

DÁIL ÉIREANN

TU AIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Friday, 10 July 2009.

[illegible]

DÁIL ÉIREANN

Dé hAoine, 10 Iúil 2009.
Friday, 10 July 2009.

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

Paidir.
Prayer.

Order of Business.

The Tánaiste: The Order of Business is No. *b11*, motion re: Mandela day, No. *c11*, motion re membership of committees; No. 23, Criminal Justice (Amendment) Bill 2009 — Committee and Remaining Stages (resumed); No. 5, Public Health (Tobacco) (Amendment) Bill 2009 — Order for Second Stage, Second and Remaining Stages; and No. 1*a*, Enforcement of Court Orders (Amendment) Bill 2009 [Seanad] — Second and Remaining Stages.

It is proposed, notwithstanding anything in Standing Orders, that Nos. *b11* and *c11* shall be decided without debate. The proceedings on the Committee and Remaining Stages of No. 23 shall, if not previously concluded, be brought to a conclusion at 1.30 p.m. today by one question which shall be put from the Chair and which shall include only those amendments set down or accepted by the Minister for Justice, Equality and Law Reform.

Second and Remaining Stages of No. 5 shall be taken today and the proceedings on Second Stage shall, if not previously concluded, be brought to a conclusion at 4 p.m. today and the proceedings on the Committee and Remaining Stages shall, if not previously concluded, be brought to a conclusion at 5 p.m. today by one question which shall be put from the Chair and which shall include only those amendments set down or accepted by the Minister for Health and Children.

The proceedings on Second Stage of No. 1*a* shall, if not previously concluded, be brought to a conclusion at 7.30 p.m. tonight and the proceedings on the Committee and Remaining Stages shall, if not previously concluded, be brought to a conclusion at 9 p.m. tonight by one question which shall be put from the Chair and which shall include only those amendments set down or accepted by the Minister for Justice, Equality and Law Reform.

The Dáil on its rising today shall adjourn until 2.30 p.m. on Wednesday, 16 September 2009.

An Ceann Comhairle: There are five proposals to put to the House today. Is the proposal for dealing with Nos. *b11* and *c11* agreed?

Deputy Enda Kenny: I agree with these.

I am glad to see Ambassador Jana from South Africa in the House. No. *b11* is a simple motion for the recognition of Mandela day, which is based on a request from President Zuma of South Africa, and we respect that request. Nelson Mandela was an international icon of persistence, dedication, truth and equality. We fully support No. *b11* and it might have been

[Deputy Enda Kenny.]

preferable to have had an opportunity to have a real debate next week on the contribution to international peace made by Nelson Mandela.

Deputies: Hear, hear.

An Ceann Comhairle: I respect what Deputy Kenny has stated but I must remind Members that if an item is agreed we do not have a discussion on it. This is an exception.

Deputy Joan Burton: As a former secretary of the Irish Anti-Apartheid Movement in Ireland, we need to remember that Mandela moved from being a prisoner of conscience for more than 20 years to being a light to the world. The Labour Party is delighted to celebrate today and we recognise the presence of the South African Ambassador.

Deputies: Hear, hear.

Deputy Michael D. Higgins: Well said.

Deputy Caoimhghín Ó Caoláin: I am happy to make one small amendment to the earlier remarks of Deputy Kenny; former President Mandela “is” an international icon and that is something we have every right to celebrate also.

I welcome the fact that the motion before the House has been signed off by the representative spokespersons of all parties in the Chamber. It is a unanimous proposition deserving of unanimous endorsement consequently.

An Ceann Comhairle: Exceptionally, the Tánaiste might wish to say a few words.

Deputy Dermot Ahern: As an exception.

The Tánaiste: As an exception to the exception.

An Ceann Comhairle: No, as an exception.

The Tánaiste: I reiterate the welcome to the ambassador. I am delighted to see we are d’aon ghuth mar gheall ar seo. We are of one voice in taking the global call, which is to inspire people from every corner of the earth to embrace Nelson Mandela’s values as they seek to improve their lives through service to their communities. They are values to which we would aspire and we are delighted to be in a position to celebrate on that day.

An Ceann Comhairle: Is the proposal for dealing with No. 23 agreed?

Deputy Enda Kenny: The Ceann Comhairle knows it is not agreed. Amendment No. 4 of 43 is being discussed at present and some of the amendments tabled have very serious import. Yesterday, I made the point that the guillotine has been used on 18 Bills out of 21 in the final four weeks of this session and four of those Bills have potential constitutional implications, namely, the Criminal Justice (Amendment) Bill, the Defamation Bill, the Twenty-eighth Amendment of the Constitution (Treaty of Lisbon) Bill and the Criminal Justice (Surveillance) Bill.

This is obviously difficult because people are outraged at what is happening on the streets in some of our towns and cities. At the same time, there is a need for this legislature to be able to debate thoroughly the amendments involved. The House should sit next week to deal with this matter. I oppose the guillotining of the Criminal Justice (Amendment) Bill in the way

proposed by the Government. It is much too serious to be just one of 18 Bills rammed through by guillotine in the final four weeks of the session.

Deputy Pat Rabbitte: As the House knows, the Bill is born out of the “something must be done” school of law-making. We have reached section 7 in the debate and it is unconscionable that the Minister would want to push through the entire legislation by 1.30 p.m. today. It has at least three very controversial dimensions. Even from the point of view of wanting to make secure whatever ultimately comes through the Oireachtas, the Bill needs to be subjected to considerably more scrutiny than is permitted between now and 1.30 p.m. I ask the Minister to agree that it be referred to select committee and that we resume it as soon as the House resumes in September.

Deputy Caoimhghín Ó Caoláin: The Sinn Féin Deputies do not agree to the taking of the Bill at all and, as for the guillotine, it clearly is a further impediment to proper scrutiny and debate in the Chamber. The Bill has huge implications for the rights of all citizens and I emphasise the word “all”. It is critical we realise this for the sake of justice and the rule of law in the State. Fundamental changes in the legal code that have constitutional implications are being provided for in the legislation in a matter of a few hours, with the conclusion of Committee, Report and Final Stages by 1.30 p.m. today. The legislation has the potential to be challenged constitutionally and, sadly, will prove to be a false hope for victims of gangland crime. What we need is to guarantee we have proper policing and investigation and ensure we have sound convictions in order to address these serious challenges in society. We are all of one mind that this needs to be done. What is happening with regard to the Criminal Justice (Amendment) Bill is, sadly, not the answer to all of that.

The Tánaiste: There has been considered debate on the legislation. More than 11 hours have been provided for the consideration of the legislation and it will be given further consideration in the Upper House. Recently, I read through the transcripts covering a situation where we considered the immediacy and necessity of introducing legislation such as this. It would be a dereliction of our duty if, for example, we allowed something happen between now and the return of the House, because a person can be charged only under the legislation that has been enacted at the time. If we want to see the activation of this legislation along with the Criminal Justice (Surveillance) Bill to deal with these issues, it is prudent the House considers and passes it today.

Question put: “That the proposal for dealing with No. 23, Committee and Remaining Stages of the Criminal Justice (Amendment) Bill 2009 be agreed to.”

The Dáil divided: Tá, 76; Níl, 61.

Tá

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Andrews, Chris.
Ardagh, Seán.
Aylward, Bobby.
Behan, Joe.
Blaney, Niall.
Brady, Áine.
Brady, Cyprian.
Brady, Johnny.
Browne, John.

Byrne, Thomas.
Calleary, Dara.
Carey, Pat.
Collins, Niall.
Conlon, Margaret.
Connick, Seán.
Coughlan, Mary.
Cregan, John.
Cuffe, Ciarán.
Cullen, Martin.
Curran, John.
Dempsey, Noel.
Devins, Jimmy.
Dooley, Timmy.

Tá—*continued*

Fahey, Frank.
 Finneran, Michael.
 Fitzpatrick, Michael.
 Fleming, Seán.
 Gogarty, Paul.
 Gormley, John.
 Grealish, Noel.
 Hanafin, Mary.
 Haughey, Seán.
 Hctor, Máire.
 Kelleher, Billy.
 Kelly, Peter.
 Kenneally, Brendan.
 Kennedy, Michael.
 Killeen, Tony.
 Kirk, Seamus.
 Kitt, Michael P..
 Kitt, Tom.
 Lenihan, Brian.
 Lenihan, Conor.
 Lowry, Michael.
 McEllistram, Thomas.
 McGrath, Finian.
 McGrath, Mattie.

McGrath, Michael.
 McGuinness, John.
 Moloney, John.
 Mulcahy, Michael.
 Nolan, M.J..
 Ó Cuív, Éamon.
 Ó Fearghaíl, Seán.
 O'Connor, Charlie.
 O'Dea, Willie.
 O'Flynn, Noel.
 O'Hanlon, Rory.
 O'Keeffe, Batt.
 O'Keeffe, Edward.
 O'Rourke, Mary.
 O'Sullivan, Christy.
 Power, Seán.
 Ryan, Eamon.
 Sargent, Trevor.
 Scanlon, Eamon.
 Smith, Brendan.
 Treacy, Noel.
 Wallace, Mary.
 White, Mary Alexandra.
 Woods, Michael.

Níl

Allen, Bernard.
 Bannon, James.
 Barrett, Seán.
 Breen, Pat.
 Broughan, Thomas P..
 Bruton, Richard.
 Burke, Ulick.
 Burton, Joan.
 Carey, Joe.
 Clune, Deirdre.
 Connaughton, Paul.
 Crawford, Seymour.
 Creed, Michael.
 Deenihan, Jimmy.
 Doyle, Andrew.
 Durkan, Bernard J..
 English, Damien.
 Enright, Olwyn.
 Feighan, Frank.
 Flanagan, Charles.
 Flanagan, Terence.
 Gilmore, Eamon.
 Hayes, Brian.
 Higgins, Michael D..
 Hogan, Phil.
 Howlin, Brendan.
 Kehoe, Paul.
 Kenny, Enda.
 Lee, George.
 Lynch, Ciarán.
 Lynch, Kathleen.

McCormack, Pádraic.
 McEntee, Shane.
 McHugh, Joe.
 McManus, Liz.
 Morgan, Arthur.
 Naughten, Denis.
 Neville, Dan.
 Ó Caoláin, Caoimhghín.
 Ó Snodaigh, Aengus.
 O'Donnell, Kieran.
 O'Dowd, Fergus.
 O'Mahony, John.
 O'Shea, Brian.
 O'Sullivan, Jan.
 O'Sullivan, Maureen.
 Penrose, Willie.
 Perry, John.
 Quinn, Ruairí.
 Rabbitte, Pat.
 Reilly, James.
 Sheahan, Tom.
 Sheehan, P.J..
 Sherlock, Seán.
 Shortall, Róisín.
 Stagg, Emmet.
 Stanton, David.
 Timmins, Billy.
 Tuffy, Joanna.
 Upton, Mary.
 Wall, Jack.

Tellers: Tá, Deputies Pat Carey and John Cregan; Níl, Deputies Paul Kehoe and Emmet Stagg

Question declared carried.

An Ceann Comhairle: Is the proposal for dealing with No. 5, Order for Second and Remaining Stages of the Public Health (Tobacco) (Amendment) Bill 2009 agreed?

Deputy Jan O'Sullivan: Are we on No. 5?

An Ceann Comhairle: I am on No. 5 but I have not read it yet.

Deputy Jan O'Sullivan: I am sorry.

(Interruptions).

Deputy Jan O'Sullivan: It is better to be too early than too late.

An Ceann Comhairle: It is female telepathy. Is the proposal for dealing with No. 5, Order for Second and Remaining Stages of the Public Health (Tobacco) (Amendment) Bill 2009 agreed?

Deputy Enda Kenny: Deputy James Reilly has informed me that the consequences of this Bill include the fact that while retailers may be in breach of the law in respect of the display of cigarettes, there is a writing-down of the penalty in a number of areas. He does not object to that. However, can I have confirmation that this does not include the sale of cigarettes to minors? I am informed that inherent in this Bill is the provision that if cigarettes are sold to minors the normal flexibility of the law should not apply.

11 o'clock

When the then Minister for Health and Children, Deputy Micheál Martin, introduced the smoking ban it was introduced on the basis of being a health issue and got support from all over the country. One cannot and should not pass a law that allows for a deliberate easing of the law where minors are concerned.

Deputy Jan O'Sullivan: I apologise for being too early, but in this House it is better to be too early than too late.

An Ceann Comhairle: That has been my experience as well.

Deputy Jan O'Sullivan: What Deputy Kenny said indicates that we should not take all Stages of this Bill today. I understand there has been consultation with shopkeepers on the legislation, but not with organisations such as the Irish Cancer Society and the Irish Heart Foundation, who are concerned about its public health elements. We need to have time between Second Stage and Remaining Stages to have such consultation and tease out the kind of issues Deputy Kenny raised. The legislation we are being asked to amend has only recently come into force and we are already producing a Bill to amend it. The guillotine is not acceptable.

Deputy Caoimhghín Ó Caoláin: I wish to oppose the guillotine. We have received——

(Interruptions).

An Ceann Comhairle: We must have order while Deputy Ó Caoláin is speaking.

Deputy Caoimhghín Ó Caoláin: ——written concerns from a number of organisations, including NGOs working in the area of cancer and ASH, and all these concerns have been received only in past 24 hours. It is very important that adequate time is given to consider all the elements of the Bill and the guillotine will, quite simply, curtail that opportunity. I ask that it be lifted and we continue our work throughout the evening if necessary.

The Tánaiste: Reading through the main provisions of the Bill, it refers specifically to the issue of retailers. Sections 3 and 5, to which the Leader of the Opposition has referred, contain the judicial discretion aspect. The provision in the Bill is for a 90 day removal from the retail register of advertising.

Deputy Emmet Stagg: We should have extra time to debate this rather than doing it on the hoof.

Deputy Martin Cullen: We will go out and have a fag.

(Interruptions).

Deputy Emmet Stagg: We do not have the time for that.

Deputy Bernard J. Durkan: Famous last words.

The Tánaiste: There will be three and a half hours of discussion on this matter.

An Ceann Comhairle: On or off the hoof, Deputy Stagg, there cannot be a debate on it now.

The Tánaiste: Exactly.

Deputy Emmet Stagg: The Government cocked up the first one and is making a hames of it now.

An Ceann Comhairle: To deal with the proposal, Tánaiste.

The Tánaiste: As the Ceann Comhairle is aware, on the issue of reform it is sometimes difficult to let go. On the issue of the guillotine, there will be more than three and a half hours to discuss the legislation. This is an amendment to the Public Health (Tobacco) Bill following consultation and a lot of deliberation involving many Members of the Houses of the Oireachtas as well as people outside, who were very anxious that the legislation would be introduced.

Question put: "That the proposal for dealing with No. 5 be agreed to."

The Dáil divided: Tá, 72; Níl, 64.

Tá

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Andrews, Chris.
Ardagh, Seán.
Aylward, Bobby.
Blaney, Niall.
Brady, Áine.
Brady, Cyprian.
Brady, Johnny.
Browne, John.
Byrne, Thomas.
Calleary, Dara.
Carey, Pat.
Collins, Niall.
Conlon, Margaret.
Connick, Seán.
Coughlan, Mary.
Cregan, John.
Cuffe, Ciarán.
Cullen, Martin.
Curran, John.
Dempsey, Noel.
Devins, Jimmy.
Dooley, Timmy.
Finneran, Michael.

Fitzpatrick, Michael.
Fleming, Seán.
Gogarty, Paul.
Gormley, John.
Grealish, Noel.
Hanafin, Mary.
Haughey, Seán.
Hector, Máire.
Kelly, Peter.
Kenneally, Brendan.
Kennedy, Michael.
Killeen, Tony.
Kirk, Seamus.
Kitt, Michael P.
Kitt, Tom.
Lenihan, Brian.
Lenihan, Conor.
Lowry, Michael.
McEllistram, Thomas.
McGrath, Mattie.
McGrath, Michael.
McGuinness, John.
Moloney, John.
Mulcahy, Michael.
Nolan, M.J.
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.

Tá—*continued*

O'Dea, Willie.
O'Flynn, Noel.
O'Hanlon, Rory.
O'Keeffe, Batt.
O'Keeffe, Edward.
O'Rourke, Mary.
O'Sullivan, Christy.
Power, Seán.

Ryan, Eamon.
Sargent, Trevor.
Scanlon, Eamon.
Smith, Brendan.
Treacy, Noel.
Wallace, Mary.
White, Mary Alexandra.
Woods, Michael.

Níl

Allen, Bernard.
Bannon, James.
Barrett, Seán.
Behan, Joe.
Breen, Pat.
Broughan, Thomas P.
Bruton, Richard.
Burke, Ulick.
Burton, Joan.
Carey, Joe.
Clune, Deirdre.
Connaughton, Paul.
Coveney, Simon.
Crawford, Seymour.
Creed, Michael.
Deenihan, Jimmy.
Doyle, Andrew.
Durkan, Bernard J.
English, Damien.
Enright, Olwyn.
Feighan, Frank.
Flanagan, Charles.
Flanagan, Terence.
Gilmore, Eamon.
Hayes, Brian.
Higgins, Michael D.
Hogan, Phil.
Howlin, Brendan.
Kehoe, Paul.
Kenny, Enda.
Lee, George.
Lynch, Ciarán.

Lynch, Kathleen.
McCormack, Pádraic.
McEntee, Shane.
McGrath, Finian.
McHugh, Joe.
McManus, Liz.
Morgan, Arthur.
Naughten, Denis.
Neville, Dan.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Donnell, Kieran.
O'Dowd, Fergus.
O'Mahony, John.
O'Shea, Brian.
O'Sullivan, Jan.
O'Sullivan, Maureen.
Penrose, Willie.
Quinn, Ruairí.
Rabbitte, Pat.
Reilly, James.
Sheahan, Tom.
Sheehan, P. J.
Sherlock, Seán.
Shortall, Róisín.
Stagg, Emmet.
Stanton, David.
Timmins, Billy.
Tuffy, Joanna.
Upton, Mary.
Varadkar, Leo.
Wall, Jack.

Tellers: Tá: Deputies Pat Carey and John Cregan; Níl: Deputies Paul Kehoe and Emmet Stagg.

Question declared carried.

An Ceann Comhairle: Is the proposal for dealing with No. 1a, Enforcement of Court Orders (Amendment) Bill 2009 [Seanad] — Second Stage and Remaining Stages, agreed to?

Deputy Enda Kenny: This is a case of another Bill being rammed through by use of the guillotine. We have made this point on many occasions but let me repeat that 18 Bills out of 21 have been rammed through by guillotine in the past four weeks and I object to this.

Deputy Seán Sherlock: It is not right that we should guillotine this Bill at this stage. It warrants further discussion particularly on Committee Stage and it warrants further consideration by expert opinion before we decide its finality. I oppose the guillotine of the Bill.

Deputy Caoimhghín Ó Caoláin: It is important to point out that in the past couple of weeks there have been at least three justice related Bills before the House, each of which required

[Deputy Caoimhghín Ó Caoláin.]

significant scrutiny and preparation by Deputies, including in the main, Opposition Deputies, in terms of engaging with the Minister and his support on these matters. Now we have another Bill, namely, the Enforcement of Court Orders Bill, being introduced on the tail of the Criminal Justice (Amendment) Bill 2009, which has taken up so much time for Opposition justice spokespersons in this past short period. It does not allow for justice spokespeople on the Opposition benches the proper opportunity to prepare and tease through each of the elements involved. It is rushed legislation which is being guillotined once again. I rest my case but I oppose the guillotine. There it is, I took a breath and silence descended upon the place.

The Tánaiste: I put my case. Molaim an rúin.

Question put: "That the proposal for dealing with No. 1a be agreed to."

The Dáil divided: Tá, 73; Níl, 66.

Tá

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Andrews, Chris.
Ardagh, Seán.
Aylward, Bobby.
Blaney, Niall.
Brady, Áine.
Brady, Cyprian.
Brady, Johnny.
Browne, John.
Byrne, Thomas.
Calleary, Dara.
Carey, Pat.
Collins, Niall.
Conlon, Margaret.
Connick, Seán.
Coughlan, Mary.
Cregan, John.
Cuffe, Ciarán.
Cullen, Martin.
Curran, John.
Dempsey, Noel.
Devins, Jimmy.
Dooley, Timmy.
Fahey, Frank.
Finneran, Michael.
Fitzpatrick, Michael.
Fleming, Seán.
Gogarty, Paul.
Gormley, John.
Grealish, Noel.
Hanafin, Mary.
Haughey, Seán.
Hector, Máire.

Kelly, Peter.
Kenneally, Brendan.
Kennedy, Michael.
Killeen, Tony.
Kirk, Seamus.
Kitt, Michael P.
Kitt, Tom.
Lenihan, Brian.
Lenihan, Conor.
Lowry, Michael.
McEllistram, Thomas.
McGrath, Mattie.
McGrath, Michael.
McGuinness, John.
Moloney, John.
Mulcahy, Michael.
Nolan, M. J.
Ó Cuív, Éamon.
Ó Fearghail, Seán.
O'Connor, Charlie.
O'Dea, Willie.
O'Flynn, Noel.
O'Hanlon, Rory.
O'Keeffe, Batt.
O'Keeffe, Edward.
O'Rourke, Mary.
O'Sullivan, Christy.
Power, Seán.
Ryan, Eamon.
Sargent, Trevor.
Scanlon, Eamon.
Smith, Brendan.
Treacy, Noel.
Wallace, Mary.
White, Mary Alexandra.
Woods, Michael.

Níl

Allen, Bernard.
Bannon, James.
Barrett, Seán.
Behan, Joe.
Breen, Pat.
Broughan, Thomas P.
Bruton, Richard.

Burke, Ulick.
Burton, Joan.
Carey, Joe.
Clune, Deirdre.
Connaughton, Paul.
Costello, Joe.
Coveney, Simon.

Níl—*continued*

Crawford, Seymour.
 Creed, Michael.
 Deenihan, Jimmy.
 Doyle, Andrew.
 Durkan, Bernard J.
 English, Damien.
 Enright, Olwyn.
 Feighan, Frank.
 Flanagan, Charles.
 Flanagan, Terence.
 Gilmore, Eamon.
 Hayes, Brian.
 Higgins, Michael D.
 Hogan, Phil.
 Howlin, Brendan.
 Kehoe, Paul.
 Kenny, Enda.
 Lee, George.
 Lynch, Ciarán.
 Lynch, Kathleen.
 McCormack, Pádraic.
 McEntee, Shane.
 McGrath, Finian.
 McHugh, Joe.
 McManus, Liz.
 Morgan, Arthur.

Naughten, Denis.
 Neville, Dan.
 Ó Caoláin, Caoimhghín.
 Ó Snodaigh, Aengus.
 O'Donnell, Kieran.
 O'Dowd, Fergus.
 O'Mahony, John.
 O'Shea, Brian.
 O'Sullivan, Jan.
 O'Sullivan, Maureen.
 Penrose, Willie.
 Perry, John.
 Quinn, Ruairí.
 Rabbitte, Pat.
 Reilly, James.
 Sheahan, Tom.
 Sheehan, P. J.
 Sherlock, Seán.
 Shortall, Róisín.
 Stagg, Emmet.
 Stanton, David.
 Timmins, Billy.
 Tuffy, Joanna.
 Upton, Mary.
 Varadkar, Leo.
 Wall, Jack.

Tellers: Tá, Deputies Pat Carey and John Cregan; Níl, Deputies Paul Kehoe and Emmet Stagg.

Question declared carried.

An Ceann Comhairle: Is the proposal that the Dáil on its rising today shall adjourn until 2.30 p.m. on Wednesday, 16 September 2009, agreed to?

Deputy Enda Kenny: I do not expect that of all the items on the Order of Business there will be agreement on this one and for very good reason, beyond the usual reason of just having a vote for the sake of having one. In April the Chief Whip told the House that the Government would publish 26 Bills of which 17 were published leaving nine unpublished, including the employment agencies regulation Bill, the industrial relations (amendment) Bill, the environment (miscellaneous provisions) Bill, the environment (liability) Bill, direct debit mandates Bill, Child Care Bill, criminal justice (forensic sampling and evidence) Bill, criminal justice (money laundering) Bill and so on. Nine Bills were not published. The House is never given an explanation why these Bills are put on a list for publication during the session and then almost half of them are not published.

As was pointed out here yesterday by both Deputy Charles Flanagan and Deputy Shatter, we all have to treat seriously the issue of serious crime. We have a duty, while we are Members of this House, to debate and tease out the implications of the amendments to Bills in a proper, thorough and fitting fashion. I am sure that as the Deputy Leader of the Government, the Tánaiste does not want to happen, a situation, as Deputy Flanagan and Deputy Shatter pointed out could well arise here, in which the Government has obviously not done its legislative duty in a proper fashion. The House is still in session and we should sit next week to tease out the Criminal Justice (Amendment) Bill in a more thorough and fitting fashion.

An Ceann Comhairle: The House divided on that issue and made a decision and there is no going back on that now.

Deputy Enda Kenny: I am not just saying this for the sake of having a vote. I really mean it.

I assume that the proposed date of 16 September is because of the publication of the NAMA legislation, or that the House is coming back to discuss that legislation.

Last week the German Government put through its legislation dealing with their bad banks and it has already settled on a price level from mid-2008 for the acquisition of assets. We are now nine months on and we still have a very small number of people employed in NAMA. We do not know what the discount will be and as a consequence, with banks informing their shareholders, bank share values are increasing and the country's credit is continuing to decline. We need to have a much clearer fix on this situation.

There are other issues. The Tánaiste is also the Minister for Enterprise, Trade and Employment. Many thousands of small businesses cannot get access to credit and liquidity and overdraft facilities and by the time NAMA becomes effective, which could well be mid-2010, I can predict there will be thousands of small businesses no longer in business. The Tánaiste needs to do something to prevent the leakage out of the economy by higher taxes, by bringing in some fiscal stimulus. The VAT regime is not working and the rates of VAT should be changed to provide that fiscal stimulus for a limited period of, say, two years, to give some incentive and some injection to create and to protect jobs.

An Ceann Comhairle: The Deputy has made his point.

Deputy Enda Kenny: Yes, I have. I am waiting for a response from the Tánaiste's Department, principally, in respect of the document produced by Fine Gael and Deputy Coveney. The Taoiseach said he would get a considered opinion on our proposals as to how we can protect 80,000 jobs and create 100,000 jobs. That is something I await with interest.

An Ceann Comhairle: We cannot have a general discussion on the economy this morning.

Deputy Enda Kenny: We have had a litany of eminent persons from the Fianna Fáil Party — Deputy Andrews, Deputy Kennedy, Deputy O'Keeffe, Deputy McGrath, Deputy Aylward, Deputy Kelly and Deputy Byrne — saying rightly that the McCarthy report should be published. If the Taoiseach did not want it published he should have said to Mr. McCarthy at the outset, "I don't want to see your report and don't come here with your report until the middle of October". The Taoiseach did not say that and the Minister for Finance is now in possession of this document. The Minister, Deputy Lenihan, should publish the document, let everyone see what is in it, let them begin to digest it and for its value, or whatever is in it, at least the range of options presented by McCarthy can be begun to be considered by the people.

Deputy Michael Creed: He should listen to his auntie.

Deputy Enda Kenny: It is only a list of recommendations. We do not know the full extent of what it contains but I believe——

An Ceann Comhairle: Deputy Kenny has made his point.

Deputy Enda Kenny: ——that the public is entitled to know what it is the Cabinet will have to discuss.

Deputies: Hear, hear.

Deputy Enda Kenny: The Taoiseach should publish it and let everybody see what is in it——

Deputy Noel Dempsey: Does the Deputy mind if the Cabinet sees it first?

A Deputy: Deputy O'Rourke said it should be published.

Deputy Enda Kenny: —because we will find out sooner or later. We all have a job to do in respect of the Lisbon referendum.

Deputy Noel Dempsey: The Cabinet is entitled to see it first.

An Ceann Comhairle: Deputy Kenny has made his point. Only short statements are allowed on this issue.

Deputy Enda Kenny: Do not mislead the public by allegations of this, that or the other.

An Ceann Comhairle: I have to move on. The Deputy has made his point.

Deputy Enda Kenny: The process the Tánaiste talked about yesterday should lead to a conclusion at the Cabinet meeting next Tuesday or Wednesday. She should make a decision and publish this document and let the people see what Mr. McCarthy has submitted.

An Ceann Comhairle: The Deputy has made his point.

Deputy Enda Kenny: For that reason I object to the taking of No. 5. The Dáil should sit next week to tease out the implications of the Criminal Justice (Amendment) Bill. It should have available to it the contents of the McCarthy report. I know all the Members on the opposite side are anxious to get away out of this place——

Deputy Noel Dempsey: Not half as anxious as the Members opposite.

Deputy Enda Kenny: —when they get lambasted, embarrassed and beaten down——

An Ceann Comhairle: The Deputy has made his point.

Deputy Enda Kenny: —after what has been one of the most lamentable performances by a Government——

An Ceann Comhairle: That is enough now.

Deputy Enda Kenny: —in the past 35 years.

Deputies: Hear, hear.

An Ceann Comhairle: The Deputy has made his point. I call Deputy Gilmore.

Deputy Enda Kenny: Four hundred and eighteen thousand people on the live register do not want to see this House rise for the summer period this week.

An Ceann Comhairle: We cannot debate the economy now. I must call Deputy Gilmore.

A Deputy: Stay with us.

Deputy Enda Kenny: Come back again next week and we will have another round.

Deputy Bernard J. Durkan: They can run but they cannot hide.

An Ceann Comhairle: I call Deputy Gilmore. Only brief statements are allowed.

A Deputy: We have the seats. The Government need not worry.

Deputy Eamon Gilmore: The Labour Party has given very careful consideration to the proposal from the Government that the House should adjourn until 16 September. I appreciate that the Government is tired, exhausted, bruised, battered and beaten.

Deputy Brian Lenihan: We are full of energy.

Deputy Bernard J. Durkan: Nervous.

Deputy Eamon Gilmore: If the Government needs a break from the exertions of governing they can be facilitated with a break for much longer than nine weeks.

Deputy Dermot Ahern: Give us a break.

Deputy Eamon Gilmore: That is exactly what we are planning on giving you. Putting the House into suspension for nine weeks when there is unfinished business and business that is being finished too quickly is not the way to do it. When the House reconvened in September of last year it was to debate the Government's approach to the banking system. That is not finished business. We still do not have the NAMA legislation and we should not adjourn the House until we have the NAMA legislation and have an opportunity of discussing it. When we came back last September the Government suddenly discovered that there was an economic problem and decided to bring forward the budget to October and in that budget announced it would examine public expenditure. It has now got the report on that. We should not adjourn until that report is published and we have had an opportunity to discuss it.

The Minister for Justice, Equality and Law Reform, Deputy Ahern, is so anxious——

Deputy Michael Creed: For the top job.

Deputy Eamon Gilmore: ——to get a political reputation for himself for dealing with gangland crime he is now in danger of leaving those very gangland people at liberty by rushing legislation which is now in danger of being tied up for a long time in the courts.

Deputy Dermot Ahern: What did you say in November 2008?

Deputy Eamon Gilmore: We could consider——

An Ceann Comhairle: That matter has been dealt with. The House is divided on that, Deputy Gilmore, as I told Deputy Kenny.

Deputy Dermot Ahern: You said you wanted no excuses as to why we could not do it.

Deputy Seymour Crawford: The Minister is giving them all.

Deputy Dermot Ahern: That is what you said following Shane Geoghegan's murder.

Deputy Eamon Gilmore: It is a long time since November. Where has the Minister been since November? We could have been dealing with this issue?

Deputy Dermot Ahern: You said you wanted no excuses.

An Ceann Comhairle: The Minister, Deputy Ahern, must address his comments through the Chair. In any event, the Criminal Justice (Amendment) Bill has been decided upon by the House.

Deputy Dermot Ahern: You said you wanted action.

An Ceann Comhairle: Deputy Gilmore, without interruption.

Deputy Eamon Gilmore: His problem is that in his haste to get a political reputation——

Deputy Dermot Ahern: You are getting the action that you asked for in November but you want to analyse it. You do not want action. You want to pull out.

An Ceann Comhairle: The Minister, Deputy Ahern, will have to address his comments through the Chair.

(Interruptions).

An Ceann Comhairle: You will have to continue that conversation elsewhere.

(Interruptions).

Deputy Eamon Gilmore: The danger now is that you are leaving them at liberty.

Deputy Dermot Ahern: You called for action in November. You are now getting. You said you did not want any excuses.

Deputy Eamon Gilmore: You have a reputation for being a tough Minister——

Deputy Dermot Ahern: You are running scared.

(Interruptions).

An Ceann Comhairle: Deputy Gilmore, address your comments through the Chair. The Deputies can continue that conversation somewhere else.

Deputy Eamon Gilmore: Now we know what the legislation is for. The legislation is designed more to enhance the Minister's reputation than it is to get the——

Deputy Caoimhghín Ó Caoláin: We are being asked to approve a nine week recess——

Deputy Pat Rabbitte: Do you want to come outside, Dermot?

Deputy Caoimhghín Ó Caoláin: ——while the country is in the depths of an economic crisis, thousands of people are being added to the unemployment list——

(Interruptions).

An Ceann Comhairle: Deputy Ó Caoláin, without interruption.

Deputy Caoimhghín Ó Caoláin: ——homes are being repossessed, businesses are going out of business on a continual basis, health and education cuts, including hospital closures, are badly hurting families and communities.

Deputy Máire Hootor: What about crime?

Deputy Caoimhghín Ó Caoláin: All of these matters are very serious issues and all the time we have no real leadership, no vision and no strategy for job retention and job creation. This Government has the country scundered, and that is the bottom line on it. We cannot agree to the proposal that they head off for a nine week break to shower their heads. The business needs to continue and we agree with other voices here; we should sit again next week. I challenge the

[Deputy Caoimhghín Ó Caoláin.]

Government. If it thinks it is a bluff, call it. Let us test it and see exactly who means what they say here this morning.

Deputy Martin Cullen: We will have to settle all of this on the plinth, a Cheann Comhairle.

The Tánaiste: There were 26 Bills on the A list. There were 18 yesterday. Nineteen have been published. Three additional Bills outside of the A list were published. Several other items of legislation will come to Cabinet during the month of July and there has been a considerable——

Deputy Emmet Stagg: Legislation by diktat.

The Tánaiste: ——amount of legislation brought forward and discussed in the House. I smirked when I heard the word “scundered”——

Deputy Pádraic McCormack: Off with the head.

Deputy Ruairí Quinn: That is a Semtex term.

An Ceann Comhairle: The Tánaiste, without interruption.

The Tánaiste: Sinn Féin are scundered, Fine Gael are in a lament and I have to tell the leader of the Labour Party——

A Deputy: You are in denial.

The Tánaiste: ——that contrary to his view, this Government is lean, mean and very fit for purpose.

