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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Thursday, 25 *March* 2004.

SEANAD ÉIREANN

Déardaoin, 25 *Márta* 2004.
Thursday, 25 *March* 2004.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, motion for earlier signature of the Public Service Superannuation (Miscellaneous Provisions) Bill 2004, to be taken on the conclusion of the Order of Business; No. 2, motion re data protection, which was referred to the Joint Committee on Finance and the Public Service and which has completed its deliberations; No. 3, Private Security Services Bill 2001 — Second Stage, to be taken on the conclusion of No. 2 and to conclude at 1.30 p.m., with spokespersons having 15 minutes and other Senators ten minutes, Members may share time and the Minister may be called upon to reply not later than ten minutes before the conclusion of Second Stage; and No. 4, Aer Lingus Bill 2003 — Committee Stage, to be taken from 1.30 p.m. until 3.30 p.m.

Mr. B. Hayes: As the Leader is probably aware, the 60th anniversary of the D-Day landings occurs on 6 June next. This was a tremendous event in the Second World War which led to the fall of the Third Reich and was significant in terms of liberating Europe from fascism. The anniversary this year is particularly significant because, for the first time in 60 years, the German Government has been invited to be part of the D-Day celebrations. This act of reconciliation between Germany and France and western Europe could not possibly have occurred were it not for the European Union.

In that regard, I strongly welcome the comments made by the Taoiseach in the context of the EU summit to be held in Brussels today and tomorrow. The Taoiseach stated he believes the political will now exists for an agreement on the new EU constitution. It is vitally important the constitution is ratified and that Europe continues to unite because a Europe which is not united is dangerous, as we know from history.

In light of the Taoiseach's comments and the importance of the summit in Brussels, will it be possible to have statements in the House next week, following the summit, to consider the remaining issues which need to be resolved before the constitutional framework can be put to the people of Europe as a whole? It is important we recognise the tremendous strides towards reconciliation in western Europe as a result of the development of the European Union. It is also important that we do not take the Union for granted and that we continue to argue on its behalf, to show to those against integration and unity that the only way forward is through a united and strong Europe, which is the best way to secure peace throughout Europe.

Mr. O'Toole: On a related topic, Members may be aware of the comments made by Mr. George Soros over the past 24 hours on his visit to Ireland. He dealt with two issues. One represented a road to Damascus conversion for Mr. Soros, in that he said the market has failed to deliver the social structures and supports needed in a fair and equitable society. His argument is worth considering.

More importantly, Mr. Soros referred to Europe, about which he made two points. First, he said Europe should show more openness, in particular to the ex-Soviet states which are not nearly ready to begin the process of application for membership of the European Union. He suggested Europe should reward and reinforce their efforts towards democracy, giving the particular example of Georgia. I believe much could be done by Europe in that regard.

Second, Mr. Soros raised a challenging point which ties in with the comments of Senator Brian Hayes — that Europe needs to have a foreign policy voice. It is an issue which troubles me but I see the sense of it and it should be discussed, although it will be difficult to achieve. It is not directly tied to the debate on the constitution although it might grow from that. However, if we are to have a proper influence in supporting countries and trouble spots outside Europe, we must find some way to have an acceptable foreign policy voice for Europe, which also recognises the Irish view and commitments on neutrality, even if that means redefining neutrality.

Ms O'Meara: I support the point made by Senator Brian Hayes on the EU summit. In particular, I wish the Taoiseach and the Irish Presidency well in advancing unity and agreement on the proposed constitution. Last December, it seemed as if this would not be achieved in the six months of the Irish Presidency. However, if progress can be achieved in the coming days and weeks, we would fully support the Taoiseach. It would be useful to have a debate on the outstanding issues as soon as possible.

When is it proposed to take the Electoral (Amendment) Bill, which deals with electronic

[Ms O'Meara.]

voting? The Leader should ask the Tánaiste and Minister for Enterprise, Trade and Employment, Deputy Harney, to come to the House to debate the role of the consumer. This is not only in the context of price controls, as the Tánaiste seems to believe it is entirely up to the consumer to ensure there are price controls, but also in regard to the power of the consumer.

We noted last week the power of consumers in regard to the Bank of Ireland and the issue of pornography, and the issue has again been raised on national radio in the context of credit card companies. There is a useful point to be made on this, which is that consumers can have a major role to play in regard to credit card companies and their use of technology, to ensure credit cards are not used to disseminate pornography. It would be useful for the Tánaiste to come to the House to debate the issue.

Mr. Dardis: I endorse the remarks of Senator Brian Hayes and others about the EU constitutional treaty. I commend the Taoiseach and other members of the Government on their work in this area. The Taoiseach is to be applauded for making significant progress here, which is probably a tribute to his conciliatory powers. I have always taken the view that it would be preferable to have the matter disposed of very soon after accession, if not before it, because if it dragged on for a long time it would send a negative signal to the accession countries. Senator Brian Hayes has highlighted the fact that the enduring monument of the EU is that it has given us peace for almost 60 years, which is unprecedented in European history. We need to keep that in mind.

If the Leader can find time for a debate on this between now and the recess, the Taoiseach and the Minister for Foreign Affairs have been very good in attending such debates. I am not anticipating what might be said in the report on Seanad reform but a more vigorous role for this House in European matters could be envisaged and this is a suitable matter for discussion.

Mr. McHugh: I congratulate the Labour Party on putting down the motion on emigration last night. I did not get a chance to speak because time did not permit but I thank the Leader for adding to the debate, which was very constructive. I wish to put the role of ICAP, the Immigration Counselling and Psychotherapy in the UK, on the record. It is a relatively new body and I acknowledge the Government's role in bringing it in to frame policy. It deals with the mental health of the Irish community abroad and employs 200 clinical psychologists but they do not work on a voluntary basis and the organisation needs funding. The task force recommended the organisation receive ongoing funding. It has an office in London and is opening an office in the next few weeks——

An Cathaoirleach: This is not appropriate to the Order of Business. It is a matter for the Adjournment.

Mr. McHugh: I have a question. In light of the office in London and the organisation's plans to open offices in Birmingham, Liverpool, Manchester and Glasgow——

An Cathaoirleach: I have given the Senator good latitude.

Mr. McHugh: In light of that organisation's plans and forward thinking we need an ongoing debate on emigration. I will raise this issue on the Adjournment. If 30% of this body's resources and energy are spent on fund-raising in Ireland, we need the task force document to be implemented. We need more money for this area. The Minister has a role in this area and so do we.

Labhrás Ó Murchú: Will the Leader invite the Minister for the Environment, Heritage, and Local Government to the Seanad to discuss the guidelines on rural housing? We have discussed this matter on many occasions and there seems to be unanimity here about the need for radical action to ensure the people of rural Ireland can live in rural Ireland. Submissions have been invited by the Minister and that process will continue in coming weeks. The intention is to get reaction from as many people as possible and to fine tune the guidelines. Would it not be helpful if, as part of the submission process, we could also put forward views on the guidelines rather than waiting until the submissions concluded? Having seen how accessible the Minister has made himself in this debate, he might welcome an invitation to the Seanad to discuss this issue.

Mr. Norris: On Tuesday I condemned the action of Israel in targeting Sheikh Yassin because I felt it had breached a barrier. I call for a debate on this issue because another significant barrier has been breached with the use of a 14 year old boy stuffed with explosives as a human bomb. This is a violation of every decent human feeling. What pressure was brought to bear on that boy to allow this to happen? The use of child soldiers is forbidden under every international protocol. It is absolutely obscene that this should be allowed to happen and it must be condemned. It was painful for me to condemn a country I love, Israel, and I expect others now to condemn this action. President Arafat has put his condemnation on the record but I would like to hear condemnation from Islamic clerics also. Sheikh Yassin was described as an Islamic cleric but I have yet to hear one Islamic cleric publicly

condemn these suicide bombs. Perhaps the media do not cover those statements.

I also seek a continuation of our valuable discussion of Iraq. Senator O'Toole mentioned George Soros and I will be meeting him in an hour's time. He has incisively illustrated what he describes as the pre-emptive foreign policy of President Bush, which he regards as an aberration. Instead of a debate on Iraq perhaps we could have a debate on terrorism, which we have not done to date. Let us do something new with a debate on terrorism to see who are the real terrorists. Sandy Berger, a former security adviser, Richard Clarke, a registered Republican——

Ms White: And Paul O'Neill.

Mr. Norris: —and Paul O'Neill have all said the war on Iraq undermined the war on terrorism. They bombed Iraq and ignored al-Qaeda.

They also ignored Saudi Arabia although almost all the people involved in the bombing of the Twin Towers were Saudis and the money trail led to Saudi Arabia. What did they do? They spirited out prominent Saudi families like the bin Laden family, who are friends of the Bush family.

Senators: They did not.

Mr. Norris: Yes, they did. That has been acknowledged and is on the public record — the American administration spirited out members of the bin Laden family after 9/11.

In that context I call for a debate on terrorism so we can flush this stuff out and shame Bush and his criminal associates.

Ms White: Hear, hear.

Mr. O'Toole: Hear, hear.

Dr. Mansergh: I welcome the comments of Senators Brian Hayes, O'Toole and Dardis on Europe. We all wish the Taoiseach and the Minister for Foreign Affairs success in concluding the work on the constitution by June. Since the tragedy in Madrid it has become very clear that Europe must present a united front. I am glad there is very little talk these days of a two-tier or two-speed Europe, as that is the last thing we want. I would welcome a general debate next week, if possible, not only on the Constitution but on other issues being discussed at the summit.

Mr. Browne: Yesterday we debated the Finance Bill. There were 20 civil servants in the House but we did not have enough time for the debate. We should learn from this and extend the time for the debate in the future, as we were just getting going when we had to stop.

I ask the Leader to invite the Minister for the Environment, Heritage and Local Government to the Seanad to discuss his policy banning shooting on State lands, a policy which came in after the outbreak of foot and mouth. The gaming lobby is irate about the ban and we should have a debate on it. If there are valid reasons for the ban let us hear them but if not we should re-examine the matter.

We debated the Public Health (Tobacco) Act recently but I was not aware that smoking was to be banned in company cars. That is going too far. If someone is driving a company car with no other person in the car, then he or she should be allowed to do whatever he or she wants within reason.

Mr. Finucane: Hear, hear.

Mr. Browne: That ban cannot be policed and smacks of the nanny state. What else will they stop us doing in our cars?

Mr. Finucane: The Senator should sit down. He is a single man.

Mr. Browne: Will the Leader guarantee that Ministers who smoke will lead by example and obey this rule?

Mr. Feighan: I join Senator Norris in condemning the use of a 14 year old boy for such a horrific, attempted crime yesterday. I am also concerned about yesterday's deadly firebomb attack by the Real IRA in Cork. Three of the suspects were out on bail from the Special Criminal Court. The Minister for Justice, Equality and Law Reform should attend the House to explain the situation.

Ms White: I support Senator Norris's request for a debate on terrorism. We need to question why there is such terrorism.

Mr. B. Hayes: Exactly.

Ms White: We should examine that aspect.

Ms O'Rourke: I thank the Leader of the Opposition, Senator Brian Hayes, for reminding us that 6 June will mark the 60th anniversary of D-Day. It is a point upon which all Members may care to reflect because it was during the past 60 years that the inclusiveness of Europe came about. In addition, the prevailing spirit of reconciliation among formerly warring parties will allow German representatives to attend the forthcoming commemorations.

In anticipation of a request for a debate on the EU constitution and Europe generally, following this weekend's summit, I have been in touch with the office of the Minister of State at the Department of Foreign Affairs, Deputy Roche. As he has to attend a three day plenary session of the European Parliament in Strasbourg next

[Ms O'Rourke.]

week, I am hoping the Taoiseach can attend the House for an hour to discuss these matters. It would be great if he could as it would end the term satisfactorily. It is proving difficult to arrange such a debate but I hope it can be done. I will keep Senators informed.

Senator O'Toole shared Senator Brian Hayes's views, and also mentioned Mr. George Soros's opinion that the free market had failed to deliver, although he hedged his comments somewhat. Senator O'Toole said Europe should be more open to the democracies that have emerged from the former Soviet bloc, particularly those whose economies lag behind the EU accession states. It is a fair point. It would be a good idea to have a definitive voice on foreign policy in Europe, which could establish an agenda and follow through on it.

