

DÁIL ÉIREANN

AN COMHCHOISTE UM CHOIMIRCE SHÓISIALACH

JOINT COMMITTEE ON SOCIAL PROTECTION

Déardaoin, 1 Meitheamh 2017

Thursday, 1 June 2017

Tháinig an Comhchoiste le chéile ag 10 a.m.

The Joint Committee met at 10 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
John Brady,	Alice-Mary Higgins,
Joan Collins,	Kevin Humphreys.
Gino Kenny,	
Willie O'Dea.	

I láthair / In attendance: Deputy Denise Mitchell.

Teachta / Deputy John Curran sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: I welcome everyone to the meeting. Before I begin I shall make the usual announcement and ask everyone to switch off their phones completely or put them on flight mode as they affect the recording equipment.

I propose that we go into private session to deal with some housekeeping matters before returning to public session. Is that agreed? Agreed.

The joint committee went into private session at 10.05 a.m. and resumed in public session at 10.25 a.m.

General Scheme of Social Welfare and Pensions Bill 2017: Discussion

Chairman: I welcome the witnesses to the meeting. From the Department of Social Protection we are joined by Mr. John McKeon, Ms Kathleen Stack, Mr. Tim Duggan, Ms Helen McDonald and Mr. Brian Duff. I thank them all for joining us this morning.

Members have already been circulated with the opening statement as well as a document. I ask Mr. McKeon to make the Department's opening statement. Members will then be invited to address their questions. I ask colleagues to please confine their questions to a few minutes to ensure we get through this matter in detail.

I wish to draw attention to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

The opening statements submitted will be published on the committee website after the meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I remind members and witnesses to turn off their mobile phones or switch them to flight mode.

I will start with the opening statement by Mr. McKeon. He does not need to read out the attachment as it has been circulated. I call on him to make his opening statement.

Mr. John McKeon: I am pleased to have this opportunity to present the general scheme of the Social Welfare and Pensions Bill 2017 to the committee. I thank the Chair and the committee for facilitating this early opportunity to discuss the content of the general scheme of this Bill.

I am joined today by Mr. Tim Duggan, assistant secretary general and Ms Helen McDonald, principal officer with responsibility for pensions, Ms Kathleen Stack, assistant secretary general

with responsibility for fraud and control and Mr. Brian Duff, principal officer with responsibility for legislative and legal affairs. My colleagues and I will be pleased to address questions that committee members may have with respect to the general scheme of the Bill.

My statement has been circulated to the committee members prior to this meeting. Members will have seen that it includes an attachment that summarises and explains the background to each of the heads contained in the general scheme. In the interests of time I do not propose to read the detail of this attachment into the record. My colleagues and I will, with the permission of the Chair, refer as appropriate to the attachment along with the general scheme, in answering questions that committee members may have.

I will sketch out the broad parameters of the general scheme as I believe it will prove useful. The general scheme contains changes to three Acts, the Social Welfare Consolidation Act 2005, the Pensions Act 1990, and the Civil Registration Act 2004.

The changes to the Social Welfare Consolidation Act contain provisions that can be categorised as being either broadly administrative or broadly policy focused in nature. The changes that are largely administrative in nature relate to the following: the clarification of the principle that payments to a guardian should not be conflated with payments to the orphan in guardianship; enabling citizens to voluntarily present their public services card as a means of establishing identity with service providers such as credit unions, banks and utility providers and, if they wish, to include their date of birth on the public services card; clarification of ministerial authority for the setting of reduced fees for the issue of life event certificates; enabling the Department to automate the award of benefits or payments; and the inclusion of supplementary welfare payments in the list of payments that can be recovered in personal injury insurance cases.

The main policy focused changes to the Social Welfare Consolidation Act, as provided for in the general scheme, relate to the following: measures to deter and reduce fraud in the social welfare system, including the publication of names of people convicted in a court for social welfare fraud; the reduction, for a limited period, in the personal rate of payment to people so convicted; and the extension of the earnings disregard for people with disabilities to include earnings from all types of employment. To address the Pensions Act, all of the proposed changes are largely policy focused and are designed to protect the interests of members and beneficiaries of occupational pension schemes. They provide for restrictions on the ability of employers to trigger the closure of a pension scheme without due notice and proper engagement; new powers for the Pensions Authority to set a schedule of employer contributions in certain circumstances; a deadline for the submission of funding proposals by trustees; and equal treatment of same sex spouses and civil partners with regard to access to a spouse's pension in certain circumstances.

All of the proposed changes to the Civil Registration Act are broadly administrative in nature. They provide for removal of the prescribed term of office for the Registrar General and deputy Registrar General in recognition of the fact that both positions are general Civil Service positions with the post-holders having the same tenure as other civil servants; bringing the arrangements for the registration of a death in cases where a coroner is involved broadly into line with those which apply when a medical practitioner certifies a death; sharing of the records of births, deaths and marriages with a body under the aegis of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs; and recording both the country of birth and the country of citizenship of a deceased person in the register of deaths.

In addition to these changes, I refer to two other issues raised recently by Members of the Oireachtas as potential legislative matters. First, Deputy Éamon Ó Cuív raised the issue of in-

producing a disregard of foster care payments received from the United Kingdom in the means assessment of claimants who are living in Ireland. While the Minister supports and wishes to give effect to this proposal, he must have regard not only to people receiving foster payments originating in the UK but also people receiving similar payments originating in other European Union member states. The Department is examining the issues involved and hopes to be in a position, if legislative change is required and with the indulgence of Members of the Oireachtas, to introduce this proposal as a Committee Stage amendment.

Second, it will be recalled that when the Social Welfare Bill 2016 was being debated towards the end of last year, a Committee Stage amendment was introduced by Deputies John Brady and Denise Mitchell which would have provided that, in cases where an employer was found under the Unfair Dismissals Act to have unfairly dismissed an employee, the employer would, in addition to whatever penalty was imposed by the Workplace Relations Commission, WRC, also have to refund any social welfare payments paid between the date of the dismissal and the date of the decision by the WRC. At the time, the Minister indicated that he saw some merit in the proposal and would examine it closely with a view to potentially making the necessary amendments in this Bill. I understand that the Chairman has circulated a letter from the Minister which outlines the outcomes of a consultation process with the relevant stakeholders. As it is apparent that there is no support among stakeholders for the proposed change, the Minister has decided not to proceed further with the proposal at this time.

I hope this short summary has helped to clarify the content and objectives of the general scheme. My colleagues and I will be pleased to address any questions members may have and take any input or suggestions for consideration by the Minister in finalising the Bill.

Chairman: I thank Mr. McKeon. In private session this morning, members were conscious that the Department and Minister indicated their desire to have all Stages of the Bill completed before the summer recess. Members understand the reasons for this and we will do everything in our power to facilitate this outcome. While the committee will not unnecessarily delay the Bill, at our next meeting after pre-legislative scrutiny, we will further examine some of the proposed pension changes and members may table Committee Stage amendments. We will, nevertheless, facilitate speedy passage of the Bill.