(Interruptions).

An Ceann Comhairle: Tánaiste, complete what you have to say.

The Tánaiste: Contrary to opinion, unlike what the Leader of Fine Gael has said——

Deputy Pat Rabbitte: Lean, mean and broke.

Deputy Tom Sheahan: And hungry.

Deputy Olwyn Enright: She means lean, mean and not ready.

An Ceann Comhairle: The Tánaiste to complete.

Deputy Emmet Stagg: The Government is mean all right.

Deputy Michael Creed: The Government is meaningless.

Deputy Damien English: That is the most honest statement she has ever made.

An Ceann Comhairle: The Tánaiste to complete.

The Tánaiste: We could always entice the Deputy outside to prove it, but I do not think we will do that.

(Interruptions).

The Tánaiste: What I find difficult with Fine Gael's policies is that its Front Bench seeks reductions while its backbench is bleating looking for more investment and services.

Deputy Pádraic McCormack: This is a pantomime a Cheann Comhairle.

Deputy Michael Creed: The Tánaiste should look at her own backbenchers who are looking for her head.

The Tánaiste: Perhaps it would be more prudent if Fine Gael decided what it wanted. This side of the House, on the other hand, has determined what it wants to see.

Deputies: The Tánaiste should look behind her at her backbenches.

Deputy Frank Feighan: She has lost it.

(Interruptions).

Deputy Pádraic McCormack: They should listen to their agony aunt.

Question put: "That the Dáil on its rising today shall adjourn until 2.30 p.m. on Wednesday, 16 September 2009."

The Dáil divided: Tá, 73; Níl, 67.

Tá

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Andrews, Chris.
Ardagh, Seán.
Aylward, Bobby.
Blaney, Niall.
Brady, Áine.
Brady, Cyprian.
Brady, Johnny.
Browne, John.
Byrne, Thomas.
Calleary, Dara.
Carey, Pat.
Collins, Niall.
Conlon, Margaret.
Connick, Seán.
Coughlan, Mary.
Cregan, John.
Cuffe, Ciarán.
Cullen, Martin.
Curran, John.
Dempsey, Noel.
Devins, Jimmy.
Dooley, Timmy.
Fahey, Frank.
Finneran, Michael.
Fitzpatrick, Michael.
Fleming, Seán.
Gogarty, Paul.
Gormley, John.
Grealish, Noel.
Hanafin, Mary.
Haughey, Seán.
Hoctor, Máire.

Kelly, Peter.
Kenneally, Brendan.
Kennedy, Michael.
Killeen, Tony.
Kirk, Seamus.
Kitt, Michael P.
Kitt, Tom.
Lenihan, Brian.
Lenihan, Conor.
Lowry, Michael.
McEllistram, Thomas.
McGrath, Mattie.
McGrath, Michael.
McGuinness, John.
Moloney, John.
Mulcahy, Michael.
Nolan, M. J.
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Dea, Willie.
O'Flynn, Noel.
O'Hanlon, Rory.
O'Keeffe, Batt.
O'Keeffe, Edward.
O'Rourke, Mary.
O'Sullivan, Christy.
Power, Seán.
Ryan, Eamon.
Sargent, Trevor.
Scanlon, Eamon.
Smith, Brendan.
Treacy, Noel.
Wallace, Mary.
White, Mary Alexandra.
Woods, Michael.

Nil

Allen, Bernard.
Bannon, James.
Barrett, Seán.
Behan, Joe.
Breen, Pat.
Broughan, Thomas P.
Bruton, Richard.
Burke, Ulick.
Burton, Joan.
Carey, Joe.
Clune, Deirdre.
Connaughton, Paul.
Costello, Joe.
Coveney, Simon.
Crawford, Seymour.
Creed, Michael.
Creighton, Lucinda.
Deenihan, Jimmy.
Doyle, Andrew.
Durkan, Bernard J.
English, Damien.
Enright, Olwyn.
Feighan, Frank.
Flanagan, Charles.
Flanagan, Terence.
Gilmore, Eamon.
Hayes, Brian.
Higgins, Michael D.
Hogan, Phil.
Howlin, Brendan.
Kehoe, Paul.
Kenny, Enda.
Lee, George.
Lynch, Ciarán.

Lynch, Kathleen.
McCormack, Pádraic.
McEntee, Shane.
McGrath, Finian.
McHugh, Joe.
McManus, Liz.
Mitchell, Olivia.
Morgan, Arthur.
Naughten, Denis.
Neville, Dan.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Donnell, Kieran.
O'Dowd, Fergus.
O'Mahony, John.
O'Shea, Brian.
O'Sullivan, Jan.
O'Sullivan, Maureen.
Penrose, Willie.
Perry, John.
Quinn, Ruairí.
Rabbitte, Pat.
Reilly, James.
Sheahan, Tom.
Sheehan, P. J.
Sherlock, Seán.
Shortall, Róisín.
Stagg, Emmet.
Stanton, David.
Timmins, Billy.
Tuffy, Joanna.
Upton, Mary.
Wall, Jack.

Tellers: Tá, Deputies Pat Carey and John Cregan; Níl, Deputies Paul Kehoe and Emmet Stagg.

Question declared carried.

Deputy Enda Kenny: First, I want to correct the record. Deputy Charlie O'Connor has informed me he too wishes to see the McCarthy report published.

Deputy Charlie O'Connor: I did not say that.

Deputy Dermot Ahern: It will go down well in Tallaght.

Deputy Aengus Ó Snodaigh: We need to keep him out of Tallaght.

Deputy Enda Kenny: I commend the heroic efforts of the Minister for Finance yesterday in diverting traffic on Ormond Quay. I hope the unfortunate person knocked off her bicycle makes a full recovery.

The House has made its decision to rise until 16 September. The tradition is that I should take this opportunity to wish the Ceann Comhairle, as presiding officer of the House, some serenity and peace in the weeks ahead. I would also like to thank the members of the staff of the House for their unfailing courtesy to both visitors and Members.

I also pay tribute to the members of the Fourth Estate for their continuous interest in what happens in the Chamber and in the machinations of politics. I hope the Ceann Comhairle, in his capacity as chairman of the Houses of the Oireachtas Commission, can deal with the business of

structural deficiencies in this ancient house of the Geraldines to allow the members of the media prompt and quick access to those people with whom they love to talk in and around the corridors of Leinster House.

My wish was that the House would have sat for another week but I cannot change that. If those who have left the Chamber already are getting their buckets, spades and sandals ready, I hope they will still focus on the real problems with which we have to deal.

Deputy Kathleen Lynch: And remember the sun block.

Deputy Enda Kenny: Exactly. As I say those few words, I wish the Ceann Comhairle success in the time ahead.

An Ceann Comhairle: I thank Deputy Kenny.

Deputy Eamon Gilmore: I join Deputy Kenny in wishing the Ceann Comhairle and all of the Members of the House, the staff of the Houses and the press who report on our business here a happy summer holiday. I hope to see them all back here again as the leaves begin to turn brown.

While we are waiting for the leaves to turn brown——

Deputy Michael Creed: And the green shoots.

Deputy Bernard J. Durkan: Out the door.

Deputy Eamon Gilmore: The only thing we have seen shooting from Greens here is shooting out the door as fast as they can.

Deputy Charles Flanagan: And the Greens shooting themselves in the foot.

Deputy Michael Creed: And mouth.

Deputy Eamon Gilmore: Obviously, there is much business that the Government must consider between now and when we have an opportunity of holding it to account again in September. How many meetings of the Cabinet are scheduled between now and 16 September?

An Ceann Comhairle: Unfortunately, that question is not in order.

Deputy Eamon Gilmore: The Tánaiste might answer it anyway.

An Ceann Comhairle: I doubt if she can because——

Deputy Kathleen Lynch: She probably does not know.

An Ceann Comhairle: No. The problem is that she is not here to answer that question. She is here to discuss the Order of Business and the business which is ordered.

Deputy Ruairí Quinn: She can be trusted with that.

Deputy Emmet Stagg: The Tánaiste may want to wish us all well anyway.

The Tánaiste: I was going to do that at the end.

Deputy Aengus Ó Snodaigh: At 9 o'clock?

Deputy Emmet Stagg: She should do it when she gets a chance.

Deputy Pat Rabbitte: Will the Tánaiste to confirm, however many Cabinet meetings there are scheduled, that after the Cabinet meeting next week, where it will consider the report from an bord snip nua, that the Government will publish it? Otherwise, bits of it will be leaked during the holidays as the beaches of Kerry beckon. It will become like an edition of *Lady Chatterley's Lover* as it is passed around among Members of the Dáil. Can we have the full, complete, unexpurgated——

Deputy Michael Creed: Unredacted.

Deputy Pat Rabbitte: ——version launched after the Cabinet meeting? What does the Tánaiste say?

An Ceann Comhairle: The Tánaiste cannot discuss what happens at the Cabinet meeting and Deputy Rabbitte knows that well.

Deputy Pat Rabbitte: After the Cabinet meeting.

An Ceann Comhairle: That is after the ball is over kind of stuff.

Deputy Pat Rabbitte: After it is all over, is there likely to be publication of the McCarthy report next week?

The Tánaiste: Matters have not changed since yesterday because we did not have a Cabinet meeting.

Deputy Michael Creed: They have the report.

The Tánaiste: The Cabinet meeting will take place on Wednesday, at which stage the Minister for Finance will brief the members of the Cabinet. The Cabinet will then make its decision as to what will happen.

Deputy Bernard Allen: Run for the beaches.

Deputy Joan Burton: Before the Dáil resumes on 16 September, will we get details of the valuation method for the impaired assets that will be taken over by NAMA? I asked the Minister for Finance if there would be an independent valuation board, as is done in most countries

An Ceann Comhairle: No doubt the Deputy will find another way of raising that matter.

Deputy Joan Burton: When we come back in September our national debt will have risen by €20 billion to €40 billion.

An Ceann Comhairle: I cannot have a discussion on the economy now, as the Deputies well know. I have allowed much latitude on the five items which were before the House this morning.

Deputy Joan Burton: I know €20 billion to €40 billion does not sound much in Kerry——

An Ceann Comhairle: I cannot discuss this now.

Deputy Joan Burton: ——but in Dublin it sounds like a great deal.

An Ceann Comhairle: Whether it is in Kerry or Dublin, I cannot discuss it. Even if it was in Cork, I could not discuss it.

Deputy Joan Burton: Will we get information——

An Ceann Comhairle: No.

Deputy Joan Burton: ——about the valuation method of NAMA——

An Ceann Comhairle: We cannot discuss it. I must call Deputy Crawford.

Deputy Joan Burton: ——and the debt it implies for every taxpayer in this country?

An Ceann Comhairle: I must call Deputy Crawford.

Deputy Joan Burton: Will we get any information?

An Ceann Comhairle: I call Deputy Crawford.

Deputy Joan Burton: Can I ask——

An Ceann Comhairle: That is not in order. Deputy Burton knows that as well as I do. She is here a good few years now. She knows what is and what is not in order and that is not in order. Ask something that is in order and I will be only too pleased to facilitate her.

Deputy Joan Burton: Can I ask about prices and the National Consumer Agency? What is the position on the legislation on the future of that agency, which apparently was meant to be merged with the Competition Authority? We also understand that part of the Financial Regulator is to be merged in a third merger. Could the Tánaiste tell us because prices continue to rise?

The Tánaiste: The legislation is being finalised in my Department. It is my clear intention to have it for the next session.

Deputy Seymour Crawford: Over recent weeks and months, junior civil servants and all sorts of people have had their salaries cut, farmers are losing out in every way and hospitals are being closed.

An Ceann Comhairle: Come on now.

Deputy Seymour Crawford: When can an issue that is extremely serious regarding the cost of tribunals, inquiries, etc., be dealt with, that is, the Legal Costs Bill? Can the Tánaiste assure us that over the summer months this will be dealt with and every citizen in this country will be treated equally, no matter his or her status?

The Tánaiste: There is no date.

Deputy Michael Creed: I note on the wires this morning that the G8 agreed a rescue package of \$15 billion for the world's poorest farmers.

An Ceann Comhairle: We cannot discuss it.

Deputy Michael Creed: I am not in any sense insisting that Irish agriculture is in a comparable situation to those at the bottom rung of the ladder globally, but we have seen in recent weeks the publication of the Teagasc income survey, which showed that farm incomes——

An Ceann Comhairle: A question that is in order, Deputy Creed. I am trying to facilitate the Deputy.

Deputy Michael Creed: I will bring this into order, if the Ceann Comhairle bears with me a moment. The report showed that farm incomes fell by 13% in 2008 and are projected to fall by 13% in 2009. We have a series of cuts, the most recent only announced in a sneaky fashion——

An Ceann Comhairle: We cannot go into that now. Deputy Creed could not expect it. I would have to allow every Member to do it then and I cannot do that.

Deputy Michael Creed: ——that this House will not be entitled to scrutinise in any way the suspension of the REPS support scheme for new applicants, the Greens pulling the plug on environment projects and on organic grants.

An Ceann Comhairle: The Deputy can raise that in another way. There are other ways of raising these matters.

Deputy Michael Creed: Can I ask the Tánaiste——

An Ceann Comhairle: Ask her about legislation, please.

Deputy Michael Creed: ——in respect of the agrifood sector, whether the Government, either at a national level or an EU level, envisages any remedy or rescue package——

An Ceann Comhairle: I cannot go into that. The Deputy must deal with that in another way. Otherwise, I would have to allow every Deputy to do the same.

Deputy Michael Creed: ——to address the crisis in agriculture, in particular, in the dairy sector?

An Ceann Comhairle: Then the agriculture spokespersons for the Labour Party, Sinn Féin and some Independents, and everybody else, including even Government backbenchers, might like to raise the same issue. I cannot allow it.

Deputy Michael Creed: The Tánaiste, from her time in the Department of Agriculture, Food and Fisheries, will be aware that there is a significant probability that we will be back here in September——

An Ceann Comhairle: I will call Deputy Durkan.

Deputy Michael Creed: ——discussing the crisis in the dairy industry along with NAMA because there are likely to be casualties in the processing sector outside the farm gate, as opposed to at farm gate level.

An Ceann Comhairle: I will have to ask Deputy Creed to resume his seat. I call Deputy Durkan.

Deputy Michael Creed: The Minister for Agriculture, Food and Fisheries, Deputy Brendan Smith, fiddles while Rome burns. There is no action.

An Ceann Comhairle: Deputy Creed is out of order. He did not ask any question that was in order. I call Deputy Durkan.

Deputy Bernard J. Durkan: Not wishing to rain on the parade, but there is a piece of promised legislation that I mentioned previously, and I hate to bring it up again. The Government stated it would introduce legislation to consolidate and modernise financial service legislation in accordance with the Government's better regulation agenda.

Deputy Kathleen Lynch: Sounds good.

Deputy Bernard J. Durkan: Those are the Government's words. It has been on the list published by the Chief Whip for some considerable time under section C. Will that Bill be brought before the House on 16 September or will the Government meander along the sylvan settings of this country for the month of August and the part of September——

An Ceann Comhairle: The Deputy has asked his question on the legislation.

Deputy Bernard J. Durkan: ——and ignore everything, which the Ceann Comhairle has never done? I want to say a special thank you to the Ceann Comhairle for his tolerance and compassion——

Deputy Paul Connaughton: Understanding.

Deputy Bernard J. Durkan: ——to the poor unfortunate Members on this side of the House for this session. He made it somewhat tolerable in an intolerable situation. Can I ask for the answer to the question now?

The Tánaiste: I answered the question. I have told Deputy Durkan I do not know how many times since Easter that there is no date.

An Ceann Comhairle: I call Deputy Kathleen Lynch.

Deputy Bernard J. Durkan: A Cheann Comhairle——

An Ceann Comhairle: There is no date.

Deputy Bernard J. Durkan: That sums up what is wrong.

An Ceann Comhairle: The Deputy cannot give a commentary on it now.

Deputy Bernard J. Durkan: There is no date.

The Tánaiste: It is a consolidation Bill.

An Ceann Comhairle: There is no “Aprés Match” allowed here.

Deputy Bernard J. Durkan: It is typical of what is going on over on that side of the House. They have ignored reality.

Deputy Kathleen Lynch: On promised legislation, when will the child care Bill be published? In that respect, does the Government have any proposals to bring together all of the issues which affect children under one Department?

An Ceann Comhairle: I knew it was too good to be true. I call the Tánaiste on the child care Bill.

Deputy Kathleen Lynch: I have been trying to get an answer from the Minister for Education and Science in respect of a particular child——

An Ceann Comhairle: The Tánaiste on the child care Bill.

The Tánaiste: It is going to Cabinet next week.

Deputy Kathleen Lynch: ——for the past month.

An Ceann Comhairle: There is the answer now.

Deputy Kathleen Lynch: When will the child care Bill be published?

The Tánaiste: It goes to Cabinet next week.

An Ceann Comhairle: It will go to Dublin next week.

Deputy Paul Connaughton: Obviously, the Government has it in the nose for the farming community when they voted so much against the Tánaiste's party last month.

An Ceann Comhairle: The pity about that was the spokesperson. I cannot really allow Deputy Connaughton at it then.

Deputy Paul Connaughton: I will be in order in an minute. The Ceann Comhairle need not worry.

An Ceann Comhairle: Perhaps the Deputy could make it faster.

Deputy Paul Connaughton: I will make it as fast as the Minister for Agriculture, Food and Fisheries took the €10,000 out of every farmer's pocket yesterday. That is how fast I will be.

An Ceann Comhairle: The Deputy must raise that some other way.

Deputy Paul Connaughton: It is an outrageous decision.

Deputy Bernard J. Durkan: Pickpockets.

An Ceann Comhairle: The Deputy should ask a question that is relevant.

Deputy Paul Connaughton: The Minister for the Environment, Heritage and Local Government has left also and he has done his level best——

An Ceann Comhairle: The Deputy should not mind him.

Deputy Paul Connaughton: ——to run every turf cutter off the bogs of Ireland over the summer.

An Ceann Comhairle: Has the Deputy a question to ask?

Deputy Paul Connaughton: I can assure the House that neither a Fianna Fáil Minister nor a Green Minister——

(Interruptions).

Deputy Bernard J. Durkan: Hear, hear.

An Ceann Comhairle: Deputy Connaughton has nothing to ask — that is fine.

Deputy Joe Costello: Has the Tánaiste any date for the publication of the European Defence Agency Bill?

The Tánaiste: It will be in the next session.

Deputy Aengus Ó Snodaigh: Ba mhaith liom an deis seo a thógaint síocháin agus sonas a ghuí ar fhoireann na Dála, ar fhoireann mo pháirtí féin, ar na Teachtaí eile agus ar na meáin.

Bhí seisiún fada againn an uair seo agus de réir cosúlachta beidh seisiún fada eile againn roimh an chéad toghchán eile.

Ba mhaith liom ceist a chur faoi Bille a bhí luaite ar na cláir reachtaíochta le tamall de bhlianta anuas ach atá anois tar éis éalú uathu. Measaim gur luadh ar dtús é i 1997. An Bille atá i gceist ná an Bille cíós talún — the ground rent Bill. Cá bhfuil sé agus an dtiocfaidh sé ar ais riamh? An bhfuil aon seans ann go mbeidh sé os ár gcomhair amach anseo?

The Tánaiste: Ag an mbomaite seo, níl mé ábalta freagra a thabhairt don Teachta.

Deputy David Stanton: I want to ask about three Bills. We signed up to the UN Convention on the Rights of Persons with Disabilities a while ago but the Mental Capacity Bill needs to be published and passed before we can ratify that important international agreement. Will the Tánaiste ask the Minister for Justice, Equality and Law Reform when the Bill will be published and passed? Will it be before the end of 2009?

What is the position on the Sale of Alcohol Bill and the public health (miscellaneous provisions) Bill, which has been promised for some time? One purpose of the latter is to protect young people from the dangers of sunbeds.

The Tánaiste: I hope the Mental Capacity Bill will be dealt with this year, if at all possible. The Sale of Alcohol Bill will be considered next year. I do not believe there is a date listed for the public health (miscellaneous provisions) Bill but I will check it for the Deputy.

Deputy Simon Coveney: With regard to the Government's commitment to put in place a new foreign adoption agreement between Ireland and Vietnam, in respect of which the Minister returned from Vietnam last week, could the Tánaiste update the House for the sake of people seeking to adopt and who are waiting to hear the up-to-date position? Can they expect a new agreement to be in place this summer? Must they wait until the new session in September or can they expect a temporary agreement to be put in place allowing them to proceed with their adoptions? Many are half way through the adoption process.

The Minister for Justice, Equality and Law Reform promised a data protection Bill. Fine Gael published its own Data Protection (Disclosure) (Amendment) Bill, which became even more relevant following recent data protection breaches. Can we expect any developments in this regard in the autumn?

Deputy Jan O'Sullivan: With regard to adoptions of children from Vietnam, I support the remarks of Deputy Coveney. The relevant legislation in this area is the Adoption Bill, which has passed through the House but which has not yet been considered in the Dáil. Is it intended to put that legislation on hold? Many countries have not signed the Hague convention or do not have bilateral agreements; this is where the difficulty lies. It is not just an issue pertaining to Vietnam because the case of Ethiopia has also come to light. There is a long recess ahead, albeit not as long as it may have been in other years, during which we will not be able to deal with these issues. For the sake of the families in question, we need a response from the Tánaiste on behalf of the Government before the summer break.

The Tánaiste: With regard to adoption legislation, the Minister issued a press statement on the matter and travelled to Vietnam, which has a sovereign Government. The work in this regard is still in progress and a new overall agreement has not been finalised.

I am advised by the Minister for Justice, Equality and Law Reform that a group is presently considering the data protection legislation and he is not yet in a position to give a final date for its introduction.

Deputy Simon Coveney: The Minister indicated that while families were waiting for a comprehensive new foreign adoption agreement between Ireland, Vietnam and other countries, the Government would consider putting in place an interim agreement such that families half way through the adoption process would be allowed to proceed. I want to know the position on this.

The Tánaiste: The question is completely out of order because it does not concern legislation.

Deputy Simon Coveney: It was promised by the Government.

The Tánaiste: I indicated there are ongoing discussions and I will ask the Minister to contact the Deputy directly.

Deputy Joanna Tuffy: Several Bills have been and are to be guillotined this week. Earlier in the year, there were weeks during which we had hardly any legislation at all to discuss. In the next session, instead of the Government giving us a schedule of Bills, which is basically just a list of Bills and publication dates that may or may not have any relationship with reality, could it instead give us an actual timetable setting out the exact months on which promised Bills are to be dealt with and the number of days that will be allowed for considering them in each House? Can we deal with legislation from the beginning of the year so we can make progress in a paced way, thus preventing us from having to rush through legislation at the end of the year, as we have done this year?

The Tánaiste: That is a fair point. When I was in the backbenches the system was such that it was very difficult to prepare for debate within the House. Unfortunately, legislation does not always proceed as the Deputy desires but we will be cognisant of the fact that Deputies need a clear indication of the Bills that are to arise so that they can prepare accordingly.

When I first became a Member of this House in 1987, the discussion was on whether we should return from the recess before or after the Listowel races. We have now decided to be like Solomon and return during the middle of them, for which I apologise profusely to the Ceann Comhairle. We are sorry we will not be with him on that occasion. I thank him, the other Members and the staff for their work. Contrary to public opinion, the Government and Members of the Oireachtas will continue to work at the committees and perform their duties as public representatives during the recess. I wish Members well and hope everyone will have an opportunity to take some time off and enjoy family life. I thank the members of the media for their work on publicising what is debated in the House. I am sure the Ceann Comhairle looks forward to the break and I assume most of us will return fighting fit and exuberant to do the work that must be done before Christmas.

Deputy Charles Flanagan: We are ready for our autumn holiday in Donegal to witness the by-election in the Tánaiste's constituency.

The Tánaiste: The Deputy will be welcome to Donegal any day.

Deputy Charles Flanagan: Indian summer.

An Ceann Comhairle: I take the opportunity to reciprocate the good wishes extended by the party leaders and the Tánaiste. I offer my best wishes to all Members over the summer. I realise they will still be working in their constituencies and that the committees will be continuing their work. This has been a long and very difficult session and very often we worked late into the night. I thank the Members for their diligence, commitment and determination. I thank the Clerk, the staff of my office and staff of the Houses of the Oireachtas for their tremendous

work over the course of this long session. In particular, I thank the staff for their co-operation with the public during the family weekend. I thank the Fourth Estate and wish it well throughout the summer months.

Mandela Day: Motion.

Minister of State at the Department of the Taoiseach (Deputy Pat Carey): I move:

That Dáil Éireann:

- welcomes the initiative of the Nelson Mandela Foundation and related organisations to celebrate, on 18th July, the lifetime of achievements of Nelson Mandela, which have been felt all over the world;
- commends the Foundation for honouring Nelson Mandela's service to humanity by giving people of the world the opportunity of his birth date to embrace his values, through seeking to improve their lives through service to their communities;
- honours the transformative and courageous leadership of Nelson Mandela who devoted his life to peace, justice and a better life for all;
- acknowledges that courageous defenders of human rights — people determined to speak out against injustice, against oppression, and against the denial of human dignity, in circumstances which are often very difficult, are needed today more than ever; and
- notes that Nelson Mandela's legacy and the principles and philosophy he embodies hold a special place in the hearts of Irish people.

Question put and agreed to.

Committee Membership: Motion.

Minister of State at the Department of the Taoiseach (Deputy Pat Carey): I move:

That Deputy Thomas Byrne be discharged from the Joint Committee on the Constitution and that Deputy Jimmy Devins be appointed in substitution for him.

That Deputies Áine Brady (*Minister of State at the Department of Health and Children*) and Pat 'the Cope' Gallagher be discharged from the Select Committee on Arts, Sport, Tourism, Community, Rural and Gaeltacht Affairs and that Deputies Michael Kitt and Tom Kitt be appointed in substitution for them.

That Deputy Dara Calleary (*Minister of State at the Department of Enterprise, Trade and Employment*) be discharged from the Select Committee on Climate Change and Energy Security and that Deputy Mary Wallace be appointed in substitution for him.

That Deputy Brendan Kenneally be discharged from the Select Committee on Communications, Energy and Natural Resources and that Deputy Jimmy Devins be appointed in substitution for him.

That Deputies Dara Calleary (*Minister of State at the Department of Enterprise, Trade and Employment*) and Áine Brady (*Minister of State at the Department of Health and Children*) be discharged from the Select Committee on Constitutional Amendment on Children and that Deputies Tom Kitt and Margaret Conlon be appointed in substitution for them.

[Deputy Pat Carey.]

That Deputy Margaret Conlon be discharged from the Select Committee on Education and Science and that Deputy Mary Wallace be appointed in substitution for her.

That Deputy Dara Calleary (*Minister of State at the Department of Enterprise, Trade and Employment*) be discharged from the Select Committee on Enterprise, Trade and Employment and that Deputy Seán Power be appointed in substitution for him.

That Deputy Michael McGrath be discharged from the Select Committee on European Affairs and that Deputy Seán Power be appointed in substitution for him.

That Deputy Chris Andrews be discharged from the Select Committee on European Scrutiny and that Deputy Michael Kitt be appointed in substitution for him.

That Deputy Brendan Kenneally be discharged from the Select Committee on Finance and the Public Service and that Deputy Noel Ahern be appointed in substitution for him.

That Deputy Michael McGrath be discharged from the Select Committee on Social and Family Affairs and that Deputy Niall Blaney be appointed in substitution for him.

That Deputy Áine Brady (*Minister of State at the Department of Health and Children*) be discharged from the Select Committee on Transport and that Deputy Noel Ahern be appointed in substitution for her.

Question put and agreed to.

Criminal Justice (Amendment) Bill 2009: Committee Stage (Resumed) and Remaining Stages.

Debate resumed on amendment No. 4:

In page 9, between lines 27 and 28, to insert the following:

“(3) A person shall not be convicted of an offence under this Act based on the opinion given under this section in the absence of corroborating evidence, which shall not include evidence given to a Court based on section 9 of this Act.”.

—(Deputy Charles Flanagan.)

Deputy Kieran O'Donnell: I support this amendment. I have listened to the Minister's response to the amendment but this amendment brings together what the Minister is trying to achieve, that the evidence based on an expert opinion would be corroborated. This amendment would strengthen the Bill and ensure that it is effective. When the Bill was announced on 13 May the Taoiseach stated “We must ensure that the criminal law is effectively implemented and that the administration is not interfered with through intimidation.” Effective administration of the law is required.

Will the Garda Commissioner lay down directions as to who may appear before the Special Criminal Court to give this evidence? We want to ensure that this legislation is effective. We must show gangland criminals, particularly in Limerick after the appalling murders of Roy Collins, Shane Geoghegan and Brian Fitzgerald, that this House means business and that we will ensure that effective legislation is introduced. Deputy Flanagan's amendment is reasonable and is not contrary to the import of the legislation. It requires that the evidence, based on an expert opinion, that a criminal gang exists must be corroborated. The amendment states this in strong terms so that there can be no ambiguity. Will the Minister tell the House, following his discussions with the Garda Commissioner,

12 o'clock

whether the Commissioner can give instructions as to what rank of garda may give this expert opinion to the Special Criminal Court?

We want this legislation to come into effect as quickly as possible so that we can deal with gangland criminals on the ground to ensure that there are no further murders such as those of Roy Collins, Shane Geoghegan and Brian Fitzgerald in Limerick. Deputy Flanagan's amendment goes to the heart of that aim. It does not contradict the Bill but brings it together in a structured way. I hope the Minister, in the limited time we have to debate the Bill will take on board the bona fides of Fine Gael which wants legislation that will work and will stand up to any form of constitutional challenge.

Deputy Charles Flanagan: We are dealing here with evidence of the existence of a criminal gang. The Minister quite rightly states that of itself that will not lead to a conviction but it must be accompanied by evidence that the person charged was in fact a member of that gang. The evidence required to show the existence of a gang in the first instance can be that of a garda or former garda of any rank. The Minister calls that expert evidence but in effect it is opinion evidence based on a certain set of facts. It is belief evidence, the person giving the evidence believes in the existence of a criminal gang. The Minister accepts that the garda or former garda can be subjected to cross-examination but because he or she is giving belief evidence, he or she can claim privilege rendering the cross-examination effectively meaningless because the garda can say no more than it is his or her opinion, belief, experience or expert knowledge that there is a criminal gang. The judge can form the view on the basis of the expert evidence that a criminal gang exists.

When the judge accepts that there is a gang a burden of evidence is required to convict somebody of being a member of that gang. That is where the corroborative evidence is all the more important. Without this amendment there will be nothing in the legislation that will require or mandate corroborative evidence to show that Mr. X participates in, directs the activity, or is a member, of that gang. The amendment is important to avoid doubt because the only evidence tendered or accepted of the existence of a gang is that of a garda or former garda. If the amendment is not accepted in section 7 it should be somewhere in the Act, although this is the most appropriate place for it.

Deputy Aengus Ó Snodaigh: This section deals with the issue of evidential provisions as proof of the existence of a criminal organisation and Deputy Flanagan's amendment states that somebody shall not be convicted under this Act. The intention of the Bill is to schedule a range of offences which came into being in the Criminal Justice Act 2006. I recently asked the Minister several questions about that Act. I should not have had to ask questions because the information should have been available to us as part of the Minister's justification for the Bill. I asked him the number of prosecutions commenced and convictions obtained, respectively, for the offence laid down by section 72 of the Criminal Justice Act 2006 and about section 73 of that Act. He answered by saying that he had requested the Central Statistics Office to provide the statistics directly to me which suggests that he does not have the information to hand. Worse again, when I asked how often sections 28 to 30, inclusive, of the Criminal Justice Act 2007, had been used in court proceedings he said that in the time available it was not possible for the Garda authorities to supply those details.

The facts I sought are the justification for much of this Bill and the other basis, which the Minister has repeatedly presented, is the idea that there was an increase in incidents of jury and witness intimidation. When he was asked to prove this he indicated that the Garda Commissioner had told him as much. The Minister told me the exact opposite in his reply to a question on Tuesday when I asked about the number of suspected or proven instances of jury

[Deputy Aengus Ó Snodaigh.]

intimidation and tampering, as opposed to that of witnesses. In the answer the Minister said he could not differentiate between the two because that is not the way the statistics are produced.

The Minister submitted a table where both were included which proved the exact opposite of the Minister's contention. There seems to have been a substantial decrease in jury and witness tampering. In 2006, there were 44 prosecutions commenced, although the information does not detail what the results were. Last year, there was more than a 60% decrease on that because only 16 cases were taken. This was 16 too many but one would have to go back to 2002 before the number of proceedings taken because of jury or witness tampering was lower.

In 2003 and 2004 there were 30 incidents in each year, in 2005 there were 22 incidents, in 2006 there were 44 and then the number falls to 16 in both 2007 and 2008. The basis for every aspect of this legislation was that these incidents were at an all-time high but the Minister's own facts have proven the opposite.

The amendment is welcome but the section and Bill itself must be opposed, rather than us trying to amend it. It was produced on a rushed basis and neither the facts nor the Minister's own words back it up. There is a major doubt about this process because of its rushed nature and the fact that we do not have the information to make an informed judgment. We have not heard the voices of those working in the field.

I have highlighted the need to properly resource An Garda Síochána to the fullest extent in order to deal with the major crime problems which have been highlighted and which we see every day in my own constituency and a number of others. Gangland crime is increasing and is becoming more vicious and ruthless but it must be dealt with by existing legislation and a properly resourced Garda Síochána.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): We discussed this amendment at length last night. Deputy Flanagan acknowledges that this is not the type of opinion evidence normally regarded by lawyers when we speak to the Offences Against the State Act. That opinion evidence goes to the guilt of the person. The reason we cannot accept the amendment on expert evidence on the existence of a gang is because two gardaí could be called, for example, to give evidence that from their direct knowledge there is a gang in existence in a particular geographic area.

I saw one of the lawyers who appended his name to the famous letter on "Prime Time" last night. He stated that there was a delusion of proof in this Bill but there is most certainly not. The proofs relating to the guilt or innocence of anybody is exactly the same; there is no delusion of proofs. He went on to say there is opinion evidence in this Bill on the guilt of a person but there is not.

As I explained last night, this is a way in which we can prove in court and put before the court the fact that there is a gang in existence in a particular geographic area. There is no way in which a garda would give evidence to say a particular person is a member of that gang, and that must continue to be proven individually.

Deputy Charles Flanagan: It is the same case and process.

Deputy Dermot Ahern: It could relate to a number of cases as a garda may not be required to give evidence under this. There may be circumstances where a number of people are arrested in quite obvious circumstances where a gang is acting in concert and this evidence is not required. I suggest to the Deputy that his amendment would give the impression that this is in some way opinion evidence as to the guilt of a person when it is not.