I thank Senator O'Meara for conveying the Labour Party's good wishes to the Taoiseach for the summit of EU leaders in Brussels. She has sought a debate on the matter which I will endeavour to arrange.

Senator Ó Murchú raised the draft guidelines on rural housing, and the relevant item, No. 16, is still on the Order Paper. I hope the Minister for the Environment, Heritage and Local Government will be able to attend the House to continue the debate.

Senator Norris referred to the 14 year old Palestinian boy arrested yesterday with explosives strapped to him. The use of child soldiers is forbidden under the terms of the Geneva Convention but we all saw it happening in full colour on television yesterday. The Senator also sought an ongoing debate on Iraq as well as a debate on terrorism and its causes. We are witnessing outbreaks of terrorism all over the world and it is important to discover why this is happening. The Senator quoted the former US security official, Mr. Richard Clarke, whose comments are riveting. There is no denying what he has said.

Senator Mansergh said we had to present a united front, which we are doing, following the tragedy of the Madrid bombings. If anything good can come from such an awful event, perhaps it is that Europe is united in its response and that, yesterday, people united to express their sorrow in Madrid.

I agree with Senator Browne that the Finance Bill ended too precipitately, given that a very fine debate was continuing at the time. I hope the Senator does not think I am being condescending in saying this but I followed the debate on the monitor and the Senator did well in the first real test he has had in dealing with a major Bill.

Senator Browne also mentioned that the Minister for the Environment, Heritage and Local Government, Deputy Cullen, had banned shooting on State lands. I am not aware of that issue but will make inquiries about it. In addition, the Senator said the proposed ban on smoking in company cars would be unenforceable. For the most part, however, the new smoking regulations will be self-regulating because it is expected that people will be imbued with good ideas about health. I hope the letter of the law will be followed, since it will not be possible for gardaí to check on everyone in company cars.

Senator Feighan referred to the Real IRA firebomb attack in Cork which has been reported in the news. It is an important matter but I do not know how we can address it through a debate.

The European summit can be dealt with as part of a more general discussion on Europe, if the Minister for Foreign Affairs or the Taoiseach can attend the House for such a debate.

Senator White joined Senator Norris in raising the issue of the accelerated rate of outbreaks of terrorism throughout the world.

Order of Business agreed to.

Public Service Superannuation (Miscellaneous Provisions) Bill 2004: Motion for Earlier Signature.

Ms O'Rourke: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the Commission constituted as provided in section 2 of Article 14 of the Constitution to sign the Public Service Superannuation (Miscellaneous Provisions) Bill 2004 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to it.

Question put and agreed to.

Customs and Excise Regulations 2004: Motion.

Ms O'Rourke: I move:

That Seanad Éireann approves the following regulations in draft:

Customs and Excise (Mutual Assistance) Act 2001 (Section 8) (Protection of Manual Data) Regulations 2004

copies of which were laid in draft form before Seanad Éireann on 10th March 2004.

Question put and agreed to.

Private Security Services Bill 2001: Second Stage.

Question proposed: "That the Bill be now read a Second Time."

Minister for Justice, Equality and Law Reform (Mr. M. McDowell): This Bill marks an important milestone in the development and regulation of the private security industry in this State. The industry encompasses a broad range of security activities and services, including door supervisors — colloquially known as "bouncers" — private investigators, security guards and consultants, as well as suppliers and installers of security equipment. When enacted, it will be the first legislation in our jurisdiction to deal comprehensively with this industry.

The Bill is proof of the Government's commitment to support the industry and its determination to promote high standards and to encourage best practice. The Bill represents a balanced and progressive response to the needs of the private security industry and the concerns of the public who increasingly come into contact with it on a daily basis.

11 o'clock

Our society has become more security conscious in recent years for good reason. As part of this process, the work undertaken by the private security industry has broadened into new areas and occupational activities. As a consequence, the industry has much greater direct contact with the public than in the past. Nowadays, we routinely encounter security equipment and security personnel in shops, shopping centres, entertainment venues and leisure facilities and we take it for granted. Moreover, many of the security-related duties that were previously undertaken by "in-house" staff are contracted out to specialised security service providers.

It is in the public interest that everyone involved in the private security industry operates to the highest standards. Unfortunately, this is not always the case and most of us have encountered, experienced or received reports of instances of low standards and unacceptable behaviour. The private security services industry has grown rapidly in recent years and it encompasses an extensive range of occupations and activities. It represents an important area of economic activity and it is an important source of employment, both full-time and part-time.

Major changes in the sector have resulted from the development of sophisticated security-related technologies in recent years. Modern surveillance systems and monitoring equipment have opened up new and improved possibilities for guarding property and protecting people. This is generally to be welcomed and supported. In the wrong hands, however, the manner of installation, maintenance and operation of such equipment could lead to abuses.

These changes point to the need for standards in which we can all have confidence and trust. The aims of the Bill, therefore, are promotion of consumer confidence and enhancement of the quality of service provided. The Bill will help achieve these aims, put the industry on a sound footing for the future and help to root out those who bring the sector into disrepute. The private security industry appreciates and supports our efforts in this regard.

The suggested framework for a statutory regulatory system, which is at the heart of the proposals in the Bill, was set out in the 1997 report of the consultative group on the private security industry. This was a high level group which brought together representatives of employers and employees in the private security industry, key Departments, the Garda and other relevant bodies. The consultative group's report acknowledges the problem of low standards, which is often related to a lack of training, poor working conditions and a high level of staff turnover. Furthermore, low pay in parts of the industry leads to abuses of the social welfare system and non-compliance with the tax code. The minimum wage did not apply when the consultative group reported.

The activities of companies of dubious origins, with links perhaps to criminal or paramilitary groups, have also given rise to concerns. I do not suggest these are widespread problems but they exist and it is regrettable that the high standards of reputable companies in the private security services industry can be undermined by less scrupulous operators and criminal elements. The industry must, because of the nature of its work, adhere uniformly to high standards of service, responsibility and accountability. There cannot be competition between the good and the bad where the bad undercuts the good at the expense of public confidence in private security.

This is the background against which the group concluded that the scope for voluntary self-regulation had been exhausted. The group recommended the establishment of a statutory body in its place to introduce, control and manage a comprehensive licensing system for the industry and to set and maintain appropriate standards. The group considered that this body could be established on a self-funding basis. The group's report and recommendations recognised a need for consistently high standards within the industry, adequate selection and training of staff and overall compliance with legislation in areas such as taxation, social security, company law, and health and safety standards in the workplace.

The Bill seeks to give effect to the principal recommendations of the consultative group. Essentially, it provides for the setting up of a statutory body to be called the Private Security Authority to control and supervise individuals and firms which provide security services and to maintain and improve standards in the provision of those services. One of the authority's immediate priorities will be to introduce and operate a licensing system and maintain an up-to-date and easily accessible register of all licensees. In the longer term, the aim will be to improve industry standards and delivery of the services concerned.

I will focus on the Bill's main provisions to give Senators an appreciation of its scope and an

[Mr. M. McDowell.]

understanding of how the proposed system of regulation will work in practice. Under the commencement provisions in section 1, it will be possible to apply the Bill's provisions to sectors of the industry on a phased basis. I envisage that the licensing requirement will apply initially to door supervisors and security guards and be rolled out subsequently to other sectors. That will help to ensure a balanced work programme for the authority. I am sure it will have its own views on this, of which I will take due account when drawing up the relevant commencement orders.

Section 2 is important because it contains the definitions which determine the scope of the Bill. I draw Members' attention specifically to the definition of "security service" which is defined as a service provided by a private security employer or any of the persons set out in the list which follows in the course of an employment or as an independent contractor. This means that both private security companies and the individual staff members who provide security services must be licensed. It is not good enough that only the employer is licensed, the employees must be licensed also.

Section 2 also contains definitions of several categories of persons providing security services. These include "door supervisor", "installer of security equipment", "private security employer", "security guard" and "security service". The definition of "person" in this context includes natural persons, partnerships and companies.

A number of exemptions to the licensing requirement are set out in section 3. These include members of the Garda Síochána, the Defence Forces, authorised officers under the Air Navigation and Transport Acts or staff of a Department or State agency while undertaking official duties. Apprentices employed by a person providing a security service are also excluded. Additional exemptions may be made by means of regulations under subsection (2).

The establishment of the Private Security Authority which will be independent in the exercise of its functions is at the heart of the Bill. This is provided for in section 6. Provision is made in Schedule 1 for the establishment, if necessary, of advisory committees and the appointment of whatever consultants or advisers the authority considers necessary. The Schedule also provides for accountability of the chief executive to the Committee of Public Accounts and other Oireachtas Committees.

Provisions on the membership of the authority are set out in section 7. Members will be drawn from a broad range of relevant interests but it will not be possible to accommodate all such interests on a ten member authority. The advisory committee structure that I mentioned will, however, provide a vehicle for accommodating interests that cannot be accommodated on the authority.

The principal functions of the authority are set out in section 8. In general, it will control and supervise persons providing security services with a view to maintaining and improving standards in the provision of those services. It will grant and renew licences to persons within the industry and, where appropriate, suspend or revoke licences. It may also specify standards to be observed in the provision of security services by licensees and qualifications or training requirements for the grant of licences. Standards and qualification requirements will be implemented by means of regulations made by the authority with the consent of the Minister under section 51.

Sections 9 to 12 deal with the staffing of the authority and production of strategic plans. The authority must put in place and administer a system of investigation and adjudication of complaints against licensees. The carrying out of such investigations will be an important task of the new authority.

Section 13 empowers the authority to investigate any security services being provided by any person. It may request information relevant to an investigation from any person and also request a person to appear before it with a view to furthering the investigation. If these requirements are not complied with, the authority may apply to the District Court for an order requiring compliance. The court may treat a failure to comply with such an order without reasonable excuse as a contempt of the court.

Under section 14, the authority may appoint members of its staff to be inspectors subject to terms and conditions determined by it. Each inspector shall, on appointment, be given a warrant which he or she shall produce when requested. Inspectors will require certain powers of entry and inspection for the purpose of obtaining information on any matter under investigation by the authority. Section 15 makes provision for this. Refusal to comply with any requirement of an inspector will be an offence.

It will be important that the Minister and the Houses of the Oireachtas be kept informed about the authority's activities. For this reason, section 16 requires the authority to report to the Minister each year before 30 September and the Minister to lay copies of the report before each House of the Oireachtas.

In the interests of transparency, and to avoid possible conflicts of interests, section 17 makes provision for a declaration of interests by the chief executive, members of the authority or advisory committees and staff, including consultants and advisers. Section 18 prohibits the chief executive, members of the authority, members of staff of the authority and others from disclosing information obtained in the course of their duties. A person who discloses such information will be guilty of an offence.

Details of the licensing system and how it will work are set out in Part 3 of the Bill. As mentioned, the licensing requirement will apply to private security employers and all persons providing the security services referred to in section 2. For the purposes of the Bill, a private

security employer is defined as a person who employs staff whose principal function is to provide security services for persons other than the employer, for example, a company specialising in the provision of security guards or door supervisors must have a licence since the company's business is to provide a security service for persons other than that employer. On the other hand, a retail outlet or licensed premises which employs its own security staff is not a private security employer for the purposes of the Bill and does not, therefore, require a company licence. A licence must be held by all individuals providing a security service as defined in section 2. All security guards and door supervisors must individually hold a licence, irrespective of whether he or she is employed by a private security employer, by a person who is not a private security employer or is self-employed. This means that "in-house", contracted and self-employed security staff are covered. I believe this approach is necessary to ensure high standards apply to all security guards and door supervisors.

Section 21 sets out the conditions for obtaining a licence to provide security services. Application forms must be accompanied by references as to the applicant's character and competence, as well as the prescribed fee. The authority may require an applicant to furnish such additional information as it may consider necessary, including certification by a senior member of the Garda Síochána, and may require verification of any information by affidavit. Investigations or examinations may also be undertaken regarding an applicant's character, financial position and competence.

In the case of companies and partnerships, the information required will relate to directors and partners respectively, as well as any manager, secretary or other officer of the entity concerned. An individual who occupies any of these positions and is also directly involved in providing a private security service will require an individual licence.

Section 22 provides that the authority may grant or refuse to grant a licence. It shall refuse to issue a licence where the applicant is not a "fit and proper person" to provide a security service or does not comply with requirements under the legislation. In the case of companies and partnerships, the conditions I have outlined apply to directors and partners, respectively, as well as to any manager, secretary or other similar officer of the entity concerned. This section also provides that a licence does not confer any right of property and that it may not, *inter alia,* be transferred or mortgaged.