It is proposed to first discuss Part 2, amendments to the Social Welfare (Consolidation) Act, and thereafter discuss Part 3, which proposes changes to pension provisions. We will then discuss other matters arising, if any. I remind members that contributions will be restricted to five minutes.

The following heads fall under Part 2: head 3 - the guardian's payment; head 4 - publication of names, addresses, fines and other penalties; head 5 - reduced rate of payment following conviction for fraud; head 6 - public services card; head 7 - birth, marriage and death certificates; head 8 - decisions made by automated information technology systems; head 9 - recovery of certain benefits and assistance; and head 10 - earnings disregard for disability allowance, blind pension and supplementary welfare allowance.

Deputy Willie O'Dea: I thank the witnesses for their attendance. Reading through the general scheme yesterday, I made a few notes on matters that came to my attention in this Part. On head 3, will it be the position statutorily that a person will be entitled to receive one full social welfare payment, a full guardian's payment and a half-rate carer's allowance? Will Mr. McKeon confirm that this will be the entitlement?

Head 4 deals with fraud, an issue I and others raised in the Dáil yesterday. I remain mystified as to the reason for this provision. I am totally opposed to social welfare fraud, which is a particularly despicable form of crime, and I fully agree that a hard line should be taken towards it. However, the way in which the proposals outlined in head 4 will improve matters escapes me. We are told that this measure will provide further deterrence. When someone is convicted of social welfare fraud we read about the case in the newspapers and the details are usually widely disseminated in local media. What purpose is to be served by publishing, some months after the event, a list of people who have been convicted of social welfare fraud? People commit other types of fraud and we have armed robbers and all sorts of other criminals who go to court, are convicted and have their cases publicised in the media. Will lists of such persons be drawn up and published in the hope that this will deter them from committing future crimes of this nature? The Revenue list of tax defaulters is different because it refers to settlements in cases that do not go to court. People would never know that Mr. or Mrs X did not pay his or her tax and settled a case if it were not for the publication of this list. How will this purported increased public awareness deter potential social welfare fraudsters?

The Irish National Organisation of the Unemployed, INOU, and others asked us to raise another issue. It is intended to publish the list within three months after the end of the quarter in which the conviction occurred. What is to stop other organisations taking the list and republishing it on a continual basis? Will it be removed from the Department's search engine, for example? I ask for clarification on that issue?

On head 5, in cases where people who are already paying off an overpayment are convicted, will they receive up to 75% of their full social welfare rate for nine weeks before reverting to the overpayment, in other words, will this be an additional payment which will not in any way impinge on the amount of the overpayment people will ultimately have to pay?

I am not sure how the provisions in head 7 will result in lower charges. Perhaps Mr. McKeeon will clarify the position.

Head 8 includes a peculiar provision on decisions made by automation. It provides that persons may receive a benefit from a machine but the machine cannot refuse a person a benefit. Does this mean that where a person is not granted a benefit, he or she may appeal but only to a human being, rather than a machine? What I cannot figure it is why anyone would appeal the granting of a benefit. The Department will certainly not appeal because it will hardly appeal its own decision. I ask for clarification in this regard. The only example of a person appealing the granting of a social welfare benefit is in cases where the full benefit to which the claimant believes he or she is entitled is not granted. I hope the machines will not have any part in making decisions of that nature.

Head 9 relates to provisions on the recovery of special damages in court cases and provided that these will be extended to supplementary welfare allowance. I can understand circumstances in which someone is granted supplementary welfare allowance but does not ultimately qualify for a benefit. Surely in cases such as those provided for in this head the person will qualify for disability allowance given that he or she will be off work with an injury. In my experience, and I am sure it is one shared by other members, if someone is granted supplementary welfare allowance during this period, the payment will be clawed back. Let us say it takes ten weeks for the disability allowance payment to come through, while the claimant will be entitled to ten weeks' arrears, the supplementary welfare payment will be clawed back from the arrears. The head must be drafted in such a way as to ensure benefits are not clawed back on the double.

I would like head 10 (1b) explained. What precise income will be taken into account in such a situation?

Chairman: I call Senator Humphreys and he has five minutes as well.

Senator Kevin Humphreys: I will not repeat everything that Senator O’Dea has said.

Deputy Willie O’Dea: Deputy O’Dea.

Senator Kevin Humphreys: Deputy O’Dea. Sorry.

Deputy Willie O’Dea: The Senator has either elevated or anticipated my situation.

Senator Kevin Humphreys: I listened to him speak in the Dáil last night and thought, for a second, that he had announced his retirement.

Deputy Willie O’Dea: No such luck, Senator.

Senator Kevin Humphreys: I have a question on head 5. I understood that social welfare overpayments are always recouped over a period. The proposed change in head 5 is to provide the Minister with the power to further punish somebody convicted in our courts of social welfare fraud. If the change is passed, the provision will allow the Minister to cut a person’s weekly social welfare payment by up to 25% for a period of nine weeks. I am concerned the measure moves the Department into the courts sector. If somebody is convicted in the courts the judge can hand down a punishment in the form of a fine or whatever. There is a proposal to add another tier whereby the Minister can add an additional punishment and the nine weeks do not count as a reduction in terms of an overpayment. I believe the measure means the Minister is moving into very dangerous territory. This has happened before but the initiative was struck down in the Supreme Court. Has the Attorney General been consulted about the proposal? In the Supreme Court case of *Cox v. Ireland* 1992 the proposal was put forward but it was struck down. We have a judicial system.

If head 5 is accepted the Minister will be granted a partially judicial role. In other words, in cases where the punishment handed down by a judge is deemed insufficient the Minister can increase the punishment by reducing social welfare payments by up to 25%. I believe the development is very dangerous. In fact, it may be constitutional and I know there are solicitors and lawyers are sitting around. The judgment of *Cox v. Ireland* 1992 has shown very clearly that the provision is unconstitutional. Has the Department talked to the Attorney General? Has the Department considered the Supreme Court judgment? Has the Minister pushed for the amendment? He cannot set himself up as a judge and impose a penalty. If the measure is accepted the Minister can deem a punishment handed down by a judge in the form of a penalty, prison sentence or fine not good enough and impose an additional fine that lasts nine weeks. I want to hear the logic and theory behind the proposal. I want to know whether the Attorney General has been consulted about the matter. Has the Supreme Court case of *Cox v. Ireland* been taken into consideration?

Chairman: I call Deputy Brady and he has five minutes.

Deputy John Brady: Five minutes is not much time to discuss this legislation.

Chairman: I urge the Deputy to state his point and get on with things.

Deputy John Brady: I will try my best. I welcome the change made to the payment for

guardians. The change recognises that the payment to the guardian should be for the benefit of the child. It is a fundamental principle that underpins payments to guardians. However, there is a contradiction because the same principle does not apply to maintenance payments. A payment to a lone parent family is regarded as a source of income and is means tested even though it is a payment for the child concerned. I ask the officials to touch on the matter.

