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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

# DÁIL ÉIREANN

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

**DÁIL ÉIREANN**

*Déardaoin, 12 Meitheamh 2014*

*Thursday, 12 June 2014*

Chuaigh an Ceann Comhairle i gceannas ar 9.30 a.m.

***Paidir.***
***Prayer.***

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**Ceisteanna - Questions**

**Priority Questions**

**Broadband Service Provision**

1. **Deputy Michael Moynihan** asked the Minister for Communications, Energy and Natural Resources if he will provide an update on broadband provision; the cost of broadband here as compared to in other member states of the European Union; the progress made in providing broadband in rural areas; and if he will make a statement on the matter. [24807/14]

**Minister for Communications, Energy and Natural Resources (Deputy Pat Rabbitte):** The Government's national broadband plan aims to radically change the broadband landscape in Ireland by ensuring high speed broadband services, comparable with high speed services available across the European Union, are available to all citizens and businesses. This is being achieved by providing a policy and regulatory framework to accelerate and incentivise commercial investment and a State-led intervention in areas where it is not commercial for the market to invest.

Since publication of the plan, investments by the commercial sector are under way and, in some instances, have been accelerated in both fixed-line and wireless high speed broadband services. Commercial operators, combined, have either invested, or committed to invest, over €2 billion in their Irish networks, delivering high speed broadband to homes and businesses. For example, eircom is rolling out a €400 million investment offering broadband speeds of up to 100 Mbps - the service is already available to over 800,000 addresses, with planned coverage to reach 1.4 million addresses by 2016; UPC has invested over €500 million in upgrading its cable network - over 700,000 homes can already access minimum broadband speeds of 120 Mbps and up to 200 Mbps, while businesses can access speeds of 500 Mbps; the ESB is en-

gaged in a new project allowing a fibre network to be rolled-out on its existing electricity infrastructure - the company plans to establish a joint venture company to construct a fibre network directly to 450,000 premises outside Dublin; mobile operators have launched 4G high speed mobile broadband services and continue to invest in 3G services; fixed wireless operators are continuing to invest in high speed point to point wireless broadband; and the broadcaster Sky has entered the broadband market, increasing choice for consumers.

*Additional information not given on the floor of the House*

Of the estimated 2.3 million premises in Ireland, approximately 1.4 million are expected to be served by these commercial next generation broadband services in the coming years at speeds comparable with those marketed across the European Union. The retail prices are set by service providers in open market conditions. While these commercial developments are welcome, the acceleration of investment is largely contained to cities and towns. On 25 April I signalled the Government's commitment to a major telecommunications network build-out to rural Ireland, with fibre as the foundation of its investment under the national broadband plan. This commitment is a clear expression of the Government's determination to address the connectivity challenge in rural Ireland in a meaningful and sustainable way.

**Deputy Michael Moynihan:** There are two issues, one of which is the cost of broadband provision in Ireland as compared to in other EU countries. Various studies and research show that the cost in Ireland is among the highest. In some instances, the cost in Ireland is four or five times higher than in some other countries in the European Union. I ask the Minister to look at this. In the past two years or so we have had many debates across the floor on broadband provision, particularly in remote rural areas. Residents in parts of County Meath which are living only 15 or 16 miles from O'Connell Street still cannot access broadband and all of the plans proposed do not seem to address that issue. Businesses across the country are looking at the cost of broadband. When everything comes down to the efficiencies that can be generated, why is the cost of broadband in Ireland so high as compared to in other EU countries?

**Deputy Pat Rabbitte:** The Deputy is correct in that there are several reports. The report on which the Department and I rely is ComReg's quarterly data review. I must make a decision on the barometer of measurement. According to ComReg, in December 2013 Ireland was 15th lowest of 26 countries in the case of fixed-lined business broadband services, six places below or 16.5% cheaper than the average; 13th lowest of 20 countries in the case of prepay residential mobile broadband services, one place above the average; and 15th lowest of 21 countries in the case of post-pay residential mobile broadband services, two places above the average. Ireland is ninth lowest of 21 countries in the case of post-pay business broadband services, four places below or 18.7% cheaper than the average; and 21st lowest of 27 countries in the case of fixed-line household broadband services, five places above the EU average.

**Deputy Michael Moynihan:** It all depends on which report one accepts as being accurate. The other point relates to broadband speeds. Company representatives state they are not receiving broadband services, particularly mobile broadband services, at the speeds for which they signed up when they entered contracts with some companies. They are not getting what it "says on the tin". There is a major issue that needs to be addressed.

The issue of broadband came up everywhere when candidates were out canvassing for the recent elections. We need to tackle it head-on with a sense of urgency because broadband provision is fundamental to the economy. The Minister might also address the issue of speeds.

**Deputy Pat Rabbitte:** As the Deputy stated, in some cases the speeds promised are not delivered, for which there are technical and complex explanations. This is one of the reasons we have gone for a fibre solution. The roll-out of a network the foundation of which is a fibre solution means that the matter raised by the Deputy will not be an issue in the future. Fibre has the capacity to meet any reasonable demand made on it and is the Rolls-Royce of solutions. The industry is investing. When I speak about the roll-out of the fibre solution, I am speaking about the State-led intervention. Similar considerations apply to the eircom eFibre project. The industry is investing approximately €2 billion. Eircom is increasing its figures from 1 million to 1.4 million homes and from 70 Mb to 100 Mb. UPC speeds are increasing from 100 Mb to 200 Mb. As the Deputy knows, the ESB has done business with Vodafone and this joint venture is being constructed. It is a fibre solution using the electricity infrastructure. These are radical measures which will address the point raised by the Deputy.

## Hydraulic Fracturing Policy

2. **Deputy Michael Colreavy** asked the Minister for Communications, Energy and Natural Resources his views on the British Government's plans to expand fracking operations in Britain; his views on whether fracking is being promoted at a European level; and if he will make a statement on the matter. [24805/14]

5. **Deputy Michael Colreavy** asked the Minister for Communications, Energy and Natural Resources if he has received any report on the environmental damage caused by flooding in an area in Colorado, USA where hydraulic fracturing has been carried out; and if he will make a statement on the matter. [24806/14]

**Deputy Michael Colreavy:** I am most unhappy that Questions Nos. 2 and 5 have been grouped. The only commonality is that both address the issue of fracking, but if this was followed to its logical conclusions, we would have three groups of questions covering communications, energy and natural resources. I ask the Leas-Cheann Comhairle for a little leeway, given that I will be trying to cover two questions.

**An Leas-Cheann Comhairle:** The Deputy is entitled to extra time.

**Deputy Michael Colreavy:** Question No. 2 asks the Minister his views on the British Government's plans to expand fracking operations in Britain and on whether fracking is being promoted at European level and to make a statement on the matter. Question No. 5 specifically asks him whether he has received any report on the environmental damage caused by flooding in an area in Colorado, USA where hydraulic fracturing has been carried out and if he will make a statement on the matter.

**Minister of State at the Department of Communications, Energy and Natural Resources (Deputy Fergus O'Dowd):** It is not this side of the House which decides how Priority Questions are grouped.

**An Leas-Cheann Comhairle:** It is not the Chair either.

**Deputy Fergus O'Dowd:** No, it is not and I am sorry that it happened.

**Deputy Michael Colreavy:** I was not notified until after 5 p.m. yesterday that the questions had been grouped. I did not have an opportunity to contest it with whoever the decision maker

was.

**Deputy Fergus O'Dowd:** I propose to take Questions Nos. 2 and 5 together.

The status of the unconventional exploration and extraction industry in other jurisdictions is a matter for the authorities in those jurisdictions and it would be inappropriate for me to comment on the government policies of other countries. We are, of course, aware of reports on last year's floods in Colorado and the public debate and controversy which ensued about concerns raised in this regard. It is important to understand the Irish environment is different from the environments in which many unconventional gas projects and operations are taking place worldwide and this must be taken into account when making reference to and comparing with experience of such projects and operations in other countries. This is why elements of the research being commissioned by the Environmental Protection Agency, EPA, will relate to specific regions where petroleum licensing options or licences have been granted by the Department or the Department of Energy, Trade and Industry in Northern Ireland. Bearing this in mind, I understand the EPA research programme will also include identification and a detailed examination of potential impacts on the environment and human health, as well as potential successful mitigation measures to counteract the impacts of such projects and operations that have come to the fore worldwide, using published reports and other sources. It is expected that findings will be accompanied by a reference to experiences in other countries where this industry is active, as well as countries where it has been banned.

The European Commission has confirmed that assessment of projects proposing the use of hydraulic fracturing in exploration for and production of shale gas, is subject to a number of EU directives, including the environmental impact assessment directive and the habitats directive. The Commission has also issued guidance in this regard. In addition to this guidance, the Commission has published a number of research documents on the potential impacts of unconventional exploration and extraction of gas, including Unconventional Gas: Potential Energy Market Impacts in the European Union; Climate impact of potential shale gas production in the EU; a report on the identification of potential risks for the environment and human health arising from unconventional gas exploration; and Mitigation of climate impacts of possible future shale gas extraction in the EU, available technologies best practices and options for policy makers.

In January this year the Commission issued a communication on the exploration and production of hydrocarbons such as shale gas, using high volume hydraulic fracturing. The purpose of this communication is to ensure the consistent implementation of environmental protection measures throughout the European Union. The guidance is implementable in member states with active hydraulic fracturing industries and the Commission has indicated that if this guidance is not followed, more binding measures will be introduced.

With regard to the position in Ireland, no applications have been made to the Department to date proposing the use of hydraulic fracturing in exploration drilling for shale gas and I reiterate that until there has been time to consider the findings of the EPA research and further research from Europe and beyond, the use of this technology will not be authorised.

**Deputy Michael Colreavy:** On Question No. 2 on the promotion of fracking at European level, I am sure the Minister of State is very much aware of the lobbying trying to force the issue fracking onto the agenda. We need to be very concerned about what is happening in the Six Counties. If water in County Fermanagh is poisoned, it will not stop at the Border. Poisoned water does not recognise any border. Any person involved in business needs to be able to trust

the partners with whom he or she is doing business. It is important to recognise that one of the companies with an exploratory licence here speaks about having extensive data from 13 vertical wells, six of which have been successfully fracked. It does not specify whether they are in the Six Counties or the Twenty-six Counties; the statement was made in the context of the company seeking investors. This is a breach of trust, which means that we need to be very careful when dealing with such companies.

**Deputy Fergus O'Dowd:** I am not aware of the document the Deputy has available and if he gives me a copy of it afterwards, I will be happy to examine the issues about which he is clearly concerned. The bottom line is that the Government will not allow fracking to take place. The EPA's report will have to be to hand before decisions can be made on it. The report is at least two years away and, when published, it will have to be debated in the Houses and be the subject matter of public comment. Regardless of what companies may state, in this jurisdiction there is total clarity on what we are doing and what will not happen. There will be no fracking in this country and we will not consider any application until such time as the scientific knowledge is available to us all and fully and properly debated in the Oireachtas. The landscape of the area where the Deputy lives is beautiful and agriculture, tourism and water in the area must and will be protected. The EU regulations are very clear in this regard.

**Deputy Michael Colreavy:** I thank the Minister of State. Is the Minister of State in communication with the authorities in the Six Counties to ensure nothing is being done that would jeopardise industry or people's health in this part of the country?

I am surprised and disappointed that the Minister of State has not received an official report on what is happening in Colorado. The Minister has travelled to observe fracking operations in the United States. He said that in one area he did not realise fracking was going on because the place looked so well. As I said at the time, the Minister needs to talk to people other than the companies involved or the official environmental protection staff. It is disappointing that a major flood in Colorado caused serious environmental damage. It took them three weeks to get in to some parts to check whether the ground water had been poisoned.

The potential impact here is serious. A groundwater survey undertaken in Ireland showed that the most vulnerable places are the very ones for which fracking licences have been sought. They are the most vulnerable areas for possible water contamination. If the Shannon gets poisoned, we will all be in trouble.

**Deputy Fergus O'Dowd:** I want to reassure the Deputy that the EPA study is examining each and every issue that he has raised. It is also looking at other jurisdictions where fracking has taken place and where there have been incidents. All of that scientific knowledge will be included in the examination.

I have a report on what happened in Colorado. If the Deputy wants me to read it out, I will certainly do so. It states that there are 20,000 oil and gas wells across the county where it happened. Some 1,900 of those had to be closed off as a result of the flooding. State officials advised that, as regards oil and gas infrastructure, the damage was limited. No wells failed during the flood and they responded quickly to minimise any spills or contamination from broken pipes or damaged storage tanks. They laid out floating booms to absorb and contain oil slicks.

I want to reconfirm that we have no applications proposing the use of fracking and no such applications will be considered until we have seen the outcome of the EPA's research.

As regards the place referred to by the Deputy as the Six Counties, I presume he means Northern Ireland, where his party is in a power-sharing administration. As I understand the communications between the people there and our Department, they are part of this fracking study as well. In other words, the Environmental Protection Agency study is for both North and South. The Northern Ireland Administration is also involved in supporting and funding this research. I think it is very positive that we will have an all-island report to inform everybody about the facts.

**Deputy Michael Colreavy:** Is the Minister of State happy that there are no fracked wells in the Six Counties?

**Deputy Fergus O'Dowd:** I will be happy to have the Deputy's report examined for clarity on that issue.

**Deputy Michael Colreavy:** Could I have a copy of the report the Minister of State has from Colorado?

**Deputy Fergus O'Dowd:** Yes, of course.

**An Leas-Cheann Comhairle:** Question No. 3 was tabled by Deputy Finian McGrath. He is unable to attend the House and has conveyed his apologies. We will therefore proceed to Question No. 4 in the name of Deputy Moynihan.

*Question No. 3 replied to with Written Answers.*

## Energy Prices

4. **Deputy Michael Moynihan** asked the Minister for Communications, Energy and Natural Resources if he is concerned at the continual rise in energy prices; the total revenue paid by EirGrid to wind energy providers in 2013 and to date in 2014; and if he will make a statement on the matter. [24808/14]

**Deputy Michael Moynihan:** Is the Minister for Communications, Energy and Natural Resources concerned at the continual rise in Irish energy prices? What is the total revenue paid by EirGrid to wind energy providers in 2013 and, to date, in 2014, and will he make a statement on the matter?

**Deputy Pat Rabbitte:** While I have no statutory function in either the regulated or non-regulated markets, I am acutely conscious of the impact of energy prices on citizens across the country. Responsibility for the regulation of the retail electricity and gas markets is a matter for the Commission for Energy Regulation, which is an independent statutory body. Prices in the electricity retail market are fully deregulated, and it is similar for gas, except in the case of BGE tariffs for domestic consumers. These BGE retail gas tariffs, however, will be deregulated from 1 July 2014.

Electricity and gas costs in Ireland are influenced by various drivers, including global gas and oil prices, the costs of capital, exchange rate fluctuations, the small size of the Irish market, geographical location and low population density. The most important factor affecting electricity prices in Ireland is the continuing high wholesale price of gas to Ireland.

Diversifying the fuel mix used in electricity generation can help to mitigate the impact of volatile fuel prices. The promotion of renewable energy by displacing imported fossil fuels can play a critical role in this regard. To date, wind energy has proven to be the most commercial technology in the Irish market. However, electricity generated from a range of renewable sources including water, biomass and landfill gas are also supported.

There are significant economic benefits already accruing to Ireland from the supports for renewable energy. A report published by SEAI last week found that in 2012 the use of renewable electricity resulted in greatly reduced use of gas, coal and peat, to the value of an estimated €245 million, and prevented the emission of 1.9 million tonnes of $CO_2$, which saved a further €15 million.

The alternative energy requirement and the renewable energy feed-in tariff, to which the Deputy referred, are the primary means through which electricity from renewable sources is supported in Ireland and are funded from the public service obligation, PSO, levy. In the 2012-2013 PSO period the cost to the PSO of the two schemes amounted to €54.6 million, and the equivalent value for 2013-14, as estimated by the Commission for Energy Regulation, will be €43 million.

**Deputy Michael Moynihan:** I thank the Minister for his reply. I am not sure if the Minister is aware that the UK's energy regulator recently wrote to the large power suppliers in Britain seeking an explanation for the fact that fuel bills had not decreased, given the decline in wholesale gas and other energy prices. We have constantly discussed this matter here when the energy regulator grants increases to energy suppliers following an increase in wholesale market prices, but there is now a decrease in wholesale market prices. I understand that the regulator is on a statutory footing, but the Minister is ultimately responsible to the House for these issues. It is time to arrange a meeting between the Minister and the regulator to ensure that energy suppliers are called in, hauled over the coals and asked why the reduction in wholesale energy prices has not led to lower fuel bills.

**Deputy Pat Rabbitte:** I am aware of Ofgem's public statement in Britain. In addition, I have noted the comments by Ofgem's chairman, who is the former chairman of our own Commission for Energy Regulation. The situation is not directly analogous; the main driving force here is the wholesale price of gas, over which we have no control. I take the Deputy's point that I am ultimately accountable to the House but, unfortunately, gas prices are not within my control. I can list for the Deputy what the regulator is focusing on.

As it happens, I met with the regulator last week on this issue. I expressed concerns similar to the ones the Deputy has just articulated. I subsequently wrote to the regulator setting out my views. Unfortunately, however, exchange rate fluctuations, the small size of the Irish market and the extent to which we are reliant on gas to generate electricity are issues that are also outside the regulator's control.

*10 o'clock*

The issues on which the regulator concentrates are putting in place energy efficiency measures, creating the framework for competition in the market, including regulatory structures, and seeking to move away from a reliance on high-priced imported gas with its volatile and sometimes high prices towards a greater diversity of fuels used in electricity generation. The Commission for Energy Regulation scrutinises network costs for both transmission and distri-

bution which form part of final retail electricity prices. I should say that is the focus of Government policy.

**Deputy Michael Moynihan:** The Minister met with the Commission for Energy Regulation recently. Did the public service obligation, PSO, and the possible increase in October come up at the meeting? Could the Minister offer an opinion in that regard?

It is a classic case that when the cost of oil goes up it is immediately reflected in the price at the pumps but when the price of oil goes down it takes months for the retail price to reduce due to storage and other issues. I accept the explanation is complex. We are aware that when the wholesale price goes up the retail price goes up and it is time to address the issue.

On renewables and efficiencies in the sector, have the Department and the various stakeholders examined the issue in terms of future renewable energy projects?

**Deputy Pat Rabbitte:** I beg the Deputy's pardon. I missed the point.

**Deputy Michael Moynihan:** Given the various subsidies available for renewable energy production, have the stakeholders considered such projects and their sustainability? It is grand while the subsidies are available but what will happen when they are no longer available? This might be my last occasion to debate Priority Questions across the Chamber with the Minister, Deputy Rabbitte, in this portfolio. I wish him the best of luck in the future.

**Deputy Pat Rabbitte:** I thank the Deputy very much. I may need it. In response to his point on renewables, Deputy Moynihan will be interested to examine the SEAI report on renewables which I published on Monday morning of this week. The SEAI considered what savings accrued in 2012 as a result of the supports for renewable energy. It concluded that savings of €245 million were realised. If one adds to that the 1.9 million tonnes in $CO_2$ emissions that were avoided, that added a further €15 million in savings. REFIT applies over 15 years. The idea is that the situation will normalise and find its own place in the market over that time.

A further study is due to be completed very soon that involves the ESRI, the SEAI, EirGrid and the Department. The quadrilateral study is focusing on precisely the question Deputy Moynihan raised and it will be very interesting to see the results of the study.

I did discuss the PSO with the regulator at the recent meeting. There are three elements to it; the renewables element, which includes the peat-burning stations in the midlands. Successive Governments have made the calculation that there is a public interest in maintaining such employment in the midlands. A contract will expire next year that was entered into in 2005 when the country was on a knife-edge in terms of energy adequacy in respect of Tynagh and Aughinish. That is a factor as well.

*Question No. 5 answered with Question No. 2.*

**An Leas-Cheann Comhairle:** Go raibh maith agat. We now go on to Other Questions. Questions Nos. 6 and 11 are grouped together.

## Broadband Service Provision

6. **Deputy Mick Wallace** asked the Minister for Communications, Energy and Natural Resources if his attention has been drawn to the poor quality of broadband services in the Wellingtonbridge and Bannow areas of Wexford; his plan to address same; and if he will make a statement on the matter. [24773/14]

11. **Deputy Seán Kyne** asked the Minister for Communications, Energy and Natural Resources if he will report on the progress of the rural broadband implementation plan; if the plan has cleared the EU regulations; and when it is hoped to begin the roll out of broadband infrastructure to the rural locations identified recently. [24720/14]

**Deputy Mick Wallace:** A constituent of mine in Bannow told me he is currently forced to use Q Sat for his broadband connection. It gives him a speed of 5 Mbps and a monthly usage allowance of 10 GB. He said the service is barely adequate for conducting day-to-day business and is definitely not good enough to allow him to use facilities such as Skype. What are the Minister's plans to address the poor quality of broadband services in the area?

**Deputy Pat Rabbitte:** I propose to take Questions Nos. 6. and 11 together.

The Government's national broadband plan, which I published in August 2012, aims to change radically the broadband landscape in Ireland by ensuring that high speed broadband is available to all citizens and businesses. That will be achieved by providing a policy and regulatory framework that assists in accelerating and incentivising commercial investment, and State-led intervention for areas where it is not commercial for the market to invest.

Since publication of the plan, investments by the commercial sector are under way and in some instances have been accelerated in both fixed line and wireless high speed broadband services. Commercial operators combined have either invested, or committed to invest, more than €2 billion in their Irish networks, delivering high speed broadband to homes and businesses. As a result of this accelerated investment the addressable area required by the State-led intervention has reduced by 30% since the national broadband plan was launched. While these commercial developments are welcome, investment is largely contained to cities and towns. Consequently, the speeds that are available in these areas are demonstrably better than those that are available in more rural areas such as those raised by Deputy Wallace.

On 25 April last, I signalled the Government's commitment to a major telecommunications network build-out to rural Ireland, with fibre as the foundation of its investment, as part of the State-led intervention under the national broadband plan. This commitment is a clear expression of Government's determination to address the connectivity challenge in rural Ireland in a meaningful and sustainable way. Central to the strategy will be a fibre build-out to locations in every county in the State identified as having no existing or planned enabling fibre network. It is intended that the fibre will be delivered directly to access points for homes and businesses, where service providers can utilise the fibre to provide high speed services to end users.

I have published a county-by-county list of towns and villages which have already been identified for a fibre build-out. It is an indicative list and is subject to the completion of the

comprehensive mapping exercise currently under way in my Department. Further locations may be identified as this process continues. Similarly, it may be determined that some locations on the list will be addressed by the commercial sector and will therefore not require State intervention. The list, which is just short of 1,100 villages, is available on my Department's website *www.dcenr.gov.ie*. I expect that the mapping exercise will be concluded in the autumn.

In tandem with the completion of the mapping exercise, intensive design and planning work is ongoing in my Department with a view to producing a detailed end-to-end implementation strategy for the State-led intervention. It is my intention to conduct a full public consultation on the outcome of the mapping process and the proposed implementation strategy. My Department has had initial discussions with the European Commission on the relevant state aid guidelines and a formal application for EU state aid application will be made to the Commission once details of the intervention are finalised. That will be followed by a detailed procurement process with a view to commencing construction of the fibre network and provision of services in identified areas as quickly as possible.

The European Commission's guidelines on state aid for high speed broadband infrastructure preclude member states from intervening in regions in which private investors have demonstrated plans to roll out infrastructure within the following three years. In this regard, I understand that at least one network operator has published a programme to roll out fibre-based broadband networks in County Wexford, including the area of Wellingtonbridge, by July 2016.

**Deputy Mick Wallace:** Am I then to understand that because some private operator has agreed to do it before July 2016, Wellingtonbridge will not be on the list for direct State intervention in this regard? Can the Minister identify the private company that has been designated for the Wellingtonbridge area? July 2016 seems like a long time away and as most things are not delivered on time in Ireland, it could be even further away. Does the Minister think it is fair that the European Union insists the State should not be allowed to help, given that a private company wishes to invest in the area but cannot do so straight away? As the private company cannot do it now but perhaps the State can, does the Minister not think there is an argument for allowing the State to go ahead? On a different subject, can the Minister tell me how much the State's direct aid will amount to? How much does the State plan to invest in this regard?

**Deputy Pat Rabbitte:** As to whether it is fair, it does not really matter whether I think it is fair. These are the European Union rules and I sometimes find some of them to be massively frustrating. However, given that the Government has decided the commercial sector is doing a job in the cities and towns of Ireland which is comparable with anything that happens throughout the European Union and that the very basic quality of broadband in parts of rural Ireland is entirely unacceptable, only a State-led intervention will then address that problem. To pass muster with the European Commission in respect of state aid rules, the Government must engage in a detailed mapping exercise for presentation to the Commission.

If the Leas-Cheann Comhairle will permit me to continue for a second, this is somewhat complex, and Deputy Wallace has asked a fundamental question. The Government has engaged consultants in the preparation of this plan and my answer formally states that it will be submitted in the autumn. While I believe it will be submitted before that, it is being done and must be done in consultation with the private commercial operators, because the European principle is that if a commercial operator has a credible plan to provide the service, the Commission will not approve the state aid permission.

**An Leas-Cheann Comhairle:** I will come back to the Minister, but I must allow Deputy Kyne to contribute.

**Deputy Seán Kyne:** I certainly welcome the Government initiative announced in April on rural broadband and the State-led intervention. It is an issue that has come up repeatedly over the past number of years and certainly during the most recent canvas, particularly in the most rural areas. However, this issue was not limited to such areas, as companies with inadequate services were also identified in places on the outskirts of Galway city, such as Bushypark. In a Dublin context, this is comparable with a company in Ranelagh, Firhouse or somewhere similar not having adequate high-speed broadband. If one goes further afield to areas that are only eight to ten miles from Galway city, such as Tullykyne, Knockferry or Rosscahill, one finds that private companies have been unable to provide adequate cover. Is the Minister confident of approval or are hiccups likely in respect of European Union approval under the State aid rules? When does the Minister believe construction of the first tranche will take place? Time is of the essence.

**Deputy Pat Rabbitte:** There has been a shift in the European policy approach to this issue, which is that the Commission is looking for a future-proofed system. Whereas it was previously technology-neutral, without specifying the type of network, European policy now essentially states that a fibre-based solution is required. Therefore, the answer to Deputy Kyne's question is that from the regular contacts the Department has had with the Commission about this issue, I am confident that approval will be forthcoming for the plan.

The Government approval for this tranche encompassing almost 1,100 villages about which Deputy Wallace asked is up to €512 million. I cannot be more precise than this, but that would be the cost of building out a new network. However, were one to leverage existing State properties, for example, it would deduct something from that figure, and the Government is of course working towards that end. The broadband task force I chaired myself was designed to remove obstacles and barriers that had traditionally existed and to encourage the leveraging of State assets that are in place, whether they are on State lands or whatever, which would mitigate that figure somewhat.

In addition, it is not acceptable that, notwithstanding the accelerating investment in urban Ireland, somewhere like Bushypark, which is less than three miles outside Galway city, has such a basic service. Therefore, considerable work and detail must go into the mapping exercise. It is painstaking, takes up a lot of time, is costing a lot of money and so on, but in conclusion, high-quality connectivity is absolutely essential for the future economic and social progress of this country, particularly the former. I was very pleased that last night, Counties Galway and Wexford were represented at an event organised by my Department at Google to announce the availability of the trading online voucher scheme to encourage more small to medium-size enterprises and microbusinesses to actually transact business online. Moreover, the local enterprise offices, LEOs, now are equipped to provide mentoring, other advice and backup to implement the scheme.

**Deputy Mick Wallace:** I welcome the State's intention to invest €500 million in direct state aid. A recent World Bank study of 120 counties found that for every increase of ten percentage points in the penetration of broadband, there is an increase of 1.3% in economic growth. Given that the private sector organisation that has earmarked provision for the Wellingtonbridge area is at least two years away from doing so, does this not mean that the European Union breaks its own rules sometimes? It bends over backwards to guarantee the maximum opportunity for

private investors, sometimes at the cost of the people. It would be fine were the private sector in a position to do it straight away, but given that it cannot, does the Minister agree there is a strong argument that the European Union is fighting against economic growth by not allowing the State to invest in what is really important for rural areas and would help them to contribute to economic growth? Moreover, this undoubtedly would lead to greater employment in rural areas.

**Deputy Seán Kyne:** In respect of the roll-out of rural broadband, has a decision been made on whether one company will receive a tender or whether it will be split into regional areas? Second, how does the ESB (Electronic Communications Networks) Act 2014, which was passed some time ago, fit in? Presumably it will be ready in order that a company may co-operate with the ESB to use its infrastructure for direct roll-out and the direct provision of high-speed broadband into people's houses. The provision of broadband to rural areas is a necessity at this stage. It is not a luxury; it is a requirement for those who work at home. People have told me that they have to drive to their local GAA club to get coverage because the area in which they live does not have adequate cover.

**Deputy Pat Rabbitte:** For those of us who support the noble post-war aspirations that led to the European Union project, it is sometimes a cause for concern that the degree of intrusion by the apparatus of the European Union can be excessive. It is frustrating that one Directorate General is urging that quality of connectivity is a *sine qua non* for economic and social progress, while a different Directorate General dealing with competition demands that we comply with the letter of the law with a very strict rule book. We are, however, taking great care that our submission passes muster and the project will go out to procurement at that stage.

In regard to Deputy Kyne's question on whether the project will be awarded to one company, a decision has not been made in that regard. My view is that it ought not to be only one company. To some extent that will be determined by the precise economics of putting it out to procurement, for example, in terms of one company operating in Munster and a different company dealing with the rest of Ireland.

The ESB's project will proceed in parallel and I hope it will be ready to start stringing cable at the end of this year or, certainly, by quarter one of next year. Vodafone has been selected as the joint partner on foot of the expressions of interest process for the project. Detailed and conclusive work has been done on the project and I hope that a formal announcement will be made in the next couple of weeks. The aim is to reach 450,000 premises in rural Ireland. This is a joint commercial venture under the auspices of the ESB and Vodafone.

## Electricity Transmission Network

7. **Deputy Michael Moynihan** asked the Minister for Communications, Energy and Natural Resources if he will provide an update on the review of EirGrid's Grid25 project; and if he will make a statement on the matter. [24724/14]

10. **Deputy Thomas Pringle** asked the Minister for Communications, Energy and Natural Resources if he will provide an update on the review of EirGrid's Grid25 project; when this review will be published; and if he will make a statement on the matter. [24769/14]

**Deputy Michael Moynihan:** I ask the Minister to update us on the review of the Grid25

project and the various reports that are pending.

**Deputy Pat Rabbitte:** I propose to take Questions Nos. 7 and 10 together.

I have appointed an independent panel of experts chaired by Ms Justice Catherine McGuinness to examine the Grid West and Grid Link projects. The independent expert panel has held five meetings between 10 February 2014 and 10 June 2014. At its meeting on 2 May 2014 the panel finalised and approved the terms of reference for comprehensive route specific studies and reports of fully undergrounded and overhead options for each of the Grid West and Grid Link projects, including assessments of potential environmental impacts, technical efficacy and cost factors. The terms of reference were published on 7 May 2014 and are available on my Department's website. The studies and reports will be undertaken or commissioned by EirGrid in accordance with the terms of reference set by the panel, which will also oversee EirGrid's study and reporting process. In due course the panel will provide an opinion to me on the completeness, objectivity and comparability of the studies and reports undertaken or commissioned by EirGrid and will oversee the publication by EirGrid of the two studies and reports prior to EirGrid proceeding to public consultation on the two projects.

I also asked the panel to consider what, if anything, it can do with regard to the North-South transmission line project and it has considered that issue. Although the North-South project was not covered by the Government's decision, having discussed my request and in the light of the finalised terms of reference for the studies and reports of fully undergrounded and overhead options for each of the Grid West and Grid Link projects, the panel decided that it would provide an opinion to me on the compatibility of the methodologies to be employed on the Grid West and Grid Link projects with what has already been done on the North-South transmission line project. I understand that the panel wrote to EirGrid shortly after its May meeting to convey its requirements in regard to Grid West, Grid Link and the North-South project and that EirGrid is attending to those requirements.

