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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 16 *June* 2004.

SEANAD ÉIREANN

Dé Céadaoin, 16 *Meitheamh* 2004.
Wednesday, 16 *June* 2004.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Order of Business.

Ms O'Rourke: The Order of Business today is No. 1, Water Services Bill 2003 — Committee Stage, to be taken on the conclusion of the Order of Business until 1.30 p.m. This will not be concluded because more than 200 amendments have been tabled; No. 2, Central Bank and Financial Services Authority of Ireland Bill 2003 — Second Stage will be taken from 2.30 p.m. until 5 p.m. and Members will have 15 minutes to contribute; No. 3, Housing (Stage Payments) Bill 2004, Order for Second Stage and Second Stage, to be taken from 5 p.m. until 7 p.m. There will be a sos from 1.30 p.m. until 2.30 p.m.

I beg the Chair's indulgence to mention that today is a special day in Dublin, in Ireland and in the world. It is the 100th anniversary of the famous fictional walk which Leopold Bloom and Stephen Dedalus took through the city of Dublin, which has become immortalised throughout the world. We are very honoured that in our Chamber we have a Member who, internationally and nationally, is associated with that famous author, James Joyce, and that famous work, *Ulysses*, and has done much to promote it. I acclaim Senator David Norris.

Senators: Hear, hear.

Mr. B. Hayes: I agree with the Leader of the House that this is a great day for Joyceans throughout the world, and particularly that we are honoured to have in our midst Senator Norris who has done so much to resurrect the memory of Joyce in his home city. We should not forget the great cultural and tourism impact that is brought to this city and country by this great writer and by the book that is immortalised the world over. It is great to see Senator Norris on this particular day.

Has the Government any plans to recall the Forum for Peace and Reconciliation so that Fianna Fáil and the Progressive Democrats can work out their difficulties as soon as possible?

Ms O'Rourke: I knew that was coming.

Mr. B. Hayes: The Forum for Peace and Reconciliation would be a particularly useful vehicle for this because much therapy is required going forward.

Mr. Minihan: Will Senator Hayes act as chair at the Forum?

Mr. B. Hayes: It is good to see Senator Minihan and Senator O'Rourke sitting beside each other holding hands today on the Order of Business. They will clearly be sticking with each other come hell and high water and I welcome that.

An Cathaoirleach: On the Order of Business.

Dr. Mansergh: That is a good piece of political analysis.

Mr. B. Hayes: No. 3 is the Housing Stage Payments Bill 2004. This is a Private Members' Bill brought before the House by our party colleague Senator Coghlan and he is to be complimented on that. Is it the Government's intention to allow this Bill pass Second Stage to Committee Stage in the House? Is it its intention not to oppose it on Second Stage as it deals in a direct way with a particular problem in the housing area? I ask the Government to allow the Bill pass Second Stage tonight. All Members of the House should be encouraged to bring forward Bills of this nature. It helps Government and Opposition alike. The notion that the Government is the font of wisdom when it comes to the preparation of legislation should be challenged. I encourage the Government to support the legislation tonight and let it go through to Committee Stage. Will the Leader indicate if that is the Government's intention?

Mr. O'Toole: I wish to be associated with the recognition and affirmation of the extraordinary work on James Joyce that Senator Norris has done over the years. He is the leading authority in the world. I am not allowed to say anymore as he is our spokesperson on Joycean affairs.

Mr. Ross: And everything else.

Mr. O'Toole: The Mahon tribunal issued a report yesterday. I ask Members to take an interest in it. We need to look at a very simple issue. Under the terms of reference the tribunal is required to investigate every single allegation. That will take 14 years. The proposal is that where matters are referred to the tribunal, it would initially investigate them and if it came to a conclusion that they did not require further investigation or a public hearing, it could dispose of them and move on. That would halve or quarter the workload. It is a sensible, practical proposal that will save the State money. There is no gain in terms of what is currently happening. The tribunal will continue for 11 years only because it is required under the terms of reference to have a public hearing and a full investigation of every single allegation. It should be trusted to look at

[Mr. O'Toole.]
each allegation, to make initial inquiries and to conclude whether it should dispose of it or to have a public inquiry. This should be done quickly as it is one of the issues about which people feel very strongly.

Yesterday I again raised the process under Article 35 of the Constitution. In the case of a person subject to an impeachment process, is that person required to be responsible for his or her own legal costs? Cathaoirleach, I am not crossing the line here. We should take a deep interest in issues regarding the Constitution. I will keep raising these unanswerable questions every week in this House. We are making a mess of it and we have not thought our way through it. We were rushed into two pieces of legislation two weeks ago. I supported them like everyone else in this House and anything I say is no criticism of anyone in the House. However, we are down a blind alley on this one.

Mr. McCarthy: I congratulate Senator Norris for his association with what is a unique event in this country and I wish to be associated with the remarks of the Leader and of the other speakers.

The point regarding the cost of tribunals is fair. These Houses set up the tribunals but no one thought at that time the amount of money and the length of time it would take the tribunals to sift through their very complex and detailed work. There is an understandable frustration among the public regarding the cost of tribunals. Considering the Houses of the Oireachtas set up the tribunals, would it be possible to set up a corruption investigation agency or some like body to do much of the work on which tribunals are expending so much money and time? Are our priorities right in this regard? We must be cognisant of the time constraint and the vast amount of taxpayers' money being spent on tribunals. I would welcome a debate on this issue to see if we could find an alternative method of dealing with these very serious issues.

The National Disease Surveillance Centre figures for the spread of AIDS are frightening. In the 1980s, we spent millions of pounds on advertising campaigns to highlight the dangers of this disease and to prevent its spread. However, a lackadaisical attitude seems to have come to the fore in recent years. We now know that minority groups are no longer exclusively affected by this deadly disease. It is now almost more threatening to heterosexuals than to homosexuals and drug addicts. The issue needs a strong debate and a strong public platform. I call on the Leader to organise a debate in the House which, I hope, will lead to a reinvigoration of the public awareness campaigns of recent times.

Dr. Mansergh: I notice we will debate today the Central Bank and Financial Services Authority of Ireland Bill 2003. I presume that is, in part, designed to prevent what a recently elected Member of Dublin Corporation, Alderman Leopold Bloom, called, "our buccaneering Vanderdeckens in their phantom ship of finance". I thought that was a better selection from the speech than Leopold Bloom's reference to the incorrigibility of humankind. "Mankind is incorrigible.....Why, look at our public life!".