I am deeply concerned about the move to tackle fraud. I share all of the concerns that have been expressed by Senator Humphreys but I have a few additional concerns. The Department has conducted a high profile campaign. Many figures and misinformation have been put into the public domain but I do not have the time to go into more detail now. I will discuss the information that has come out about identity fraud. Over the past couple of days figures were circulated but yesterday the figures were amended. Yesterday morning, up to April of this year there was one case of suspected identity fraud. Subsequently, the figure was amended to 11 cases late yesterday afternoon yet the overall figure has remained static at 155 cases that date back to 2013. I would like clarity on the matter.

I have serious concerns about publishing the names and addresses of people. Has the Data Protection Commissioner been consulted about the practice of naming and shaming by the Department? I acknowledge that people will go through the courts system. There has been a level of concern expressed about the practice being a breach of data protection, which I share.

In terms of preventing people or entities from using the information in terms of housing, insurance and potential employers, the Department has said that the information will be published for three months. What measures have been put in place to stop that information being shared outside of that structure and being held against the people concerned? How will the Department prevent people from sharing the information? Will the Department hold on to the information and publish it at a later stage?

I read about an interesting case of overpayment in the media yesterday. The case went all of the way to the Ombudsman. The Department chased an individual for an alleged overpayment of €20,000. The Ombudsman wrote to the Department to state that there was no way the overpayment could have happened. I do not think that the individual concerned received an acknowledgement or correspondence from the Department. The person took the case to the Ombudsman. It turned out that the discrepancy had been caused by the Department and, in fact, the person was owed €700 by the Department. There are more similar cases. Overpayment is a bigger problem than the focus that the Minister and the Department has put on this type of fraud. I agree with Deputy O'Dea and do not condone social welfare fraud. However, overpayment is a bigger problem. The case that was mentioned in the media yesterday typifies this matter. What has the Department done about overpayments?

Senator Humphreys mentioned that the Minister can cut a person's weekly social welfare payment by up to 25%. I agree with Senator Humphreys that the provision is dangerous and that the constitutional issues involved will cause serious problems. I do not understand the rationale behind the provision. Small amounts of money are involved. I cannot get my head around the provision and believe it is dangerous territory.

Deputy Gino Kenny: I wish to talk about head 4, and I raised this fraud issue a couple of weeks ago. I find it very unsettling and deeply inflammatory that the idea has been flagged. Who came up with the idea, the officials or the Minister? This is a 21st century witch hunt of people who find themselves in a very precarious position. The ethos of social welfare is to protect the dignity of the citizen and it is nauseating to see this humiliation and naming and sham-

ing of people in black and white. It is equivalent to a hate campaign. If someone is convicted by a court of committing a fraud to the amount of €1,000, will that person be named and shamed in a publication? I find it extraordinary that this information could be in newspapers and I am not being flippant when I say it could be on the sides of buses because the way this campaign is being run is pretty horrible. Who came up with this idea, spent so much money on it and went out with vitriol after certain people? I do not condone social welfare fraud but I have been in court when people are routinely humiliated to the point where they are left crying and traumatised. I have seen that at first hand. At the same time in this country there is corporate fraud but no one is named and shamed. There is one law for poor people and one for wealthy people. Who came up with the idea? What is its purpose? How far does this go? If this is allowed to pass into legislation what comes next? It would be productive if the witnesses could answer that question today.

Deputy Joan Collins: Deputy Kenny and others have set out squarely the issues under head 4. I agree with the point about the naming campaign. I, too, would like to know who came up with the idea. It was interesting that Bernadette Gorman asked whether it was a solo run by the Minister or whether the Department came up with this idea. She described it as a hate campaign because of the way it deals with people, many of them vulnerable. It is not that they deliberately defrauded the system but that they did not understand it or there were overpayments by the Department. A few cases have been highlighted by the Ombudsman, for example, when the mother of a woman who was mentally ill died, she was hit with a bill for €105,000. When it was investigated it turned out to be a mistake by the Department dating from 2010. The Ombudsman, David Taylor, decided it should not be followed up. The Department's role is to pay people, to look after them, and if there is fraud, to take the relevant action. Naming and shaming people in this way is very dangerous.

Under head 5, when I went to the Department with people who had been overpaid, the amount deducted could not fall below a certain level to ensure a living income, but 25% goes way beyond that. I have huge concerns about that. A deduction of 15% is bad enough but 25% is way out of line.

Has the Department checked with the Data Protection Commissioner in respect of the naming and shaming campaign?

Senator Alice-Mary Higgins: Under head 3, I echo the concern raised by Deputy Brady about maintenance payments. This is an issue the committee has been looking into. In some cases the inability to secure maintenance payments has proved detrimental to the payments that people receive, including jobseeker's payment as well as the one parent family payment. That needs to be considered if we are to be sure we are consistent in our treatment of all families, including single parent families.

In respect of the public services card, while I appreciate this legislation sets out the situations where the public services card can be used, we need to ensure it does not become a mandatory requirement in respect of these areas or access to services. I would appreciate the witnesses' thoughts on that because in the past we have decided not to have mandatory identity cards and it is important that we do not move indirectly to that position.

In respect of decisions by automated information technology systems, that is mainly positive but there are concerns about where the data are held. It is one thing for that to be an automated system within the Department, but will it be tendered out to private providers like the application for driver licences, for example, which is run by a database in America? There is a

data protection issue there because one has to say what state or country one might be in. It is quite a wide data set. It is important to know about the security of the data in that system given the data hacking that has happened recently. Overpayment is in fact as large if not a larger concern than any hint of fraud. Where will the liability sit for persons affected by that? I welcome the fact the system can make only positive and not negative decisions.

Senator Humphreys has dealt strongly with head 5. These are anti-poverty payments. While they are allowances, they are calibrated to keep people living at a basic level. It is the business of courts to issue fines and to seek what can be appropriately recovered after due consideration of all related facts. If we set a precedent whereby we remove payments as an additional punishment, I would be concerned about where that would lead and what other things we would decide we would wish to punish. These are people's entitlements as citizens of our State. They are not a privilege granted.

The Data Protection Commissioner will have to be consulted in respect of head 4. It might also be good to see the precedent in other countries. This is not the same as the publication of the names of tax defaulters by the Revenue Commissioners, not simply because, as one of my colleagues said, in that case the settlements are highlighted but also because on that list information is highlighted for people who may be engaging in business with someone to ensure their payments are accurate. It has an additional function. There is no campaign on the side of buses saying that tax cheats cheat us all or that tax avoidance or evasion damages us all. The Minister has sent the opposite signal. It is a matter of great concern that he has cautioned against those who want billionaires living abroad to pay for everything.