I am advised that EirGrid, in response to the panel's inquiry regarding the compatibility of the methodologies, has provided a detailed submission to the panel. This submission was discussed by the panel at its meeting on Tuesday of this week. I understand EirGrid made a detailed presentation at that meeting and that the panel requested EirGrid to provide it with additional written material. The panel will continue its work at its next meeting, which is provisionally scheduled for 30 June 2014. I have on many occasions emphasised the importance of the North-South transmission line project to citizens in both jurisdictions on this island. The project when implemented will give rise to considerable savings for electricity consumers and will contribute significantly to security of electricity supply for Northern Ireland.

On 18 February I informed the House that the North-South line had been designated at EU level as one of 248 key trans-European energy infrastructure projects listed as projects of common interest. I also said that, while I had yet to receive formal confirmation of this, this status meant that the planning application could be subject to specified procedures to ensure public participation, as set out in EU regulation 347 of 2013.

An Bord Pleanála was designated as the competent authority for projects of common interest in Ireland. The board published the necessary projects of common interest manual on 15 May and on 23 May it informed EirGrid that the North-South transmission line would not come under certain transitional provisions of the relevant regulation and that the regulation will accordingly apply in full to the pre-application and planning application stages of the project.

However, I understand that the regulation requires An Bord Pleanála to take into consideration any form of public participation and consultation that has already taken place before the formal start of the permit granting process in respect of this project.

**Deputy Michael Moynihan:** I fully understand the Minister's response and why he referred to the regulations. Given the detailed and technical nature of the discussions between EirGrid, the European Commission and An Bord Pleanála, it is no surprise that communities are fearful of the extent of bureaucracy around this project. When will the independent panel of experts come to a determination on the matters arising? That is the crucial question to which communities around the country want an answer.

**Deputy Pat Rabbitte:** When I asked Ms Justice McGuinness to take on this task, I did not envisage that she and her panel of experts would have delved into matters so deeply. I did not intend to impose on them the burden of work they have taken on themselves. I very much appreciate that they are examining the issues entrusted to them so rigorously. The meeting they held this week, which lasted four hours, was their fifth meeting and they plan to meet again on 30 June. I understand that by 30 June they may be at a stage when it will be a matter for commencing the studies on the comparisons between underground and overhead transmission. It will then be a matter for the studies to commence on the comparable underground versus overground transmission. The panel's job from there will be to supervise the integrity of the process, having briefed itself on all aspects of the issue and having taken expert advice from whomsoever it was felt necessary to take such advice. Arrangements have already been initiated to put those studies in place in respect of Grid West and Grid Link. The expert panel will then be able to assure the Minister of the day that all is above board and in accordance with best practice.

**Deputy Michael Moynihan:** Did the Minister say that the body of work will be completed by 30 June?

**Deputy Pat Rabbitte:** Yes, 30 June.

**Deputy Michael Moynihan:** It is vitally important, if this project is to have any public support, that everything is examined. I accept the Minister's point about the volume of work involved but it is crucially important that this is scrutinised to the nth degree. Can I take it that on 30 June the studies will go ahead on the underground versus overground options? Is the Minister saying that the panel will have completed its preliminary work and will set in train the studies at that point? Will a report be issued on 30 June?

**Deputy Pat Rabbitte:** I should say, for complete clarity, that I have not spoken to Ms Justice Catherine McGuinness since the first meeting with her and the panel members where I explained the Government and Cabinet decision and the task that I was asking them to take on. I am not in a position to speak for her. It is a matter for her and her panel to decide whether to issue a report. I am not saying to Deputy Moynihan that the studies will start on 30 June but rather that the final scheduled meeting of the panel will most likely take place then. I know that preparations have been underway for the initiation of the studies but whether they start on 30 June or 7 July I cannot say. They will start as soon as everything is brought together. I expect that an announcement will be made but I am not in a position to speak for the panel, nor am I authorised to do so. That said, I expect that an announcement will be made. The panel may not initiate the two studies simultaneously but may start with one or the other. The panel will supervise the integrity of the process.

**Deputy Michael Colreavy:** I understand the concept of a report being submitted to a Minister for his or her information. Will Ms Justice McGuinness's report inform the planning process?

**Deputy Pat Rabbitte:** The studies done arising from this, having been validated by the independent panel, will be put out for public consultation so that citizens can compare one with the other. Then the normal public consultation process leading to ultimate decision by An Bord Pleanála will kick in.

## National Postcode System Establishment

8. **Deputy Michael Colreavy** asked the Minister for Communications, Energy and Natural Resources the minimum turnover requested in respect of companies tendering for the post code project; the reasons for the minimum level of turnover requested; his views on whether the minimum level of turnover would have rendered many Irish companies ineligible to quote; and if he will make a statement on the matter. [24783/14]

**Deputy Michael Colreavy:** I have touched on this issue before concerning the postcode project and the minimum level of turnover that was requested of companies to tender for the contract. The last time we spoke, the Minister did not have the information to hand. Has he established since then the minimum level of turnover required? Why was that level required and does he believe that it was such that most Irish companies were not eligible to quote for the contract?

**Minister for Communications, Energy and Natural Resources Deputy Pat Rabbitte:** My Department commenced the procurement process for a national postcode system in 2011. An open and competitive procurement process was conducted in accordance with Department of Finance and EU procurement frameworks. A pre-qualification questionnaire was issued on *www.etenders.gov.ie* on 17 January 2011. This invited interested parties to tender for the contract as a postcode management licence holder for a period of ten years to design, provide, disseminate and maintain a national postcode system. This procurement process followed the negotiated procedure under the relevant EU regulations. Given the technical complexity of the project, the Department ran the procurement following a competitive dialogue procedure provided for in the Public Supply and Works Directive.

There was an annual turnover threshold of €40 million applying to certain bidders for the postcode contract. The figure was arrived at by reference to the estimated cost of provision of the service in the initial stages of operation by the postcode management licence holder. The threshold set did not preclude Irish companies from participating in the procurement process. The tender documents permitted a partnership approach whereby entities could join together to submit a bid.

The inclusion of a turnover threshold is a standard feature of large-scale procurement tenders. As part of the tendering process it was important to ensure that the preferred bidder had the financial capacity to design successfully and implement the project. All entities that satisfied the tender requirements, either singly or as part of a consortium, were eligible to enter the process.

**Deputy Michael Colreavy:** There is something wrong here.

**Deputy Pat Rabbitte:** I hope not.

**Deputy Michael Colreavy:** There is something badly wrong here. The Minister said that €40 million was set for seven companies but generally minimum turnover requirements are set before companies submit their tenders. Is the Minister saying that tenders came in and that because seven companies were over the €40 million limit, they were accepted or is he saying that whoever was doing the evaluation looked at them and decided that €40 million would be the minimum requirement in order to qualify those seven companies? There is something wrong here. The requirement for a minimum turnover of €40 million would certainly have excluded most, if not all, Irish companies tendering for the contract. There is something badly wrong here.

**Deputy Pat Rabbitte:** No, in fairness, I know the Deputy is a glass-half-full man but there is nothing wrong. This has undergone very careful scrutiny right the way through. In fact, it is late. We ought to have done it before now. In its first year in office the Government could not do it because it did not have the money. It ought to have been done seven or eight years ago and it certainly must be done now because of the scale of the digital economy here. The digital economy is growing at a rate of approximately 16% per annum or eight times the rate of general economic growth. The digital economy and the demand for a postcode system is accelerating all of the time.

The inclusion of a turnover threshold is standard procedure in public procurement. It is very important that the company selected after a fair, transparent and open tendering process, has the financial capacity to do the business. If it was discovered halfway through the process that the company selected did not have the financial capacity and the process broke down, there would be a further inevitable, prolonged delay. The one thing this country cannot now take is a further prolonged delay.

**Deputy Michael Colreavy:** We are not debating the necessity of a national postcode system; I agree with the Minister that we need one. What we are discussing is the process that was used to award the contract. If I understand what he said correctly, the Minister indicated that an annual turnover threshold of €40 million was set in respect of seven companies. This means that a process was used, after the tenders were received, to set the threshold in question.

Is there a person involved with the successful bidder who was also instrumental in designing the system in the first instance? I would regard it as very unusual business practice if an individual who was responsible for identifying the need that exists and designing the system to be used would be employed by the company to which the contract was awarded. Is this the case?

**Deputy Pat Rabbitte:** That is the first I have heard of it. I do not know for sure - I will communicate further with the Deputy on the matter - but I am pretty certain that it is not true. I am aware that there is one individual who believes he is in possession of a better solution for a postcode system for Ireland and who has been discussing the matter with some Deputies and Senators. The individual in question was free to submit an application but he did not do so. It is not at all unusual that a consortium would apply for a contract such as that under discussion. The notion that the successful bidder - a company which already employs in the region of 1,000 people in Ireland and which has expertise and a proven track record in this area - had any prior involvement is complete news to me and I do not believe it is true. When the competitive process was in train, many people might have stated that An Post was going to be awarded the contract. That did not prove to be the case. The company to which it was awarded has a proven

track record and is a major employer in the Irish economy.

## Hydraulic Fracturing Policy

9. **Deputy Clare Daly** asked the Minister for Communications, Energy and Natural Resources if he will withdraw all fracking licences in view of the environmental consequences. [24552/14]

**Deputy Clare Daly:** I am aware that the Minister of State discussed this issue, or aspects of it, on Priority Questions. I am also aware that the traditional response is to state that the EPA is examining the whole issue of fracking and that nothing will be done before its investigations have been concluded. By the time the EPA reports on the matter in 2016, the Transatlantic Trade and Investment Partnership, TTIP, will be in place. Whatever decisions the agency makes at that stage could potentially be overruled, and the State - if it is interested in protecting its citizens and the environment - could be brought to court by the likes of Chevron. I would like the Minister of State to address my contention to the effect that we need to withdraw fracking licences now.

**Deputy Fergus O'Dowd:** I am going to respond to the actual question the Deputy tabled for reply. I will obtain and forward to her the further information she is seeking as soon as possible. As she noted, the key point is that nothing can happen in respect of fracking in this country until the EPA submits its report in 2016. It will then be a matter for the Government of the day to decide what will happen because the current Administration will not be in office at that time as a result of the fact that a general election is due to be held early in 2016. I wish to reassure the Deputy that there are currently no fracking licences in existence. The previous Government awarded options to three companies but they are not allowed to engage in fracking under the terms of those options. The companies in question are obliged to wait for due process to be completed in respect of this matter. I will be happy to obtain the additional information the Deputy has requested as soon as possible.

**Deputy Clare Daly:** This is the key point. The Minister of State has indicated previously that nothing can happen. I tabled my original question in response to the growing concerns with regard to the environmental problems relating to fracking and the widespread opposition to it in nearly every European country in which its use has been proposed, as well as across the United States. Discussions are under way in respect of the TTIP, which contains safeguards that are designed to protect corporate investments above the rights of citizens and the environment. The fracking issue is being teed up in respect of this matter in such as way as to steal from states the ability to protect themselves. Essentially, the TTIP will give companies more rights than governments. If the Government is genuinely serious with regard to protecting the environment and people from the effects of fracking, then the clause in the TTIP relating to investor-state dispute settlement rights must be removed. Governments that have put in place regulations to protect their citizens and the environment are already being taken to court by multinationals on the basis of either a loss or a potential loss of profits. If the clause to which I refer is not withdrawn and if a future Irish Government seeks to protect its citizens from the effects of fracking, the State will be brought to court by multinational corporations seeking billions in compensation. On that basis, we should rescind the options to which the Minister of State referred before it is too late.

**Deputy Fergus O'Dowd:** I wish to make it clear that my initial reply was to the original

question tabled by the Deputy. I will be happy to obtain for her an answer in respect of the new question she has posed. The Minister and I do not believe that the Deputy's very important question is not actually relevant to our brief at present, but I wish to reassure her that I will obtain for her a complete answer in respect of it. I reiterate that no fracking will take place in this country for the remainder of the Government's term of office.

*Written Answers follow Adjournment.*

## Message from Select Committee

**An Leas-Cheann Comhairle:** The Select Sub-Committee on Social Protection has completed its consideration of the Social Welfare and Pensions Bill 2014 and has made amendments thereto.

## Protected Disclosures Bill 2013 [Seanad]: Order for Report Stage

**Minister for Public Expenditure and Reform (Deputy Brendan Howlin):** I move: "That Report Stage be taken now."

Question put and agreed to.

## Protected Disclosures Bill 2013 [Seanad]: Report Stage

**An Leas-Cheann Comhairle:** Amendment No. 1 in the names of the Minister for Public Expenditure and Reform and Deputy Sean Fleming arises out of committee proceedings.

**Minister for Public Expenditure and Reform (Deputy Brendan Howlin):** I move amendment No. 1:

> In page 5, line 19, to delete "not later than the end of the period of 5 years" and substitute "not later than the end of the period of 3 years".

Deputy Sean Fleming will recall that we engaged in a long debate on Committee Stage on foot of an amendment he tabled to section 2 in respect of what might constitute an appropriate timeframe within which a review of the legislation should be carried out. That was a very useful debate, particularly as we want to ensure there will be sufficient activity under the legislation to make a meaningful review worthwhile. I made a commitment to reflect further on the matter and, having done so, I submitted my own amendment. The Deputy will recognise that my amendment replicates the one he tabled on Committee Stage. It proposes that the legislation be reviewed within three years of its enactment and that such review be completed within a 12-month period. The review will provide the opportunity - consistent with Deputy Sean Fleming's amendment - to assess whether the legislation is working as intended by the Oireachtas. It will also allow to be proposed any reforms which might, in light of its actual operation, strengthen the legislation.

As I indicated on Committee Stage if there are any major issues emerging which demonstrate that the legislation is not meeting its objective in advance of the formal statutory reform

it would of course be my intention to seek to address the matter through legislative change, as necessary. We are starting on a positive note and I have listened to the clear case the Deputy has made.

**Deputy Sean Fleming:** I am happy to support this. As the Minister noted, we discussed it on Committee Stage. I put in an amendment on Report Stage and the Minister has an identical amendment. That is a great start. There is no more to be said, save to say that we look forward to the amendment being agreed to.

Amendment agreed to.

**An Leas-Cheann Comhairle:** Amendments Nos. 2 to 4, inclusive, 6 and 7 form a composite proposal and amendment No. 5 is an alternative to amendment No. 4. Therefore, amendments Nos. 2 to 7, inclusive, may be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 2:

> In page 6, to delete line 5 and substitute the following:
>
> " "employee" has the meaning given by section 1 of the Unfair Dismissals Act 1977 and includes an individual who is deemed to be an employee by virtue of *subsection (2)(a)*;".

The amendments in this group could be characterised as essentially technical in nature. However, they are important in providing clarity of the definitions of "employee" and "employer" and that part of the definition of "worker" relating to contractors. We had a long discussion during Committee Stage as both Deputies will recall. I will discuss each amendment in turn.

The purpose of amendment No. 2 is to ensure that members of An Garda Síochána, including members of An Garda Síochána Reserve, and civil servants who do not work under formal contracts of employment will have access to the full range of protections available to employees under this legislation, including recourse to the Employment Appeals Tribunal, the Rights Commissioner Service and the Labour Court, in circumstances where members of An Garda Síochána or civil servants believe that they are being penalised for having made a protected disclosure. We are taking them out of the normal system that operates in such cases and putting them into the regulatory environment that applies to all workers and they will have access to the full panoply of supports, including the Labour Court, the Employment Appeals Tribunal and so on. The proposed section 2(a) in amendment No. 7 explicitly deems that members of An Garda Síochána and civil servants are to be employees for the purposes of this Act.

The purpose of amendment No. 3 is to simplify and clarify the definition of "employer" and "worker" to minimise the risk of any legal uncertainty of the relationship that exists between them in any particular case. The proposal is to replace the existing definition of the term "employer" with a new definition that maintains the feature of the original definition but which clearly aligns definition of "employer" with the definition of "worker". The objective is to create a direct one-to-one relationship between each category of employer, set out in the definition of that term, with each category of worker, set out in the definition of "worker". Deputies will, therefore, see that the proposal includes four clear and distinct categories of employer, each of which can be mapped against the four distinct categories of worker in the definition of that term. The benefit of this change is that it simplifies the legal identification of the employer for the making of a protected disclosure by the worker or for the worker to secure redress for hav-

ing been penalised for making any such disclosure. Deputies will recall that we debated this on Committee Stage and that the way it was structured is somewhat convoluted. I know Deputy McDonald, in particular, sought greater clarity. I believe this is a clearer approach and it helps to clarify for the employer the category of workers for whom he or she may receive a protected disclosure or is required to safeguard from penalisation for having made such a disclosure.

Amendment No. 4 focuses on the definition of "worker". There are two aspects to amendment No. 4. The first is a simplification of the language used in the definition of "worker", in particular that part of the definition relating to contractors. This follows a point strongly made by Deputy McDonald on Committee Stage. The second is the extension of the description of contractors in the definition to ensure that all types of contractors fall within the definition of "worker". This had been the objective but I wanted to make it clear. The reference in amendment No. 4 to an "employee" is a straightforward simplification of the current definition. The revised definition of "worker" in so far as it relates to a contractor in amendment No. 4 reflects the extensive debate on Committee Stage.

Deputy McDonald submitted a particular amendment on this issue on Committee Stage which is resubmitted and is part of the group we are now discussing. I note that the relevant amendment continues to reflect her concerns in respect of the definition of "worker" as it applies to contractors and proposes the removal of a specific exclusion currently included in the Bill in cases where a contractor carries out work for a client. My policy objective is to include in this legislation, as I have said repeatedly, the widest definition of "worker" that is legally feasible and in this regard I am keen to ensure that contractors come fully within the ambit of the legislation. Following our discussion on Committee Stage I undertook to bring my amendments to Report Stage. That is what I have done and that is what we are now discussing. I hope and I believe they meet Deputy McDonald's concerns as reflected in her amendment, which would also provide clarity with regard to the coverage of contractors. My corresponding amendment replaces what we agreed to be a complex set of definitions with potentially confusing language relating to contractors set out in the original draft of the Bill. I hope the case made by the Deputy is fully made by the amendment that I have submitted and I hope the Deputies opposite will agree that the pursuit of the other amendment in Deputy McDonald's name is unnecessary. I wish to make clear to the House that the overall effect of my amendment legally will be to ensure that all contractors will be included under the ambit of the legislation and, as such, will be in a position to seek redress against detriment experienced for having made a protected disclosure.

The purpose of amendment No. 6 is to confirm that the definition of "worker" includes member of the Permanent Defence Force.

Amendment No. 7 is supplementary to amendment No. 2. It confirms the employment status of members of An Garda Síochána and includes members of An Garda Síochána Reserve and civil servants and deems them to be employees for the purposes of this legislation. It also confirms the employment status of members of the Defence Forces as workers since redress for the Permanent Defence Force will be provided, as we discussed, in accordance with the rules and regulations specifically applicable to the Defence Forces as set out in the Defence Acts, relevant regulations and section 20.

This sounds a little convoluted but, in essence, I am saying that I have listened to the clear message on Committee Stage in respect of the definition and spelling out of who is encompassed as a worker and who is encompassed as an employer. I believe this is a clear set of defi-

nitions and that it meets the points made effectively by Deputies opposite on Committee Stage.

**Deputy Mary Lou McDonald:** As the Minister indicated, my amendment No. 5 was grouped with the Minister's amendments. I am pleased to withdraw my amendment in favour of the Minister's amendment No. 4, which addresses the concerns raised and debated on Committee Stage. I thank the Minister for clarifying the matter and putting it to rest within the legislation.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 3:

In page 6, to delete lines 6 to 19 and substitute the following:

" "employer", in relation to a worker, means, subject to *subsection (2)(c)*—

(a) in the case of an individual who is a worker by virtue of *paragraph (a)* of the definition of that term, the person with whom the worker entered into, or for whom the worker works or worked under, the contract of employment,

(b) in the case of an individual who is a worker by virtue of *paragraph (b)* of the

definition of that term, the person with whom the worker entered into, or works or worked under, the contract,

(c) in the case of an individual who is a worker by virtue of *paragraph (c)* of the definition of that term—

(i) the person for whom the worker works or worked, or

(ii) the person by whom the individual is or was introduced or supplied to do the work,

or

(d) in the case of an individual who is a worker by virtue of *paragraph (d)* of the definition of that term, the person who provides or provided the work experience or training;".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 4:

In page 7, to delete lines 21 to 30 and substitute the following:

"(a) is an employee,

(b) entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,".

Amendment agreed to.

Amendment No. 5 not moved.

**Deputy Brendan Howlin:** I move amendment No. 6:

In page 8, line 3, after "and" to insert "includes an individual who is deemed to be a worker by virtue of *subsection (2)(b)* and".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 7:

In page 8, to delete lines 5 to 17 and substitute the following:

"(2) For the purposes of this Act—

(a) an individual who is or was—

(i) a member of an Garda Síochána, or

(ii) a civil servant (within the meaning of the Civil Service Regulation Act 1956),

is deemed to be an employee,

(b) an individual who is or was a member of the Permanent Defence Force (within the meaning of the Defence Act 1954) or the Reserve Defence Force (within the meaning of that Act) is deemed to be a worker;

(c) "employer"—

(i) in relation to a member of the Garda Síochána (other than the Commissioner of the Garda Síochána), means the Commissioner of the Garda Síochána;

(ii) in relation to a civil servant (within the meaning aforesaid), has the meaning given by section 2A(2) of the Unfair Dismissals Act 1977;

(iii) in relation to a member of the Permanent Defence Force or the Reserve Defence Force (both within the meaning aforesaid), means the Minister for Defence.".

Amendment agreed to.

**An Leas-Cheann Comhairle:** Amendments Nos. 8, 9, 11 to 13, inclusive, 15, 16, 22, 24 to 27, inclusive, and 32 to 39, inclusive, are related technical amendments and will be discussed together.

*11 o'clock*

**Deputy Brendan Howlin:** I move amendment No. 8:

In page 8, line 25, after "information" to insert "(whether before or after the date of the passing of this Act)".

We are dealing a great range of amendments. The purpose of amendment No. 8 is to provide clarity to the effect that a disclosure made prior to the enactment of this legislation can qualify

as a protected disclosure provided that the penalisation, detriment or consequences for making it are subsequent to the enactment of the legislation. On the assumption that Deputies accept this amendment, the provision contained in section 5(9) of the Bill is, on a technical basis, no longer necessary, given the fact that the retrospective intention of the legislation is confirmed and, I hope, made clearer by the amendment. Amendment No. 11 proposes the deletion, therefore, of section 5(9).

A number of further technical amendments arise as a consequence of the acceptance of amendment No. 8. Clearly and logically, it could not be possible for a person to have made a disclosure precisely in accordance with the provisions of the legislation prior to the legislation. I hope Deputies are following me. If the requirement is that, to have a valid disclosure, it must be made in accordance with the legislation even though we want disclosures made prior to the legislation to be in accordance, we need to drop this provision. Therefore, it is necessary to provide the third parties involved in determining whether a protected disclosure was made with the appropriate legal basis to make a determination as to whether a disclosure made before the passing of the legislation was done in a manner specified in the section concerned, which sets out the conditions that need to be met for a disclosure to qualify. This being the case, and I hope it is clear, the term "in accordance with" should be replaced by "in a manner specified in". The remaining amendments encompassed in this group provide this change where it arises in the legislation. They are repetitive, technical changes.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 9:

In page 8, lines 25 and 26, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Mary Lou McDonald:** I move amendment No. 10:

In page 9, between lines 2 and 3, to insert the following:

"(c) that a person has failed, is failing or is likely to fail to comply with a nonstatutory obligation, such as that arising from a professional code or workplace code of practice or recognised international standard, where such obligation is intended to uphold human rights, or other rights of citizens,".

The Minister will recall that we had some discussion around this matter on Committee Stage. The objective of my amendment then and now is to ensure that breaches of what might be termed soft law or professional codes of conduct that do not have a statutory footing are covered by this legislation. At the time, the Minister not unreasonably raised the fact that, as an unintended consequence, codes of conduct could be a containment mechanism and have the reverse of the impact I had intended in my amendment, so I have recast it. The qualification is "where such obligation is intended to uphold human rights, or other rights of citizens". This affords clarity to the effect that soft law, standards and codes of practice are covered by this legislation and adds the rider that those obligations are intended for the upholding of citizens' human or other rights. This addresses the fair concern that the Minister raised on Committee Stage.

It is important that soft law obligations be covered explicitly by the legislation. I do not

know whether the Minister is minded to accept my amendment, but he might clarify the reference in section 5(4) to the general corpus of law, be it within or without this jurisdiction. If the Minister will bear with me, I will rummage and find the precise-----

**Deputy Brendan Howlin:** Reference.

**Deputy Mary Lou McDonald:** It is on page 9. Section 5(4) of Part 2 reads: "For the purposes of subsection (3) it is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory." This does not cover exactly what I am seeking to remedy, but the Minister might comment on it. On Committee Stage, he took on board the spirit of what I was trying to achieve through the amendment. I heard his reservation at that point and recast the amendment to try to cater for it. I look forward to his response.

**Deputy Brendan Howlin:** We had a good debate on this matter on Committee Stage, when I set out the legal assessment that I had been given by the Attorney General. I also indicated that I would consider how the points made by Deputy McDonald might be addressed in light of that legal advice. The Office of the Attorney General has advised that inclusion of breaches of non-statutory codes of practice or professional codes as wrong-doing under this legislation would not be legally consistent with the purposes of the Bill. I fully understand the basis of the amendment and its refinement, but the legal analysis that I am bound to accept is that, where professional bodies or representative organisations apply particular codes or standards to their members that do not have the force of law, it is not possible to apply sanctions under legislation on a person who is alleged to have been penalised for reporting a breach in such codes or standards.

The basic premise of this Bill is that the report relates to some unlawful action or breach of a formal legal obligation. In such circumstances and given the imperative to uphold the law, where an employee reports his or her concerns regarding a potential breach of the law in accordance with this legislation, there is a compelling public interest to safeguard such an employee from any victimisation. The legal assessment is that the protected disclosures legislation could not sustain the imposition of high levels of compensation, which are implicit in this Bill, of up to five years' compensation in respect of an issue that did not constitute a breach of law. On the basis of the Attorney General's advice, I am therefore not in a position to accept Deputy McDonald's amendment.

As I promised, however, I have reflected on how the amendment's intention could be recognised within the overall framework of protecting whistleblowers, as that is important. This is the aim of my approach to the legislation. In that context, I am examining how the procedures to be put in place in all public service bodies for dealing with protected disclosures could address the important issue of ensuring that public service employees who have concerns regarding breaches of professional codes or professional standards can make such reports without any concern regarding possible retribution or retaliation by the employer. We can implement this in our public service and Civil Service codes.

Section 5 does not capture the specific point raised by the Deputy. Rather, it relates to a multinational company and reporting some wrong-doing that occurred in a foreign jurisdiction. That wrong-doing would need to be a breach of the law.

**Deputy Mary Lou McDonald:** I welcome the Minister's positive decision to make addi-

tions in respect of the code for the public service and Civil Service, but what I am referring to are legal instruments to which the State may have signed up but that remain unincorporated in statute. This is my concern. The Minister may say it is a bit of a reach to say that some of these instruments might be called upon or referred to by workers in respect of violations or difficulties they might identify in their workplace. I cite the International Covenant on Economic, Social and Cultural Rights, for example, but I repeat the point that it is a gap in the legislation. If the Minister is not minded to amend the legislation in the way I am suggesting we have at least noted it on the record of the Oireachtas and if at any stage it becomes apparent that this is a difficulty, we have the option of amending the legislation. I withdraw the amendment.

Amendment, by leave, withdrawn.

**Deputy Brendan Howlin:** I move amendment No. 11:

In page 9, to delete lines 27 and 28.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 12:

In page 9, line 30, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 13:

In page 10, line 5, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Acting Chairman (Deputy Liam Twomey):** Amendment No. 14 arises out of committee proceedings. Amendments Nos. 14 and 23 are related and may be discussed together.

**Deputy Mary Lou McDonald:** I move amendment No. 14:

In page 10, lines 9 to 11, to delete all words from and including ", and" in line 9 down to and including "true" in line 11.

I am concerned about this stepped approach, as the Minister described it, between reasonable belief and then that a concern or allegation might be substantially true. In explaining this stepped approach the Minister pointed to the British legislation. It is important to say in response to that that organisations such as Transparency International share my concerns in respect of this two-stepped approach. It is potentially confusing. It also leads to a scenario where workers second-guess themselves. All of us know that the experience to date has been one of marked reluctance for whistleblowers to come forward. Recent public controversies reflect the fact that workers in real time and in real terms have faced substantial stress and personal risk in doing just that. It is in the best interests of the regime to ensure that the provisions in the legislation are not misused for vexatious purposes or trivialities, but I am firmly of the view that a position of reasonable belief is a sufficient protection and threshold for any worker to come forward. My amendment No. 14 seeks to ensure that that threshold of reasonable belief - a single standard - is maintained throughout the legislation.

**Deputy Brendan Howlin:** We had considerable debate on this issue and I set out on Committee Stage that I regarded this amendment as undermining in a significant way the basic architecture of the legislation, and it is modelled on the best international practices.

The Deputy's amendments propose the deletion of section 7(1)(b)(ii) that an external disclosure - this is to a person outside the company such as a journalist or somebody else - to a prescribed person under section 7 must be based on reasonable belief of the substantial truth of the information disclosed. That is the criterion to afford the protections to the individual. She also proposes the deletion of a similar requirement in section 10(1)(a) regarding external disclosures, for example, to the media.

It should be clear that the simple focus on the substantial truth test in the provision does not tell the full story. That test, in both cases where the amendments seek change, is subject to reasonable belief. For example, in section 7(1)(b)(ii), the test for the external disclosure to be afforded those protections is that the disclosure must have reasonable belief that the information disclosed, and any allegation contained in it, is substantially true. There are two hurdles. They must have reasonable belief that they are substantially true. They do not have to be fully true; they do not have to be true at all. One just has to have reasonable belief that they are substantially true. It is not a terribly high threshold but it is important. The notion that we could have very significant protections that would afford one five years salary, for example, if one did not have a belief that they were substantially true, before one gave them to an external person, seems to be a blow at what we are trying to do here. The whistleblower must have reasonable belief in the substantial truth of the information. The information may or may not be true. If he or she can show that he or she had reasonable belief that they were substantially true, he or she has met the criterion. By any objective measure I believe that is a reasonable threshold for enabling the disclosure into the public domain of what might be very damaging allegations.

We have to have balance in the way we construct this; otherwise, we will undermine the legislation. If there is no requirement to have reasonable belief of substantial truth before one makes very damaging accusations in the public arena, and one is protected by law for that, we could not hold public confidence in the whistleblowing legislation we are putting forward. As I said, the weakening of the threshold would be a detrimental blow to the intended operation of the regime we have set out. For that reason, and I am consistent with what I said on Committee Stage, I do not accept the amendments put forward.

**Deputy Mary Lou McDonald:** The Minister is consistent but he is arguing a consistent contradiction because on the one hand he seems to be suggesting that reasonable belief in a substantial truth is almost a play on words-----

**Deputy Brendan Howlin:** No.

**Deputy Mary Lou McDonald:** -----and on the other hand he is recognising that it is a second and higher threshold in terms of availing of the protections. I accept that we are not going to agree on this matter but in terms of lay persons who finds themselves in circumstances where it might be necessary or they might consider coming forward with an allegation or revelation, to ask for reasonable belief is one thing but to then ask the person to guess or establish the substantial truth will act as a barrier in terms of some persons coming forward. I hope I am wrong but our job here is to road-test this legislation, not just for its legal finesse but also for its practicality and how amenable and supportive it will be in real life for people who find themselves in circumstances where they would avail of these protections. In accepting that the Minister and

I do not see eye to eye on this matter, I will still press amendment No. 14.