Deputy Charles Flanagan: It cannot give that impression because the amendment clearly states that a person shall not be convicted of an offence under the Act. It does not state that a person shall not be entitled to give evidence under the Act, which is the difference. It is about the achievement of the conviction.

I do not believe we can separate the process from its entirety. The evidence on the existence of a gang will lead automatically to the second point.

Deputy Pat Rabbitte: What is the point of it otherwise?

Deputy Charles Flanagan: The question could arise of whether Mr. X, who is before the court, is a director of the gang. One cannot say that the evidence given does not lead to a conviction as it is fundamental to the leading to a conviction. The existence of a gang would be established and one would follow on to establish whether the person before the court is a member or participant in that gang.

Deputy Dermot Ahern: It would be one of the proofs necessary in order to ground a charge for directing or participation.

Deputy Charles Flanagan: That is right.

Deputy Dermot Ahern: On its own——

Deputy Charles Flanagan: I accept that.

Deputy Pat Rabbitte: We are agreeing with that.

Deputy Dermot Ahern: The 133 people who signed the letter did not say that.

Deputy Pat Rabbitte: We are answering for ourselves.

Deputy Kieran O'Donnell: Will the Minister clarify the other point?

Deputy Dermot Ahern: Ultimately, it is a matter for An Garda Síochána as to who it believes is the garda with the best direct personal knowledge of the activities of a gang in a particular area.

Deputy Kieran O'Donnell: Would that be directed by the Garda Commissioner?

Deputy Dermot Ahern: Generally it would be accepted that it would be at least someone of detective inspector rank but it may well be a sergeant living and working in that area.

Deputy Kieran O'Donnell: It could be a chief superintendent.

Deputy Dermot Ahern: Of course. We went back to An Garda Síochána since Tuesday's debate to ask about the rank of the garda in question. We were preparing an amendment in that respect but the Garda were adamant that it would be better to leave it. The rank of the garda is not important but rather the knowledge of the garda in question.

Deputy Pat Rabbitte: I am bound to say that I have serious apprehensions about what three judges will say when confronted with a retired Garda presenting expert opinion as to the existence of a gang. That is a complete novelty in Irish criminal law. Somebody retired from the force could be brought in, and there is no specification of the person retiring last week, ten years ago or what that person does now. Will we have columnists for the *Evening Herald* giving expert testimony? It is a worrying addition.

[Deputy Pat Rabbitte.]

I support the amendment by Deputy Flanagan as the point of the exercise is not clear if we consider the process, unless it is the first step in leading to the ultimate conviction. In that sense, all that is being suggested is that the safeguard of corroborative evidence would be provided for.

It is very well for the Minister to take up a stance of opposition to everything we say in the House and he is probably buoyed by the fact that much of the noise outside is supportive. Why would the latter not be the case? Every right-thinking citizen wants to put these gangsters behind bars. However, we cannot just go along with the loudest laugh that declares the empty mind. It is our job to probe, test and scrutinise the legislation.

The Minister cannot afford to allow something to pass which is likely to be the cause of a constitutional action and which will lead to the implementation of the legislation being delayed by 18 months or two years. I presume the latter would be the last thing the Minister would want to happen. The amendment offers what is no more than a reasonable safeguard. As the Minister indicated, we discussed the matter at some length last night but I merely wished to outline my view.

Deputy Dermot Ahern: There should be no confusion about this. There is a complete distinction with regard to opinion evidence given as to the guilt of a person. Such evidence goes to the existence of a gang in a particular area and no more than that. In itself, opinion evidence cannot be used to convict anyone. As is normally the case, the prosecution must prove that a person participated in or directed the activities of a gang, thereby committing a criminal offence.

It is not possible for a Government to guarantee that any Bill passed by the Houses is constitutional or otherwise. We are obliged to proceed on the basis of the advice provided by the Attorney General and his experienced staff. The latter examined the legislation line by line, word by word and they are satisfied that it will pass constitutional muster. I thank the Attorney General and his staff for the work they did in this regard.

We are being criticised in respect of elements the Bill does not even contain. That is frustrating. The Bill is easy to read and I am of the view that those who should know better would be aware of the exact nature of its contents. People outside the House are criticising us in respect of matters the Bill does not even contemplate.

Deputy Pat Rabbitte: The Minister has rounded up a fair few unusual suspects.

Deputy Dermot Ahern: The Deputy has run a few canards.

Deputy Charles Flanagan: I do not believe that the Minister is really of the opinion that this Bill is easy to read.

Deputy Dermot Ahern: It is easy to read for anyone in the legal profession.

Deputy Charles Flanagan: It is an extremely complex item of legislation. What the Minister said a moment ago is one of the reasons Deputy Rabbitte, as late as this morning, made the important point that we should be meeting in committee with interested parties in respect of the Bill. As is his right, the Minister is continually involved in discussions with members of the Garda Síochána. That is an advisable course of action. However, we are not in a position to engage with gardaí in the same manner. I would have thought that the Joint Committee on Justice, Equality, Defence and Women's Rights exists for just such a purpose. We would have loved to have thrashed out the issues of consequence we are debating, and our difficulties

relating thereto, in a session with the Garda Commissioner. However, the Government has denied us that opportunity.

I agree with the Minister in respect of the level of evidence to be provided by a former garda or whomever to establish the existence of a gang. I also accept the fact that the provision of this evidence alone will not lead to anyone being convicted. However, I do not believe that the two can be separated. A conviction will ultimately be based on the evidence provided in the first instance that a criminal gang existed. Lest there be any doubt, it is important, therefore, to specify in the Bill the matter of the need to provide corroborative evidence.

Deputy Joe Costello: I do not wish to reopen the debate on this matter. I am sure most of the Deputies present wish to move on to deal with other issues.

Section 7 contains a definition in respect of what constitutes a criminal gang. It seems that virtually any three people operating in concert — and in any capacity — could be deemed to be a criminal gang. It is similar to the Lord's pronouncement to the effect that "where two or more are gathered in my name, there I am in the midst of them". There is nothing much more beyond that.

The section refers to a structured organisation. People who commit crimes do not conduct their business in the same way others. Gangs are not similar to organisations which hold meetings and keep minutes relating thereto. Regardless of how loose might be their connection, virtually any combination of more than three people of any description — it could be members of a family who discussed a particular matter — would come within the remit of the legislation.

Under the section, the question as to whether a gang exists is left to the determination of any member or ex-member of the Garda Síochána. Surely this provision is wide open to abuse. From that point of view, it is extremely difficult to accept the Minister's contention that this constitutes anything other than opinion. Effectively, that is what it is and if any member or former member of the force wishes to state that a certain number of people operating together constitute a gang, it makes matters difficult because there are no rules or regulations set down in respect of proof. Even if a garda or ex-garda were cross-examined on the matter in order that the information provided might move from being opinion to evidence, that would not be the same as having available the type of evidence a superintendent would be required to provide in respect of the existence of a subversive organisation. The subversive organisations that have operated in this country have employed recognisable structures of command, etc.

We are, therefore, discussing evidence that is entirely subjective. One of the only exceptions in this regard would relate to the case of Al Capone in the United States. It is not appropriate that the opinion of any member or former member of the Garda Síochána would be acceptable. Opinion has not been acceptable within the Special Criminal Court to date.

I accept that the section was drafted with the best of intentions. However, why is the Minister proceeding with it when, most assuredly, it will be open to abuse? Under it, virtually anyone the Garda wishes to identify as being part of a criminal gang will be capable of being so identified. Matters are going to be left wide open and it is difficult to see the provision withstanding a challenge on the basis of its constitutionality.

Deputy Dermot Ahern: I do not accept that matters will be left wide open. The section only relates to expert evidence members or former members of the Garda may provide as to the existence of a gang. Such evidence will not in any way be capable of being taken as an indication that a person before the court is a member of that gang. It will be part of the overall evidence required to prove the existence of a criminal gang. Since the 2006 legislation was passed, there has been a difficulty in respect of providing proof as to the existence of criminal gangs. That difficulty also arises internationally.

[Deputy Dermot Ahern.]

In drafting this Bill and the 2006 legislation, we considered whether it might be possible to create an offence relating to the membership of gangs. Organised criminal gangs do not keep lists of their members. They are generally fluid, amorphous organisations and their membership changes constantly. It is, therefore, much easier to prove participation in a specific organised criminal act rather than prove that a person is an ongoing member of a particular criminal gang.

The experience in some of the country's difficult areas shows that a particular gentleman might be a member of one gang on one day and of another the next day. Although the gangs generally revolve around families, this is not always the case. I again ask the Deputy to understand that this section is about proof of the existence of a gang and no more than that. That is the reason that corroborative evidence, as is normally known in the context of opinion evidence tending to the guilt of a person, is always required and must be required, but not in this case.

Amendment put.

The Committee divided: Tá, 66; Níl, 76.

Tá

Allen, Bernard.
Bannon, James.
Barrett, Seán.
Breen, Pat.
Broughan, Thomas P.
Bruton, Richard.
Burke, Ulick.
Burton, Joan.
Byrne, Catherine.
Carey, Joe.
Clune, Deirdre.
Connaughton, Paul.
Costello, Joe.
Coveney, Simon.
Crawford, Seymour.
Creed, Michael.
Creighton, Lucinda.
Deenihan, Jimmy.
Doyle, Andrew.
Durkan, Bernard J.
English, Damien.
Enright, Olwyn.
Feighan, Frank.
Flanagan, Charles.
Flanagan, Terence.
Gilmore, Eamon.
Hayes, Brian.
Higgins, Michael D.
Howlin, Brendan.
Kehoe, Paul.
Kenny, Enda.
Lee, George.
Lynch, Ciarán.

Lynch, Kathleen.
McCormack, Pádraic.
McEntee, Shane.
McHugh, Joe.
McManus, Liz.
Mitchell, Olivia.
Naughten, Denis.
Neville, Dan.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Donnell, Kieran.
O'Dowd, Fergus.
O'Mahony, John.
O'Shea, Brian.
O'Sullivan, Jan.
O'Sullivan, Maureen.
Penrose, Willie.
Perry, John.
Quinn, Ruairí.
Rabbitte, Pat.
Reilly, James.
Shatter, Alan.
Sheahan, Tom.
Sheehan, P. J.
Sherlock, Seán.
Shortall, Róisín.
Stagg, Emmet.
Stanton, David.
Timmins, Billy.
Tuffy, Joanna.
Upton, Mary.
Varadkar, Leo.
Wall, Jack.

Níl

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Andrews, Chris.
Ardagh, Seán.

Aylward, Bobby.
Behan, Joe.
Blaney, Niall.
Brady, Áine.
Brady, Cyprian.
Brady, Johnny.
Browne, John.

Níl—*continued*

Byrne, Thomas.
 Calleary, Dara.
 Carey, Pat.
 Collins, Niall.
 Conlon, Margaret.
 Connick, Seán.
 Coughlan, Mary.
 Cregan, John.
 Cuffe, Ciarán.
 Cullen, Martin.
 Dempsey, Noel.
 Devins, Jimmy.
 Dooley, Timmy.
 Fahey, Frank.
 Finneran, Michael.
 Fitzpatrick, Michael.
 Fleming, Seán.
 Gogarty, Paul.
 Gormley, John.
 Grealish, Noel.
 Hanafin, Mary.
 Haughey, Seán.
 Hoctor, Máire.
 Kelleher, Billy.
 Kelly, Peter.
 Kenneally, Brendan.
 Kennedy, Michael.
 Killeen, Tony.
 Kirk, Seamus.
 Kitt, Michael P.
 Kitt, Tom.

Lenihan, Brian.
 Lenihan, Conor.
 Lowry, Michael.
 McEllistram, Thomas.
 McGrath, Finian.
 McGrath, Mattie.
 McGrath, Michael.
 McGuinness, John.
 Moloney, John.
 Moynihan, Michael.
 Mulcahy, Michael.
 Nolan, M. J.
 Ó Cuív, Éamon.
 Ó Fearghail, Seán.
 O'Connor, Charlie.
 O'Dea, Willie.
 O'Flynn, Noel.
 O'Hanlon, Rory.
 O'Keeffe, Batt.
 O'Keeffe, Edward.
 O'Rourke, Mary.
 O'Sullivan, Christy.
 Power, Seán.
 Ryan, Eamon.
 Sargent, Trevor.
 Scanlon, Eamon.
 Smith, Brendan.
 Treacy, Noel.
 Wallace, Mary.
 White, Mary Alexandra.
 Woods, Michael.

Tellers: Tá, Deputies David Stanton and Emmet Stagg; Níl, Deputies Pat Carey and John Cregan

Amendment declared lost.

Deputy Dermot Ahern: I move amendment No. 4a:

In page 9, lines 30 and 31, to delete all words from and including “the member” in line 30 down to and including “subsection” in line 31 and substitute “the appropriate expert”.

Amendment agreed to.

Acting Chairman (Deputy Jack Wall): Amendment No. 5 cannot be moved.

Amendment No. 5 not moved.

Deputy Dermot Ahern: I move amendment No. 5a:

In page 9, line 32, to delete “member” and substitute “expert”.

Amendment agreed to.

Deputy Dermot Ahern: I move amendment No. 5b:

In page 9, line 35, to delete “member” and substitute “expert”.

Amendment agreed to.

Section 7, as amended, agreed to.

NEW SECTION.

Deputy Pat Rabbitte: I move amendment No. 6:

In page 10, before section 8, to insert the following new section:

“8.—(1) The Director of Public Prosecutions shall not exercise his or her power under section 46(1) or (2) of the Offences against the State Act 1939 (as amended by section 11 of the Criminal Justice Act 1999) to certify in writing that the ordinary courts are in his opinion inadequate to secure the effective administration of justice and the preservation of public peace and order, in relation to the trial of an offence that is not a scheduled offence within the meaning of that Act, unless the Director is of opinion, on reasonable and objective grounds, that there is a real and substantial risk that jurors or potential jurors in the case may be intimidated or put in fear.

(2) In any proceedings in a court where it is sought to challenge or review the basis of the opinion of the Director of Public Prosecutions referred to in *subsection (1)*, the court shall take all such measures as seem to it appropriate, consistent with the administration of justice, to ensure that the necessary confidentiality of information available to the Director is maintained and that the integrity of the criminal investigation and prosecution processes are preserved.

(3) For the avoidance of doubt, in arriving at the opinion referred to in *subsection (1)*, it is not necessary for the Director of Public Prosecutions to be satisfied beyond reasonable doubt, or on the balance of probabilities, that jurors or potential jurors in a case will be intimidated or put in fear; but the Director must be satisfied:

(a) that there is a real and substantial risk of such an outcome in the particular case concerned; and

(b) that measures lawfully available in relation to the protection of jurors and their identities are inadequate to meet the situation.”

This amendment concerns a pivotal section, which turns on the intimidation of juries. It deletes the provisions making organised crime offences scheduled offences triable automatically in the Special Criminal Court. It preserves the right of the DPP, in particular cases, to send serious offences forward for trial to that court. It would require him to be satisfied, on reasonable and objective grounds, that there is a risk of jury intimidation and would require any court hearing a challenge to the basis of this opinion to take all necessary steps to preserve confidential information. It provides that the DPP's opinion does not have to be one sufficient to satisfy a court beyond reasonable doubt or even on the balance of probabilities but the DPP must be satisfied there is a real and substantial risk and that no other measures for the protection of jurors and their identities are adequate to deal with the situation.

The section is pivotal to the Bill because it involves the Oireachtas declaring that the ordinary courts of the land are not adequate to deal with the effective administration of justice and the preservation of public peace and order in respect of certain offences. It is a major statement by the Oireachtas to the effect that the ordinary courts are not capable of securing effective

administration of justice. Until now, the Minister has not advanced any evidence to show that it is true. We have no evidence to suggest the ordinary courts are not capable of delivering justice and preserving peace and public safety. Dr. Carol Coulter stated, “the Bill has not been accompanied by any evidence of a failure on the part of the courts or any reluctance on the part of jurors to face up to their responsibilities. Indeed, the principal judge in the Central Criminal Court, Mr. Justice Paul Carney, is on the record as stating that when gang members are brought before his jury court there is no difficulty convicting.” He is the most experienced and senior judge dealing with this area of serious crime. This is the judge who took his court to Limerick and heard cases from Limerick in Dublin, which is the alternative.

The big question is that if the Oireachtas is to declare that the ordinary courts are inadequate to secure administration of justice and if juries are being intimidated why do we not have a number of perverse acquittals to which any Deputy in the House can point. Where have trials collapsed because jurors have been got at? Why do we continue to deliberately confuse witnesses with jurors? I have not heard any Member of the House deny that witness intimidation occurs. There is witness intimidation and people are in fear in certain parts of urban Ireland in particular.

It is important to understand that a move to the Special Criminal Court does not mean that justice can be administered without witnesses. Witnesses will still have to be produced in court after this legislation goes through, if the Minister is intent on putting it through today. If a case of this magnitude goes to the Special Criminal Court witnesses will still have to be produced. Late the other night, the Minister went within an ace of stating to a Deputy in this House that it might be possible to get convictions without witnesses. He did not quite say that but he went very close to the line. If people here were not vigilant to point out the obvious he might even have nodded in that direction. He knows very well that even after the implementation of the Criminal Justice (Surveillance) Bill it still will not be possible to convict without witness evidence.

Many people are offering views on this outside of the House. One can understand that this is a subject that greatly moves people for obvious reasons. Some people writing on it do not have any particular experience or expert knowledge, but they are still writing on it and one takes that for what it is worth. It is unusual to see the Garda Commissioner entering public debate on a Bill going through the Oireachtas; I do not recall it happening before.

I have much regard for the present commissioner, Fachtna Murphy, but I am also aware that when he appeared before the Oireachtas Joint Committee on Justice, Equality, Defence and Women’s Rights we did not get any answers to the effect that the problem was a gap in the law. In fact, until quite recently, the Garda Síochána at the highest level opposed the Labour Party Bill on Garda surveillance, which would permit material gathered by covert surveillance to be admissible as evidence in court. The then Minister, Deputy Brian Lenihan, stated it was opposed because, to use his memorable phrase, it would only serve to alert criminals to Garda investigative techniques. It appears this has changed and there may be good reasons for this change but the history should be on the record of the House.

I am glad the Government changed its view on the Labour Party Bill because, unlike this Bill, it provided some ease to witnesses not by enabling the Garda Síochána to conduct surveillance because it has always been able to do so, but by enabling the information gathered to be made admissible in court as evidence. The Government introduced a Bill similar to that of the Labour Party and it received support on this side of the House. That was important because we do nothing in this legislation to protect witnesses and we have not proved that there is a regular or serious problem of intimidation of jurors. We have the Minister’s word for this.

[Deputy Pat Rabbitte.]

Previously, I referred to the letter he wrote to Deputy Charles Flanagan where he could not produce any evidence of intimidation of jurors. Deputy Aengus Ó Snodaigh tabled a written question to the Minister for reply on 7 July. Deputy Ó Snodaigh asked the Minister to state specifically the number of suspected and proven instances of jury intimidation. The Minister could not provide any. Again, he explained the view that the Garda does not maintain separate statistics so witnesses and jurors are rolled in together. To be honest, I do not buy it. If there was evidence of juror intimidation this Minister above all Ministers would put it up in lights. We would have read it from Stephen O'Byrnes or whoever. He would have put it out there; the chap who ran for Fianna Fáil on the northside would have written about it in the *Irish Independent*. We would have read about it. However, there is no evidence.

The Minister referred to the State solicitor in Limerick and I have already put his quote on the record; we will return to it if the Minister wants to engage on it. The State solicitor in Limerick came into the public domain after the Bill was published. Nobody in the House denies that we have a serious problem as a society driven by lucrative profits from the drugs trade where criminals who have little regard for human safety or human life are at large. Everybody in the House, without exception, wants to see them behind bars. Will this Bill make that more likely? I do not believe it will. It is a great pity that we do not have the opportunity to tease it through section by section. Perhaps it is capable of being turned into an Act that would make it more effective against the criminal bosses. As we stand, we will not be able to do that because we are only on section 8 of the Bill.

The amendment before the House does not undermine any of the Minister's core objectives in this legislation. What it seeks to do is to allow a case where there is an apprehension of intimidation of a jury to go to the Special Criminal Court. It puts that on a statutory footing. The Director of Public Prosecutions, DPP, already has that discretion, but this amendment would put it on a statutory footing. The same DPP, only a few weeks ago made some comments to a prosecutors' conference on the wisdom and historical reasons for jury trial. As he spelled out his arguments he said jury trial "imports a degree of democratic legitimacy into the system".

This amendment would preserve the right of the DPP, in particular cases, to send any serious offence forward for trial to the Special Criminal Court. It merely requires him to be satisfied on reasonable and objective grounds that there is a risk of jury intimidation. I cannot understand why the Minister will not take on board this amendment. It does not do violence to any of his core objectives in the Bill. It is not consistent for the Minister to say, on the one hand — as he does in the Bill — that the ordinary courts are inadequate to deliver justice and, at the same time, in a different section of the Bill, to say that where the DPP is so minded he may refer the case to the ordinary courts anyway. Which is it?

The better approach is to put on a statutory basis the discretion, as it has been up to now, whereby the DPP, confronted with a particular case, whether it is in Limerick, Finglas or anywhere else, can refer that to the Special Criminal Court under the guidelines I set down in the amendment. I ask the Minister, at least on this section that turns on the intimidation of juries, to take on board my amendment. Let us at least amend the Bill in that respect. That would certainly colour my view on other sections about which I have some reservations, but not so serious as the reservation I have in this regard.

Deputy Dermot Ahern: We need to put all of this in context. I do not suggest there is anyone in the House who does not want to do his or her best to eradicate organised crime from our society. I cannot accept the Deputy's amendment because it cannot stand side by side with what we intend to do. What we are trying to do is to raise the level of seriousness of organised

gang crime offences to a similar level as pertained with regard to paramilitary organisations in this country. Currently, the DPP has the power — a power he used in the Veronica Guerin situation — to send cases into the Special Criminal Court.

I believe, as does the Government, this move is necessary, particularly in the aftermath of the Roy Collins murder. In that case some people waited four years to take revenge on a family and murder a person related to somebody who gave evidence in a trial four years earlier. I hear people suggest it, but I did not confuse the issue of witnesses and jurors. However, does anybody for one minute suggest that those people who murdered Roy Collins would stop at murdering or intimidating a juror just because he or she was a juror and not a witness. I do not believe they would.

Some people say we should not use the Special Criminal Court for organised gang crime. One of the judges in a Supreme Court case, *Quilligan v. O'Reilly*, said it was common knowledge, and was discussed during the debates on the enactment of the 1939 Act that what was envisaged were cases or situations of a political nature where juries could be open to intimidation or threats of various types. He went on to say that, however, a similar situation could also arise in types of cases far removed from what one would call political offences. These could well be a grave situation dealing with ordinary gangsterism or well-financed or well organised large-scale drug dealing or other situations where it might be believed or established that juries were, for some corrupt reason or by virtue of threats or illegal interference, being prevented from doing justice. It is clearly envisaged, therefore, that the Special Criminal Court can be used to deal with these situations.

In a High Court case, the *DPP v. Special Criminal Court* — a case taken in the context of the Veronica Guerin situation — the High Court judgment made reference to the difference between crime in traditional forms and organised crime. The High Court judgment stated that those engaged in such crime require a wall of silence to surround their activities and believe its maintenance is necessary for their protection. They have at their disposal the resources, including money and firearms, to maintain this wall of silence and will resort to any necessary means, including murder, in furtherance of that objective.

I suggest to the House that we are in that situation. I am not trying to raise the Roy Collins murder above any other murder. Of course, every murder has been awful for the families of the murdered, but the Roy Collins murder was different. Clearly, the murderers were sending out a signal to anyone in that community that if they assisted in any shape or form in cases against them, they would take revenge and make an example. Deputy Rabbitte suggests I have produced no evidence for this belief. The evidence I have produced is the word of the Garda Síochána saying this is necessary, on the basis of the hard evidence it has over a number of years, but particularly in recent times and in certain areas, of jury intimidation, interference and threats.

This is more surreptitious than witness intimidation and we know that. We changed the law in 2007 to take previously recanted statements of witnesses. That is working well. Some 200 lawyers wrote letters about that 2007 legislation and the Law Society said it needed more time to examine it and it should not be rushed through. Has the world fallen in since that legislation? No it has not.

Deputy Charles Flanagan: It has not worked.

Deputy Dermot Ahern: It has. It worked in the area of witnesses who had recanted their statements. Their previous statements were accepted by the court. It has worked in a number

[Deputy Dermot Ahern.]

of other cases also. It has worked and the world has not fallen in. All the hullabaloo predicted at the time by the 200 lawyers did not happen. I hazard a guess the same will be true in this case.

This Bill has been criticised for provisions that are not even in it. I remind Deputies of the reason I brought this forward. The catalyst for the legislation was not my meeting with Steve Collins — I only met him a couple of weeks ago — but the Roy Collins murder. Clearly, that was different from any murder that has taken place in the State. It was an attack on the people, the State and on the criminal justice system. If the Oireachtas did not respond to that attack, we would be ignoring the level of threat and intimidation communities suffer in their daily lives. We did not base our view on what the State solicitor had said, because we made our decision before he spoke on the issue. I did not base it on what Paul Williams very eloquently said on a “Newstalk” programme recently. Nobody would second guess him — he is one of the most respected investigative crime journalists in the country.

The Government had the benefit of the Minister, Deputy O’Dea, at Cabinet meetings and had to take on board what he said. Deputy O’Donnell is on the record of this House as saying there has been jury intimidation in his area. The Minister of State, Deputy Power, said the same. Others mentioned intimidation to me privately. Deputy Finian McGrath referred to it happening in areas he represents. To be fair, that information is all anecdotal.

The evidence brought to Cabinet by me, aside from what the Minister, Deputy O’Dea, said was the hard evidence gardaí have garnered recently, particularly in the aftermath of the Roy Collins murder. I respect Deputy Rabbitte’s amendment. It is important to emphasise that there is provision for a 12-month review in the Bill. We will review and examine what has happened over the past year when we come to conduct a review. It may well be that the DPP will not have brought a prosecution and I will fully understand that.

The Oireachtas has to give a signal to the DPP and the wider community, particularly those directing and participating in organised gang crime, that if one participates in it, one will bear the full brunt of the available legislation and will go before a non-jury trial. Therefore, we are removing from the equation any attempt by the people behind the person who pulls the trigger to attack and intimidate jurors. One is reducing the level of civilian interaction in such trials.

I heard what was said about Mr. Justice Carney, but I have to listen to what the Garda Síochána said about intimidation. I respectfully suggest that gardaí are on the ground day in and day out working in this area. I have to listen to people such as the Minister, Deputy O’Dea, who said when people in his area receive a jury summons they shake like leaves because they are afraid. We also have to look at the statistics on gangland crime trials. When they are held, particularly in Limerick, the level of jury participation drops dramatically and increases when such trials are no longer taking place.

It is the view of Government that it is important to send out a strong signal that these offences will be tried in a non-jury court unless the DPP directs otherwise. I strongly urge this House to follow that so a signal is sent to those who are orchestrating these crimes and sending out patsies to do their dirty work. The gardaí have been very successful in putting away the people who pulled the trigger, but have not been as successful with those who have been orchestrating crime.

We have introduced this Bill to put a greater onus on the system to respond and to try to make it easier for prosecutions. One of the major difficulties we had was in trying to establish what constitutes a criminal gang. It is much more difficult to define than a paramilitary organis-

ation. The last section we divided on concerned the expert evidence of a garda. It was a stupid decision by the Opposition and I could not understand it, but it is its prerogative.

It is vital that we send out a strong signal to the wider community that the State will protect it, and to the DPP that all of these offences will be contained in the Bill. I accept judges are able to put prejudice out of their minds when dealing with these issues, but by leaving the matter to the DPP, if he decides a case must be tried in the Special Criminal Court, as is the case currently, it may be that there is perhaps an element of prejudice in such a decision.

The Oireachtas has been convulsed every time there has been a murder. I do not say this is a political way, but people on the other side of the House, when there is a murder, criticise the Government knowing full well we do our level best in regard to the resources we provide to the Garda. I do not accept what Deputies have said because those who represent Limerick, Finglas and other areas will attest to the fact that gardaí in those areas are extremely well-resourced. It a criticism Deputy Rabbitte sometimes makes, namely, that there are more gardaí per head of population in Limerick than in his constituency. That is because there are particular difficulties in those geographic areas.

I strongly urge the House not to divide on this issue and accept what the Government is trying to do, that is, raise the level of this type of insidious, organised gang crime to that which the House previously adopted regarding the paramilitary threat against the State.

Acting Chairman: Four Deputies wish to contribute and there is less than 15 minutes left for the debate on this Bill.

Deputy Aengus Ó Snodaigh: The Minister began his contribution by saying this issue should be put in context. He is quite correct; there is a context. Wayne Doherty, Roy Collins, Donna Cleary, Shane Geoghegan and many others have been mentioned in the debate and we should put the issue in that context. However, it would do them a disservice to turn our criminal justice system on its head. The DPP currently has, as the Minister said, the privilege to refer cases such as these to the Special Criminal Court.

The context we should put this in are the replies to my comments which Deputy Rabbitte read out, namely, that there is no context and the opposite has been proven by the Minister in his own words. He also said the Bill was drafted based on the evidence produced by the Garda Commissioner and that he is acting on that. It is a pity we do not have the opportunity to debate this issue with the Garda Commissioner and have the statistics he would be able to rely on. It is also a pity the Minister does not act on everything else the Garda Commissioner asked for, including money for barracks, Internet, radios, extra units of the drugs squad and a range of other issues.

The other context is that the Special Criminal Court has been continuously criticised by the UN, the Human Rights Commission, the ICCL and, in particular, the Government's Hederman committee, which looked at the role of the Special Criminal Court and whether it should be extended or ended. It found, regrettably, that it should remain in place, but specifically stated that there should be no further extension of scheduling offences to it.

I will not labour the point because other Deputies wish to contribute. What message is going out? In some ways the message to criminal gangs is that they have won and have managed to turn our system on its head, and we are declaring martial law or its equivalent instead of using the existing laws, properly resourcing the Garda Síochána and using the new Criminal Justice (Surveillance) Bill. The key point on this amendment and on this section is that we are dis-

[Deputy Aengus Ó Snodaigh.]

cussing juries. Steps could be taken which could lead to the protection of juries and could make it impossible or virtually impossible to intimidate them, but these steps have not been taken.

Reference to Limerick is, rightly, made on a continuous basis. However, when there was a problem the court was moved out of Limerick and there were successful prosecutions. To my knowledge there has been no jury intimidation here. Perhaps this is where the first steps should have been taken and perhaps the court should not sit in Limerick until such time as there is confidence once again in the ability to find juries. In Ireland the level of convictions by jury trials is quite high in comparison to other countries.

Deputy Dermot Ahern: The issue of alternatives was considered and we received advice from the Garda. However, the alternatives are impractical in a country the size of Ireland because these gangs have tentacles in different parts of the country and that has been proven in some high profile cases. Alternatives related to jury intimidation are not possible because of the size of the country. They work well in countries such as the USA where people can remain anonymous in a large country but not in a country such as Ireland.

Deputy Aengus Ó Snodaigh: They have not been tried here and when they were tried they were successful. When the court was moved out of Limerick in the Keane case there was a successful prosecution. It is the case that we are a small country and it is difficult to find a solution but making juries anonymous, using video links or sequestering them could work. It has not been proven that they do not work. Why opt for the worst case scenario when other options are available but have not been tried or tested? Such measures, along with the surveillance Bill and the changes introduced could have been successful. If there were a possibility of jury intimidation then one would use the surveillance Bill and where one could provide proof and get convictions, then the Minister could revert to us and demonstrate the examples, the facts and the figures concerning jury intimidation.

Deputy Charles Flanagan: I differ in my view from Sinn Féin on the matter of the Special Criminal Court. I see a role for that court in certain circumstances. The Minister states he is sending out a signal but I regret that he is doing nothing more and that this is a signal without substance. This amounts to announcing a declaration that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order in the State, a savage indictment of the past 12 years of Government. It is an indication by the Minister that he and his predecessors have failed to deal with the problems in the criminal justice system.

As other Deputies have stated, the most important aspect of any Administration is the provision of proper enforcement proceedings with any legislation as well as resources. It is easier to legislate than to provide resources and it seems we are doing nothing more than legislating because of the great imposition on Garda frontline activity and the failure to properly police our ports and to ensure we deal with the menace of gangland and drugs in the manner in which we should. Fine Gael will support the legislation but with reservations related to the manner in which we have been debarred from debating the important issues.

The Constitution enshrines the right to a trial by jury. The Minister mentioned the Gilligan case but one could also refer to the Kavanagh case and the criticism of the use of the Special Criminal Court both nationally and internationally. While I support the Special Criminal Court it is important that it is used on a case-by-case basis. That would be a good deal more preferable than introducing a statutory provision to the effect that cases would go to the Special Criminal

Court as a matter of course, unless the Director of Public Prosecutions advises otherwise. I am unsure if such a blanket referral would withstand a constitutional challenge and I call on the Minister to inform the House of the advice he has received from the Attorney General in that regard.

The Constitution guarantees the right to a trial by jury and goes even further than some of the international conventions to which Deputy Ó Snodaigh referred. If we are to ensure this legislation is as effective as the Minister maintains, then any decision should be on a case-by-case basis and it should be left to the Director of Public Prosecutions to decide.

I also believe we have not dealt adequately with alternatives. I do not intend to rehearse the arguments about the letter to *The Irish Times*, the parliamentary question or the manner in which the authorities never separate the matter of intimidation of jurors from the intimidation of witnesses, for reasons best known to themselves. I am unsure if we have dealt with the alternatives such as the options of screening or anonymous juries. Some years ago a trial related to events in Limerick was held in Dublin which did not present any great difficulties. The locality could be different and perhaps juries could be brought in from other parts of the country which may not prove too difficult in the circumstances. The Minister is doing no more than sending out a signal which could perhaps have the opposite effect to his intention.

The legislation may well be unworkable. An important aspect of this debate is to ensure it is robust and that it could withstand a constitutional challenge. That is the reason some months ago in this House the Taoiseach indicated that important sections of the 2007 Act were unworkable because they were constitutionally unsound. We do not appear to be learning in any way from the mistakes of the past.

Deputy Joe Costello: None of us ever expected the day would come when we would be asked to declare or admit that the ordinary courts of the land are not adequate to deal with the administration of justice. The jury trial is a cornerstone of the criminal justice system. I am concerned about the question of constitutionality. We have incorporated the European Convention on Human Rights into legislation. Serious constitutional questions arise but what concerns me above all is the anecdotal fashion in which Minister has presented his case. If this and the other House are being asked to make a declaration that the Special Criminal Court will not be the means by which the administration of justice will operate, then we should have heard more than anecdotal evidence. Expert evidence should have been presented. The Garda should have appeared before the Joint Oireachtas Committee on Justice, Equality Defence and Women's Rights. The evidence, which according to the Minister exists but cannot be produced, should have been put on record. I could equally outline anecdotal evidence to the contrary.