To my mind, this is a message that not only do we not regard revenue fraud or, if not fraud, at least legitimate tax avoidance as a serious concern but the Minister does not intend to regard it as a concern because we are no longer even using the phrase "tax exiles". The latter is a phrase I always thought was quite mild. We are now talking about billionaires living abroad. In terms of revenue settlements, I am very concerned about this matter but I would like consideration to be given to the question of the danger that may exist. It relates to the publication of even full addresses because there is a concern that if we are publishing the addresses of persons and combining this information with a campaign which indicates that these individuals are cheating others, we are creating potential endangerment. In such circumstances, I would like consideration to be given not just to the suitability of head 4 but also to the suitability of the specific provision of publication of actual addresses. My final point, which has been made by others, is how do we know this information will go away after three months?

Chairman: Before we revert to Mr. McKeon, he has heard a number of issues. In respect of head 4 and naming and shaming, while nobody is condoning fraud, there is concern that the ultimate sanction should be appropriate to the offence that was committed. There is a big difference between somebody being convicted in court for a relatively small issue and somebody who has habitually committed very serious fraud, for example, by submitting multiple claims. The question is whether the sanction and penalty are appropriate to the crime in all cases. Are there any controls around it or will everybody be treated the same? There are many questions that I do not want to repeat.

In respect of head 5, it was summed up best by Senator Humphreys who asked some very specific and detailed questions. Could Mr. McKeon respond to them with the level of detail the Senator requested? In respect of head 3, members do not disagree with what the Department is trying to do in terms of the guardian payment. What the Department is effectively saying is that the guardian payment is not an income support for the guardian but a payment for the child.

Has the Department looked at the consequences of that for all or any other potential payments? Maintenance payments were specifically mentioned. The Department is saying that the payment is the child's payment, not the guardian's payment. Does it or could it apply to other payments that are being made? Has the Department examined that and what might be the possible impact? Mr. McKeon or whoever feels it appropriate to answer can address those questions. We will deal with pensions later.

Mr. John McKeon: I will take some of the questions and my colleagues will join in. In respect of Deputy O'Dea's question about the full guardianship and the half-rate carer's payment, what we are essentially looking to achieve in head 3 is that if somebody already validly in receipt of a payment - be it a widow's pension or a half-rate carer's payment - the receives a guardianship payment, it will not have a negative impact on the amount of money they receive through those payments. So the short answer to the Deputy's question is "Yes". If the person is validly in receipt of a payment and meets the conditions for that payment, he or she keeps the payment. In respect of the correlation between that and lone parents - as Senator Higgins noted, it applies to jobseekers as well - there is a difference. In respect of lone parents, the payment is specifically to provide for maintenance of the children as well as the parent's own living expenses so the payment already includes a payment in respect of the children. If somebody is receiving a maintenance payment from a former partner which might be quite significant, there is the question of whether we should disregard that maintenance payment. I do not think we should.

The guardianship payment is different. It is a payment made to somebody to recognise that they have a child who is not their own and to whom they are providing guardianship. If they are already in receipt of a payment which does not recognise that child and the receipt of the payment, getting the payment should not have an impact. They are two slightly different things and I do not think the issue raised by the Deputy is necessarily a valid one. It is something we will consider and return to. If it is an issue, we will reflect on it in the Bill but I do not think it is an issue.

Senator Alice-Mary Higgins: What is the situation with jobseeker's payments?

Mr. John McKeon: In respect of jobseeker's payment, a person gets an increase for it if they already have a qualified child. An element of the payment referred to by the Senator in terms of lone parents and jobseekers already reflects the fact that a person is minding a child. If the person is then getting a payment from elsewhere to cover some of the costs of minding that child, it is appropriate for us to take account of that payment in assessing it for means. If someone is in receipt of a widow's pension, which does not take account of the fact that they are guarding a child who is not their own, receipt of a payment for that guardian should not affect the person's widow's payment. They are the two examples. That is the difference.

Deputy O'Dea asked a question about the recovery of supplementary welfare allowance and how those people will qualify for disability allowance in any event. It does not always happen. In order to be on disability allowance, a person must be pretty much disabled for at least 12 months. There are people who receive personal injury awards where it might be a six, eight or nine-month period and they would not be eligible for disability allowance in that situation. That is what it is to provide for.

In the context of an appeal on an automated decision, I agree that it is quite strange, particularly when one considers why somebody would appeal a positive decision. The reason we have that provision is because we are very conscious that the general data protection regulation,

which comes into force next year, only allows automated decisions if there is an appeals process and does not distinguish between whether the automated decision is positive or negative. A public authority can only implement an automated decision process if there is an appeals process against that in legislation, so we are doing it to comply with the general data protection regulation.

The issue relating to head 7 is that it will not necessarily result in reduced fees. At the moment, because the General Register Office was previously the responsibility of the Minister for Health and is now the responsibility of the Minister for Social Protection, there is provision in two different Acts for the setting of reduced fees. We are just trying to clarify that it is the Minister for Social Protection who has the power to set reduced fees. The Minister has no intention of increasing fees. It is just about cleaning up the legislation so that rather than having two Ministers with power to set reduced fees, just one will have that power. That is the sole purpose of it. I will ask Ms Stack to address the questions regarding heads 4 and 5.

Ms Kathleen Stack: Members raised many issues relating to heads 4 and 5. I will do my best to deal with as many of them as possible. It is important to put on the record that the Department strongly believes that the majority of people who claim social welfare payments do so legitimately. They get what they are entitled to. However, there is an element of fraud and the measures set out in heads 4 and 5 are very much directed at those people.

People will be familiar with the figure of €41 million which we raised in fraud overpayments last year out of a total of €110 million that we raised in respect of overpayments. As members are aware, the provisions in head 4 are about publishing the names and addresses of and penalties that have been applied to people who are convicted in court of fraud. I note that Deputy O'Dea spoke to the Minister about this during parliamentary questions yesterday. We very much see this as legislation that raises awareness of the consequences of social welfare fraud. There is no doubt that these cases get covered in the provincial press and the media in other quarters. What does not happen, however, is the publication of a consolidated list. The latter is what we are trying to do in the context of this head. The Data Protection Commissioner offered her views on it. Her main concern related to the issue of proportionality. We feel we have addressed that because the list will be published for three months and will then come down. We will be making sure that there are safeguards in place to ensure that once the list comes down, it can no longer be accessible. The names will be up for three months and will not be accessible after that. We will make sure that happens. This is very much part of our intent regarding the head. That is where we are. We see this as an awareness-raising exercise, pulling the names together. Only offences that are committed after the publication of the Bill will be subject to publication. Last year we concluded 188 cases in court under our own social welfare legislation, and roughly two thirds of those resulted in a conviction. The numbers from our own legislation are relatively small, but that is the context.

I will move on to head 5, which the members have raised a number of issues on. One of the questions raised was whether we had consulted with the Attorney General. We did. The main concern that the Attorney General raised was around the area of discretion, and that there would not be an automatic disqualification but rather a discretion for our deciding officers to make that call depending on the circumstances of the particular case. The individual circumstances of the individual would be taken into account and that would be part of the proposal. I am not familiar with the 1992 case but we can certainly check it out as part of the ongoing study.