**Deputy Brendan Howlin:** There has to be balance. If we move away from the balanced approach in this Bill so that we afford protections in all circumstances to somebody who makes an accusation, we will fundamentally undermine the Bill. The modelling I have talked about is examining the best international practice, and I have asked my team to examine best international practice. These matters have been legislated before the courts in the United Kingdom and they found that reasonable belief is a low threshold case but where there is demonstrable knowledge that the allegation is false, we have to have protections for people against that as well. That is the balance that is implicit in the Bill. I genuinely believe that objectively a requirement for reasonable belief of substantial truth before a matter could be raised externally is the right threshold. Obviously, this threshold is not required in order for a complaint to be made internally to the company.

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

Amendment declared lost.

**Deputy Brendan Howlin:** I move amendment No. 15:

In page 10, line 26, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 16:

In page 10, line 31, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Acting Chairman (Deputy Liam Twomey):** Amendments Nos. 17 to 21, inclusive, are related and may be discussed together by agreement.

**Deputy Brendan Howlin:** I move amendment No. 17:

In page 10, line 32, after "advice" to insert "(including advice relating to the operation of this Act)".

Deputies will recall that on Committee Stage these amendments were the subject of discussion in the context of the circumstances in which advice from a solicitor or a trade union official on a legal matter constitutes what is captured as "legal advice". On the basis of my commitment to Deputies on Committee Stage, I asked my Department to consult further with the Office of the Attorney General on this particular legal issue. That office has confirmed that advice provided by trade union officials to members on, for example, how this legislation will operate or how it might be utilised, would fall within the scope of the term "legal advice" in exactly the same way that advice from a solicitor would be characterised and protected as legal advice.

The Attorney General's office also advises that it would not be prudent to replace the term "legal advice" in this provision with the word "advice" as, in the case of trade union officials, it would create uncertainty as to the circumstances where a protected disclosure may have been made and when a whistleblower might expect to benefit from the provisions provided under the

legislation. For those reasons, the legal assessment is that the term "legal advice" should be retained in the legislation. The Attorney General's Office did, however, endorse the proposal that a text in parenthesis could be included in the provision to make it clear in the legislation that "legal advice" extends to "advice" on the operation of the protected disclosures regime. This is the purpose of amendment No. 17.

I have also carefully considered Deputy McDonald's proposal that the disclosure channel be extended beyond solicitors and trade union officials to, as proposed in her amendment, "other suitably qualified individuals who give advice on legal issues and legal rights as part of their public advocacy role". The legal assessment is that this amendment is not necessary in light of the existing provision which allows for a protected disclosure, using this provision, to be made to any solicitor. In such circumstances, if any public advocacy organisation is willing to provide legal advice from a solicitor based on operation of this legislation, that advice is captured by the definition already in place. The Deputy may have in mind extending the scope of the provision to allow a protected disclosure to be made to a paralegal or a person without legal qualifications. I have considered this and do not believe it is wise to enable a situation in such circumstances that advice on the operation or use of the legislation - in essence, legal advice - is provided by an individual who is not legally trained. Given the complex legal issues that can arise in whistleblowing cases, the critical importance of the worker's decision-making on a step-by-step basis and the risk that the advice received would be not sufficiently well informed or ground in proper legal basis and of the person being misguided by inappropriate legal advice, I have decided not to move in that direction. Given the existing role and experience of trade unions in representing the interests of their members - I worked out of a trade union office for many years - and the legal advice available to trade unions I would have some concerns if we moved outside those parameters in relation to this Bill.

Deputies will note that I am also proposing a revised wording of section 9 arising out of amendments Nos. 17 and 19, which encompass an official of an exempted body within the meaning of the Trade Union Act 1941, to provide that an exceptional body within the meaning of section 6 of the Trade Union Act 1941 includes bodies which were included on the register maintained by the Registrar of Friendly Societies for the purposes of representing workers in their relations with employers or to act as representative bodies for particular interest groupings.

**Deputy Mary Lou McDonald:** I am satisfied that as stated by the Minister this is the correct balance to strike. However, in the context of public exposition of this legislation in terms of official publications and so on it is important for workers that the appropriate channels are set out in plain language. Given not everyone has access to the wisdom of the Attorney General's Office it is essential the appropriate channels are clearly set out for workers.

**Deputy Brendan Howlin:** We enact legislation. However, we do not expect every worker to be able to follow or understand it, particularly when there are significant personal consequences for them. I indicated on Second Stage that I had asked IBEC and ICTU to work together on a simple communication structure in respect of this Bill, to be published in tandem with enactment of the legislation so that employers and all trade union members and employees will have a simple guide to the operation of the Bill, with training courses in that regard provided.

Amendment agreed to.

Amendment No. 18 not moved.

**Deputy Brendan Howlin:** I move amendment No. 19:

In page 10, line 32, to delete "solicitor or trade union official" and substitute the following:

"solicitor, trade union official or official of an excepted body (within the meaning of section 6 of the Trade Union Act 1941)".

Amendment agreed to.

Amendments Nos. 20 and 21 not moved.

**Deputy Brendan Howlin:** I move amendment No. 22:

In page 10, to delete lines 34 and 35 and substitute the following:

**"10.** (1) A disclosure is made in the manner specified in this section if it is made otherwise than in the manner specified in *sections 6* to *9* and—".

Amendment agreed to.

**Acting Chairman (Deputy Liam Twomey):** Amendment No. 23 has been already discussed with amendment No. 14. Is the amendment being pressed?

**Deputy Mary Lou McDonald:** Yes. I move amendment No. 23:

In page 10, to delete line 36, and in page 11, to delete line 1.

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

Amendment declared lost.

**Deputy Brendan Howlin:** I move amendment No. 24:

In page 11, line 9, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 25:

In page 11, line 13, to delete "under" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 26:

In page 11, line 16, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 27:

In page 11, line 17, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Acting Chairman (Deputy Liam Twomey):** Amendments Nos. 28 to 31, inclusive, are related and may be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 28:

In page 14, lines 34 and 35, to delete "shall take all reasonable steps to avoid disclosing" and substitute "shall not disclose".

This group of amendments relates to an important issue at the core of the Bill, that of seeking as much as possible, consistent with the objectives of the legislation and other important policy objectives, to differentiate between the message and the messenger through the safeguarding of the identity of the potential whistleblower. We had an extensive debate on this issue on Committee Stage.

I am very cognisant of the concerns raised by Deputies Mary Lou McDonald and Sean Fleming to the effect that the duty imposed on the holder of a protected disclosure in section 16(1) is qualified by the test that such a holder shall take all reasonable steps to protect the identity of the discloser. There is clearly a risk that the qualification may be interpreted in practice in a permissive way – that was the argument made by Deputies opposite - notwithstanding the risk of legal action for disclosing the identity of a whistleblower. However, we must also be aware of the fact that circumstances will arise where it may not be possible to safeguard completely the identity of a whistleblower, particularly where disclosing the identity of the whistleblower in a restricted and limited way is essential for action to be taken to address or redress the issues being reported. As I committed to doing, I have reflected further on the balance between these intentions since we had a good, robust debate on Committee Stage.

The effect of the amendment I am tabling, No. 28, will be to remove the "all reasonable steps" qualifier from section 16(1) so as to make the duty to protect the identity of the whistleblower absolute in the first instance. Deputies will, however, acknowledge that it is essential that recipients of disclosures are not precluded from taking necessary action on foot of the information disclosed to them because it may require them to disclose the identity of the whistleblower. If there was only one potential source of information, that might become obvious. We cannot have circumstances where the person is precluded from actually addressing the wrongdoing concerned because the mere addressing of it would inadvertently identify the one person who might be able to report the wrongdoing.

The amendment to section 16(2), therefore, makes explicit the specific and limited circumstances that objectively could warrant the departure from what I am including, the mandatory prohibition on the disclosure of the identity of the whistleblower. The legal assessment is that the effect of amendment No. 29 will be to place the burden squarely on the recipient of a disclosure to demonstrate, where the identity of the whistleblower has been revealed, that all reasonable steps were taken to avoid such a disclosure. I understand the legal assessment is that the test will set a high standard for the recipient of the disclosure in terms of protecting the identity of the discloser. I am confident that my proposed approach, when considered in conjunction with the provisions of section 16(3), whereby the holder of a disclosure can be subject to an action for any loss arising, represents a significant strengthening of the Bill in the direction Deputies sought, that is, safeguarding in so far as is prudent and practicable the identity of whistleblowers consistent with the concerns raised by Deputies opposite but also with making

sure the wrongdoing is dealt with.

Amendments Nos. 30 and 31 are also in the group. Having considered the concerns raised by Deputies about the necessity of the recipient of the disclosure to seek express written permission for the disclosure from the discloser in amendment No. 30, it seems that given the absolute duty to protect the identity of the discloser we are now enshrining in the Bill, the proposed amendment is unnecessary and I hope the Deputy will not press it.

Amendment No. 31 proposes the deletion of that part of section 16(2)(b) that lists the circumstances in which the duty to protect the identity of the discloser does not apply, particularly where a breach is required for the effective investigation of the wrongdoing. I refer to where the reported wrongdoing cannot be fixed without such a breach. It is essential that the holder of a disclosure is not prevented from taking such action. That is common sense and I hope the Deputies opposite will accept this.

The deletion of line 7 in page 15 would place a very high hurdle in the path of a recipient of a protected disclosure who is required to investigate an alleged wrongdoing. I am satisfied that the combined effects of the amendments I am proposing, Nos. 28 and 29, will be to maximise to the extent that is reasonable, prudent and right the protection of the identity of the whistleblower, and meet the valid concerns raised by Deputies on Committee Stage.

**Deputy Mary Lou McDonald:** It would be a little farcical and render the legislation null and void if provisions within it were to set out to paralyse the recipient of a disclosure. We all recognise this. That is not what my amendments are intended to do. This is not only about the investigation of an allegation or complaint but also about the revelation of the identity, or the protection of the identity, of the whistleblower. In addition to the thresholds with which any worker would have to be satisfied, involving a reasonable belief an allegation is substantially true, there is the core issue - the level of risk to the worker. Other factors are confidence in the process and confidentiality. We can all imagine somebody in these circumstances. It is essential that there be a consent provision in the legislation. It does not have to be in writing. In fact, the amendment does not suggest this; it suggests there be positive consent given by the complainant, except in circumstances where there is a serious risk to the security of the State, public health, public safety or the environment, where it is believed disclosure is necessary for the prevention of a crime or the prosecution of a criminal offence, or where the disclosure is otherwise necessary in the public interest or required by law. There are already in the legislation significant waivers in respect of the need for consent. That is absolutely appropriate, but it is equally appropriate to strike a balance in the legislation to ensure protections for the individual. The phenomenon of whistleblowers falling over one another to make revelations has not been the culture in Irish organisations, public or private; rather, the instinct or culture is for people to keep their heads down and say nothing. Therefore, the legislation must afford a minimum level of protection and give confidence to any worker coming forward. I respectfully suggest to the Minister that he reconsider his position on this matter. I do not believe the balance is struck in the legislation as drafted.

**Deputy Brendan Howlin:** I believe we have the same objective and that we have achieved the same result by different means. I have moved to delete in amendment No. 28 the phrase "shall take all reasonable steps to avoid disclosing" and substitute "shall not disclose". There are sanctions against disclosure. This obviates the need to have permission to disclose. The law states one shall not disclose.

Section 16(2) states:

(b) the person to whom the protected disclosure was made or referred reasonably believes that disclosing any such information is necessary for—

(i) the effective investigation of the relevant wrongdoing concerned,

(ii) the prevention of serious risk to the security of the State, public health, public safety or the environment, or

(iii) the prevention of crime or prosecution of a criminal offence,

These are the only escape clauses for the thou-shalt-not provision. I have more than met the requirements of the Deputy without placing an additional burden on anybody. I have approached the same issue in a different way.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 29:

In page 15, between lines 1 and 2, to insert the following:

"(a) the person to whom the protected disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information,".

Amendment agreed to.

**Deputy Mary Lou McDonald:** I move amendment No. 30:

In page 15, to delete lines 2 to 4 and substitute the following:

"(a) the person to whom the protected disclosure was made or referred has ascertained, by way of express permission by the person making the protected disclosure, that she or he does not object, in particular if the person to whom such disclosure is made reasonably believes that this is necessary for the purpose of the effective investigation and rectification of the relevant wrongdoing concerned,".

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

Amendment declared lost.

**Deputy Mary Lou McDonald:** I move amendment No. 31:

In page 15, to delete line 7.

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

Amendment declared lost.

**Deputy Brendan Howlin:** I move amendment No. 32:

In page 15, line 34, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 33:

In page 15, line 35, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 34:

In page 16, line 1, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 35:

In page 16, line 6, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 36:

In page 16, line 15, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 37:

In page 16, line 16, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 38:

In page 18, line 3, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 39:

In page 18, line 4, to delete "in accordance with" and substitute "in the manner specified in".

Amendment agreed to.

**Acting Chairman (Deputy Liam Twomey):** Amendments Nos. 40 and 41 are logical alternatives and may be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 40:

In page 18, to delete lines 11 to 16 and substitute the following:

"**102A**. (1) Where a disclosure relating to the Garda Síochána is disclosed to the Ombudsman Commission as a prescribed person under *section 7* of the *Protected Disclosures Act 2014* in respect of disclosures so relating, it may, if it appears to it desirable in the public interest to do so, investigate the disclosure, even if the worker (within the meaning of that Act) making the disclosure is a member of the Garda Síochána.".

Again, the Deputies opposite will recall that at the conclusion of the Second Stage debate I indicated that the priority must be that the legal framework presented in this Bill protect in all respects members of An Garda Síochána who wished to make protected disclosures under the legislation. On the basis of the Government's examination and decision making on this issue, it has been agreed to provide for what is termed the mainstreaming of An Garda Síochána for the purposes of the Bill. In other words, members of An Garda Síochána are subject to the legislation in exactly the same way as any other worker or employee. No further legal requirements apply to them beyond the provisions of the protected disclosures legislation. Section 19 and a number of associated technical amendments accepted on Committee Stage bring members of An Garda Síochána, including members of the Garda Reserve, fully within the ambit of the Bill. In short, members of An Garda Síochána will, for the purposes of making confidential reports, be treated in a similar manner to every other worker in the State and will have access, without exception, to all of the protections in the panoply of labour relations organisations as are afforded to any other worker.

Deputies will recall that the former Minister for Justice and Equality announced that the Garda Síochána Ombudsman Commission would deal with disclosures by members of An Garda Síochána. While section 19(1)(a), as approved by the committee, was intended to implement this policy approach, I am conscious of the comments made by Deputy Sean Fleming on Committee Stage that the wording might be misinterpreted and presented as ambiguous, notwithstanding my assurances to him and the clear Government decision that members of An Garda Síochána could make disclosures to GSOC and the fact that the effect of the amendment proposed to the Garda Síochána Act 2005 would be to allow this. In view of the points made by Deputy Sean Fleming and my reflections on them and on the basis of further discussions I have had with the Office of the Attorney General, amendment No. 40 is intended to address the Deputy's concerns. The proposed wording is, in fact, closely allied with what the Deputy suggested on Committee Stage and is now proposing.

In response to amendment No. 41 - the "may" versus "shall" issue we also discussed - in regard to that part of the legislation relating to the investigation of a matter by the Garda Síochána Ombudsman Commission, it states that where GSOC receives such a complaint, "it may, if it appears to it desirable in the public interest to do so, investigate any disclosure". The view of the Deputy is that it should read " it shall...". In the first instance, as I said on Committee Stage, we have set up a completely independent investigative organisation, GSOC, and the House is now of a mind to give it even greater independence and more authority as an independent investigative body of An Garda Síochána. Therefore, it must be allowed to exercise that independence and discretion in a manner that it chooses, rather than it being prescribed by the House. Without this discretion, the regulatory body is put in a position where, irrespective of its assessment, it is obliged to take a particular course of action. That is not right. I have thought about the issue and what the Deputy has said. If we truly believe we want to have an independent oversight body, we should not say that, whatever its conclusion is, it "shall" do this. That is a view which has been sustained by my reflections in the last while.

In the case of this provision, the Office of the Attorney General has advised that once a

matter has been determined by the commission to be in the public interest, there is obviously an onus on it to carry out such an investigation. On balance, I hope the Deputies will agree with me that if we are serious about creating, maintaining and allowing a robust independent oversight body, we should not give it directions in law; we should allow it discretion to make that determination.

**Deputy Sean Fleming:** I want to clarify one issue. There are two amendments grouped for discussion purposes, amendment No. 40 in the name of the Minister and amendment No. 41 in mine. The Acting Chairman has said they are logical alternatives. Is he suggesting that if amendment No. 40 is passed, I may not move amendment No. 41?

**Acting Chairman (Deputy Liam Twomey):** That is correct.

**Deputy Sean Fleming:** Therefore, if I have a problem with amendment No. 41 not being moved, I will have to oppose amendment No. 40 because I will not be able to move amendment No. 41.

I thank the Minister for considering this matter, on which we had a detailed discussion on Committee Stage. There are many important issues to be discussed today and further amendments before we finish the debate. This amendment has a resonance among the public because if this legislation does not stand the test when it leaves this Chamber and has been signed by the President such that it affords protection to gardaí, it will be seriously diminished. That is why I brought forward a specific amendment on Committee Stage, on which we had a detailed discussion. I note that while the Minister has gone some way towards changing the wording, he has not changed the effect of the legislation.

Both amendments seek to delete lines 11 to 16 on page 18. While I will not go over everything I raised on Committee Stage, I need to refer back to it. The section, as presented on Committee Stage and which we are now seeking to amend, commences with the words: "If the Ombudsman Commission is prescribed...". I had a big issue with the word "If" because it was not definite. We moved on to the second element, where the Bill stated: "if it appears to it desirable in the public interest ... GSOC may investigate". People want to be sure in a case where it is desirable to investigate in the public interest; we should not shilly-shally. It is either in the public interest that an issue be investigated or it is not. It is not good enough to say there is a matter to be investigated in the public interest, but we do not feel like doing it. People want to have absolute confidence. It is ironic. Yesterday, the Minister published a report about accountability in the public service, the theme of which was making the public service more accountable, yet here we are saying that even when matters are in the public interest, the Minister does not necessarily want public accountability. It is a case of perhaps we will or perhaps we will not. That is not good enough and runs counter to the theme of what the Minister has said on other occasions and in his press release yesterday about making the public service more accountable. To say "Even if it is in the public interest to investigate a matter, we do not really have to do it," allows a public service body off the hook. That is not good enough in this day and age. I will come back to that point in further detail.

We are discussing amendments Nos. 40 and 41. Amendment No. 41, which is in my name, states: "the Ombudsman Commission is prescribed under section 7 of the Protected Disclosures Act 2014 in respect of disclosures relating to the Garda Síochána", so I was absolutely specific - no ifs, buts or maybes. The Minister has come back with his amendment, which states:

In page 18, to delete lines 11 to 16 and substitute the following:

"102A. (1) Where a disclosure relating to the Garda Síochána is disclosed to the Ombudsman Commission as a prescribed person under section 7 of the Protected Disclosures Act 2014 in respect of disclosures so relating, it may, if it appears to it desirable in the public interest to do so, investigate the disclosure, even if the worker (within the meaning of that Act) making the disclosure is a member of the Garda Síochána.".

Let us see what section 7 says, because amendment No. 40 refers specifically to it. It states that the Minister may by order prescribe bodies. Instead of stating that it is prescribed, the amendment now provides that the Minister may prescribe. It is still not definite. The Minister has taken out the word "if" and put in the word "may" by referencing section 7. It is still not definite. The Minister has gone a bit of the way on one of the issues I sought to address by taking out the word "if", but he has effectively substituted the word "may". The effect of this section is that the Minister may designate the Garda Síochána Ombudsman Commission as a prescribed body and, even if a matter that requires investigation is in the public interest, the Garda Síochána Ombudsman Commission may investigate it. Those two "mays" are not good enough. We want definitive positions in respect of those matters.

The Minister spoke about mainstreaming, with which I do not disagree, but it is not possible to mainstream it because of all the people in the public bodies, the Minister has picked out a particular section and a particular reference to deal with. The Garda Síochána and the Garda Síochána Ombudsman Commission are then dealt with separately in this legislation. Yes, the Minister wants to make them as mainstream as possible, notwithstanding the fact that they are being dealt with separately in the legislation.

Saying that the Minister may prescribe a body is not strong enough. We have no assurance when we leave the House after this legislation is passed today, having gone through the Seanad, that it will be so prescribed. The reason I raise that particular issue, of which the Minister is aware, is because when we were here last week, I asked him about legislation he had passed since coming to office that he had not yet commenced. We will not go into the case of the former Minister for Justice and Equality, Deputy Shatter. Legislation was passed but it was not commenced. The Minister went on to tell us that one of the most long-standing and important pieces of legislation that went through his Department - the Construction Contracts Act - has still not commenced even though it was passed a year ago. The Minister is asking us to accept that he will do something when the legislation just gives him the option of doing it. When he was given the option in respect of that important piece of legislation, he still did not commence it. In respect of commencing legislation, we regularly listen to statements from the Minister about stimulus packages, construction and getting projects moving, but we then find that the Construction Contracts Act has not even been commenced by the Minister, for a variety of reasons. The exchange with the Minister about legislation that has been passed in his Department but not yet commenced is directly relevant to this section, because section 1 states that it will come into effect on a day appointed by the Minister, so it does not come into immediate effect upon signing by the President. The Minister may or may not choose to do so. If the Minister can give me an exact date by which he will sign and so prescribe those organisations under section 7, it would be a big help to this debate.

Looking at the performance of this Government in respect of commencing sections, as the Minister proposes to do here in section 7, I put the same parliamentary question to every other Minister about legislation passed in the past three years and items not yet commenced. The

range is staggering - child care, social welfare and foreign affairs legislation. I mentioned one relating to the Minister's own Department. There are a litany of cases in which legislation has been passed in this House but has not yet been commenced by the Government, having been debated at length in the House. The public probably presumes that this legislation is in operation but we find that this is not the case. There is a big lacuna in this regard - a gap in confidence as to whether, when the Minister is given the power to do something down the road, he will do so in a timely manner. The practice we have seen here in the past seven days does not inspire confidence in that regard.

Instead of the phrase "if the Garda Síochána Ombudsman is prescribed", we now have "the Minister may prescribe". This is not a sufficient advance and is not definitive. My wording is more definite and superior. The wording of the amendments match very closely, except for the opening line and one other word - "shall" versus "may". My amendment is saying that the Garda Síochána Ombudsman Commission is prescribed under section 7. When the Minister comes to respond, I will be asking him to say that he accepts the merit of removing doubt, wants to make the public service more accountable, and does not want to provide any opportunities for ifs, mays and buts or for the public service to weasel out of its responsibilities, particularly since he has acknowledged in the legislation that the matter of GSOC is in the public interest, but there will still be no requirement under this legislation for the Garda Síochána Ombudsman Commission to investigate the matter. I know we talk about Garda discretion, an element of which is often required. However, what happens when complaints are made by a worker who is a member of An Garda Síochána within the meaning of this Bill to the Garda Síochána Ombudsman Commission and the commission is satisfied that there is a valid complaint - because if it is not valid it does not come under this - and is satisfied that the complaint requires investigation in the public interest but does not want to do so? We should not giving the public sector so much discretion, because that will damage public confidence. This legislation needed a belt-and-braces approach relating to complaints by members of An Garda Síochána to the Garda Síochána Ombudsman Commission, but it does not use such an approach. The Minister is still leaving wriggle room for the Garda Síochána Ombudsman Commission to decide whether or not it will investigate a matter in the public interest and there is still wriggle room for the Minister as to whether it will ever be the designated body for receiving such complaints.

There is too little certainty. The issue of the Garda whistleblowers went to the Committee of Public Accounts. I will not go through everything that happened. People want to feel that the Oireachtas is responding definitively to this matter - not that the Minister may do it or that Garda Síochána Ombudsman Commission may choose to investigate matters in the public interest. The Minister recognises the point I have made but the draftspersons have got to him to say that we should not tie people's hands, we should not be definite, and we should leave wriggle room, scope and ambiguity.

*12 o'clock*

The time for ambiguity when it comes to members of the Garda making complaints in the public interest and having them investigated by GSOC has long since passed. We want definitive, prescribed primary legislation and not a statutory instrument.

Debate adjourned.

## Topical Issue Matters

**Acting Chairman (Deputy Liam Twomey):** I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 27A and the name of the Member in each case: (1) Deputy Timmy Dooley - the need for the Government to intervene to resolve the industrial dispute at Aer Lingus; (2) Deputies Seán Kyne and Paul J. Connaughton - the position regarding young farmers who have missed out on previous installation aid schemes; (3) Deputy Terence Flanagan - the need for tree height legislation to be introduced to protect the right to light; (4) Deputy Shane Ross - the way in which the Minister will vote at the Allied Irish Banks annual general meeting; (5) Deputy John O'Mahony - the need for extra accommodation at Gort Sceiche national school, Hollymount, County Mayo; (6) Deputy James Bannon - the need to review the decision to end one of the ASD classes in St. Mary's national school, Edgeworthstown, County Longford; (7) Deputy Joan Collins - to raise the serious matter that today is the 50th day of the mass hunger strike of Palestinian administrative detainees in Israeli jails and that the Israeli state is now trying to pass legislation that will allow force feeding of the strikers; (8) Deputy Billy Kelleher - the need for the Minister for Health to make a statement on the events surrounding the resignation of the chairman of the West-North-West Hospital Group; (9) Deputy Martin Heydon - the proposed change of policy for the provision of service areas on the national road network; (10) Deputy Mick Wallace - the findings of the Cooke report; (11) Deputy Robert Troy - the need to reverse the recent staffing cut to the 1428 Club, Mullingar, County Westmeath; and (12) Deputy Clare Daly - the implications of the Cooke report in respect of Garda oversight.

The matters raised by Deputies Seán Kyne and Paul J. Connaughton; Robert Troy; Martin Heydon; and Terence Flanagan have been selected for discussion.

## Visit of Isle of Man Delegation

**An Ceann Comhairle:** Before proceeding to Leaders' Questions, on behalf of all of us, I wish the members of a parliamentary delegation from the Isle of Man who are in the Distinguished Visitors Gallery a warm welcome. I hope that their visit here will be helpful in their consideration of procedures, etc., and that they will enjoy their stay in Dublin. They are very welcome.

## Leaders' Questions

**Deputy Billy Kelleher:** Last year, the Government brought forward the House of the Oireachtas (Inquiries, Privileges and Procedures) Bill after the people voted down a referendum in this regard the previous autumn. The Bill was agreed by the Oireachtas and during his Second Stage contribution, the Minister for Public Expenditure and Reform outlined passionately the process of clarifying the role of the Houses of the Oireachtas in securing accountability through investigations into matters of significant public importance. He stated:

> This Bill will enhance the effective functioning of our modern parliamentary democracy by facilitating such inquiries and it is our duty as public representations to use our constitutional powers appropriately and responsibility and for the benefit of wider society and the economy. Used effectively, I anticipate that the framework established by this Bill will fa-

cilitate focused, constructive political discourse that will enhance our parliamentary system.

Those were the Minister's words this time last year when he brought forward the Bill to establish the banking inquiry.

By any stretch of credibility, what has happened over the past number of days has brought not only the House and the Seanad into disrepute but it has also brought the banking inquiry into disrepute. It is undermining the inquiry's credibility before it even starts its work.

**Deputy Mattie McGrath:** Hear, hear.

**Deputy Billy Kelleher:** My party from the outset has said it will co-operate fully. We said we would like a banking inquiry and we also highlighted the need for it to be impartial and without bias to ensure we could all leave the House knowing such an inquiry would go about its business and come to conclusions without political interference. Every Member knows this will not be the case.

Three years ago we were promised a democratic revolution. The Government parties swept into power with a massive majority and we have had nothing since but autocracy in terms of how they deal with the Parliament.

**An Ceann Comhairle:** Ask a question please.

**Deputy Billy Kelleher:** The proposal to add two Government members to the committee because the Government did not get its way in the selection process in the Seanad simply undermines the vestiges of credibility that it has left. The Tánaiste should take note that only two weeks ago the public was emphatic about the conduct of the Government parties. However, one would think that in their two remaining years in office, they would like to have an inquiry that has the support of the House and the people and will come to conclusions in which everybody will have confidence.

The banking inquiry should not be about trying to get at individuals.

**Deputy Mattie McGrath:** A kangaroo court.

**Deputy Billy Kelleher:** It should be about trying to find the truth to ensure things will not happen again that may have happened previously and to find out exactly why we ended up where we were and how we got through these difficult times. The Tánaiste said that he wanted to find out the truth.

**An Ceann Comhairle:** The Deputy is over time.

**Deputy Billy Kelleher:** However, the Taoiseach's conduct in the House when he sat in the same chair two days ago leaves an awful lot to be desired regarding whether I can believe the Government parties are interested in the truth.

**The Tánaiste:** I am not sure where the question was in that statement but the Government wants a banking inquiry to be established and working-----

**Deputy Michael McGrath:** Under its control.

**Deputy Sean Fleming:** A Government inquiry.

**Deputy Mattie McGrath:** Contrived.

**The Tánaiste:** -----and getting to the bottom of what happened to the banking crisis in this country.

**Deputy Timmy Dooley:** The Government wants to predetermine the outcome.

**The Tánaiste:** I am disappointed at what has happened over the past number of days regarding the appointment-----

**Deputy Timmy Dooley:** About the ineptitude of his own-----

**An Ceann Comhairle:** Will the Deputy please stay quiet? He can leave the Chamber if he cannot do so.

**The Tánaiste:** I am disappointed at what happened in the past number of days in respect of the appointment of the Seanad members of the banking inquiry.

**Deputy Robert Troy:** The Government did not get its own way.

**Deputy Timmy Dooley:** Why is the Tánaiste disappointed?

**The Tánaiste:** My understanding was that the intention was that two Seanad Members would be appointed to the inquiry-----

**Deputy Timmy Dooley:** Anointed.

**The Tánaiste:** -----one from the Government side and one from the Opposition side. It appears that what happened was a bit of slick parliamentary footwork was performed-----

**Deputy Sean Fleming:** It was Government Members.

**Deputy Timmy Dooley:** Government Members could not be bothered to show up.

**Deputy Michael McGrath:** It is called a vote.

**Deputy Timmy Dooley:** It is called attendance.

**An Ceann Comhairle:** Will Members please stay quiet and listen?

**The Tánaiste:** -----and we ended up with two Opposition Members proposed to be nominated as the Seanad members of the inquiry. If the Government had come in either to this House or the Seanad and had pulled a stroke like that-----

**Deputy Sean Fleming:** The Government is trying to do that now.

**Deputy Timmy Dooley:** By adding two members, the Government is doing the same.

**Deputy Sean Fleming:** Why not add four while it is at it?

**The Tánaiste:** ------to produce two Government nominees and no Opposition nominee, we would have a lot of noise from the Opposition about it.

**Deputy Michael McGrath:** The Government has learned nothing.

**Deputy Emmet Stagg:** We have.

**Deputy Ruairí Quinn:** Fianna Fáil has forgotten everything.

**Deputy Ann Phelan:** Empty vessels.

**The Tánaiste:** The leadership of Fianna Fáil should use------

**Deputy Timmy Dooley:** We will take no lectures from the Labour Party, which is on 4%.

**Deputy Eric Byrne:** Will the Deputy please take his tablets?

**Deputy Timmy Dooley:** Cyanide is what the Deputy needs.

**The Tánaiste:** -----its good offices to ensure the membership of the banking inquiry - we have decided the Dáil members - drawn from the Seanad should be representative of the Government and Opposition as we normally expect.

**Deputy Arthur Spring:** That is democracy.

**Deputy Ruairí Quinn:** Hear, hear.

**The Tánaiste:** That is what balance is about.

**Deputy Timmy Dooley:** It is up to the Government Members to show up.

**Deputy Billy Kelleher:** It is evident that the Tánaiste has not taken note of what has happened over the past number of weeks regarding this issue.