Section 23 provides for the renewal of licences. Section 24 contains tax clearance provisions while section 25 specifies documents to accompany certain applications. An application by or on behalf of a company must be accompanied by a certificate of incorporation under the Companies Acts and dated not earlier than four weeks before the date of application. Where business is carried on under a business name, an application must be accompanied by a certificate of registration under the Registration of Business Names Act 1963.

Section 27 provides that the authority may, in certain circumstances, refuse to renew a licence; suspend a licence for a specified period; or revoke a licence. Such action would arise where false or misleading information had been supplied; where the licensee was no longer a fit and proper person to provide a security service; or where provisions under the legislation had been contravened. The procedures to be followed by the authority when it proposes to refuse to grant or renew a licence, suspend a licence for a specified period or revoke a licence are set out in section 27. A licensee might wish to apply for a variation in the kind of security service to which the licence relates. This scenario is provided for in section 28.

Among the important functions of the authority will be the issuing of identity cards to licence holders. Each licensee must have the identity card in his or her possession when providing the security service and, on request, produce it for inspection by a member of the Garda Síochána, a designated member of the staff of the authority or any person for whom the licensee is providing a security service. Detailed provisions on identity cards are set out in section 29.

Section 30 provides that certain categories of licensees to be determined by the authority must wear an identity badge containing the licensee's licence number when providing a security service. The aim of the provision is to facilitate identification of the individuals concerned where the need arises, for example, in the making or investigation of a complaint. Sections 31 and 32 deal with duplicate licences and identity cards and the surrender of licences and cards, respectively.

To provide ready access to the list of licensees, section 33 requires the authority to establish and maintain a register to be known as the private security register. The register will be kept at the offices of the authority and a copy will be supplied to every Garda station. This will enable users or intending users of private security services to confirm that a provider is registered to provide the service concerned. The register will be updated and published each year.

In the context of vetting licence applicants or licensees, section 34 provides that the authority may request the Commissioner of the Garda Síochána to provide any information required for the due performance of its functions. The section also provides that the Commissioner shall comply with any such request.

Section 35 requires a licensee, on request, to produce the licence for inspection to a member of the Garda Síochána, a designated member of staff of the authority or any person for whom the licensee is providing a security service under the licence. Where the licensee is a company, the licence shall be displayed in a conspicuous place in the company's registered office.

[Mr. M. McDowell.]

In so far as offences are concerned, section 36 requires an applicant for a licence or a licensee who has been convicted of an offence, or against whom proceedings are pending, to notify the authority of the conviction or the proceedings in the prescribed manner and within the prescribed period. It is essential for the purposes of the Bill that the provider of a security service shall not provide such a service without a licence.

Section 37 prohibits a person from advertising security services unless he or she is licensed. Section 38 makes it an offence to employ a person who does not hold a licence. It will, however, be a defence to prove that the person providing the security service had produced a licence or identity card to the defendant.

An effective complaints procedure is an essential requirement in a legislative measure of this type and provision in this regard is made in section 39. A person may make a complaint of misconduct against a licensee provided that it is made in good faith and not frivolous or vexatious. If, following investigation, the complaint is upheld, the authority may take appropriate action. The authority's options range from revocation of the licence to the issuing of a caution or advice to the licensee concerned.

In addition to a complaints procedure, a proper appeals system is also essential. Section 40 provides for the establishment of a second body to be called the Private Security Appeal Board which will hear and determine appeals against decisions of the authority. An applicant or licensee may appeal against any decision of the authority to refuse to grant or renew a licence, suspend or revoke a licence or take action on foot of a complaint under section 39. Details of the composition and operation of the appeal board and the procedures for handling appeals are set out in Schedule 2. Section 41 makes provision for an appeal to the High Court on any question of law arising from a determination by the appeal board.

Part 6 of the Bill relates to the provision of security services in the State by persons who hold licences from comparable licensing authorities in other member states. The right of establishment is set out in Article 43 of the Treaty Establishing the European Community. According to Article 43, restrictions on the establishment of branches or subsidiaries by nationals of any member state in the territory of any member state are prohibited. Freedom of establishment also includes the right to take up and pursue activities as a self-employed person and to establish and manage companies. Article 49 of the same treaty prohibits restrictions on the freedom to provide services within the Community by nationals of member states. National regulations are, therefore, not permitted to hinder the rights of establishment and freedom to provide services. The Court of Justice of the European Communities has made this clear in successive rulings. Member states may retain their domestic laws but these cannot be used to restrict the provision of services from elsewhere in the Community. Many of the services in which the private security industry is involved, including transportation of works of art or high value goods, require the crossing of national frontiers.

A transnational dimension can also arise where a company in one member state wishes to tender for a private security contract in another or where an individual applies for a job in one member state having acquired work experience or a qualification in another. Part 6 contains a set of procedures which will permit a person — referred to in the Bill as a "relevant person" — who holds a licence from a comparable authority in another EU member state — referred to as a "corresponding authority" — to provide a security service in the State. A number of safeguards are included in Part 6 to ensure persons who would not qualify for an Irish licence due to criminal convictions or inadequate qualifications cannot circumvent our standards by procuring, by whatever means, a licence to provide a security service from another member state. This matter was discussed on Committee Stage in the Dáil.

Section 44 provides that relevant persons must inform the authority of convictions before providing a security service in the State. Section 45 provides that the authority may, if satisfied that a relevant person is not or no longer a fit and proper person to provide a security service, prohibit that person from providing the service. Schedule 3 modifies the Bill in its application to relevant persons.

Part 7 contains miscellaneous provisions. Section 48 deals with offences and empowers the authority to bring and prosecute summary proceedings for an offence under the Bill. Section 49 contains provisions of a procedural nature which relate to the receipt of notifications or notices while section 50 specifies when decisions of the authority take effect.

It is neither possible nor appropriate to make provision for detailed implementation of all aspects of the licensing system in a Bill such as this. The authority will have a crucial role to play in establishing the categories of licences to be issued, the forms of licences and identity cards, the qualifications required for particular categories of licence and related issues. Section 51 provides for the making of regulations to deal with these detailed issues.

It is not feasible to bring the entire licensing system into operation on a set date. I envisage a phased introduction of the new requirements which will avoid bottlenecks. I want to ensure there is no unjustified interruption of legitimate business when the new provisions come into force. Section 52 contains certain transitional provisions to facilitate a smooth entry into force of the new licensing system.

Schedule 1 provides for various procedures of the authority to deal with the appointment of advisory committees, consultants and advisers,

meetings of the authority and the accountability of its chief executive to the Committee of Public Accounts and other Oireachtas committees. Part 1 of Schedule 2 provides for the establishment of the Private Security Appeal Board and related matters, including appointment of the chairman, procedures of the board, reports to the Minister and the declaration and disclosure of interests. Part 2 contains details of the operation of the appeals system. As I mentioned, Schedule 3 modifies the Bill as it relates to relevant persons.

As one hopes, the Bill is being introduced with the active involvement and support of the private security services industry. It reflects the clear public interest in the statutory regulation of the industry. It has had a long gestation and been considered over an extended period. The time has come to act decisively to conclude the process of consideration by the Houses of the Oireachtas. If modifications to the legislation are required, they can be made in the context of a system which is up and running. The time for consideration by the Houses is fast running out.

I have good reason to state there is significant potential for people to abuse the facade of security services to conduct extortion rackets. Some publicans have found themselves facing groups presenting as would-be applicants for door work while conveying the very clear message that if they are not taken on, the publicans will encounter a great deal of trouble. People are using the façade of security services to extract money from legitimate businesses. This is a serious state of affairs and is not an exaggeration. Dark forces within our society have used the veneer of security services to extort money and engage in illegal activities, including, I regret to say, trading in drugs. This legislation is urgently needed.

I am confident that the provisions of the Bill, when enacted, will serve to enhance the standing and image of the private security industry, provide quality assurance for customers and reassure the public that high standards will be applied and maintained. I commend the Bill to the House.

Ms Terry: I welcome the Minister. I also welcome this Bill. The private security area has been in need of regulation for some time. The Minister said this is urgently needed. Why has it taken so long? Nonetheless, it is welcome now and I hope it will progress quickly after it is passed by this House.

The private security area has grown significantly and we see it every day, whether it is at public houses, clubs or in the form of security cameras. The area certainly requires regulation. The Bill has its origins in a Private Members' Bill tabled by former Deputy, John Farrelly, and I welcome the fact that the Minister saw merit in it. I note that the report of the consultative group of the private security industry was presented in late 1997. It has taken a long time to get to this stage and it is proper that we should deal with the matter as speedily as possible.

I welcome the proposed establishment of a private security services authority to regulate and police the industry. Under this, training and proper standards will be enforced. However, legislation is only as good as the level of enforcement. We have seen that much legislation is not enforced in practice. We will be wasting our time if we do not have good enforcement in this area. It is vital that the Minister follows up on this to ensure proper enforcement.

I turn to another matter related to enforcement, namely happy hours and drinks promotions. As I understand it, these have been outlawed under the terms of the Intoxicating Liquor Acts. However, they are still going on. One need only walk to the end of Kildare Street to see a sign advertising a happy hour. Our children tell us that they are still being given free and promotional drinks in pubs. This is wrong. Where is the enforcement?

This Bill will not be worth the paper it is written on if we do not follow it through with enforcement. People will adhere to the law if they fear the consequences of failing to do so. We need proper sanctions to ensure people adhere to the letter of the law. Small sanctions, such as imposing fines of €100 or €500, are not a sufficiently strong deterrent to ensure a person does not commit the crime again. There was mention of what action would be taken against those who do not adhere to this legislation; serious penalties must be imposed on them. While closing an establishment is well and good, any financial penalties imposed must be heavy enough to make this work properly.

I have a few minor concerns about the Bill. The Minister may answer them today, or I may address them by proposing amendments on Committee Stage. The Bill does not make clear that members of the Garda or Defence Forces will be excluded from participating in this type of work. There are exemptions to this. We must ensure that no conflict of interest exists. Members of the Garda and Defence Forces should not be involved in this type of work as it could lead to a conflict of interest. I seek clarification from the Minister on this.

I am also concerned about the potential for criminals to be actively involved in this line of work. While the Bill mentions that criminals should not be involved, it is not good enough to say that a former convict must declare his past experiences. This is much too loose. We could learn lessons from the manner in which the Minister for Transport has dealt well with this issue in the taxi industry. Former criminals can no longer obtain taxi licences. We should examine how this regulation has been implemented and use the same system to ensure criminals, who may pose a danger to members of the public, are not involved in this industry.

I asked my son for his comments on this. His generation is the one that most encounters

[Ms Terry.]

bouncers — "door supervisors" is the correct term — and they experience difficulty with them. It will be helpful when bouncers wear identification. They will be identifiable and will realise that someone can take their number and report them. Young people are only allowed into a club at the discretion of the door supervisor. This is not dealt with well. For example, young people are judged on their clothes or even their footwear — they must wear shoes to gain admittance. This is ridiculous in this day and age. Many young people, particularly students, do not even possess a pair of shoes. A good pair of runners can cost much more than a pair of shoes. This can lead to discrimination. In the recent well-publicised Anabel court case, we heard of a young man who was not allowed into the night-club and stayed outside for several hours while his friends were inside. This occurs on many occasions. This Bill will be helpful to young people who feel they are discriminated against.

While I will table amendments on Committee Stage, I welcome the Bill. I would like to see it dealt with as speedily as possible.

Mr. Kett: I welcome the Bill. I promise that I will say nothing about the fact that the Minister is once again in the Seanad. This Bill will set up a private security authority to supervise and monitor the industry. The main function of the authority is to operate a licensing system for the providers of the services. I hope this will improve standards and give confidence both to those involved in the industry and the public.

The security service is important in terms of what it gives to the economy. Its growth in recent years has been enormous.

It behoves us to look at some form of regulation for the future. As the Minister said, society has in recent times undoubtedly become much more security conscious. One can now go nowhere without some form of security system looking over one's shoulder, whether while filling up with petrol or going to the shops. The industry has recently broadened into a whole new range of services. As the Minister noted, because of the times in which we live, many of the security-related services previously undertaken by in-house staff must now be contracted out to professional security services. I read somewhere that the business now contributes some €250 million to €300 million to the Exchequer in any given year, a phenomenal sum.