Senator Kevin Humphreys: The key to the question is that there is a process in the court and a punishment if the accused is found guilty, as in the witness's cases. Another process

outside the judicial system is now overlapping with it. With or without discretion the case was tried and the punishment was handed out. The proposal under head 5 is to put an additional punishment on top of that. That is a constitutional issue. It is also covered by previous Supreme Court cases. There is a political agenda here rather than a legal agenda, and there is a clear breach in the constitutional rights of citizens. It also means that the Department is moving in to the judicial area, which I have never seen any Department do before. If it is allowed it would set a very worrying precedent.

Ms Kathleen Stack: The draft head says “up to 25%”. It could be zero in some cases, depending on the circumstances.

Senator Kevin Humphreys: Even if it is 1%, it is swaying into the judicial area, and that would set a precedent. As legislators on this side of the House, we have to protect judicial independence very strongly.

Chairman: I want to remind colleagues that this is pre-legislative scrutiny. The Minister and the Department are putting forward what is in the Bill. It is not up to us to like it or not.

Senator Kevin Humphreys: It is not a matter of liking it or not, it is actually the legal content.

Chairman: The point I am making is that we can reflect the issue that the committee raised in the report that we will make to the Department. They do not have to agree with us. The consensus here is that this is a step in a new direction. Senator Humphreys is saying it is a second penalty, effectively.

Senator Kevin Humphreys: I disagree. I apologise to Ms. Stack for interrupting her. There is a separation between the judicial and the legislative, and this is the legislative moving into the judicial area. That is the key. Deputy O’Dea would probably have an opinion on that, but we are overstepping the mark by even putting a document such as this out. It is really worrying. Forgive me for saying this, but I believe that this is a political move rather than something which actually comes from the Department. I am worried where we are going with this.

Ms Kathleen Stack: I take Senator Humphrey’s comments on board and will certainly consider them, particularly in the context of the 1992 case that he referred to.

Deputy O’Dea asked a question about the overpayments piece and the disqualification piece of nine weeks. What the head intends is that we would stop collecting the overpayment piece for the nine weeks that the disqualification applies so that the two would not run concurrently.

Deputy Willie O’Dea: Is that up to 25% of the full personal rate of payment?

Ms Kathleen Stack: Yes, for the full personal rate up to nine weeks. For that nine week period the overpayment would be suspended and would only kick in again at week ten. The two would not run at the same time.

Deputy Collins raised the issue of overpayment recovery. We have provision in the legislation to recover up to 15% of the personal rate as well, which is about €28 or €29 at the moment. That provision has been there for a number of years at this stage.

On the awareness campaign and Deputy Gino Kenny’s comments, to be fair to the Department it was never its intention to humiliate anybody. That needs to be said. The idea came out of discussions that the officials had with the Minister over the last couple of months where vari-

ous issues were discussed in the areas of fraud and control. It was one of the issues that came up in the same way as the publishing names proposal. It was part of the general discussions.

Deputy Gino Kenny: I would say it was the Minister's idea-----

Chairman: That is pure speculation.

Deputy Gino Kenny: -----for the record.

Chairman: For the record, that is purely speculation.

Ms Kathleen Stack: The campaign has happened at this stage. Up until Monday of this week we have 3,681 reports received. Last year we had 2,289. There has been an increase. We are working through those reports at the moment. Roughly 40% of them relate to claims of people working and claiming. We will be working through and referring appropriate cases in time the appropriate scheme areas for follow up action.

There are a number of other issues but they were the main ones that I picked up on.

Mr. John McKernan: There was one other question about the public services card that I will ask Mr. Duggan to answer, but before I do it is worthwhile mentioning, on the issue of the broad campaign, that part of the purpose of the campaign is to increase awareness among people so that they do not fall into fraud accidentally. People need to update us and let us know if their circumstances have changed. The Department is not looking for sympathy, but to a certain extent we are damned if we do and damned if we don't. The Department has been criticised in this House before, including at the Committee of Public Accounts, for not being more visible in its fraud control efforts. We have raised our visibility and now we are being criticised for being visible. There are two sides to it and there is a balance that has to be reached. I can understand that sometimes people think we have gone too far in one direction and at other times we are too meek. It is a learning curve for all of us, and we understand that.

Perhaps Mr. Duggan will talk about the public services card and the issues that were raised by Senator Higgins.

Mr. Tim Duggan: The Senator asked that it is ensured that the public services card does not become mandatory for use by services. I assume that she means private sector commercial services.

Senator Alice-Mary Higgins: I also mean public services. I believe that a public service card will now be required to apply for a driver's licence.

Mr. Tim Duggan: Yes, it will be, and it is absolutely intended that that would be the case. It was always the intention that the public services card would be used for public services - hence the name - in the same way that the personal public services number is for public services. There is a distinction between that and how it will be used in the public services. For instance, the specific public service bodies that are allowed to use the card are set out in legislation, in schedule 5 of the Social Welfare Consolidation Act 2005. No other public bodies or private commercial bodies may request the public services card other than those listed in that schedule. Although the Minister has powers under the legislation to specify bodies through regulation he has never used that power, and the Department has never sought to use that power. We have always used primary legislation as the means of adding any bodies to that list. We have done that very deliberately and specifically to allow for debate in the House and to allow for it to be

as public as possible. It is the intention that public bodies would use the public services card as a means of authenticating the identity of its customers. That has always been the intention since the Government made that specific decision back in 2005. It is absolutely also the case that private sector bodies would not be allowed to request a public service card for any commercial transactions, and the way that we ensure that that happens is by making sure that only those bodies specified in legislation can seek it. There is no danger of it going beyond that, unless the Government chooses to allow it to do so.

Senator Alice-Mary Higgins: Can we expect new public bodies which will be permitted under legislation to use the public services card to make it mandatory?

Mr. Tim Duggan: The bodies are not new. The legislation has been in place since 2005. Most of the public bodies listed in the Schedule to the legislation have been also in existence since 2005. There have been a few added since but, by and large, the bulk of them have been in existence since this process started. It is important to remember that the public services card is a means of authenticating the identity of an individual seeking a service, which happens any-way. For example, to apply for or renew a passport, a person must appear in person at a Garda station and present a garda with a great deal of information, including, possibly, documentary information. The garda records the information in a ledger. If the Passport Office chooses to require a person to produce a public services card, it will be used instead of that process. The registration process will be changed such that instead of a person having to appear at a Garda station, he or she will have to produce a public services card. To get a public services card a person must engage in a face-to-face process with an officer of the Department of Social Protection, who authenticates his or her identity. It is a once in a lifetime process. A public services card establishes identity to a far greater extent and hugely conveniences the customer in that to apply for or renew a passport, he or she will never again be required to turn up at a Garda station to have his or her identity authenticated. The same applies to a driver's licence. Currently, to apply for or renew a driver's licence, a person must appear at a location operated by the Road Safety Authority and go through a process of proving identity, have his or her photograph taken and produce documents and so on. The Road Safety Authority is planning to dispense with all of that process in preference of using the public services card because the registration process used for the public services card is better than the one it operates. Again, it massively conveniences the customer in the sense that he or she will never have to go through that process again.