**Deputy Bernard J. Durkan:** Neither has the Deputy.

**Deputy Billy Kelleher:** The Taoiseach stated in the House that the Government wants a majority on the inquiry committee to set the terms of reference. The committee should set the terms of reference, not the Executive. Deputies opposite should read the legislation. This simply is jackboot politics at its best. The Tánaiste is trying to stand over the Government not only setting the terms of reference but also the outcome. That is effectively what it is doing.

**Deputy Charles Flanagan:** It is called democracy.

**Deputy Billy Kelleher:** If that is democracy, I have great worries for this place.

**An Ceann Comhairle:** Perhaps the Deputy will put a question.

**Deputy Billy Kelleher:** The point we have made consistently is that the Oireachtas should set the terms of reference. The Government opposed the addition of a Member-----

**An Ceann Comhairle:** Will the Deputy put a question? He is over time.

**Deputy Billy Kelleher:** Why did the Government oppose the extension of the number of members on the committee? The Government parties stated it should be a tight committee comprising nine members when it was proposed that Deputy Mathews be added. They said it could not happen and the committee could not have any more than nine members. They had all the reasons there could only be nine members a few weeks ago.

**Deputy Arthur Spring:** Tell us why Senator MacSharry should be on the inquiry.

**Deputy Timmy Dooley:** That is democracy.

**An Ceann Comhairle:** Deputy Kelleher should resume his seat.

**Deputy Billy Kelleher:** Let us be clear. Does the Tánaiste agree that the Government has undermined the credibility of the banking inquiry and the authority of the banking inquiry to call witnesses?

**Deputy Bernard J. Durkan:** Fianna Fáil has undermined the country.

**The Tánaiste:** The composition of the banking inquiry committee was intended to be a chairperson, three Members of this House from the Government side, three Members from the Opposition side and two Members of the Seanad, one of whom was to be from the Government side and one from the Opposition side.

**Deputy Timmy Dooley:** Who decided that? Was it handed down on a tablet of stone?

**The Tánaiste:** That is the proposed membership of the banking inquiry committee.

**Deputy Sean Fleming:** That is the Tánaiste's hypothesis.

**An Ceann Comhairle:** Will the Deputy stay quiet?

**The Tánaiste:** What happened was that Fianna Fáil and others participated in a parliamentary stroke in the Seanad to end up with a situation-----

**Deputy Timmy Dooley:** We prevented the Labour Party Senator from attending a meeting.

**The Tánaiste:** -----where the two Members of the Seanad would be from the Opposition side of the House.

**Deputy Billy Kelleher:** Why have an Oireachtas?

**The Tánaiste:** Frankly, that is playing political and parliamentary games with the establishment of an inquiry which the public wishes to see up and running as quickly as possible. Members opposite should cop on to themselves, work with the Seanad, have the members of the inquiry team appointed, have a balanced committee as intended and let it get on with its work.

*(Interruptions).*

**An Ceann Comhairle:** Talk in the Dáil about the good name of the Seanad is not doing the name of the Dáil any good, particularly with behaviour such as shouting and roaring across the Chamber.

**Deputy Timmy Dooley:** You are quite right, a Cheann Comhairle, with the deputy leader of the State behaving like this.

**An Ceann Comhairle:** Please refrain from shouting across the Chamber.

**Deputy Mary Lou McDonald:** This morning people are reading in the newspaper that the HSE is backing down on the issue of excessive salary top-ups for senior managers of voluntary hospitals and section 35 organisations, as they are called. The Tánaiste will recall that people were shocked in the recent past when they learned about the scale of the top-ups received by some of these individuals. They were even more horrified to discover that, in some instances,

the top-ups were being funded through charitable donations. Last December, for example, we discovered that the chief executive officer, CEO, of St. Vincent's University Hospital was receiving a top-up of almost €140,000, in addition to a HSE salary of almost the same amount, with a privately funded car allowance of almost €20,000. We also discovered that the total bill for top-ups was €3.2 million. The organisations that engage in this practice are fully funded from the public purse. Their employees are regarded as public servants. Front-line public services are strained after seven years of Fianna Fáil, Fine Gael and Labour Party cuts. People could not and do not yet understand how such excessive pay was allowed for a small number within the public service. I remind the Tánaiste that the Government, like the previous one, was swift to introduce emergency legislation to drastically cut the salary levels of workers across the public service and the Civil Service, including those not just on modest salaries but low pay. Is the Tánaiste aware of the difficulties the HSE is experiencing in implementing public sector pay policy in these organisations? Will he inform the Dáil of the scale or level of this difficulty? What does the Government propose to do to ensure all of these individuals respect and comply with public sector pay policy?

**The Tánaiste:** I remind the Deputy that the issue of top-ups arose because the Minister for Health and the Government took an initiative to deal with it. It was the Minister for Health, in the first instance, who sought an audit of section 38 and section 39 agencies to examine the levels of pay of the top personnel in these agencies. The audit brought to public attention the top-ups being paid by some of the agencies to their chief executives and senior personnel. The Government's position is clear. The pay caps established must be adhered to. Engagement has been ongoing for some time between the HSE and the agencies on the levels of pay of some of the chief executives. I read the article in the newspaper this morning. I understand from it that there are a number of cases in which there are contractual arrangements that must be examined. I am not familiar with the detail of these contractual arrangements, but I am sure the Minister for Health would have no difficulty with addressing these issues in the House and responding to questions that arise.

**Deputy Mary Lou McDonald:** This is not just an issue for the Minister for Health but particularly for the Minister for Public Expenditure and Reform, Deputy Brendan Howlin. It is also one for the Tánaiste and the Government. I am sure the Tánaiste is no different from me in that public servants still write to him and recount the level of difficulty they are experiencing following a series of very significant pay cuts and the imposition of a pension levy. I am sure they write to him, as they do to me, to tell him that, in many instances, they reckon they would be better off out of work than in work. That is the position for many in the public service and the Civil Service.

The Tánaiste is correct that an audit was conducted and that serious difficulties were identified on foot of it. The question is what the Government will do about it. The HSE has signalled clearly that it has run into difficulties with a number of the individuals concerned and it cites contractual obligations. Will the Government introduce emergency legislation to ensure all of the people concerned are in full compliance with public sector pay policy? In other words, will it ensure there is consistency, that what is sauce for the goose is sauce for the gander and that two levels or standards do not apply within the public service and the Civil Service? That is what the average clerical officer expects the Government to do. As there are difficulties, will the Government introduce emergency legislation and when does it propose to do so?

**The Tánaiste:** First, it is precisely because the Government believes there should not be two standards that it initiated the audit of section 38 and section 39 agencies to ensure they

complied with public pay policy. The Government's position is that there must be compliance with public pay policy. I acknowledge, of course, the very strong feelings among many people who work in the public service about their pay levels. For that reason, when we negotiated the Haddington Road agreement last year, we ensured there would be no reduction in pay for those whose salaries were under €65,000 per annum and that where reductions were made on a progressive basis beyond that figure, there would be a way, for those earning between €65,000 and €100,000, to have that pay recovered over a period of time. That is built into the agreement.

I cannot speak about the specific individual contracts referred to in the newspaper article this morning, but if the Deputy wishes to pursue the detail with the Minister for Health, he would be happy to come to the House-----

**Deputy Mary Lou McDonald:** Will the Government legislate?

**The Tánaiste:** Let us establish the facts first.

**Deputy Mary Lou McDonald:** The facts are established.

**The Tánaiste:** I know that the facts and the truth are matters the Deputy does not bother with because she jumps to conclusions straightaway, but let us establish the facts first. That is the reason I suggest the Deputy table a question about the individual contracts to the Minister for Health. I am sure he would be able to respond to it. We should be clear about the policy issue. The Government established caps and restrictions.

**Deputy Mary Lou McDonald:** And broke them.

**An Ceann Comhairle:** Sorry, we are over time.

**The Tánaiste:** We did not. Stick with the truth. Why does Deputy McDonald have such a difficulty with the truth? The reason we are dealing with these salaries for these agencies is that the Government decided in pursuit of its public pay policy to conduct an audit of the agencies and to pursue it through the HSE. That is what is being done.

**Deputy Mary Lou McDonald:** So legislate for it.

**Deputy Clare Daly:** I am very interested in the Tánaiste's views on Garda accountability and what happens next in the context of the Cooke report. We have heard from acting Commissioner O'Sullivan that gardaí have been exonerated from any wrongdoing in her opinion. Her words were very similar to those of former Commissioner Callinan who told us before the inquiry that at no stage was any member of An Garda Síochána involved. The Minister for Justice and Equality, Deputy Fitzgerald, has told us that the report does not support evidence of actual surveillance much less that it was carried out by gardaí. The former Minister for Justice and Equality, Deputy Shatter, issued a press statement telling everyone he did a great job and had dealt with these matters in a straightforward, truthful and comprehensive way. GSOC welcomed the fact that it was found to have acted in good faith. In other words, everyone was right and we are where we were.

However, there is a very large elephant in the room. The fact that everyone is calling that a kitten does not make it any less of an elephant. The elephant in the room is the huge divergence between the report itself and the way in which it is being spun. The reality is that the Cooke report did not find any truth and it did not find any answers because it was constructed in a manner that ensured it would not. The title of the report refers to an investigation into unlawful

surveillance. There was no attempt to discover whether lawful surveillance had taken place. As the Tánaiste knows, there is a legislative provision which makes it lawful for senior gardaí to allow other senior gardaí to surveil somebody else. We are told there was no evidence of Garda involvement. I was going to ask how Mr. Justice Cooke knows, but he is a former Justice not a Justice now. How does Mr. Cooke know this when not a single Garda was interviewed? There was no examination of logbooks and Garda equipment. There was no stock check on IMSI catchers and all the rest of it. The biggest security threat identified by Verrimus was the ring back, the chances of which being benign were virtually zero according to professionals. That was no explanation.

What does the Tánaiste think of the report? It tells us that the photographers at the airport photographing Verrimus could have been members of the Garda security branch.

**An Ceann Comhairle:** A question please.

**Deputy Clare Daly:** The person who leaked the story to GSOC could have tampered with the device inside GSOC. No explanation has been given of who tried to contact Verrimus in relation to its involvement in the inquiry and no explanation has been given of why the GSOC commissioner's phone's batteries were going down but now are not. Meanwhile, the report acknowledges that modern surveillance is not possible to detect.

What I am asking is quite simple. How can there be a new relationship when we still have not got the truth? The Tánaiste is the leader of the Labour Party and is supposed to have a history in justice and oversight.

**An Ceann Comhairle:** The Deputy is over time.

**Deputy Clare Daly:** Will the Tánaiste authorise a proper commission of investigation on a statutory basis so that people can get the truth they so badly need?

**The Tánaiste:** I have read the Cooke report, which is very comprehensive. It concludes that there was no evidence of surveillance of GSOC by anybody, not least the Garda Síochána. It goes through the different issues that were raised. The piece of equipment that was supposed to be for the conference facility was the focus of a great deal of the attention. It turns out that it did not have a microphone. There was an allegation that there was a second WiFi system, but the report concludes that there was not. The report makes it clear that the public interest investigation conducted by GSOC should have been reported to both the Minister for Justice and Equality and the Garda Commissioner, but it was not provided until after the article appeared in *The Sunday Times*. The report questions whether the public interest investigation should have been conducted at the time it was.

I understand the Whips have discussed arrangements to debate the Cooke report in the House next week. If there are issues Members have on the content of the report, that will be the opportunity to ventilate them. The Cooke report is comprehensive and conclusive. If there are issues arising, particularly in respect of the recommendations, which the Government accepts should be implemented, they can be debated next week in the House.

**Deputy Clare Daly:** It is bizarre that the Tánaiste refers to the report as comprehensive when Mr. Cooke himself talks about it being a personal evaluation and that it must not be read as a definitive determination. In fact, he is a retired judge and it is a personal opinion. The Tánaiste might as well have had the opinion of a retired dentist or a retired docker for all the

difference it makes.

*(Interruptions).*

**Deputy Bernard J. Durkan:** That is appalling.

**Deputy Clare Daly:** There is not a single piece of new information in the report. If the Tánaiste did indeed read it, he would know that the five issues I just mentioned are still not answered. How could it be that comprehensive?

**An Ceann Comhairle:** Question, please.

**Deputy Clare Daly:** The Tánaiste has dodged the fact that the report does not deal with the issue of lawful surveillance. Why was that excluded? The Tánaiste talks about the public interest inquiry under section 102 which provides for GSOC to investigate wrongdoing by gardaí. If the surveillance was lawful, there would be no wrongdoing to investigate. The Tánaiste knows and Cooke reports that the backdrop to this was the Boylan affair and the strained relations between GSOC and An Garda Síochána. We do not know whether rogue or senior elements in the Garda authorised themselves to have lawful surveillance.

**An Ceann Comhairle:** The Deputy is over time. Could she put her question?

**Deputy Clare Daly:** In making his last point on the public interest inquiry and GSOC's observations, the Tánaiste's has again undermined GSOC by incorrectly repeating that it had an obligation to bring it to the attention of the Garda and the Minister. Section 103 excludes GSOC from doing so in the public interest.

I suggest the Tánaiste read the report again as he missed a few things in his comprehensive analysis.

**The Tánaiste:** No, I did not. The Cooke report is very clear. It is an independent examination by Mr. Justice Cooke of the issues relating to the alleged bugging of the GSOC offices. This arose when there was a newspaper article which stated as a fact that GSOC offices had been bugged by Government or high level intelligence gatherers. It went through the type of surveillance it felt was taking place. The Cooke report has gone through that and found no evidence of surveillance having taken place and no evidence of gardaí being involved. It goes through each of the different issues. It is fair and comprehensive and conclusive.

If there are issues people wish to discuss arising from the report, we will have a debate and a discussion next week. That will be the place to raise them. I am sure the Minister for Justice and Equality will be happy to respond to any questions which arise. Mr. Justice Cooke did a very good job. It is not fair to cast aspersions on his work or his integrity in the way in which he did it.

**Deputy Clare Daly:** Read what he said himself.

## Order of Business

**The Tánaiste:** It is proposed to take No. 10, motion re proposed approval by Dáil Éireann of the ratification by Ireland of the internal agreement concerning the 11th European Development Fund - back from committee; No. 23, Protected Disclosures Bill 2013 [*Seanad*] - Report

Stage (resumed) and Final Stage; No. 6, Radiological Protection (Miscellaneous Provisions) Bill 2014 - Order for Second Stage and Second Stage; and No. 1*a* - Johnstown Castle Agricultural College (Amendment) Bill 2014 [*Seanad*] - Second and Subsequent Stages.

It is proposed, notwithstanding anything in Standing Orders, that the Dáil shall sit later than 5.30 p.m. and adjourn at the conclusion of Topical Issues which shall be taken at the conclusion of No. 1*a*; No. 10 shall be decided without debate; Second and Subsequent Stages of No. 1*a* shall be taken at 3 p.m. and the following arrangements shall apply: the proceedings on Second Stage shall, if not previously concluded, be brought to a conclusion after one hour and 45 minutes; the opening speeches of a Minister or a Minister of State and the main spokespersons for Fianna Fáil, Sinn Féin and the Technical Group who shall be called upon in that order shall not exceed 15 minutes in each case and such Members may share time, the speech of each other Member called upon shall not exceed ten minutes in each case and such Members may share time, a Minister or a Minister of State shall be called upon to make a speech in reply which shall not exceed five minutes; and the proceedings on Committee and Remaining Stages shall, if not previously concluded, be brought to a conclusion after 30 minutes by one question which shall be put from the Chair and which shall, in relation to amendments, include only those set down or accepted by the Minister for Agriculture, Food and the Marine.

**An Ceann Comhairle:** There are three proposals to be put to the House. Is the proposal for dealing with the late sitting agreed to? Agreed. Is the proposal for dealing with No. 10, motion re proposed approval by Dáil Éireann of the ratification by Ireland of the internal agreement concerning the 11th European Development Fund, agreed to? Agreed. Is the proposal for dealing with No. 1*a*, Johnstown Castle Agricultural College (Amendment) Bill 2014 [*Seanad*] - Second and Subsequent Stages, agreed to? Agreed.

**Deputy Billy Kelleher:** The recently published HIQA report on the accident and emergency unit at University Hospital Limerick and other governance issues at the hospital was alarming and damning. I was alarmed when I raised the issue in the Dáil on Tuesday and the Minister for Health informed me that he was an integral part of the Government and would resolve the matter. There are major problems with the governance structures of the HSE owing to the fact that it is going through a transition-----

**An Ceann Comhairle:** We cannot have a debate on the HSE.

**Deputy Billy Kelleher:** It is a leaderless transition.

**Deputy Ruairí Quinn:** Who set up the HSE?

**Deputy Timmy Dooley:** Who abolished it?

**Deputy Billy Kelleher:** We are not talking about that; we are talking about the fact that it is being abolished.

**Deputy Timmy Dooley:** It is.

**An Ceann Comhairle:** Excuse me; we are talking about promised legislation.

**Deputy Billy Kelleher:** In the summer legislative programme there is a Bill entitled, Health Reform Bill, to put in place new structures for a health service as set out in the document, Future Care.

**Deputy Ruairí Quinn:** We are repairing the damage caused by the Deputy's party.

**Deputy Bernard J. Durkan:** It is called denial.

**Deputy Billy Kelleher:** HIQA's report states there is no proper governance by the Department of Health which is the responsibility of the Minister, Deputy James Reilly-----

**An Ceann Comhairle:** The Deputy did not hear me. We are talking promised legislation; we are not debating the Bill. When is the Bill due to be published? Let us not get excited about its content.

**Deputy Billy Kelleher:** It relates to the difficulties that arose in the context of the western group and the resignation of-----

**An Ceann Comhairle:** I understand the concerns.

**Deputy Billy Kelleher:** All of these issues stem from a lack of leadership.

**An Ceann Comhairle:** Not on the Order of Business.

**The Tánaiste:** The Health Reform Bill will be taken this session.

**Deputy Mary Lou McDonald:** Will time be set aside for the Minister for Health, Deputy James Reilly, to make a statement to the Dáil on the resignation last night of the chairman of the West and North-West Hospitals Group, Mr. Noel Daly, and the serious conflict of interest arising from the Minister's original appointment of Mr. Daly as chairman of the group?

In respect of the commission of investigation established to examine mother and baby homes and other institutions, I understand the interdepartmental group will report on 30 June. Will its report be published? In what format will it be published and will the Tánaiste confirm the date for publication and the laying of the terms of reference for the commission of investigation? Most importantly, will he confirm the timetable and the format of the consultation between the Government and Opposition parties and between the Government and survivors and campaign groups on the terms of reference, the scope of the investigation, the composition of the commission and other pertinent details?

**The Tánaiste:** On the resignation of Mr. Daly, that issue can be pursued in the House in certain ways and it is a matter for the Deputy to decide if she wants to avail of them.

With regard to the commission of investigation, the work of the interdepartmental group will be concluded by 30 June. With regard to the establishment of the commission and its terms of reference, it is our intention to do it in a collaborative way with the Opposition parties which will be consulted.

**Deputy Mary Lou McDonald:** Will the Government publish the interdepartmental group's report?

**The Tánaiste:** We have to get it first. Our practice has been to publish reports, but I cannot anticipate before it is available what will be in the report. We are anxious to have the commission established as quickly as possible.

**Deputy Joe Carey:** Can I receive an update on the publication of the Criminal Justice (Legal Aid) Bill, No. 54 on the list, and the Bail Bill, No. 108?

**The Tánaiste:** The Criminal Justice (Legal Aid) Bill will be published early next year. I do not yet have a date of publication for the Bail Bill.

**Deputy Mattie McGrath:** In view of the pivotal role grandparents play in society, particularly for families in distress, where is the rights of grandparents Bill?

**The Tánaiste:** I do not know if a Bill on the rights of grandparents was promised, but the Civil Registration (Amendment) Bill may address some of the issues involved. It will be taken this session.

**Deputy Dessie Ellis:** When it is planned to amend the Electricity Regulation Act 1999 to help to facilitate the creation of an all-island gas market? The Bill is entitled the Common Arrangements for Gas Bill. Do we know when it will be published?

**The Tánaiste:** The Common Arrangements for Gas Bill will be published next year.

**Deputy Brian Walsh:** Will the Tánaiste provide an update on the Maritime Area and Foreshore (Amendment) Bill? Will he confirm that it will contain provisions to deal with the contentious issue of seaweed harvesting?

**The Tánaiste:** It was intended to publish the Maritime Area and Foreshore (Amendment) Bill, but its drafting will take place after the Housing (Miscellaneous Provisions) Bill, which is before the House.

**Deputy Richard Boyd Barrett:** Will it be taken this session?

**The Tánaiste:** The hope is to take it this session, but we are in the hands of the House as to when the Housing (Miscellaneous Provisions) Bill will be completed.

**Deputy Bernard J. Durkan:** What is the current position of the Criminal Justice (Cybercrime) Bill to comply with the Council of Europe's decision on cyber crime? What is the position on the promised mediation Bill? To what extent have discussions progressed at the Cabinet and when is the Bill likely to be brought before the House? When can we expect it to be signed into law?

**The Tánaiste:** The mediation Bill is due next year. I do not have a date of publication for the Criminal Justice (Cybercrime) Bill, but I discussed it yesterday with the President of the Parliamentary Assembly of the Council of Europe and we will try to bring it forward as quickly as possible.

**Deputy John O'Mahony:** The Broadcasting (Amendment) Bill will provide for the change from a television licence to a broadcasting charge and will have implications for funding of broadcasting. As so much change takes place in the area, it is an important Bill. I thought it was due to be published before the summer, but it seems to have slipped down the ladder.

I also wish to inquire about the gambling control Bill. There is significant concern in regard to the control of online gambling. Will the Tánaiste provide an update on these two Bills?

**The Tánaiste:** I understand the broadcasting (amendment) Bill will be introduced late this year and the gambling control Bill early next year.

**Deputy Ray Butler:** When is publication of the Bill on the sale of loan books to unregulated third parties, which will introduce legislation to cater for the sale of loan books by regulated

financial institutions to unregulated financial institutions, expected? Another issue that has arisen recently is that of payday loans. This is a huge problem here and in Britain. Is regulation expected on this issue?

**The Tánaiste:** The sale of loan books to unregulated third parties Bill is expected next year.

**Deputy Charlie McConalogue:** Yesterday, the Minister for Education and Skills published a performance review of the third level sector by the HEA. He also has had in his possession for some time now a report from the HEA on the future of third level funding. He announced yesterday that he is establishing a review group to look at third level funding, but will he publish the report he has from the HEA on funding models for third level education? Why has he not published it so far?

**The Tánaiste:** There may be some misunderstanding on this. As I understand it, the Minister does not have a report of the kind described on third level funding. However, he intends to establish a group to look at third level funding, and that was the announcement he made yesterday.

**Deputy Robert Troy:** Earlier this week we discussed the devastating consequences of how society viewed certain families and people, such as single mothers. Today, we have many different family configurations. In that context, what is the position on the children and family relationships Bill? The heads of the Bill were published earlier this year, but the Bill now seems to be stalled. When will we see full implementation of this legislation?

I understand the Minister for Education and Skills has had a report on the future of small schools in his possession for more than 12 months. When will that report on the future, viability and sustainability of small schools be published? Will the Oireachtas get an opportunity to discuss the findings of that report?

**The Tánaiste:** In regard to the Child and Family Agency Bill, the Minister for Children and Youth Affairs is anxious to progress that Bill and is currently in discussions on it.

**Deputy Robert Troy:** The Bill I referred to is a justice Bill.

**The Tánaiste:** I apologise. I thought the Deputy was referring to the Child and Family Agency. I understand it is intended to deal with the children and family relationships Bill this session. In regard to the value for money report on small schools, the Minister is considering the report.

## Public Sector Management (Appointment of Senior Members of the Garda Síochána) Bill 2014: First Stage

**Deputy Shane Ross:** I move:

> Bill entitled an Act to provide for the independent appointment of Commissioner, Deputy Commissioner and senior members of the Garda Síochána, to make the removal of such members more transparent and accountable, to amend the Public Service (Recruitment and Appointments) Act 2004 and 2013 and the Garda Síochána Act 2005 and to provide for related matters.

I am grateful to the House for the opportunity to introduce this Bill. The House will be aware of the recent resignation, or sacking, of the Garda Commissioner, Martin Callinan. Therefore, this is an appropriate time for a Bill to be introduced to provide for an open and transparent procedure for the appointment of his successor. This Bill provides a way to do that.

The Bill will introduce reforms which should have been introduced years ago. I do not know whether the House is aware that the top 200 positions in the Garda Síochána are filled by political or Government appointment. This is a shocking figure in view of the fact that these appointments should be made independently. These top positions go from Garda Commissioner down to the rank of superintendent. The Bill addresses this problem, which is possibly the worst case of political patronage in the public service. This practice is open to abuse and undoubtedly has been abused. Promotions and appointments in An Garda Síochána are a scandal that should have been addressed many years ago. A recent editorial in the GRA bulletin described the process that exists currently as a three-ball lottery system, where a hidden hand selects the winner. This cannot be allowed to continue.

In view of the fact the public has lost confidence in the Garda, particularly in gardaí at the top, it is imperative that political interference in this area is ended. The Bill addresses this through two main principles. The first is that there should be open competition. Currently, positions at the top of the Garda Síochána are filled by insiders with insiders. This is unacceptable. I believe everybody in this House accepts that the position must be addressed. The Bill tracks a way forward for the Government using the principles I have outlined. These two principles are open competition and independence.

This is a no-cost Bill. It will not represent a cost the Exchequer, will not set up any new quango and will draw on existing resources and people to make the appointments. It will draw on people who already work in the public service on related matters. The Garda Commissioner, the assistant commissioner and any deputy commissioners or deputy assistant commissioners will be appointed by the top level appointments committee, TLAC, which already has responsibility for appointments in the public service. TLAC will advertise openly for a commissioner and for these other positions. When the advertisements have been posted and the necessary interviews have been carried out, TLAC will recommend three individuals as suitable for appointment. Those recommendations will go to a new public appointments board. This board will not be a new quango, because it will draw on existing people serving in this capacity in the public service, including people from the Standards in Public Office Commission. This board will then nominate one person, whose name will go to the Dáil rather than to the Government. This nomination will be accepted or rejected by the Dáil. If the first nominee is rejected, the second will be put forward, but if that nominee is also rejected the process must start again. This is a cost-neutral way of taking this vital and sensitive position out of the hands of the Government. As we know, many governments have abused the current process, to their cost and to the cost of the credibility of the justice system.

Under this Bill, other appointments - those below the level of Garda Commissioner and Assistant Garda Commissioner and their deputies - will be made in a more direct way. These appointments could be made directly by the new public appointments board, but could be subject to Dáil committee approval and interview if this is felt necessary.

The Bill also addresses the sensitive issue of what should happen in the case of the removal of a Garda Commissioner or Assistant Garda Commissioner. It makes it imperative that if this occurs, an inquiry into the circumstances surrounding the dismissal will be mandatory. It will

be up to the Dáil and not the Government to dismiss a Garda Commissioner.

**An Ceann Comhairle:** Is the Bill being opposed?

**Minister for Public Expenditure and Reform (Deputy Brendan Howlin):** No.

Question put and agreed to.

**An Ceann Comhairle:** I declare the motion for leave to introduce the Bill agreed. As this is a Private Members' Bill, Second Stage must, under Standing Orders, be taken in Private Members' time.

**Deputy Shane Ross:** I move: "That the Bill be taken in Private Members' time."

Question put and agreed to.

## European Development Fund Agreement: Motion

**Minister for Public Expenditure and Reform (Deputy Brendan Howlin):** I move:

That Dáil Éireann approves the ratification by Ireland of the Internal Agreement concerning the 11th European Development Fund, signed in Luxembourg on 24 June 2013, copies of which were laid before Dáil Éireann on 17 April 2014.

Question put and agreed to.

## Protected Disclosures Bill 2013 [Seanad]: Report Stage (Resumed)

Debate resumed on amendment No. 40:

In page 18, to delete lines 11 to 16 and substitute the following:

"**102A**. (1) Where a disclosure relating to the Garda Síochána is disclosed to the Ombudsman Commission as a prescribed person under *section 7* of the *Protected Disclosures Act 2014* in respect of disclosures so relating, it may, if it appears to it desirable in the public interest to do so, investigate the disclosure, even if the worker (within the meaning of that Act) making the disclosure is a member of the Garda Síochána.".

- (Minister for Public Enterprise and Reform)

**Deputy Sean Fleming:** We were discussing amendments Nos. 40 and 41 and I have already made most of the points I wished to make. There are relatively small but significant differences between the amendment I have proposed and what the Minister is proposing. In an earlier draft of the Bill that we discussed on Committee Stage, if the Garda Síochána Ombudsman Commission was to be the prescribed body for dealing with complaints from gardaí under the legislation and if the matter was in the public interest, the Bill provided that GSOC "may" if it so chooses, carry out an investigation. My amendment, No. 41, provides that GSOC be prescribed, with no ifs, buts or maybes about it and that if a matter is reported to the commission by a member of the Garda Síochána that was in the public interest to investigate, then GSOC "shall" rather than "may" carry out such an investigation. My amendment does not give the commission discre-

tion or enable it to sweep something under the carpet, particularly when it is in the public interest. The Minister has come back with a revised amendment following our Committee Stage debate which reads that the Minister "may" by order, prescribe GSOC as the recipient body. However, he does not deal with the issue of requiring GSOC to investigate matters that are in the public interest. His amendment falls short of what I had sought to achieve.

In my earlier remarks before this debate was adjourned, I asked that the Minister give me a definite date by which he will prescribe GSOC - by way of statutory instrument presumably. Perhaps he will say he can do it next Wednesday or that the Department is already working on it. Sometimes when legislation is passed, the statutory instruments are ready to roll immediately while other times they take a number of days, weeks or even months. Can Minister tell me whether he will have the relevant statutory instrument laid before the Oireachtas within seven or 14 days? I seek a commitment on an exact date.

**Minister for Public Expenditure and Reform (Deputy Brendan Howlin):** The Deputy is calmer in his post-break intervention than he was beforehand. We were making very considerable progress on a consensual basis. I always try, in as far as is practicable, to be open and amenable to Opposition amendments. I have never worked on the basis that this side of the House has all knowledge and wisdom. In that context, I was taken aback by some of the things the Deputy said in advocating his amendments on this issue because we had made progress on 40 amendments prior to that.

I have a few general points to make. The Deputy's tone belies the fact that at least three times he voted against whistleblower legislation in the last Administration. I introduced such legislation twice and Deputy Rabbitte also introduced it. This is important. The Deputy made two net points and I tried my best to address each point that was made on Committee Stage, as I said I would, and I did not vote them down on the basis that I would come back to the Deputy and try to deal with them. On the issue of "if" the Ombudsman Commission is prescribed, I gave a firm commitment that it would be prescribed. I have come back now with a clear indication that this will happen. Now the Deputy has moved his focus away from the "if" to a different section of the Bill, namely, section 7, which deals with the general powers of prescription. Of course, the Minister "may" by order, prescribe such people or bodies as the appropriate recipients. This is a general provision for all time and does not only relate to An Garda Síochána. It relates to everybody so it is necessary to have that general prescription. Any order made by a Minister under that section has to be laid before the House and can be annulled by the House, if Members so determine. It remains in the command of the House to ensure that those prescribed to be the recipients are both appropriate and competent. I have said that I want the regime that applies to An Garda Síochána to be the general regime. Short of challenging my bona fides on this, I am giving the Deputy a commitment that GSOC is the organisation that will be prescribed as the appropriate body to receive disclosures of this nature.

On the second point, we had a long presentation of the facts before the break on the issue of "may". I have indicated that "may" is used because GSOC is an independent organisation. It is a statutory, independent body which, only yesterday, the Deputy was very robust in defending. Today, he seems to be saying that he has no confidence in the same body. He has no confidence in GSOC to do what is right. The Deputy cannot have it both ways.