I represent the consistency of Dublin Central which includes the north inner city where there is a significant amount of gangland crime, especially drug-related shootings. I am a member of the local drugs task force and I chair the supply control drugs committee on the community policing forum. We have been asked questions about policing, about the courts, about the prisons and on no occasion has there been a call that we would abolish the juries. This is where the Minister's case falls down.

Deputy Jan O'Sullivan: That the two Limerick Deputies have not had an opportunity to contribute to amendment No. 6 of 43 amendments to this legislation is an indication of how ridiculous the timescale has been.

Deputy Dermot Ahern: The Deputy had time last Friday.

Acting Chairman: The order of the House was maintained in respect of the section.

Deputy Jan O’Sullivan: I want to speak on this amendment.

Deputy Dermot Ahern: The Deputy had five hours last Friday.

Acting Chairman: As it is now 1.30 p.m. I am now required to put the following question in accordance with an order of the Dáil of this day: “That the amendments set down by the Minister for Justice, Equality and Law Reform for Committee Stage and not disposed of are hereby made to the Bill, in respect of each of the sections undisposed of, the section, or as appropriate, the section as amended, is hereby agreed in Committee, that the Title is hereby agreed in Committee, that the Bill, as amended, is accordingly reported to the House, that Fourth Stage is hereby completed and the Bill is hereby passed.”

Question put.

The Dáil divided: Tá, 118; Níl, 23.

Tá

Ahern, Bertie.
 Ahern, Dermot.
 Ahern, Michael.
 Ahern, Noel.
 Allen, Bernard.
 Andrews, Barry.
 Andrews, Chris.
 Ardagh, Seán.
 Aylward, Bobby.
 Bannon, James.
 Barrett, Seán.
 Behan, Joe.
 Blaney, Niall.
 Brady, Áine.
 Brady, Cyprian.
 Brady, Johnny.
 Breen, Pat.
 Browne, John.
 Bruton, Richard.
 Burke, Ulick.
 Byrne, Catherine.
 Byrne, Thomas.
 Carey, Joe.
 Carey, Pat.
 Clune, Deirdre.
 Collins, Niall.
 Conlon, Margaret.
 Connaughton, Paul.
 Connick, Seán.
 Coughlan, Mary.
 Coveney, Simon.
 Crawford, Seymour.
 Creed, Michael.
 Cregan, John.
 Creighton, Lucinda.
 Cuffe, Ciarán.
 Cullen, Martin.
 Curran, John.
 Deenihan, Jimmy.
 Dempsey, Noel.
 Devins, Jimmy.
 Dooley, Timmy.
 Doyle, Andrew.
 Durkan, Bernard J.

English, Damien.
 Enright, Olwyn.
 Fahey, Frank.
 Feighan, Frank.
 Finneran, Michael.
 Fitzpatrick, Michael.
 Flanagan, Charles.
 Flanagan, Terence.
 Fleming, Seán.
 Gogarty, Paul.
 Gormley, John.
 Grealish, Noel.
 Hanafin, Mary.
 Haughey, Seán.
 Hayes, Brian.
 Hoctor, Máire.
 Kehoe, Paul.
 Kelleher, Billy.
 Kelly, Peter.
 Kenneally, Brendan.
 Kennedy, Michael.
 Killeen, Tony.
 Kirk, Seamus.
 Kitt, Michael P.
 Kitt, Tom.
 Lee, George.
 Lenihan, Brian.
 Lenihan, Conor.
 Lowry, Michael.
 McCormack, Pádraic.
 McEllistram, Thomas.
 McEntee, Shane.
 McGrath, Finian.
 McGrath, Mattie.
 McGrath, Michael.
 McGuinness, John.
 McHugh, Joe.
 Martin, Micheál.
 Mitchell, Olivia.
 Moloney, John.
 Moynihan, Michael.
 Mulcahy, Michael.
 Naughten, Denis.
 Neville, Dan.

Tá—*continued*

Nolan, M.J.
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Dea, Willie.
O'Donnell, Kieran.
O'Dowd, Fergus.
O'Flynn, Noel.
O'Hanlon, Rory.
O'Keeffe, Batt.
O'Keeffe, Edward.
O'Mahony, John.
O'Rourke, Mary.
O'Sullivan, Christy.
Perry, John.

Power, Seán.
Reilly, James.
Ryan, Eamon.
Sargent, Trevor.
Scanlon, Eamon.
Shatter, Alan.
Sheahan, Tom.
Smith, Brendan.
Stanton, David.
Timmins, Billy.
Treacy, Noel.
Varadkar, Leo.
Wallace, Mary.
White, Mary Alexandra.
Woods, Michael.

Níl

Burton, Joan.
Costello, Joe.
Gilmore, Eamon.
Higgins, Michael D.
Howlin, Brendan.
Lynch, Ciarán.
Lynch, Kathleen.
McManus, Liz.
Morgan, Arthur.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Shea, Brian.

O'Sullivan, Jan.
O'Sullivan, Maureen.
Penrose, Willie.
Quinn, Ruairí.
Rabbitte, Pat.
Sherlock, Seán.
Shortall, Róisín.
Stagg, Emmet.
Tuffy, Joanna.
Upton, Mary.
Wall, Jack.

Tellers: Tá, Deputies Pat Carey and John Cregan; Níl, Deputies Emmet Stagg and Aengus Ó Snodaigh.

Question declared carried.

Message from Seanad.

An Ceann Comhairle: Seanad Éireann has passed the Land and Conveyancing Law Reform Bill 2006, without amendment, and the Twenty-Eighth Amendment of the Constitution (Treaty of Lisbon) Bill 2009, without amendment.

Public Health (Tobacco) (Amendment) Bill 2009: Order for Second Stage.

Minister of State at the Department of the Health and Children (Deputy Áine Brady): I move: "That Second Stage be taken now."

Question put and agreed to.

Public Health (Tobacco) (Amendment) Bill 2009: Second Stage.

Minister of State at the Department of the Health and Children (Deputy Áine Brady): I move: "That the Bill be now read a Second Time."

Work on this Bill was initiated by my colleague, Deputy Mary Wallace, and I thank her for her work and her commitment to the preparation of this legislation.

As Deputies will be aware, on 1 July last significant further provisions of the Public Health (Tobacco) Acts were commenced. These provide that no advertising or display of tobacco products will be permitted in a retail premises that sells tobacco products and they require

[Deputy Áine Brady.]

retailers to ensure that their tobacco products are stored out of view, within a closed container or dispenser which can only be accessed by the retailer or retail staff.

To inform potential customers of the brands on sale, a retailer may use a pictorial list to inform a member of the public aged 18 years and older who intends to purchase a tobacco product as to the products that are available. This pictorial list can only be produced when requested by a customer and must otherwise be kept out of sight. Retailers must also display a sign at their premises informing the public that tobacco products may be sold at those premises to people over 18 years of age.

In regard to self-service vending machines, these are now prohibited except in licensed premises and registered clubs and they must be token activated and be located within the line of sight of a member of staff at all times. The purpose of this measure is to ensure that under 18s cannot buy cigarettes from an unsupervised self-service vending machine. All retailers of tobacco products must register with the Office of Tobacco Control.

These measures, which were announced more than a year ago, are an important next step in responding effectively to the continuing public health crisis caused by the consumption of tobacco products, which, in the Irish context, mainly involves smoking cigarettes. The year long lead-in period allowed my Department, together with the Health Service Executive and the Office of Tobacco Control, to work with those affected by the new measures. In addition, a comprehensive guidance document was prepared and made available.

During this lead-in period a number of issues were raised with my Department, some, though not all, of which had merit. As a result, the current measure, the Public Health (Tobacco) (Amendment) Bill 2009, is before us today.

In summary, the Bill proposes some minor changes to the overall package of measures introduced on 1 July last and, in addition, the opportunity is being taken to introduce other minor changes.

The Bill comprises eight sections. Sections 1 and 8 are standard provisions. Section 2 provides a definition of cigarettes. To my slight surprise, a definition was not previously required in our tobacco control legislation.

Sections 3 and 5 provide for judicial discretion on the period a person who is convicted of an offence under the Public Health (Tobacco) Acts is suspended from the retail register. The effect of such a suspension is that they cannot sell tobacco products for the period of the suspension. As this proposal has attracted some critical comment, it would be helpful if I outlined the reasons for the proposed change.

This amendment is being introduced against a background of concerns that the existing penalty, whereby retailers would be removed and therefore be unable to sell tobacco products for three months, is disproportionate in the context of penalties under the Intoxicating Liquor Act. Where a person is convicted of an offence under the Intoxicating Liquor Act 2008, the licensed premises will be closed for two to seven days for a first offence and seven to 30 days for a second or subsequent offence. While it is not proposed to align the penalties, it is considered appropriate to allow a judge some discretion under the Public Health (Tobacco) Acts, as in the Intoxicating Liquor Act.

However, it should be noted the three-month penalty remains an option and retailers on summary conviction will also be liable for a fine of up to €3,000. The proposed change was influenced by a concern that the stricter penalty might not be imposed in practice. The decision was also influenced by the prospect of a legal challenge on the basis that a three month removal from the register would be a disproportionate penalty.

As the majority of retailers can be expected to be compliant, it is not envisaged that there will be a large number of prosecutions in the retail sector. I consider, therefore, the current proposal represents a sensible compromise.

Section 4 provides an exemption from the advertising ban for airport duty free retail outlets. They will be permitted to have on permanent display a pictorial list of tobacco products sold but will be required to conform to other significant changes in how they do business. Self-service will be abolished and tobacco products will be required to be kept in a closed container, meaning significant changes in the airport duty free sector. I intend to review this exemption towards the end of 2013. Section 4 also provides an exemption from the advertising ban for specialist tobacconist shops.

Section 6 empowers the Minister to make regulations to introduce combined text and photographic warnings, also known as pictorial or graphic warnings, on tobacco products. The European Commission has proposed a library of these warnings but, as their introduction is not mandatory, an enabling provision is required, hence the inclusion of section 6. These high impact warnings have already been introduced in several other EU member states and similar warnings have been introduced in some third countries such as Thailand, Canada and Brazil. My officials will develop an action plan for the introduction of these warnings.

Section 7 broadens the definition of a specialist tobacco retailer to be either a retailer who carries on, in whole, the business of selling tobacco products and tobacco related products by retail, or a person who carries on, in part, the business of selling tobacco products but other than cigarettes.

This amendment to the existing legislation will allow specialist tobacco retailers, of which there are no more than five in the State, the choice of either selling only tobacco products and tobacco-related products such as lighters, cigar cutters, humidors, ash trays and so forth as is provided in current legislation or in addition to selling tobacco products, selling a full range of non-tobacco related products, typically, wines, walking sticks, ties and high-end consumer goods but not cigarettes.

Tobacco control is a challenging task, requiring building public awareness of the issues and working to achieve public support for radical changes in how we live and work and in how we conduct our social lives. An excellent example of giving effect to this pragmatic vision of tobacco control was the introduction of a smoke free environment at work in March 2004. An important aspect in ensuring the success of this measure was convincing the public of the objective merits of the proposal. We should be in no doubt that measures which do not enjoy this support will not succeed. Our previous success, on which we must build, was based on establishing consensus and support, and this is the approach I am commending today.

Deputy James Reilly: Although I welcome the Bill, I have grave reservations about some the Minister's amendments. On Committee Stage I will table amendments to them.

When we debate a Bill of this nature, it is important we keep in mind the background to it. There are those lobbying for change to the original legislation, which carried a mandatory suspension from the retail register of three months, versus those who would wish it to stay in place. We can have a semantic and philosophical argument about the difference between the terms "vested interest" and "interest group". The interests groups opposed to the dilution of the original legislation are health-orientated organisations which wish to protect the health of our children and nation. They comprise the Irish Heart Foundation, the Irish Cancer Society and ASH, the latter which consists of many public health experts and cardiologists.

The chief executive of the Irish Heart Foundation, Michael O'Shea, wrote to me about this legislation. He stated:

[Deputy James Reilly.]

On behalf of 10,000 families who lose loved ones to heart disease every year, I express my serious disappointment that amendments watering down the enforcement of tobacco health legislation will be hastily put forward on a Friday evening before recess. As the chief executive of the national charity supporting people with heart disease and strokes I welcome the arrival of this legislation as a positive step in the fight against tobacco. But like any legislation its success depends on enforcement by authorities and compliance by relevant parties.

However, I cannot hide my dissatisfaction at the hurried approach to push through amendments to a piece of legislation we believe will operate effectively in its current form [i.e. before the Minister's amendments]. Furthermore, I am extremely disappointed that our organisation has not been consulted as part of this process. I can only conclude that this last minute approach to amend otherwise sound legislation is a direct result of pressure from the vested interests.

I strongly urge you not to give in to this pressure and to strive to set the amendments aside — until the Dáil recommences in the autumn. Our country has led the way with the introduction of the smoking ban and we must continue to drive change to protect our children against the evil of tobacco.

Tobacco is evil. Its consumption has lifelong consequences, shortens lives and causes people to die, which is written on the back of a packet. These measures will ensure that adults, who under our Constitution have the freedom of will and can do as they desire, can choose to smoke as long as they are informed. Minors, however, who cannot be considered to have reached that age for choice, need protection from an industry that holds no bars in trying to get its product out. For years it has increased the addictive nature of its product while obfuscating on its real effects.

Michael O'Shea concluded his letter:

Furthermore, I wish to draw your attention to new signage which has been placed in retail outlets around the country which is contrary to section 43(4) of the Public Health Tobacco Acts. In the latest guidelines for those selling tobacco, it clearly states that only one prescribed sign is permitted per premises. However, it has come to our charity's attention that retail outlets are indeed carrying a second sign clearly designed to attract the attention of young people. This is yet another insidious ploy by the tobacco industry to attract young smokers by "bending the rules" and we strongly urge you to take immediate action to have them removed.

I have tabled amendment to that effect.

The Irish Heart Foundation does sterling work. We all will be aware of the extent of cardiovascular disease in this country, the number of people who die from heart attacks and from strokes, and from other peripheral vascular disease, particularly those with diabetes. It has been my experience that if a diabetic smokes, he or she faces the amputation of a lower limb. Anything that will avoid people taking up smoking must be commended, and I commend the Bill in that regard.

However, we must look at why we are diluting penalties. There must be a penalty. There must be an urgency about this. There must be a real threat to those who would consider doing otherwise.

This brings me to the next piece of information, which was sent to me by the Irish Cancer Society. In a key point, the society states that it welcomes the introduction of this progressive

legislation in principle, but for the initiative to be effective the Government needs to follow through with a real deterrent. The society can see from the latest data from the OTC that a significant portion, 40%, of retailers are still willing to sell cigarettes to minors.

If 40% of retailers are prepared to sell cigarettes to minors, they need a strong message from this House and from the Government that this will not be tolerated and that they will pay a price. As the only reason they are selling those cigarettes is for profit, let us hurt them in their pockets where it hurts most. We are talking not about sending people to jail for three months, but only about removing them from the register to sell tobacco for three months. It is totally incongruous to compare this to the Intoxicating Liquor Act, which penalises somebody only for two to three days. Alcohol is not something we recommend for persons under the age of 18, and yet alcohol in moderation carries nothing like the same health risk as cigarette smoking because there is no such thing as any amount of cigarette smoke being in any way conducive to good health. It is erroneous to compare the two.

The other point that must be made is that an off-licence found in breach and losing its licence is out of business because it sells alcohol in the main, whereas what we are talking about here are many retailers who run small shops who will still be allowed continue to sell newspapers and other products. It is not comparing like with like, and it is particularly disingenuous of the trade to suggest otherwise.

While there is agreement here and I know we come under pressure, there is a time when we must stand up for what we believe is right, and for the rights of our children. The tobacco industry is one that seeks to make the product more addictive and the golden goal is the 20 pack. If one can get the child to smoke 20 cigarettes, one has him or her addicted. That is the aim. It takes years to get them off those cigarettes, while the costs associated must also be taken into consideration. There is also the annual cost to the health service generally of cigarette-related illnesses due to hospitalisation and medication.

This is why the point of sale legislation should not be amended. Young people would be the group impacted upon the most. Some 80% of smokers start before the age of 18, and 53% start before the age of 15. Is this coincidental? Does the Minister think that this industry, which has honed its advertising skills to the last and is probably streets ahead of any other industry, is not focusing on this area? There is a consequence to its advertising and to its activity. It is a frightening statistic that 80% of smokers start before the age of 18. This is what we are trying to prevent.

According to the Irish Cancer Society adult smokers are the most brand loyal of any good on the market. This measure is aimed at young people and will affect young people, a section of the market to which retailers should not be selling in the first place.

On the deterrent being removed, what is measure without enforcement? Surely that is the key. It is not fair on those who do comply, who will lose income as a consequence while they watch somebody up the road selling to minors. However, the real point is that 1,600 people die each year from lung cancer of which cigarette smoking is intimately causative; 7,000 people die each year from smoking related illnesses and there are 1 million smokers in Ireland today. Most worrying, despite the smoking ban, which seemed to have a great effect initially, is that the most recent National Health and Lifestyle Survey from 2007 showed the number of people who smoke increased from 27% in 2002 to 29% in 2007. When one allies that fact with the statistic that 80% start under the age of 18, it shows how critical this legislation is.

ASH Ireland is similarly concerned. It, like the agencies to which I referred, would like this legislation left for a more considered debate in the autumn.

[Deputy James Reilly.]

I have no issue with some of the amendments, particularly the amendment on the airports. Nor do I have a problem with the amendment on the specialist tobacco suppliers. However, the one at which I am truly alarmed, which was not clear to people when the amendment Bill was first mooted, is the 90 day mandatory suspension, and its now diluted effect, which would apply to all sections of the Bill, including the sale of cigarettes to minors. I have no issue with there being discretion around breaches of the signage and other small breaches, but I consider sacrosanct the issue of sale to children because that goes to the heart of what we are trying to stop. We spoke about this in the case of food advertising in the context of the time at which advertisements appropriate for children to view should be on television. Subtle or unsubtle, advertising works.

The issue of signage is mentioned in the Bill. It shows how devious this industry is that it put out a sign straight away advising on the age one must be, but it is designed in such a way as to mirror their previous advertising products. There is no end to how far those in the industry will go to protect their profit and there should be no end to how far we will go to protect our children.

I do not wish to delay any more than necessary. I plead with the Minister of State that when we come to Committee Stage she would take cognisance of the concerns of all of these agencies. We all accept that people must make a living, but surely not on the back of the health of children. That must be the bottom line. When we come to Committee Stage I would hope that the Minister of State would take on board the amendments.

I will not vote against the Bill on Second Stage because I fully concur with its principles and attempted purpose. We are disappointed that the Government has diluted down the main deterrent in the Bill and I hope the Minister of State gives due consideration to that rather than rush through this legislation which may then require amending legislation in a year's time. People will be watching closely to see who offends and what penalty and consequence he or she faces for the offence.

Deputy Jan O'Sullivan: I wish to share my time with Deputy Caoimhghín Ó Caoláin.

I must express my serious concern at the speed with which this legislation is being taken, and particularly that organisations such as the Irish Cancer Society, the Irish Heart Foundation and ASH Ireland did not know this was happening until a few days ago when they sought to make representations to those of us who will be speaking on the legislation today and to express their serious concerns. The industry and representatives of those who sell tobacco were aware for quite some time that there were proposals to amend the original Act and they had consultations on the content of the legislation. I object to this one-sided process as it did not afford a fair opportunity to those with a different point of view to discuss the changes being made in the legislation. The legislation, as published, could have been influenced by their views and the information that would have been made available to the Minister. Those of us seeking to amend the Bill could have had that information available to us in good time.

I had an opportunity to meet representatives of the Irish Cancer Society but only received written submissions from the other two organisations because there simply was not enough time to hear their concerns in person. Did the Minister of State, Deputy Áine Brady, have an opportunity to meet them? When legislating, we need to hear the arguments on both sides.

We have a very serious responsibility as legislators in respect of cigarette smoking and the purchase of cigarettes by children under the legal purchasing age and we need to hear all the facts and weigh them up as we proceed.

I have no difficulty about the provisions on duty-free purchases but have one or two questions on specialist tobacco shops. I am concerned about the main sections of the Bill that provide for judicial discretion on the period of time a person who is convicted of an offence under the original Acts is suspended from the retail register.

It is important to prevent young people from smoking in the first instance. The statistics are startling in that more than half of all smokers start before they are 15 and 83% start before they are 18. I find it very surprising that, from 2002 to 2007, there was an increase from 27% to 29% in the number of smokers. I believed there had been a decrease since I know many people who have given up smoking. The statistic probably indicates more younger people are taking up smoking, perhaps earlier than ever before, and that older people are quitting. I do not know the statistics on the period in question but must deduce from personal experience and the fact that one cannot smoke in pubs that it is likely the increase indicates many young people are smoking.

We must do everything possible to prevent young people from starting to smoke. Controlling the sale of cigarettes in shops is part of the solution, albeit only part of it. A large part of the solution involves education, making it not cool to smoke and changing the attitudes of young people, particularly young girls who regard smoking as a means of staying thin. We must get across the message that smoking is not attractive and we should change the attitudes of young people so they will not want to smoke. Our job today, however, is to amend the legislation.

The new point-of-sale measures came into force only on 1 July, yet we are taking steps to amend these measures without even determining their effects. Why are we doing so and why were the amendments not included in the original legislation? I presume there were representations made when the original Bill was being considered. Representations were received from cigarette vendors to the effect that mandatory removal from the register for a given period is not always commensurate with the offence committed. They believe that if an offence is fairly minor, one should not be removed from the register for three months. I have taken this on board in my proposed amendment but believe there is a need for some kind of mandatory removal from the register. If one is not removed, one can continue to sell cigarettes the day after committing an offence. We need a mechanism for the definite removal of the guilty vendor from the retail register.

I am particularly concerned that the organisations that focus on the unhealthy effects of smoking were not consulted on this Bill. Lung cancer is the biggest killer in Ireland and 1,600 die from it each year. The smoking of cigarettes is the primary contributor. Seven thousand die each year from smoking-related illnesses. The effect of smoking on the health of the population is extraordinary given the number who die from it and the number whose illnesses are related to it.

All of us, whether we smoke or have lived with smokers, know how difficult it is to quit smoking. This is why it is all the more important to deter young people from smoking in the first instance. We must ensure the measures in place are strong enough to do so.

I do not have a particular difficulty with the provisions on duty-free purchases because duty-free shops are designed to target a specific group. Members of this group make purchases in a controlled environment and must have a passport. I understand there will be no self-service of cigarettes and that they will be stored behind a counter in a box or container. There is an element of competition with other European countries over which gets to sell the duty-free cigarettes being purchased by those from beyond the European Union. I understand the thinking behind this.

[Deputy Jan O'Sullivan.]

Will the Minister of State address section 7, which pertains to specialist shops? There are only five specialist tobacco shops. One type sells just tobacco, including cigarettes. Another carries on, in part, the business of selling tobacco products by retail and does not carry on any business that consists, in whole or in part, of selling cigarettes. The Minister of State suggested they might also sell products such as wine. Is there a loophole allowing retailers that sell a variety of goods to sell tobacco also? While they may not sell cigarettes, they may sell the kind of tobacco one rolls to make one's own. There may be a loophole. I do not have a problem with the specialist tobacco shop that sells only tobacco products. When I heard the word "wine", I felt the provision could easily constitute a way to allow shops that sells many different products to sell tobacco, albeit not cigarettes. Will the Minister of State address this in her reply on Second Stage or during Committee Stage?

The issue of signs was brought to my attention by the Irish Heart Foundation and, I believe, ASH Ireland. I have not seen the signs because we have been pretty much cooped up in the House for the past week. I understand there are signs in shops designed to remind people of packets of cigarettes. I have not seen them and cannot say whether this is true.

Is it possible, by way of regulation under the legislation, for the Minister to specify the types of signs that can be erected, including their colour, size and message, and to ensure there are no subliminal messages on them? I presume that could be done by way of regulation if it is not already there. Maybe it is in the legislation but I have not seen it. We have to be wise to all the possible ways there might be of persuading young people to start smoking because that is what keeps the tobacco industry going. Older people are stopping. I imagine that the number of older people smoking has dropped. The evidence, however, is that young people smoke more now than in the past. We must make sure that every loophole is closed and every measure is taken to ensure that not only are cigarettes not sold to young people but that there are no messages going out to suggest that they should smoke. We will not oppose the Bill on Second Stage but I have proposed an amendment and there are others. We will certainly seek to ensure that anybody who contravenes the legislation will be subject to mandatory removal from the register.

Deputy Caoimhghín Ó Caoláin: I thank Deputy O'Sullivan for sharing her time with me.

The ban on the display and advertising of tobacco products in shops came into effect on 1 July. It is a very welcome and progressive measure which, as Sinn Féin spokesperson on health and children, I fully support. It complements the workplace smoking ban which has been so successful in helping to create a healthier environment and in discouraging smoking. The impact of smoking is widely agreed to be one of the greatest health challenges facing humanity. It is estimated that across the 32 counties of Ireland 9,500 people die every year from smoking-related illnesses. This is part of a truly shocking worldwide death toll. The World Health Organisation says that tobacco causes approximately 5.4 million deaths a year. Smoking will kill 6.5 million people in 2015 and that number is projected to rise to 8.3 million in 2030. Every 6.5 seconds a current or former smoker dies and an estimated 1.3 billion people worldwide are smokers. These are shocking statistics.

It is a sad fact that smoking is increasing in the developing world and the biggest rise in deaths will occur in low and middle income countries. That is a terrible indictment of the tobacco manufacturers who push their products on children and on the poorest people in the world. The history of that industry is a record of shame beginning with the use of slaves to harvest and process tobacco and continuing today with the spread of addiction and its impact

on human health. The tobacco industry does not have the power and influence it once had and there is greater awareness of the health consequences of smoking.

The damage smoking causes to the health of individuals also imposes a significant burden on health systems, including our own. A reduction in smoking is essential for improved public health and provision of public health services. Considering all of that and taking into account the need for constant vigilance and concerted efforts to combat smoking in the most effective ways possible it is extremely disappointing to see the Government bringing forward provisions in this Bill which water down the penalties for breaches of the law relating to the advertisement, sale, and display of tobacco products in shops. What signal does this send out when the latest survey from the Office of Tobacco Control shows that some 40% of shop retailers and 63% of licensed premises are willing to sell cigarettes to minors? While there has been some improvement in those figures since 2007 it is a very high rate and shows that breaches of the law are widespread. Such breaches help to ensure that children have ready access to cigarettes and begin an addiction that in many cases will be lifelong, injurious to health in most, and fatal in a significant number.

In the Public Health (Tobacco) Act 2002, among the penalties set out is removal from the register and consequent prohibition from the sale of tobacco products for three months for a summary offence and a year for a person convicted of an offence on indictment. This Bill proposes to dilute those penalties. The mandatory tobacco sale prohibition period for offenders is to be changed from three months and one year to a maximum of three months and one year with shorter periods possible at the discretion of the Judiciary. This is not acceptable. When the Bill was published the impression was given that this change affected only those provisions relating to the display for sale of tobacco products, the order for which came into effect on 1 July. Retailers had lobbied the Government arguing that the order would for them cause untenable loss of revenue, closure of shops and loss of jobs. The Government rightly went ahead with the order but apparently as a softener for the retailers signalled that it would reduce the penalties for breach of the law. The impression was that this related to display but my reading of the Bill indicates that it covers all breaches of the principal Act of 2002. I ask the Minister of State to clarify this matter, to which other Deputies have referred and state whether this is the case. If so, it adds insult to the injury intended by the dilution of the penalties signalled.

Sinn Féin opposes sections 3 and 5 of this Bill and will act accordingly. They send out entirely the wrong signal and represent a slackening in the effort to combat smoking and the grave damage it does in our society. I have no difficulty with the other sections of the Bill, relating to duty free and specialist tobacco shops. Those are particular cases and not part of the greater concern about access that I wish to see continued and strengthened if possible.

Deputy Mary Alexandra White: I wish to share time with Deputy Wallace.

An Leas-Cheann Comhairle: Is that agreed? Agreed.

Deputy Mary Alexandra White: I am delighted to speak for a few minutes on this significant Bill. Following the groundbreaking legislation introduced in March 2004 to ban smoking in the workplace and elsewhere this is a welcome step forward.

We have heard the main provisions of the Bill — no advertising for, and no display of, tobacco products permitted in retail premises. All tobacco products must be out of view and stored within a closed container accessible only by the retailer. Vending machines will be permitted only in licensed premises.

[Deputy Mary Alexandra White.]

I loathe smoking and what it does to people. We have all seen at first hand people who have suffered from lung cancer and heart disease through smoking. In Ireland 1,600 people die each year from smoking, 7,000 die from smoking-related illnesses in a year, and there are 1 million smokers, half of whom will die of smoking-related diseases. This is a very welcome Bill. While we may have concerns about the penalties and their implementation I hope the Minister will review the legislation after a year in practice and examine them to see how they are working and address any shortcomings.

We all know how powerful the smoking lobby is. Its tentacles are everywhere. It tries to suck people in to buy and use its products. When I hitchhiked in New Zealand and south east Asia people offered young travellers free cigarettes so that they could get hooked and the tobacco companies could have new customers for their products. Whether in south east Asia or Carlow, Kilkenny or Dublin we must make sure to protect our young people. This legislation is primarily geared towards young people so as to guarantee that access to something that will have such a damaging effect on their lives in the long term, and perhaps in the short term, is restricted.

It is no longer cool to smoke and take out a packet of Gitanes, Players or other cigarettes. The strong message must go out that we are doing this for the betterment of the health of our young people and to ensure that they are protected from the advertising and strong smoking lobbyists who try to get us to buy these products.

There are concerns about the difficulties of trying to get a prosecution but the primary function of this legislation is to protect health and such considerations. We have all received letters from the Irish Cancer Society and ASH and various Deputies have added the content of those letters to this debate. I have seen at close hand within my family the problems of people who have spent many long years smoking and we must put an end to this, particularly for the next generation. We must ensure that they do not easily gain access to cigarettes. If the action did not affect the inflationary basket at the next budget, I would call on the Minister for Finance to place another few cent on a packet of cigarettes.

We must do all in our power to ensure that progressive legislation is introduced to protect the health of the nation. Everybody in the House has spoken from the heart on this issue and I am glad there is general co-operation and support for this legislation. I would like to conclude by asking the Minister to review the legislation after a year to see if there are any loopholes or if it can be tightened up in future.

Deputy Mary Wallace: As the former Minister of State with responsibility for health promotion, I am familiar with the terms of the Bill, having worked on it. I congratulate the staff of the Department of Health and Children and, in particular, the Minister of State, Deputy Áine Brady, on bringing the Bill before the House today. The work done to bring about the changes from 1 July will make a difference in removing from the point of sale the advertising of smoking to children.

It is no exaggeration to say that this country has led the way in trying to reduce the number of smokers and in particular the number of young people taking up smoking. It is hard to believe that it was only five years ago that the smoking ban was introduced in Ireland. Deputies referred to today's legislation, but legislation from 2002 and 2004 was not put into place because of the actions of the cigarette companies in the courts. It was only when that position changed that the announcement could be made by the Government on 1 July 2008 that these changes would happen on 1 July 2009.

We can all remember how radical the smoking ban was when it was introduced in Ireland and how vehemently it was opposed by some groups at the time. We can now take clean air for granted and most of us would be appalled to see somebody lighting up in a pub or restaurant. It is great to think that, for a whole generation, smoking in the workplace is unthinkable.

The Government has been able to progress the 2002 and 2004 legislation because of recent actions by cigarette companies, and this year has seen the preparation and bringing into force of a number of regulations for 1 July 2009. For example, because of the product information regulations, a shopkeeper can show a pictorial list outlining the size of a packet with one image and list of warnings. There is a retail sign regulation, which a Deputy has queried, that confirms the size, colour and text font allowed. Those regulations have been signed off.

There is a registration regulation which concerns the setting up of a register by the Office of Tobacco Control, OTC. The Office of Tobacco Control has done significant work in this area and we saw the wonderful work it did in 2002, 2004 and since then. The setting up of a register will be important.

One of the concerns expressed yesterday in *The Irish Times* related to self-service vending machines and the issue of under age people being able to get cigarettes from 40% of outlets. The self-service vending machine regulations came into effect from 1 July 2009 and dictate that the vending machine must be in sight of the staff and activated by a token or card provided by staff, who must be satisfied that the purchaser is over 18.

All of those changes, combined with the legislation before us today, bring about change in this country from 1 July 2009 that should be as significant as what happened in 2004. I have walked into my local shops in the past few days, although the Houses have been sitting until the late hours, and there are significant changes behind counters. Children going in to buy sweets will not be bombarded with a big advertisement for cigarettes behind the cash register. The advertisements were removed from 1 July, which is significant for the children of the future.

There has been much debate about the effects on children. Deputy O'Caoláin mentioned statistics from the Office of Tobacco Control. The percentage of retailers who refused to sell cigarettes to under age people was 60% in 2008, which compared to 52% in 2007. As the Deputy indicated, those statistics are improving, but, as we would all agree, they are not yet good enough. If we do nothing else today, we should send a strong message to retailers that it is unacceptable for them not to seek identification from young people. Their efforts are currently insufficient.

The audit carried out by the Office of Tobacco Control indicated that, overall, 46% of minors who asked for cigarettes in shops were not asked for identification. This is a slight improvement from a year earlier, when the figure was 53%. Whether it 53% in 2007 or 46% in 2008, it is still not acceptable to the Members of this House that retailers in Ireland are not asking children or young teenagers for identification when they look to buy cigarettes.

The 2008 audit also showed that 96% of minors who were asked for identification were refused the sale, with the figure being 91% in 2007. One of the key findings from the Office of Tobacco Control was that retailers should ask for identification. Others have mentioned statistics relating to children.

In 2006, the Office of Tobacco Control figures showed that 75% of all smokers in Ireland started smoking before they were 18. Whether it is what the Opposition stated today or what the Government believes in its bringing forward of these changes from 1 July, we are all saying

[Deputy Mary Wallace.]

the same thing. We all want to ensure that everything possible is done to prevent people from taking up smoking.

All of us know people who smoke and every one of those people would prefer if they had never taken up the habit and could drop it. No Irish person that I know has said that they love smoking and are glad to have started. The difficulty is that over half of all smokers start before they are 16, and the problem must be addressed with young people in mind. That is the reason the Government is working to fine-tune the 1 July changes to do everything possible to remove the opportunity for tobacco companies to advertise to children in this subtle way in shops and airports. By doing so, it will make a difference.