Senator Alice-Mary Higgins: I appreciate that it is a process that is increasingly being used as more bodies become involved and that the public services card is effectively an identity card. However, that is the subject of a wider discussion.

Deputy Joan Collins: I would like to return to the point made by Ms Stack that the deduction rate has been 15% for a number of years. The point is that 10% is being added to it, which means that 25% could be deducted from a person's payment.

Ms Kathleen Stack: In terms of how it will work, the 25% rate will apply for only nine weeks. If we are taking 15% to recover an overpayment, it will not happen at the same time. It will be suspended until week ten.

Deputy Joan Collins: I am speaking about the level of income to which a person is entitled. These are not top-up payments: they are payments on which people live. In taking 25% of a person's payment, even for nine weeks, the Department is overstepping the mark. We should not be moving in that direction.

Ms Kathleen Stack: It is up to 25%. The figure ranges from 0% to 25%.

Chairman: Are there outstanding issues which Mr. McKeon would like to address?

Mr. John McKeon: I think we have addressed all of the issues raised.

Chairman: I will allow Deputy John Brady to ask a brief question.

Deputy John Brady: The anti-fraud campaign is labelled an awareness campaign. I get the sense from the officials that even they are uncomfortable with it. It has been mentioned that there has been an increase in the number of calls to the Department. How many will turn out to be legitimate fraudulent cases? Like the Data Protection Commissioner, I have concerns about the publication of information on the website for three months, after which it will be taken down and mysteriously disappear. The officials have said they are examining ways of making it disappear. In this day and age people are easily able to access all of the information they want on social media and so on. How will the Department stop information from being shared or held against individuals?

Chairman: The Deputy has made his point.

Deputy Gino Kenny: Ms Stack has mentioned that 188 people were taken to court last year for fraud, two thirds of whom were convicted.

Ms Kathleen Stack: The cases were finalised in court.

Deputy Gino Kenny: Of the two thirds who were convicted, what was the minimum amount involved?

Chairman: Before Ms Stack responds, I will allow other members to ask questions on the same issue.

Senator Alice-Mary Higgins: On the endangerment of the publication of addresses and the issue of public messages - a very negative action - Mr. McKeon has suggested the campaign might encourage people to come forward and rectify the position, but I do not believe the message is targeted at persons who may be concerned about overpayments.

Chairman: That is not a related issue.

Senator Alice-Mary Higgins: There is a direct correlation with the headlines used about migration, for example, and the concrete, measurable increase in the level of racist crime. What measures are being taken to address potential endangerment arising from the publication of addresses?

Chairman: I thank the Senator.

Senator Kevin Humphreys: The current maximum deduction from social welfare payments is 15%. Will the officials clarify if it is underpinned by a statutory instrument or regulation and, if so, if the relevant statutory instrument or regulation will have to be changed?

Deputy Willie O'Dea: I think that is provided for in legislation. When drafting head 9, will the officials ensure that in a situation where somebody is legitimately injured, he or she will automatically qualify for social benefit payments and that, as the supplementary welfare allowance will already have been deducted from their payments, there will be no charge on any rebate due? In other words, will they ensure there is no double charge in that instance?

On the section dealing with fraud, I agree with Senator Kevin Humphreys that the system of penalties to be applied by judges in courts which are separate from the Legislature and the Executive is very severe. It is constitutionally shaky to introduce a separate system of penalties. At the very minimum, there should be some provision in the legislation to allow for penalties imposed by the Minister to be taken into account by the court when passing sentence or *vice versa*. Having two regimes of penalties is constitutionally very shaky. I am still not convinced that increased visibility will deter people who deliberately set out to defraud the social welfare system anymore than would publication of a list of individuals who defraud credit unions, banks and so on. With no disrespect to the officials, the only effect of the campaign thus far, of which I am aware, is an increase in the number of people making complaints about their neighbours and asking for them to be investigated. I would not claim credit for that. We have not yet had adequate explanations for this fraud campaign, although, based on the answers we have received to date, I have a fair idea from where it originated.

Chairman: So, too, has Deputy Gino Kenny.

Deputy Willie O’Dea: I am taking my lead from him.

Chairman: I now invite the officials to respond. We will then conclude our deliberations on this section. Deputy Gino Kenny asked a number of specific questions.

Ms Kathleen Stack: Senator Kevin Humphreys has left the meeting. The basis of the 15% figure is in primary legislation.

Deputy Gino Kenny asked about the overpayment figures. In the 188 cases finalised in court last year the average overpayment involved was €16,996. The average figure across all overpayments is about €1,500. The cases involving convictions obviously have a much higher overpayment level attached to them.

Deputy Gino Kenny: The figure is €17,000.

Ms Kathleen Stack: Yes.

Deputy Gino Kenny: Does Ms Stack know what the minimum figure is?

Ms Kathleen Stack: The amounts ranged from €789 to €195,984.

Deputy Gino Kenny: The minimum figure was €789.

Ms Kathleen Stack: Yes.

Deputy Gino Kenny: There was a conviction in that case.

Ms Kathleen Stack: In those cases we probably took a sample of the overpayments rather than the overall total.

Deputy Gino Kenny: They are on the register.

Ms Kathleen Stack: Yes. Equally, the cases involving overpayments of €195,000 are on the register.

Deputy Gino Kenny: That is a big chunk of change.

Ms Kathleen Stack: We refer to the average figure.

On the question of publishing addresses, to which Senator Alice-Mary Higgins referred, our difficulty with being that non-specific is not wanting to cause confusion about whose name we are publishing. There might be six persons with the name of Kathleen Stack living in north Kerry and I would not want the wrong person to be identified. We are trying to be specific in the people being identified. That is why we are going down that road.

On the issue raised by Deputy John Brady of control of publication, we can control what is contained on our website. As I said, we intend to have safeguards to ensure that once names come down after three months, they will no longer be accessible. We have less control over what happens in the general public domain.

Mr. John McKeon: We can make sure names and conviction details are no longer accessible on our website. However, once they have been published, there is nothing to stop anybody from printing the information. The same is true today of court reports in newspapers. We are responsible for ensuring the list is not available on the consolidated version of our website and we will certainly do so.