Let us examine what we are amending here, namely, section 102 of the Garda Síochána Act of 2005, an Act which was introduced by Deputy Fleming's party. It gave that same concession throughout. It is a "may" rather than a "shall" provision. Section 102, subsection (4) reads as

follows:

> The Ombudsman Commission may, if it appears to it desirable in the public interest to do so and without receiving a complaint, investigate any matter that appears to indicate that a member of the Garda Síochána may have—
>
> (a) committed an offence, or
>
> (b) behaved in a manner that would justify disciplinary proceedings

That is the Act as it currently stands. Does the Deputy want to go back and alter every provision of that Act, which his party authored and supported in Government? Perhaps the Deputy has had a change of heart on these matters. When I was my party's justice spokesperson a very long time ago, in the early part of the 2000s, I introduced both a Garda ombudsman Bill and a Garda authority Bill, both of which were completely rejected, resisted and defeated by Fianna Fáil in Government at that stage. Let us bring some element of reality to bear on this. It is both ground breaking and important to have overarching whistleblower legislation. The fixed view for a decade of previous Administrations prior to this was that we should do this in a piecemeal way. I am saying now that we need to have overarching legislation and I am delighted that An Garda Síochána will be incorporated into the mainstream of this.

The Deputy's final point, made in a contrarian way, was that somehow this Government does not sign off on legislation that has been passed. Deputy Fleming tabled a parliamentary question to that effect and I replied that there were two Acts for which my Department is responsible whose enactment has been delayed. One is the Construction Contracts Act and I explained that we are currently working with the industry stakeholders to finalise the modality of it. As I explained in my reply last week, we have just distributed the latest guidelines on that. Of course, none of that is relevant to Deputy Fleming. There is legislation which has not been enacted going back a long way. For example, a referendum was passed to broaden the franchise for votes in the Seanad decades ago but legislation has never been enacted.

The other Act which is relevant is the Ministers and Secretaries (Amendment) Act 2013. I also explained why that was not immediately enacted. Within five days of the President signing that particular Bill, I wrote to the leader of Deputy Fleming's party to explain that I was not going to commence the legislation until July because I wanted to give time to the Independent Members to prepare for the quite onerous accounting mechanisms that would apply, at their request. I heard diddly squat back from them, in complaint about that, by the way. Let us not try to cheapen what is a very important and good debate with partisan political points which are distracting from the bones of what we want to do.

I believe that the two issues that the Deputy poses are well and properly met. First, I am giving a commitment that GSOC will be the recipient body that will be prescribed by me. That is the way it is going to be.

*1 o'clock*

I have already indicated that I want to commence the legislation as quickly as possible following enactment. Obviously, technical drafting will be required when both Houses have passed the Bill. It was already passed by the Seanad but I will need to return to the latter in order to have it accept the amendments we have passed in this House. It would be my desire that all matters relating to the legislation will be done and dusted during the current session, hope-

fully before the end of this month. I would like to move as quickly as possible to bring it into force thereafter. As I informed Deputy McDonald, a communication exercise will be required as a result of the fact that what we are dealing with here is new and ground-breaking. Work is under way with IBEC and ICTU in preparing guidelines - in simple, readable language - for workers and employers in order that the provisions of the legislation can be implemented in an efficient, effective and user-friendly way and as expeditiously as possible.

**Deputy Sean Fleming:** The Garda Síochána Act 2005 has been in place for nine years. The Minister stated that my amendment contains a different wording from that which is to be found in the Act. That is probably a good thing. In view of the lessons we have learned in the past nine months - not to mention the past nine years - in respect of the Garda Síochána, perhaps it is time to re-examine that legislation. However, that is not our function today. What is important in the context of the Bill before the House is the number of documents and files given to Deputies, by whistleblowers and others, in respect of the serious matter of alleged malpractice within the Garda Síochána. The Taoiseach has indicated that he has received dozens of such documents and files. I do not know if there is anyone who does not believe that action must be taken in order to improve public confidence in the Garda in respect of certain matters. Lessons should have been learned in this regard. In that context, it is probably necessary to amend the Garda Síochána Act 2005.

The Minister referred to a particular referendum that was passed and the fact that the decision of the people was never implemented. He also referred to legislation being commenced within five days of the passing of another referendum. Despite the fact that the people voted overwhelmingly in favour of the question put to them, the result of the recent referendum on the rights of children has not yet been acted upon. I have confidence in the Minister for Public Expenditure and Reform but I do not have confidence in the Government of which he is a member. I only have confidence in him and, perhaps, one or two other Ministers. That is my difficulty. I believe the Minister when he says he wants to implement the legislation. However, he is not in a position to indicate that he will still occupy his current position in four weeks' time. I would like to think that he will remain where he is, and perhaps that will be the case. A number of Government Ministers who spoke on the radio this morning indicated that there would be a Cabinet reshuffle immediately following the change of leadership in the Minister's party. Several Ministers have indicated that the reshuffle will take place within a month. Nobody cannot assume that he or she will either be in government or in a particular position in the aftermath of that reshuffle. Nobody is in a position to provide a commitment in respect of what he or she will do in his or her Department next month. I accept the Minister's bona fides but there are others on this side of the House who might challenge them. Like members of the public, however, I lack confidence in the Government. It would be somewhat unrealistic for those of us on this side of the House to accept with full confidence everything that is said on the opposite side, particularly as the public does not accept it.

We do not know whether the Minister is going to be around to honour the commitment he has given. I am of the view that if he is in his Department in a month or two, he will honour it. However, I cannot accept what is being offered at face value. If he is asking me to have full confidence in the person who might take over from him as Minister in his Department, I cannot do so. There are several members of the Government in whom I have zero confidence. Notwithstanding that the Minister is acting in good faith and irrespective of the regard in which I hold him, I do not have confidence in the Government, as a collective entity, to deliver on what is provided for in the legislation. It is not his fault that I have doubts about the legislation being

implemented in the timescale he has outlined. The Minister is a victim of the state of flux that currently obtains in the political arena. A number of his colleagues in government have referred to the fact that a reshuffle is going to take place and I do not know who will be Minister for Public Expenditure and Reform in its aftermath. Will the Minister indicate whether the legislation can be implemented by 4 July next?

**Deputy Brendan Howlin:** That depends on how quickly the House concludes its business. If we can conclude our deliberations on the Bill today-----

**Deputy Sean Fleming:** We will.

**Deputy Brendan Howlin:** -----then it will proceed to the Seanad forthwith. I will not be in any way deleterious when it comes to advancing it to enactment.

**Deputy Sean Fleming:** I was going to press the amendment in my name to a vote but I will not now do so. I hope the Minister accepts what I said about the broader issue in good faith. I will communicate with my party's spokesperson in the Seanad and if matters do not move quickly there, I will suggest that the appropriate actions - including votes - be taken there. I trust the Minister will try to ensure that the Bill is taken in the Seanad promptly.

**Deputy Brendan Howlin:** I will do so.

Amendment agreed to.

Amendment No. 41 not moved.

**An Ceann Comhairle:** Amendments Nos. 42 to 45, inclusive, are related, while amendment No. 43 is a logical alternative to amendment No. 42. Amendments Nos. 42 to 45, inclusive, may be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 42:

In page 19, to delete lines 9 to 13 and substitute the following:

**"Internal procedures for protected disclosures made by workers employed by public bodies**

**21.** (1) Every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures.

(2) The public body shall provide to workers employed by the body written information relating to the procedures established and maintained under *subsection (1)*.

(3) The Minister may issue guidance for the purpose of assisting public bodies in the performance of their functions under *subsection (1)* and may from time to time revise or re-issue it.

(4) Public bodies shall have regard to any guidance issued under *subsection (3)* in the performance of their functions under *subsection (1)*.".

The amendments in this group relate to the internal procedures to be put in place by public bodies, the guidelines to be put in place by the Minister for Public Expenditure and Reform in

respect of the content of those guidelines and the information to be provided by public bodies to the Minister. Much of the content of the amendments relates to the matters we have been discussing up to now.

The purpose of amendment No. 42 is to elaborate on the provision in section 21 requiring public bodies to establish and maintain procedures. As the Bill has progressed through both Houses, a number of suggestions in respect of establishing and maintaining procedures have been articulated by both Senators and Deputies. In that regard, I wish to record my gratitude to Deputy McDonald, who agreed to withdraw a related amendment on Committee Stage in order to provide me with the opportunity to consider the matter she had addressed in that amendment. Many issues surrounding the maintenance of consistency in internal procedures would normally fall to be dealt with by my Department on an administrative basis and would not usually be provided for in primary legislation. That said, I sympathise with the concerns that have been expressed with regard to the need to ensure that consistency applies in respect of these matters. The amendment proposes the inclusion, in section 21, of a provision allowing the Minister to issue guidance, together with a requirement that public bodies shall have regard to any such guidance issued. This approach represents normal administrative practice and provides the Minister with a greater degree of latitude in respect of the matters to which the guidelines relate. Above all, it deals with the issue of consistency, which we discussed on Committee Stage.

On amendment No. 43, in the past I have referred to the difficulties associated with the inclusion of volunteers within the ambit of the Bill. The lack of a contractual arrangement between the relevant parties gives rise to difficulties in accommodating volunteers within the framework of legislation in a meaningful way. People who are volunteers are not employees in any strict sense. I am cognisant of the concerns that were raised in respect of volunteers in the context of amendment No. 43. While I do not propose to accept the amendment, I will ensure that specific provision for volunteers will be made in the guidelines to which I referred when discussing amendment No. 42. I will also require that information on the relevant procedures will be circulated to all such persons. It is important to say such an approach does not bring volunteers within the remit of the legislation because we cannot provide for a Labour Court determination. However, that was not the point made on Committee Stage. I have said that, in view of the absence of any contractual relationship and the non-remuneration status of volunteers, it is not intended, as debated on Second Stage and again on Committee Stage, to bring volunteers within the ambit of the legislation. However, the guidelines I propose under the new amendment will broaden the legislation to ensure it provides a framework for public service organisations within which appropriate arrangements can be made to issue reports made by volunteers that do not fall within the ambit of the legislation. In essence, I am keen to ensure that where volunteers have something to report, there will be a mechanism in place for this to happen and it will be captured in the guidelines I propose to issue.

On amendment No. 44, I am conscious of the fact that the issue of the number and type of protected disclosures received by public bodies has featured in the debate in this and the other House. Amendment No. 45 tabled by Deputy Mary Lou McDonald reprises many elements of the debate. I have given the matter detailed consideration in the period since Committee Stage and I am bringing forward amendment No. 44 which proposes to insert a new section 22 to require every public body to prepare and publish on an annual basis anonymised information on the protected disclosures it has received in the previous 12 months. The publication of this information will provide for a significant degree of transparency in the operation of the Bill in public bodies. That was what we were trying to capture in the debate on Committee Stage. I

believe and hope the proposal in amendment No. 44 meets the objectives of Deputy Mary Lou McDonald and, in view of this, that she will not proceed with her amendment.

**Deputy Mary Lou McDonald:** I will happily withdraw amendment No. 45 in favour of amendment No. 44. I was going to point out that there was a typographical error in my amendment, but it is hardly worth saying this now.

I am concerned about the issue of volunteers. I have no wish to labour the point or rehearse the argument, but I am pleased to hear that provision will be made in the guidelines. I accept absolutely that there is not the same contractual work relationship in the case of volunteers. Nonetheless we can envisage scenarios where a volunteer might face serious consequences for whistleblowing, including, perhaps, reputational damage. I am keen to ensure that within the guidelines for volunteers there will be an identified process and protections and remedies that volunteers will be able to access. What form does the Minister envisage this will take? I do not expect him to be prescriptive at this stage. I am pleased that he has again acknowledged the issue of volunteers and that they will be incorporated in the manner suggested.

**Deputy Sean Fleming:** I seek clarification on amendment No. 42. We have dealt with the topic before. The Minister's amendment refers to a public body. Will he indicate what he means by a public body? I realise it is included in the definitions section on page 6. There is reference to Departments, local authorities and other entities established under enactments, etc. There is also reference to a company, within the meaning of the Companies Act, in which the majority of the shares are held on behalf of a Minister of the Government. Does this include all commercial semi-State companies, as well as non-commercial semi-State companies? We have debated the merits under freedom of information and other legislation coming from the Department of whether certain State organisations should come under freedom of information legislation. The Minister's view, which I agree with, is that those organisations operating in competition should not come under it. For example, Aer Lingus should not come under FOI provisions since Ryanair does not. I accept that principle fully. The issue relates to monopolies such as Irish Water and Iarnród Éireann. I do not accept it in their case and understand the Minister probably thinks along the same lines. In this section does he distinguish between commercial and non-commercial semi-State bodies? There are commercial monopolies, for example, Irish Water. However, other commercial organisations such as Bus Éireann and the ESB operate in competition. Will this place a requirement on commercial semi-State bodies in competition with organisations in the private sector to produce reports, while competitors will not have to do so? Could this place them at a disadvantage? I gather EirGrid comes under the legislation. It was established under a statutory instrument, although primary legislation has been promised for years. Will the Minister confirm whether Irish Water will come under it? I expect that it will.

There is one company in which I am particularly interested. There is reference in the section to a company within the meaning of the Companies Act in which the majority of the shares are held by a Minister of the Government. What is the position on Allied Irish Banks and Permanent TSB? The majority of the shares in AIB are held by the Minister. Does AIB come under this legislation? We only have a minority share in Bank of Ireland which is exempt under this section. Will the Minister clarify whether there is a potential issue in this regard? We drew a clear line in freedom of information legislation such that it would not infringe on the rights of commercial organisations, but we do not appear to make the same distinction in this case. Will the Minister offer a comment on this? The example of Bank of Ireland versus AIB probably crystallises the debate.

**Deputy Brendan Howlin:** Different regimes will apply to freedom of information and protected disclosures legislation. Freedom of information legislation will apply to public bodies. It does not apply in the private sphere. The point of debate, to which we will return when the freedom of information legislation is taken on Report Stage, relates to commercial semi-State bodies. My view which Deputy Seán Fleming has supported is that we do not wish to disadvantage commercial State companies in such a way that it will give open access to information to their competitors. We may have to deal separately with monopoly State companies. This is an overarching Bill that will apply in the public and private spheres. The only difference relates to public companies. This includes all companies, including commercial companies. State companies are captured by the definition of a public body in the Bill. For example, one of the mechanisms allows for disclosure to the relevant Minister. This, obviously, does not apply to a private company. I hope that answers the question.

Amendment agreed to.

Amendment No. 43 not moved.

**Deputy Brendan Howlin:** I move amendment number 44:

In page 19, between lines 13 and 14, to insert the following:

**"Annual report**

**22.** (1) Every public body shall prepare and publish not later than 30 June in each year a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved containing information relating to the matters specified in *subsection (2)*.

(2) Those matters are—

(a) the number of protected disclosures made to the public body,

(b) the action (if any) taken in response to those protected disclosures, and

(c) such other information relating to those protected disclosures and the action taken as may be requested by the Minister from time to time.".

Amendment agreed to.

Amendment No. 45 not moved.

**Deputy Sean Fleming:** I move amendment No. 46:

In page 24, line 18, after "parties" to insert "within 60 days of receiving the complaint".

This is an issue we discussed specifically on Committee Stage. I gave the Minister a lengthy and specific example of why I was coming at the issue. I will explain the point in order that those who are following the debate will know what we are talking about. We are dealing with Schedule 2 which relates to redress for a contravention of section 12(1). This relates to complaints to the Rights Commissioner. There is a mechanism whereby following a complaint made, a Rights Commissioner can grant the parties a hearing and give a decision to be communicated in writing to the parties. As I am trying to allow a little time, I propose the insertion of the words "within 60 days of receiving the complaint".

I provided the Minister with a specific reason for this, although there are examples everywhere. It can take a couple of years for a complaint to be dealt with by a Rights Commissioner because of a recalcitrant employer's refusal to attend, resulting in the meeting being postponed for six or 12 months, after which time the employer can pull the same stunt. This approach makes it difficult for a Rights Commissioner to conclude the work. I want to attach a timeline to the process, although I am not fixed on 60 days. If the Minister wanted it to be 160 days, I would accept it. Otherwise, the process could continue for years.

**Deputy Brendan Howlin:** The provision in Schedule 2 represents standard practice concerning complaints and the procedures for Rights Commissioners. I heard the Deputy's contribution today and on Committee Stage, but the workings of the Rights Commissioner Service's mechanisms is a matter for the Minister for Jobs, Enterprise and Innovation, not me. However, the Minister is addressing these issues and the arrangements for the administration of the rights commission complaints system are being examined. He is working on a new, more efficient system. Those proposals will be made to the House by way of legislation before too long. That will be the appropriate vehicle to propose a change in how the system works, not a Bill that is not the purview of the Minister for Jobs, Enterprise and Innovation. As the Deputy knows, the two-tier system is being integrated. A simpler, more efficient and time-bound system will be proposed.

**Deputy Sean Fleming:** I will withdraw the amendment on the basis that I will raise the matter with the relevant Minister when the other legislation is before the House.

Amendment, by leave, withdrawn.

**An Ceann Comhairle:** Amendments Nos. 47 and 48 are related and may be discussed together.

**Deputy Sean Fleming:** I move amendment No. 47:

> In page 29, line 6, after "Court" to insert "following approval by both Houses of the Oireachtas".

This is an amendment to Schedule 3. We are getting close to the end. The first line of the Schedule reads: "The Taoiseach shall appoint as the Disclosures Recipient a person who is a judge or retired judge of the High Court." This person will report to the Taoiseach. As to my amendment, I do not know whether I made this exact point on Committee Stage, but the Houses approve the appointment of the Ombudsman and Information Commissioner and many other positions of senior standing. In the case of the disclosures recipient, my amendment would provide for the national Parliament's approval, not just the Government's. This would be better for no other reason than the fact that, when there was a confidential recipient in the Department of Justice and Equality, no one so much as knocked on the Department's front door because no one there knew who or what the confidential recipient was. I am afraid that the same will happen-----

**Deputy Brendan Howlin:** It would not have been very confidential if people were able to find out who it was.

**Deputy Sean Fleming:** Exactly. I am afraid that the disclosures recipient could end up in a similar little bunker about which no one knew. Oireachtas approval would be of help.

Amendment No. 48 relates to the same principle. Under the Bill, the "Taoiseach may remove the Disclosures Recipient from office, but only for stated misbehaviour or for incapacity." I would amend this to add "but only after a decision of both Houses of the Oireachtas". If a retired judge can be appointed, it is possible that someone in his or her 70s or even older could be appointed. The recipient can never be removed from office except for stated misbehaviour or incapacity. We must take the person out in a coffin. This is nonsense. The person must be allowed to die in office. What if there is no stated misbehaviour? For example, what if the recipient simply does not do the work anymore and gets lazy? This is not misbehaviour - it is a lack of behaviour. The Houses should have the authority to remove such a person. This would be an important measure, as providing that someone cannot be removed from office unless he or she is carried out in a coffin is not a good way to draft legislation.

**Deputy Mary Lou McDonald:** I see merit in Oireachtas approval for the disclosures recipient. Given the stature of the type of person envisaged in the legislation, one would hope his or her appointment to the role would not be a matter of controversy, but laying the matter before the Oireachtas would probably be good practice and do no harm.

Regarding Deputy Sean Fleming's second amendment, I have grave reservations about giving any Taoiseach an open-ended ability to remove the recipient from office. The recipient should only be removed for stated misbehaviour or incapacity, particularly after being ratified by the Oireachtas. It would not serve us well to give too much room for manoeuvre, as such removals could be interpreted as political decisions. In this spirit, will the Minister shed some light on the matter? We understand "stated misbehaviour", but what is the Minister's dictionary's version of what "incapacity" means? I also note that the envisaged term of office is five years. As such, it is not a case of instating someone *ad infinitum* and bearing with him or her until the person goes to his or her great reward.

**Deputy Brendan Howlin:** These amendments relate to the appointment and dismissal of the disclosures recipient, respectively. Amendment No. 47 deals with section 18. As I advised on Committee Stage, the role of the disclosures recipient is a narrow one. It has no real function other than to be the conduit for information that relates to section 18, namely, a narrow range of information pertaining to the security of the State and related matters. Section 18(1)(a) reads:

> (i) the security of the State,
>
> (ii) the defence of the State, or
>
> (iii) the international relations of the State,

The role of the disclosures recipient is simply to consider whether the nature of the information provided to him or her is captured by section 18 and, if so, to pass it on to the appropriate officeholder. If it does not fall within section 18's ambit, the recipient will hand it back and explain why. The discloser can then find whatever conduit is appropriate for his or her complaint. Having reconsidered the limited nature of the role to be a conduit, we do not need to do much more than I have already set out in the Bill. I am satisfied that the direct appointment of the individual concerned by a the Taoiseach is sufficient.

Regarding Deputy McDonald's question on incapacity, it refers to medical incapacity and would involve a certificate of inability to perform the duty for medical or health reasons. The duty is not onerous. The functions of the recipient are laid out in paragraph (5) of Schedule 3, which states:

5. Where a protected disclosure is made to the Disclosures Recipient under *section 18*, the Disclosures Recipient shall consider the relevant information and—

(*a*) if he or she considers that the disclosure of relevant information is not one to which [that security section] applies, shall give notice to the person by whom the disclosure was made stating that, and

(*b*) otherwise, shall make a report—

(i) referring the relevant information for consideration by the holder of such public office ... as appears to the Disclosures Recipient to be the most appropriate to consider the relevant information, and

(ii) including any such recommendations for the taking of action in relation to the relevant information as the Disclosures Recipient may consider appropriate.

**Acting Chairman (Deputy Jerry Buttimer):** How stands the amendment?

**Deputy Sean Fleming:** I will not press it.

Amendment, by leave, withdrawn.

Amendment No. 48 not moved.

**Deputy Sean Fleming:** I move amendment No. 49:

In page 30, line 10, after "year." to insert the following:

"The details of such report shall be published in such manner as would not in any way identify a person who has made a protected disclosure.".

It is a very simple report. The Minister has made it clear that the role of the confidential recipient is narrowly focused regarding matters of security of the State and other such matters and that he does not expect a large amount of information to be submitted to this office, but my amendment proposes that in respect of the report required by the Minister in this section to the Taoiseach on the activities in the preceding year, the details of such report shall be published in such manner as would not in any way identify a person who has made a protected disclosure. I seek openness and transparency without the disclosure of any unnecessary confidential information, and in that way we will at least know the number of such reports.

In all legislation from our Government over the years, and perhaps it applies to other Governments also, there is a standard approach to exclude matters of security of the State and international relations from freedom of information, but international relations could be relevant to a taxation inquiry in respect of multinationals, if it comes to that. Sometimes we throw the cloak very wide to ensure information is not made available and to keep it under lock and key, so to speak, but a report should be published in such a manner as would not in any way identify a person who has made a protected disclosure in order to protect them. The Minister will probably agree with the principle in that regard.

**Deputy Brendan Howlin:** Deputy Fleming is right. We had a fairly long discussion on this amendment on Committee Stage. I did not accept it then and, on reflection, I believe I was right. In the event that the disclosure of the recipient determines that he or she should pass on information to the appropriate officeholder, I am satisfied that that information, by virtue of the

requirements of section 18 of the Bill, is likely to be of such importance to the security of the State that its publication would not in any event be appropriate. The main reasoning behind the disclosure of such information to the disclosures recipient is that it would not be in the public domain, so it would run counter to that to require a reporting of it. What needs to be done is that an action would be taken by the officeholder regarding it, and I presume that would be pursued in the normal way by way of parliamentary question by Members of the House.

**Acting Chairman (Deputy Jerry Buttimer):** How stands the amendment?

**Deputy Sean Fleming:** I am pressing the amendment.

Amendment put and declared lost.

Bill, as amended, received for final consideration.

## Protected Disclosures Bill 2013 [Seanad]: Fifth Stage

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

**Minister for Public Expenditure and Reform (Deputy Brendan Howlin):** I thank the Deputies opposite. By and large we had a very constructive debate. I said on Committee Stage that it is unusual for a Bill to make such substantial progress between Second Stage and Committee and Report Stages. The amendments accepted on Committee Stage have resulted in a much better Bill, particularly as it relates to An Garda Síochána. I reaffirm my commitment to seek an early date in the Seanad for this Bill. I hope to have all the legislative work done in this session and then to bring it in as soon as possible.

I meant to say earlier in regard to the amendment we have now adopted into the Bill to have guidelines and procedures that if it is of use, I would be happy to bring those to the Oireachtas committee once they are drafted.

**Deputy Mary Lou McDonald:** That would be extremely useful. Sinn Féin is very pleased that this legislative work is almost complete. I thank the Minister for taking on board some of the suggestions and congratulate him and the Government - to break new ground - on introducing this legislation. All of us understand it is critically important. It is important that those who can avail of its protections understand it fully and therefore it would be very welcome to see the guidelines before the committee.

Question put and agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** The Bill, which is considered to be a Bill initiated in Dáil Éireann in accordance with Article 20.2.2° of the Constitution, will be sent to the Seanad.

## Radiological Protection (Miscellaneous Provisions) Bill 2014: Order for Second Stage

Bill entitled an Act to provide for the dissolution of the Radiological Protection Institute of Ireland and the transfer of all its functions, assets, liabilities and staff to the Environmental Protection Agency; to give effect to the Amendment to the Convention on the Physical Protection of Nuclear Material done at Vienna on 8 July 2005; to amend the Radiological Protection Act 1991, the Environmental Protection Agency Act 1992 and certain other enactments; and to provide for matters connected therewith.

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Fergus O'Dowd):** I move: "That Second Stage be taken now."

Question put and agreed to.

## Radiological Protection (Miscellaneous Provisions) Bill 2014: Second Stage

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Fergus O'Dowd):** I move: "That the Bill be now read a Second Time."

I welcome the opportunity to introduce Second Stage of the Radiological Protection (Miscellaneous Provisions) Bill 2014. The Bill has two main objectives: first, to provide for the dissolution of the Radiological Protection Institute of Ireland, RPII, and transfer its functions to the Environmental Protection Agency, EPA, and, second, to introduce the necessary statutory provisions to enable Ireland to ratify the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material.

The Bill also provides for the updating of certain fines under the Radiological Protection Acts, updates the definition of "ionising radiation" to the latest international standard and makes provisions to enable the RPII and the EPA to hold radioactive substances or irradiating apparatus necessary for the fulfilment of their functions without requiring a licence.

As part of the comprehensive spending review of all areas of public expenditure, the programme for Government includes a policy of reducing the number of State agencies. A decision of November 2011 provided for the rationalisation of 48 State bodies and agencies and the critical review of another 46 by the end of June 2012. The merger of the EPA and the RPII was considered as part of this critical review process. Following completion of the critical review in October 2012, the Minister for Public Expenditure and Reform announced that the EPA and the RPII were to merge, with a target date for the merger of summer of 2014. In order to meet this target, enabling legislation must be in place before the summer recess, but I want to place on the record that there will be no diminution in the functions of either agency, or of the levels of service provided by them, arising from this merger. The synergies and greater linkages between environmental and radiological functions will enhance the capacity of both organisations.

The aim of the agency rationalisation programme is, ultimately, to reduce the number of State bodies. While the savings may not be significant, the policy is to follow through on mergers and rationalisations unless there are strong evidence-based reasons for not doing so. However, efficiencies following the merger of the EPA and the RPII should give rise to reduction in certain costs over time.

It was concluded that the most efficient and economic means of merging the two bodies was dissolution of one and transfer of all of its functions, staff and assets to the other rather than dissolution of both and the creation of a new entity. This approach requires significantly simpler legislation, costs less and ensures the least potential disruption to service delivery. It also makes it easier to ensure ongoing maintenance of the functions of both agencies. Accordingly, it was decided to dissolve the RPII and transfer its functions, powers, staff and assets to the EPA, it being the larger of the two organisations.

As well as drafting the requisite enabling legislation, extensive preparations and structures have been put in place to ensure a smooth and efficient merger process. These structures include a project management group and a project working group, comprising representatives of both organisations and the Department of the Environment, Community and Local Government. Both groups have met on a monthly basis to ensure the merger is progressing on all fronts, including administration, human resources, financial, accommodation, corporate and the environmental functions and operations of both agencies. All efforts have been geared towards amalgamation of the operations of the two agencies this summer, which adds further impetus to the necessity to enact this Bill prior to the recess.

The merger will take the following approach, as reflected in the Bill. First, on a day appointed by ministerial order, the RPII will be dissolved and its functions, powers and staff will transfer to the EPA. It will become a radiological protection office within the agency, headed up by a director, taking the number of offices in the agency to five. The other four offices are environmental enforcement; climate, licensing, research and resource use; environmental assessment and communications and corporate services. This Bill will make the necessary repeals and amendments to all relevant enactments and statutory instruments to ensure that the EPA on behalf of the public has the requisite powers to assume the radiological protection role. In this regard, all current functions of the RPII become functions of the EPA from the date of transfer.

Second, this Bill is to enable Ireland to ratify the 2005 amendment to the Convention on the Physical Protection of Nuclear Material, CPPNM. The initial CPPNM was signed in March 1980 and included all EU member states as signatories. Ireland ratified the convention in September 1991, the terms of the treaty being provided for through the Radiological Protection Act 1991. The original CPPNM required that the international community afford certain levels of physical protection to nuclear materials, including during international transportation. It established a framework for cooperation among states that are party to it for the protection, recovery and return of stolen nuclear material and also set out a range of serious criminal offences for the misappropriation or harmful use of nuclear material, which participating States were to make punishable under national law or in respect of which offenders could be subject to extradition.

In July 2005, the states party to the CPPNM agreed the text of an amending treaty to strengthen its provisions, primarily by extending the provisions to require ratifying states to protect nuclear facilities and materials in peaceful domestic use, storage and transport. It also provides for extended co-operation between and among states to enable rapid measures to locate and recover stolen or smuggled nuclear material and to mitigate any radiological consequences of sabotage. The original CPPNM required that states introduce a series of offences relating to nuclear materials. These included unlawfully obtaining or demanding nuclear materials or using, or threatening to use, such materials in a manner that would cause death or serious injury to a person or substantial damage to property. The 2005 amendment to the CPPNM extends the range of criminal offences to include also offences relating to the sabotage of nuclear facilities, the smuggling of nuclear materials or facilitating, conspiring or directing offences that could

lead to deliberate, malicious and dangerous dispersal of nuclear materials or release of radiation from a nuclear facility. It also requires ratifying states to make it an offence to engage in any deliberate activity that releases radioactive materials, or radiation through the sabotage of a nuclear facility, in a manner that causes significant harm to the environment.

This amending treaty, when ratified, will create the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, CPPNMNF. It is an important milestone in international efforts to improve the physical protection of nuclear material and facilities. It is regarded internationally as being significant for nuclear security and is expected to have a major impact in reducing the vulnerability of states to nuclear terrorism. It also increases nuclear security internationally by requiring common high standards of physical protection of nuclear material and facilities and that parties to the convention introduce a range of offences to prevent acts of terrorism involving nuclear material or against nuclear facilities and allows for international co-operation to meet such threats. The strategic importance of the CPPNMNF to international efforts to combat nuclear terrorism and increase nuclear security was emphasised to me recently when I met Dr. Yukiya Amano, Director General of the International Atomic Energy Agency, IAEA. Dr. Amano expressed the strong hope that Ireland would ratify the treaty soon as ratification of it by 96 nations is required to enable it to come into force. As of 29 May this year, 76 states had ratified it. I assured him that Ireland, as a signatory to the amendment and a nation with a strong track record and interest in promoting nuclear safety, security and non-proliferation, takes its responsibilities in relation to the CPPNMNF very seriously and would endeavour to ratify the amendment as soon as possible.

Ireland has been a key driver of non-proliferation since the 1960s. The then Minister for External Affairs, Frank Aiken, was the first minister to sign the Nuclear Non-Proliferation Treaty. The 2010 Nuclear Non-Proliferation Treaty, NPT, Review Conference called on all states party to the CPPNM to ratify the amendment to the convention as soon as possible. It is important that Ireland does so in order to maintain its good standing. I know that my colleague, the Tánaiste, would very much like his Department to be in a position to announce Ireland's ratification of the CPPNMNF at the 2014 meeting of the IAEA's general conference in September 2014. Following this conference, Ireland will take its turn in joining the IAEA's board of governors for a period of two years. Ratification of the CPPNMNF is also regarded by the EU as a key element of Europe's nuclear security policy. Currently, 26 of the 28 EU states have ratified the treaty, with Italy close to doing so. However, the EU, through the Euratom Treaty, cannot ratify the treaty until all 28 member states have first ratified it. In this context, the EU and our EU partners have communicated their desire that Ireland ratify the amendment at the earliest possible juncture. To do so, we must first enact primary legislation. It is hoped the legislation will be enacted soon and that we can ratify the treaty prior to the summer recess.