One of the key issues that struck me when I worked on this was that the research done by Professor Ken Warner, the dean of public health at the University of Michigan. He examined the number of customers lost by the industry every year due to people quitting, smoking-related death and smokers dying of other causes. For every smoker who dies or quits, the industry needs a replacement smoker, such as a child who will become addicted and replenish the basis of long-term smokers. For the industry to maintain its customer base in Ireland, it is estimated that more than 50 children must start smoking each day. That is why the changes introduced on 1 July are key changes.

Legislation can only go part of the way towards reducing tobacco use. Peer pressure, parental example and the extent to which tobacco is perceived as the norm in certain social situations are all factors in fostering a relaxed attitude to tobacco use. Therefore, everything possible must be done to ensure that advertising of tobacco products ends so that children will no longer believe tobacco use to be the norm and fewer people will take up this terrible habit in the future.

The announcement on the changes introduced on 1 July was made in March. Certain Members have expressed concerns with regard to the 90-day period. I am sure the Minister of State will address that matter in her reply but the key point is that a judge will have discretion with regard to the period during which a retailer may not sell cigarettes following a conviction. A judge may impose a 90-day period if he or she is of the view that the situation merits it. However, every situation must be measured in the context of the offence. Many Deputies wrote to the Department of Health and Children — on behalf of their local shops, and so on — in respect, for example, of temporary staff members placing something on a counter by mistake and thereby causing difficulties for their employers. If a retailer can demonstrate that a temporary employee made a genuine mistake, then the matter can be taken from there.

Self-service will no longer be permitted at duty free retail outlets and tobacco products will be required to be kept in a closed container. Like other Members, I have not had the opportunity to pass through Dublin Airport since 1 July. However, I expect that when I have occasion to do so, I will not see shelves stacked with Carrolls, Silk Cut or Major cigarettes. That will be a major difference. As Deputy Jan O'Sullivan pointed out, the relevant provisions had to be tweaked to a certain degree on foot of concerns regarding duty free retail outlets here being able to compete with Heathrow and other UK airports.

The overriding concern among most people is that smoking involves a major risk factor. I met representatives of the Irish Heart Foundation, the Irish Cancer Society and Ash, which are wonderful organisations and which do great work in this area, on several occasions. As a result, I am aware that we must reduce the prevalence of smoking to mitigate cardiovascular disease, respiratory disease, many forms of cancer and a wide range of debilitating conditions. The Government has acted by bringing forward legislation, engaging in health promotion cam-

paigns, dealing with the pricing issue at budget time and controlling the sale and advertising of tobacco. When people look back at what happened during the current period, they will state that the changes introduced on 1 July made a difference.

According to the SLÁN health and lifestyle behaviour study for 2007, 29% of adults reported that they were current smokers. Evidence demonstrates that pricing is a key tool. A 25 cent increase in the price of a pack of 20 cigarettes was introduced on 7 April 2009. Cigarette prices in Ireland are the third highest in Europe. However, I accept that we must take account of the fact that people can purchase cigarettes much more cheaply abroad and then bring them home in their suitcases. The Government must continue to introduce changes in this area because we must do everything in our power to safeguard the health and well-being of future generations.

This legislation, the changes introduced on 1 July and the legislation introduced by the then Minister for Health and Children, Deputy Martin, form a package of measures which mark this country apart. Internationally, Ireland is seen as a trailblazer in this area. Ireland was the first country in Europe to introduce legislation imposing a smoking ban and the model it employs has been copied across member states. Research shows that in the aftermath of the smoking ban, sales of cigarettes here decreased. However, young people and women are again taking up the habit in large numbers. That is a matter of concern to everyone in the House. The perception that smoking is cool or trendy continues to obtain among young people. We must seek to tackle that perception.

We must also seek to address the matters of accessibility and availability. This legislation and the regulations introduced on 1 July are designed to deal with these matters. As with sweets and comics, for many years cigarettes have been on display in newsagents. This serves to make them seem innocuous. However, since 1 July retailers have been obliged to remove all cigarettes and other tobacco products from view and ensure they are placed in closed containers which can only be accessed by said retailers and their staff. This will help to ensure that only those who are of an age at which they can legally purchase tobacco will be able to do so. Furthermore, no advertising of tobacco products will be permitted on retail premises.

As previous speakers indicated, an article in *The Irish Times* yesterday indicated that young people were able to obtain cigarettes from vending machines in 40% of outlets such as discos, bars and other licensed premises. The changes introduced on 1 July will assist in preventing this from happening because from now on vending machines must be token or card operated.

Smoking and its effects cost the health service more than €1 billion each year, cause the deaths of thousands and give rise to suffering for many more. The legislation makes the purchase of cigarettes by young people extremely difficult. The House must send out a strong message to retailers that it wants it to be difficult for children to purchase cigarettes and wants the legislation and the regulations introduced on 1 July to act as a deterrent.

Smoking is the leading cause of preventable deaths here. I am delighted the Government has been proactive in trying to prevent the sale of tobacco to those who are under age and in discouraging others from taking up this terrible habit.

Deputy Pat Breen: I wish to share time with Deputy Connaughton.

An Leas-Cheann Comhairle: Agreed.

Deputy Pat Breen: I welcome the opportunity to contribute to the debate on this important Bill. Like previous speakers, I am of the view that more time should have been devoted to this

[Deputy Pat Breen.]

legislation. It is sad that, as with other Bills this week, a guillotine is being applied in respect of it.

In general, Fine Gael supports the Bill. Deputy Reilly tabled several amendments in respect of the penalty for offences committed under the Public Health (Tobacco) Act, most notably those relating to the sale of cigarettes to people under the age of 18. The latter are covered in sections 3 and 5.

I thank the Minister of State, Deputy Áine Brady, for keeping Members updated on progress relating to the drafting of the Bill. I also thank her officials for providing us with copies of it last week.

There are numerous people who each day try to break the grip nicotine has upon them. Smoking is a difficult habit to break and it is widely accepted that it is extremely bad for one's health. It is estimated that each year approximately 6,500 people here die as a result of smoking-related diseases. Some 1,600 people die from lung cancer. There are approximately 1 million smokers in this country and half of these will die as a result of smoking-related illnesses. Some 90% of lung cancers are caused by smoking and it costs approximately €1 billion per year to provide health services for smokers.

In spite of all the campaigns to try to stop people from smoking, when the Department of Health and Children published the results of the third national survey of lifestyle, attitudes and nutrition in April 2008, it was revealed that there was a slight increase in the percentage of smokers since 2002, with 29% admitting to being a smoker in 2007 compared to 2002, even though the 2007 figure represented a drop from the 1998 percentage of 33%. The former Minister of State, Deputy Wallace, referred to the number of young people who still smoke, particularly females. I agree with her and this is evident at all social outlets, which is a pity. The introduction of the workplace ban on smoking in 2004, which initially met with some resistance, has been a great success both for smokers and for non-smokers like myself, who also were affected by smoking. The ban was successful, which was partially due to the high percentage of people who complied with it. For instance, last year 97% of workplaces were compliant, which is the highest level since the introduction of the ban in 2004 according to the Office of Tobacco Control's annual report. Consequently, when Ireland became the first country in the EU to remove all tobacco advertising from retail outlets as of 1 July, it was no surprise that when one entered shops on that Wednesday morning, all cigarettes were out of view. We are a law-abiding society and the majority of retailers complied with the law.

Retailers estimate it will cost them approximately €5,500 each to reconfigure their shops to comply with this legislation. They have referred to a similar development in Canada in which no link was found between the implementation of a similar ban and a reduction in the rates of smoking among youths. However, it is a good idea to prevent cigarettes from being visible on entry to a shop and it will deter some people from buying them. While one could argue against this measure by citing the example of drugs, which people are not deterred from using by the lack of advertising, it is important to be proactive and to make every effort to stamp out smoking, particularly among young people. Most contributors to this debate have spoken about the damage to young people's health.

It will be interesting to ascertain whether this ban will be effective in inducing young people to stop smoking. I believe the introduction of more stringent penalties to stop the sale of cigarettes to young people, particularly those under the age of 18, would be more effective. We must also declare war on the illegal importation of cigarettes and this is an extremely important issue. In 2008 alone, Revenue seized 134 million illegal cigarettes, 38 million of which

were seized at our airports and a further 90 million at the ports. The value of such seizures was approximately €152 million, which is a great deal of money. However, it is estimated that another 826 million cigarettes went undetected by the Customs and Excise. While a great quantity of cigarettes still are being imported, one must commend the Customs and Excise. It is now in possession of new X-ray equipment with which to spot such contraband in containers. The Leas-Cheann Comhairle will be familiar with this issue from his own constituency of Wexford. Unless the illegal sale of cigarettes is tackled, Members will not witness any significant reduction in the number of young people smoking. Moreover, there is also the important issue of the excise duty lost to the Exchequer. Revenue estimates the amount lost last year because of cigarette smuggling was approximately €54 million, which is a great deal of money.

As someone from County Clare, in which Shannon Airport is located, I welcome the recognition in this Bill that the duty free industry will be exempted from the ban until December 2013. Otherwise, the duty free industry in Ireland would have been at a serious disadvantage to its counterparts in the United Kingdom, where a similar ban will not be introduced until 2013. The sale of duty free products contributes significantly to commercial revenues at the three main airports at Dublin, Shannon and Cork, which are run by the Dublin Airport Authority. The income stream from landing fees, etc., is a lot less than heretofore, as airlines seek to cut costs. As the airline industry is no different from any other sector at present, getting revenue from commercial activities has become very important for the airports. Any reduction in the sales of duty free at the airports could have a serious impact on jobs. The industry already has faced many threats to its business. The industry in Ireland was also particularly threatened by the adoption of global aviation security regulations on liquids. Particular difficulties for Irish airports arose in respect of transfer passengers, who initially were not allowed to buy duty free at their point of departure. At one point, were one to buy duty free in Shannon Airport before travelling to London Heathrow or London Gatwick to catch a long-haul flight, such liquor would be confiscated in the United Kingdom unless the purchase was put into one's checked-in luggage.

Time is limited at every airport and if passengers do not purchase their cigarettes at Shannon, Dublin or Cork airports, they will buy them at their next point of departure, which in many cases is a hub airport in the United Kingdom. The procedures that are place at our airports for the purchase of duty-free goods are strictly enforced and controlled and are regularly inspected by Revenue. As one must produce one's boarding card and passport to purchase duty-free cigarettes, the sale to minors is not an issue and in any event, cigarettes are sold in cartons of 200s at such outlets.

I welcome the Minister of State's commitment to re-examine the position in respect of duty-free shops if the position in the United Kingdom changes. That is a positive development and we should continue to monitor developments in the United Kingdom. A similar exemption is being sought by duty-free operators there and one must consider what will happen if the United Kingdom's Government extends this exemption beyond 2013. I am pleased the Minister has stated she will revisit this measure.

While most of the parties will support this Bill, I note Deputy Reilly has tabled some amendments to it. I was pleased to have an opportunity to speak on this matter and look forward to the enactment of the legislation.

Deputy Paul Connaughton: I concur with all I have heard in this debate. It would be difficult to oppose the Bill in that I consider it to be correct in principle. As Deputy Breen was speaking, it occurred to me that it is necessary for the State to intervene, in so far as it can, to protect people from themselves. While it is a shocking state of affairs that this must be done, I recall

[Deputy Paul Connaughton.]

a time, perhaps seven or eight years ago, when I served on an Oireachtas committee on health. At that time, the tobacco companies were making a case that somehow or other, nicotine would not cause one to become addicted to smoking. At one time, the tobacco companies went to the trouble of bringing their so-called medical advisers from America to this Parliament. Members can imagine the kind of damage such activities would do unless the State was there to protect people from such propaganda. Ever since then, whenever I hear representatives of the tobacco industry comment on what it is or is not able to do, I always take such comments with a grain of salt. This is a dangerous poison that has poisoned countless thousands of people in Ireland. Unless we understand, accept and believe that this is what nicotine will do, we are in a false paradise.

I wish to raise two or three aspects of the entire business of smoking. Like my colleague, Deputy Breen, I am a lifelong non-smoker. However, as the Leas-Cheann Comhairle and other Members are aware, before the introduction of the ban, politicians spent most of their lives in the smokiest places on earth. One never had a real expert on the economy unless he had a pint in one hand and a fag in the other at 2 a.m., whispering in one's ear about how to run the country. I did not have to see the statistics on young people smoking because I see a huge number of young people smoking. Maybe I have the statistics wrong but it seems to be primarily young girls who smoke. There appears to be a massive increase in that category.

I am realistic enough to know, as is the Minister of State, that if one buried tobacco in the bowels of the earth, some people would find it. The onus is on us to act in respect of a number of issues. We must change the culture because that will prevent people from going any length to get tobacco products. In fairness to the Government, clamping down on smoking in public places was a great step in the right direction. I have no problem with people smoking and I take no notice of it, even though maybe I should. I notice a great number of people objecting to those who smoke in public places. I assume that is a good thing to do, even though I do not do it. It is important that we hold the line and the ban is now adhered to by 97% of the population. If that is the case, we are on the right line.

There was a trend that a few specific items got people to come into a shop. One went in for the morning newspaper and one usually bought a pint of milk. While people were there, they would buy a packet of fags. There is no particular connection between these products but that is what people had on the way out of the shop. When cigarettes are removed from view, I agree that there is a lower chance people will want to buy the packet of fags on the spur of the moment. It does not mean that hardline smokers or youngsters will not follow the fags no matter where they are.

I cannot understand why the legislation was changed since it was published if many retailers seem to have sold this product to under age persons. This will form the basis of one of Deputy Reilly's amendments. Why was it deemed necessary to change this? As I read the legislation in March or April, there were well-defined fines to apply to those who break the law. That provision seems to be watered down. We are now saying the judge will have discretion. I do not see anything terribly wrong with that but if people believe nicotine is poisoning the people of our country, the less ambiguity and wriggle room for the implementation of provisions to stop that happening, the better for everyone. One knows that this is what is coming if one breaks the law. The two options are "A" and "B", there should not be any grey area.

When the Minister of State, who has a great interest in this and whose interest coincides with mine——

Deputy Pat Breen: And she is from Galway.

Deputy Paul Connaughton: We are two Galway people, and neighbours to boot. How much time remains?

Acting Chairman (Deputy Charlie O'Connor): Deputy Connaughton may continue for two minutes and 30 seconds.

Deputy Paul Connaughton: The Acting Chairman was always nice.

Deputy Pat Breen: I thought he could be more generous.

Acting Chairman: We all wish we were in Galway.

Deputy James Reilly: Not Tallaght?

Deputy Paul Connaughton: The Minister of State should be able to give a good reason for the Government changing tack on this matter. Deputy Reilly is a medical doctor and knows more about the effects of tobacco than I do but one does not need to be a medical doctor to know what nicotine has done to thousands of people Members know so well. I had to smile at Deputy Wallace, who put much work into this in the past, when she said she never knew a person who was not sorry for having started smoking and never knew a person who enjoyed it. She was wrong on one point — they are sorry they started but they do enjoy it. If they did not, they would stop. If I see people smoking I see it as their prerogative. If that is what they want to do, well and good. With this Bill, which is part of a much bigger business, we have the opportunity to ensure everything is black and white. As far as this is concerned, people will know that if they break the law there will be a certain penalty, with no deviation. I hope the Minister of State will give us an insight into why there was a change in the past few weeks.

Minister of State at the Department of the Health and Children (Deputy Áine Brady): On the conclusion of Second Stage, I thank Deputies most sincerely for their contributions. I share the concern about our young people and the number who smoke. The ban on the point of sale advertising is particularly aimed at children and young people.

We had a one year lead-in to this Bill. The then Minister of State at the Department of Health and Children, Deputy Mary Wallace, announced the changes on 27 March 2009. Deputy Wallace and I met with all groups that sought a meeting during that time, as did my officials. I met representatives of the Irish Cancer Society and the Office of Tobacco Control to discuss these proposals. I appreciated the input of these groups. ASH Ireland, in particular, did not seek a meeting with me.

Regarding Deputy O'Sullivan's point on specialist shops, there are five such shops at present and it is unlikely that we will have any more. Over 90% of the Irish tobacco market is cigarettes. No ordinary retailer other than a specialist could have a viable business unless he or she sold cigarettes.

Regarding signage, signs other than the statutory sign cannot refer to tobacco. The current signs are not in breach of the legislation. As well as tobacco, there is a surprisingly wide range of age restricted products found in retail outlets that sell tobacco. Examples include alcohol, lottery tickets, petrol, some aerosols, disposable lighters, knives and some DVDs. There can be no legitimate objection to a sign drawing attention to the fact that age identification may be required as long as tobacco is not specifically referred to. Retailers have made the point that it is helpful for staff to have a sign to point to when dealing with troublesome customers. There is a need to find a solution to this problem and a sign not specifically referring to tobacco is an acceptable solution.

[Deputy Áine Brady.]

Deputy Ó Caoláin stated that there was an impression given that the Bill only affected the display aspect. No such impression was given. The change proposed will affect all offences and this was made clear when the change was announced. This was the main issue I discussed with the Irish Cancer Society.

Deputy White mentioned the review of the legislation. The tobacco control legislation and its operation is routinely monitored and the suspension from selling tobacco will also be kept under review. I appreciate that Deputies were concerned about the smuggling of tobacco products and I share this concern. The Revenue Commissioners continue to implement a wide range of measures to combat smuggling, including seizing illegal products, the prosecution of offenders, monitoring sea cargo and international courier and air freight services and monitoring Internet sites and sales patterns.

In particular I note the concerns many Deputies expressed with regard to the proposed removal of the mandatory 90 day suspension from the retail register when a retailer commits an offence. I emphasise that careful consideration was given to this point when the legislation was being drafted and I am confident that the proposed change is a sounder approach that will better serve the tobacco control agenda in the long term. It is a judgment call. The period of suspension is mandatory and the only change proposed is the duration of the period of suspension which will now be a matter of judicial discretion. I will elaborate on that on Committee Stage.

As I mentioned in my opening speech, the purpose of the Bill is to address legitimate points that were raised with the Department over the past year. It does not represent any weakening of the Government's position on tobacco control. With the introduction of the 1 July package, when international tobacco measures are compared, Ireland's position is at the forefront. The protection of our younger people is a particular objective of the Bill.

Question put and agreed to.

Acting Chairman: In accordance with the orders of the House, we now move to Committee Stage.

Public Health (Tobacco) (Amendment) Bill 2009: Committee and Remaining Stages.

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

Deputy Jan O'Sullivan: Have the amendments been grouped?

Acting Chairman: The Order provides that I am dealing with section 1, then section 2 and the first group of amendments is on section 3. Deputies may comment on section 1 if they so wish.

Deputy James Reilly: I wish to so do.

Acting Chairman: I hope it will be that type of afternoon.

Deputy James Reilly: It will be one full of decorum, as ever. It is proposed to group amendments Nos. a1, b1 and 2 to 9, inclusive.

Acting Chairman: They are to section 3 and we are now disposing of section 1.

Deputy James Reilly: I apologise; section 1 deals with definitions.

Deputy Jan O’Sullivan: On a point of order, I would like a list of the grouping of amendments.

Acting Chairman: It is being distributed. I am not sure that is a point of order.

Deputy Jan O’Sullivan: It is because I will not be able to speak to the amendments if I do not know which ones are grouped.

Acting Chairman: I am happy to facilitate.

Deputy James Reilly: I do not have any issues with section 1.

Question put and agreed to.

Section 2 agreed to.

SECTION 3.

Acting Chairman: Amendment No. *a1* was on the first additional list of amendments circulated on 10 July. Amendments Nos. *a1*, *b1* and 2 to 9, inclusive, are cognate and may be discussed together by agreement.

Deputy James Reilly: I move amendment No. *a1*:

In page 3, line 29, after “order” to insert “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

I was going to make a comment to the Acting Chairman but given that it is the last day I will not.

Acting Chairman: The Deputy can give me classes.

Deputy James Reilly: According to the Irish Cancer Society, we are spending €1 billion on the health-related complications of smoking. Smuggling is a separate issue but there is no question that increasing the price of cigarettes, which the Irish Cancer Society seeks and which I support, will lead to greater temptation to smuggle but that is an enforcement issue for the Customs Service and the Garda. This is an ongoing battle with regard to diesel, petrol and liquor and it should not influence this debate.

I wish to allude to something the Minister of State said. She stated that this does not represent any weakening of the Government position but I am afraid that is not the message people are getting. It is not the message received by the Irish Cancer Society, ASH Ireland or the Irish Heart Foundation. They all received the message that this is a weakening of the Government’s position and a dilution of the effect of the original Act which is to send a sound, loud and serious message to retailers in the country who would seek to make profit by selling cigarettes to minors, thus entrapping them in a life of nicotine addiction and all that goes with it.

One does not have to be a GP or a doctor to understand the pain of watching a loved one die slowly and waste away from cancer, heavily drugged to control the pain. That is what many people who smoke cigarettes face; that is a fact and we know it. That argument is long won and nobody denies the truth of it. I do not want to paint a terrible picture for people who suffer with cancer but while we have cures for many cancers, lung cancer has one of the poorest cure rates and that is the one for which cigarettes are primarily responsible. They also cause throat cancer and are associated with bowel, breast and bladder cancer. Some 10,000 people in

[Deputy James Reilly.]

this country die annually from cardiovascular disease, of which cigarette smoking is a major cause.

When we are dealing with legislation such as this and its impact, it is no harm to remind ourselves of the reality as it can be a case of out of sight out of mind. We cannot allow it to go out of sight because we do not want to be first generation which, through increasing smoking levels and a spreading epidemic of obesity, buries the generation behind it. That is what we are looking at and smoking on its own, never mind obesity, will be a major cause of this.

Advertising and the storage of product are serious issues and the Bill includes provisions on these. There should be a minimum mandatory element, which is why this amendment proposes a period of “not less than 14 days”. However, the offence of selling cigarettes to minors is so serious that there can be no compromise, which is why the amendment proposes a period of “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

I heard the Minister of State, Deputy Áine Brady, and the former Minister of State, Deputy Mary Wallace, speak about the difficulties for employers with regard to an employee who makes a mistake. Employers must be responsible for their employees. There must be a real fear of transgressing the law and a sanction against transgression. Otherwise we will have a situation where the attitude will be “Don’t worry about it Mary — or Tommy — lash away and if they say anything about it I’ll say you didn’t know any better.” That is not good enough. That is like saying to a lorry driver “Go on and drive for 14 hours and keep up the speed at 80 mph. We will make a fortune and I’ll give you a cut at the other end; and if anyone says anything, say you didn’t know.” That is not on. The people will not appreciate that attitude.

If retailers think about the likelihood of their children receiving cigarettes in another shop, when they would not sell to them, they will feel strongly about the issue. As mentioned earlier, the 60% of retailers who abide by the law will not see it as fair if the sanctions against those who breach the law are laughable, which is what they may very well be. We have seen such situations time and again, for example, when people who commit heinous crimes such as murder are released after four years. This does not sit well with Fine Gael’s position on mandatory sentencing in the case of murder. I do not want to overcook the egg or be dramatic, but what the Government is doing is setting children on a pathway to adulthood with an addiction that will shorten their lives considerably and lead to a very unpleasant demise.

It is not too much to ask the Minister to accept this amendment. I do not think it is a draconian or unreasonable proposal, nor do those who prioritise children’s health. I urge the Minister of State to consider accepting this amendment and I would be delighted if we did not need to put it to a vote. While I have put forward two amendments under other sections, this section is the key section of the Bill and the part about which we are most seriously concerned. It is the part that makes real safeguards for children.

I have great admiration for the Minister of State, but she should not dilute this proposal or say black is white. She cannot say the section does not represent a weakening of the position when all those concerned want stronger sanctions. I am not talking about politicians but about apolitical organisations who prioritise the health of the people and who give of their time voluntarily, organisations such as the Irish Cancer Society, which has given €1 million towards the cancer strategy programme for bowel screening, the Irish Heart Foundation which trains people in CPR and tries to educate people about healthy lifestyles and ASH, a group that wants to protect people from the ill effects of smoking. Their only agenda is the health and protection of children and I believe that is also the agenda of the Minister of State.

The Minister of State must not let herself be hoodwinked by outside influences with a different agenda, namely, to sell cigarettes. That is their bottom line and that is all they are interested in. They do not want to think about their actions but want to shut out of their minds the consequences of their actions and the impact they will have on children. It is hugely worrying that in 2002 some 27% of people smoked but the 2007 figures show an increase of 2% to 29%. This has come about despite all our advertisements and all the education offered. We are not winning. We need every bit of help and support we can get for the fight. This section of the Bill is key to that. I plead with the Minister of State not to allow any discretion, confusion or uncertainty reign in this area. Our society will not tolerate that. I plead with her to accept the amendment.

Deputy Jan O'Sullivan: While a maximum period of three months is mentioned for suspension of a licence, it is important that we also state a minimum period. I presume the failure to state a minimum period means that, technically, suspension could be for just half a day or a very short period. Fine Gael has put forward a series of amendments proposing a minimum period. I agree with that. We must send out a message that the sale of cigarettes to children will not be tolerated and it is not enough to make an excuse such as someone has only been working for a few weeks and did not know the regulations. The owner of a premises must take responsibility for informing all staff of the rules on the sale of cigarettes. We need a minimum period for the withdrawal of a licence to ensure this happens. The Minister of State said there was a mandatory withdrawal period, but I would like her to expand on that. If there is not a minimum period for removal from the licence register, saying a withdrawal period is mandatory is insufficient because a judge could order that the offender be removed for a very short period such as a day or an hour or two. We must send positive messages with the legislation.

I commend the Government on what has been done in this area, particularly the ban on smoking in the workplace and the legislation that preceded this legislation, now being amended with regard to the sale and display of cigarettes and signage and so on. In that context, we should look at the statistics regarding the increase in the percentage of smokers in the 2007 figures. Perhaps we should not have expected to see much change or a decrease in the figures following the legislation. Perhaps too, if we looked at the statistics for 2008 and into 2009, we would now see a decrease. Can the Minister of State give any information on the percentage of the population who smoke?

The legislation has been very strong, particularly the ban on smoking in pubs, restaurants and workplaces and one would have hoped it would have made a significant difference. If it has not, we need to reconsider the situation. While some people may not smoke, others do and it seems we need to look at what is happening with young people. Research evidence seems to indicate that young girls, in particular, are smoking at an earlier age. They seem to see smoking as a way to keep their weight down. This may be due to the fact that the image of women portrayed to young people as attractive is an image of thin women.

We must counteract this by sending a different message. We must send the message that it is not attractive to smell of cigarettes. We must get the message out that it is not cool to smoke. We must win that battle, but statistics seem to indicate we are not winning it. I would love to hear if there are more up to date statistics that indicate a turn around in the percentage of the population that smokes. We must take the issue seriously because of the enormous effect on people's health. If people start smoking at the age of 14 or 15, they will find it very hard to give it up when they eventually realise it is affecting their health. Usually, people have been smoking for from ten to 20 years by that time.

It is important we succeed with prevention. I have no doubt that everybody here wants to make a difference. It is important to listen to the concerns of both sides. We do not want to

[Deputy Jan O'Sullivan.]

put a newsagent out of business because there may be an small error in the legislation, but we must ensure that people cannot get around the serious aspect of the legislation by giving some excuse as to why they breached the law and should not, therefore, be removed from the licence register for any significant period. The legislation as proposed today allows them to make such excuses. We have to ensure that we have some basic standard of removal and timeframe in which the person who owns the premises and has broken the law is taken off the register.

Deputy Caoimhghín Ó Caoláin: As I said in my Second Stage remarks, the Public Health (Tobacco) Act 2002 very clearly and prescriptively lays out the penalties that apply regarding removal from the register and the consequent prohibition on the sale of tobacco products for three months for a summary offence and 12 months for a person convicted of an offence on indictment.

The amendments before us, with respect to my colleagues, speak of minimums. However, one does not need a minimum if one does not prescribe a maximum. The 2002 sections of the existing legislation are very clear. It is the amending Bill that creates the problem. It seeks to dilute the existing position from one that is quite clear regarding the penalties that apply, namely, three months and 12 months, respectively, and seeks now to speak of a maximum of three months and 12 months, respectively. It is only in the context of the introduction of maximum penalties that the amendments before us tabled by Opposition Deputies speak of minimums applying, and they believe that is necessary. My appeal to the Minister of State is to withdraw sections 3 and 5 and allow the current position to pertain.

I was in a store in my home town recently and saw a young shopkeeper's assistant request, very courteously but firmly, identification from people who were perhaps of her peer group. She was not happy that they were of the required age to sell tobacco products to. I was very impressed by the confidence of the young assistant making the challenge to demand identification and of the way she had been properly instructed by her employer as to how she should respond where there was any question or doubt as to the age of the person seeking to purchase such products. It was very impressive and needs to be the norm.

Why it is that, despite all the concerns as to how the ban on smoking in the workplace would be implemented and enforced, it has been so successfully implemented and enforced? I do not understand why we cannot expect a similar implementation and enforcement regarding the rigours laid out in the 2002 legislation *vis-à-vis* the display and sale of tobacco products to under age people. We have applied it in every other situation. Why can it not apply to retail outlets? It applies strictly in every other work environment. Why is it not possible to have the same understanding and co-operation regarding the point of sale?

This point is the kernel of the matter. The Bill indicates to me a half-hearted approach on the part of the Government regarding these measures. It reminds me of the introduction of Part V of the Planning and Development Act 2000 and how I welcomed the introductory remarks of the then Minister, Deputy Noel Dempsey. Yet, when the lobby got at it, legislation to amend the Act was introduced a couple of years later. It was watered down and those to whom it was addressed could literally buy their way out of their obligations to provide a quota of social and affordable housing in private developments.

This is another indication of a specific lobby seeking easement regarding the advertising, display and sale of tobacco products to children. There is no justification for such an accommodation. It should be absolutely firmly held to. The Government's proposition is fundamentally flawed which, in turn, invites the amendments before us. I hope the Chair will allow us the opportunity to oppose the section.

Deputy Leo Varadkar: I am speaking in favour of the amendment tabled by Deputy Reilly, which I very much support. I am speaking as spokesperson for enterprise, trade and employment and as somebody who understands the pressures small businesses and retailers, in particular, are under in a very difficult economy where there is a shrinking market and rising costs, mostly imposed by Government. I am also conscious of the fact that I believe in personal freedom and rights of adults to make their own choices about how they behave.

I have been sceptical of some of the policies the Government has introduced regarding tobacco and alcohol. As we have seen, the recent increase in excise has not brought in any more revenue. In fact, revenues have fallen, as I predicted, contrary to what the paid economists and lobby groups who thought, for ridiculous reasons. I have concerns that some of the restrictions on signage and so on have gone too far, particularly those relating to antique signs, which was subject to a subsequent amendment.

I am also concerned that the Government may go too far on the issue of alcohol if it chooses to outlaw all alcohol advertising related to sport. It is currently under consideration by the Department and is unnecessary, given that there is a functioning and well-operating voluntary code of conduct covering the area. However, sometimes public health, particularly that of children, overrides concerns about economic and personal freedoms.

There is no safe level of consumption of tobacco, unlike alcohol. There is no scientific evidence that tobacco can be enjoyed safely or could ever be good for somebody's health. Unlike fatty foods, there is no safe level for tobacco and if it were to be introduced to the market for the first time today, it would be designated as a poison and would be illegal. It does not just cause lung cancer but horrible chronic illnesses such as chronic obstructive pulmonary disease, or chronic bronchitis, and emphysema.

As a doctor, I have treated people who spend 15 to 20 years of their lives having to take oxygen, being unable to walk up stairs or having to go into a hospital every time they develop a chest infection. I have seen the consequences of smoking. I am strongly of the view that, whatever about the right of adults to make their own decision, we should do everything to ensure that young people do not take up the smoking habit in any way. That is why this amendment is so important, because there is no point in having any law unless it is enforced. The Department is passing two criminal justice Acts per week at this stage and it is all for nothing if there is no enforcement. The same applies to road safety, alcohol and tobacco and I am aware from a briefing from the Irish Cancer Society that in 2008 there were only 26 convictions for selling tobacco to minors and the average fine was €250. If that is the case, it is no surprise that tobacco is so readily sold to minors. There must be a fear of punishment through real enforcement and where there is enforcement, the punishment must be sufficient to deter people from breaching the law again.

I know of a case involving my local Spar shop which was selling alcohol to minors. It was asked to close for two or three hours on a Saturday. That was the sole punishment which is simply not good enough. It is different in other jurisdictions. Let us consider the United States. Even when I travel to the United States and enter a bar, I am asked for identification. Although I am very fresh faced, no one could possibly believe I am under 21 years of age. However, it is the law for people to be asked for identification and it is enforced. That should be the case for young people and, indeed, everyone who wishes to buy tobacco or alcohol should be obliged to present identification, even if such a person is elderly. The only way to proceed is to make it a requirement that everyone must be asked for identification and this requirement should apply to retailers, publicans and other sellers. All such enterprises should be obliged to ask for identification from everyone buying alcohol and tobacco and in cases where this does not take place, the law should be enforced. The punishment should be sufficient to deter an offender

[Deputy Leo Varadkar.]

from repeating the crime and for this reason a ban of either seven or 14 days should apply. There must be an economic cost and consequence on those who would disregard public health for economic gain. That is why I strongly support the amendment and I call on the Minister to consider not dividing the House on this matter and to agree to the amendment.

Acting Chairman: I thank the Deputy. I am sure he got in the line of the day regarding his age.

Deputy John Perry: I fully support the amendment. The Minister of State will appreciate my view as a retailer. The difficulty for many retailers as, Deputy Varadkar outlined, is the issue of identification. It is very important to recognise the responsibility on retailers of the identification requirement. In many cases it is very difficult to determine the age of someone entering a supermarket. Often there are cases of people aged more than 18 years buy cigarettes for a minor. There is an immense level of responsibility on retailers. It is very difficult to distinguish between someone who is 17 years and someone who is 18 years old. Recently, many retailers have been employing Polish employees and others from Eastern Europe. It can be difficult to know the client and the customer. Ultimately, the principle responsibility falls on the proprietor or owner who, in many cases, may own a large convenience store and this can present a difficulty. It is more important that the public health concerns are clearly expressed in colleges and schools. It is quite frightening when one considers the number of young people who have started smoking. Much needs to be done with regard to the public health campaign against minors smoking and they must be informed of the dangers associated with smoking. This should be done through colleges and schools.

Little or nothing is done when it comes to the public health concerns and the difficulties and health consequences associated with smoking. School buses are an ideal facility in this regard. They are owned by the State and they contain no merchandise. The Department should use this facility to highlight the concerns of under age smoking on State owned property. However, this is not done.

I support the remarks of Deputy Reilly. My brother is a professor of public health and he is against smoking outright, including sponsorship by cigarette companies. Let us consider the premium national sporting organisations in the country. They are not sponsored by cigarette companies but they use other alcohol related products. Smoking has been banned from national organisations but alcohol has not.