There have been significant changes in the sector, including great development in sophisticated technologies such as modern surveillance systems and other monitoring equipment. As the Minister also said, such equipment, which can stick its nose anywhere, can be seriously abused if it falls into the wrong hands. It is right that we should now be setting standards and regulations at a time when the industry is progressing and modernising itself. In doing so we are giving confidence to those operating security services.

An integrated licensing system will also sort out the good from the bad. As the Minister said, there are cowboys operating in the industry, although most of those involved are good people doing a fine and important job. The licensing system will also safeguard people working in the private services companies. I know of a man working for such a company who fell victim to a very dangerous situation as a result of which he was traumatised. As he worked only part-time and was moonlighting, the company walked away from him. The new system will hopefully regulate in such areas.

There are more than 400 people in the security business, employing nearly 25,000 people. That it has not been regulated up to now is probably why we have seen some terrible deeds carried out. The poor old bouncer seems to be the butt of everyone's displeasure. On national television, we have seen by means of CCTV cameras where bouncers have used the fist in the first instance because they are not trained to do otherwise. We have seen a terrible cost arise from that in the recent past. Up to now, it seems that the meaner the bouncers look, the bigger, tougher and the more physical and verbal they are, the more likely they are to be employed. Some years ago, RTE screened a programme on bouncers which showed them in a very poor light.

The legislation brought to this House by the Minister in the past few months has had a common thread running through it. It has included the illicit trafficking at sea Bill, the joint investigation teams Bill, the public order Bill and the liquor licensing Bill. Such legislation has all had the public interest at its core. The common thread unfortunately relates to drink and drugs. Many of the Bills brought through the House by the Minister in recent times will, when they begin to take effect, have major benefits for society.

Being a doorman is not an easy job. The individual works in a very dangerous environment, faced with drunk and unruly people, perhaps someone trying to show off to a girlfriend, or whatever. The doorman must make a split-second decision, either to confront such people outside, or allow them in and then confront them.

That doormen or bouncers have not up to now been trained is reprehensible. They are dealing with dangerous situations without any training. Looking at section 8(2)(*f*) of the Bill, I wonder whether bouncers will have to undergo training in order to acquire a licence. The section states that "without prejudice to the generality of subsection (1), the authority may, and where required, shall, specify qualifications or any other requirement including requirement as to training." Training should form a serious element of all this, and should almost be mandatory. The report highlighted the need for a comprehensive standard training programme to be one of the criteria for obtaining a licence. Fire training

should form part of that programme. In the past we have all seen the dreadful outcome of fires, the Stardust fire being the one that springs to mind. In that instance, not alone was the security element not intact, but security people had chained the doors at the request of management because people were gaining free entry. Fire training is essential for security staff, along with first aid skills and drug awareness training. We are told, and perhaps Senator Terry can also tell us, that discos are hives of drug use.

Ms Terry: I have no experience myself.

Mr. Kett: It seems that drugs are sold in discos all the time. If a doorman, or whatever he might be called, were trained in all these areas, he would be confident in his ability to do the job, and the venue patrons would be equally confident there are people working there trained to a standard which makes patrons feel safe. In this way the situation would be much improved.

The right of recourse to the authority for a person who feels aggrieved is also central to the Bill's effectiveness. Conditions must be put in place to allow that right to be substantiated. Security people must be easily identifiable, although in some situations, such as those involving drugs, that is not desirable — someone going about with a "bouncer" or "security staff" sign on his forehead will not catch drug dealers. However, if a person felt that treatment by a door person who might need to use some physical force turned out to be too rough, he or she should be able to complain about the doorman by name, rather that referring to "the big fellow at the door". There is also a need for objective evidence. If it is a case of a security man's word against that of an individual, that will not work. CCTV must be a feature, as it has more and more become. We saw that unfortunate incident in Cork last year, when a young man died, and the CCTV coverage of the incident was awesome, to say the least.

Senator Terry alluded to the Garda. The Garda, the Defence Forces and by and large the prison officers are a feature in all of this. I am told that quite a few of them moonlight in the security area. I am not suggesting that is bad, as they are entitled to moonlight in their own time. However, there is a section of the Act which suggests that a garda can enter a premises, talk to an individual and insist on a security work licence being shown. If a garda approaches a colleague who happens to be moonlighting, the garda will not, with the best will in the world, be as enthusiastic about the job as he or she might be if it were I or someone else he was approaching.

Mr. M. McDowell: Gardaí will not be entitled to do that.

Mr. Kett: That settles that. I welcome the Bill. It is another advance over a range of issues in terms of how we live our lives. It is unfortunate that we must bring in so much legislation to regulate society and to protect ourselves from ourselves.

Ms Tuffy: I welcome this legislation because, as the Minister and other Senators have said, there is rising public concern about the private security industry and some of the individuals involved in it. Bouncers, private investigators and persons engaged in surveillance have operated in an unregulated fashion, making the industry particularly attractive to criminal elements. It is important this legislation is quickly brought into place. I note the Minister said that the private security industry itself supports this legislation. Many bouncers acknowledge they work in a grey area and are afraid of breaching the boundaries of the law. Hopefully, this legislation will make matters clearer for them. Making the industry more accountable is in their interest.

While I welcome the broad terms of the legislation, a number of modifications are desirable. Some of them may have been raised in the Dáil and, if the Minister did not take them on board, he may look at them again. There should be a requirement that the application for a licence to provide security services be advertised in newspapers with nationwide circulation. The public has an interest in the granting of licences to persons, who on foot of receipt of a licence will have significant powers and control for financial gain. The public must have the right to submit an objection to any application in writing to the authority.

On Committee Stage I intend to table an amendment to section 21(3). It indicates that the authority may "require verification by affidavit or ... require the applicant to supply a certificate by a member of the Garda Síochána not below the rank of superintendent" in an application. The verification of all facts and details contained in an application for a licence is critical. A certificate from a superintendent of the Garda must be a mandatory requirement. The precise contents of the certificate may be a matter for subsequent regulation. However, if the requirements are not mandatory, the vetting procedure is rendered toothless. To ensure this mandatory requirement, the section should be amended by deleting the word "may" and inserting "shall".

Section 21(4) covers the use of limited liability companies in the security industry. Generally speaking, this is a perfectly legitimate operation for security companies. However, when accidents or assaults occur, the victim can have difficulty in establishing which company is culpable. It is also often impossible to identify the name of the rogue bouncer. A company providing security to a venue will frequently be a shelf company making it impossible to ascertain the beneficial owner. In the case of a body corporate applying for a licence under Part 3, an affidavit of verification should be mandatory, compelling the disclosure not just of the directors and company secretary but of the beneficial owners. Directors' names are

[Ms Tuffy.]
already readily ascertainable from a company office search. This legislation will only work if it strictly imposes accountability and has a competent system for enforcement of its provisions and identification of the various people involved.

The security industry is a big business that generates much income. In the public perception, it operates in a twilight zone closely allied to criminality. If a sworn declaration must be given to the private security authority at the time of application for a licence, it creates a clear signal that the legislation means business and those who control and profit from the industry can expect to account for any wrongdoing that occurs. I urge the Minister to consider amending section 21 subsections (3 and (4) so that there will be a real prospect of raising standards, not alone by vetting people in the industry, but by vetting those in control and ensuring criminal elements are excluded.

Section 23, on the renewal of licences, does not provide for a time limit. In the absence of regulations, I recommend that licences be renewed annually. A minimum time within which such a renewal can take place can be specified in section 23. I also propose that wheel clampers are incorporated into the provisions of the Bill. As Senator Terry said, this legislation will only be as good as its enforcement mechanisms. It is vital that sufficient resources are given to the authority to carry out its investigating functions under sections 13 to 15, inclusive. Resources to train its personnel to an adequate standard must be provided. The authority must be in a position to retain sufficient numbers of inspectors to police the operation of the legislation. Can the Minister confirm his commitment to ensuring the private security authority is adequately financed to fulfil its functions?

Mr. Quinn: I welcome the Minister. I intended to be critical of this Bill's long gestation, considering the report on the area was published in 1997. However, having heard the Minister speak on the Bill, I realise it is far better to have moved slowly and carefully with this legislation and its phased introduction.

The need for legislation in this area is now much greater, particularly as some criminals use private security as a facade for extortion. The establishment of make-believe services is one that has come to light in this debate. I was unaware until recently how big this was influenced by the drug trade. In 1960 when I opened my first supermarket, I was responsible for using a similar facade. I discovered shoplifting was occurring and, as I did not know of such things as detective agencies, I invented my own. Little signs were placed around the store stating that the premises were guarded by the IDA, the non-existent Irish Detective Agency. I then received a warning from one security company that whoever the IDA were, they might be criminals. *Mea culpa.*

Going through a Swiss airport recently, I was stunned to see various kinds of surveillance equipment for sale. I understand this is illegal in many countries. However, sale of such equipment was permitted in the airport to those who would not use it in Switzerland. These included items such as pens and tape recorders that were hidden in furniture. However, technology is moving so fast that such items are obsolete, as surveillance can now be carried out from some distance. Whatever happens in the private security area, we must be protected against the abuse of such undetectable technology.

12 o'clock

I am also impressed by the increased need for this legislation because of the criminal activity that exists in the industry.

Before I visited Baltimore in Maryland four or five years ago, a garda mentioned to me that he was familiar with some of the crime statistics for that city. I am not sure but I think he said there had been 365 murders the previous year, compared to 49 in Dublin. I do not want to be accountable for the exact numbers but think that is what I remember. When I walked around shopping centres in Baltimore, I was surprised that there was an armed security person, most of whom were men, on the door of every shop, including boutiques, regardless of size. It was a reminder that we need a Bill to control the private security sector. We have no way of knowing who is responsible and what controls there are in that area.

I notice in the Bill that the strategic plans of the authority being established will be laid before both Houses. I would like to ensure everything, including the strategic plans, is made available to the public in order that we can investigate quite easily. I am not sure that I was able to check this. Senator Tuffy mentioned that a newspaper circulating in the area was being used. I hope technology such as the Internet and all other electronic means of communication will be used also. If we are to ensure the system works, we have to earn the confidence of the public and provide for the openness and transparency it demands of the authority and its plans, as well as of the security companies established.

The Bill which has been needed for a long time deserves to be supported. It will be needed to a greater extent in the future than in the past. I congratulate the Minister on introducing it and I am sure that he will amend it if it needs to be amended in any way. He has proved in the past that he is willing to consider and accept amendments. Although the Bill has not been initiated in this House, I am quite sure the Minister will listen to any amendments tabled by Senators.

Minister for Justice, Equality and Law Reform (Mr. M. McDowell): I welcome the response the Bill has received from Members of the Seanad. I thank Senators for their broadly supportive approach to the Second Stage debate. As I said,

it is a matter of considerable urgency. As Senator Terry said, it is one thing to legislate but something different to produce results on the ground. It is an absolute certainty that if we do not produce legislation, we will not do the job. I accept her point that the production of the legislation alone does not guarantee that the job will be done.

A great deal of good can flow from this legislation if the proposed security authority works well, sets about its work in a sensible manner and has sufficient resources to carry out its functions. The working group study on which the Bill is primarily based stated the authority should be designed to be self-financing. The Government intends to provide for this. It is clear that in its initial stages it will have to be given some seed capital with which to get going. We have to contemplate how much funding will be necessary, the phased introduction of the licensing system and how the authority will function. A good deal of thought is required in respect of all these matters.

Senators Tuffy and Terry stressed the importance of knowing who was behind a company. I draw to the attention of Senator Tuffy who was particularly concerned about the matter that section 2 of the Bill defines a "director" as follows:

> "director", in relation to a body corporate, includes—
>
> (*a*) any person occupying the position of director, by whatever name called,
>
> (*b*) any person who effectively directs or has a material influence over the business of the body corporate,
>
> (*c*) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act, unless the directors are accustomed so to act by reason only that they do so on advice given by the person in a professional capacity, and
>
> (*d*) where the affairs of the body corporate are managed by its members, any of the members who exercises the functions of such management;

It is a fairly comprehensive definition of control. One cannot avoid the investigation of one's character or one's beneficial interest in a company. If one *de facto* controls a company or has a material interest in its management, one is covered by this artificial extension of the term "director" in order that one is caught up in it. One's character, behaviour, fitness and propriety as a director are extended to cover situations of that kind, in which people act as shadow directors, in effect, or as manipulators behind the scenes of a company. For example, if members of a paramilitary organisation get a stooge to set up a company but it is abundantly clear that they are pulling the strings and there is evidence to that effect, it will not be possible for them simply to say they are not covered by the entity because they do not hold paper office in the body corporate.