I will now give a more detailed overview of the Bill. The Bill is divided into five parts and one schedule. Part 1 is a general part and contains three sections. Section 1 sets out the Short Title of the Bill on enactment and allows that this Bill and the Radiological Protection Acts 1991 to 2002 may be cited together as the Radiological Protection Acts 1991 to 2014. Section 2 defines the use of key terms and phrases upon enactment. Section 3 allows for the repeal of those sections of the Radiological Protection Act 1991 which enable the RPII to exist and function.

Part 2 contains 12 sections and provides for the dissolution of the RPII and the transfer of its functions, powers, staff and assets to the EPA. These are, in the main, standard legal provisions necessary to ensure the smooth transition of the merger. Sections 4 and 5 provide for the

setting, by order, of the date of the dissolution of the RPII and that the RPII will be formally dissolved on that day. Section 6 transfers all functions of the RPII to the EPA and provides that from the date of dissolution and transfer all references to the RPII in legislation will be construed as references to the EPA. Section 7 allows for the transfer of lands and properties to the EPA. Sections 8 and 9 allow for legal continuity, transferring all rights, liabilities, and continuation of leases, licences and permissions granted by the RPII and liability for any legal matters occurring before the dissolution day to the EPA. Section 10 covers the transfer of functions, assets and liabilities to the EPA, puts in place transitional measures for actions not completed and allows for transfers of moneys and other financial assets from the RPII to the EPA. Section 11 allows for the preparation of the final RPII annual report and accounts by the EPA for presentation to the Minister. It requires that the final accounts are audited and that the Minister present the final accounts and final report to the House. Sections 12 and 13 make provision for staff transferring from the RPII to the EPA. Section 12 allows for the transfer of staff to the EPA, preserving their conditions of employment as they relate to remuneration. That is an important point. Section 13 ensures that the terms and conditions of employment of RPII staff relating to superannuation are preserved after transfer to the EPA. It protects the pensions of former staff of the RPII and of An Bord Fuinnimh Núicléigh, which preceded the RPII.

Section 14 provides for a smooth operational transition by appointing the chief executive officer of the RPII as a director of the EPA for a transitional period up to 30 April 2016. Section 15 makes several technical provisions to ensure that licences, authorisations, approvals, certificates, codes of practice, etc., remain in effect after the dissolution day.

Part 3 of the Bill makes various technical amendments to ensure that the EPA can continue to carry out all of the functions of the RPII without interruption after the RPII is dissolved, and to provide the EPA with the necessary functional authority to do so. It consists of 16 sections and is divided into three chapters. The first chapter makes the necessary amendments to the Radiological Protection Act 1991, the second chapter amends the Environmental Protection Agency Act 1992, and the third chapter amends other relevant legislation and statutory instruments.

With regard to Chapter 1, section 16 amends section 8 of the 1991 Act to ensure that codes of practice concerning radiological protection matters which are completed after the dissolution day comply with the standards laid out in the EPA Act. Section 17 amends section 9 of the 1991 Act to ensure that it refers only to radiological functions and not all of the functions of the EPA upon transfer as a consequence of the provisions of section 6 of this Act. Section 18 amends section 36 of the 1991 Act to remove a potential conflicting duplication between the confidentiality requirements laid out in the 1991 Act and the EPA Act.

In Chapter 2, section 19 amends section 3 of the EPA Act by inserting definitions of "ionising radiation", "radioactive substance" and "radiological protection" for the purposes of that Act. Section 20 amends section 16 of the EPA Act to ensure that RPII staff and radiological inspectors are indemnified while undertaking bona fide duties of the EPA upon their transfer. Section 21 amends of section 19 of the EPA Act to provide for a fifth director to be appointed to the EPA. Sections 22 and 23 amend sections 21 and 24 of the EPA Act, respectively, to allow the Minister to appoint a person with radiological protection expertise to the selection committee that appoints directors to the EPA and that such radiological protection expertise may be a consideration in the appointment of EPA directors by the selection committee. Section 24 amends section 25 of the EPA Act to ensure that the determination of licences issued under Acts or orders dealing with radiological protection may be delegated to staff below director level

after the RPII functions transfer to the EPA. Sections 25 and 26 amend sections 27 and 28 of the EPA Act to allow that radiological protection expertise may be a basis for appointments to be made to the EPA advisory committee and that the advisory committee may provide advice on radiological protection matters.

Section 27 amends section 45 of the EPA Act to disallow the transfer of radiological protection functions from the EPA to other public sector bodies, such as local authorities, using general devolutionary powers under this section available to the EPA in regard to its other functions. Section 28 is a technical amendment to section 53 of the EPA Act to ensure there is no duplication between the principles and policies laid out in this section, and similar provisions relating to radiological protection functions in the 1991 Act concerning the ability of the Minister to confer additional functions upon the EPA. Section 29 is a technical amendment to section 55 of the EPA Act to allow the Minister, other Ministers and the Government to seek advice or recommendations from the EPA in relation to radiological protection functions transferring from the RPII, as well as advice on environmental protection functions as currently provided for within that section. Section 30 amends section 66 of the EPA Act to extend the entitlement of the EPA to undertake, or seek, quality assurance exercises or guarantees from laboratories undertaking radiological protection work, as well as from those engaging in environmental work as currently allowed by that section. Section 31 amends of section 76 of the EPA Act to ensure that the standards for production of EPA codes of practice apply to codes of practice produced in regard to radiological protection matters after the transfer of functions to the EPA. This does not affect or negate any codes of practice drawn up prior to the transfer and still in operation. Section 32 amends section 79 of the EPA Act so that the Minister can give general directives on radiological protection matters in addition to environmental matters, as currently provided for by that section.

In Chapter 3, section 33 is a technical amendment of the Dumping at Sea Act 1996, as amended by the Foreshore and Dumping at Sea (Amendment) Act 2009, to resolve a legal technicality relating to the setting of minimum radiation levels of waste dumped at sea. Section 34 amends various regulations issued pursuant to the European Communities Act 1972 to transpose various EU directives and regulations to remove the RPII as a "public authority" from a number of European regulations under which the EPA is already a designated competent authority, following the dissolution of the RPII.

Part 4 of the Bill makes the necessary statutory provisions to enable Ireland to ratify the 2005 amendment to the CPPNM. Section 35 amends section 2 of 1991 Act by inserting a series of definitions relevant to the provisions which are necessary to meet the requirements of the amendment to the CPPNM. Section 36 amends section 8 of the 1991 Act to provide the RPII, and subsequently the EPA, with responsibility for the exchange of information internationally regarding the protection of nuclear facilities as well as nuclear materials. Section 37 amends section 27 of the 1991 Act to make the RPII or EPA the competent authority for the CPPNM, as amended. Section 38 amends section 29 of the 1991 Act to provide the RPII or EPA with the authority to seek Garda Síochána assistance when making inspections pertaining to quality assurance schemes that relate to the physical security of nuclear materials and facilities.

Section 39 amends section 30 of the 1991 Act, inserting new subsections, (4B) to (4E), to require that conditions relating to security measures for nuclear materials and facilities are incorporated into the licences issued in respect of them. Section 40 inserts two new sections, 34A and 34B, into the Act of 1991. The new section 34A introduces a requirement to prepare contingency plans, setting out the procedures to be implemented in the event of any theft or loss

of any nuclear materials in or over the State, or an accident relating to such material. The new section 34B establishes a quality assurance scheme with a view to providing confidence that specified arrangements necessary for the physical protection of nuclear materials and nuclear facilities are put in place.

Section 41 amends section 36 of the 1991 Act to require that individuals maintain the confidentiality of information received from another State under the CPPNMNF, unless duly authorised otherwise by that State. It also requires that any person with knowledge of security arrangements relating to nuclear facilities or nuclear materials should keep it confidential unless duly authorised. A breach of these confidentiality requirements will be an offence.

Section 42 amends section 38 of the 1991 Act to incorporate new offences relating to criminal use of nuclear materials or sabotage of nuclear facilities. In particular, it makes criminal deliberate activities intended to cause significant damage to the environment. The new offences set out include: extending offences relating to nuclear material to include offences relating to the receipt, discharge or emitting of nuclear materials in order to harm people, property or the environment; being reckless as to whether the receipt, possession, use, transfer, alteration, disposal, dispersal, discharge, emission or introduction of nuclear material would harm people, property or the environment; the illegal import or export of nuclear material; sabotage of a nuclear facility in order to release ionising radiation or radioactive substances to cause harm to people, property or the environment; being reckless as to whether sabotage of a nuclear facility could cause such harm; threatening to use nuclear material to damage the environment; or threatening to sabotage a nuclear facility to compel any person, international body or the State to undertake any action.

Section 42 amends section 38 of the 1991 Act to update the legal definition of the word "steal" to accord with that of the Criminal Justice (Theft and Fraud Offences) Act 2001. Section 43 amends section 40 of the 1991 Act to increase the maximum level of fine payable in respect of serious offences, reflecting the provisions of the Fines Act 2010.

Finally, Part 5 of the Bill outlines a number of miscellaneous provisions. Section 44 amends section 2 of the 1991 Act to update the definition of "ionising radiation" to reflect standard international legal scientific definitions. Section 45 amends section 7 of Act of the 1991 Act to provide a general function to the RPII to hold, use and dispose of nuclear devices without needing a licence. Section 46 amends section 3 of the EPA Act to insert a definition of radioactive substances the same as that in the 1991 Act. Section 47 amends section 52 of the EPA Act to provide a general function to the EPA to hold, use and dispose of nuclear devices without needing a licence. The Schedule to the Bill incorporates the text of the 2005 amendment to the CPPNM.

*2 o'clock*

In conclusion, this is a very important Bill which should be enacted without undue delay. In part, it is a technical Bill that allows for the merger of the RPII and the EPA as required to meet Government policy. It also makes a number of small technical amendments to facilitate the radiological protection functions of the RPII and the EPA when it takes over these functions. This Bill also seeks to put in place the necessary legal provisions for Ireland to be able to ratify the amendment to the CPPNM. This is an important convention in terms of international nuclear security and to mitigate the potential for nuclear terrorist acts. It is important that we live up to the standards that we have always held in regard to nuclear materials by meeting our responsi-

bilities regarding this convention. If not, we risk undermining our position and the reputation we have developed over the last 40 years as champions of international nuclear safety, security and non-proliferation. The sooner this Bill is passed, the sooner we can ratify the convention. I commend the Bill to the House.

**Deputy Michael P. Kitt:** I welcome the opportunity to discuss the Bill, which Fianna Fáil strongly supports. We need a strong and sound framework to deal with dangerously volatile nuclear material, which is of paramount importance to any state.

The legislation also gives us a chance to discuss the broader Government approach to reshaping our public service. Prior to the 2011 election, the public was promised a dramatic reduction in the number of quasi-governmental organisations. This promise, like so many others, has been thrown by the wayside. Fine Gael, in its pre-election promises, stated: "One of the essential measures in Fine Gael's five point plan is to abolish or rationalise 145 State agencies, boards, committees, task forces and public bodies, often referred to as quangos, to help us hit the deficit reduction target without affecting frontline services". The cameras were rolled out for a photo shoot and it was said the face of public service would be radically changed by Fine Gael, with quangos a thing of the past. We are now into the Government's fourth year and the reality of that promise is very different from the bold numbers outlined by the Government. The fact is Ireland now has a grand total of 12 quangos fewer than when the Government took office. This is a far cry from the promised 145 quangos to be abolished before the election. In fact, the Government has set up 33 new quangos and merged 45 to date. On top of all that, it set up the bonus-driven super-quango of Irish Water. In the legal services industry, it intends to set up two further quangos to help regulate the area.

If this is the "Reinventing Government" promise made by Fine Gael, maybe it does actually believe it achieved a "democratic revolution". However, instead of streamlining public services it has attempted to present its failures to live up to pre-election promises as radical change. It is the typical spin-obsessed policy by the Government, where spin triumphs over actual substance.

The Government has not clarified how much it has actually saved from the 45 mergers that have taken place to date. I am interested in finding out how much these savings have been offset or completely overwhelmed by the establishment of the additional 33 new quangos. Does the taxpayer really pay less now or is the Government desperately trying to hoodwink them? In his speech, the Minister of State said "the savings may not be significant". I hope that when he replies he will outline the savings involved in this legislation. At the current rate of progress achieved, by 2016, the end of the Government's term, the net reduction in quango numbers may be fewer than 20, or one fifth of the original target. This is nothing less than a damning indictment of the Government's "spin over substance" obsession and adds to the growing list of broken promises. The Minister of State's claims of progress in the quango cull is firmly rejected by these facts.

The original promise to abolish 145 quangos was born from a knee-jerk populist response by Fine Gael rather than a rational approach to how we can improve our public services. It failed to look at how best to reintegrate unnecessary bodies back into Departments, what additional bodies, if any, would be needed and the merit of retaining certain existing boards. Making sweeping promises without substance and then failing to deliver upon them when in power has been the hallmark of this Government. It is deepening public cynicism about the political process and underlining the disconnect between people and their politicians. This is all to evident in the huge anti-establishment vote in last month's elections.

I have some comments in regard to the specific proposal put forward in the Bill. The proposed merger makes sense and I support the legislation. The EPA has the capacity and experience to undertake the work currently under the Radiological Protection Institute of Ireland. The RPII was originally established in 1992 under the 1991 Radiological Protection Act, which conferred on the RPII a broad remit in regard to radiological protection in Ireland. The advisory, research, licensing and educational role of the institute can be adequately performed within the framework of the EPA.

It is vital that the newly merged body retains its commitment to the goals and objectives of the institute and its work to date. The threat of nuclear fallout and ensuing radiological positioning is a dreadful vista for the country. We must continue to guard against such a possibility and adequately prepare to deal with it. While Ireland has no nuclear power plants, nor should it, we do have radiological materials, in particular in medical facilities, and we need to be enabled to adequately deal with this.

It also underlines the need to recommit to our efforts to shut down Sellafield nuclear power station, which remains a potential danger to the safety of the country. The impact of the plant on the east coast has been the subject of considerable debate and public anxiety. The newly merged body should have a role in undertaking research into this area and strengthening our case. The watching brief that the RPII has had in regard to Sellafield and its ongoing activities must be maintained within the newly merged body. The possible impact of the plant on Ireland demands ongoing supervision to back up our case with the UK.

This Bill also enables Ireland to ratify the 2005 amendment to the International Atomic Energy Agency Convention on the Physical Protection of Nuclear Material. This is an important convention in establishing high standards of care in handling these extremely hazardous materials. All EU member states are among the signatories, with Ireland ratifying on 6 September 1991. The convention required that the international community afford certain levels of physical protection during the international transport of nuclear material. It also established a framework for co-operation among member states for the protection, recovery and return of stolen material.

I have long been a great admirer of the work of the RPII and I would like to particularly mention a brochure sent to Members in recent days, with the very helpful title of "Who we are and what we do". The leaflet sets out clearly the situation as regards radiation in the environment, in the home and in the workplace, as well as nuclear safety and emergency response. In particular, the issue of radiation in the home is one that should be further debated in this House. The leaflet states that exposure from radon, particularly in the home, accounts for 56% of the total radiation dose received by the Irish population. It states that exposure to radon represents the greatest health risk from exposure to radiation and it is linked to up to 250 cases of lung cancer each year.

In a letter, the chairman of the RPII, Professor William Reville, refers to the significant problem with the naturally occurring radioactive gas, radon. He states that radon is the second biggest cause of lung cancer after smoking and refers to the 250 radon-linked lung cancer figure, which is greater than the statistic for deaths on the road in Ireland, which was 190 road fatalities in 2013. He suggests that reducing exposure of the Irish population to radon is obviously a matter of great importance, and that the RPII plays a key role in the national radon control strategy launched by the Minister, Deputy Phil Hogan, in February 2014. Professor Reville also refers to the national radon survey and the preparation of a radon map of Ireland

which divided the country into 10 km grids. In each of those squares, a percentage of houses predicted to exceed the national radon reference level were surveyed. This is the level at which house owners are strongly advised to take steps to reduce radon levels. The RPII offers a home radon measurement to all domestic householders and places of work in Ireland and strongly encourages those with indoor radon levels above the radon reference level to have remediation work carried out to reduce the radon concentration.

I very much welcome what Professor Reville has said. I think the RPII has an excellent reputation at home and abroad. It is trusted by the Irish public and seen as an independent body whose regulations, guidelines and advice are solidly based on the best scientific evidence. This legislation underpins the work it is undertaking, strengthens the protection of nuclear waste and material and deserves to be supported.

**Deputy Brian Stanley:** I will start with the role of the RPII. People's main awareness of that relates to the role of the RPII in monitoring Sellafield and the threat posed by releases of radioactive material into the Irish Sea from that nuclear facility on the west coast of England. I know the Minister of State will take an interest in this because clusters of cancers in the Louth area, which is in his constituency, have been highlighted over the years by local doctors. This would lend weight to the case that some of these are caused by material leaking from Sellafield into the Irish Sea and the atmosphere. In 2009, the RPII issued a report following a survey of over 500 people which concluded that levels of radioactivity in the Irish Sea were low and did not present a significant level of threat. That would conflict with many people's perception that radiation from Sellafield was indeed dangerous and was responsible for cancer. A report by the RPII in 2002 was far more critical of Sellafield. The RPII was given access to the plant and was able to conduct its own examinations. It concluded that the quantity of radioactive material held in storage tanks was so high that it would represent a severe risk even to people at a far distance from the plant if there was to be an accident there.

Despite its acceptance of a study that found no link between the occurrence of Down's syndrome in the Louth area and emissions from Sellafield, in 2001, the RPII insisted that Sellafield remained a danger due to the levels of radioactivity in the Irish Sea and the risk of an accident. It is clear that there is still a need for this state to have the capacity to monitor levels of radioactivity emanating from Sellafield and I hope that this remains the case when the merger of the RPII and the EPA takes place.

That is the key concern. Of course, quangos need to be cut and that was referred to earlier on. However, there is a concern that the role and work of the RPII would not diminished or lessened and that the vigilant role it plays would not be in any way dissipated by the merger. The need for such capacity was illustrated earlier this year when Sellafield claimed that higher levels of radioactivity around the plant were caused by naturally occurring background radon rather than anything concerning the operation of the nuclear facility. It is clear from the past that we cannot rely on such self-monitoring and that, therefore, we need our own agency. We know that Sellafield and the nuclear industry in Great Britain have issued their reports but we know from the past that we cannot rely on them.

The RPII has also conducted other research into both artificial and naturally occurring radioactivity and in 2008 found that levels of exposure in Irish people were much higher than the global average. While some of that was due to the accident at Chernobyl and Sellafield, much of it was connected to high levels of radon in the atmosphere here. The RPII stresses that radon continues to be an important concern and that its current work must continue when it is

merged with the EPA. I also note that the RPII opposed amalgamation with the EPA so perhaps the Minister might address that point. The RPII's chief concern appears to be the concern that radiological protection will not have the same priority. I believe it is requesting that some reference to its functions be included in the title of the EPA. It also wants the radiological protection office within the EPA to have statutory footing. Could the Minister of State clarify whether it will have statutory footing within the EPA?

I note that section 12 of the Bill provides that all of the staff of the RPII will be transferred over to the EPA with the same pay and terms of employment. That is to be welcomed and I would also hope that the RPII's concerns regarding the continued focus on the importance of monitoring any radiological threat will be maintained. Section 23 states that "radiological protection expertise" will be a consideration in the appointment of EPA directors. Perhaps that ought to be amended so that at least one of the five directors of the EPA, as expanded by section 21, would be someone with the necessary expertise and background. The same applies to the provision in section 25 for appointments to the EPA advisory committee, which should also contain someone with that expertise.

Apparently an office of radiological protection is to be established within the EPA but the RPII has concerns that its functions might change over the course of time and that there might be a drift. This is why it thinks there is a need to establish it on a statutory footing. It would like to see the office established under this Bill to ensure that it will in fact concentrate solely on the issues which up until now have been the responsibility of the RPII.

One of the priorities for the RPII has been the monitoring of natural radioactivity caused by radon. It is vital that this work continues given the high levels of radiation detected here. As referred to previously, they are well above the international average and it is believed that this is in large part as a consequence of radon. Radon is the second highest cause of lung cancer in this country after smoking tobacco. It causes 250 deaths per year, which as the RPII has pointed out is higher than the average number of road fatalities, and yet nowhere near the same level of importance or preventative programming is devoted to it. While the issue of radon in the home is not dealt with in this Bill, it is something at which we need to look given the fact that we are losing 250 people per year. It is safe to assume that a high number of those deaths are caused by radon in the home.

The mapping exercise has highlighted areas of the State that have high levels of radon. Perhaps that is something that the Department might look at and highlight. There may be no better way of doing it than through the local authorities to get the message out there that this is a factor. I am not an engineer but I do know that a radon barrier can be fitted. When new houses are being built, we can highlight the need for people to fit radon barriers in their homes. Perhaps the Government might look at a tax incentive programme similar to what it has done with the home improvement scheme. It could be a tax incentive or small grant scheme in areas with very high levels of radon so that people could take out floors and fit radon barriers. It is something that needs to be done. We need to let people know. There was a good deal of information on it six or seven years ago, but issues such as this have been put on the back burner because of the economic crisis and so on. We should give attention to it. If people are building a new house or an extension in an area in which there is a high level of radon, they should be made aware of this in order that they can install radon barriers during construction.

The RPII has conducted excellent research on radon levels and published a map showing where radon contamination is significantly in excess of acceptable levels. It tends to be in clus-

ters around the State, with notable incidences in parts of Connacht and the south east. People can also assess the levels in their own area through a facility on the institute's website. This could be publicised through the media and local authorities. On the basis of this research, the institute advises homes and businesses on the level of risk and measures which can be taken to reduce and ameliorate the risk. It is vital that this research and work continue, which bolsters the argument in favour of strengthening the references in the Bill to an office within the EPA dedicated to radiological protection work. The research is important, but maps are available. The Department should examine publicising their availability again through the media and local authorities and should consider incentives to help people to carry out remedial works. A version of the tax incentive provided under the home improvements scheme could be considered to help people in areas in which there are clusters of radon sources. They could be drinking tea and sleeping on top of a radon source without knowing it.

Seven years ago a report was commissioned by the British and Irish Governments on the Sellafield plant and the Irish Government footed the bill for it. A heavily edited and short version saw the light of day. If the Government had commissioned and paid for it, the entire report should have been made public. It is important that we remain vigilant. The nuclear industry in Britain has huge resources available to it and significant resources are put into the use of propaganda which the industry would describe as publicity and public relations. We have a nuclear free island, given that the North has declared itself nuclear free; therefore, it is important that the Government continue to state our opposition to the plant and monitor what is happening in it.

The key message is that the good work carried out by the RPII should continue and that it should be not be diminished in the merger with the EPA.

**Deputy Richard Boyd Barrett:** The produce of nuclear power plants, nuclear waste and the nuclear industry generally in how it relates to the production of nuclear weaponry make source of nuclear energy the most dangerous substance in the world. Nothing could be more serious than how we deal with it. It may be one of the great indictments of society that human beings have produced the most dangerous and lethal substance imaginable for military purposes because that is where it all began. Alongside the Nazi Holocaust, probably the most obscene crime committed by one group of human beings against another was the dropping of nuclear weapons on Nagasaki and Hiroshima, not by so-called terrorists but by the most advanced and self-proclaimed civilised society in the world. Over two days approximately 200,000 people were incinerated. Two cities were destroyed, with virtually every living thing in them, using this new technology. One would have thought this event would have been enough for our society to say collectively, "Never again," just as most sane and sentient human beings say, "Never again," to the horrors of the Nazi Holocaust. One would have thought that would have been the immediate reaction to the horrors of what happened in Nagasaki and Hiroshima, particularly when one considers the cold, calculated geopolitical logic that drove it. A cursory examination of what happened at the end of the Second World War and the history of that period makes it clear that there was no military necessity for these bombs to be dropped. They were dropped not as the final action of the Second World War but as the first action of the Cold War. It was essentially a move by the United States to ensure Russia would not gain influence in Japan. That set the scene for the Cold War and the nuclear arms race. The other day I tried to explain the Cold War to my ten-year old son. There is a young generation growing up who do not understand that in 1962 the world came close to the abyss during the Cuban missile crisis when we were on the edge of nuclear annihilation. The two largest super powers in the world shaped

up to one another in an effort to secure their strategic interests in their geopolitical-military struggle and seriously contemplated unleashing nuclear weapons in an action that could well have spelled the end of civilised society and, potentially, humanity. The arms race continued, which is from where the nuclear industry derived.

Some suggest nuclear power is benign and might help us to solve the energy crisis in an environmentally friendly way. This is utter nonsense. It fails to acknowledge the fact that nuclear power was developed as a by-product of the production of nuclear weapons and that is the only reason for it. The claim that it is an efficient or a relatively cheap way of producing power is utter nonsense. During the great miners' strike in 1984 and 1985 the National Union of Mineworkers produced a report which showed that if British Coal had received the same subsidy as British Nuclear Fuels Limited and the nuclear industry, it would have been able to give away every bag of coal that Britain produced at the time free, with a £10 voucher. Nuclear power production is not cheap or cost effective. It requires enormous subsidies from states and is a constant environmental threat, as well as a threat to the health and lives of people living in the vicinity of nuclear plants. Why is this energy produced? It is produced as a by-product of the nuclear arms industry. For that reason alone, there is a huge irony in respect of some of the states that are signatories to the conventions we are seeking to ratify. We should ratify them, but there is a huge irony that they seek to put in place legislation, protections and so forth to ensure the safety of nuclear power plants from terrorist attack when, in fact, it is the plants that are the problem.

Every nuclear plant is a potential nuclear bomb that could explode at any stage. There would be no necessity to protect ourselves against a threat to nuclear plants if we did not have the plants in the first place. They are the danger, along with the people who produce and operate them and the governments that sanction that and put enormous amounts of taxpayers' money into them in places such as the UK, France, the United States, China and the other nuclear power generating countries. We would not have to worry about these things or be obliged to pass these laws and conventions if we did not have this insane technology which provides no benefit to society and simply represents a threat. It only exists to produce the material that is used to make nuclear weapons, the most obscene military technology in the history of humanity. It is important to register those points. We are obliged to worry about a threat that we, as a society, have created.

Ireland is against nuclear proliferation and does not have nuclear power stations. The only reason it does not have them is the huge movement that arose against an attempt to develop a nuclear power station in Carnsore. Due to the mass popular movement against that attempt, Ireland is a nuclear-free zone in terms of producing nuclear power. As the Minister said, we have historically taken a progressive position in opposing nuclear proliferation. However, one cannot repeat too often the point about the lunacy of nuclear power and nuclear weaponry and the urgency of decommissioning the nuclear power and nuclear arms industries.

We do not experience now the same Cold War fears that hung over a generation in the post-war period about the possibility of nuclear annihilation. That existed through to the 1980s. One of influences that first led me into politics as a youngster was becoming aware of Nagasaki, Hiroshima and the Campaign for Nuclear Disarmament, CND, movement. That was a big movement at the time because there were real fears up to the end of the Cold War about the potential use of these weapons and the awesome destructive potential of the nuclear arsenals of the big powers, notably the United States, Russia, China and Britain. In fact, while there has been a small amount of decommissioning, these weapons are still being produced. There is

still an enormous arsenal of them. Nuclear material is being transported across the seas close to us, while nuclear power is still being produced. Britain now intends to build eight new next-generation nuclear power stations in the UK.

If one thinks about it, the threat is as real and terrifying now as it ever was. Consider the geopolitical manoeuvrings of Russia and the United States in Ukraine and Europe's involvement in that. War is breaking out essentially because of the manipulations of the big powers in Ukraine. One begins to get a sense of the re-emergence of the logic that drove the Cold War and the quite terrifying possibilities that went with it with regard to the potential for war on a bigger scale and the use of nuclear weapons when things get out of control. It has been done before. The United States did it previously for cold, calculated geopolitical advantage.

One could also consider Israel, a state increasingly normalised by the European Union even though it is a renegade state in terms of its attitude towards nuclear power and nuclear weapons and its refusal to sign up to international treaties. Europe and the United States continue to treat Israel as if it is a normal state when, in fact, it is an incredibly dangerous entity that has these weapons and a huge nuclear industry. It does massive trade with Europe. Indeed, the technology industry in this country produces components for some of the weapons. Raytheon in the North, which thankfully closed down due to local protests over many years, was producing components for depleted uranium missiles used by the United States and Israel. In the South a number of companies are producing components for such weapons and exporting to Israel and so forth.

It is important to remind people what we are dealing with, how terrifying it is and how very real the threat is. The threat has not gone away. Indeed, with the development of new plants in the UK, it is increasing. Against that background, the idea is to get rid of a dedicated institute whose responsibilities are to monitor the nuclear industry internationally and the impact nuclear power plants and the transport of nuclear waste could potentially have on this country, to prepare plans in case of a nuclear accident and to deal with the naturally occurring problem of radioactivity in the form of radon, which leads to more deaths than road accidents. These are very serious matters, although not ones most of us think about on a daily or weekly basis. To have an entity that is dedicated to monitoring this area, making sure we have plans in place to deal with a serious accident should one occur and essentially fighting our corner on the international stage as a nuclear-free state and a state that might be endangered by the nuclear activities of other states is very important.

Given the importance of what we are dealing with and the importance of the role of the Radiological Protection Institute of Ireland, I do not understand why the Minister is doing this. The single explanation given is that there might be some savings, although the Minister cannot identify them. That is not a very strong argument for getting rid of an institute that has such an important function and has developed an important international reputation.

Why is the Government getting rid of it? I do not understand. In any event, all staff currently working there will be transferred to the EPA, which means there is no saving in that regard.

Where are the savings coming from? So far, the only thing that has happened as a result of the plan is that more costs will be incurred. I heard that €800,000 had been set aside to progress the merger. It may actually cost us more to dissolve the RPII than to maintain it as it currently functions. I understand that the board which will be dissolved costs virtually nothing at €60,000 a year. Any committee established within the EPA is going to cost the same anyway.

As such, I do not see where the savings are coming from. It seems like more cosmetic politics from the Government to suggest that we are getting rid of quangos. We are not in many cases getting rid of the quangos that really matter, the ones which really cost us or which have no justification. In the case of Irish Water we are establishing a new quango that will drain the pockets of citizens. It is already costing us an absolute fortune in the tens of millions of euro for consultants and billing systems. Here, we have an institute which actually does something useful and is dealing with an important issue but we are planning to dissolve it.

I would like to hear from the Minister of State why we should endorse this. It is unfortunate that the Government has mingled the plan to dissolve the RPII with the need to ratify the treaty, which we should do. It is ironic that we must ratify these things as the nuclear industry is so insane. We will be ratifying the treaty along with the states and powers which have created the threat in the first place. It is laughable. If they were serious about dealing with the problem, they would decommission the whole industry. However, given that the industry exists, we must ratify the treaty. That treaty matter should be separated from the issue of whether we dissolve the RPII into the EPA. I would like to hear why these things are being rolled up when they should not be. Frankly, my inclination is to vote against the Bill on the basis that we should not do this. The Minister of State has failed to provide any serious justification for getting rid of the Radiological Protection Institute. However, I do not want to vote against the other measure and should not be forced to. I put that out there for the consideration of the Minister of State and for the consideration of other Deputies who may not have had a chance to look at the issue yet. There are many things happening and preoccupying people which may seem more immediate, but this is quite an important issue. These two things should not be rolled into one.