It is one thing to introduce legislation but the real difficulty is with its enactment and enforcement. I know of cases in which the HSE encouraged minors to enter shops and retail outlets to establish whether they were in breach of the law, a despicable act. It is a very bad sign if the executive nominated young people under 18 years to enter shops and test the legislation. That is a fact and it represents an appalling vista. Minors were nominated to enter particular stores and find out if they were in breach of the law. That should not happen and the executive should not resort to using minors to check if the law is being policed. I trust in the enforcement of this law minors will not be employed to check whether retailers are in breach of it. I call on the Minister of State to comment on this point. If one has to employ minors to check the validity of the law, something is wrong with the Department, the legislation and its enactment.

Minister of State at the Department of Health and Children (Deputy Áine Brady): I thank the Deputies for their contributions and I refer to the Fine Gael amendments. If a retailer is convicted of an offence under the Public Health (Tobacco) Acts, he or she is liable to a fine of up to €3,000, a period of imprisonment not exceeding three months, or both, and to a period of suspension from the retail register. The period of suspension is in addition to any fine or

term of imprisonment and is mandatory. The only proposed change is that the duration of the period of suspension will now be a matter for judicial discretion. I emphasise that the 90 day period of suspension remains an option.

It should be noted that the penalties referred to only apply in the case of summary proceedings. A retailer convicted on indictment would be subjected to more severe penalties of up to two years imprisonment and a fine of up to €125,000. A mandatory period of suspension from the retail register would also apply. These penalties apply to any offence under the Acts, for example, sales to minors, breach of the advertising ban or smoking in an enclosed workplace. Not amending this period for which a retailer can be removed from the register could have different potential effects. For example, a judge could consider that three months removal from the register is too severe and may not convict the retailer or, alternatively, he or she might strike out the case. It is highly likely there would be a legal challenge on the basis of disproportionate penalties.

The protection of young people is a particular objective of the legislation. However, I emphasise that they are protected by a range of measures, not simply by the prohibition of under age sales. These include, for example, a ban on selling confectionary that resembles tobacco products, the ban on the sale of packs of less than 20 cigarettes and the ban on point of sale advertising. Other measures include advertising generally aimed at the de-normalisation of tobacco products and the protection of young people.

I refer to the Labour Party amendment and the question of whether to introduce a minimum period of suspension from the retail register. This was considered in detail when the legislation was being prepared. A policy decision was taken to leave the issue of the period of suspension entirely to judicial discretion. Accordingly, I regret that I am unable to accept this or the Fine Gael amendment.

Deputy James Reilly: That is very regrettable. It is very well to speak of indictment, jail, fines and so on, but I do not accept for one moment the case put. Perhaps someone from the Judiciary will correct me, but my understanding is that if one is found guilty, one is found guilty. If there is a mandatory sentence it must be applied and that is what is at question. We are discussing a mandatory suspension from the retail register of 90 days if found guilty of selling tobacco or tobacco products to a minor, not a mandatory sentence for jail or a mandatory fine. This is at the heart of our request and of what this is all about.

This is a good Bill and it sends out all the right messages. The Government worked on it for a year and it was happy with it but now it has become unhappy because of the loud voices of individuals whose vested interest is to sell cigarettes. The Government has not been listening to the loud voices of the Irish Cancer Society or the Irish Heart Foundation or ASH but listening instead to those who sell cigarettes. There is no way a judge should decide guilt on the basis of the severity of what the person will experience. On this side of the House we do not believe that 90 days suspension from the retail register for the sale of tobacco is draconian or too severe. It will send the right message to people, that they have a responsibility to the next generation, a responsibility to play their part in ensuring that children, minors, are not exposed to cigarettes and that they will not sell, aid or abet the sale of cigarettes to children. That is what this is about and nothing else. We do not have an issue with the other aspects of the Bill and I ask the Minister of State to just consider this amendment. If I were a retailer I would be extremely careful to make sure that neither I nor my staff would sell tobacco or tobacco products to anyone under 18 years because I would know I would lose the right to sell those products for three months. This will not put such a retailer out of business; he or she will still sell newspapers, the pint of milk, the half pound of butter but he or she will not be allowed sell cigarettes. This is a very just, fair and, above all, a very focused amendment. We are not

[Deputy James Reilly.]

seeking to punish them in any other way other than if a person abuses his or her right to sell cigarettes, he or she will lose that right. This is one hell of an abuse if it is engaged in. It is, as we all know, setting a young person on the path to a lifelong addiction.

We have already alluded to cancer, cardiovascular disease and Deputy Varadkar has alluded to the significant area of chronic obstructive airways disease, or COPD. The disability caused by cigarettes is huge and the cost to our State is huge. This Bill sent out a strong message when it was first published and now that message is being diluted. I am not the one saying that; it is what the Irish Cancer Society, ASH and the Irish Heart Foundation are saying. I ask the Minister of State to please listen to those who have the good of children at heart and the good of their health at heart. I ask the Minister of State to accept this amendment. The mandatory 90 days for the sale of cigarettes to minors is my main consideration. I will not fall out with the Minister of State over a minimum or maximum level, incorrect signage or other issues. They are important considerations but this is the most important consideration, the key message. This is a message not just aimed at the retailers of Ireland but at the Irish people as to how the Minister for Health and Children considers and prioritises the safety of children and their health.

Deputy Jan O’Sullivan: The difficulty is that the Minister of State is saying it is mandatory and yet discretionary. This is leaving it up to the judge to decide on the level of suspension that should be applied, despite the fact that it is mandatory. I agree with the Fine Gael position with regard to minors in particular — this has to be seen as the most important aspect of this Bill. There are a number of offences under the legislation but the issue about selling cigarettes to minors must be taken seriously. I am not hung up on the period of time I have specified in my amendment although I understand it is not being discussed in this grouping as these are the Fine Gael grouped amendments. It is important a suspension be imposed that sends out the message that this is absolutely unacceptable.

I do not know if it is possible for the Minister of State to bring forward a provision acceptable to all of us. The reality of life in this House is that whatever we say on this side of the House it is presumed we will be defeated in a vote. We must ensure that the principle of sending out a message that if a retailer or his or her staff sell cigarettes to minors there will be a period of time when he or she will not be allowed to sell cigarettes; this period of suspension as a result of selling to children should be sufficiently long to make it painful and for retailers to take this legislation seriously so that they will not allow anyone working for them to sell cigarettes to anyone under 18 years. This is what we want to achieve. I presume this Bill will go to the Seanad. This House will be returning early to deal with the NAMA legislation and we could possibly deal with this legislation also in that week. We are willing to be flexible in whatever way possible. We must ensure that those who sell tobacco products realise that the law is serious and that it will hurt them if they sell to children.

Deputy Caoimhghín Ó Caoláin: The explanatory memorandum to the Bill states: “The object of the Bill is to further amend the Public Health (Tobacco) Act 2002 and the Public Health (Tobacco) (Amendment) Act 2004.” The main provisions of the Bill are summarised as follows:

Sections 3 and 5 — These sections provide for judicial discretion on the period of time a person who is convicted of an offence under the Public Health Tobacco Acts 2002 and 2004, is suspended from the retail register.

The Minister of State has not responded to my earlier request, both in my Second Stage contribution and in my contribution to the debate on these amendments. Will she withdraw sections 3 and 5 of the Bill and allow the mandatory time penalties to stand? These amendments would

not be necessary as they are reactive to what the Minister of State is proposing to do. If the situation is maintained, where three months and 12 months apply, we will not have to start worrying about judicial discretion, maxima of three and 12 and minima of seven or 14, depending on the amendments before us. It is very important we accept that this is exactly what we are addressing here. This is a dilution of existing legislation that is very clear, very firm and eminently workable, in my view, where everybody co-operates and pulls together. If it can apply in terms of the smoking ban in the workplace — something many did not believe would work as well as it does — why can we not see the same acceptance and application of the rigours of the legislation now in place, still in place, apply across the retail sector with regard to access to tobacco products? This is the way it should be. It should be allowed to stand and to continue. This would be the appropriate position to take. Oftentimes once a Bill has come to Committee and Remaining Stages, it is often beyond the potential of the presiding Minister to accede to the request of Opposition Deputies but I have seen it happen.

I realise the Minister is in an invidious position, as a Minister of State in the Department, even with responsibility for this particular section. I have seen the senior Minister accede to amendments on the hoof, so to speak, in terms of debates in this Chamber. It is rarely the case that a Minister of State has sufficient confidence in his or her position to make
4 o'clock that call and acknowledge the common sense of the arguments being put by Opposition Deputies. I invite the Minister of State to take just such a stand, and I would like clarification as to her intent.

It is clear to me that if the Minister does not accede to Deputy Reilly's amendments Nos. 3 and 5, not that I am in any way impressed by "not less than 14 days", the critical point regarding the sale of tobacco products to minors would merit support.

Deputy Leo Varadkar: Two questions arise from the Minister's response. She said that a policy decision has been made to leave it to judicial discretion as to whether a person will be banned from selling cigarettes for a period of time. I am always bemused when I hear Ministers say that a policy decision has been made because in this case it begs two questions. First, does the Minister of State have confidence in our Judiciary to be consistent in the application of this law across the State or will we find that judges in some places take one view and judges in other places take another? If that is the case this amendment is necessary for two reasons, both to ensure, to be fair to the retailers, that there is a consistent decision across the country and that the will of this House is reflected, and that we do not give judges too much discretion in this regard. That is why I believe it is important.

On the second and more important question, the Minister says a policy decision has been made but the Minister is the Minister of State with responsibility for public health. When she says "a policy decision has been made" did she make that decision or was it made by the Minister for Health and Children, who is her superior in Cabinet, who may have made that decision over her head? Have these decisions been made by mandarins who are passing the Minister sheets back and forth in the Chamber quicker than washing on laundry day. The Minister might answer those two questions.

Acting Chairman: The Deputy is coming up with the lines.

Deputy James Reilly: To hang the laundry on.

Deputy John Perry: I would like to ask the Minister where this proposal is coming from because I am not aware of any lobbyist, RGDATA or any of the retail representative groups making any contact about it. When we consider the level of compliance with the smoking ban

[Deputy John Perry.]

in licensed premises, the deterrent was very effective in achieving the objective in that there was total compliance by all restaurant owners, publicans and in the entire licensed trade.

I support Deputy Reilly's amendment. The 90 days proposal represents an immediate loss to retailers and they will instill in their staff the need to demand ID before they make a sale.

On the number of prosecutions to date and the ability of the State to prosecute anybody, with 26 convictions, the element of proof required to get a case through the courts means that many cases have been thrown out. It is difficult to bring a provable case before the courts. Introducing major court restrictions and the imposition of massive fines sounds good in theory but implementing that in terms of bringing cases before the courts is not a reality.

When we are talking about an immediate deterrent, an effective deterrent would be the loss of the licence to sell tobacco products if it was proven that a retailer had been selling cigarettes to those under 18. That would have an immediate effect because the margin of profit in the tobacco business is about 10%, which for many convenience stores is a major contribution to the net margin. In a cash business that deterrent would be far more effective than imposing a huge fine because in reality, when the legal profession gets involved and with the inability of the State to prove a case, the case will never go to the courts. Deputy Reilly's amendment is immediate and effective and will register with all retailers.

For publicans in breach of the smoking ban a €2,000 on-the-spot fine was imposed. That registered with every licensee in the licensed trade because it had an immediate effect in cash terms. Likewise with regard to Deputy Ó Caoláin's proposition, we want to send out a clear message.

When bringing legislation before this House it is not good enough for the Minister charged with responsibility for public health not to follow through with the point of sale material and have it displayed not only on school buses but in all areas where young people congregate indicating the danger to their health. Equally, the Department should send out information to every retailer in the country in the form of a clear sign that they would be required to display in their stores indicating they are obliged by law not to sell any tobacco products to anyone under the age of 18. Signage to that effect should be mandatory because the message must be clear. We all hear about the laws of the State but unfortunately that message does not get across, and we are talking about sending out a clear message to younger people.

In terms of the number of young people attending college and the responsibility of parents, this has been a public relations disaster. We all hear about these recessionary times but a packet of cigarettes is €6 or €7. That is a large amount of money and the Department has failed dismally, on a public health matter, to hammer home this message on local radio, which is never used for public health messages, and on all the popular music stations that are dedicated to younger people. The Department should find some way to allocate funding to highlight the dangers of smoking to younger people on those youth channels, radio stations, local radio and through sporting organisations.

I have seen a great deal of legislation come through this House but is there ever any outturn check done on it? It is like business. We have many items of legislation coming into this House and I would like to see the Department come back here 12 months from now, show due diligence in terms of the laws enacted by the State and outline what has happened with that legislation. Last week, Bill after Bill was guillotined. I often wonder on how many occasions that legislation is used, even the criminal justice legislation. There is a major preoccupation with initiating legislation but very little checking is done to determine how effective it was and whether it has been implemented by the representatives of the State. That does not happen. I would like to think that when Fine Gael is in government it will check the enactment of

legislation after 12 months to determine its effectiveness, whether it was implemented by people in authority or ignored.

Deputy Áine Brady: To answer Deputy Perry, the guidelines for those selling tobacco products were sent to them with the only sign that is allowed to be displayed indicating that tobacco products are to be sold only to those over 18.

Deputy John Perry: Has that gone out to all the retailers?

Deputy Áine Brady: Yes, and the feedback has been positive. If Deputy Perry has been in any of the shops he will notice that the cigarette machines are covered.

Deputy John Perry: I will check Perry's this evening and make sure it was done.

Deputy Jan O'Sullivan: Otherwise he might not be back in September.

Deputy Áine Brady: The Deputy should do that. I did not respond to his test purchasing question. The test purchasing, which is organised by the Health Service Executive, is a recognised way of enforcing tobacco legislation. It is conducted in line with a protocol developed by the HSE. The under age test purchasers are normally children of HSE staff. We could not suggest that these parents would put their own children at risk.

Deputy Leo Varadkar: How much are they paid?

Deputy Áine Brady: The protocol is clear that the primary concern is for the welfare of the minor. Without test purchasing, it is difficult to know how under-age sales could be policed. The period of suspension is mandatory. The penalties apply to many offences other than the sale of cigarettes to minors. It was decided, for the reasons already outlined, that judicial discretion was the best option. I regret I am unable to accept the amendments. I must add that the policy decision was taken before my ministerial appointment and that the enforcement of the legislation will be monitored.

Deputy James Reilly: Amendment No. *a1* clearly seeks to put in place a minimum period of 14 days for all offences other than the grievous and serious offence of selling tobacco products to children. In that instance a mandatory three-month suspension will apply.

As Deputy Jan O'Sullivan said, the Minister's view of mandatory could be from half an hour to three days which is laughable. It will be sneered at by those who will transgress. Deputy Perry made the point eloquently that what drove home the smoking ban was the serious consequence of being caught. If the consequence for one's actions is not going to cost one a night's sleep, one will take chances. It was the same with drink-driving for years. Once enforcement started, people realised there was a real chance of getting caught and losing their driving licences. Since then, drink-driving incidents have reduced significantly. Similarly, with this legislation, if it is left to the discretion of the Judiciary, we will have, as Deputy Varadkar said, parts of the country where the offence will be punished with a slap on the wrist, such as a suspension for two hours on a Sunday morning before mass, while in other parts it will taken more seriously with suspensions of two weeks.

A serious disincentive against transgressions of this law needs to be in place because it is a serious matter concerning our children's future. One only gets one childhood. It takes years for someone addicted to tobacco to get off it. I make no apology for saying the cigarette companies' *modus operandi* is to get young people addicted. Deputy Wallace referred to the point that every smoker who dies must be replaced with a new smoker. Who do the cigarette companies go after? They go after the kids. I believe in freedom of choice. Anyone over 18

[Deputy James Reilly.]

years can make their choices and suffer the consequences, but that is not the case for those under age. I do not want children taken advantage of by a vicious industry. All Members believe there is nothing good about cigarette smoking. Why then should we not do everything in our power to protect our children from it?

I have drafted the amendment so that a retailer cannot lose his licence for a breach such as leaving a box of cigarettes in a wrong place or having an incorrect sign. I have no problem with a judge having discretion in such cases. However, my problem is with their discretion on breaches of the law on the sale of tobacco products to minors.

Maybe the Minister of State will change her mind and break the mould by accepting my amendment. Like the then Minister for Health and Children, Deputy Martin, with his smoking ban, maybe she will go down in history for being prepared not to listen to those whose agenda is not the welfare of our children.

Deputy Áine Brady: I have dealt with the points made by Deputy Reilly and I regret I am unable to accept these amendments.

Amendment put.

The Committee divided: Tá, 57; Níl, 73.

Tá

Allen, Bernard.
Barrett, Seán.
Breen, Pat.
Broughan, Thomas P.
Bruton, Richard.
Burke, Ulick.
Byrne, Catherine.
Carey, Joe.
Clune, Deirdre.
Connaughton, Paul.
Costello, Joe.
Coveney, Simon.
Crawford, Seymour.
Creed, Michael.
Creighton, Lucinda.
Deenihan, Jimmy.
Doyle, Andrew.
English, Damien.
Enright, Olwyn.
Feighan, Frank.
Flanagan, Charles.
Flanagan, Terence.
Gilmore, Eamon.
Howlin, Brendan.
Kehoe, Paul.
Kenny, Enda.
Lee, George.
Lynch, Ciarán.
Lynch, Kathleen.

McCormack, Pádraic.
McEntee, Shane.
McManus, Liz.
Mitchell, Olivia.
Naughten, Denis.
Neville, Dan.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Donnell, Kieran.
O'Dowd, Fergus.
O'Mahony, John.
O'Shea, Brian.
O'Sullivan, Jan.
Perry, John.
Quinn, Ruairí.
Rabbitte, Pat.
Reilly, James.
Sheahan, Tom.
Sheehan, P. J.
Sherlock, Seán.
Shortall, Róisín.
Stagg, Emmet.
Stanton, David.
Timmins, Billy.
Tuffy, Joanna.
Upton, Mary.
Varadkar, Leo.
Wall, Jack.

Níl

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Andrews, Chris.
Ardagh, Seán.

Aylward, Bobby.
Behan, Joe.
Blaney, Niall.
Brady, Áine.
Brady, Cyprian.
Byrne, Thomas.
Calleary, Dara.

Níl—*continued*

Carey, Pat.
Collins, Niall.
Conlon, Margaret.
Connick, Seán.
Coughlan, Mary.
Cregan, John.
Cuffe, Ciarán.
Cullen, Martin.
Curran, John.
Devins, Jimmy.
Dooley, Timmy.
Fahey, Frank.
Finneran, Michael.
Fitzpatrick, Michael.
Fleming, Seán.
Gogarty, Paul.
Gormley, John.
Grealish, Noel.
Hanafin, Mary.
Haughey, Seán.
Hector, Máire.
Kelleher, Billy.
Kelly, Peter.
Kenneally, Brendan.
Kennedy, Michael.
Killeen, Tony.
Kirk, Seamus.
Kitt, Michael P.
Kitt, Tom.
Lenihan, Brian.

Lenihan, Conor.
Lowry, Michael.
McEllistram, Thomas.
McGrath, Michael.
McGuinness, John.
Martin, Micheál.
Moloney, John.
Moynihan, Michael.
Mulcahy, Michael.
Nolan, M. J.
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Dea, Willie.
O'Flynn, Noel.
O'Hanlon, Rory.
O'Keeffe, Batt.
O'Keeffe, Edward.
O'Rourke, Mary.
O'Sullivan, Christy.
Power, Seán.
Ryan, Eamon.
Sargent, Trevor.
Scanlon, Eamon.
Smith, Brendan.
Treacy, Noel.
Wallace, Mary.
White, Mary Alexandra.
Woods, Michael.

Tellers: Tá, Deputies Kehoe and Stagg; Níl, Deputies Pat Carey and Cregan.

Amendment declared lost.

Amendment No. *b1* not moved.

Deputy Jan O'Sullivan: I move amendment No. 1:

In page 3, after line 33, to insert the following:

“(2) The period of time for which registration of a person is suspended under this section in respect of any one offence shall not be less than 7 days.”.

We have spoken about the substance of this amendment, the intent of which is similar to that of those tabled by Deputy Reilly. The intention is to ensure that a retailer of cigarettes will be taken off the register for a minimum period if he commits an offence and that the discretion of the judge should not be absolute, thus necessitating a minimum period of suspension. I chose an arbitrary period that is possibly appropriate for some offences but which is obviously too short in respect of the offence of selling tobacco to minors. I am not particularly exercised in regard to the period I chose but I wanted to ensure a debate on Committee State on establishing a definite suspension period if one is found guilty of various offences under the legislation.

While we have had this discussion in respect of amendment No. *a1*, I must reiterate that I feel very strongly, as do other Members, that the offence of selling cigarettes to children must be the most significant. My amendment does not address this directly but I urge the Minister of State to do what she can, whether it be by way of amendment in the Seanad or another mechanism, to ensure there will be a mandatory period of suspension for the offence of selling

[Deputy Jan O'Sullivan.]

cigarettes to children, for all the reasons on which we have elaborated during Second Stage and Committee Stage thus far. It should not just be mandatory in name but mandatory in reality.

We know the reality of life in this House and that the Government can win votes here. It lost one in the Seanad yesterday so the Minister of State cannot be quite sure of making amendments in that House. If this Bill is passed without any Opposition amendments being accepted or without a Government amendment being accepted in the Seanad, will the Minister of State at least review the legislation after a relatively short period to determine whether it is being applied consistently throughout the country where there is judicial discretion?

Deputy Caoimhghín Ó Caoláin: There is an alternative to review in the event that the Minister of State does not accept any of the amendments, particularly amendment No. 1. I ask her for the third time, with a view to suggesting an alternative, whether she will withdraw sections 3 and 5 and allow the existing legislation to stand. There are clearly specified periods of delisting pertaining to offences committed by those licensed to sell tobacco products, namely, three months and 12 months. These amendments are a reaction to that of the Government, which seeks to dilute the existing clear statutory penalties that currently apply to those in the retail sector who breach the existing legislation.

If the Minister of State does not intend to accept any of these amendments, I appeal to her once again not to dilute the existing legislation in response to what must clearly have been considerable lobbying over some time. It was interesting to hear none of the Opposition voices experienced any such lobbying. It was hardly necessary granted that the Government already had this interest impressed upon it, as the legislation before us clearly indicates. The position the Government adopted in the 2002 Act was correct and should be let stand and the Minister of State should stand up to the pressure she has clearly been under.

Deputy Áine Brady: I regret I am not able to accept Deputy Ó Caoláin's suggestion. I pointed out why I cannot do so and will not elaborate on it further. However, I assure Deputy Jan O'Sullivan that the legislation will be kept under review. I want workable legislation and what I have proposed is what I consider the most workable.

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 2:

In page 4, line 9, after "order" to insert "not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months".

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 3:

In page 4, line 12, after "order" to insert "not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months".

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 4:

In page 4, line 21, after “order” to insert “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 5:

In page 4, line 24, after “order” to insert “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 6:

In page 4, line 41, after “offence,” to insert “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 7:

In page 4, line 44, after “offence,” to insert “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 8:

In page 5, line 12, after “offence,” to insert “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

Amendment put and declared lost.

Deputy James Reilly: I move amendment No. 9:

In page 5, line 15, after “offence,” to insert “not less than 14 days, except for offences relating to the sale of tobacco products to minors whereby removal from the register will be for a mandatory period of not less than 3 months”.

Amendment put and declared lost.

Question proposed: “That section 3 stand part of the Bill.”

Deputy Caoimhghín Ó Caoláin: I have already stated why I oppose the section.

Question put and declared carried.

NEW SECTION.

Deputy James Reilly: I move amendment No. 10:

In page 5, before section 4, to insert the following new section:

4.—Any approved signage regarding age restrictions on the sale of tobacco products, or any other matter, must be approved by the Department of Health and Children and must not carry the colour scheme of tobacco brands on the market.

I alluded to this earlier. This is a ploy of the manufacturers to subtly advertise their product. We can get around it without incurring any cost to the Exchequer or to the Department by insisting that the Department first approve all such signs and ensure the colour schemes of tobacco brands are not used in the signs so displayed. It is a fairly simple amendment and I cannot possibly imagine how the Government could have a problem with it, but I am always prepared to be surprised.

An Ceann Comhairle: I was trying to figure out where a fellow would find an antique sign.

Deputy Jan O’Sullivan: I am not sure what the exact ruling on this is but my understanding is that there are specified colours and so on for the signs, that they have to have a white background and I think black and red are allowed. We have been told, however, that other signs have gone up. If so they may be in breach of the law and if it is not as tightly controlled as it should be then let us accept Deputy Reilly’s amendment.

Will the Office of Tobacco Control, or whoever else is monitoring this, go out and make sure the signs being used are in line with what is allowed? If the letters we have received are true it seems there are breaches. It may be a matter of regulation or of needing to change the legislation.

Deputy Áine Brady: Amendment No. 10 is not required. The existing legislation bans marketing images and colours associated with particular brands, for example, gold, purple and blue. They are caught by that prohibition. This point was raised with the Office of the Attorney General when the 2009 Bill was being drafted.

Deputy James Reilly: I have no problem if the Bill covers these signs and I will happily withdraw the amendment but I refer the Minister of State to the last paragraph of the letter from the Irish Heart Foundation, which states:

However it has come to our charity’s attention that retail outlets are indeed carrying a second sign clearly designed to attract the attention of young people. This is yet another insidious ploy by the tobacco industry to attract young smokers by “bending the rules” and we strongly urge you to take immediate action to have them removed.

If this is an enforcement issue the Minister of State should please ensure it is enforced.

Amendment, by leave, withdrawn.

SECTION 4.

Deputy James Reilly: I move amendment No. 11:

In page 5, between lines 41 and 42, to insert the following:

“(1A) The display of genuine antique (not reproduction) signs will be permitted in licensed premises as long as the brand/product is no longer available.”.

The purpose of this Bill is to prevent the advertising of cigarettes, which we fully support. My amendment refers to antique signs for tobacco products that are commonly displayed in pubs and cafés for the purpose of creating an old world atmosphere. I do not have a significant problem with this as long as the signs are genuine antiques in the sense that they are aged — not like anyone in this House — and not reproductions and that the industry does not mass produce the latter to encourage cigarette smoking, and as long the brand or product being displayed is no longer available. I would like to hear the views of the Minister of State and other Members on this.

Deputy Caoimhghín Ó Caoláin: I have just one small question for Deputy Reilly. Who would bear the onus or responsibility of establishing the genuineness of the “antique” sign? Some reproductions are very good. Is there an implication for people who manufacture replicas? The Deputy is interested in creating the ambiance of old world pubs but I wonder how many antiques are available. The amendment raises several problems and I wonder how it would work out in practice. Maybe there are experts in this area.

An Ceann Comhairle: We can take it that it will not be the owner of the old curiosity shop.

Deputy Jan O’Sullivan: Does Deputy Reilly intend this to apply outside the jurisdiction because I have been in a bar in San Sebastian which had some of these signs? There are a lot of Irish pubs around the world that probably have reproduction signs but I presume Deputy Reilly does not envisage this applying to them.

Deputy Caoimhghín Ó Caoláin: The good citizens of San Sebastian who refer to their city as Donostia might very well accept Irish legislation, such is the good rapport between our respective peoples.

Deputy James Reilly: We may have close ties but I cannot imagine that our influence extends to creating law in countries outside our jurisdiction, although we will of course try to influence European law.

I accept Deputy Ó Caoláin’s concerns but I do not think there are any implications *per se* because the alternative is that no signs, antique or otherwise are displayed. I am trying to ensure that a genuine article can be displayed once the product is not available and therefore it is not an advertisement and, furthermore, that the tobacco industry cannot use its devious ability to get around law, as it did in the Irish Heart Foundation’s example by creating signs that are subtly aimed at youth. They should not be able to get into a new industry of making old world effect signs to advertise products that will be tweaked to resemble a product on the market.

Deputy Áine Brady: If a brand no longer exists then there is no product to recommend to the public and the display of the name of the brand could not be seen as recommending that product. The sign does not have to be an antique as long as the brand is not on the market. Signs and memorabilia connected with brands which are no longer on the market may therefore continue to be displayed. Amendment No. 11 is not required because the brands must be obsolete.

An Ceann Comhairle: Is Deputy Reilly happy about that response?

Deputy James Reilly: I am not happy about the use of reproductions. That is my concern. If one has the right to create a reproduction, and it might not be a direct reproduction but be tweaked, ever so slightly, the tobacco companies will use that loophole. I would like to press the amendment.

Amendment put and declared lost.

Question proposed: “That section 4 stand part of the Bill.”

Deputy Timmy Dooley: This section deals with the provisions required by duty free shops to avail of the opportunity to display signage associated with the sale of tobacco products which generally are in cartons of 200 in duty free shops. While this is welcome business for duty free shops it is right that we make the changes as identified in this amending legislation to allow that business to continue. It does not in any way impact on the desire of the State, which we share, to prevent young people taking up smoking.

The Minister of State and her predecessor, Deputy Wallace, accepted the bona fides of the airport authorities in attempting to continue their trade albeit with people who already smoke. That the cartons hold 200 and do not display the individual packets shown in the catchy advertising for cigarettes makes it acceptable, in line with the Government policy of trying to prevent people starting to smoke.

I acknowledge the tremendous efforts of the departmental officials in finding an appropriate amendment to the law to allow that trade to continue while at the same time protecting young people so they do not start to smoke. That is our focus and that of the Irish Cancer Society. I welcome this amending legislation.

Question put and agreed to.

SECTION 5.

Question proposed: “That section 5 stand part of the Bill.”

Deputy Caoimhghín Ó Caoláin: Sections 3 and 5 are related and both represent the central thrust of this legislation which is to dilute the existing penalties and accordingly I oppose the section.

Question put and declared carried.

Section 6 agreed to.

SECTION 7.

Question proposed: “That section 7 stand part of the Bill.”

Deputy Jan O’Sullivan: I raised the definition of “specialist shop” in my contribution on Second Stage. I do not have a problem with the first case, which just sells tobacco products, including cigarettes. In the second case, shops can sell tobacco products and other items as well, but be exempt from the closed container requirement. That is according to the information note we received on the Bill.

Does that mean I could have a gift shop on Grafton Street or Nassau Street and sell all kinds of items, including wine and tobacco, but not cigarettes and I can have the tobacco on display? If that is the case, that presents loopholes, and I would like to hear the Minister of State’s response.

Deputy Áine Brady: Such a shop cannot have cigarettes, but one must apply for an exemption to have tobacco products on display in a specialist shop.

Deputy Jan O'Sullivan: This is a loophole and I want more information on it. How hard will it be to get the exemption and what kind of standards would apply? I understand the attempt to protect specialist shops but if this allows many other shops to become specialist shops by virtue of the fact that they do not sell cigarettes but sell other tobacco products and items, there could be a proliferation of specialist shops. This would need to be controlled tightly.

Deputy Áine Brady: Some 90% of the shop's profit would come from cigarettes so people would not open a shop and apply for an exemption just to sell tobacco products.

Deputy Jan O'Sullivan: That is if the shop wants to sell cigarettes. There are many shops that may wish to sell tobacco along with other items. They could see this as an opportunity to sell tobacco without being subject to the normal regulations that will apply to everybody else who sells tobacco. I do not have an amendment on the section but I ask that whoever implements the legislation would be aware that this could be a loophole that might be exploited.

Question put and agreed to.

Section 8 agreed to.

Title agreed to.

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

An Ceann Comhairle: The Bill will be sent to the Seanad.

Enforcement of Court Orders (Amendment) Bill 2009 [*Seanad*]: Second Stage.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I move: "That the Bill be now read a Second Time."

Notice taken that 20 Members were not present; House counted and 20 Members being present,

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I thank the House for agreeing to consider this legislation this afternoon. Members will be aware that the need for this short Bill results from the issues raised in the recent High Court judgment in the McCann case in which the applicant successfully challenged the constitutionality of section 6 of the Enforcement of Court Orders Act 1940. The High Court delivered its judgment on 18 June last and, following close consultation with the Attorney General, I decided not to appeal that decision but to move quickly to apply the principles contained in it to the existing legislation in order to provide a definite and reliable method of dealing with debt enforcement.

5 o'clock
These short but important amendments will be of benefit not just to creditors but also to the individuals who are falling into debt. In these often distressing circumstances, delay and prevarication are the normal human reaction. However, these do not constitute a particularly useful approach. The earlier people can face up to their difficulties and engage positively with their creditors, the easier a manageable solution can be achieved for both parties.

The High Court found that the existing legislation lacked a number of necessary safeguards in circumstances where a person is at risk of imprisonment. The judgment states that while this process has traditionally been regarded as a civil matter, its effect was similar to a criminal process and that, as a result, the debtor was entitled to similar protections. The court expressed

[Deputy Dermot Ahern.]

particular concern that the 1940 Act did not appear to require a person to be heard by a court before being imprisoned. Following default on an instalment order made by the District Court, the creditor could apply to the court for a committal order and even without appearance by a debtor. Committal orders could be, and were, granted by the District Court.

The absence of a means to ensure that the debtor attended the court gave rise to difficulty, particularly in view of the fact that in the legislation the obligation was on the debtor to show that his or her failure to pay was not simply because he or she chose not to do so. The court had to be satisfied the debtor — if he or she appeared — had proved that his or her failure to pay was not the result of wilful default. The High Court also found issue with the fact that no option was open to a court to grant legal aid to an indigent debtor at risk of imprisonment, although of course it should be remembered that it was open to a debtor to make application to the legal aid board for civil legal aid.

The provision I am now proposing will replace section 6 and amend sections 8 and 9 of the 1940 Act. Its effect will be to insert a number of key safeguards to the provisions under which a court may hear an application or grant an imprisonment order against a debtor who has failed to comply with an instalment order. The Bill will also provide that a debtor against whom an imprisonment order may be made will be entitled to apply for legal aid.

The Bill still allows for the possibility of imprisonment. I am aware there are those who will think this harsh. I have given detailed consideration to this issue, however, and I am of the view that we must live in the real world and consider the effect of abolishing imprisonment on the process of debt enforcement between two contracting parties. While in practice as a solicitor, I had experience of trying to obtain compensation for people who were awarded money by the courts and of trying in vain, through many different layers of process, to collect it.

Without detaining the House with statistics, the data made available by the Courts Service and the Irish Prison Service demonstrates eloquently the effect of the ultimate sanction of imprisonment in dealing with debt. The Courts Services estimates that in the first six months of this year there were approximately 4,300 applications to the District Court for enforcement orders. In the same period, 186 people, less than 5% of the total, were imprisoned. The average imprisonment period is 20 days. The simple fact is that the vast majority of people who may ignore every other step of the process find the means to pay their debts when faced with the threat of imprisonment. It should also be remembered that this process is always preceded by an instalment order granted by the court. It can be seen, therefore, that, even under the 1940 Act, only a very small percentage of debtors were subject to the sanction of imprisonment.