Senator Tuffy also discussed the system of advertising applications for licences. There would be difficulties if we were to require every doorman, watchman or security guard to place an advertisement in a newspaper stating they intend to apply for a licence. The proposed security authority may decide, in the fullness of time, that such notices should be placed on its website. It may decide to inform the public that applications have been received from larger organisations such as bodies corporate. If we require people who wish, from time to time, to work as a security guard at a rock concert in their spare time to advertise in a newspaper their intention to apply for such a licence, we may be using a sledgehammer to crack a nut.

I hope the register that will be open to public inspection will available to read on the Internet, in accordance with the Government's e-commerce and e-government strategies. As we live in the 21st rather than the 19th century, it seems information publicly available should be made available in a way that makes sense.

Senators referred to the training of those colloquially known as "bouncers" but who are more politely referred to in the Bill as "door supervisors". The training given to a door supervisor is probably quite different from that given to a site watchman who is considered in the Bill as a "security guard". While they may share certain training requirements such basic first aid and similar issues, other requirements might be inapplicable to a security guard but appropriate in the case of a door supervisor. A door supervisor may need to be trained in crowd control or dealing with aggressive or difficult people, for example, but a security guard may have different needs. The fact that there are two categories means that the authority is entitled to prescribe different levels of training. If one is employed on a building site as a security guard or night watchman, one's level of training will not necessarily be the same as that demanded of door supervisors.

Senator Terry mentioned that she was worried about happy hours and drinks promotions.

Ms O'Rourke: She has raised the matter in the House on many occasions.

Mr. M. McDowell: I am not sure if she was in order to discuss the matter but if she was not, I will be equally disorderly by responding to her comments. I think I know from the hints she gave me where such happy hours are to be found.

Ms O'Rourke: Down the road.

Ms Terry: That is one of them.

Mr. M. McDowell: If the Senator draws a case to my attention, I will ensure it is dealt with. I am

[Mr. M. McDowell.]
anxious to ensure all instances of inappropriate promotion of alcohol to young people are drawn to the attention of my Department, the Commissioner of the Garda Síochána or the District Court, as appropriate. It is important that we develop a different attitude to drinking.

Ms O'Rourke: That point has been made in this House.

Mr. M. McDowell: I say that in the context of the recent St. Patrick's Day arguments and controversy. As I was out of the country during that period, I was not in a position to draw conclusions of my own on the matter. There is one breed of commentator in public who says I am the personification of the nanny state while, on the other hand, there is a group telling me I am not doing enough to deal with problems such as those faced on St. Patrick's Day. Our recent legislative package has struck a balance between these two points of view. Being in politics is like being in a coconut shy: people will hit one from either side with equal vehemence and persistence.

Ms O'Rourke: The Minister must be getting it right then.

Mr. M. McDowell: Yes. As long as it comes from both sides, I must be getting it right.

Some of the penalties in the Bill are District Court summary conviction penalties but others for offences such as employing unlicensed staff or acting as a security provider without a licence attract indictable penalties of five years' imprisonment and substantial fines on indictment. If an offence is punishable by a term of five years' imprisonment, it becomes an arrestable offence, which gives the Garda power to detain a person, carry out searches in certain circumstances, question people and so on, which would not be the case in regard to a summary offence. The Bill has teeth without being draconian.

Senator Quinn mentioned the issue of the future we are facing. Whatever view one holds about where our society is going, private security will increasingly be part of our lives. Yesterday I met a delegation from the South Dublin Chamber of Commerce to discuss the problems it was having in a particular shopping centre. It is unreasonable to expect the State will be in a position to provide store detectives through the Garda. That will not happen. Because of our modern methods of retailing and marketing, in which everything must be open and accessible rather than behind counters and up on shelves, it is the essence of modern retailing, marketing and entertainment that those who provide these services must provide the appropriate security.

In Cork, for example, there is a partnership among the Judiciary, the Garda and the entertainment industry in which norms are applied to the number of door security staff appropriate to a venue, the use of closed circuit television systems, opening hours and so on. The three partners, particularly the Judiciary, the licensing body, are aware that these agreed norms amount to a partnership. This has had useful repercussions. I am told by senior gardaí in Cork that the number of public order offences went down by one third once this new approach was taken. A key element, undoubtedly, is that the owners of premises are investing in proper supervisory staff, management and training.

The question of whether it is appropriate for gardaí to provide security services was raised. It is not appropriate for gardaí to provide security services of the ordinary kind.

Ms O'Rourke: In their spare time.

Mr. M. McDowell: Yes, although I am not happy to make a blanket statement that no security service mentioned in the Bill could ever be provided by gardaí. For example, I do not want to say it would be wrong for a garda to have an interest in a locksmith business. It is clearly inappropriate, however, for gardaí to act as door staff in venues with which other gardaí are likely to have business. This would be quite wrong. I have emphasised, however, that this is a matter for Garda legislation and regulations. It is not really a matter for private security industry legislation.

Mention was made of prison officers and members of the Defence Forces. I have no objection in principle to a prison officer acting as a security person in his or her own time at a rock concert, race meeting, Croke Park or Lansdowne Road. One of my aims as Minister is to return to prison officers as much of their own time as possible. Therefore, I do not want to be draconian and say they cannot provide useful services in the time I am returning to them under my proposals.

I also do not see anything wrong in principle with members of the Defence Forces providing security services at sports events such as the Budweiser Derby. I do not see why they should not participate in such activities, providing it does not conflict with their obligations as members of the Defence Forces. We need different approaches to different situations but I agree with the notion that it is inherently undesirable for members of the Garda Síochána to work as bouncers during their spare time. They are not permitted to do so. The potential for conflict of interest would be serious.

The legislation went through a detailed examination in the Dáil. It was by no means cursory. Committee Stage of the legislation went on for a number of days and valuable changes were made, some of which I outlined to the House, including provisions to prevent abuse of the European right of establishment to circumvent licensing regulations. The Bill, although it may not be perfect, is robust legislation which should prove adequate for the

establishment of the Private Security Authority. Although problems may arise with it in a number of years, as happens to nearly all legislation that is the first to deal with a particular area, it can be commended to the House with a degree of confidence.

I look forward to Committee and remaining Stages in this House but, above all, I look forward to the Bill's passing into law. It is remarkable that even in the 21st century we have no legislation in this area, for the reasons mentioned by all Senators. I thank all Members for their constructive and thoughtful contributions and look forward to having the Bill processed through the appropriate Stages of consideration and established in law as soon as possible.

Question put and agreed to.

An Leas-Chathaoirleach: When is it proposed to take Committee Stage?

Ms O'Rourke: Next week.

Committee Stage ordered for Wednesday, 31 March 2004.

Sitting suspended at 12.20 p.m. and resumed at 1.30 p.m.

Aer Lingus Bill 2003: Committee Stage.

Sections 1 and 2 agreed to.

SECTION 3.

An Leas-Chathaoirleach: Amendments Nos. 1, 2 and 5 are related and may be taken together by agreement.

Mr. Browne: I move amendment No. 1:

In page 4, subsection (1), line 15, after "Finance" to insert ", subject to the approval of both Houses of the Oireachtas".

I welcome the Minister of State and his officials to the House. This Stage should not take long unless Senator Dooley has problems with the legislation. It is proper to take those three amendments together. There are two Houses of the Oireachtas. The Minister gave a commitment in the Dáil that any future sale of Aer Lingus would come before the Dáil. My amendment proposes that it come before both the Dáil and the Seanad. I believe there is equal brain power in this House as there is in the other House. We are fortunate to have Members such as Senator Dooley and Senators O'Toole and Ross on the Independent benches. Senator O'Toole has a great trade union background while Senator Ross may be on the right of Irish politics. The requirement that any proposed sale of Aer Lingus should be debated in this House would ensure a good balanced view on issues that might be missed in the other House. I believe it is normal practice that an issue such as this would come before both Houses.

From my inquiries it appear that the sale of Eircom was debated in this House. The Leader has indicated to me that as far as she can recall this was the case. It might set a precedent. I ask the Minister of State to clarify the situation. It is in everyone's interests to have a debate in both Houses.

Minister of State at the Department of Transport (Dr. McDaid): Most of the amendments being considered today have arisen from the debate in the Dáil. I appreciate the Senator's point of view. There is no question about the brain power in both Houses of the Oireachtas. Unfortunately the Minister for Finance is the main shareholder in the airline.

I am informed that in the case of Eircom it was stated the Minister could not dispose of any shares in the company other than as provided for in the relevant legislation without the general principle of the sale being laid before and approved by Dáil Éireann. For the information of the Senator, that is a standard regulation.

The Minister for Finance is the main shareholder in the airline and he has been given the powers to enter into one or more agreements in connection with the issue of shares in the airline, subject to consultation with the Minister for Transport. Similarly, the agreements may cover a wide range of issues, including representations, warranties and indemnities in connection with the sale of the shares in the airline. Section 3(5) states: "The Minister for Finance may not dispose of any share in the Company without the general principles of the disposal being laid before and approved by Dáil Éireann." The Government accepted that part of a Fine Gael amendment in the Dáil.

I acknowledge the point made by the Senator about approval by both Houses but that would set a precedent. On previous occasions such as in the cases of Eircom, ACC and ICC, that precedent was not established. It is not a case of it being the Dáil versus the Seanad; it is a case of it not being necessary. The Minister for Finance will bring it before the Dáil but it is not necessary for it to come before this House.

Mr. Browne: I accept what the Minister of State states. There was a good debate on the Finance Bill in this House yesterday. I realise that there are restrictions on this House in its dealing with Finance Bills. The future sale of Aer Lingus will be a major national issue and it will particularly affect employees and former employees of the company. One difference between the two Houses is that the Seanad has a Labour panel whose Members, including myself, represented trade unions in the last Seanad election campaign. We could bring some knowledge to bear on the subject that might not be available in the Dáil.

[Mr. Browne.]

I accept the Minister of State's point about precedent and that it did not happen in the past. I ask him to examine the matter again. I am sure the Leader of the House will facilitate statements on the sale of Aer Lingus if that happens. I believe the House should be involved because the more people who discuss the matter, the better for everyone involved.

Mr. McDaid: I agree with the Senator. It was raised by Fine Gael Members in the Dáil. Accountability is very important in this case and I believe that is what the Senator is asking for.

The Senator has not tabled an amendment to section 3(5) which provides for the laying of the principles of a sale for approval by the Dáil. The text used in subsection (5) follows precedent as it is similar to that used in legislation for the sale of Eircom, ACC and ICC. In the circumstances it is considered prudent to continue to follow this precedent in this case and reject the proposed amendment. If I were to accept this amendment I would be creating a precedent which I am not prepared to do. The Minister, unfortunately, has rejected this amendment in the Dáil and I must follow that line. I am not saying that matters should not be dealt with by this House but in this case it would appear that the line of thinking is that it is unnecessary. Any points which Senators wish to raise could be raised in the Dáil in consultation with their colleagues.

Amendment put and declared lost.

An Leas-Chathaoirleach: I wish to bring to the attention of the House a typographical error in the text of amendment No. 2, in the second line. The word "Oireachtas" is misspelled. This amendment has already been discussed with amendment No. 1.

Mr. Browne: I move amendment No. 2:

In page 4, subsection (2), line 18, after "may" to insert "with the approval of both Houses of the Oireachtas".

Amendment put and declared lost.

Mr. Browne: I move amendment No. 3:

In page 4, subsection (3), line 25, after "Exchequer" to insert "Capital Budget".

This is a straightforward proposal, that the proceeds of the future sale of Aer Lingus would be invested in capital projects as opposed to current expenditure. That is the main purpose of the amendment.

Mr. Dooley: While I understand where Senator Browne is coming from, from my perspective I would not want any encumbrance placed in the way of the State or the company in the disposal of any company stock or in terms of where the revenue might be used afterwards. Such an encumbrance is unnecessary. This is not something any Government has done in the past in identifying particular projects. I appreciate the Senator is not identifying projects. Given the level of Government investment in capital projects, particularly infrastructural projects, and the development of the public transport system, there is little doubt that the Government has shown a true commitment to such investment. Therefore, I am happy with the current situation.