I appreciate that readings from *Ulysses* are not part of the Order of Business.

Ms O'Rourke: Well, the sun is shining.

Dr. Mansergh: We hear much criticism in this House and outside it of our trade unions. I congratulate the ESB staff at Moneypoint on agreeing a pretty incredible deal involving a 20% to 30% cut in their take-home salaries. Given the stress we all put on competition, we need to bear in mind that competition and public service are not incompatible. I would like to see equal weight given to both values.

Mr. Finucane: I agree with the last speaker with regard to the ESB. What the unions have done in Moneypoint is very welcome. Given the capital investment in Moneypoint which the ESB has promised, something must be done with regard to the environmental aspect of the station. For a long time in our area we have been putting up with the spewing out of sulphur dioxide. Nearly 50% of the entire national sulphur dioxide emissions are happening within the Shannon estuary region. For that reason, I welcome movement on this matter. I hope the ESB will progress to do something about the environmental standards there.

There is concern at the prospect of 11 more years of the Mahon tribunal. We are all aware that tribunal fatigue appears to have set it, which is understandable. The people will focus when a high point is reached by a tribunal. The terms of reference must be examined in the context of much trivial stuff which seems to emerge at the tribunal and long rambling pieces by lawyers which drag out the process. We must look at ways of reducing the time it takes tribunals to complete their business. The public would be extremely concerned if this process continued for another 11 years given the inherent costs involved and the many pressing priorities for finance throughout the country.

Mr. Norris: I thank my colleagues and, in particular, the Leader for their gracious words. It is true that commemorating 100 years of James Joyce has released a massive energy which is being positively harnessed for the benefit of the people of this country. I welcome that. I know some people are critical of what they believe is the tatty side of things. Plastic Buddhas and luminous crucifixes do not detract from Buddhism or Christianity or from the message of James Joyce.

It was splendid to hear two distinguished politicians, the Leader and Senator Mansergh, quote from Ulysses. It is sad that this is one of the few places in Ireland where that type of quotation can

be made with impunity. I look forward to a day when Joyce's work is made more generally available. The quotations chosen were wonderful and apposite. I would like to put on the record of this House once again what I believe are Joyce's wisest words. Bloom, challenged on his Jewishness and, feeling like an alien, pointed out that Jesus Christ was a Jew: "Force, hatred, history, all that. That's not life for men and women, insult and hatred. And everybody knows that it's the very opposite of that that is really life." When contentiously asked what was the opposite, he replied: "Love. I mean the opposite of hatred. I must go now." He does not stand his ground but it is a lovely moment to recall.

I am grateful for this tribute to Bloomsday and to all the wonderful young people involved in it, led by Joyce's grandniece Helen Monaghan. I have done virtually nothing this year. I have sat in the background and watched the new generation take over.

I wish also to support my Labour Party colleague's remarks about AIDS. It is important we take another look at this issue. The Senator is right to suggest the matter be debated in this House because it was the Seanad that launched the first major debate on AIDS. The Seanad has played a role in providing a sensitive, balanced and serious discussion on the matter.

Mr. Mooney: I am sure most of my colleagues are aware that as a sports journalist I have long championed the cause of close relations between North and South on this island. Given the new era of peace and reconciliation, perhaps the Leader might consider, if not before the summer recess in the autumn session, holding a debate on the dispersal of millions of euro on sporting facilities. I am not suggesting there is no coherent policy in that regard. However, it is timely that this House debate issues such as where the money is being spent and the best and most efficient way of utilising it.

There is a wide variety of sport and disciplines in this country. In that context, the question might be asked as to whether the two Governments, joined together by the peace initiative, might give serious consideration to nudging the Irish Football Association and the Football Association of Ireland into a closer relationship. I am not suggesting a takeover of either national team nor am I in the short term suggesting that there should be one national or all-island team, although those of us of a sporting bent would welcome people supporting the one green jersey. There may be a role for Government in this regard.

I raised this matter, as the Leader will be aware, at a meeting of the British-Irish Interparliamentary Body where, unfortunately, the answer was kicked to touch — if I may use that sporting metaphor — in that the Governments do not have a role in this area.

An Cathaoirleach: That would be my opinion on the matter.

Mr. Mooney: If Government money is provided by both jurisdictions on behalf of the taxpayers then surely it is incumbent on the two Governments to at least encourage the two remaining national associations involved in a sport which is universally accepted and widely followed, to develop some debate in that area.

An Cathaoirleach: The Senator has made his point.

Mr. Mooney: Perhaps the Leader would consider a debate on the matter in the context of a general debate on sporting facilities.

Mr. Coghlan: I wish Senator Norris and Joyceans everywhere a very happy day. I was delighted when I woke this morning to see him looking so sprightly in a clip on EuroNews during which he said something to the effect that Dubliners were taking *Ulysses* on their holidays — more of that to them.

With regard to the fourth interim report of the Tribunal of Inquiry into Certain Planning Matters, now that the tribunal has formally requested the Houses of the Oireachtas to amend its terms of reference so it might concentrate its efforts more fruitfully on specific areas, will the Leader state when she believes the necessary instrument will be brought into effect?

I appreciate the Leader's views on the Housing (Stage Payments) Bill and her kind offers of Government time on two previous occasions. What is happening this evening is not her fault. It is happening by agreement because there might not be enough time left in the session. As I see it, there is no division between any of us in this House. We are all agreed that this is a pro-consumer matter. Nobody has a monopoly of wisdom in this or any other area, therefore, I join my colleague Senator Brian Hayes, my leader, in appealing to the Leader to agree to Second Stage this evening. It can then be amended on Committee Stage, if necessary. I hope there are no divisions between us.

Mr. Ross: I also acknowledge the great achievement of Senator Norris in bringing the crowds onto the streets of Dublin to celebrate a book that none of them has ever read and which nobody understands.

Ms O'Rourke: A wonderful book.

Mr. Ross: It is a great tribute to one man that he is capable of doing that. I am sure many Members of this House will be among that flock, including me.