On the purpose of the fraud campaign, publication of details and so on, as I said, there are a number of audiences for these initiatives. As officials, we regularly hear that we do not do enough to combat fraud. I was born and raised in the north inner city of Dublin where I have a lot of family connections. I visit the area a couple of times a week to see family and friends. The thing I hear most frequently is that we are not doing enough to combat fraud. There is a responsibility on the Department to show evidence of form, but, as I said, we have to be careful in how we do this. The audience includes not only those in receipt of social welfare payments; it also includes others who are contributing to the social welfare system and looking for reassurance that the Department is doing something to combat fraud. As I said, at meetings of the Committee of Public Accounts officials are regularly grilled on statements received from the Comptroller and Auditor General. They are asked what they are doing about fraud and told that people do not see enough, that they are not out there enough, that they do not have enough inspectors and that they do not get the message out about the consequences of fraud. It needs to be recognised that it is about striking a balance.

Chairman: At this stage, I want to move to Part 3 of the Bill which provides for the amendment of the Pensions Act 1990. The heads in question are No. 11 - time limit for the submission of a funding proposal; No. 12 - minimum notice for ceasing contributions; No. 13 - determination of schedule of contributions; and No. 14 - occupational pensions equal treatment.

Deputy Willie O'Dea: I refer to head 11. I read some documentation that confirmed that as of 31 December 2015, 60% of defined benefit schemes were in compliance with the funding standard, while the rest were subject to funding proposals. In other words, there were only nine schemes outstanding. Does the Bill provide for only nine schemes? I imagine that on 31 December 2016 all but nine were in order because they were in compliance with the legislation or had agreed to a funding arrangement. The number of non-compliant schemes is probably less than nine or close to zero.

I refer to head 12 which provides for a notice period of 12 months before there is a triggering. There are varying periods of notice and different trust instruments. The time period involved is usually three to six months. We are providing for extra months. That is welcome and I support the proposal, but whether it will make a significant difference is another matter. It has been represented to me that in some cases it could make matters worse, as members might be accruing benefits at a rate greater than the level of contributions. In other words, the longer

things go on, the worst the deficit will ultimately be. If a scheme is seriously underfunded and an employee has to continue funding it, as he or she would usually have to do if an employer continued to fund it, the benefits will be reduced, which would be a waste of money for the employee. Surely it would be better, in such a situation, to have the option of putting an employee's money into a defined benefit scheme? In many cases, one finds that when there is a difficulty, an employer has been contributing at a level below that required by the trustees. As I read it, 12 seems to preserve that position during the 12 month period involved. While the provision contained in it requires consultation with members, it does not ensure their views will be implemented. Typically, pensions legislation involves consultation, but, at the end of the day, others make the decision. On reading the head, it appears that deferred members are put on the same level as everybody else but lot of commentary on it suggests otherwise. We, therefore, need clarification in that regard.

Head 13 states the Pensions Authority can put a payment system in place. I may be wrong, but on my reading of it, it seems that all an employer will have to do to prevent the process from being triggered is to enter into discussions. The Bill does not require an employer to agree to a funding proposal. In these circumstances the Pensions Authority cannot impose a funding rate as the employer has not failed to enter into negotiations and pay contributions under a funding proposal because there is no such proposal in place.

On the head dealing with equality, I have received correspondence, as I am sure everybody else has, from an organisation on pensions equality, to which the Chairman drew my attention yesterday. I subsequently received a hard copy of the documentation. The organisation represents a small group of people, mainly retired public servants, and makes a number of points. On this head, it claims that people are being denied an entitlement to survivor's pension for a same-sex spouse because they were unable to marry the person they wished to marry before they retired. The group also states the current legislation restricts access to the Circuit Court, unlike other equality claims under equality legislation for which the usual forum is the Workplace Relations Commission. Why not include a reference to both? The group raises a legitimate point in that regard. It also states public servants, following acceptance of the constitutional amendment, have an entitlement to a survivor's pension for a same-sex spouse but that the payment is not being calculated based on the entirety of their service.

I ask the officials to address those points.

Chairman: Deputy Willie O'Dea referred to a specific document from the group Pension Equality. As I said, we are anxious not to delay passage of the Bill. The committee will engage in further scrutiny of the section on pensions and if, within a week or so, the officials could respond to the Pension Equality document from the point of view of the Department or the Minister, it would be very helpful.

Deputy Denise Mitchell: I have a brief question about defined benefit schemes. The moves the Department are making are very positive. I have a concern about some of the defined schemes. We have seen some schemes beginning to unwind even though they have a surplus of €150 million in them and have never had a deficit. Can the witnesses confirm the legislation could override any rules within the schemes?

Mr. John McKeon: Mr. Duggan is the expert on this.

Mr. Tim Duggan: It does not only apply to the nine schemes; it applies to every defined benefit scheme. Just because a scheme is solvent today and the employer is committed to

supporting it does not mean it will remain the case. In the event there is any change in those circumstances, where an employer seeks to cease contributions to a defined benefit scheme, the provisions set out here will apply.

It is absolutely a possibility the 12 months will make things worse. The nature of schemes and their funding position changes over time. Consequently, depending on what is happening at any given moment in time, something could disimprove from the time an employer announces it will cease contributions. The provisions make allowance for the notice period being reduced. It is a very deliberate provision to facilitate a discussion between the trustees and the employer where they believe the situation the Deputy referred to could arise. In that case they would allow for a shorter period. It has to be by agreement between the trustees and the employer rather than being unilaterally imposed by one side.

The issue of the contributions during the period being below that required was raised. The legislation sets out that the employer must make the proper contributions during the period of dialogue, namely the 12-month notification period. If they do not do that and stay with a lesser contribution, they will be in breach of the law.

The issue was raised about consultation being meaningless. The trustees are required under law to act in the best interests of all of the members of the scheme, which means they must engage in dialogue with the members - active, deferred and pensioners - and seek their views. There will obviously be differences of opinion across those three constituencies. They will have to try to balance those against what they know to be the position with respect to the employer and their capability for funding. I fully accept sometimes it is better to have hard and fast imposition through legislation but in this situation it could be as detrimental as it could be beneficial.

The Deputy suggested an employer would only have to enter into discussions and that the Pensions Authority piece, if I can call it that, would be unable to kick in because the employer did not fail to enter into a funding proposal. That is not the case. Under the head, a funding proposal must be made within a defined period of time. If it is not made within that period of time, the Pensions Authority will have the power to impose a contribution schedule. If they do not enter into discussions and therefore the trustee is unable to make an agreed funding proposal the provision will kick in. If they enter into discussions but are unable to agree a funding proposal with the trustees the provision will kick in. It is tighter than the Deputy suggested. The backstop is there regardless of what level of engagement the employer has with the trustees.

I have not seen the pension equality report. We will do our best to respond to it within the time the Chairman suggested if it is possible. I am saying it blind.

Chairman: If it is not possible, let us know.

Mr. Tim Duggan: I will. Ms McDonald will address the last point.

Ms Helen McDonald: The Deputy asked about redress and the court.

Deputy Willie O'Dea: It is part of the pension equality matter.

Ms Helen McDonald: It is part of the pension equality matter but it is included in the heads of the Bill. Applications for redress will be to a court of appropriate jurisdiction. The monetary limit for Circuit Court jurisdiction is only €100,000. The matter will be heard by an appropriate court and that will be in the text when it is finished.