Dr. McDaid: There are many areas which the Department of Transport has sought to fund. For example, tolls should be ring-fenced for the Department. Unfortunately, we do not live in a perfect world and the Department of Finance seems to rule the roost. I have been informed that acceptance of the amendment, as read, would not necessarily mean the Department of Finance could use the capital for capital projects. That Department has observed that there is no question but that the receipts of any sale transaction would be paid into the Exchequer. The Minister may wish to acknowledge at this time that any receipts received would be recorded in the Department of Finance but he might also point out that the allocation of such receipts to capital spending, which we presume is the intention of the Senator's amendment, would not be achieved by it. That is the interpretation I have been given by that Department. We would all like to use capital acquired from the sale of various State assets in different areas but, unfortunately, it goes to the Department of Finance and the Cabinet decides where it should be spent.

An Leas-Chathaoirleach: Is the amendment being pressed?

Mr. Browne: I bow to the Minister of State's superior knowledge and withdraw the amendment.

Amendment, by leave, withdrawn.

Section 3 agreed to.

SECTION 4.

An Leas-Chathaoirleach: Amendment No. 10 is an alternative to amendment No. 4. They may be discussed together, by agreement. Is that agreed? Agreed.

Mr. Browne: I move amendment No. 4:

In page 4, line 36, to delete paragraph (*a*) and substitute the following:

"(*a*) issue shares in accordance with the Companies Acts as part of one or more than one employee shareholding scheme, and shall be deemed always to have had the power to issue such shares and".

This matter was discussed on Second Stage. Several Senators, including Senator Dooley,

highlighted the need to address this issue for those who had left Aer Lingus from 1 December 2003 and those who will leave up to 31 March 2004 as they might find themselves in no man's land. I understand having spoken to my colleague, Senator O'Toole, who will expand on the matter, and others that there has been some movement in this area and that the issue may be resolved internally rather than through this mechanism. I hope the Minister of State will ensure this happens. I eagerly await his reply.

Mr. O'Toole: I spoke at length on this issue on Second Stage when I indicated I would table an amendment which I have subsequently withdrawn having discussed the matter with the Minister. I thank him and his advisers for their help in going through the issues with me.

The issue at the time was that those who had left Aer Lingus since October but who had bought into the scheme and had agreed with the whole deal might be excluded by this legislation from effectively sharing in the share option scheme. The Minister's advisers have explained to me that the legislation does not prevent them from being involved fully in the ESOP. On Second Stage I said we had dealt with a similar matter in the ESB Bill. I now recognise it was not precisely the same because the ESOP had not been established at the same time as the ESB Act. I also recognise, provided the legislation is passed before 30 June 2004, there is nothing in it which will prevent those who have left from sharing in it. Consequently, it would be helpful for the Minister to state that this is a correct interpretation. It was on that basis that Senator Browne and I made the case.

In order to include those who have retired in the meantime in the share option scheme, those who have the authority, discretion and power to decide are the partners to the scheme, namely, the Department of Transport, the Department of Finance, the workers represented by the trade unions and the company. Once those four groups agree to extend the options to the those about whom I spoke on Second Stage, they will be included. On that basis it means that nothing that happens in this House today will prevent the retired staff from achieving equity for themselves. It would be useful if the Minister of State indicated that this interpretation is reasonably correct in order that we can be assured that what we are doing legislatively here today will not cause any trouble or create any block for those retired workers who gave of their time to the building of the company.

Mr. Dooley: Like my colleagues, Senators Browne and O'Toole, I raised this matter on Second Stage, following conversations with the members of two groups, some of whom had retired, as they had no choice but to do so in line with standard retirement regulations. Effectively, they could have been excluded from the share option programme. The difficulty for them was that they had taken certain actions in latter years in not getting the pay increases they had expected. They had agreed to remain on their then rates of pay. They had also changed working conditions. Effectively, they had bought into a programme that would ultimately see them receiving their reward at a later stage through the issuance of shares. Through no fault of their own but purely as a result of delays associated with the publication of the Bill and its subsequent withdrawal, they found themselves at a distinct disadvantage. I am pleased that the work done by Senators O'Toole and Browne behind the scenes with the Department will ensure they are not excluded, although I recognise there is work to be done to get agreement from all parties.

I understand another group will also be catered for in this regard — those being asked to take voluntary redundancy. This applies particularly to Shannon Airport where there is a proposal from Aer Lingus management, with which I disagree. Not having a controlling interest in Aer Lingus there is little I can do other than voice it here. Some 104 of the workforce of 208 have been asked to opt for voluntary redundancy. This would have a devastating effect on the airport and the presence of Aer Lingus but that is a matter for discussion another day. The most important object of this debate is to protect those workers in any way we can. It is important, if they opt for voluntary redundancy, that they will be in a position to avail of any shares which will be made available by way of a share issue. Many, who may have family and children settled in a particular area, will potentially make the ultimate sacrifice by accepting voluntary redundancy at a time when their futures are not definite. While some media elements have referred to this as a windfall, it is not and will be quite small for those in their late twenties or early thirties who have mortgages and car loans to pay.

I hope they can be accommodated in some way because many of the redundancies are expected before the passage of the Bill. I assume the provisions which apply to those who have already retired under normal retirement procedures will apply particularly to those at Shannon, which is the only area within Aer Lingus where there is a current request for redundancies. I look forward to the Minister of State's comments in that regard. I compliment the Minister of State and his officials, who have worked hard to identify a solution to this important matter.

Mr. McDowell: There is obviously consensus in the House on this matter. It is agreed that the workers concerned contributed towards the restructuring of the company. Had the Minister had his way at an earlier stage, the company would long since have been disposed of and they would have been party to the employee share ownership plan, ESOP, arrangement. My understanding is that the Bill does not exclude the possibility of them being included in the ESOP, and it is important to put that on the

[Mr. McDowell.]

record. I am fascinated and puzzled by Senator Dooley's remarks about Shannon.

Mr. O'Toole: It is understandable.

Mr. McDowell: If I understood him correctly, he said he did not have a controlling interest. When last I checked, Senator Dooley was a member of Fianna Fáil.

Mr. Dooley: I am not on the board of Aer Lingus. It is a plc.

Mr. McDowell: To the best of my knowledge, the Minster for Transport, Deputy Brennan, and the Minister for Finance, Deputy McCreevy, are also members of that party. Is Deputy McCreevy in a different Fianna Fáil to Senator Dooley? I understood it was all one big, united outfit.

Mr. Dooley: It is.

Mr. McDowell: Perhaps the Senator should tell that to the approximately 100 workers who will be obliged, one way or another, to take redundancy, and to the customers of the company in the County Clare region who will find it more difficult to use the services when the programme of change goes through. It is quite remarkable how Fianna Fáil can dissect itself in this way and wear different hats in different places at different times.

Mr. O'Toole: That is what makes it great.

Mr. McDowell: Maybe so. However, there is consensus on the substantive issue of this section and it is useful that the matter has been clarified.

Dr. McDaid: I thank the Senators for accepting this. It was a matter with which I, the Minister or anyone else had no major hang-up. It is understood that the proposed amendment would have been tabled in the belief that such amendments would facilitate the issue of ESOP shares to Aer Lingus employees who have recently left the company. This is not so. The legislation does not determine who gets the shares. It is a matter for legal documentation governing the ESOP which was agreed by the unions, the company, the relevant Departments and the Revenue Commissioners. It would not be appropriate for the Department to suggest or initiate any changes to the ESOP legal documentation. However, if such changes were proposed by the trustee directors, the Department of Transport, in consultation with the Department of Finance, would endeavour to facilitate the change, if at all possible.

Following the tabling of the amendment, the issue was considered by the directors of the employee share ownership trust, ESOT, which comprises representatives of the unions and the company. The secretary to the trust has advised the Department that the following are the views of the trustee directors. First, amending the Aer Lingus Bill as proposed would not facilitate former staff in receiving shares under the ESOP. Second, former staff cannot participate in future allocations of ESOP shares because the legal documentation governing the operation of the ESOP precludes it. Third, the trustee strongly believes that any change in relation to former staff is not a matter for legislation but for the trustee, the unions, the company and the Departments in considering whether a change in the legal documentation governing the ESOP is appropriate in approving any proposed change, for these parties, the Revenue Commissioners and, potentially, the current participants. Fourth, the ESOP legal documentation which was signed by all parties in April 2003 provides that when the ESOP shares are acquired by the trustee, such shares should be nominally allocated to all beneficiaries who were employees on the relevant date. The relevant date is defined as the date on which the ESOP shares were acquired by the trustee. The trustee can amend and submit for approval any such changes. Fifth, the ESOP explanatory booklet which was sent to all prospective ESOP participants on 15 September 2003 stated that shares would only be allocated to those who signed the contract of participation and who were employees of the company on the date the shares were acquired by the ESOT. Sixth, any changes to the rules could have significant consequences, some of which may not currently be foreseen. The trustee directors must consider the interests of all beneficiaries and, given that any change of the rules would serve to dilute the interests of the current staff, it is likely that the trustee might or would require a ballot of the members to ratify the proposed change. The trustee is anxious that the Aer Lingus Bill should be enacted as soon as possible so the ESOT can subscribe for the additional shares with a view to making allocations immediately thereafter, thereby ending the accumulation of leavers without share allocations, and, notwithstanding the above, the trustee has not formed any definitive view on whether a change of the rules is appropriate.

As I understand it, Fine Gael introduced this amendment because it felt, given the Air Companies Act 1966, that the company would have the power to allocate the shares. That might well be so in an interpretation of other companies. However, it was agreed with the Attorney General that this part of the Bill was required to ensure the Air Companies Act 1966 was able to deal with the ESOT in this manner. Senator Browne's interpretation seems to have been that the company was empowered to issue shares under the Companies Act, as all companies can. However, there was a tie to Aer Lingus in the Air Companies Act 1966 which did not apply to other companies and which meant the company would not be able to do this. This part of the Bill is to clear the path for it, as was agreed with the Attorney General. Senator

Browne's amendment applies to this section of the Bill whereas that of Senators O'Toole and Ross applies to section 7.

Mr. O'Toole: I welcome the clarification from the Minister of State. I am concerned with the outcome, although that has nothing to do with the legislation, and wish to pick up on some of the points made by the Minister of State. He said, quite correctly, that it would not be appropriate for the Department to make proposals on this matter to the trustees at this time. I agree fully with this as such proposals must come from one of the other groups, namely the worker trustees. The Minister of State was clear about the implications of the legislation and it was helpful that he gave a clear interpretation of the trust and its legality.

The Minister of State made two points. First, the ESOT can only give out shares after it receives them, as that is part of the rules of the trust. Effectively, what must be changed, to benefit those for whom we spoke recently, is the date from which this becomes applicable which, as of now, is the date of the receipt of shares. Although that is simply a date change, it must go through the process.

Arising from the fact that people bought into this by way of the prospectus issued in June last year, it may be the case, as the Minister of State stressed, that in order to enable any changes to take place the trustees might consider it a requirement to ballot all members. I understand that but some points need to be made.

2 o'clock

There is a question of equity here. Workers on pensions are effectively getting deferred wages or salaries. It is important to recognise that these people were given this option in the first place because they agreed to make sacrifices while they were still employed. The changes made were specific, measurable and easily quantifiable. As I have stated previously, these people agreed to forego the increases due to them under the national agreement, which was quite significant, at a time when the workers had already come out of the belt-tightening of the Cahill plan and other changes. In effect they were paying for the future allocation of shares by doing this.

In addition, they agreed to a combination of changed work practices and a series of redundancies and workforce reductions which increased productivity significantly. That productivity is also directly attributable to their input and sacrifice, all of which was done on the basis that they would get their day in the sun with the share option scheme. That was understood by everyone.

I have not read the prospectus but it was surely intended to be made available to all the potential beneficiaries, whose names are listed. It is not as if some of them were away at a certain time — we know who they all are. I ask the Minister of State and his Department to take a special interest in this issue. I am not arguing with him on the legal aspect, and I agree with the importance of the Department standing back from a matter which would be better dealt with by workers' representatives, but there is a broader issue here of trust and confidence. What is happening in An Post at present is a rerun of what happened in the airports several years ago when we decided on the solution I outlined earlier. I do not want a trade union official dealing with the An Post issue to have someone at a meeting say: "We might agree to something now, but I know people in Aer Lingus who agreed to a proposal but because of their age they had left before it was implemented and they were screwed." That is the kind of thing which, ultimately, makes life difficult for everyone, so there is an issue of good faith here also.

