6), line 40, after "indemnity" to insert "in respect of a particular incident".

I suggest this to ensure that section 16(6) should not be a backdoor mechanism to repeal this Act by stealth. The intention is that the Minister could lock down liability for a particular incident but not for air navigation generally. This clarifies that this action will be taken in respect of one particular incident.

Mr. Cullen: The purpose of an order under section 16(6) is to set down a date before which all claims on foot of any indemnity must be received so that the State can be certain that all claims have been received and that compensation can be apportioned appropriately. The purpose of this Bill is to allow civil aviation to continue to function in the face of a withdrawal of certain insurance by the insurance market. However, if there is an incident involving a dirty bomb or an electromagnetic pulse it cannot be said what would happen after. We do not know. A decision on whether indemnities would be withdrawn would be taken after the incident. An order made under this subsection is intended to wrap up any claims against the State on foot of indemnities. While it is not envisaged that more than one order would be made, my advice, from the Office of the Attorney General, is that there is nothing in the current text preventing further orders from being made in the event of a subsequent incident leading to claims. On that basis, and on foot of the advice of the Attorney General, I do not propose to accept this amendment.

Ms Shortall: Is the Minister stating that the intention is to have the flexibility to end all cover?

Mr. Cullen: Yes. To some degree, we do not know what might happen in an incident and the scale of it. We are trying to be as cautious as possible from the taxpayers point of view.

Amendment, by leave, withdrawn.

Section 16 agreed to.

Sections 17 and 18 agreed to.

SECTION 19.

Ms Shortall: I move amendment No. 9:

In page 12, after line 13, to insert the following subsection:

"(2) The Air Navigation and Transport Acts 1936 to 2004, the Air Navigation and Transport (International Conventions) Act 2004 and this Act may be cited together as the Air Navigation and Transport Acts 1936 to 2005.".

This is a technical amendment. I thought it was standard practice that there be a collective citation listing all of the air navigation Acts. I suggest it would improve the Bill to do so.

Mr. Cullen: The Deputy is correct in her assertion but there is a specific reason this is not the case here. While it is a common feature of Irish legislation that Acts may be grouped together as a series, it is not a requirement nor does it affect the validity of any part of the Act or Acts in question if they are not grouped together. In this case, the Parliamentary Counsel has advised that it is not necessary to group this Bill with the other Air Navigation Acts. This Bill is a stand-alone one dealing with a particular issue and, consequently, it is not necessary to link it to any of the earlier Air Navigation Acts.

We do not want to give the impression that this Bill will form part of all the other Acts, and will give some permanency and currency of attachment to the Acts. It is a specific, stand-alone measure and I want to keep it separate from the other Acts. That was the advice of the parliamentary counsel and I can understand the reason in this case.

Ms Shortall: I accept that the Bill deals with a distinct aspect of air navigation but I would have thought that, mainly for administrative reasons, there would be a collective citation.

Mr. Cullen: I do not have an issue with that. I am used to dealing with Bills, as we all are, but the parliamentary counsel's advice was specific on this one. The strong advice was to keep it separate and do it this way.

Amendment put and declared lost.

Section 19 agreed to.

NEW SECTION.

Ms O. Mitchell: I move amendment No. 10:

In page 12, after line 13, to insert the following new section:

"20.—(1) This Act shall cease to be in operation at the expiry of 12 months from the date of its coming into operation unless a resolution has been passed by each House of the Oireachtas resolving that the Act shall continue in operation.

(2) The operation of this Act may from time to time be continued in force by the passing of a resolution by each House of Oireachtas while the Act is still in operation.

(3) Where a resolution referred to in subsection (2) is passed pursuant to that subsection the Act shall continue in force for the period specified in such resolution, which shall be a period of not more than 12 months.".

Having heard the Minister's response, I realise that both he and those who prepared the Bill recognise the enormity of what we are getting ourselves into. That is my thinking behind tabling this amendment. The Minister will recognise that this sunset clause was lifted in its entirety from the 2001 Act.

The Minister has included a requirement that a ministerial order would be laid before the Dáil every 12 months, but that does not amount to Dáil scrutiny. The opportunity to scrutinise the material, while being in possession of all the information, is missing from the Bill. I do not feel we have that provision in the legislation.

I have not moved this amendment for the reason it appeared in the 2001 Act when it was anticipated that circumstances would change and that perhaps insurance would become available again. I do not think that will happen and the Minister is right in that respect. I have moved the amendment, however, to force the issue in this debate for a number of reasons, first, to give it the proper scrutiny and, second, to do so in the context of knowing what other countries have done in the meantime.