Deputy Willie O’Dea: They are complaining that there is no access to the Workplace Relations Commission as an alternative to going to court or as a preliminary step.

Ms Helen McDonald: They are not employees and usually the WRC is for employees. They are beneficiaries.

Deputy Willie O’Dea: It could also be the Equality Tribunal.

Ms Helen McDonald: They are spouses of the original employees and it could be a long time after the employee-employer relation has ceased. It makes more sense for it to be in court. Somebody could live to be 80 and when they die their spouse goes looking for a pension. It is more appropriate for it to go to a court rather than the WRC.

Deputy Willie O’Dea: What about the Equality Tribunal? There are various other tribunals.

Ms Helen McDonald: We can certainly look at all the options.

Deputy Willie O’Dea: Will the witnesses look at that?

Ms Helen McDonald: Yes.

Mr. Tim Duggan: Will Deputy Mitchell repeat her question?

Deputy Denise Mitchell: Will this legislation override any of the rules of the schemes?

Mr. Tim Duggan: It will override certain rules. As Deputy O’Dea pointed out many defined benefit pensions schemes have notification periods built into them. Sometimes there is no period at all but three to six months is typical. They are all different. This will ensure the minimum is 12 months. It will override rules. The level of commitment required by an employer under the trust rules will be overwritten by the fact that the Pensions Authority can impose a schedule of contributions in the event the process goes that far.

Senator Alice-Mary Higgins: I welcome the attempt to address the issue. Last year, I proposed a Report Stage amendment to the Social Welfare Bill in respect to a similar scheme. This particular approach has been taken because I identified the concerns about solvent firms. One of the criteria I suggested is such a firm would not be able to close a defined benefit scheme until it had reached 90% of its funding standard. I appreciate notice is required but I have some concern about the early wind-up of a scheme. Head 7 says a reduced period can only be agreed where it is in the best interest of members. It is not very clear how the best interest of members is to be determined. It mentions a consultation period and that its form will be prescribed. Where will the ultimate determinant of the best interest of members fit? Will it be solely with the trustees? Will there be objective measures? I am not suggesting my version was perfect because it absolutely was not. There are many versions. Will there be objective standards in terms of the best interest of members to ensure a minimal return for example?

I share the concerns about the employer entering negotiation. Is there any limit to the period in which an employer could avoid the impact of head 13, which provides that the Pension Authority could set out a schedule of contributions because there has been a prolonged period of negotiation? I have those two specific concerns. Others have addressed the concern about pension equality and whether it will be possible to extend the period in respect of post-retirement spousal benefit so that it would also apply to schemes where persons have retired already but have been adversely impacted.

My final question is on something that will be the subject of an amendment. We can discuss it in more detail at a later date.

The other major pension inequality in Ireland is pension inequality for women and the acknowledged disparity in the averaging system that is impacting people in two ways. The refusal to backdate and address what is acknowledged as an unfair system means that people who have made the same amount of contributions as others are disadvantaged by the averaging rules. The second impact is the embedding of further losses for people affected by that unfair system as a result of the 2012 changes. I would respectfully suggest that either the 2012 changes are reversed or a measure to address the problems of averaging, pending the move to a total contribution approach, is introduced, or both.

Chairman: Thank you Senator. That is not related to this specific-----

Senator Alice-Mary Higgins: No, but it may come up in an amendment.

Chairman: Yes, but it is not related to the Bill as presented. We are dealing with pre-legislative scrutiny of a Bill as presented.

Senator Alice-Mary Higgins: I am simply flagging areas of future concern.

Chairman: The Senator can do that elsewhere. At the moment, the Bill as presented is what we need to focus on.

Mr. Tim Duggan: The definition of member's benefits is a matter for the trustees and they are required, under law, to act in the best interests of all members of the scheme. It is a function of the trustees to determine that. There is guidance from the Pensions Authority on that but by and large, it is a legal function of the trustees.

The Minister has said previously that he intends to publish an entire pensions reform action plan later this year. Included in that will be measures dealing with reform and simplification of pension schemes generally in the private sector and particularly the transposition of what is known as the IORP II directive. That directive and some of the proposals by the Pensions Authority are around the qualifications, expertise and knowledge sets of trustees and their ability to properly administer the schemes for which they have responsibility. The combination of the two should result in better trusteeship of schemes and better outcomes consequently, one would hope, for the members.

I was not entirely clear on what Senator Higgins meant by the period around the equality heads and I would ask her to clarify that.

Senator Alice-Mary Higgins: One of the concerns raised around pension equality was-----

Chairman: I must pause that for the moment because we are going to get a written reply. That is the same point-----

Senator Alice-Mary Higgins: We will get a written reply on that. That is fine.

Chairman: That is included in the document.

Senator Alice-Mary Higgins: That is the same point covered, essentially.

Mr. Tim Duggan: Okay.

Chairman: That concludes that part.

Part 4 of the Bill is mainly technical in nature and contains amendments to the Civil Registration Act. Does anyone have any issues they would like to raise? No. Part 1 contains the standard material around Titles, definitions and so forth, so that concludes our scrutiny.

Before we conclude I would like to thank the departmental officials for attending today. As I said at the outset, it is not the intention of the committee to delay the passage of this legislation in any way. We agreed in private session this morning that we would conclude the pre-legislative scrutiny here but we have identified that we would like to explore the pension issue further. Members may well introduce amendments on Committee Stage. In that regard, the pension equality group and IBEC, which has some concerns around the Pensions Authority, will be appearing before us in the coming weeks. That should not affect the passage of the Bill from the Department's point of view but it may result in members proposing Committee Stage amendments. It is important to flag that to the Department at this stage.

Senator Alice-Mary Higgins: I have a brief technical question on the public services card. Under the legislation there needs to be a justification for each use or sharing of data. I ask the officials to confirm that there has been a justification process which is accessible in respect of the extension of information to each new body.

Mr. Tim Duggan: I will repeat, there is no extension. These public bodies are entitled under the existing legislation, since 2005, to use the public services card. They are just exercising that ability right now. There is no extension. The public services card is for public service purposes by those bodies already specified in the legislation.

Senator Alice-Mary Higgins: Is the rationale for necessity available?

Mr. Tim Duggan: They are using it in line with the legislative provisions that are already set out in the Social Welfare Consolidation Act or, indeed, their own legislation.

Chairman: Once again, I thank Mr. John McKeon, Mr. Brian Duff, Ms Kathleen Stack, Mr. Tim Duggan and Ms Helen McDonald for their attendance today and for responding to the queries raised. That concludes our pre-legislative scrutiny.

We will be meeting again on 15 June. I remind colleagues of the launch of the report in the audiovisual room at 2 p.m. today.

The joint committee adjourned at 11.55 a.m. until 10.30 a.m. on Thursday, 15 June 2017.