On a slightly more serious point, I suggest to the Government parties that there is a solution to the squabbling in which they are indulging in public. While there is a great temptation to blame each other after an electoral setback of the kind

[Mr. Ross.]
we have witnessed, I suggest that the House take the opportunity to debate what is happening in Government Buildings. Senator O'Toole will be missing from the discussions, unfortunately, which means there is less noise coming from Government Buildings but perhaps a little more content. I am serious in asking that backbenchers of both sides of this House who feel they are being ignored do not take it out on their partners in Government but look at the centre of power in this country. They are correct in believing they are being ignored. Their wishes are being ignored by the Cabinet because the next budget is being written today in Government Buildings. The people involved in the discussions, the so-called social partners, will have a great deal more input than the Members on the Government side who are complaining about each other.

Dr. Mansergh: The Government is part of the social partners.

Mr. Ross: It is time that those Members seized back some elements of power themselves, stopped turning on each other, turned to the Cabinet and requested that they want an influence on what it is doing and on the budget, rather than IBEC, ICTU, the Irish Farmers' Association and others, which have their role but should not be deciding Government policy on issues that have nothing to do with them.

Mr. B. Hayes: Hear, hear.

Dr. M. Hayes: As ever, Senator Ross speaks for himself when he describes the reading habits of Members of the Oireachtas. I, too, would like to be associated with the tributes to Senator Norris, who is noteworthy not only for his scholarship but for making Joyce and his works meaningful for the ordinary person on the street. He has done a wonderful job for us all. Only in Ireland would we be celebrating the centenary of what is, if not an imaginary event, at least an imagined event.

I support Senator Mooney's request for a debate on sport on an all-Ireland basis, particularly in the light of proposals made in the North for a national stadium, which looks suspiciously like our version of the Millennium Dome and would be the biggest white elephant of all. An attempt is being made to embarrass the two truly all-Ireland sporting organisations to facilitate others which are not.

Reverting to the Bloomsday theme, it is a great day to talk about Greeks bearing gifts. I say to Senator Brian Hayes that the chairman of the National Forum on Peace of Reconciliation *pro tempore* is getting offside as rapidly as possible and will not be seen or available for quite some time for the type of task he has in mind.

Mr. B. Hayes: The Senator would be a great mediator.

Mr. McHugh: Now that the local and European elections are over and the dust is settling, there will be considerable discussions and post mortems about various aspects of the elections. It would do justice to the electorate to have a debate on the electoral registers. I spoke to many people in County Donegal who came out to vote and found their names had been struck off the register without knowing who had done this or why. It is a disaster and crazy for people who pay taxes to be unable to vote. Having thought long and hard and discussed the matter with many people, including this morning with the Minister for Social and Family Affairs, Deputy Coughlan, I believe the vote should be linked to a person's PPS number, which would entitle everyone on reaching 18 to a vote even though there would be issues for those who leave or emigrate. We require a debate in this House to allow us to prevent people from becoming disenfranchised and permitting them one vote only. At present some people have two or three votes in different electoral wards in one county.

Mr. Bannon: In the past few days there has been considerable squabbling between the Government parties, Fianna Fáil and the Progressive Democrats. The only way to resolve this squabbling is for the Taoiseach to go to the country and let the people give their verdict.

Senators: Hear, hear.

Mr. B. Hayes: That would sort it out.

An Cathaoirleach: While I know Senator Bannon is very anxious leave this House and go to another House, I do not believe it is a matter for the Order of Business.

Mr. Bannon: On another issue, extraordinarily high levels of radon gas have been found in various locations.

Mr. Coghlan: Are they generating the stuff?

An Cathaoirleach: There should be less gas here.

Mr. Bannon: The highest levels ever found in Europe have been found in Tralee, Galway and Castleisland.

Ms O'Rourke: What about Ballymahon?

Mr. Bannon: Health professionals have expressed great concerns over the links to lung cancer etc. This is very disturbing news for residents in these areas. It is important for us to have a debate and I call on the Leader to invite both the Minister for the Environment, Heritage and Local Government and the Minister for Health and Children to the House to give us an update on the Government's plans to monitor radiation levels at the various locations. This problem needs national consideration as members of the

public have serious concerns. It is quite alarming to hear that our radon levels are the highest in Europe.

Mr. U. Burke: I am not sure if the Leader knows of the whereabouts of the Minister for Education and Science. Time and again we have asked for him to come to the House and to tackle four or five of the major issues that he indicated were his priorities. Nothing has happened about funding for third level education or access for the disadvantaged. The appointment of the teachers he promised a month ago will now not necessarily take place because of difficulties he has discovered. He has also spoken about school league tables. There are four or five areas in which he has flown a kite that has subsequently disappeared. It is very important that the Minister come to the House to clarify the situation as we begin to prepare for a new academic year while many people are left high and dry in terms of knowing the Government's policies.

Mr. Moylan: I rise to support Senator McHugh's point about problems with the register of electors. The matter was also raised by Members yesterday morning. The Minister for the Environment, Heritage and Local Government should come to the House to listen to the views of Senators.

11 o'clock

People who go on holidays and cannot obtain a postal vote are not being treated fairly. It was reckoned that close to 500,000 people were out of the country on the day of the election. They may have booked their holidays well in advance of the fixing of the date. It is most unfair. People who are leaving to take holidays should be afforded the opportunity to use a postal vote.

Ms O'Rourke: I thank the Cathaoirleach for providing us with the opportunity to pay tribute to Senator Norris. I had the idea this morning at which point it was a question of telephoning the Senator's secretary to have him jump into a taxi to get here. There was no point in praising him if he was not here. He arrived on time. Senator Brian Hayes added his own tribute and that of his party to Senator Norris on this very special occasion.

He made a tongue in cheek remark on the Forum for Peace and Reconciliation.

Mr. B. Hayes: I was trying to be helpful.

Ms O'Rourke: Whatever happens, we are welded together and Senator Bannon should note that we shall not be going to the country.

At a parliamentary party meeting yesterday, many Fianna Fáil Members expressed an interest in placing Senator Coghlan's Bill on a statutory footing. Yesterday, the officials said that was a no-no. I will endeavour to see the Minister today, which will hopefully shed a kinder light on the matter. We are glad the Bill is being taken in the House. To take up Senator Brian Hayes's point, it is positive to introduce Private Members' Bills in the House.

Senator O'Toole raised the issue of the Mahon tribunal. We all received copies of the interim report this morning. Yesterday, the Taoiseach said in the Dáil that he would seek to work with party leaders to ascertain whether the terms of reference can be changed to facilitate a different way to proceed. That would be positive. Both Houses put forward the terms of reference and passed the necessary legislation. It is now up to us to alter them and to put in place a structure to allow the matters to be dealt with. Senator O'Toole referred to the process under Article 35 and in particular to the legal costs appertaining thereto. He intends to continue to raise the matter as is his right.