I do not expect that the Government will rework the Bill or separate it into two Bills, which is what should happen. However, there is an opportunity for it to consider the comments that have been made and to respond now or on the next Stage of the Bill. Unless I hear very convincing arguments which respond to the questions I have raised and provide serious justification for what is being done here, I will vote against the Bill and encourage others to do the same. I realise the Government's majority means that will probably not make a difference. However, it should not be the case that a potentially controversial issue is rolled in with something which is not controversial. Most people would endorse the view that we should ratify an international treaty to ensure the safety of nuclear energy plants and materials. I hope the Minister of State will come back with convincing arguments. On the face of it, we should retain the RPII.

If the Government is insistent on going ahead with this, it must ensure that whatever committee is established within the EPA to deal with the very important areas covered by the RPII is placed on a statutory footing. If it is not, things may chop and change within the EPA on an administrative basis. Skills and expertise could be diluted and a dedicated focus on the extremely important matter of protection from radioactivity and nuclear waste could be lost over time. They might be diluted in a way that seems relatively unimportant to people now, but which comes back to haunt us in the event of an accident at Sellafield or Hinkley Point or where a nuclear powered ship dropped a load or sank in the Irish Sea. Suddenly, we would all go running to ask "Who has the plan? Who knows what the hell to do in this extremely dangerous situation?" only to find that we had diluted or weakened the body whose responsibility it is to monitor those things.

I await the Government's response to those points. I hope it will take them seriously.

**Deputy Paudie Coffey:** I welcome the opportunity to contribute to the debate. I have lis-

tened carefully to many of the contributions. While I may not have the same cynical approach as Deputy Boyd Barrett, I understand that he has genuine concerns which he has the right to voice here.

Radon and radiological issues have always been of concern to the Irish people. We have addressed them in a very responsible manner to date. We must continue, however, to treat them with the utmost attention. The Radiological Protection Institute of Ireland must be commended. It has provided a valuable service to citizens. That it is being merged with the Environmental Protection Agency, which seems to me to be its natural home, does not mean reduced resources will be applied to radiological protection issues. I urge the Minister and officials to ensure that resources are maintained.

I acknowledge the work and expertise of the staff of the institute and commend them on what they have been doing in the many years since the RPII was formed to protect citizens from the harmful effects of ionising radiation. They have many other responsibilities. Radiation can occur in the environment, our homes, educational facilities, industry and commercial areas. Radiation can be utilised in positive ways, as we know from X-rays and other medical applications which are essential to medical practitioners and specialists who use them in the best interests of their patients. At the same time, it is important that we know and recognise the risks of radiation to the general population and human health. That is why there is an important role for State agencies to licence and monitor the use of radiation in the health sector, industry and commerce and education.

Deputy Boyd Barrett and others have spoken in detail about concerns regarding nuclear energy and radioactivity from artificial sources. Many views are on the record on that. We have had a great deal of public discourse on threats and risks from Sellafield. I note that last year or the year before, a detailed report was published on behalf of the State which showed that there was little or no risk from Sellafield should a crisis occur there. I acknowledge the departmental officials, the scientists and the Minister who produced the report to reassure the Irish people. It is important that we do not have misinformation and scaremongering. The report was important to reassure people in that regard.

My main focus in the debate is on naturally occurring radioactivity in the form of radon gas. I come from Waterford in the south east, which has high levels of radon in the ground. My colleague, Deputy John Paul Phelan, probably has similar concerns. Radon is a silent killer and although the RPII has done tremendous work on education and awareness, I still fear many members of the public do not fully comprehend the risks when radon is present in the home or workplace. Exposure to radon, mainly in homes, accounts for 50% of the total radiation dose received by Irish people. We must not lose sight of that statistic. Exposure to radon gas poses the greatest radiation-related health risk in Ireland and is linked to almost 250,000 deaths per year in Ireland from lung cancer. It is a serious concern and an issue that we continually need to address. The RPII engaged in roadshows and information seminars in the past, and this should continue under the new arrangement with the EPA. The organisation should continue to engage with local authorities, which have the potential and capacity to play a greater role in creating awareness and managing radon issues on the ground in our constituencies. Much information is available in respect of mapping and it is simply understood if the public is made aware of it. There are high-risk areas in the country, of which Waterford in the south east is one.

We can do more, and the following is an example. For a house to be sold or rented, a building energy rating, BER, certificate must be produced. This requirement is justified because it

informs the purchaser or the tenant of the kind of house the person is moving into and how efficient it is. Given the statistics we know about radon and its threat to public health, any house sold, rented or passed on to other people should have a radon test certificate. The amount of money involved for the test is similar to that for the mandatory BER certificate. I call on the Government to introduce mandatory testing for radon gas in houses in areas where there are high risks to public health. This would create awareness among the important stakeholders dealing with property management. Providing that houses cannot be sold or rented unless the test is done puts responsibility on people before tenants or new purchasers move into the area without realising the risks in the ground.

There are ways of addressing this that are not too expensive. Many new houses are being dealt with in this way under building regulations through the provision of radon barriers. I hope that system is regulated and monitored properly by local authorities and other professionals in the construction field. A school in my area with high radon levels had to carry out remediation work. A pump system was installed in the school to draw out the air and circulate it to ensure radon levels were not high. Simple measures can be introduced to address problems where they arise. We need to address why a BER certificate is mandatory but a radon certificate is not, and I ask the Minister of State and his officials to do so.

In 2010, when I was a Member of Seanad Éireann and spokesperson on the environment, I called for a national radon strategy. I welcome that the strategy was published in February under this Government. It contains a number of recommendations that I do not have the time to go through in detail. The strategy contains recommendations that I hope will be adequately resourced. Radon gas is a colourless, odourless and tasteless gas and we can breathe it in day in and day out without realising it. It is the second biggest contributor to lung cancer after smoking. It is not something we can afford to dismiss and we cannot lessen the resources provided for dealing with it. There are concerns on the Opposition benches that, because a merger is taking place, there might be fewer resources available for the managing and monitoring of radioactivity levels in natural and non-natural areas. I urge the Minister of State, his officials and the EPA to ensure resources continue to be put into radiological protection issues, monitoring and licensing.

Another area must be addressed. During recent debates on the EirGrid transmission lines, which were controversial, it was discovered that there is no independent State agency dealing with non-ionising radiation, the electromagnetic field that can come from transmission lines. In the interest of public assurance and confidence, we should look at extending the remit of the EPA so that it carries out a State examination of non-ionising radiation. This is a deficit in our current system and perhaps the Minister of State can address its introduction, which is welcome move.

**Deputy John Paul Phelan:** I echo the comments of Deputy Coffey on non-ionising radiation and EMF. Now that we are re-establishing the EPA, incorporating the role of the RPII, perhaps its remit can be broadened to include that area. I echo the points made in respect of radon. As someone from the south east, our area of the country seems to have the highest levels of radon measured. I commend the work of the RPII and I hope the work will be continued in the new format as part of the EPA.

Deputy Richard Boyd Barrett raised a number of issues concerning the roles carried out by the RPII, and the Minister of State may have the opportunity to reassure the Deputy that those functions will be carried out and perhaps extended, as suggested by me and Deputy Paudie

Coffey.

Deputy Boyd Barrett also referred to the ratification of the CPPNM and changes made therein. The dualist Irish legal system requires incorporation into statute as well as ratification of the treaty. That is why this aspect of the legislation is necessitated. Perhaps the Minister of State can confirm this point.

I express my full support for this particular item of legislation and the reasons it is being introduced. I like Deputy Michael Kitt, but one can always tell when people are uncomfortable speaking on something because they race through it. He raced through his speech giving a lecture on how the Government had not abolished half enough quangos. He was a Member of this House and the Upper House for the past 14 years, when quangos were created at a rate of knots. There was a quango every day of the week and it is a bit rich to be lectured by someone from Fianna Fáil on the point that the Government is not abolishing half enough quangos. The programme for Government gave a commitment that 48 agencies would be rationalised and I understand 45 have been rationalised at this stage, with another 46 being examined. The RPII and the EPA were part of the group of 46. There is natural synergy between the role of the EPA and that of the RPII.

*3 o'clock*

It makes sense for the two roles to be merged. I am confident from what I have read and heard that the role of the Radiological Protection Institute of Ireland will be fully incorporated into the new unit within the Environmental Protection Agency.

Debate adjourned.

## Johnstown Castle Agricultural College (Amendment) Bill 2014 [Seanad]: Second and Subsequent Stages

**Minister for Agriculture, Food and the Marine (Deputy Simon Coveney):** I move: "That the Bill be now read a Second Time."

I am pleased to introduce the Johnstown Castle Agricultural College (Amendment) Bill 2014 which is a technical amendment to existing legislation governing the use and disposal of land at the Johnstown Castle estate. The scope of the Bill is narrow and straightforward. It is purely an enabling provision to permit Teagasc to develop part of the Johnstown Castle estate, comprising the castle and gardens, as a visitor attraction and to permit the sale of a small area of land to the local community for a burial ground. As expected, there was strong support yesterday in the Seanad for the provisions contained in the Bill and its immediate enactment. I look forward to similar support from Deputies in order that the Bill can be passed into law as soon as possible.

Johnstown Castle estate was gifted to the State by private owners as provided for in the Johnstown Castle Agricultural College Act 1945. The gift was subject to a restriction that it be used exclusively for the purposes of a "lay agricultural college" and no other purpose. The Johnstown Castle Agricultural College (Amendment) Act 1959 extended use of the estate for the conduct of "agricultural research" and transferred ownership from the Minister for Agriculture to An Foras Talúntais. That Act also included a provision preventing An Foras Talúntais

from disposing of any part of the estate.

During the 1990s the statutory prohibition on a disposal of the estate was eased and provision was made for the disposal of up to 5% of the estate for "environmental, heritage, amenity or recreational purposes" under the terms of the Johnstown Castle Agricultural College (Amendment) Act 1996. The estate transferred to Teagasc under the Agriculture (Research, Training and Advice) Act 1988, with all related provisions remaining intact in terms of the disposal of estate land.

Johnstown Castle estate extends to some 980 acres and consists of a protected 19th century castle surrounded by gardens and farmland. The estate is of historic and cultural significance. The castle was built in 1840 and is the most significant surviving country house in Wexford. The Irish Agricultural Museum Society operates a museum on the estate, displaying local agricultural heritage artefacts. The walled gardens and grounds remain open to the public and the Department of Agriculture, Food and the Marine and the EPA occupy offices adjoining the estate.

Teagasc is obliged to maintain the estate at substantial cost to the organisation. It is currently used for farming and agricultural research purposes. The castle and gardens, comprising 120 acres, are no longer used for agricultural education or research. Teagasc is exploring the possibility of transforming the castle and gardens into a visitor attraction for the south east. It has commissioned a number of reports to find viable alternative uses. A conservation plan prepared in 2007, with support from the Heritage Council, recommended conservation works to ensure the significance of the property was maintained. A report commissioned in 2009 by Teagasc, the Heritage Council and the Irish Heritage Trust proposed phased interventions to transform the estate into a high quality visitor destination. More recently, a local steering group led by Teagasc commissioned a business plan to develop a range of visitor and amenity attractions that would attract a substantial number of visitors each year. Currently, the estate has approximately 35,000 visitors a year, but that figure could be increased significantly with the right investment.

Separately, the local community in Murrintown urgently requires land for a burial ground and has identified 2.8 acres on the estate that would be suitable. Teagasc wishes to facilitate the request, but the current legislation, limiting disposal to "environmental, heritage, amenity or recreational purposes" prevents it from doing so. It is proposed to change the legislation to permit Teagasc to dispose of land for burial purposes. The bequest of the estate was a substantial gift to the State by private owners, with certain conditions attached that restrict its use to agricultural education and research. As such, there are quite complex legislative arrangements governing the estate that can only be dealt with by way of legislation. Following examination of the existing legislation governing the estate, the Office of the Attorney General has confirmed that enabling legislation can be introduced to extend use of the castle and gardens and facilitate the transfer of land for a burial ground.

The Johnstown Castle Agricultural College (Amendment) Bill 2014 has six sections and the provisions are as follows. Section 1 provides for a definition of the 1959 Johnstown Castle Agricultural College (Amendment) Act, the Act being amended in the Bill. Section 2 amends section 1 of the 1959 Act to define Teagasc and the Act establishing it. It also defines the map detailing that portion of the estate known as the castle and gardens for which a change of use is sought. This map was deposited on 12 May 2014 with Ordnance Survey Ireland where it is available for public inspection. It is also available on my Department's website.

Section 3 incorporates a number of amendments to section 3 of the 1959 Act. Subsection (2)(a) provides for the inclusion of "burial ground" in the list of specific purposes for which land on the estate may be disposed of. There is no change to the existing 5% limit on land disposals. Teagasc has already accommodated local interests by providing small land parcels for amenity purposes, as already permitted under the 1959 Act.

Paragraph (b) is an entirely new provision which provides that the part of the estate delineated on a map and comprising the castle and gardens may be used for "heritage, tourism, amenity or recreational" purposes. This provides a statutory basis for the development of the castle and gardens as a visitor attraction. They are largely under-utilised in their current state and it is recognised that their preservation for future generations requires Teagasc to find alternative uses for the estate. As I said already, there is also a significant maintenance cost of €300,000 per annum which is not covered by admission charges to the estate currently.

Teagasc is preparing an outline plan to precisely define the project scope and estimate the full cost of transforming the castle and gardens into a visitor attraction. It is being assisted by the Office of Public Works and Fáilte Ireland to leverage their experience and expertise in developing heritage and conservation projects. Teagasc is also working with Wexford County Council and the county manager on the project. This is a collaborative effort to try to get the most out of a fantastic piece of infrastructure that was gifted to the State many years ago. The plan will be subject to a full capital appraisal in accordance with Government guidelines before any expenditure takes place.

Paragraph (c) permits Teagasc, subject to the consent of the Minister, to lease the castle and gardens or any portion of that part for "heritage, tourism, amenity or recreational" purposes. This is another new provision permitting Teagasc to lease the castle and gardens or part thereof to another organisation to manage it as a visitor destination on behalf of Teagasc, if it deems it the most appropriate and efficient way in which to operate the property as a visitor destination. Any lease will be subject to the consent of the Minister for Agriculture, Food and the Marine. Paragraph (d) is a re-enactment of the existing provisions. Subsection (3) prevents a change of use of the estate to anything other than the purposes set out in subsection (2). We are not really changing anything here. The estate will remain in its current state. We are simply looking for a change of use for the house and gardens but are keeping the entire estate in public ownership.

Section 4 inserts a new section 3A into the 1959 Act to set out the provisions relating to the map showing the area of the castle and gardens for which change of use is being made in order to separate it from the rest of the estate. It provides for the deposition of the map in the central office of the High Court and the Circuit Court office for the county of Wexford after the passing of the Bill. It also provides for retention of the map in the office of Ordnance Survey Ireland, OSI, and that it shall be available for inspection free of charge in the office of OSI. It is also available on my Department's website.

Section 5 inserts a new subsection in section 4 of the Agriculture (Research, Training and Advisory) Act 1988 which outlines the principal functions of Teagasc, which owns and operates the estate. As currently constructed, the existing provisions do not allow Teagasc to operate and develop the estate as a visitor destination. This amendment provides that, in addition to its other functions in providing research, advisory and education services to the agricultural sector, Teagasc may develop and operate the castle and gardens in the estate for heritage, tourism, amenity or recreational purposes. Section 6 provides for the short title and collective citation of this Act.

Johnstown Castle estate requires a new sustainable use to safeguard its future as well as investment to arrest the continuing deterioration of the property. The estate has potential to be developed as a visitor destination for the south east. However, the basis upon which the property can currently be used is restricted by legislation to agricultural education and research. The whole purpose of what we are doing today is to change that.

The Johnstown Castle Agricultural College (Amendment) Bill 2014 brings legal certainty to the future use of the estate and permits Teagasc to develop part of the estate comprising the castle and gardens for tourism purposes as they are no longer required for the performance of Teagasc functions in the agricultural sector. I emphasise that the estate will remain in State ownership and continue to be vested in Teagasc. The Bill is sufficiently restrictive to ensure that the spirit of the gift of the estate to the nation is respected. It does not interfere with existing sporting rights and rights of way reserved in perpetuity to the donors.

Teagasc has been in contact with the descendents of the original donors, who live abroad, about the content of the Bill and I am pleased to say that they have not raised any objections to the planned change of use. They are also supportive of the provision to include a burial ground in the list of purposes for which land on the estate may be disposed of. There is no direct cost to the Exchequer on enactment of the Bill. It is purely an enabling provision to allow the castle and gardens to be developed for tourism purposes and to permit the sale of 2.8 acres to the local community in Murrintown for a burial ground. The objective is to create a flagship heritage and tourism project in Johnstown Castle estate offering a wide range of visitor experiences. Any such development can be expected to generate positive economic spin-offs by enhancing the attractiveness of the area and sustaining jobs in the local economy through increased visitor numbers and so forth.

I look forward to the swift enactment of this legislation and hope the Deputies opposite will facilitate that. I also look forward to hearing what Deputies have to say, and if they have any questions or queries I will try to respond to them.

**Deputy John Browne:** Fianna Fáil supports this Bill. As the Minister has said, it is technical legislation which will change the existing legislation governing Johnstown Castle estate. Those of us who come from Wexford have always recognised Johnstown Castle estate as being a landmark in the history of County Wexford, but in recent years we have seen it deteriorate considerably. All political parties have been calling for Johnstown Castle to be developed as a centre of excellence in tourism, heritage or culture but those calls have been ignored until now. I welcome the fact that the current Minister has seen fit to change the legislation to allow Teagasc to develop the castle and grounds. The castle and its grounds are beautiful and include lakes which many people visit on a regular basis. Weddings and many other functions have been held in the castle, including launches of Wexford Strawberry Fair, 1798 celebrations and so forth.

The estate was not developed by Teagasc because it did not have the funds or the legal entitlement to do so. Now the Minister is introducing legislation to allow Teagasc to develop a section of the estate as a tourism centre. There are already many tourism centres in Wexford, including the Heritage Park, Enniscorthy Castle, the 1798 Centre, the Kennedy Homestead, Kennedy Park and Dunbrody, but if the castle at Johnstown is developed in the way it should be, it will become the jewel in the crown of tourism in the county. If one gets off a plane in Shannon Airport, one can go to Bunratty Castle, which is an important tourist attraction in that area. Approximately 1 million people travel through Rosslare Port every year, and if the castle

were developed in a manner similar to Bunratty and other castles in the west, that would encourage people to remain in the south east, and in Wexford in particular. We always bemoan the fact that people do not stay in Wexford and spend their money there. However, if Johnstown Castle estate is developed properly, many people will remain in Wexford and the wider south east generally.

The proposal to give land to the people of Murrintown for a graveyard is welcome. They have been seeking land for quite some time but the cost of land in that part of the county has been prohibitive. It is only right that the Minister would enable them to secure land for a burial ground. St. Martin's GAA club acquired land from the Johnstown estate in the past and I understand that it will seek more land to develop hurling and football further. The club is expanding its activities as a result of the huge increase in population in Wexford town in recent years. If it is obliged to seek land in six, 12 or 18 months' time, will the Minister be obliged to introduce further legislation in order to facilitate its procurement from the Johnstown Castle estate? If the latter proves to be the case, I hope he will be in a position to introduce amending legislation to allow Teagasc to surrender the relevant land. Perhaps the 5% provision would suffice in this regard.

A key part of fostering an enhanced tourism product will be the further development and promotion of the local culture and heritage product. The south east has the makings of a world-class centre in the interpretation and presentation of Ireland's history. I refer, for example, to the Kennedy interpretative centre in New Ross, the Viking Triangle in Waterford and other facilities to which I referred previously. In order to build on the success of The Gathering, it is important that we consolidate tourism success in the region and use all resources available to help encourage the industry. The Bill before us is a step in the right direction in helping to develop a strong tourism industry in the area.

I will not discuss the history of Johnstown Castle in detail because the Minister has already done so. Suffice it to say that it dates from Norman times. Teagasc has been responsible for the castle since the 1950s, when the late Dr. Tom Walsh was in charge. Dr. Walsh was a pioneer within the institution that is Teagasc and he was also one of the founders of the Wexford Opera Festival, which has gone from strength to strength and which is one of the great cultural success stories in this country.

The Irish Agricultural Museum, a labour of love for Dr. Austin O'Sullivan, is located at Johnstown Castle. Dr. O'Sullivan, prompted by the need to preserve material evidence relating to agriculture and rural life in general in Ireland, established the museum in the early 1970s. When one visits the museum, one is taken back in time and given an insight into how agriculture developed in Ireland through the 1930s, 1940s and 1950s and right up to the present. Dr. O'Sullivan always sought to have the castle and its grounds developed in a way that would encourage people to visit the museum. I am sure this will now happen.

I welcome the Bill. Fianna Fáil has no hesitation in supporting the legislation and wants it to be passed as quickly as possible in order to enable Teagasc to develop the Johnstown Castle estate in the way in which it should be developed and to facilitate the acquisition of land for a graveyard. Will the Minister indicate how St. Martin's GAA club will acquire additional land in the future without the necessity for further legislation to be introduced?

**Deputy Dessie Ellis:** I dtús báire, ba mhaith liom fáilte a chur roimh an mBille seo. Sinn Féin welcomes the Bill and, as such, has no objections to it. The proposal to develop the castle

and gardens at Johnstown Castle as a visitor destination for the south east region is also welcome. As we are all too aware, the region is an unemployment black spot which is in urgent need of assistance and action. Only yesterday, at a meeting of the Joint Committee on Jobs, Enterprise and Innovation, my colleague, Senator Cullinane, pleaded with the Minister for Jobs, Enterprise and Innovation, Deputy Bruton, for immediate, strategic and targeted Government intervention in the region. Sinn Féin has also repeatedly called for a regional IDA Ireland office and director to be located in Waterford. The south east is in desperate need of jobs and it is clear there is an opportunity to make use of the tourism potential of Johnstown Castle and its surrounding grounds and, hopefully, provide employment for people in the area and elsewhere as a result. Any spin-off from the development of the castle and its grounds that would have a positive impact on the local area is to be welcomed. However, I have one concern. It is imperative that we ensure - and place on record the fact - that neither the castle nor any part of its grounds should ever be sold for private development of any kind. The castle and its grounds were gifted to the State - or, in other words, the people of Ireland - in 1945 on the proviso that they remain in public ownership. It is our duty as legislators to ensure this remains the case.

We hope the work of Teagasc will not be affected by any aspect of the proposed development. It is valuable work and Teagasc must be properly resourced in order that it might continue its supportive role in Irish agriculture. At present, there is great demand on its services, particularly in terms of the education and training of young farmers. There is now an obligation on such farmers to obtain formal training from Teagasc in order to qualify for some farm payments. This has resulted in the numbers applying for level 5 and 6 courses increasing from approximately 500 to 1,500 per year. As a result of the public service recruitment embargo, Teagasc does not have the capacity to deal with this demand. This issue must be tackled. The aim of the new obligation for people to obtain training was very positive in nature. It would be a great shame if young farmers could not avail of it and meet the obligations relating to eligibility for payments due to the fact that Teagasc is so under-resourced that it cannot meet the demand.

Johnstown Castle is a valuable national resource that people cherish. Tourism needs innovation such as that proposed in this instance. The south east will benefit in a number of ways as a result of what is planned. Johnstown Castle and its environs should be cherished and developed in the interest of our people. The people of Wexford are rightly proud of their heritage and welcome the plans to develop the estate. The notion of establishing a centre of excellence at Johnstown Castle should be examined and I hope the Minister will give consideration to developing the estate for the benefit of both the people and the tourism industry.

**Acting Chairman (Deputy John Lyons):** I was not expecting Deputy Ellis to complete his contribution so quickly.

**Deputy Dessie Ellis:** I thought I only had five minutes.

**Acting Chairman (Deputy John Lyons):** The Deputy had plenty of time.

**Deputy Dessie Ellis:** I did not know that.

**Acting Chairman (Deputy John Lyons):** Next is Deputy Wallace, who has a maximum of 15 minutes. The Deputy appears to be out of breath.

**Deputy Mick Wallace:** Yes. It is great to see all the Deputies from Wexford in the House.

**Deputy Simon Coveney:** Deputy Wallace should take his time and get his breath back.

**Deputy Mick Wallace:** I am not as fit as I should be. I am sure Anthony Kelly of Sinn Féin will be a Member of the House after the next general election and he will be obliged to make contributions on the issue of agriculture as it relates to Wexford.

**Deputy John Browne:** I hope Deputy Wallace is not going to throw in the towel that easily.

**Deputy Mick Wallace:** Johnstown Castle is situated very close to my home. It is an absolutely beautiful spot. Am I correct in understanding that it will be reopened to members of the public? It is an awful pity that it has not been open to them for some time. Some years ago I played soccer in the grounds of the castle for Forth Celtic football club from Murrintown.

**Deputy Simon Coveney:** I would say the Deputy was fitter in those days.

**Deputy Mick Wallace:** Yes. I even ran three marathons without training for them. I could run all day on a soccer pitch at that time but, of course, I was much younger. I am glad to be able to walk at this stage.

Johnstown Castle is a real gem. It is extremely beautiful and it will be great if the public are given greater access to it. There is quite an amount of land attached to the castle and I am aware that Teagasc carries out a great deal of research there. I do not know how good that research is because I have not really studied the matter in any great detail. However, the Bill gives us an opportunity to discuss agriculture in the area. In that context, last weekend I bought some of the first new-season potatoes on sale in Wexford. As everybody knows, the best new potatoes in Ireland are grown in the county. The soil in Wexford seems to be unusual. Despite what the Minister for the Environment, Community and Local Government, Deputy Hogan, says, it is not very conducive to the good operation of septic tanks. However, it is very conducive to the cultivation of potatoes, strawberries and rhubarb. Of course, one cannot sell the latter. Years ago my father had an acre of rhubarb when no one else did. I love rhubarb and I used to get up in the middle of the night to cook and eat it. Last weekend I ate some British Queens I bought from Rowes of Fethard-on-Sea, which grows beautiful potatoes. I started a war on Twitter by mentioning this and all the other farmers in Wexford contacted me to argue in favour of the quality of their potatoes.

New potatoes are mainly grown on land located near the sea. The sandy soil suits the British Queen.

**Acting Chairman (Deputy John Lyons):** Deputy, I am going to be a killjoy. On Second Stage you can refer to what is in the Bill and what may be in the Bill. The scope is broad but I do not think it goes as far as your comments.

**Deputy Mick Wallace:** Do you know what? I have been in this place three years. Generally I come in here and talk specifically about the Bill before me. Yet, I have listened to people talk about everything except what is in the Bill for three years. Now, you want to tell me that I cannot talk about agriculture in Wexford.

**Acting Chairman (Deputy John Lyons):** No, you know what I mean.

**Deputy Mick Wallace:** I know what you mean. Thank you for the advice. It is much appreciated.

Given that Johnson Castle carries out research and makes recommendations for the industry in Ireland it is something of a surprise that there is no one promoting local potatoes, because the potatoes in Wexford are unusual. The matter is worth considering. In Wexford, British Queen, Golden Wonder and Kerr's Pink are grown but they make up a small percentage of the Irish potato. The Irish potato is now completely dominated by the rooster, which is easy to boil and exportable. It is used for chips and mash but people who really like potatoes and who know how to cook them are far more interested in Queens and Golden Wonders in particular because they have a stronger flavour.

An educational issue is at stake. We do not educate people today about how they should eat and cook. People have forgotten and many young people do not know how to cook potatoes. When cooking Golden Wonders, for example, we must finish them by steaming or they will simply burst. Young people do not tolerate that. There is far more demand for convenience food now because people know so little about cooking and that is not good.

Any supermarket owner in Ireland will testify that his frozen food cabinets are getting longer every year. We should think about this issue. Ireland produces such wonderful fresh food and yet our frozen food aisles are getting longer and longer. There is a problem here and it is something we should probably address in the schools. It is a great shame that we are not teaching our young people to cherish and enjoy the wonderful fresh food products we have.

**Deputy Simon Coveney:** We are doing that under the food use programme. We spend a good deal of money each year on fruit and vegetables in schools. They grow them in schools.

**Deputy Mick Wallace:** Does the Minister not agree? My brother has a supermarket. For 25 years his frozen food cabinet has been getting longer and longer. It is not that he does not have good fresh food, but there is less demand for it.

**Acting Chairman (Deputy John Lyons):** Deputies, can I remind you to speak through the Chair rather than responding back and forwards? Furthermore, we are beginning to go beyond the scope of the Bill, although I find what you are saying interesting.

**Deputy Mick Wallace:** You do not want me to talk any more about potatoes.

**Deputy John Browne:** He could set up cookery classes.

**Deputy Mick Wallace:** I am concerned because recently we have been growing genetically modified potatoes in Carlow. It will be a sad day if we go down that road and it is not in the interests of the Irish farmer to engage in genetically modified foods. If organisations like Monsanto begin calling the shots on what food we use and what pesticides or sprays we use then it will not be good, especially for the small food producer. Such a change would cause serious problems and there is a good reason why Europe has fought so hard against the introduction of genetically modified foods.

Something that has come to my attention of late is seaweed. One of the biggest plants in Ireland has been sold to a Canadian company. The company is looking for a licence to be allowed to process approximately 40,000 tonnes per year. At the moment there are two laws which are contradictory. I imagine the Minister knows a good deal about this. One of them dates back to 1934. One law holds that we are not allowed to take anything out of the sea without a licence while the other holds that if a person owns land beside the water he can go out as far as the tide. These are contradictory. The processing of seaweed is an indigenous industry and it should be

promoted.

I went out for a swim on Sunday morning and I was wading through seaweed. There are massive amounts of seaweed in Wexford but we are not processing it.

**Acting Chairman (Deputy John Lyons):** Deputy, I am unsure at this stage whether you are trying to rile me.

**Deputy Mick Wallace:** I am not.

**Acting Chairman (Deputy John Lyons):** All I can say is that in the Chair I am supposed to direct the debate according to what it is supposed to be about. I would not be doing my job in the Chair if I allowed you to continue to talk about seaweed. The Bill before the House relates to Johnstown Castle and the transfer of agricultural land within the property, some of which is to be used for the extension of a graveyard, as well as the redevelopment of the house. In fairness, I have been exceptionally flexible but you are really going beyond that.

**Deputy Mick Wallace:** How much talk has there been about the graveyard since the debate opened?

**Acting Chairman (Deputy John Lyons):** I am sorry. You would know if you were in the Chamber. Deputy, let us keep this as polite as possible.

**Deputy Mick Wallace:** Does the Minister for Agriculture, Food and the Marine think I am out of order in speaking about agricultural items? Seaweed is an agricultural item and an interesting topic. It is problematic.

**Acting Chairman (Deputy John Lyons):** Deputy, no one is disagreeing with you. It is simply that as Chair I am directed, according to Standing Orders, that the debate must be within the broadest remit of what the Bill entails. This Bill does not entail these topics. Deputy, I am being polite - I have been most polite.

**Deputy Mick Wallace:** You have spent more time talking than I have.

**Acting Chairman (Deputy John Lyons):** Deputy, will you stick to the Bill at this stage? You can be as broad as you wish as long as it is within what the Bill entails. We are drifting a little too much.

**Deputy Mick Wallace:** Johnstown Castle Agricultural College is certainly part of the Bill. I think the college should engage in the seaweed issue because there is scope for an industry related to seaweed in the area. Given the environment along the south coast of Wexford there is considerable potential for the harvesting of seaweed. I understand this area comes under the remit of the Department of the Environment, Community and Local Government as well as the Department of Agriculture, Food and the Marine. It would be disappointing if we allowed organisations like the Canadian company that has recently bought here to dictate who can or cannot use seaweed.

We should be promoting indigenous industry. We are finding out to our cost how much foreign direct investment can disappoint us on a regular basis. Repeatedly, Governments in Ireland have refused to invest in serious indigenous industry and this is a major problem for us because we have become dependent on foreign direct investment. I am raising the matter of seaweed because it is a small example of an area where there is serious growth potential. We

are not maximising or even coming remotely close to maximising what we could do in that area.

I know nothing about the graveyard that the Chair would like me to talk about. However, there is a great deal of land there. I imagine it is unlikely to be a seriously controversial issue in the area if a small plot of land is used as a graveyard locally. Perhaps I am wrong but I doubt if it is a serious problem. Thank you, Chair, for butting in so often.