There are legal issues and responsibilities which arise from the establishment of the ESOP and we also have issues of trust and confidence in human resource procedures. For that reason, while workers will appreciate the commitments given by the Minister of State today, I ask him to get the Government to take an interest in ensuing these workers get their due in equity.

Mr. McDowell: I endorse what Senator O'Toole said, which makes sense and repeats what we said earlier. I am now more confused than I was ten minutes earlier about the legal structure of the ESOP. Section 7, as I now understand it, allows for a certain power and confirms the power the Minister already thought he had to set up an ESOP. It provides that one or more such scheme may be established. I am not clear whether the existing ESOP is being merged into the new ESOP. My understanding was that they were essentially separate.

More importantly perhaps, I am also unclear as to whether the now departed workers, who took redundancy in recent months, are existing members of the already existing ESOP and have to be accepted into the new ESOP. At what point does their entitlement arise?

The Minister of State's comments about existing members of the ESOP having to vote is crucial. My understanding was that they were already members of the ESOP by virtue of the 5% provision, which was already disposed of, and that their entitlement to any additional shares which might be disposed of would arise by virtue of that fact and that there was no need for them to be accepted into membership and so on. I see from the Minister of State's officials that is clearly wrong but perhaps he can explain the position.

Dr. McDaid: They are two separate situations — the original 5% provision remains as it was.

Mr. McDowell: Is there a separate legal structure with separate membership?

Dr. McDaid: That is my interpretation at this point. The original one has finished and this is the new ESOP — the new legal structure.

Mr. McDowell: Does the existing trust continue?

Dr. McDaid: No. I see Senator O'Toole's point. He has accepted the legal situation and the documentation. When one is reading a reply something may hit one and that is the issue one raises. I knew he would raise the ballot issue I mentioned but I still felt I had to state the position as it is something of which Members should be aware.

If we were cold and calculating we could tell these people they could take the package or they can stay, though the package might not be available to them later. That would be a calculating approach, to say that some people took a package which might not be available to them at another time. I see Senator O'Toole's point, that they took the package in order that others could benefit and the company could survive, and we should take that into consideration. Senator O'Toole asked me to raise this with Government colleagues. I will raise it with the Minister for Transport in order that he can discuss it with Government colleagues. I will do so because, as Senator McDowell said, when dealing with ESOPs in future people may say, when looking at what happened here, that people who took up the option were left floundering even though taking up the option allowed the miracle in Aer Lingus to continue. Not only does this apply to the people involved here, it could have implications for future agreements also.

Mr. Dooley: I concur with much of what Senator O'Toole said. The important issue for me is the contract of participation. These people signed up to a process in good faith and on the basis of deferred rewards for the work they were doing. Unfortunately, if the situation was as we thought up to the last few days, they would not have received that reward. I thank the Minister of State for clearly outlining the position.

Something which cannot be dealt with by legislation — I understand why from the Minister of State's explanation — is the situation where some voters will not take care of those who have left the company. There is also the fear that what they take out of it will be diluted. From looking at the numbers I understand the level of dilution is so small as to be almost negligible. Much depends on the value of shares at a later stage and the figures I have seen do not seem to indicate any great loss when one compares the numbers affected to the entire number in the organisation. While recognising that one cannot do anything by way of legislation because it is open to all parties, the Minister could let it be known that the Government accepts the principle that those who signed the contract of participation, bought into the programme and were part of the company's recovery, either by accepting early redundancy or a wage freeze, would benefit. It should indicate to all concerned that it appreciates, understands and believes there is a valid entitlement which may help to resolve the matter.

Mr. Browne: It is important to acknowledge the sacrifices Aer Lingus employees have made to save the company. It is fair to say, however, that once one leaves a position — whether one is an ex-Minister, an ex-Senator or a former civil servant — one is, unfortunately, quickly forgotten. I do not hear colleagues referring often to former Senators but that is a fact of life.

Senator Dooley raised a concern I had that even if this matter was put to a vote, would the current Aer Lingus staff accept it? One would hope they would. Unfortunately, however, people tend to consider the present, rather than the past but I hope that will not be the case. This may involve more than just the 200 to 300 people we are currently discussing because we are witnessing a major downsizing of Aer Lingus. We can see what is happening at Shannon Airport and while the company is seeking voluntary redundancies, they may not be as voluntary as one would wish.

There is also an ongoing problem concerning Aer Lingus pilots because the company is seeking a reduction of 40 pilots' positions. The way in which this matter is being approached is unfair, considering that pilots on full pay were put out of work because of a lack of aircraft. They have since been informed that they will be redeployed. This means that captains could be working as co-pilots, while co-pilots will be redeployed elsewhere.

Mr. Dooley: Cabin crew.

Mr. Browne: As there are big issues involved, I hope the Minister will keep his word. For the sake of future industrial relations we must act honourably. Given the current fiasco in the postal service, people may use the Aer Lingus example as an argument against reform of An Post but I hope that will not happen.

Dr. McDaid: While I accept most of the points the Senators have made, I want to reply to the latter points concerning the situation at Aer Lingus and Shannon Airport, including the accusations flying here, there and everywhere. I have heard Deputies and Senators extolling the virtues of what Willie Walsh has done for Aer Lingus but the same arguments are not made about Shannon Airport. One Senator said Aer Lingus was dead and then resuscitated but I would have said it was unconscious before being resuscitated. There seems to be a contradiction in terms because one cannot praise a person, on the one hand, while criticising his methods, on the other.

Mr. McDowell: One can, if one is a member of the Fianna Fáil Party in County Clare, apparently.

Dr. McDaid: Aer Lingus is a commercial company with a commercial mandate and has to make its own decisions. We do not interfere in a company which has a commercial mandate as such. However, Fianna Fáil has and will continue to have a political interest in the matter at Shannon Airport. Aer Lingus must ensure it can take its place among other airlines operating in the international aviation industry. One only has to look at what is happening around the world in the industry to understand the situation. I am a great admirer of Michael O'Leary who has said he will never go to Ireland unless Dublin Airport has a second terminal. I am all for a second terminal but Mr. O'Leary has a financial nose which is pointing towards Dublin because the current situation in Norway and France is not panning out. Whether it likes it, Ryanair will probably locate in Dublin because that is the financial reality.

Aer Lingus is trying to ensure it continues to have people like us admiring the way it has turned around. If one looks at what is happening worldwide, one will see that KLM and Air France have practically merged. In addition, I forecast that Olympic Airways will probably be no more after the Olympic Games. We must ensure we work in the best interests of Aer Lingus and the Irish aviation industry.

The situation is a difficult one but people are beginning to understand it better. I wanted to point out, however, that one cannot extol the virtues of one person while criticising him also, although I realise that the Shannon region is suffering as a result of what is happening. It has been suggested that Aer Lingus does not care about it anymore. Aer Lingus is a commercial airline which makes its own commercial decisions but, politically, I can assure the House that Shannon Airport will not be forgotten.

Amendment, by leave, withdrawn.

Section 4 agreed to.

SECTION 5.

Mr. Browne: I move amendment No. 5:

In page 4, subsection (1), line 41, after "Minister," where it secondly occurs, to insert "and with the approval of both Houses of the Oireachtas,".

Amendment put and declared lost.

Mr. Browne: I move amendment No. 6:

In page 5, between lines 22 and 23, to insert the following new subsection:

"(4) Without prejudice to the generality of the foregoing an agreement referred to in *subsection (1)* or *(2)* shall, include provisions relating to——

(*a*) Aer Lingus slots at airports which it services; and

(*b*) minimum levels of service,"

The second part of the amendment is self-explanatory. The first part reflects my concern about slots, primarily at Heathrow Airport. The Minister expanded on this point on Second Stage when he indicated they were not owned by Aer Lingus. I may withdraw the amendment if the Minister of State can clarify their exact status.

Mr. McDowell: Sadly, this amendment demonstrates the regrettable ambivalence of Fine Gael on the whole issue. The party is effectively saying we can sell off Aer Lingus but should seek to maintain the slots at Heathrow Airport. That argument is not made in the real world. The major assets which, I suspect, any likely purchaser of Aer Lingus would want are the Heathrow Airport slots, which are very valuable.

To suggest that we can dictate to any private investor or private owner of Aer Lingus that it must observe minimum levels of service is not realistic. If we want to maintain "minimum levels of service", to use the wording of the amendment, between Ireland and elsewhere, we will have to retain total ownership of Aer Lingus, notwithstanding the ESOP. That is the reason, as the Minister of State will be aware, we opposed the Bill on Second Stage.

Mr. Dooley: Senator McDowell has said the delivery of minimum levels of service can only be guaranteed by retaining Aer Lingus in State ownership. In this respect, I raise a point that has been well documented in the last two days. Last week a wheelchair-bound passenger travelling from Shannon Airport to Dublin was left on an aircraft for 90 minutes during very bad weather. The person concerned who is suffering from diabetes was travelling to attend a hospital in Dublin. This occurred due to a misunderstanding and, although I accept fully that such difficulties can arise, it does not reflect a good level of service within the public sector.

While I agree with Senator Browne that it is important to have identifiable levels of service, I am not sure they can be provided for through legislation. Whatever regulatory authorities are in place post privatisation, if that is what happens, there are ways by which levels of service can be regulated. The market tends to address service levels when they fall below a specified standard as the company tends to suffer the wrath of the travelling public. These issues can be dealt with later.

Mr. O'Toole: I agree with Senator McDowell's interpretation of the section, which is paving the way for privatisation. I am absolutely delighted by the changed emphasis to slots over the past two months after an official said Heathrow Airport would do whatever it wanted with its slots, including giving them to airlines without necessarily being sold on. Suddenly the value of Aer Lingus goes up and down on the say so of an invisible bureaucrat or management type at Heathrow Airport. That demonstrates how dependent we are.

This is similar to the point made in jest about Senator Dooley and County Clare. A consistent theme of the Fianna Fáil Party is that privatisation is good but as soon as a State company is privatised and the level of service turns into a disaster, everybody wonders how it happened. The swings and roundabouts we have experienced regarding Eircom are precise and classic examples. If Eircom was still owned by the State, every house would have broadband because it would come through the copper lines but, as soon as Mr. O'Reilly and company got control of the utility, it was not worth their while providing broadband for households at Malin Head, west Kerry or west Clare. Senator Dooley would be a long time waiting for the company to provide broadband in the Loop Head area.

I disagree with Senator McDowell on one issue. The presence of two Fianna Fáil Members can be helpful given that many senior people in the party have grave doubts about the privatisation of a number of State transport companies. We might just be saved by this. The man in charge of transport has a clear view but the man in charge of the man in charge might not have the same clear view. The man in between might not have the same clear view either.

For example, a minimum level of service to Carrickbeg cannot be included as part of the sell-off of Aer Lingus. There are strategic issues involved in such a sale for both airports and airlines in terms of which other airlines can set up in the State. Every argument used against the threatened strike by Aer Lingus workers two weeks ago could be used to make a case against the sale of the company and the airports. However, the slots at Heathrow Airport are bottles of smoke. There is an ongoing row between British Airways and Qantas over a proposed merger because Qantas wants to use its transatlantic slots at Heathrow Airport for connecting flights between Birmingham and Heathrow and BA is unhappy about this. If that is the case, it will not happen. The slots are in the ownership of the airport.

Dr. McDaid: I took the Montreal Convention legislation in the Dáil yesterday and there was more debate about Knock, Shannon and Cork Airports than about the legislation. However, if I was a backbencher, I would also make sure that I raised those issues.

The Council of Ministers is debating the single skies policy and the slots issue is being dealt with separately. Aer Lingus does not own slots but has so-called grandfather rights. However, such slots are important to the United Kingdom. Heathrow Airport is so important because only two British carriers fly to the United States — British Airways and Virgin — while only two US carriers — USAir and American Airlines — fly the same routes with 40% of all European passengers travelling to the United States flying from the airport.

Discussions are ongoing between the European Union and the United States following the recent European Court of Justice decision which provides that any airline can set up in a member state. For example, if Air France has a gateway in Washington, it can set up in Dublin Airport and provide a direct service. We must always keep an eye on what is in the best interests of Aer Lingus and Irish aviation.