Senator McCarthy praised Senator Norris also and raised the issue of the costs of the Mahon tribunal. As the interim report has been laid before the Houses, we could debate it without going into costs as a precursor to changing the terms of reference of the tribunal which we would have to debate here anyway. The Senator raised the important issue of the spread of AIDS. When the debate began ten years ago, it was seen in the light of the homosexual issue or drug abuse. AIDS has now spread massively throughout the whole community. A debate in the House would be useful and I thank Senator McCarthy for raising it.

Senator Mansergh referred to *Ulysses* and provided the House with a very apposite quotation from it for which I thank him. He raised the issue of the very fine agreement which has been reached between unions and management at Moneypoint. The Senator indicated that there is a balance to be struck in these matters and said equal weight should be given to the participants. Senator Finucane took up the Moneypoint issue, being from the constituency where it is located, and focused on its continuous environmental impact. When one stands on the hill at Clonmacnoise, which is near my home in the midlands, one can see the fumes from Moneypoint coming up the River Shannon. It is an amazing sight on a clear day. I was there about two weeks ago on a fine afternoon and I had forgotten how amazing it was until I saw it again. I am sure the agreement referred to takes into account the substantial cleaning-up issue.

Senator Finucane also noted how the Mahon tribunal is being dragged out. We were all very keen initially on the tribunal, but it is a different matter now. I accept that the projected timetable is Orwellian, being so frightening. Only a few of us will still be walking about when the tribunal concludes.

Senator Norris made an excellent point about the massive energy generated by the widespread interest in Joyce's work. This energy is reflected around the world, and in Irish tourism and its people, young and old, and of all sorts. The energy carries on. There are of course those who wish to criticise — let them do so.

[Ms O'Rourke.]

Senator McCarthy called for a debate on AIDS. Senator Mooney made an excellent point. One thinks of cycling, GAA sports, rugby and so on, which are all-Ireland sports. The idea of having the two football associations working together — though not all wearing the green jersey, as Senator Mooney said — on events, management and sports facilities, is an excellent one. We could ask the Minister for Arts, Sports and Tourism for his thoughts on the matter. I am sure he is thinking about it and if he took the initiative it would be worthwhile.

Senator Coghlan asked when, following the fourth interim report by the Mahon tribunal, the terms of reference might be amended by the Houses of the Oireachtas. We await news on that from the Government, which must consult with the other party leaders. The Senator also asked about the Housing (Stage Payments) Bill. I will return to that matter when I have had a political discussion on it.

Senator Ross spoke warm words about his colleague Senator Norris. He said we had not all read *Ulysses* but he should speak for himself. Some of us have read it. His point related to those of us in this Chamber who have not read the book.

Mr. Ross: All of us have not read all of it.

Ms O'Rourke: I have not read all of it. Senator Ross also said that the Government partners should stop squabbling. We are not squabbling. We are chums.

Mr. B. Hayes: I would hate to see them if they were enemies.

Mr. Ross: Was the Leader listening to "Morning Ireland" this morning?

Ms O'Rourke: I was.

Mr. Ross: I refer to the gentleman on the Leader's left, Senator Minihan. Did the Leader hear him?

Ms O'Rourke: The Senator and I have already spoken about that. We have reached a concordat on the matter.

An Cathaoirleach: "Morning Ireland" is of no relevance to the Order of Business. The Leader to reply without interruption.

Ms O'Rourke: Senator Ross referred to the pay talks. As my colleague Senator Mansergh said, the Government is one of the social partners.

Mr. Ross: It is only a very small partner.

Dr. Mansergh: No, no.

An Cathaoirleach: The Leader to reply without interruption, please.

Ms O'Rourke: The idea that the partners are all there talking without the Government as a partner is wrong. As part of the proposed Seanad reform I have put it to the Taoiseach's Office that this Chamber would act as a monitor, affirmative or not, regarding the issue of the social partnership. This has been accepted. Indeed the Taoiseach suggested it in his submission to the Seanad, which was a very fine gesture. I will remind him of it.

Senator Maurice Hayes complimented Senator Norris, and regarding Senator Mooney's contribution he warned us to beware of the Greeks bearing gifts. I thank my colleague, but I did know half of the saying — I fear the Greeks though they come bearing gifts, *timeo Danaos et dona ferentes*. We are getting very classy, very posh. I thank the Senator for making his points, though he declined Senator Brian Hayes's offer to reconvene the Forum for Peace and Reconciliation for a particular purpose.

Senator McHugh referred to discrepancies in the electoral register. While his colleague, Senator Browne, raised the issue yesterday, Senator McHugh is fully entitled to raise it himself. My view is that the worst discrepancy occurs when a person attempts to vote only to find his or her name is not on the register. Despite having lived at the same house for 20 years, a person might be told by a polling station clerk that he or she cannot vote as his or her name is not on the register. However, this is not the fault of the polling station clerk but of others, and computers also have faults. Busybodies are sometimes involved in the compilation of the electoral register. I recently came across a very intense busybody who was very busy taking names off registers. She said that people had gone away when they had not.

Mr. B. Hayes: Fianna Fáil adds, it does not take away.

Ms O'Rourke: Senator Bannon put forward the idea we would have a general election. I do not agree. He also raised the issue of radon gas. We laughed at that because of the combination of squabbling and gas. The air is full of it.

Senator Ulick Burke raised some timely points regarding third level funding, the special needs teachers announced at the recent education conference, league tables and other matters. I will endeavour to bring the Minister for Education and Science to the House. We will specify the issues raised by the Senator as they will all come into play as the planning for September develops.

Senator Moylan raised an apt point regarding the electoral register. During the election campaign, it was found that many people were making pilgrimages to Lourdes and other places — I am glad they are getting very holy — and going on holidays. While there is a risk postal voting could be abused, perhaps it would be possible to develop a system whereby people could vote while holidaying abroad.

An Cathaoirleach: Before agreeing the Order of Business, it is appropriate that I, as Cathaoirleach, would be associated with the kind words to Senator Norris. They were well deserved and I am sure his major contribution created great interest in the works of Joyce.

Order of Business agreed to.

Water Services Bill 2003: Committee Stage.

Section 1 agreed to.

SECTION 2.