The aim of this Bill is to ensure that people who cannot afford to pay will not be subject to imprisonment but that those who can pay and who simply chose not to may still face prison. The Government's view is that this sanction is a necessary aid to creditors who are finding it increasingly difficult to collect moneys owed to them, particularly in the current challenging economic climate. This legislation is mainly utilised by small creditors — shops, businesses and credit unions, which are struggling to maintain their trade and their employees — as well as family law creditors. I would be loath to add to their troubles by abolishing the persuasive sanction that enables family members to recover debts owed to them by, for example, spouses from which they are separated.

Fine Gael has suggested that the imprisonment option should be abolished altogether and replaced with an attachment procedure. I had considered that option for this Bill and the Fines Bill, which is already before the Houses, but decided against it at this time. This is doubtless an area which will form a key part of the examination currently being undertaken by the Law Reform Commission. Most Deputies would agree it is more appropriate to await the com-

mission's recommendations rather than to proceed in haste to construct an attachment process which may be reframed entirely within a relatively short period.

As Deputies will be aware, the Law Reform Commission is considering this issue and will be commencing a consultation process in the coming weeks. While I have sympathy with the notion of an attachment procedure, we should not second guess the outcome of the Law Reform Commission's deliberations. What we are doing, on foot of the High Court judgment, is introducing the changes that are required in respect of the existing legislation. When the Law Reform Commission reports, we will re-examine the entire system. I accept that the commission may very well recommend removing the option of imprisonment. Deputy Charlie Flanagan, the Ceann Comhairle and I know, from our experience as practising lawyers, that the threat of imprisonment was always persuasive in encouraging people to eventually pay their debts.

Section 1 of the Bill is a standard provision containing definitions. Section 2 is the principal provision and inserts a new section 6 into the 1940 Act. The latter sets out the process by which the District Court will deal with the summons and the hearing. It also specifies various safeguards and criteria which will in future apply to the granting of a committal order.

The new section 6(1) sets out the circumstances in which a creditor may apply to a District Court clerk for a committal order. As already stated, this will follow on from an earlier court process in which an order for payment by instalment will have been granted. Where the debtor fails to pay these instalments, or one thereof, the creditor can make an application under section 6.

The new section 6(2) sets out the details that will be contained in the summons. These measures concentrate on making the debtor clearly aware of the consequences if he or she fails to attend, as well as the range of potentially less onerous options the court has available to it under this legislation, such as a variation order or mediation. It should be noted that the Bill provides for personal service of the summons and this will be a matter for the creditor.

The new section 6(3) provides that where a debtor fails, without reasonable excuse, to appear in answer to the summons, a judge can either issue an arrest warrant in order that the Garda will bring the debtor before the court at the earliest opportunity or adjourn the hearing. This provision effectively channels the court towards the provisions and protections in subsections (6), (7) and (8).

The new section 6(4) provides that where a debtor is arrested he or she should be brought before a court as soon as possible. The new section 6(5) provides that where a person is arrested and brought before a court under the bench warrant issued under subsection (3), a date shall then be fixed for a hearing and specifies that the judge shall make clear in ordinary language to the debtor his entitlement to apply for legal aid, the consequences, including imprisonment, of failing to comply with the instalment order or of failing to appear for the hearing on the date fixed.

The new section 6(6) deals with the judge's explanation in circumstances where the debtor attends on foot of a summons, that is, the entitlement to apply for legal aid and the consequences, including imprisonment, of failing to comply with the instalment order.

The new section 6(7) sets out the options open to the court if it is satisfied that the debtor has not complied with an instalment order. In the first instance, the proceedings on the summons may be treated as an application for a variation of the existing instalment order. This option exists at present but I understand that people seldom avail of it. This is clearly a good option for the creditor as well as the debtor because some payment is better than none. By setting matters out clearly in the new section 6, the take-up relating to may increase.

[Deputy Dermot Ahern.]

The new section 6(7)(b) provides that the court may request the parties to engage in mediation. This is aimed at increased use of the money advice and budgeting service, MABS, which provides such valuable assistance to those in difficulties. Government funding of MABS in 2009 is in the order of €18 million. MABS provides an extremely effective service to people in trouble, with over 90% of callers to the helpline finding that their money management and budgeting issues can be resolved with the assistance of the helpline adviser. When I served as Minister for Social and Family Affairs between 1997 and 2002, I was especially pleased to have at my disposal the resources required to increase the number of MABS offices throughout the country.

The other option open to the court is to make a committal order. This may be postponed until such time as the judge thinks is appropriate, thus giving the debtor a further opportunity to make payment, or come into effect immediately.

Subsection (8) sets out in detail the standard and the onus of proof, as well as the criteria that must be applied by a judge before making an order for imprisonment. Members will note that I have included the criminal standard of proof, that is, beyond reasonable doubt. This is to take account of the High Court's view that the potential effect on a debtor is that he or she may be imprisoned and, therefore, I have erred on the side of caution in requiring a criminal standard.

The onus will be on the creditor to establish the case. The proofs required include establishing that the debtor has means but is wilfully refusing to pay. In addition, the court may require the creditor to establish that the debtor has no goods that could be attached in lieu of the debt. While this seems a potentially onerous provision, it is included specifically to establish that imprisonment really is the last resort.

Subsections (9), (10) and (11) are self-explanatory. Subsection (12) is designed to protect the proceedings from a debtor who fails to attend the court hearing. I accepted a helpful amendment tabled by the Labour Party in the Seanad. We had the same objective in mind, namely, to protect the integrity of the proceedings from the debtor who refuses to co-operate.

Section 2 also inserts a new section 6A, which grants power to the court to consider an application for legal aid. This will operate on a similar basis to the current criminal legal aid scheme. It makes provision for an entitlement to apply to the court for a debtor's legal aid certificate and sets out the circumstances in which it can be granted. Consideration was given to simply referring to the Legal Aid Board, as it is currently possible for persons to apply to it for assistance in such matters. However, again bearing in mind that the end result can be imprisonment, it was felt more appropriate to leave the granting of legal aid as a matter for the court to decide.

Deputies may be concerned at the financial implications in this regard. Obviously, there will be consequences resulting from extending legal aid in this way. It is not, however, my intention to provide for large fees. Regulations are being drafted and my officials have notified the Law Society that the scheme is being structured to restrict the cost to the State as much as possible, while allowing for a fair rate to be payable to solicitors for their work. This represents a new avenue of business for the profession, which I appreciate has been experiencing its own difficulties, and this will be very suitable work for recently qualified young solicitors. I intend that a rate will be struck on a per-case basis. The Department will monitor the impact of the provision and it is proposed that the arrangement be reviewed once it has been in operation for a period of two years.

Section 2(2) applies the provisions of the amended section 6 above to section 8 of the 1940 Act, which deals with applications for enforcement proceedings for default of payments due

periodically, for example, maintenance orders. Section 2(3) amends section 9 of the 1940 Act to render more workable the power of the Minister to release debtors where that is necessary. Following advice from the Attorney General, this is being done to tidy up the existing archaic provision from the 1940 Act that requires the Minister to consult, where practicable, with the District Court judge who issued the committal order. I cannot envisage circumstances where such consultation would be appropriate and the minor change introduced here, which is to include consideration of whether such consultation is appropriate or proper in all the circumstances, is designed to take account of this.

Moreover, I do not envisage that this provision to release debtors will be used frequently as it has been very rarely used in the past. The issue of whether ordinary remission procedures should apply to debtors has been raised — traditionally it has not applied — and this will be examined further in due course.

As Deputies will be aware, the Law Reform Commission is currently engaged in a root and branch examination of the area of debt and will publish a discussion paper in September. This will be followed by the commission's annual conference in November, which will be centred on this topic. All this work will lead to the publication of a major paper next year in which it will make recommendations for any in-depth reform of this area, which undoubtedly is overdue. The commission has lengthy experience of broad consultation and produces excellent, workable solutions in complex areas. I have no doubt that it will take into account the jurisprudence, as well as the detailed and helpful research produced this week by FLAC. Any other issues arising in this area can and will be considered in that context.

In the aftermath of the recent court case, I decided to hone in on section 6 of the 1940 Act and amend it to take account of the High Court judgment, while leaving the wider examination of this issue to the Law Reform Commission. While the amendment tabled by Fine Gael in this respect is helpful, I do not consider it appropriate to accept it because were the Law Reform Commission to come up with another procedure, Members would be obliged to change this all over again. Consequently, it is better to leave this to the Law Reform Commission.

It also is necessary to emphasise that not only does this measure help creditors in respect of normal contract issues or debts, but the legislation is also required to ensure that an ultimate penalty exists in respect of unfulfilled family law maintenance orders. It is important not to lose sight of that fact. To a certain extent, there is a perception that this measure simply pertains to money in respect of contract debts and such issues. Moreover, I note that attachment applies in the area of family law in respect of maintenance orders and yet 50% of those who are subject to maintenance orders and who fail to pay actually end up in prison. In other words, the attachment procedure in that regard does not work as well as one might think.

I commend the Bill to the House.

Deputy Charles Flanagan: It is timely that a Bill dealing with matters of financial debt should come before the House. However, as the Minister has more or less admitted, the legislation before Members is a sticking plaster to get over a problem that has arisen. It is a pity this Bill has been introduced in a manner that is lacking in imagination and is merely designed to circumvent the High Court judgment of 18 June last, rather than as an attempt to address the real and practical problems that debt defaulters face.

I do not intend to detain the House to any great extent as the Seanad had a detailed debate on this matter and I do not wish to be repetitive. However, when this Bill was before the Seanad, my colleague, Senator Eugene Regan, tabled an important amendment that reflects Fine Gael's policy on this matter and to which the Minister referred. Fine Gael considers that an attachment of earnings order would be a far better solution to the debt default problem

[Deputy Charles Flanagan.]

than a term of imprisonment. I am unsure what purpose imprisoning debt defaulters serves because it is strictly punitive and in no way bestows benefit on the creditor. The person is put into jail and it is most unlikely that his or her personal circumstances can improve while serving a prison sentence. That also is to the detriment of the creditor and when that person emerges, having served a prison sentence, the debt remains due in any event. It is important, and the Minister has more or less said the same thing, that one should be pragmatic about such matters and the objective of the Legislature must be to find a way for the debtor to pay the creditor what is owed, rather than having people serve prison sentences.

In this context, I welcome the proposed new section 6(7)(b) of the 1940 Act, which provides that the court may request the parties to engage in mediation. The Government has indicated that it envisages an increased use of the money advice and budgeting service, MABS, which I welcome. The Minister mentioned his practice as a solicitor and from my experience as a solicitor, I am familiar with the mediation process, particularly in respect of family law, and the family mediation service is doing excellent work. It quietly assists people by helping to reduce the adversarial nature of a dispute and in many circumstances it helps to deliver an outcome that is satisfactory to both parties. Mediation has an extremely important role to play in settling some types of disputes. I wish to see mediation at the heart of resolving disputes about debt.

The current budget of MABS is approximately €18 million. This seems generous and I hope it is adequate to enable MABS to carry out an expanded role, as envisaged by this Bill. Irrespective of this Bill, I hope MABS is assisted by the Government in every way because more and more people are likely to seek the help of MABS for help as job losses continue to mount. It is important that the Government recognises the fundamental importance of an agency like MABS at a time like this and ensures that it is working to capacity.

I refer constituents to MABS, as do other Members, almost on a daily basis. I know the local office is under pressure and I value its work. It should be assisted in every way possible. I see an expanded role for an organisation like MABS in respect of debt resolution disputes.

As anticipated by the Minister, Fine Gael would like to see this Bill amended to provide for an attachment of earnings order, rather than a prison sentence, where difficulties arise in respect of debt defaulting. Attachment of earnings orders are common in the field of family law regarding maintenance provision. Where a spouse fails to pay maintenance as per a court order, an attachment of earnings order can be sought from the court if the person is in employment, on social welfare or on a private pension. The order results in the maintenance amount being deducted at source by the employer or the Department of Social and Family Affairs. If the spouse is self-employed, an enforcement summons can be applied for.

Such orders can be handed down by both the District Court and the Circuit Court. In making a maintenance order, a court can direct that the payment under the order shall be made to the District Court clerk if the court considers that it would be proper to do so. As part of its order the Circuit Court may direct that a maintenance order is payable through the District Court on the basis that the office of the local court is more accessible to a querist. The District Court has a fully computerised payments system for the receipt and transmission of payments received. Payments received are immediately dispatched to the applicant and there is no delay. The system is working well. A fully computerised print out of all payments is available to either party on request. The process is simple, fast and efficient. I do not dispute that it has its flaws but it is a more practical measure.

It is a more imaginative solution than putting people into prison. The prisons are dangerously over-crowded. The Government states that in the first six months of this year only 186 people

were imprisoned for debt defaulting. The Minister said this number is small but 186 people is a lot. An alternative to prison for those 186 people would make far more sense.

As my colleague, Senator Regan, pointed out when this Bill was before the Seanad, Ms Justice Mary Laffoy stated, on page 84 of her judgment in the recent McCann case, that as the plaintiffs case illustrated, a statutory procedure for enforcement of debt under which the debtor may be imprisoned, without there being a positive requirement that the court determine if non-payment is due to an inability to pay before making an order for arrest or imprisonment, is not only futile in terms of securing the creditor's remedy, but it imposes unnecessary expense both on the creditor and the State. If the warrant for the imprisonment of the plaintiff had been executed, the plaintiff would spend a month in Mountjoy Prison. The credit union, however, which its counsel described as a not-for-profit co-operative financial service provider governed by the Credit Union Act, would not have received €5,658 or even one cent from the plaintiff. The credit union would have borne the cost of the proceedings for the instalment order and the application for the order for arrest and imprisonment. The State would have borne the cost of two District Court sittings, the execution of the warrant and the accommodation of the plaintiff in Mountjoy Prison for one month. That is the major defect in the Bill. It still does not provide for an attachment of earnings procedure. In that regard, it fails to adhere to the provisions of the High Court judgment.

Senator Regan proposed a strong amendment to the Bill when it was before the Seanad. It was designed to provide for a procedure whereby an attachment is ordered as a substitute for imprisonment, which is to the benefit of creditors, eliminates the use of imprisonment to force the individual to pay a debt and is more efficient. The proposed amendment provided that where a debtor is liable, by virtue of an instalment order, to pay a debt and costs either in one payment or by instalments, and the debtor fails to make such payment or fails to pay any one or more of such instalments accruing while such an order is in force at the time or times appointed, the creditor may, at any time while such order is in force or within 12 months thereafter, apply to the court for an attachment of income order. That proposed amendment was rejected by the Government for reasons that are less than satisfactory.

Fine Gael's approach to the Bill is more practical, reasoned and based on sound legal principles and precedent. I am disappointed by the narrow-minded view of the Minister. At this late stage I hope the Minister will be more open-minded in the Dáil than he was in the Seanad when dealing with the matter.

I am aware that the Law Reform Commission is due to present a major paper on debt before the end of the year. This Bill shows that the Government is not averse to introducing amending legislation where it sees a need. I am disappointed that we have not dealt with the very real problems in the area of unregulated debt collection. In April of this year, having been approached by several victims of unscrupulous debt collectors and in the face of Government failure to act on the issue, I published a Private Members' Bill to regulate debt collection in this jurisdiction. I was very conscious of the involvement of criminals and eastern European Mafia types involved in debt collection, which has become more prevalent since the economic downturn.

There is a need for urgent action to protect vulnerable debtors from threatening behaviour by some debt collectors. People have come to me who have been threatened by well-known criminals, property has been vandalised and physical assaults have taken place. Many victims told me they were afraid to go to the Garda Síochána because of the nature of the threats against them. It is clear that the State needs to intervene at the root of this problem by ensuring that those engaged in debt collection and their agents are fully licensed. The operation of debt

[Deputy Charles Flanagan.]

collection in the State must be governed by regulation and licence. A complaints mechanism for debtors treated in an unfair, unjust and intolerable fashion must be provided.

Fine Gael's Bill proposed a system to regulate debt collectors so that they must register with the Financial Regulator and be vetted by the Garda Síochána prior to being allowed to operate. It would be run in much the same way as the private security industry in that it would not involve any great new authority and could be self-financing, which is also important. Ireland has no system to regulate debt collectors unlike most EU countries. As a result, anyone can set up a debt collection agency and there are no rules as to how they should operate. Debts can also be sold on and transferred without the debtor's knowledge. With more people owing more money, debt collection is becoming a more profitable business for some who can operate without having to be under the umbrella of any form of regulation of any description.

Either the Government remains oblivious to this obvious difficulty or it does not care. I encourage the Government to consider over the summer, and prior to our return in the autumn, the plight of debtors who are subjected to threats and violence by debt collectors. We should regularise the industry by ensuring a proper licensing system. This need is pressing and the facts confirm that people are coming under pressure in a way that can be most unsavoury.

I note that the Bill makes provision for legal aid in response to the High Court's concern that no option was open to a court to grant legal aid to a debtor at risk of imprisonment. The Bill proposes that a debtor against whom an imprisonment order may be made will be entitled to apply for legal aid. This brings us to the reality that civil legal aid is very much the poor relation of criminal legal aid. There have been reports of significant delays in obtaining civil legal aid in recent times and I would again state to the Government that it cannot legislate without matching that legislation with appropriate resources.

While pointing to the need for greater resources in the area of civil legal aid, I suggest that there are savings to be made in the area of criminal legal aid. Wealthy gangsters are known to frequently avail of legal aid in the Supreme Court despite apparent wealth. There is a need to tighten up the checks and balances that apply in this context. It is reprehensible that an ordinary citizen cannot obtain legal aid because of inadequate resources being allocated by the State, while a wealthy criminal can rather easily obtain free legal aid in a criminal case. I have not seen too many cases where the Criminal Assets Bureau has taken over the assets of a person convicted of serious crime and reimbursed to the State any criminal legal aid which may have been granted.

The timing of the High Court finding of unconstitutionality in respect of section 6 of the 1940 Act is interesting, given that expert lawyers from the prosecution and defence sides of the profession have been warning the Minister, Deputy Dermot Ahern, that his proposed gangland legislation is unsound from a constitutional point of view.

Deputy Dermot Ahern: I am not so sure about the "expert" bit.

Deputy Charles Flanagan: I encourage the Minister to bear in mind that legislation repugnant to the Constitution will not withstand legal challenge, as exemplified by the court case that precipitated this Bill.

Deputy Seán Sherlock: The legislation is based on a challenge to section 6 of the Enforcement of Court Orders Act 1940, which provides that where a debtor has an instalment plan to pay a debt and fails to discharge that obligation, the creditor may apply to the District Court for the arrest and imprisonment of the debtor.

The Free Legal Aid Centres, FLAC, in its opinion, states the Enforcement of Court Orders (Amendment) Bill 2009 confines itself to remedying the constitutional deficiencies identified by the High Court in the McCann case and this is the most fundamental point. Political and legal arguments were well made by my colleague, Senator Alex White, on the Bill in question and particular reference was made to the instigation of an attachment of earnings procedure when cases come before the courts for non-payment of debt. I have made provision for this argument by way of proposed amendment to the Bill to reflect that view.

We should also take cognisance of the fact that the Minister for Justice, Equality and Law Reform has indicated that the Department will await the Law Reform Commission's consultation paper on debt enforcement before taking any further action in this area. Will the Minister give a commitment to legislate for this and, in particular, that aspect of the Laffoy judgment on attachment of earnings? The Law Reform Commission's report will be most welcome but if it does not give voice to legislation almost immediately then I suggest the inherent problems will continue.

I acknowledge FLAC's comments in that regard and it should also be noted that its report, *To No One's Credit*, published on 6 July, proposes a wide range of recommendations for change in this area. The FLAC position paper states: "These are welcome changes to the existing legislation but it must be said that they only address the last step in what is a complex and less than user friendly procedure that takes place in open court and is in need of comprehensive reform generally." The report points out that while the Bill contains welcome changes necessitated by the McCann judgment, it does not go far enough in that it still contemplates imprisonment as a sanction for debtors. Although it will improve the current position, it is akin to placing a sticking plaster on an open wound, namely, our shameful policy of continuing to imprison people who for genuine reasons cannot pay their debts as opposed to refusing to do so. We must make the distinction between those who cannot and those who simply will not pay their debts.

FLAC suggests that the State moves towards the removal of imprisonment as an option in debt cases and instead employs effective non-penal remedies to enforce compliance with civil debt judgments. I hope the Law Reform Commission would give greater voice to this aspiration. There is merit to this argument but the complete removal of the sanction of prison is not a vista that we would support at present, particularly with regard to family law matters.

In introducing the Bill in the Seanad, the Minister of State said:

The High Court found that the existing legislation lacked a number of necessary safeguards in circumstances where a person is at risk of imprisonment. The judgment stated that, while this process had traditionally been regarded as a civil matter, its effect was akin to a criminal one and the debtor was entitled to similar protections. There was particular concern that the 1940 Act did not appear to require a person to be heard by a court before being imprisoned. Following a default on an instalment order made by the District Court, a creditor could apply to the court for a committal order and even in the case of the non-appearance of a debtor, committal orders could be, and were, granted by the District Court.

The new section 6 addresses this and we will not seek to amend it in that regard. I believe we must give voice to the McCann judgment and deal with it immediately. However, whether the legislation deals with the Laffoy judgment in its entirety is another matter.

In the debate in the Seanad, my colleague rightly asked how a debtor could be imprisoned without any requirement that the District Court would first have to decide whether the non-payment was due to an inability to pay or a refusal to pay. This seems a fundamental point, but it was not an area of the law with which many of us were familiar until the judgment

[Deputy Seán Sherlock.]

was made in this case. The judgment probably surprised people in that it deemed the area unconstitutional, which necessitated legislation. I could not understand how it could be justified as a law. It seemed to require a change. It seems basic that fair procedures should be available for a hearing before the courts dealing with the possible imprisonment of a debtor.

The Labour Party acknowledges this is serious legislation, as it involves the potential imprisonment of people for non-payment of debt. We also acknowledge that serious issues were raised in the judgment of Laffoy in the McCann case. We need to discuss those issues in greater detail. The question for the House is whether this legislation is drafted to take cognisance of the difference between those who cannot pay and those who will not pay and whether the application of criminal procedures against debtors who fail to discharge their debts is reasonable.

The fact that the imprisonment order made against Ms McCann would have been carried out if she had not taken the action shows that a person could be deprived of his or her freedom, regardless of whether he or she was deliberately flouting the law or could not simply pay their debts. In that case, the respondents had informed the court that they would vary the instalments, but that the debt would still stand. This was widely reported in the media at the time and *The Irish Times* of 27 June stated that Judge Neilan said he would remand all committal and many enforcement matters to the end of November, when it might be clear if the Laffoy decision would be appealed to the Supreme Court or if legislators would take action. We are taking action today, but it still remains unclear whether the Government has adequately dealt with the Laffoy judgment as it pertains to attachment of earnings procedures.

The question remains as to whether we should vote against the Bill on the basis that the findings within the Laffoy judgment are not implemented in their entirety in this legislation or whether we should revert to the 1940 Act. I suggest we should not revert to the 1940 Act but that a response is required. I feel the response is delivered in the legislation, although the Labour Party still finds the legislation somewhat flawed. It remains to be seen whether the lack of a provision in this regard will be challenged once the Bill is passed.

We must legislate to ensure that maintenance orders are enforced and upheld and ensure that the threat and potential for imprisonment remain. On the enforcement of maintenance orders, the current situation in this regard is unclear in light of the McCann judgment and until the implementation of this legislation. District Court clerks must maintain those orders, but the situation as to their standing is unclear. Is there an issue with regard to time constraints, from the time of the McCann judgment up to the implementation of this legislation? People seeking maintenance through maintenance orders wonder whether they will be affected adversely and whether the orders will be enforced. They want to know what direction the Minister will give to the Attorney General with regard to advice to court clerks on the matter of what they should do next about those orders once the legislation is passed. There is significant confusion and concern in this regard.

I understand that in one area in the west up to 200 maintenance orders have been put in abeyance as a result of the lack of implementation of the legislation. Will the Minister address that in his response? I may be missing the point, but if Judge Neilan made a judgment he would not do anything until such time as the legislation was passed, we need to find out exactly what the effect the passing of the legislation will have on the issuing of maintenance orders. We must legislate to ensure that maintenance orders are enforced and that the Minister maintains the potential threat of imprisonment where they are not paid.

The attachment of earnings procedure could still be incorporated in the Bill. The changes in the Bill will, in some circumstances, put an end to the sentence of imprisonment of a debtor in

his her absence and alter the onus of proof in these cases so that it is now for the creditor to establish that the debtor's failure to pay instalments was either due to wilful refusal or culpable neglect. This is as suggested by FLAC. This shifts the balance away from the debtor to the creditor but allows for the possibility for the creditor to reclaim the debt or part of it. This concept, however, gives rise to some difficulty for the Labour Party. We seek to amend the legislation to reflect the fact that in her judgment Judge Laffoy spoke specifically about the issue of attachment of earnings procedures.

The Minister of State in his response to the Fine Gael amendment moved in the Seanad stated that the question of attachments of earnings — the substantive basis of the amendment — and of the whole area of attachments of earnings to social welfare payments had been considered by the Government, both in this Bill and in the Fines Bill. The conclusion, however, was that it would be problematic and difficult to operate fairly. The amendment also acknowledged that it would be necessary to include attachments to social welfare payments, but that this might not be the best time to try to do that. There would also be practical difficulties that would need to be overcome where persons in temporary employment were concerned.

I question the logic of such an approach. If the Law Reform Commission is going to consider the issue of debt and seek solutions by way of legislation, we must consider the range of options available. I contend the attachment of earnings procedure is one such option. This already operates within the family law system and I see no reason that it cannot operate within other areas of civil debt. In the Seanad the Minister of State said the attachment of earnings procedure presented a difficulty. If the difficulty is due to the cost factor or if it is an administrative difficulty, what is the logic of his argument? If the ultimate aim is to keep people out of prison, the cost of administration of such a scheme would be far less than the cost of imprisonment. There is logic in considering the attachment of earnings procedure and including it in the legislation. That would be the way to go. The Minister of State said people had been imprisoned for not adhering to maintenance orders, but with regard to civil debt, one could instigate such procedures.

Senator Bacik, when speaking in the Seanad and addressing the Fine Gael amendment said it is eminently sensible since it proposes a different regime as an alternative to the sanction of imprisonment being imposed upon a debtor, and rather than imprisonment, it envisages an attachment of income or welfare order that would be made to address circumstances where somebody is unable or unwilling to pay debts.

We agree with this approach and have tabled amendments to that effect. We still need to go back to the judgment of Ms Justice Laffoy, who refers to Article 11 of the UN International Covenant on Civil and Political Rights. It states: "No one shall be imprisoned merely because of their inability to fulfil a contractual obligation." The principle in international law that people should not be imprisoned merely because of their inability to fulfil a contractual obligation is clear and we are in breach of it.

Although there are improvements to the current situation in this Bill, which were necessitated by the McCann judgment, the fundamental principle upon which the current system is premised, namely, that people can be imprisoned for non-payment of debt remains in place. What was the point of imprisoning Ms McCann? It is fair to assume that the vast majority of those before the courts are people with little or no means or without the necessary life skills, in some instances, to manage household income.

The idea that someone would be subjected to a committal order without having engaged in any process before a judge speaks volumes about the arcane, archaic and outmoded and borrowed common law procedures which form part of this system. Even when someone receives documentation regarding the discharging of a debt, the chances are that they are intimidated

[Deputy Seán Sherlock.]

by a language that is far from simple and is typical of a bygone age. I am glad this is being dealt with in the Bill.

The State must immediately begin the process of changing the arcane procedures regarding the discharging of debt. It is one thing for us to change the legislation, but the question then arises as to when the section 6 provisions will kick in and whether we will see a revolution in the courts regarding their arcane procedures and the type of language they use, and whether they will change overnight. I suggest they will not and that many people who present themselves to the courts will be as confused as ever. Until we develop a language for the law that reflects modernity — if I can use that word — we will still have situations like the McCann case.

An Ceann Comhairle: It is definitely in the thesaurus.

Deputy Seán Sherlock: We still await the Law Reform Commission's paper in that regard and hope it will lead to the overhaul of the system.

We need to strike a balance between the rights of the debtor before the court and the rights of the creditor to obtain payment. The Minister stated there were 4,300 applications for enforcement orders to the District Court and that 186 people were imprisoned so far this year. There is no doubt that figure will rise. When one takes into account those in prison for non-payment of fines, we have more trouble is worth it inside our prisons, where people are there for civil rather than criminal issues. It is something that needs to be addressed.

This brings me back to FLAC. Why not look seriously at the proposal launched on Monday called To No One's Credit and engage on those issues in a meaningful way? I suggest the Government, particularly the Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern, has its face set against any idea that seeks to look more laterally at the issue. The fact remains that since Adam was a boy people have reneged on their debts and no government, no matter how well-intentioned, will be able to legislate for human behaviour. I suggest a little bit of common sense and the accommodation of new ideas would be the way to go. We can no longer afford the notion that people would be jailed for debt where it is proven that they genuinely cannot pay.

Ms Justice Laffoy, on page 82 of the judgment, states that the application of elements of the test to section 6 illustrates that it is disproportionate interference with the constitutionally protected right to liberty because the objective of imprisoning a debtor for failure to comply with an instalment order is to procure the discharge of arrears of instalments. She refers specifically to a statutory procedure under which a debtor who is unable to discharge the arrears is imprisoned because of the absence therein of procedures, including procedures which give effect to the debtor's right to fair procedures under the Constitution, which ensures that the judge ascertains that the debtor is unable to discharge the arrears, cannot be said to be rationally connected with the objective. This speaks to points we made on the attachment of earnings procedures. She states such a procedure is arbitrary, unfair and not based on rational considerations, and is an unreasonable and unnecessary interference with the debtor's right to personal liberty.

The question is whether this aspect of her judgment has been remedied by the new section 6. I am a layman; I am not solicitor, as are my two learned colleagues, but perhaps the Minister could respond and let us know whether that aspect of her judgment has been remedied. Could the statutory scheme she refers to be applied by way of an attachment of earnings procedure? She states that in circumstances where a debtor has some resources to meet a debt, a statutory scheme which does not require the creditor to seek redress by attaching those resources does

not impair the debtor's right to liberty as little as possible. We wish to speak to that issue by way of the amendments we have tabled.

Ultimately, the question for us is whether we need to amend the legislation to give voice to Ms. Justice Laffoy's judgment so as to offset the risk that the Bill may be struck down again on foot of a legal challenge in these strange times. Where we guillotine at will, we risk the prospect of a challenge when the space for proper debate is curbed. Proper space and time has not been allocated for debate on this matter. It should be stated, for historical purposes, that guillotining legislation such as this does the Legislature no good. I often think that when we legislate in haste, it may come back to haunt us.

We welcome section 6. It will get the Minister over the hump, so to speak, regarding the McCann judgment, but there are other issues which need to be addressed. If we had more time and debate, a greater allowance for amendments and more expert opinion on this matter, perhaps we could have addressed it more fruitfully.

Deputy Aengus Ó Snodaigh: I welcome the opportunity to speak on this Bill. Bille rí-thábhachtach atá i gceist leis An Bille um Fhorfheidhmiú Orduithe Cúirte (Leasú) 2009. Tá muid ag déileáil anseo le gnáth daoine agus tá sé tábhachtach go dtuigeann muid gur daoine leochaileacha atá i gceist. Is daoine iad seo don chuid is mó nach raibh os comhair na cúirte go dtí seo ach a mbeidh os comhair na cúirte amach anseo. Daoine iad atá in ísle brí don chuid is mó. Is minic nach dtuigeann siad cad atá os a gcomhair nó cén fáth gur tógadh os comhair na cúirte iad.

Ní thuigeann daoine, b'fhéidir, cé chomh leochaileach agus atá na daoine seo. Measaim go bhfeicfidh muid i bhfad níos mó daoine sa gruachás céanna ná bhí le feiscint le blianta anuas. Anuraidh, cuireadh 279 i bpriosún de thairbhe na fiacha a bhí orthu gan a bheith íoctha agus cuireadh breis agus 200 i bpriosún na blianta roimhe sin. Cheana féin i mbliana tá suas le 186 curtha i bpriosún. Ba chóir dúinn déileáil leis an fhadhb seo sa Bhille seo. Fáiltím roimh an Bille mar is Bille maith é don chuid is mó, ach ba chóir dúinn déileáil i bhfad Éireann níos tapúla leis na fadhbanna a bhaineann leis an mbun reachtaíocht. Tá súil agam go mbeidh an Law Reform Commission in ann déileáil leo go tapaídh agus go dtiocfaidh reachtaíocht nua ar aghaidh cuíosach tapaídh ina dhiaidh sin.

The Enforcement of Court Orders (Amendment) Bill provides welcome changes to the fundamentally flawed and draconian Enforcement of Court Orders Act 1940. Last year, 276 people were put into prison for non-payment of debt. As the Minister stated, the corresponding number thus far this year is 186, although we have only recently passed the half way stage. It is clear most of these costly incarcerations and the subsequent personal anguish, deepening poverty and the ongoing discrimination experienced by many of those affected could have been avoided had aspects of the 1940 Act been reformed more quickly.

I welcome that we are addressing one part of this today, albeit on foot of a recent court judgment. It is a pity we have been obliged to wait until now. I welcome that the Law Reform Commission will address this area and hopefully it will do so quickly and without a timeframe, given the significant level of indebtedness in society today.

We must be prepared to address that legislation as soon as the Law Reform Commission makes its findings. Within a number of months I hope there will be a change in our attitudes towards indebtedness and the non-payment of fines and debt. In a study launched last week conducted by FLAC, Free Legal Advice Centres, entitled To No Ones Credit, three out of four debtors surveyed claimed not to have understood the full consequences of the proceedings or the options available to them. That is a catastrophe and indicates how the legal system stands and sometimes works against rather than for the citizen.

[Deputy Aengus Ó Snodaigh.]

In the current economic climate, many have found themselves falling deeper and deeper into debt due to job losses, reduced wages, short-time working and business failure, combined with an increased tax burden. Given this, the onset of spiralling debt is blatantly predictable. It is paramount the Government provides in its legislation an alternative to costly imprisonment for non-payment of debts and fines. The current reforms address a way in which debtors might improve their chances of avoiding imprisonment, which I welcome. I also welcome the clarity of the Minister's suggestion in section 7. However, imprisonment remains the preferred option in the end and I do not believe this should be the case. It is a lazy and costly solution. Ultimately, imprisonment does not result in a guarantee of payment to the creditor. Has consideration been given to community service as the primary penalty for small cases of non-payment of debt? In such lesser cases the seizure of goods and assets should or may be an end as well and should not necessarily be followed by a succession of crippling demands after the goods have been seized. That may be an option.