We do not know if these countries provide the same kind of insurance. In particular, we should know what the European Commission is doing in this regard. If accepted, the amendment would force the Minister to put pressure on the Commission to bring forward its solution to this problem. It seems perverse for the Commission to require the taking out of an indemnity now, which cannot be purchased. It is therefore putting an onus on each State to provide something that could be calamitous. In many cases in the past, such an indemnity system was not even required in the aviation sector — for example, concerning the radioactivity indemnity.

The amendment aims to bring the debate on this matter before the House when we are in possession of all the information, as well as putting pressure on the European Commission to come up with a solution by establishing a fund. After all, this matter has obviously been on the Commission's mind for a while. It has been thrust on us suddenly, although not overnight, and has been in gestation for a number of months. It is up to the European Commission to provide this fund if it feels this kind of cover is essential. I want that pressure to come from us, as I am sure it will come from other EU member states if they are doing the same as ourselves. We are making a major commitment in this regard.

Mr. Cullen: There has been strong resistance from all governments to this issue. The Deputy is correct in the sense that it was flagged for some months, but that is why we were not giving an indication, overtly in any fora, that EU governments might consider this. However, it became clear this month that we had no choice. The effect of the amendment would be to insert a sunset clause in the Bill. Currently, there is no such clause in the Bill. As the Deputy and I accept, since the withdrawal of insurance, there is expected to be a permanent change in insurance conditions. Insurers do not intend to go back to covering dirty bomb and electronic-magnetic pulse risks in future. Therefore, it is not appropriate for the new Act to have a provision for it to lapse automatically, although I accept why the Deputy has moved the amendment.

The consequences of an accidental and unintentional failure to renew the Act could result in the collapse of an airline or the closure of an airport. The Oireachtas will continue to have an appropriate degree of control because section 2(7) includes the usual provision for laying Government orders before the Oireachtas and for either House to be able to pass a resolution to annul the order within 21 days. The fact that the Bill cannot lapse automatically is also balanced by the 12-month maximum timespan for orders and indemnities, which means that indemnities cannot be put in place and then simply left there indefinitely. That is part of what we are all trying to achieve.

The Bill also provides that indemnities can be terminated at any time should that become appropriate. In the broader sense, we do not know at this stage what Europe may come up with or what the legislative base will be. We may well have to come back on foot of whatever Europe-wide agreement is reached. I hope that such an agreement would move the goalposts quickly away from governments to establish a European mutual fund. I have no difficulty in keeping people informed, as they should be. We did not want to have that provision in the Bill in case, for whatever reason, the timeframe lapsed and we ended up without cover. For those reasons I cannot accept the amendment.

Amendment put and declared lost.

Title agreed to.

Bill reported without amendment and received for final consideration.

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

The Dáil divided: Tá, 59; Níl, 15.

Tá

Brady, Johnny.
Brady, Martin.
Browne, John.
Callanan, Joe.
Callely, Ivor.
Carey, Pat.
Carty, John.
Costello, Joe.
Crowe, Seán.
Cullen, Martin.
Curran, John.
Dempsey, Tony.
Dennehy, John.
Ellis, John.
Ferris, Martin.
Fitzpatrick, Dermot.
Fleming, Seán.
Gallagher, Pat The Cope.
Gilmore, Eamon.
Grealish, Noel.
Gregory, Tony.
Hanafin, Mary.
Harkin, Marian.
Keaveney, Cecilia.
Kelleher, Billy.
Kelly, Peter.
Kirk, Seamus.
Kitt, Tom.
Lenihan, Brian.
Lenihan, Conor.
McGuinness, John.
Moloney, John.
Moynihan, Donal.
Moynihan, Michael.
Mulcahy, Michael.
Murphy, Catherine.
Nolan, M. J.
Ó Caoláin, Caoimhghín.
Ó Fearghaíl, Seán.
Ó Snodaigh, Aengus.
O'Connor, Charlie.
O'Dea, Willie
O'Donnell, Liz.
O'Donoghue, John.
O'Keeffe, Ned.
O'Malley, Fiona.
O'Malley, Tim.
Pattison, Seamus.
Penrose, Willie.
Power, Peter.
Sexton, Mae.
Shortall, Róisín.
Smith, Brendan.
Stagg, Emmet.
Treacy, Noel.
Upton, Mary.
Wallace, Dan.
Walsh, Joe.
Wilkinson, Ollie.

Níl

Durkan, Bernard J.
English, Damien.
Enright, Olwyn.
Hogan, Phil.
Kehoe, Paul.
McCormack, Padraic.
McGrath, Paul.
Mitchell, Olivia.
Murphy, Gerard.
Naughten, Denis.
Neville, Dan.
Perry, John.
Stanton, David.
Timmins, Billy.
Twomey, Liam.

Tellers: Tá, Deputies Kitt and Kelleher; Níl, Deputies Kehoe and Stanton.

Question declared carried.

The Dáil adjourned at 1 p.m. until 2.30 p.m. on Tuesday, 28 June 2005.