An Cathaoirleach: Amendments Nos. 1 and 32 are related and they will be taken together by agreement.

Mr. Bannon: I move amendment No. 1:

In page 9, subsection (1), to delete line 25.

This is a technical amendment to assist the reader. Concepts and definitions should be kept to a minimum. Good drafting practice requires that where the concept occurs more than twice, it is best to define it, but we refer to the Act of 1851 only once in the body of the Bill. Its definition is not justified and should be deleted.

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. Gallagher): As the Petty Sessions (Ireland) Act 1851 is mentioned only once in section 9 of the Bill, I am pleased to accept amendments Nos. 1 and 32.

Amendment agreed to.

Government amendment No. 2:

In page 10, subsection (1), lines 3 and 4, to delete "'Act of 1997' means Local Government (Financial Provisions) Act 1997;".

Mr. Gallagher: This is a technical amendment to correct a clerical error. There is no reference to the Local Government (Financial Provisions) Act 1997 in the Bill.

Amendment agreed to.

An Cathaoirleach: Amendments No. 3 to 12, inclusive, 14 to 19, inclusive, 58 and 99 are related and will be taken together by agreement.

Government amendment No. 3:

In page 10, subsection (1), line 7, before "water main" to insert "waterworks, waste water works,".

Mr. Gallagher: While there are many amendments here, a thread runs through them. They form a package of technical measures designed to make the legislation operate more efficiently. After the publication of the Bill, departmental officials consulted widely on it, as the Minister indicated on Second Stage, particularly with local authority engineers. We are, therefore, making changes of an engineering nature. These amendments are nothing to do with policy, they are technical in nature and I hope the House will accept them.

Amendment agreed to.

Government amendment No. 4:

In page 10, subsection (1), line 10, after "stopcocks for", to delete "the main, sewer or other pipe" and substitute "them".

Amendment agreed to.

Government amendment No. 5:

In page 10, subsection (1), line 12, before "main", to insert "waterworks, waste water works,".

Amendment agreed to.

Government amendment No. 6:

In page 10, subsection (1), between lines 39 and 40, to insert the following definition:

"'distribution system' means pipes, and related fittings, that are not a service connection, that are not owned by, vested in or controlled by a water services authority, an authorised provider of water services, or a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services, and that are used, or to be used as the case may be, to convey water into or through one or more premises (including any related internal or external taps), extending, in the case of water used in manufacturing or food or drinks production undertaking, to include the point where water is used in the undertaking;".

Amendment agreed to.

Government amendment No. 7:

In page 10, subsection (1), to delete lines 40 to 46.

Amendment agreed to.

Government amendment No. 8:

In page 11, subsection (1), line 5, after "sanitation" to insert ", but does not include fats, oils, grease or food particles discharged from a premises in the course of, or in preparation for, providing a related service or carrying on a related trade".

Amendment agreed to.

Government amendment No. 9:

In page 11, subsection (1), to delete lines 6 to 12, and substitute the following definition:

"'drain' means a drainage pipe, or system of such pipes and related fittings for collection of waste water, that is not owned by, vested in or controlled by a water services authority, an authorised provider of water services, or a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services, and that is not a service connection, which is used, or to be used as the case may be, to convey waste water from one or more premises;".

Amendment agreed to.

Government amendment No. 10:

In page 11, subsection (1), between lines 23 and 24, to insert the following definition:

"'internal distribution system' means that part of a distribution system, within the curtilage or a premises, which is used for the provision of water for human consumption or food or drinks production;".

Amendment agreed to.

Government amendment No. 11:

In page 12, subsection (1), to delete lines 34 to 37 and substitute the following definition:

"'service connection' means a water supply pipe or drainage pipe, or related accessories, extending from a waterworks or waste water works to the curtilage of a premises, and used, or to be used as the case may be, for the purpose of connecting one or more premises with a waterworks or waste water works, and, where used for connecting more than one such premises, it shall extend to the curtilage of the premises which is furthermost from the said waterworks or waste water works;".

Amendment agreed to.

Government amendment No. 12:

In page 12, subsection (1), to delete lines 40 to 43 and in page 13 to delete lines 1 to 3 and substitute the following definition:

"'sewer' means drainage pipes and sewers of every description, including storm water sewers, owned by, vested in or controlled by water services authority, an authorised provider of water services or a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services, and for the avoidance of doubt, does not include drains to which the words "drain" or "service connection" interpreted in this section apply;".

Amendment agreed to.

Government amendment No. 13:

In page 13, subsection (1), line 11, to delete ", horticulture".

Mr. Gallagher: This is a technical amendment to remove unnecessary duplication arising from the inclusion of "horticulture" in the earlier definition of "agriculture" in section 2.

Amendment agreed to.

Government amendment No. 14:

In page 13, subsection (1), to delete lines 23 to 25 and substitute the following definition:

"'urban waste water' means domestic waste water or the mixture of domestic waste water with industrial waste water.".

Amendment agreed to.

Government amendment No. 15:

In page 13, subsection (1), between lines 25 and 26 to insert the following definition:

" 'waste water' means sewage, storm water or other effluent discharged, or to be discharged, to a drain, service connection or sewer;",

Amendment agreed to.

Government amendment No. 16:

In page 13, subsection (1), to delete lines 26 and 27 and substitute the following definition:

"'waste water works' means sewers and their accessories, and all other associated physical elements used for collection, storage or treatment of waste water, and any related land, which are owned by, vested in or controlled by a water services authority, an authorised provider of water services or a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services;".

Amendment agreed to.

Government amendment No. 17:

In page 13, subsection (1), between lines 27 and 28, to insert the following definition:

"'water main' means water supply pipes owned by, vested in or controlled by a water services authority, an authorised provider of water services or a person providing water services jointly with or on behalf of a water services authority or an author-

ised provider of water services, and for the avoidance of doubt, does not include pipes, fittings and appliances to which the words "distribution system" or "service connection" interpreted in this section apply;".

Amendment agreed to.

Government amendment No. 18:

In page 13, subsection (1), to delete lines 28 to 31 and substitute the following definition:

"'water services' means all services, for households, public institutions or any economic, social or service activities which provide storage, treatment or distribution of surface water or groundwater, or waste water collection, storage, treatment or disposal, and, for the avoidance of doubt, the following shall be excluded:

(*a*) provision of pipes and related accessories for the distribution of water, or collection of waste water, solely to facilitate the subsequent connection, by or on behalf of a provider of water services, of another person to a water supply or waste water collection service, and

(*b*) such other exemptions as the Minister may prescribe, for the purposes of the application of licensing provisions under *Part 6*;".