I disagree with Senator McDowell regarding the privatisation of Aer Lingus. While I have no problem with the privatisation of certain State companies, I have reservations about the privatisation of a number of others. While I do not have reservations about privatising an airline, I would have reservations about fully privatising an airport as in the Aer Rianta scenario.

Mr. McDowell: Will the Minister of State reassure Senator Dooley about the Shannon stopover if the Government sells off Aer Rianta?

Dr. McDaid: I have explained what could happen regarding the Shannon stopover. An airline such as Air France could come in and swipe the gateway from under the nose of Aer Lingus.

Mr. McDowell: I am anxious that Fianna Fáil in County Clare should be aware of the situation.

Dr. McDaid: Shannon Airport no longer needs to be as dependent on Aer Lingus as it has been. More than 70% of people from Munster must fly from Dublin when going on holidays when that is not necessary.

This is a complicated area and it is a case of the best interests of Irish aviation versus the best interests of Aer Lingus. The slots issue is a concern because 40% of all European passengers travelling to the United States fly out of Heathrow Airport. However, the issue will be addressed separately at European level and, if an airline is taken over, it will have to be given rights to the slots out of necessity. Slots are also a major problem because they are responsible for between 20% and 30% of delayed and cancelled flights. The slots would naturally be part of whatever transaction involved Aer Lingus. I have

reservations about this issue and, before privatisation takes place, it will have to be addressed at European level.

Slots are important as, apart from Aer Lingus, only British Midland operates Heathrow-Ireland services. Their value arises from their scarcity which may change in future when additional runway capacity is developed. Heathrow Airport is still the largest international hub in the world and an important part of the Aer Lingus network.

It is essential that we continue to have access to this large hub. I have no problem with the privatisation of Aer Lingus because it has a market of 14 million to 20 million at Dublin Airport and nobody will turn his back on this large hub. There has been an increase in direct services from Ireland to other large European hubs in Paris, Frankfurt and Amsterdam. The slots would be part of any deal in the negotiations on privatisation, if the Government should so decide.

An Leas-Chathaoirleach: With grandfather speed as well.

Mr. O'Toole: The reason we have concerns about slots is that we remember what happened before. The Minister has dealt with slots previously. It is interesting that he referred to Aer Lingus flying to Heathrow. In 1989, following considerable investment in consultancy, planning, advertising and marketing Aer Lingus developed five to seven daily slots to Stansted, but the current Minister, who was then also the Minister, took the slots from Aer Lingus and handed them to Ryanair. I have watched this game being played before. At what stage does it not have an interest in it? I heard Senator Dooley say that the Government does not have a great influence over Aer Lingus but I draw Members' attention to Aer Lingus's chief executive who earlier this week listed the six new routes to the US he could open next month if the Government would let him do so. The Minister cannot blame Members on this side for querying the issue because we have suffered from what happened before.

Mr. Dooley: That is an international agreement.

Mr. O'Toole: Let us remember that currently Aer Lingus does not have decent slots into Stansted which deprives it of a feed into one of the largest low fares markets in Europe.

Mr. Browne: I thank the Minister for his reply, however, I am still not sure of the status of the slots. The Minister said categorically that Aer Lingus does not own but has grandfather rights to the slots. Will he clarify what exactly that term means?

I do not agree with the point made by Senator McDowell. The Labour Party is having a cut at us and I am surprised it does not accept that the Government may invest in Aer Lingus when it is going well but is not allowed to bail it out should it get into difficulty. It is no harm to have the option of privatisation open to us. It makes sense to privatise a company when it doing well and not when its back is against a wall. Fine Gael accepts that point and makes no apology for it.

I am delighted the Minister agrees to a minimum service. Should a private investor take over Aer Lingus, it will want to make a profit. Dublin Airport is the jewel in the crown whereas Shannon Airport is a burden and a new owner could route all flights to Dublin Airport, where it would be financially attractive, and the regional airports could be disadvantaged. I understand it would be difficult to lay down conditions on what must be done when selling the company to an investor. Perhaps it can be done. Let us take a hypothetical scenario, which I know will not happen, in which Ryanair buys Aer Lingus and then puts it out of business, making Ryanair a monopoly. While this is farfetched, it is a possibility and the reason we tabled an amendment seeking minimum levels of service.

Dr. McDaid: The Minister's actions would be determined by the Government of the day. Grandfather rights mean one is entitled to slots because one has been there for such long time, but one does not own them. There is an ongoing debate on this issue in Europe and I can make the papers available to the Deputy if he so wishes.

Mr. Browne: Can one inherit grandfather rights? If I bought Aer Lingus tomorrow morning, would I have the slots?

Dr. McDaid: Whoever takes over the airline automatically gets them.

Amendment put and declared lost.

Section 5 agreed to.

SECTION 6.

An Cathaoirleach: Amendments Nos. 8 and 9 are related to amendment No. 7 and they can be taken together by agreement. Is that agreed? Agreed.

Mr. Browne: I move amendment No. 7:

> In page 5, lines 34 and 35, to delete subsection (3).

This is a technical amendment which deals with duplication.

Dr. McDaid: There are 12 members on the board, four of whom are worker directors and if an employee share ownership plan, ESOP, is to go ahead, the number of worker directors would

[Dr. McDaid.]

be reduced to allow for representation by ESOP. In the event of a future sale, it would allow the third party to be on the board as well. It is trying to keep the number on the board at a workable level. It would not be the same if there were 24 on the board. As Members know, the smaller the board, the better the work. That is the reason I cannot accept this amendment.

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

Amendment declared lost.

Mr. Browne: I move amendment No. 8:

In page 5, lines 36 to 42, to delete subsections (4) and (5).

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

Amendment declared lost.

Mr. Browne: I move amendment No. 9

In page 6, lines 1 to 8, to delete subsection (6).

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

Amendment declared lost.

Section 6 agreed to.

SECTION 7.

An Cathaoirleach: Amendment No. 10 has already been discussed with amendment No. 4.

Amendment No. 10 not moved.

Mr. Browne: I move amendment No. 11:

In page 6, between line 12 and 13 to insert the following new subsection:

"(2) An employee shareholding scheme referred to in *subsection (1)* shall include the establishment of a shareholding scheme in respect of former employees of the Company.".

This amendment relates to those who have left midway before the completion of the whole scheme and this ensures that former employees are protected and get their full entitlements.

Mr. McDowell: I understood the Minister of State was of the opinion that this section would have retrospective effect. Is that the case? Can it be clarified that the Minister continues to have the power to issue shares? The wording is not very clear to me.

Dr. McDaid: As I understand it, Senator Browne's amendment seeks to provide that people who have left the company would be entitled to participate in a shareholding scheme. In the ordinary definition of the term, "shareholding" is used to reward people who have been in a company for the work they have done. It would be exceptionally difficult in this case to establish an entirely new scheme. The separate scheme which operated previously is no longer in place. The Senator seeks to set up an entirely new scheme for people who have left the company. Those who have left the company, notwithstanding what we have discussed in the previous amendment, have done so with pensions or lump sums. Where would this start and end? Should we consider all former employees of the company or those employed from a certain date? There is no way to properly accomplish the Senator's goal in the normal operation of any shareholding or pension scheme.

Amendment put and declared lost.

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

Mr. McDowell: Is the power provided for the Minister under section 7 intended to be retrospective? I understood from the Minister of State's comments that the section was intended to cure any possible ambiguity about the power of the Minister to create previous ESOPs.

Dr. McDaid: That matter is dealt with in section 4.

Mr. McDowell: Section 7 provides, notwithstanding anything contained in the Air Companies Acts, that the company may issue shares in accordance with the Companies Acts as part of one or more employee shareholding schemes.

Dr. McDaid: Can I clarify this with the Senator after the debate?

Mr. McDowell: Perhaps that would be best.

Question put and agreed to.

Section 8 agreed to.

SECTION 9.

An Cathaoirleach: Amendment No. 13 is consequential on amendment No. 12. They may be discussed together.

Mr. Browne: I move amendment No. 12:

In page 6, subsection (1), line 45, to delete "or former employees".

These amendments relate to the pension rights of former employees and seek to ensure their full entitlements would be granted.

Dr. McDaid: The purpose of section 9 was raised in the Dáil. It involves superannuation schemes in Aer Lingus and Aer Rianta and contains 17 subsections. My response to the Senator's amendment relates to superannuation schemes in general.

The sole purpose of the section is to provide that Aer Lingus may establish its own pension schemes at some stage. While the section is long and complex, running to 17 subsections, this merely reflects the complicated nature of pension scheme provisions and the need to ensure that if and when Aer Lingus establishes its own scheme, the rights entitlements and obligations of Aer Lingus employees or former employees under the existing scheme will be preserved under any new scheme. It is not feasible for Aer Lingus to establish pension schemes specifically for former employees and which would have benefits paid out in line with national wage agreements. In other words, it is a matter for the company. Pension payments are made in accordance with the rules of the scheme which also determine the rate of contributions.

The question arises as to where the funds would come from for the scheme proposed by the Senator. If his scheme was introduced, former employees would be in a better position than current employees who pay into the existing pension scheme. It should be noted that following Second and Committee Stages in the Dáil, during which concerns about pensions were raised by the Opposition, the Minister for Finance issued a letter to the Minister for Transport which stated that it was a long-standing policy and principle that pensions in the commercial semi-State sector were a matter for the trustees of the funds, the companies in question and the members of the schemes. The letter continued to the effect that it would be inappropriate for the Minister or this Department to become involved in such matters and that any issue raised should be referred to the company. I understand the Minister read the letter to the Dáil to confirm that pensions were a matter for the company rather than this legislation.

Amendment, by leave, withdrawn.

Amendment No. 13 not moved.

Section 9 agreed to.

An Cathaoirleach: Amendment No. 14 is out of order and cannot be moved.

Mr. Browne: While I accept the Chair's ruling that amendment No. 10 is out of order, it was tabled to provide the same pension rights for Aer Rianta workers as for those of Aer Lingus.

An Cathaoirleach: This is an Aer Lingus Bill and the amendment is not applicable.

Mr. Browne: Fine Gael accepts that it is forced to refrain from moving it.

Amendment No. 14 not moved.

Sections 10 and 11 agreed to.

NEW SECTION.

An Cathaoirleach: Amendment No. 16 is consequential on amendment No. 15 and they may be discussed together.

Mr. Browne: I move amendment No. 15:

In page 9, before section 12, to insert the following new section:

"12. With effect from the coming into operation of this section, each enactment specified in the *Second Schedule* ceases to apply to the Company to the extent specified in *column (3)* of that Schedule."

All we are seeking through this amendment is to ensure the list in the Schedule would be published in tabular form. A table would be easier to understand and allow us to list the relevant Acts and their years of enactment. It would have the effect of making the legislation more reader friendly.

Dr. McDaid: All I can say to Senators is that if a lay person was to attempt to read this legislation, he or she would consider it to be double Dutch. It is drafted in another form of the English language. The provisions of the Bill use a different phraseology to Senator Browne's amendment to achieve the same effect. My officials have indicated that the provision the Senator seeks to make through his amendment has been accepted in principle in the Bill which is drafted using a different wording. I will not return to the Dáil with the legislation for the sake of different phraseology.

Amendment, by leave, withdrawn.

Section 12 agreed to.

Section 13 agreed to.

SCHEDULE.

Amendment No. 16 not moved.

Schedule agreed to.

Title agreed to.

Bill reported without amendment.

An Cathaoirleach: When is it proposed to take Report Stage?

Ms O'Rourke: On Wednesday next.

Mr. McDowell: May I raise a point of order? As there are no amendments there can be no Report Stage. Is it not possible for us to take the remaining Stages now?

An Cathaoirleach: It is in the hands of the Leader.

Ms O'Rourke: This is an important semi-State Bill and my preference is to have an interval between Committee and Report Stages. I have consistently tried to do this with Bills, except where it is not possible. It is better that we should proceed in this way.

Dr. McDaid: I thank Members for facilitating discussion on Committee Stage. If Members have any queries, they can avail of the expertise within my Department.

Report Stage ordered for Wednesday, 31 March 2004.

An Cathaoirleach: When is it proposed to sit again?

Ms O'Rourke: At 10.30 a.m. next Wednesday.

The Seanad adjourned at 2.55 p.m. until 10.30 a.m. on Wednesday, 31 March 2004.