Noeleen Blackwell from FLAC rightly pointed out that debt enforcement in this country has devastating and largely pointless human costs. I condemn the Government decision, which I have raised several times regarding money lenders charging interest rates of up to 195%. I refer to the comments of Noeleen Blackwell. She stated there is a system of modern day loan sharks with a licence to rob. She called on the Government to bring forward urgently further legislation to reduce the maximum interest that may be charged and to ensure that anyone who has no choice but to default on a loan from a money lender, retail credit firm or hire purchase company, because they are simply unable to make the repayments, is protected from financial demands for payments well in excess of the value of the purchased item.

I will provide several examples and I refer to the money lenders register. Some 49 companies are registered by the Financial Regulator to engage in the business of money lending under the Consumer Credit Act, some of which are reputable companies and act within the law and some of which are simply catalogue companies of larger companies. I have no beef with these. However, of the 49 licensed companies, some 32 charge rates of more than 100%, 17 charge rates of more than 150% on loans and one company, namely, Southside Finance Limited, charges a rate of 188.45% on loans, on top of which it charges seven cent in the euro as a collection charge. That is highway robbery in any language. Anyone who ends up approaching that company must be in dire straits and I do not understand how such companies are regulated or how they are allowed to charge such a rate. There are other companies including, in the Taoiseach's area of Tullamore, Green Fields Financial Services which charges a rate of 187.22%. I could list more but that is the scale of the business.

The extent of indebtedness in our society is very large and well beyond anything that has gone before as a percentage of income. The numbers suffering over-indebtedness in the 26 counties is rising and the figure for non-housing and non-investment related unpaid credit balances rose from €3.9 billion in the second quarter of 1999 to €18.8 billion in the third quarter of 2008. That is the scale of the problem and that will be a source of difficulty given the recession job losses and with the availability of money becoming tighter. We will end up with many more people coming before the courts because they cannot afford to pay the debt into which they sank when times were easier for some.

People are not stupid either and some signed up knowingly. However, some did not understand the consequences and that was one of the findings of the report to which I referred earlier. Some such people may not have fully understood the consequences and this is one of the issues which must be fully addressed. Plain language must be used. The plain English campaign exists to ensure that documents are used which people can understand and it attempts to help them to understand legislation. When people sign contracts, they should understand

the consequences and if they are illiterate, the full consequences should be spelt out to them chapter and verse.

Community service should be a primary penalty and it might be a mechanism which could be introduced. Perhaps if it was carried out, the State might be able to pay back some of the debt to the credit companies, based on the work done by the person on community service. This is worth looking at.

FLAC's senior policy officer stated when presenting the report: "The whole process of debt enforcement in Ireland almost seems designed to exclude the debtor from both understanding and fully taking part in it." He further stated: "Apart from the risk of individual human rights violations involved, which has been noted by the UN, our penal system does not in any way actually improve the debt problem in Ireland." This is the key point. The penal system does not improve the debt problem.

It has been a lengthy and arduous process in arriving at some reform. While the Bill provides considerable improvements to the enforcement process, along with many others, I remain of the opinion that the reforms proposed could be stretched further. The Bill's three main changes are all welcome and I fully support them. They include an end to imprisonment of a debtor in his or her absence. I particularly welcome this provision.

A constituent of mine has agoraphobia and she was in complete panic when she received a fine for non-payment of her TV licence. She had not been out of her home properly in over seven years. Her son had recently moved out and she did not attend the court hearing. She never communicated with the authorities, which would have been advisable, because she is not illiterate but she was in a panic about dealing with the system. Many people do not like the system and they are afraid of it. They are afraid of the law, the courts and the police. This woman telephoned me in a panic because she had received notice of a fine for non-payment of her TV licence and with costs, amounting to more than €500. The woman is literate and has her full faculties but this is the effect it had on her and the effect would be much worse for anyone who is illiterate or with no money or in the depths of depression. We need to take such examples into consideration.

The Bill provides that a person with a debt must be present in court or be represented. I welcome the new provision for the possibility of legal aid for debtors. I also welcome the reversal of the onus of providing proof during the court process from the debtor to the creditor. However, reform in this area must go further. Between 2001 and 2007, approximately 200 persons a year were imprisoned as a result of debt. If this is the average since 1940, it would amount to 14,000 people in total having been imprisoned for debt.

Many people have been effectively criminalised simply for being poor. I will withdraw my Committee Stage amendment No. 4 which slipped through the net, given the week we have had in the House. It did not get proper scrutiny. People associate prisons with criminals and stigma results regardless of whether a conviction is recorded. I will ask on Committee Stage whether previous failure to pay a debt is taken into account in these type of proceedings.

We must go further and rectify the wrong done to the hundreds of people who were, in their absence, unfairly committed to prison for contempt of court or failure to comply with a relevant court order in their absence. These people may be continuing to experience stigma and related discrimination as a consequence of their committal to prison. For example, an employer may discriminate against a person who has been in prison because there is nothing to prevent an employer from refusing employment to someone who has been in prison. Many employers would not make the distinction between committal and conviction.

I am tabling an amendment to section 2 in regard to the proposed new section 6(4) of the 1940 Act. As currently drafted, the Bill provides that an arrested debtor shall be brought before the court "as soon as practicable". Such a person has not committed a violent crime and will

[Deputy Aengus Ó Snodaigh.]

not receive a criminal conviction. It should be provided that such a person should be brought to court within hours if not minutes so that no debtor is forced to spend the night in prison pending the next District Court hearing.

This legislation is one small reform to the end point of an outdated system. The court enforcement procedure operates against a backdrop of an outdated, constrained and extremely expensive bankruptcy system. We also have no personal insolvency system akin to the individual voluntary arrangements made available in recent years in England or to the type of repayment schemes that exist elsewhere in Europe.

In addition, greater resources must be made available to the Money Advice and Budgetary Service offices which are increasingly inundated with requests for help and which are operating in a near vacuum when it comes to statutory supports and systems to recover personal debt in a fair and humane way. We should explore ways of making financial and credit institutions foot some of the funding that is required by MABS. The Government has increased funding for MABS but it is nothing like what it should be. Companies who are charging 188.7% interest should make some long-term contribution to the Money Advice and Budgetary Service.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I thank the Deputies for their comments on this Bill. We all share the same objective, to address a relatively urgent matter. When this judgment was handed down we had some forewarning that it might be negative and the Department made preparations in the event the case went against us. Case law in this area has developed over the years and imprisonment is regarded as a last resort. I wish to debunk the notion that our prisons are cluttered up with debtors.

I was a practitioner in this area in my earlier years and as a newly qualified solicitor I was given this type of work because it is not the most enterprising area and it is difficult. Small businesses invariably want to collect their debts and there are many hoops to go through.

It is a frustrating experience for somebody who is owed a debt. It must be said there are many opportunities for debtors to evade their responsibility in this regard. Deputy Flanagan will attest to this but I cannot recall anyone I was involved with in a case, either as a creditor or a debtor, going to prison. That was my experience. Given that there are numbers in prison, it was happening but my experience was that judges were always extremely reluctant to put anyone in prison in respect of a debt.

One of the Deputies raised the issue of whether they have a criminal record. They do not have a criminal record. This is a civil matter and there is no criminal record to be expunged.

The objective we were trying to fulfil was to deal with an urgent situation. When the Laffoy judgment was delivered, there were a number of people in prison and between then and now we have erred on the side of caution. We released 11 people from prison who were there subject to section 6 and, to be fair and absolutely correct, a further 11 people were let out in that period. They were subject to section 8 which is relevant to maintenance orders. Even though maintenance orders were not challenged in this particular action and given the fact that section 8 was framed in the same way as section 6, we felt it would be vulnerable to challenge and we decided, therefore, on the basis of the Attorney General's advice to err on the side of caution and release from prison those people who were subject to maintenance orders.

We decided that we would hone in on the requirement of the Laffoy decision for safeguards and protections to be put into this section, and that is the reason we have a new section 6. The Law Reform Commission will give a view and it is better that it looks at the entire area of debt, not least the issue some Deputies raised — it was raised in the Seanad also — as to the reason people get into debt in the first place, and some of the issues Deputy Ó Snodaigh raised. It is important that is examined.

We were endeavouring to get a balance between the creditor on the one hand, such as small businesses and situations where there was a maintenance order and the errant spouse was not paying on foot of that order, and, on the other, to make sure the debtor got a fair and reasonable opportunity to respond to the court and in a way in which, ultimately, they do not go to prison. As I said, judges have always been reluctant in this regard. I have dealt with Deputy Ó Snodaigh's question on the criminal record.

The Bill as proposed refers in two different sections to the requirement for ordinary language to be used in regard to the summons, etc. Section 6(1) is to provide information in ordinary language about the options available. That is a duty the judge has to explain.

I thank the Deputies. This is a tortuous area. To refer back to my experience, I told a story in the Seanad about an effort I made on behalf of a relatively elderly Canadian couple in my constituency about 25 years ago.

Deputy Seán Sherlock: Before the Minister embarks on a story, I ask him to address the point on the District Court where there are outstanding issues in regard to maintenance orders.

Deputy Dermot Ahern: Yes. This man and wife were subjected to a very serious assault by their neighbour and the Director of Public Prosecutions decided not to prosecute because he said there was not enough evidence. We took a civil action against the neighbour in which I acted for the couple and succeeded in the Circuit Court in getting judgment against the neighbour for \$5,000 and £2,500, which was a lot of money 25 years ago. He refused to pay and we went through the entire system of instalment orders, committal orders and so on but he evaded them. Given that he had a house, and I accept in many of these cases people are in local in local authority houses and, therefore, this case does not apply, I decided to register the judgment as a mortgage against the house of the assailant. We could have moved for an order for sale, and Deputy Flanagan would know the procedure, but we decided not to do that as the couple emigrated back to Canada because they were so traumatised by the assault.

Fifteen or 20 years later I got a telephone call from a solicitor in Dundalk who was in an office closing the sale of this particular house and when they did their searches they found that not only was there a mortgage with a building society, but there was also a judgment mortgage registered against it and no one knew what this was about. The sale could not go ahead that day and I had to make contact with the Canadian couple, who I had great difficulty contacting because they had moved back to Canada, but I was delighted to locate them eventually through various sources and to be able to tell them that not only would they get their £7,500 but they would get 20 years interest at 11%. If my memory serves me correctly, they got approximately £17,500. It was one of those cases one takes a lot of sweetness from in terms of people getting what they deserve. There are many opportunities for a creditor and in terms of that judgment mortgage issue, in the aftermath of the Celtic tiger many people would have additional property. Perhaps that is something that should be used.

On the maintenance orders before the courts, many of those cases were adjourned because they would have been awaiting the passage of legislation. That is the reason there is an imperative in regard to this Bill. There is no one in prison currently in regard to maintenance orders that we are aware of. I believe the courts are waiting for us to pass this legislation and, therefore, the sooner we pass it, the better. I thank the Deputies for their contributions.

Question put.

Question put.

The Dáil divided: Tá, 71; Níl, 43.

Tá

Ahern, Bertie.
 Ahern, Dermot.
 Ahern, Michael.
 Ahern, Noel.
 Andrews, Barry.
 Andrews, Chris.
 Ardagh, Seán.
 Aylward, Bobby.
 Behan, Joe.
 Blaney, Niall.
 Brady, Áine.
 Brady, Cyprian.
 Byrne, Thomas.
 Calleary, Dara.
 Carey, Pat.
 Collins, Niall.
 Conlon, Margaret.
 Connick, Seán.
 Coughlan, Mary.
 Cregan, John.
 Cuffe, Ciarán.
 Cullen, Martin.
 Curran, John.
 Devins, Jimmy.
 Dooley, Timmy.
 Fahey, Frank.
 Fitzpatrick, Michael.
 Fleming, Seán.
 Gogarty, Paul.
 Gormley, John.
 Grealish, Noel.
 Hanafin, Mary.
 Haughey, Seán.
 Hoctor, Máire.
 Kelleher, Billy.
 Kelly, Peter.

Kenneally, Brendan.
 Kennedy, Michael.
 Killeen, Tony.
 Kirk, Seamus.
 Kitt, Michael P.
 Lenihan, Brian.
 Lenihan, Conor.
 McEllistrim, Thomas.
 McGrath, Michael.
 McGuinness, John.
 Martin, Micheál.
 Moloney, John.
 Moynihan, Michael.
 Mulcahy, Michael.
 Nolan, M. J.
 Ó Cuív, Éamon.
 Ó Fearghail, Seán.
 Ó Snodaigh, Aengus.
 O'Connor, Charlie.
 O'Dea, Willie.
 O'Flynn, Noel.
 O'Hanlon, Rory.
 O'Keeffe, Batt.
 O'Keeffe, Edward.
 O'Rourke, Mary.
 O'Sullivan, Christy.
 Power, Seán.
 Ryan, Eamon.
 Sargent, Trevor.
 Scanlon, Eamon.
 Smith, Brendan.
 Treacy, Noel.
 Wallace, Mary.
 White, Mary Alexandra.
 Woods, Michael.

Níl

Allen, Bernard.
 Bannon, James.
 Barrett, Seán.
 Breen, Pat.
 Bruton, Richard.
 Burke, Ulick.
 Byrne, Catherine.
 Carey, Joe.
 Clune, Deirdre.
 Connaughton, Paul.
 Coveney, Simon.
 Crawford, Seymour.
 Creed, Michael.
 D'Arcy, Michael.
 Deenihan, Jimmy.
 Doyle, Andrew.
 Durkan, Bernard J.
 English, Damien.
 Enright, Olwyn.
 Feighan, Frank.
 Flanagan, Charles.
 Flanagan, Terence.

Hayes, Brian.
 Hogan, Phil.
 Kehoe, Paul.
 Lee, George.
 McCormack, Pádraic.
 McEntee, Shane.
 McGinley, Dinny.
 Mitchell, Olivia.
 Naughten, Denis.
 Neville, Dan.
 O'Donnell, Kieran.
 O'Dowd, Fergus.
 O'Mahony, John.
 Perry, John.
 Reilly, James.
 Shatter, Alan.
 Sheahan, Tom.
 Sheehan, P. J.
 Stanton, David.
 Timmins, Billy.
 Varadkar, Leo.

Tellers: Tá, Deputies Pat Carey and John Cregan; Níl, Deputies Paul Kehoe and David Stanton.

Question declared carried.

An Ceann Comhairle: We will move to Committee Stage in accordance with the Order of the Dáil of today.

Enforcement of Court Orders (Amendment) Bill 2009 [*Seanad*]: Committee and Remaining Stages.

Section 1 agreed to.

NEW SECTION .

An Ceann Comhairle: Amendment No. 1 is in the name of Deputy Charles Flanagan while amendments Nos. 1*b*, 2 and 3 are related. Therefore, amendments Nos. 1, 1*b*, 2 and 3 may be discussed together by agreement.

Deputy Charles Flanagan: I move amendment No. 1:

In page 3, before section 2, to insert the following new section:

“2.—The Act of 1940 is amended—

(*a*) by the repeal of sections 6 and 9, and

(*b*) by the insertion of the following sections after section 5:

6.—Where a debtor is liable, by virtue of an instalment order, to pay a debt and costs either in one payment or by instalments and such debtor fails to make such payment or fails to pay any one or more of such instalments accruing due while such an order is in force at the time or times appointed in that behalf by such order, the creditor may, at any time while such order is in force or within 12 months after it has ceased to be in force, apply to a Justice of the District Court for an Attachment of Income Order.

7.—‘Attachment of Income Orders’ means an Order made under section 8 or section 17.

8.—(1) On application to the relevant court, by a creditor named in a court order, the court may make an attachment of earnings order.

(2) An attachment of earnings order—

(*a*) shall be an order directed to a person who (at the time of the making of the order or at any time thereafter) has the debtor in his or her employment, and

(*b*) shall operate as a direction to that person to make, at such intervals as may be specified in the order, deductions of specified amounts.

(3) An attachment of earnings order shall not be made without the consent of the debtor unless the court is satisfied that the debtor has, without reasonable excuse, defaulted in the making of any payment under a court order.

(4) An attachment of earnings order shall—

(*a*) specify the normal deduction rate, that is to say, the amount of the debtor’s earnings which the court considers reasonable to be applied in satisfying the court order, but such rate should be no greater than is necessary for the purpose of—

[Deputy Charles Flanagan.]

(i) securing payment of the sums falling due from time to time under the court order, and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the court order and any costs incurred in proceedings relating to the order which are payable by the debtor,

(b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and the needs of the debtor, the court considers it proper that the debtor's earnings should not be reduced by a payment made in pursuance of the attachment of earnings order,

(c) contain such particulars as the court considers appropriate for the purpose of enabling the debtor to be identified by the person to whom the order is directed.

(5) The particular of an attachment to earnings order may be agreed on consent by the debtor and the creditor in advance the hearing of an application under this section and may be ruled on by the Court as an order under this section.

(6) Payments under an attachment of earnings order shall be in lieu of payments of the like total amount under the court order that have not been made and that, but for the attachment of earnings order, would fall to be made under the court order.

9.—(1) A court registrar or court clerk as may be specified by an attachment of earnings order shall cause the order to be served on the employer to whom it is directed and on any subsequent employer of the debtor and such service may be effected by leaving the order at, or sending the order or a copy of the order by prepaid registered post to his or her place of business or residence in the State.

(2) Where an attachment of earnings order or an order varying it is made, the employer for the time being affected by it shall comply with it within 10 days of it being served on him or her.

(3) On any occasion where a person makes, in compliance with an attachment of earnings order, a deduction from a debtor's earnings, he or she shall give to the debtor a statement in writing of the total amount of the deduction.

(4) Where an attachment of earnings order is served on any person and—

(a) the debtor is not in his or her employment, or

(b) the debtor subsequently ceases to be in his or her employment, that person shall, within ten days from the date of service or, the date of cesser, give notice of that fact to the court.

(5) An order made under subsection (1) shall be confidential and the employer shall not make it known to any person other than those persons necessary for the payment of wages, and such persons shall themselves have a duty not to disclose the existence of an attachment of earnings order.

10.—Upon application to the court for an attachment of earnings order, or at any subsequent time which the court deems fit, the court may—

(a) order the debtor to give to the court, within a specified period, a statement in writing signed by him or her of—

(i) the name and address of any person by whom earnings are paid to him or her,

(ii) specified particulars as to his or her earnings and projected earnings and as to his or her resources and needs, and

(iii) specified particulars for enabling the debtor to be identified by any other employer, including any future employer,

(b) order any person appearing to the court who has the debtor in his or her employment to give to the court, within a specified period, a statement signed by that person, or on his or her behalf, of specified particulars of the debtor's earnings and projected earnings.

11.—Where an attachment of earnings order is in force—

(a) the debtor shall notify the court in writing, within 10 days of every occasion, in which he or she leaves any employment, or becomes employed or re-employed,

(b) the notice referred to in paragraph (a) shall include particulars of his or her earnings and projected earnings from the relevant employment,

(c) any person who becomes an employer of the debtor and has knowledge that an order is in force shall, within ten days of acquiring that knowledge, notify that court in writing that he or she is the debtor's employer, and include in the notification a statement of the debtor's earnings and projected earnings.

12.—(1) Where an attachment of earnings order is in force, the relevant court shall, on the application of—

(a) the employer concerned,

(b) the debtor, or

(c) the person to whom payments are being made under the order,

determine whether payments (or any portion thereof) to the debtor of a particular class or description specified by the application are earnings for the purpose of the order, and the employer shall give effect to any determination for the time being in force under this section.

(2) Where an application under this section is made by the employer, he or she shall not incur any liability for non-compliance with the order as respects any payments (or any portion thereof) of the class or description specified by the application which are made by him or her to the debtor while the application or any appeal in consequence thereof or any decision in relation to the application or appeal is pending, but this shall not, unless the court otherwise orders, apply as respects such payments (or any portion thereof) if the employer subsequently withdraws the application or abandons the appeal.

13.—(1) Where a debtor is in the service of the State, a local authority for the purposes of the Local Government Act 1941, a harbour authority within the meaning of the Harbours Act 1946, a health board, a vocational education committee estab-

[Deputy Charles Flanagan.]

lished by the Vocational Education Act 1930, or a committee of agriculture established by the Agriculture Act 1931, or is a member of either House of the Oireachtas—

(a) in a case where a debtor in the service of the State is employed in a department, office, organisation, service, undertaking or other body, its chief officer (or such other officer as the Minister of State, by whom the department, office, organisation, service, undertaking or other body is administered, may from time to time designate) shall, for the purposes of this Act, be regarded as having the debtor in his or her employment,

(b) in a case where a debtor is in the service of such an authority, board or committee, its chief officer shall, for the purposes of this Act, be regarded as having the debtor in his or her employment,

(c) in any other case, where a debtor is paid out of the Central Fund or out of moneys provided by the Oireachtas, the Secretary General of the Department of Finance (or such other officer of the Minister for Finance as that Minister may from time to time designate) shall, for the purposes of this Act, be regarded as having the debtor in his or her employment, and

(d) any earnings of a debtor paid out of the Central Fund or out of moneys provided by the Oireachtas shall be regarded as paid by the chief officer referred to in paragraph (a) or (b), as the case may be, the Secretary General of the Department of Finance or such other officer as may be designated under paragraph (a) or (c), as the case may be, as may be appropriate.

(2) If any question arises in proceedings for, or arising out of, an attachment of earnings order as to what department, office, organisation, service, undertaking or other body a debtor in the service of the State is employed in for the purposes of this section, the question may be referred to and determined by the Minister for Finance, but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the Court.

(3) A document purporting to contain a determination of the Minister for Finance under subsection (2) and to be signed by an officer of the Minister for Finance shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and be deemed, unless the contrary is shown, to contain an accurate statement of that determination.

(4) In this section references to a debtor in the service of the State include references to a debtor to whom earnings are paid directly out of moneys provided by the Oireachtas.

14.—(1) The relevant court may, if it thinks fit, on the application of the creditor or the debtor, make an order discharging or varying the antecedent order.

(2) Where an order varying an attachment of earnings order is made under this section, the employer shall, within ten days of it having been served upon him or her, comply with its terms.

(3) Where an employer affected by an attachment of earnings order ceases to have the debtor in his or her employment, the order shall, in so far as that employer is concerned, lapse (except as respects deductions from earnings paid after the cesser by

that employer and payment to the person in whose favour the order was made of deductions from earnings made at any time by the employer).

(4) The lapse of an order under subsection (3) shall not prevent its remaining in force for other purposes.

15.—(1) An attachment of earnings order shall cease to have effect upon the discharge of the court order.

(2) Where an attachment of earnings order ceases to have effect, the clerk or registrar of the relevant court shall give notice of the cesser to the employer.

16.—(1) Where an attachment of earnings order has been made, any proceedings commenced under section 8(1) of the Act of 1940, for the enforcement of the court order against the debtor shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect.

(2) An attachment of earnings order shall cease to have effect upon the making of an order under section 8(1) of the Act of 1940, for the enforcement of the court order against the debtor.

17.—(1) The Minister for Social and Family Affairs shall make regulations to address circumstances where—

(a) a person who is entitled to income support, and

(b) has defaulted on the discharge of a court order,

so as to enable the court to make an order directing the Minister to deduct sums from any amounts, not below the protected welfare rate, payable to the debtor by way of income support, in order to secure the payment of any sum which is or forms part of the court order.

(2) The regulations shall specify the protected welfare rate, that is to say, the rate below which, having regard to the resources and the needs of the debtor, the Minister considers it proper that the debtor's income support should not be reduced by a payment made in pursuance of the attachment of earnings order and for the purpose of this section the protected welfare rate shall be prescribed by the Minister, to be reviewed annually.

(3) The regulations may include provision—

(a) that, before making an application, the court shall make an enquiry as to the debtor's means,

(b) allowing or requiring adjudication as regards an application, and provision as to appeals and reviews,

(c) as to the circumstances and manner in which and the times at which sums are to be deducted and paid,

(d) as to the calculation of such sums (which may include provision to secure that amount payable to the debtor by way of income support do not fall below prescribed figures),

(e) as to the circumstances in which the Minister is to cease making deductions,

[Deputy Charles Flanagan.]

(f) requiring the Minister to notify the debtor, in a prescribed manner and at any prescribed time, of

(g) that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Minister.

(4) In this section, ‘Minister’ means Minister for Social and Family Affairs.”.”.

This goes to the heart of the Bill and it was a matter that was discussed at some length earlier. It requires that, as an alternative to a sentence of imprisonment, an order become attached to the earnings of the individual against whom the order is sought. This is a far more practical way of dealing with it and it would benefit the debtor as an alternative to a term of imprisonment.

I heard the Minister state that only a small number of people for civil debt are sentenced to prison in any event. Nevertheless, a term of imprisonment for people the vast majority of whom would never have spent time in prison previously can be an ordeal of considerable significance. The Minister stated it only occurs in a small number of cases. The fact is there were 276 persons imprisoned for failure to pay a civil debt last year.

The period of time has been reported as being reasonably short, but I understand the average period is 20 days. This is a significant period of time for somebody who did not commit any criminal offence, who did not have any involvement with the criminal law and who merely, in many cases, could not pay the debt.

I will not rehearse the arguments. I addressed them earlier and they were dealt with in a considered way in the Seanad. However, we must distinguish between inability to pay a debt and unwillingness to pay a debt — cannot pay versus will not pay. In the amendment, were it to be accepted, the procedure is such that the “cannot pay versus will not pay” issue would be dealt with before a judge of the District Court by way of an examination of means in a way that would ensure an element of fairness. Indeed, it was the lack of fairness that was the deciding factor in the judgment of Ms Justice Laffoy earlier this year.

I will not deal further with the issue. I ask the Minister of State, Deputy John Curran, if he has given any consideration to the issue since the matter was debated in the Seanad and voted upon. If his position remains the same, I will proceed to press the amendment because it goes to the heart of the legislation.

Deputy Seán Sherlock: This was fully addressed in the Seanad. My party would agree with the principle of attachment of earnings being added to this legislation for obvious reasons. It would provide a way towards off-setting the risk against imprisonment. It would set in place a clearly defined procedure within the legislation on which there could be no doubt afterwards. On that basis, we would support the principle of attachment of earnings as used in maintenance orders, which could be extended here. It would address the Laffoy judgment also.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran): As we have discussed, the Bill, as drafted, represents an interim response to the McCann judgment. The draft legislation replaces section 6 of the 1940 Act with a carefully balanced range of safeguards and protections designed to take account of all the principles raised in the High Court. The Bill should be seen in that light. It is only three weeks yesterday since the High Court delivered judgment in the case and the Government was keen to have a reliable interim solution as the Law Reform Commission’s deliberations, while relatively well balanced, will take some time to come to fruition. We will be returning to this legislation in due course.

Specifically, the proposal to include a provision to attach earnings raised by Deputy Flanagan was debated extensively in the Seanad where I participated and listened with great care to the detail. To answer the Deputy directly, I have considered it. However, as this is an interim arrangement to deal with a specific issue that arose in the McCann judgment and given also that the Law Reform Commission will be reporting in due course, we will not proceed with the attachment at this point in time.

There are one or two other points I want to make, and I want to be specific and clear. The aim of the Bill is to ensure — this is a key point because sometimes outside of this Chamber there can be a little confusion — that people who cannot afford to pay will not be subject to imprisonment but those who can but who simply choose not to, will still face the possibility of prison. That is explicit in the new subsection (8)(a) to section 6 of the 1940 Act which states, “the failure to pay the sum in respect of which the debtor has made default is not due to his or her mere inability to pay but is due to his or her wilful refusal or culpable neglect”. We make a very specific distinction in the legislation between the ability and inability to pay. The Minister indicated it is not the norm for people to be imprisoned and only a small number are imprisoned for refusing to pay. With regard to family law cases, which represent a sizeable proportion of these types of cases, attachment is a well-established practice and it may be possible to formulate another model along those lines. It is worth noting that approximately half those imprisoned at any given time are maintenance debtors in respect of whom the option of attachment is already available. Bearing in mind the proposals of the Law Reform Commission, we need to explore this further. I am not accepting the amendment but we are certainly open to a full review of the findings of the commission, which I understand will be available before the autumn.

Amendment put and declared lost.

SECTION 2.

Deputy Aengus Ó Snodaigh: I move amendment No. *a1a*:

In page 4, line 24, to delete “as soon as practicable” and substitute “within 8 hours”.

I mentioned this on Second Stage and will not labour the point. I am concerned that the legislation stipulates that one be brought to court “as soon as practicable” after arrest. I understand this means as quickly as possible but this is often not the case because a person arrested on a Friday could have to wait until Monday for a hearing in the District Court. Would it be appropriate to have a special sitting within eight hours in such cases to ensure that nobody spends the night in prison for a civil offence? Such offences should be treated as a civil cases.

The amendment is to ensure that a person will not end up in a cell for longer than is reasonable given that the offence in question is indebtedness rather than a major crime. It is often the case that individuals are placed in cells because they are afraid to engage with the system or because they cannot afford legal advice. The top criminals in this country could get a solicitor to help them obtain bail much quicker than others could. I am not suggesting the latter should not be arrested but that they be brought before a District Court judge as quickly as possible. I suggest that this should occur within eight hours.

Deputy John Curran: The section provides that a person arrested on foot of a bench warrant should be brought before a court “as soon as practicable”. This is a standard provision and the Deputy will be aware that the Garda routinely brings people before the courts all around the country on foot of bench warrants. I am not aware of any undue delay in this regard. Where

[Deputy John Curran.]

difficulties arise in this area, there are various complaint procedures available. I am not accepting the amendment.

Amendment, by leave, withdrawn.

Deputy Seán Sherlock: I move amendment No. 1a:

In page 4, after line 47, to insert the following:

“(6) Without prejudice to section 15 of the Enforcement of Court Orders Act 1926, the debtor shall furnish such information (including information on oath and subject to cross examination) as may be directed by the court for the purposes of any application under this section.”.

Section 15 of the 1926 Act allows the court to direct the debtor to furnish information to enable the court to make appropriate orders, bearing in mind his or her means. The amendment ensures that such powers are available in an application for imprisonment.

Deputy John Curran: I understand the Deputy’s concern. I have sought advice on this proposal and I am informed it is unnecessary. A District Court judge may hear the evidence on oath and the debtor is subject to cross-examination in the ordinary course of proceedings in the District Court. There is no necessity to provide for this directly and, accordingly, the amendment is being rejected.

Amendment, by leave, withdrawn.

Amendment No. 1b not moved.

Amendment No. 2 not moved.

Deputy Seán Sherlock: I move amendment No. 2a:

In page 6, line 42, after “order” to insert the following:

“, being the amount specified in that behalf in the order under subsection (7)(c) or (d)”.

This amendment makes clear that the amount the debtor must pay to secure release under the section is only the amount specified in the District Court order. If it is not accepted, a question may arise as to whether the amount under subsection (10) is different from that under subsection (7).

Deputy John Curran: I know where the Deputy is coming from because I dealt with this or a very similar amendment in the Seanad and sought advice thereon. I was told the amendment in the Seanad was unnecessary and that there is a preference in drafting for avoiding the making of unnecessary references because doing so adds to the already convoluted nature of legislation. Having examined the Deputy’s amendment in some detail, I cannot accept it.

Amendment, by leave, withdrawn.

Deputy Seán Sherlock: I move amendment No. 2b:

In page 6, between lines 51 and 52, to insert the following:

“(13) Any power to order imprisonment for debt under the Debtors (Ireland) Act 1872 shall not be exercised save in accordance with the conditions specified in this section.”.

We have very good legal people in the Labour Party, as Members can imagine, and they are very good at looking at old statutes. The 1872 Act appears to provide for possible imprisonment for debt. To avoid a constitutional challenge to that Act, we wish to provide that the same conditions would apply to imprisonment under that Act.

Deputy John Curran: I thank the Deputy for his suggestion in this regard. The 1872 Act did confer jurisdiction on the Circuit Court and High Court in debt matters in addition to the District Court. However, even by the time the 1926 Act was drafted, it was recognised that the District Court was the jurisdiction in which such matters were commonly dealt with. It constructed the legal framework that is used to this day and this was reinforced by the 1940 Act. Ms. Justice Laffoy refers to this in her judgment in page 6, where she states it is the latter, the District Court jurisdiction, that is more commonly exercised. Costs associated with the higher courts would leave a creditor potentially very exposed if he or she were to choose, for some perverse reason, to pursue a debtor there. It may be a matter that the Law Reform Commission will examine but it need not detain us today. I do not propose to accept the amendment.

Deputy Seán Sherlock: Is the 1872 Act in use or has it been repealed?

An Ceann Comhairle: If the lawyers in the Labour Party say it is in use, it probably is.

Deputy John Curran: It has not been repealed but it is not in use. The 1940 Act is in use.

Amendment, by leave, withdrawn.

Section 2 agreed to.

NEW SECTIONS.

Deputy Charles Flanagan: I move amendment No. 3:

In page 8, before section 3, to insert the following new section:

“3.—The Enforcement of Court Orders Act 1926 is hereby amended by the insertion of the following section, after section 17:

“17A.—All instalment orders made under the aforementioned section must be served, personally, on the judgment debtor and must contain a notification of the consequences of failure to comply with such an order, including the possibility of imprisonment pursuant to section 6 of the Enforcement of Court Orders (Amendment) Act 1940, as amended by section 2 of the *Enforcement of Court Orders (Amendment) Act 2009* and the District Court Rules applicable to such proceedings may make provision for same.”.

Amendment put and declared lost.

Deputy Aengus Ó Snodaigh: I move amendment No. 4:

In page 8, before section 3, to insert the following new section:

“3.—(1) The Minister shall, by way of Ministerial Order within 6 months of the commencement of this Act, introduce a spent conviction regime applicable to persons with a conviction resulting from their inability to pay a debt.

(2) The order made under this section shall require the approval of both Houses of the Oireachtas.”.

[Deputy Aengus Ó Snodaigh.]

Tá sé i gceist agam é seo a tharraingt siar, ach sula dhéanfaidh mé é sin ba mhaith liom cúpla ceist a chur ar an Aire Stáit. I intend to withdraw this amendment but before I do so I want to ask the Minister of State some questions. The amendment was tabled inadvertently because it does not apply. Does the judge take into account previous instances of non-payment? Does he or she take into account the percentage being charged on the loan when making a determination on the scale of the debt and the way it should be repaid and whether it is appropriate?

Deputy John Curran: I will do my best for the Deputy. I heard him say on Second Stage that he would withdraw the amendment and understood the reasons and I heard the Deputy's points. On the scale of the debt, if it is a legitimate debt it is fine. As to whether a person's past record is taken into account it is a question of how one looks at it. It is not
7 o'clock taken into account in the manner in which the Deputy suggests. A person's means and ability are taken into account. The intention is not to imprison somebody who is unable to pay. The person's current means are taken into account not that he or she might have previously been in this situation.

Amendment, by leave, withdrawn.

Section 3 agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

Question "That the Bill do now pass" put and declared carried.

The Dáil adjourned at 7.04 p.m. until 2.30 p.m. on Tuesday, 16 September 2009.