Amendment agreed to.

Government amendment No. 19:

In page 13, subsection (1), to delete lines 39 to 42 and substitute the following definition:

"'waterworks' means water sources, water mains and their accessories, and all other associated physical elements used for the abstraction, treatment, storage or distribution of water, and any related land, which are owned by, vested in or controlled by a water services authority, an authorised provider of water services or a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services;".

Amendment agreed to.

Section 2, as amended, agreed to.

SECTION 3.

An Cathaoirleach: Amendments Nos. 20, 26, 29 and 31 are related and will be discussed together.

Mr. Bannon: I move amendment No. 20:

In page 14, line 18, to delete "shall come" and substitute "comes".

The use of active voice in the legislation was recommended by the Law Reform Commission in its report on legislative drafting. It is important that the style of our legislation should represent best practice and be made more readable for the public. Amendments Nos. 26, 29 and 31 are technical amendments designed to introduce the active voice. As the preceding sections use the active voice, my amendment proposes consistency in the Bill.

Mr. Brady: As I agree that the amendments may improve the Bill, I ask the Minister of State to consider them.

Mr. Gallagher: I thank Senator Bannon for tabling the amendments and Senator Brady for supporting them. Having revisited sections 3 and 8, I accept that the revised wording is an improvement on the existing text. I will, therefore, take on board the amendments and thank the Senator for bringing the matter to our attention.

Amendment agreed to.

Section 3, as amended, agreed to.

Section 4 agreed to.

SECTION 5.

An Cathaoirleach: Amendments Nos. 21, 49, 84, 151 and 165 are related and will be discussed together.

Mr. Bannon: I move amendment No. 21:

In page 15, between lines 13 and 14, to insert the following subsection:

"(2) A further purpose of this Act is to ensure the widespread availability of fresh water to the population without any charge.".

My party is opposed to the imposition of water charges. While the Bill was initiated in December 2003, we are only debating in detail its provisions following the local and European elections. The provisions in the Bill will give the Minister power to meter and charge for water. I want to make clear that the Bill will not be used as a vehicle for introducing water charges either through the back door, front door or any other door. It is important to define in the Bill this aspect. Perhaps the Minister of State will deliberate on whether there are plans to introduce water charges. We oppose the imposition of water charges. Our party abolished water charges when it was in Government. Water charges would be most unfair for people who are already over taxed. In the last two years a number of stealth

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taxes have been imposed and these have affected people's daily lives. It is important that the Minister clarify if there is provision in this Bill to reintroduce domestic water charges and that he give a firm commitment that they will not be reintroduced.

Mr. Brady: I reject the use of the phrase "stealth taxes". We have been open about the charges that have been introduced, including the bin charges. We have seen the benefits of some of these charges. The Government is open about these matters; there is no stealth involved. I reject the Senator's assertions.

Mr. Gallagher: I will deal with the amendments and then confirm the position regarding domestic water charges. The common thread running through these amendments is that they propose to introduce provisions relating to water charges in the Bill. This is not appropriate or necessary.

The Water Services Bill is designed primarily to regulate the delivery and supervision of water services and to enable operating standards to be set and public health and the environment to be protected. It deals with the nuts and bolts of water service delivery. Water charges, on the other hand, are an integral part of the local government financial matrix. They are inextricably linked to the broader issue of public financing. It makes more sense, therefore, to provide for them in financial provisions legislation.

The Local Government (Financial Provisions) Act 1997 precludes the charging of domestic users of water services. This is in line with Government policy and there is no intention to change it. This Bill is not a vehicle to introduce water charges by the front or back door or by any other means. The Government's position on water charges has not been changed by this Bill. The Bill makes no provision for water charges and the provisions of the Local Government (Financial Provisions) Act 1997 prohibiting charges for domestic water services continue to apply. There is no question of using devious means to introduce water charges by way of legislation. If water charges were to be introduced, and it is not our policy or intention to do so, it would be necessary to do so by way of primary legislation. I hope Senators accept that assurance.

The charging of commercial users of water services is already provided for under existing legislation. This Bill does not propose to amend that. The Minister went to great lengths during the debate on Second Stage to assure Members that the Bill would not change the current position on charging. All reference to charges were excluded from the Bill to provide additional assurance on this issue. In the circumstances, I am reluctant to accept an amendment which would alter this approach.

Amendment put and declared lost.

Section 5 agreed to.

SECTION 6.

Mr. Bannon: I move amendment No. 22:

In page 15, subsection (1), line 15, after "purposes of" to insert "discharging". This is another technical amendment. Perhaps the Minister of State will see fit to accept it. I am fearful of the imposition of water charges and I am not too happy with the Minister's response on this issue. He should give us a clearer statement about the reintroduction of water charges. There is genuine fear among the general public that this will happen. Memos have been circulated to various local authorities on this issue. Perhaps the Minister will give a clear indication that there will be no reintroduction of water charges.

Mr. Brady: The Minister made it clear in his previous remarks where this Bill stands on the subject.

Mr. Gallagher: I have reviewed this section with my officials and I agree the proposed amendment adds clarity to the intention of the section. Therefore, I am happy to accept it. On the further question raised by Senator Bannon, I state unambiguously that the Government's position on water charges has not been changed by this Bill. The Bill makes no provision whatsoever for water charges. The Local Government (Financial Provisions) Act 1997, which specifically precludes charging for domestic water services, continues to apply.

The matter may be debated in various local authority chambers and I cannot prevent anyone from debating it in this House. As far as the Government is concerned, however, the matter is black and white. There is no grey area. There is no section in this Bill that provides for the Minister to introduce water charges by way of regulation and if anyone pointed out such a section to me I would be extremely surprised. There is no such provision, nor will there be. I hope this will allay the fears of Members and that this message will go out to the wider public.

Mr. Bannon: Does this mean the Minister can give us a guarantee that no domestic water charges will be introduced during the term of this Government?

Mr. Gallagher: I confirm that and state emphatically and unambiguously that this is not part of the Government's or the Minister's agenda. A review of all aspects of local government funding is currently under way and I do not intend to tie the hands of those who are carrying it out. It would not be appropriate for me to engage in speculation on the outcome of the

review. There is no point in ordering a review and setting provisions in advance. Such behaviour on my part would only serve to undermine the integrity of the review process.