**Acting Chairman (Deputy John Lyons):** Thank you, Deputy Wallace. Again, I am only doing what I have been asked to do, which is to ensure we keep within the Bill. That is all. I am doing that job, nothing else, although I appreciated your comments on potatoes and so on. I am one of those younger people who can cook potatoes.

**Deputy Mick Wallace:** I am prepared to teach you.

**Acting Chairman (Deputy John Lyons):** I said I can cook them. The Minister of State, Deputy Paul Kehoe, has ten minutes. Are you responding on behalf of the Minister?

**Minister of State at the Department of the Taoiseach (Deputy Paul Kehoe):** No.

**Acting Chairman (Deputy John Lyons):** You have ten minutes.

**Deputy Paul Kehoe:** I will try not to cause you any stress. I thank the Minister, Deputy Simon Coveney, for taking the Johnstown Castle Agricultural College (Amendment) Bill in the House today. Johnstown Castle and its estate lie just outside Wexford town and are steeped in Irish history. The estate's ownership has changed hands a number of times, involving such historic families as the Esmondes, a Norman family that settled in Wexford in the 1170s, and later the Grogan family, which owned the land from 1692. The estate and the many castles that have stood there played a role in many of the major events in our history, including the Norman invasion of Ireland, the Cromwellian purge of Catholic landholders and the 1798 rebellion, before being given to the State in 1945. It was gifted by the family under the Johnstown Castle Agricultural College Act 1945 on condition that it would be used exclusively as a lay agricultural college. In the intervening years, the strictness of the original Act has needed to be amended and modernised. This Bill is the next step in that process. It will allow this wonderful gift to the people of Wexford and Ireland to be used for tourism and for the benefit of the wider public and local community while continuing to honour the family's original intentions.

The centrepiece of the Johnstown estate is the castle surrounded by gardens and a lake. While including older buildings, the castle is very much a Victorian image of a romantic medieval castle complete with towers and built to fit in with the surrounding gardens. The style of architecture and beautiful setting have made it a popular location for wedding photographs. As the Minister, Deputy Coveney, pointed out, up to 35,000 people visit it annually. Johnstown Castle and the surrounding gardens are no longer used for agricultural education or research purposes. That work continues to take place elsewhere on the estate.

There exists an opportunity to develop this unique historic building and its surrounding gardens into a major visitor attraction in County Wexford and the south east. Such a development will also fit in with the Irish Agricultural Museum, which is housed in some of the buildings of the Johnstown estate. The museum has developed into one of the "must see" tourist destinations in Ireland since its establishment. The work of the volunteers who have turned a personal interest and hobby into a first class agricultural museum, one that includes implements previously used in agriculture, cannot be praised enough. I have no doubt but that the Irish Agricul-

tural Museum and the development planned at Johnstown Castle will benefit each other greatly.

The first aspect of this Bill will allow Teagasc to develop and operate the castle and gardens for heritage, tourism, amenity or recreational purposes. Teagasc's staff have great plans for the castle and gardens. Working closely with Fáilte Ireland, the OPW, Wexford County Council and other partners, I do not doubt that they will develop this historic site into a major tourist attraction. The benefits will be felt across County Wexford. I compliment Teagasc on its forethought regarding the castle and estate in recent years. I also compliment Wexford County Council and its new manager, Mr. Tom Enright, on their foresight.

Fáilte Ireland's last visitor insight survey listed Ireland's history, spectacular scenery and crafts as the top elements that holiday makers associated with the south east. Fáilte Ireland's figures for 2012 show that 229,000 overseas tourists visited Wexford and generated revenue of €65 million. Some 122,000 came from Britain, 64,000 from the rest of Europe, 25,000 from the US and Canada and 18,000 from other markets. In 2012, only seven counties attracted more tourists than Wexford. Johnstown Castle will increase the tourism benefits to Wexford.

Compared with 2012, the general tourism figures for 2013 show a substantial growth in trips to Ireland of 7.2% to almost 7 million. The number of visits to Ireland from Britain, Wexford's key market, was almost 3 million. I expect that the figures for Wexford in 2013 will show a substantial growth. These figures do not take into account the visitors to Wexford from other parts of the island where County Wexford continues to be a major destination for domestic tourists holidaying at home or taking short breaks. Adding to the attractions in County Wexford, especially in those areas highlighted by initiatives like the Wexford Heritage Trail and Johnstown Castle, is something we can all welcome.

The Bill's second aspect will, after a decade of campaigning, allow the local community of Murrintown to purchase a plot of land for an extension to the local cemetery. I have been involved in this campaign for the past three and a half years and have seen at first hand the work done by the local community in bringing this legal change about. I thank the Minister, Deputy Coveney, who I have plagued for the past three and a half years, for introducing this Bill. I also wish to note some of the many people in the Murrintown community who have worked tirelessly for this project, for example, Fr. James Moynihan, Mr. Pat Delaney, Mr. John O'Neill and Mr. Frank Cardiff, who approached me a number of years ago, as well as an active local committee that pursued this goal for more than a decade. I am delighted that a number of these people are in the Gallery to witness the passage of this legislation, which is largely down to their hard work.

I have been in contact with Teagasc in recent days. It has informed me that, once this legislation is in place, it expects that the transfer of land can proceed quickly. I look forward to visiting Murrintown in the coming months to see the newly extended cemetery and the changes at Johnstown Castle. For almost 1,000 years through invasions, wars and rebellions, Johnstown Castle has had an influence on the people of County Wexford. Many people have a proud association with it. This legislation will allow the estate to continue its legacy by providing a much needed local graveyard for the community and attracting tourists and creating jobs in the region.

I recognise the work done by a number of people to bring about this legislation - the Minister and his departmental officials, who have been committed to this, Mr. Tom Doherty and the staff of Teagasc, and especially the members of the local community of Murrintown.

**Minister for Agriculture, Food and the Marine (Deputy Simon Coveney):** I will provide some clarity and respond to a number of questions and comments. I echo the Minister of State, Deputy Kehoe's comments, in that there has been a considerable community effort to try to solve a genuine problem adjacent to the estate. It could not be solved easily without access to some of the estate's land. The community is not getting something on the cheap, as it is paying full value for the land. Due to the location of the existing graveyard, this was the only option. The campaign has been under way for a long time and I am pleased that the legislation will help everyone who has been trying to make it happen. The Minister of State has been in touch with me repeatedly for some time to try to solve the problem, as has the Minister for Public Expenditure and Reform, Deputy Howlin.

The Bill has a broader purpose. A fantastic gift was donated to us many years ago and we must ensure that it has a future, we can invest in it, it can contribute to the south-east's economy, something that is badly needed, it can provide a new opportunity for tourism and leisure and it can be well run, not only for those who live in the south east generally, but also for the region's many visitors. The area is a fantastic tourist destination.

This is positive legislation and I thank those opposite for not opposing it and for taking it at face value. There is a south-east interest involved. To reassure Deputies, if a further request or proposal comes from a local GAA club or so on, it can be considered by Teagasc as long as it is consistent with the detail of the legislation that requires the land to be used for environmental, heritage, amenity or recreational purposes. However, there is a limit of 5% on the amount of land that can be sold in any one act. There are limitations because we do not want to see a creeping sales process where we would sell this valuable asset, part of which is valuable because of its scale at nearly 1,000 acres. We do not want to see that eroded over time unless there is very good reason for it. Also, we want the opportunity for a change of use to facilitate the kind of tourism and visitor facility most people envisage for the castle and the gardens, which are at the heart of the estate. We want to be able to facilitate Teagasc leasing that facility to an operator if that is the best way to operate it because Teagasc is not a tourist organisation or a leisure facilitator.

This is sensible legislation. It maintains the spirit of the donors in terms of this contributing to Wexford and to the south east, but it is modernising the vision for Johnstown Castle and the broader estate and for that reason the relatives of the donors have no problem with what is being proposed here.

To reassure Deputy Ellis, there is no intention to sell this estate, privatise it for profit or anything like that. This was a donation to the State and it will be respected as such.

Regarding Deputy Wallace's comments, I can assure him I am very interested in the potato industry, not only in Wexford but across the country. I take some of his comments on board.

On the seaweed industry, that is a potentially exciting growth sector for Ireland which we are examining seriously as part of an aquaculture development programme. I suspect Wexford is as relevant to that ambition as are other parts of our coastline.

I thank my officials who have been working on this legislation. We put people in my Department under some pressure to get this legislation done before the summer because there are some time pressures in that regard. I thank them for that because even though it is straightforward legislation on the face of it, it has been a complex process in terms of getting legal advice

from the Attorney General's office and so on. I hope we will be able to finish the job now without any further delay.

Question put and agreed to.

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

## Topical Issue Debate

### Installation Aid Schemes Eligibility

**Acting Chairman (Deputy John Lyons):** Deputies Kyne and Connaughton have two minutes each.

**Deputy Seán Kyne:** I thank the Ceann Comhairle's office for choosing this topical issue. I know the Minister is attuned to the needs of young farmers and that he supported them in the recent Common Agricultural Policy review. For the first time in the history of the CAP there is a chapter dedicated to young farmers, which consists of a mandatory top-up on payments in the first years of farming. Macra na Feirme, which is very supportive and has a mandate on behalf of young farmers, had worked with the Minister and as backbenchers we fully supported the plight of young farmers in terms of generational change of farms, that we have qualified people and that the supports are put in place to ensure that farmers inheriting land, taking over the farms at home or those who have the ability to buy or lease land on a long-term basis would have assistance towards developing their farm business.

In the CAP agreement provision of 2% of funds under Pillar 1 was provided, and a mandatory 25% top-up on single farm payment for new entrants for farmers under 40 for the first five years of installation. I very much welcome those initiatives. However, a cohort of farmers known as the old young farmers have missed out on the previous installation aid scheme that was closed by the previous Fianna Fáil Government and, unfortunately, they will not benefit from the measures to be enacted under the CAP reform programme. Those individuals feel aggrieved that they have missed one boat and are now missing a second boat because it will not let them on board. Is any other measure available to provide them with additional supports either within the CAP programme with regard to easier access to the discretionary fund-----

**Deputy Simon Coveney:** National reserve.

**Deputy Seán Kyne:** -----or could the national reserve be made available to them or some initiative in that regard?

**Deputy Paul J. Connaughton:** I thank the Ceann Comhairle's office and the Minister, Deputy Coveney, for taking this issue. Deputy Kyne clearly spelled out our concerns. I realise there is probably quite a small number of farmers caught in this trap but be that as it may they certainly have a grievance.

*4 o'clock*

There are some who might not see the importance of it. These farmers, who are as well-trained and educated as those who went before them, and equally as ambitious in terms of what

they can do to drive business, do not have the same opportunities as them. Having attended an agricultural college, I know many people in County Galway who were caught out by this. What we want more than anything else is for the Minister, while there is still some movement within the new CAP deal, to see what can be done to help these farmers. I am aware of the time invested by the Taoiseach and Minister, Deputy Coveney, in ensuring the best possible deal for young farmers within the new CAP agreement, which has been welcomed by the IFA and Macra na Feirme. Like Deputy Kyne, I am interested in hearing from the Minister if there is anything that can be done for the group of farmers who are caught in this trap. Is there any way of getting them additional support and aid? Those who previously qualified for installation aid say that it gave them a fantastic hand-up in a range of areas - taking over a farm, production and so on. It also gave them great career opportunities, which is something these young farmers believe they are being deprived of.

**Minister for Agriculture, Food and the Marine (Deputy Simon Coveney):** While I have a script which provides a great deal of technical information in terms of what young farmers are entitled to under the new CAP - direct payments, rural development programmes and positive discrimination in the form of a 20% top-up on single farm payments and access to 60% grant aid for capital investment programmes on their farms, as opposed to the 40% which applies to everybody else - I do not propose to read it.

For some time now, young farmers have been able to benefit from the national reserve and priority treatment in terms of milk quota allocations and so on. A priority for me as part of the CAP reform process was the facilitation and encouragement of generational change in agriculture. As Deputies Kyne and Connaughton work with young and not-so-young farmers, they will understand agriculture and how it works.

I would love to be able to solve the problem for the small cohort of farmers that are falling between two stools, including those who may be under 40 but will miss out because of the five-year rule. Under current regulations, which are mandatory across Europe in that they relate to schemes for young farmers, to qualify, a person must have started farming in the past five years. A person who just missed out on installation aid when the previous Government decided to abolish it and who has been farming for more than five years will not, even if under the age of 40, qualify, in terms of definition, as a young farmer. We discussed with the Commission the possibility of making an exception for the people about whom we are speaking today. However, we cannot do it without changing the regulation, which cannot now be done because the CAP process is finalised and the regulation is set. There are a relatively small number of farmers that are outside the definition of a young farmer and therefore cannot, we are told in definitive terms by the Commission, receive the 25% top-up. Likewise, they do not qualify for 60% grant aid on their farms. They will qualify for 40% grant aid but not for the young farmer top-up.

In this regard, we are currently examining how we could use the national reserve to try to help this cohort of farmers, but we have to do so within the regulations. I do not as a Minister have the power to spend what are essentially European funds, or partial European funds, on a cohort of people that fall outside the definition of young farmers, who are entitled to receive special supports. This is not a straightforward process. I have a great deal of sympathy for this group of farmers, many of whom I know and have met at Macra, IFA and farming events generally. I have a great deal of sympathy for those who missed out on the last occasion on getting financial supports to get themselves started and are now missing out again, essentially because they do not qualify under the definitions. The definitions are the same across Europe. Therefore, I cannot allocate resources that are directly linked to CAP funds without consistent

application of the definition, because this will be audited. We are in communication with the Commission regarding what flexibility we may have in terms of how we use national reserve money to provide top-ups under Pillar 1 or supports under Pillar 2. If it is possible to do something, I will. However, I do not want to over-promise at this stage because so far what we have proposed has not been acceptable to the Commission.

**Deputy Seán Kyne:** I thank the Minister for his reply. I recognise that he is supportive of this group and that, as he stated in his response, he is actively investigating alternative ways of assisting them. Are the Minister's counterparts in Europe actively pursuing this issue? Will it be possible to put in place alternative arrangements by way of addendum to the existing regulations, albeit regulations not long agreed?

Obviously, the farmers concerned are faced with the same costs as everybody else, including transport, conveyancing, land stocking and farm improvement. In terms of the top-up, has the Minister discussed with the Commission whether, if all the funding is not spent, the remainder could be used to support these farmers?

**Deputy Paul J. Connaughton:** I too thank the Minister for his reply. What the Minister achieved through CAP for young farmers was fantastic and is something about which young farmers are particularly happy.

The Minister said he was actively looking at what else could be done and that he did not want to over-promise, which I accept. In terms of what he is trying to achieve, can the Minister tell us when it might be known if anything can be done so that the farmers concerned have a date by which they will know what is and is not possible into the future?

**Deputy Simon Coveney:** The problem arose when installation aid was abolished without notice. Many people who had submitted applications missed out because there was literally a shut-down of that scheme. Many people were caught out by that. We have not been able to find the money to reopen that scheme and so I decided to prioritise young farmers through the new CAP, which we have done very successfully. A young farmer lucky enough to take over a farm of 50 hectares or more will receive €16,000 in single farm payments over a five-year period. This is a significant support provided through the new CAP. Also, a young farmer investing €70,000 or €80,000 in a new milking parlour or other facility on a farm that is eligible for grant aid will now receive 60%, as opposed to 40%, of the cost in that regard.

The problem that arises is one of definition. I agree with Deputy Kyne that costs are the same for everybody and that we need to be seeking to treat young farmers the same. The problem is that young farmers who have been farming for ten years do not meet the definition of a young farmer. Essentially, young farmers are defined as people coming into farming who need a good start to get their business up and running. This is the reason for the five-year rule. The problem with the five-year rule, which makes absolute sense in terms of defining young farmers who have come into farming in the past five years, is that a small number of people who missed out on installation aid because that scheme was shut down without notice are now also missing out on this support. Essentially, that is the problem.

I will examine this further in the context of the national reserve, which in my view is the only area where there may be some flexibility, because the Commission has been very rigid on this issue. For us to spend public money, that is, EU money, on young farmers, they have to be defined as young farmers. If they are not, we are limited in terms of what we can do. I totally

take on board what the Deputies are saying and I have much sympathy for it. Finding a solution is not as straightforward as they might think. I have had long conversations on this issue with various parties, particularly Macra na Feirme, to try to find acceptable solutions that could be applied consistently without setting an inappropriate precedent.

**An Leas-Cheann Comhairle:** Deputy Robert Troy wishes to comment on his Topical Issue.

**Deputy Robert Troy:** The Minister for Social Protection, Deputy Joan Burton, has asked me to defer it until next Tuesday, which I am happy to do.

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

**Deputy Simon Coveney:** We really appreciate that.

## National Road Network Service Areas

**Deputy Martin Heydon:** I thank the Minister, Deputy Leo Varadkar, for coming to the House to address this important issue. I raise it today because, as the Minister will be aware, the NRA has issued a draft policy on service areas on the national road network. The draft policy is to be subject to public consultation until 23 June. I am concerned about it on a number of levels. When one reads it, one realises that the NRA references the trans-European network transport, TEN-T, policy as its basis for having to bring about change. The TEN-T policy has divided Europe's road network into two: the core network, which in Ireland comprises the M1, M7 and M8, and the comprehensive network, which in Ireland comprises the other motorways and dual carriageways, including the M9 and M11. It seems to be unduly hasty on the part of the NRA to be implementing the TEN-T policy given that the deadline for the development of service areas on the core network is 2030 and for the development of service areas on the comprehensive network is 2050.

The M9 goes through my local community. I know all too well from travelling up to and down from Dublin the need for online service areas. I am very much in favour of them but I do not believe the State should necessarily be building them without giving the private sector an opportunity to do so in the first instance. A striking feature of the NRA's policy is that there is no reference to privately developed projects. I believe these have been very successful. The State-led approach ignores the potential of existing facilities. It does not refer to specific private enterprises, such as Junction 14 in Monasterevin, of which I am very aware. A new one, known as the Barack Obama Plaza, is being developed outside Moneygall. This was developed at a cost of €7 million by a private investor. It will create in excess of 60 jobs overall. While expansion may be required in Tipperary to facilitate HGVs, the Junction 14 project meets all the necessary requirements regarding parking facilities etc.

In the draft policy, the NRA states there is a high level of public satisfaction with the existing NRA service areas. This is based on a customer survey. The service areas in question are in Lusk, Castlebellingham and Enfield. Did the NRA ever carry out a survey of Junction 14 in Monasterevin? If footfall is anything to go by, the customers are satisfied. I would imagine that those customers, who are taxpayers, would be happy to know hard-earned taxpayers' money was not used to build the facility.

I am concerned that the NRA seems to be going into competition with the private sector. We lack an holistic approach whereby the NRA, in conjunction with the local authorities, would have very much fixed criteria on how a private sector developer could develop online service facilities. The NRA's document sets out where it would like them to be and where they need to be. It refers to a distance of 100 km, as in the TEN-T policy, and the requirement for drivers to take a break after having driven for four hours and 15 min, at a maximum. There are very few journeys in Ireland that would take longer than that. One would travel from one coast to the other. We are not comparing like with like. This is not Germany or Italy, which have large autobahns on which one could drive for days on end.

We need to develop an holistic approach whereby the NRA could work with the local authority and allow the private sector to develop the service areas in the first instance. Failing that, we have until 2030 to develop them. We would like to see them in place much earlier. If the private sector is given a clear, coherent way of going forward, it can do what is desired. Failing this, the State should intervene and develop service areas where the commercial sector has not recognised sufficient demand but where they are necessary from a road safety perspective. I am very concerned that we are investing taxpayers' money in the development of service areas without affording an opportunity to the private sector to develop them first. Obviously, if the money were not used on public private partnerships, it could be used by the Minister for further road maintenance works, repairs and road development and construction.

**Minister for Transport, Tourism and Sport (Deputy Leo Varadkar):** I thank the Deputy for the opportunity to address this issue and to clarify the position regarding the provision of service areas by the NRA on the motorway network. As Minister for Transport, Tourism and Sport, I have responsibility for overall policy and funding regarding the national roads programme. The construction, improvement and maintenance of individual national roads, including service areas, is a matter for the National Roads Authority under the Roads Acts 1993 to 2007 in conjunction with the local authorities concerned. In particular, section 54 of the Roads Act 1993 specifically provides for the National Roads Authority or a local authority to provide or operate service areas.

In 2005, the then Minister for Transport asked the NRA to review its policy of generally not providing service areas on national roads, particularly on the expanding network of access - controlled motorways and dual carriageways. Arising from this review, the NRA decided to proceed with a programme to provide service areas across the major inter-urban network. The imperative to have service areas on the network arises as a result of a number of factors: the major inter-urban motorway network is largely complete; the EU working time directives contain specific requirements for permissible driving and rest times for professional drivers, including hauliers; the significant road safety benefits of rest areas for other road users; and the TEN-T policy. Much of our national road network is part of the TEN-T network, and regulations include specific requirements with regard to parking and rest facilities on the core road network.

In October 2007, the NRA published its initial policy on the provision of service areas which incorporated a map showing indicative locations. In light of the funding constraints that emerged, the NRA scaled back on the development of service areas. At present, there are NRA service areas at three locations on the network. Two are located on the M1, at Lusk and Castlebellingham on the way to Belfast, and one is on the Galway road at Enfield. All three of these service areas provide a high range of services, including parking, fuel and restaurant facilities. The current NRA service areas that are in operation were developed as PPP projects. Overall, the NRA has indicated that there is a high level of public satisfaction with these service areas,

as evidenced in customer surveys. A second group of three service areas is currently under development. The one at Gorey is at construction stage and those at Kilcullen and Athlone are at tender stage. These service areas, which are located on one side with an overbridge, are due to be in operation at some stage between now and 2017.

In light of developments at EU level, including the TEN-T regulations, the NRA has published a revised draft policy document entitled NRA Service Areas on the National Road Network. This document sets out the background to the existing NRA motorway service area policy, the legal context, plans for future needs, proposed locations and so on. Members of the public, interested groups, industry etc., have been invited to review the document and participate in the public consultation process. The needs analysis carried out by the authority determined an objective of locating online NRA service areas approximately every 45 to 60 km along the motorway and high quality dual carriageways. In addition, the road safety strategy sets out the need for a total of five additional service areas, to be provided by 2020. It is acknowledged that the revised motorway service area policy is a long-term plan and the full programme of proposed locations would involve a very substantial commitment in the current constrained budgetary situation. The purpose of the public consultation is, therefore, to seek views, examine options and allow interested groups to submit suggestions and proposals. The public consultation process is being managed by the NRA and the closing date for receipt of responses is 23 June. Following this, the feedback will be evaluated and considered both by the NRA and my Department.

**Deputy Martin Heydon:** I want to bring to the Minister's attention a matter of which he will be aware and to which he referred. In my constituency of Kildare South, just south of Kilcullen, between junctions 2 and 3 on the M9, there is the development of an online service area in a bundle with other services areas, including in Athlone on the M6 and the Gorey bypass. I want to know why private enterprise was not given an opportunity to try to provide a site before the NRA charged in to use taxpayer's money. It went to tender previously but could not attract private sector interest. In some way, one could argue that the NRA's sites are possibly over-spec and do not meet commercial realities. I have talked to people involved in the industry who tell me it does not stack up or make commercial sense for the private sector to develop according to the current spec. Whether that is the case, this is not Germany or Italy. We are developing this site and anybody who drives north on the M9 will see the diggers onsite, but it is still at the tender stage and we have not attracted private sector investment. Moreover, the site will require the construction of another bridge, even though plenty of bridges were built when the motorway was built some years ago. Why can there not be a development like that at junction 14 at an existing bridge instead of having to build a new one? We have gone ahead with developing the site without having a private operator in place. I want to know why we are spending money on it and why Kilcullen was selected. It is a very strange choice, given that the site is a long way from Waterford. There is no question that service areas are needed along the M9 and the nearest one to Kilcullen is 25 km away. Even in the draft policy, in which the NRA references the position in Australia, Germany and Italy, most of the distances are set at 50 km, 60 km and 70 km, while TEN-T refers to a distance of 100 km. However, we are developing this site at Kilcullen which is 25 km from the nearest station, when an area much further south would have struck me as being the optimum at which to locate the first service area. I do not believe we are getting the best value for taxpayers' money.

**Deputy Leo Varadkar:** Several issues arise. First, it is important to point out that this is just the public consultation phase. It is not a policy decision and the NRA is welcoming an

input from the private sector, local authorities and, of course, public representatives. I know TEN-T very well as I was chairman of the Council of Ministers when it went through the European process. What it states is that we should have rest areas every 100 km and that this is in line with the needs of society, the market and the environment in order to provide appropriate parking space for commercial road users and for an appropriate level of safety and security. It seems the NRA's document interprets this to mean that, in an Irish context, service areas should be more frequent than every 100 km. My own view is the reverse, that we probably need them to be less frequent than every 100 km. I would be more in line with the road safety strategy which suggests we need a few more but not one every 40 km or 50 km.

The Deputy's point about the private sector is well made. I hope potential private sector operators and developers take the opportunity presented by the public consultation process to indicate very clearly what they could offer, whether online or offline services. On the M9, Dublin-Waterford, we all agree that a service area is needed. One can almost drive the whole way without finding anywhere to stop for petrol or to take a break. Originally, there were to be two service areas, one at Kilcullen and one at Paulstown, which is probably how the NRA came up with the location, as there would have been one one third of the way along the route and a second two thirds of the way along it. Had there been a plan just for one, perhaps somewhere further south might have made more sense, but that decision was made a long time ago.

## Tree Remediation

**Deputy Terence Flanagan:** I thank the Ceann Comhairle for selecting this important matter and the Minister of State, Deputy Fergus O'Dowd, for coming to the House to deal with it. The issue is one which affects many householders throughout the country, namely, the need for tree height legislation to be introduced to protect the right to light. The height of trees is a source of trouble among neighbours and many disputes are caused because there is no tree limit legislation in place in order to set a height restriction. My office receives many queries on this issue and I am sure it is the same for the Minister of State. Residents are looking for assistance to have the issue dealt with effectively. We know that residents have no power regarding the height of trees surrounding their gardens which are blocking their natural light. This poses major problems and causes a lot of stress and negativity between neighbours.

One constituent in Kilbarrack has contacted my office on a number of occasions. She has substantial concerns about overgrown trees on her neighbour's property and the effect they are having on hers. The problem is that the trees in question are leylandii which grow to 60 ft. in height. She cannot use her back garden and is concerned about the danger of significant damage or even the destruction of her home if the trees were to fall on top of her property during bad weather. She has approached the owner on a number of occasions to ask that the trees be better maintained, but the neighbour refuses to do so. That is the nub of the issue in that unnecessary stress is being caused for residents because the woman in question and no other resident have rights.

I have raised the issue with the Minister for Justice and Equality and been advised that a mediation Bill is being progressed in order to deal with this type of issue. However, a mediation Bill would not deal directly with the issue of a right to light, although it would promote mediation as an alternative remedy to court proceedings, with the aim of reducing legal costs and speeding up the time it takes to deal with a dispute. However, the key issue concerns tree

height and ensuring neighbours' trees are at an acceptable height so as not to cause unnecessary distress for neighbours. We know that, in some cases, neighbours approach homeowners who can be reluctant to take action because of the cost involved in cutting trees and the time it takes to deal with the issue. However, it is important for the welfare of residents to have natural light. There are the obvious health benefits. It also affects the price of property if someone looks to sell a property with no natural light in a back garden.

I ask the Minister of State to consider introducing legislation in this area that would strike a balance between the rights of owners of trees and nearby residents and ensure they were not negatively impacted on.

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Fergus O'Dowd):** I am taking this matter on behalf of the Minister of State, Deputy Jan O'Sullivan. I thank the Deputy for raising it.

The current legal position on high trees and hedges is that planning legislation does not make a particular provision for recognition of a right to light or a remedy from any other nuisance which may be caused by trees in a residential area. Complaints where branches or roots of trees are encroaching on a neighbour's property would normally be remedied under civil law between the parties concerned.

In response to a number of representations made to my Department on the issue of high trees and hedges, the Minister of State, Deputy Jan O'Sullivan, wrote to the Minister for Justice and Equality in June 2012 to explore the possibility of providing a broader civil law remedy for affected parties. For example, this could be a provision to be enacted in appropriate primary legislation along the lines that a person substantially deprived of the enjoyment of his or her property due to the deprivation of light caused by high trees on a neighbouring property could apply to the courts for an order and that the courts court make an order as they saw fit. The Minister for Justice and Equality responded in July 2012 suggesting that such disputes could perhaps be more appropriately dealt with through mediation rather than through the courts. I understand that the Department of Justice and Equality intends to publish a mediation Bill during 2014.

My Department has also looked at the "high hedges" legislation operating in Great Britain and Northern Ireland. Under these provisions, an owner or occupier of a property, having made reasonable attempts to resolve the matter with their neighbour, may make a complaint to a local authority that high hedges or trees on a neighbouring property are affecting their reasonable enjoyment of their home. Following its assessment, the local authority will decide whether to issue a remedial order requiring the cutting back or maintenance of the trees or hedges in question. Failure to comply with the requirements of a remedial notice is an offence and subject to a fine and is enforceable through the courts.

While the UK regulatory regimes have merit, the implementation of a comparable system in Ireland would have significant resource implications for local authorities in the investigation of complaints, the issuing of notices and the enforcement of same. It should also be noted that the UK local authority schemes require their case processing costs to be carried by the individual complainant, which can be quite onerous. The enactment of bye-laws would similarly have resource implications for local authorities in respect of enforcement. My Department will, however, give consideration to the high trees issue in the context of its legislative programme.

**Deputy Terence Flanagan:** I thank the Minister of State for his response and I note that he referred to the fact that a neighbour having a difficulty may apply to the court for an order and the courts may make an order as they see fit. Perhaps that is something that my constituent can follow up on in this particular case.

The mediation Bill will not deal with it to the degree that has been referred to here. I do not think it will deal fully with this particular situation. The Minister of State referred to the "high hedges" legislation in Great Britain and Northern Ireland. He said that we might not be able to implement this legislation here because of the significant resources that are required. Could he define exactly what he means by that? Local authorities are responsible for maintaining trees within their own areas. Perhaps the people who are involved in that work would be able to adjudicate where issues arise, particularly major issues like the case I outlined involving a 60 ft. tree that would cause significant damage if it was to fall down on a neighbour. Surely a local authority would be able to make adjudication in a fairly straightforward fashion having examined the tree in question.

On a related topic, residents consistently complain about local authorities and the length of time it takes for local authorities to cut down trees. In particular, I am informed by Fingal County Council that it is unable to prune or cut down trees because it does not have the available resources and that the tree in question will be listed in a future programme of works. This has been ongoing on a consistent basis. Local authorities have failed. They have not maintained their own stock of trees. In some instances, they have just planted the trees and left them. They have never pruned or maintained them down through the years. This causes much distress for residents as well.

Two areas need to be looked at. Local authorities must be serious about helping and adjudicating on situations where residents have concerns. They are very genuine concerns that are being raised with all Deputies in this House and this area must be looked at seriously by the Minister.

**Deputy Fergus O'Dowd:** I thank Deputy Flanagan for his contribution and the points he raised. I will ask for a direct reply from the Department in respect of the query he raised about the costs and why that would be prohibitive and the way in which it would be prohibitive. My Department will give consideration to the high trees issues in the context of its legislative programme and will have to identify the most cost-effective approach. We have to discover the most common sense and effective way to do it. I agree with the Deputy because I have heard cases in which people are placed at a big disadvantage. They may not have the resources to hire a solicitor and go to court.

Our local authorities are already operating under resource constraints and restrictions, as the Deputy noted. They must enforce many statutory codes including planning, building control and fire safety so if we introduce a new resource-intensive response, we must be able to justify it. I am happy to bring that to the attention of the Minister for direct reply to the Deputy if that is acceptable.

The Dail adjourned at 4.35 p.m. until 2 p.m. on Tuesday, 17 June 2014.