This matter will arise time and again as we discuss this Bill, the aim of which is to consolidate Acts from as far back as Victorian times. I am sure it will be raised by other Members, but my answer will be the same, that there is no provision for water charges in the Bill and the matter is not on the Government's agenda.

Amendment, by leave, withdrawn.

Government amendment No. 23:

In page 15, subsection (1), lines 18 to 20, to delete all words from and including "(*b*) making" in line 18 down to and including "require the person" in line 20 and substitute the following:

"(*b*) making, causing or permitting a discharge to a drain, service connection or waste water works, or

(*c*) in receipt of a water supply, require the person to keep such records or".

Mr. Gallagher: This amendment deals with section 6 of the Bill, which enables the Minister, the Water Services Authority or other person prescribed for the purpose of his functions under this Bill to serve notice on specified persons requiring them to provide information. The amendment to section 6(1) is necessary to ensure the obligations to provide information apply equally to all, not just water service providers. The amendment also enables notification under the section to include a requirement to keep specified records.

As currently drafted, the obligation to provide information only applies to water service providers and persons discharging waste water and not to consumers of water supplies. This omission is rectified by the addition of paragraph (*c*). In paragraph (*b*), the addition of reference to a drain and service connection is for the purpose of preventing the application of the provision being frustrated by the existence of complex drainage structures linking a premises to a waste water works and is therefore intended to cover all possibilities in this regard. Specification of requirements to keep records may be necessary to ensure the data and other particulars required from the person specified in the notice are properly recorded, produced and verifiable.

To ensure there is a proper flow of information from the providers, all the information required from the consumer will be provided either for the Minister or the Water Services Authority or any other person prescribed. Like some Opposition amendments which I accepted, this is an important amendment. It intends to ensure that all the information that will be required can be made available. The inclusion of others over and above those providing the water is necessary.

Amendment agreed to.

Government amendment No. 24:

In page 16, between lines 3 and 4, to insert the following subsections:

"(4) Without prejudice to *section 19(1)(f)*, the Minister may make regulations in relation to the provision of information or documents in electronic form by any person for the purposes of this Act.

(5) Without prejudice to the generality of *subsection (4)*, regulations under this section may——

(*a*) provide for:

(i) specification of the circumstances in which information or documents may be provided in electronic form,

(ii) related technical and procedural requirements,

(iii) consent to the giving or receipt of information in electronic form,

(iv) retention and reproduction of information or documents given in electronic form, or

(v) related and ancillary matters, and

(*b*) apply to a particular class or classes of information or document, or for a particular period.

(6) *Subsection (4)* applies without prejudice to any other enactment requiring or permitting documents or other information to be given, retained or produced, as the case may be, in accordance with specified procedural requirements or particular information technology.

(7) In this section, 'electronic form' means information that is generated, communicated, processed, sent, received, recorded, stored or displayed by electronic means and is capable of being used to make a legible copy or reproduction of that communicated information, but does not include information communicated in the form of speech and such electronic means includes electrical, digital, magnetic, optical, electro-magnetic, biometric, photonic and any other form of related technology.".

Mr. Gallagher: The purpose of this amendment is to enable regulations to be made dealing with the provision of information under the Bill by electronic means. For example, in the matter of licensing applications or appeals, data on monitoring or strategic water services plans, it will enable procedures under the Act to be kept abreast of ongoing developments in technology. The

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detailed provisions are based on similar provisions in section 248 of the Planning and Development Act 2000.

The reference in subsection (4) to section 19(1)(*f*) is intended to prevent doubt by ensuring the section, which enables a notice to be served by fax or e-mail, provided a hard copy is also served, continues to apply notwithstanding the provisions of this section. Regulations may specify the circumstances in which information may be provided electronically and related technical and procedural requirements including those dealing with the retention of records. Subsection (6) provides that these additional provisions are subject to any requirement in other more generic legislation dealing with data provision, such as the data protection Acts. Before Senator Bannon takes the opportunity of reminding me of the importance of VVPAT, a hard copy will be provided.

Amendment agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

SECTION 8.

An Leas-Chathaoirleach: Amendment No. 25 is consequential on amendments Nos. 87 and 88 and all three may be discussed together. Is that agreed? Agreed.

Government Amendment No. 25:

In page 16, subsection (1), line 25, after "*42(9)(a)*,", to insert "*49(6)*,".

Mr. Gallagher: I will deal with the substantive amendment to section 49 under amendment No. 87 first. Amendment No. 87 replaces the existing section 49 and expands the scope of its application to include service connections in addition to waterworks and waste waterworks as before. In addition, for the avoidance of doubt, the obligation on third parties to provide relevant information to the water services authority is now applied also to the update of any records under subsection (2). Additional powers are also introduced to enable a water services authority to provide specified records to be provided to it for the purposes of this section, and a new offence provision is provided for in relation to failure to provide the requisite information.

The entire section as revised is reproduced as one amendment to facilitate a clearer understanding of the effects of the various changes to the original text. The amendment applies the mapping obligations under section 49 additionally to service connections in order to ensure, for example, that pipe networks within industrial and housing estates are adequately mapped. This was always the intention of this subsection. However, in the light of the revised definition of waterworks and waste waterworks under section 2, the mapping obligation in accordance with the original wording would now apply to such pipes in the charge of a water services provider. Where pipes had not been taken in charge by the water services authority, they would not have been subject to this section. The revised wording closes the gap.

Two additional subsections have also been added. Subsection (5), to facilitate enforcement, enables a water services authority to instruct a person who is in charge of relevant pipes to keep relevant records and to provide it with relevant dates and information within a specified period. Subsection (6) provides that it is an offence not to comply with a notice under subsection (5). Failure by a person to provide information under subsection (1) in the first place will also be an offence. Thus it is envisaged that there will be an onus on third parties in the first instance to provide information to water services authorities whenever relevant works are being undertaken. For the information of the House, subsections (3) and (4) remain as before. Subsection (3) ensures that records kept will be open to the public during regular office house. Subsection (4) enables the Minister to make regulations specifying the types of information to be kept by the water services authority.

Amendment No. 25 is a technical amendment to include reference to the offences under subsection (6) of the new subsection in the general offences provision in subsection (8)(1). On amendment No. 88 in the name of Senator Bannon, it would not be practical to impose a six-week deadline on a water services authority to bring all maps of works up to date at the end of a job. The Minister has been resisting pressure from water services authorities to extend the period beyond the six months which is currently proposed. Six months is considered to be the minimum time needed to produce final "as constructed" drawings recording the precise finished details of pipe layouts. The job of producing and checking drawings could not possibly be done any sooner and could not possibly be done within a period of six weeks as suggested in Senator Bannon's amendment. We all know from experience of dealing with planning issues that planning permission is granted on the basis of plans submitted but that in a number of cases amended plans must be provided to the authority which reflect the final construction. While they may not be important at the time or for the next few years, time passes, and how many of us could say where the stopcocks in our houses or in any housing scheme are located? It is, therefore, important that this be recorded and sufficient time given to the providers to submit any changes there may be. I ask Senator Bannon to reflect on this and to take into account that the Department is, perhaps justifiably, resisting pressure for a period longer than six months. We feel this is a good compromise.

Mr. Bannon: I disagree with the Minister. In areas of high development the mapping of water pipes should be updated in order to address the problem of burst water mains. This serious problem would not occur if maps were updated regularly and made available for inspection. It is not unreasonable to expect maps to be updated after the completion of works. If there is a delay of six months, the issue is usually long-fingered and nothing is done. Burst water mains result in the imposition of major costs on group and county council water schemes and greatly inconvenience the general public. We have an opportunity today to rectify that. I ask the Minister to examine this again and to reconsider his decision not to accept amendment No. 88.

Mr. Gallagher: I cannot agree with Senator Bannon. We have all dealt with group water schemes in our time. However, I am referring to large schemes. If the final plans are submitted within six months of the completion of the works we will have made tremendous progress. The problems to which Senator Bannon referred do not necessarily emerge for a considerable time, generally some years. I want to ensure that all maps are submitted within six months. There will be no extension of that. As a result of this legislation, which it is hoped will be enacted later this year, there will be an obligation to submit plans within six months, and there will be a record in both electronic and hard copy form. That is important, perhaps not to those who are operating the scheme now, but to those operating it in the future. I suggest I am being very reasonable in stipulating a six-month period. It would be unreasonable and would not lead to good legislation if we curtailed that to six weeks. I accept that Senator Bannon tabled his amendment in good faith. However, I ask him to reflect on the issue. If sound arguments are put forward on Report Stage, I am usually open to persuasion, but I do not envisage accepting this amendment at any stage.

Mr. Bannon: We all know of cases where roadworks have been the cause of burst mains. It cannot be beyond the Minister's remit to change this a little because six months down the road, when grants and so on have been drawn down, there is not the same interest in a project and there is little interest in completing it. It is important to have the arrangements in place within the shortest possible period after the works have been completed.

Will there be a charge imposed on various bodies and private individuals who are looking for copies of those maps?

Mr. Gallagher: There will be a nominal charge and that is reasonable. If one currently seeks copies of a planning application or details from an application, there will be a charge. It will certainly not be a question of trying to meet substantial costs, but rather to recover the actual cost.

Amendment agreed to.

Amendment No. 26 not moved.

An Leas-Chathaoirleach: Amendment No. 27 is a Government amendment and is consequential on amendment No. 107, therefore, both amendments may be discussed together by agreement.

Government amendment No. 27:

In page 16, subsection (2), line 30, after "*60(2)*,", to insert "*61(2)*, ".

Mr. Gallagher: Amendment No. 27 is consequential on amendment No. 107, so I will first deal with the substantive amendment. Amendment No. 107 expands the scope of the original section 61 to include, in addition to prohibiting the unauthorised connection of a premises to waste water services, an explicit prohibition on discharging anything into a sewer without the permission of the relevant water services provider. The entire section as revised is reproduced as one amendment to facilitate a clearer understanding of the effects of the various changes to the existing text. The original subsection (1), which is being deleted, limited the application of the section to all structures constructed after 10 June 1990 and any structure erected prior to that which is not connected to the water services authority sewer. It was based on section 258(1) of the Planning and Development Act 2000. Such restriction is no longer considered appropriate, and could hinder the application of section 61 of the Bill, where for example, a building which was previously connected to services undergoes substantial refurbishment involving additional connections to a sewer. It would be invidious to leave such a connection outside of the scope of this section. In the revised section, while "waste water services" is not defined for the purposes of subsection (1), its meaning is implicit from the definition of "water services" in section 2 as amended. The wording of the subsection subsequently refers to "those water services", with a view to removing any doubt as to waste water services being an element of "water services".

The purpose of section 61(2) is to prohibit unauthorised discharges to sewers. For example, it could be applied to prevent surreptitious discharge of the contents of bulk tankers to sewers via manholes on the side of the road. Such unregulated discharges, depending on their nature, could severely impact on the capacity and integrity of a waste water treatment system.

Section 61(3) introduces a good defence provision whereby subsection (1) will be deemed not to have been contravened in respect of a connection made in accordance with a direction issued by a water services authority under section 92. Section 92 enables a water services authority to direct any person who is already connected to its water services to facilitate extension of those services to another person through his or her pipes.

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Section 61(4) provides that where a connection is made in compliance with a notice under section 42, directing a person to connect to a waste water works, it will be deemed that the agreement of the water services provider has been given for the purpose of compliance with subsection (1). It applies without prejudice to subsection (6), which enables a water services authority to require a proposed service connection to be opened for inspection prior to being attached to the public collection network, notwithstanding agreement in principle to the connection.

Section 61(5) provides that where a water services authority is also a planning authority it may include agreement to a connection in the conditions attaching to a planning permission. This will help to streamline the operation of the two consent mechanisms in the interests of greater efficiency. As with subsection (4) it is also without prejudice to subsection (5). This provision replaces a similar provision in section 258(7) of the Planning and Development Act 2000, which is being repealed. The 2000 Act provided that, unless otherwise indicated, the grant of a planning permission for a structure would be taken as permission to connect to a sewer of the sanitary authority. Such an approach is no longer appropriate, since with the transfer of the water functions of town authorities to county level with effect from 1 January 2004 under the Local Government Act 2001, not all planning authorities have responsibility for water services. The same general approach was replicated in the published Bill, but only in respect of applications where the planning authority was also the relevant water services authority. That may not now be the position. It has been decided, however, in the context of the general amendment of the section to leave such integration of procedures at the discretion of individual water services authorities, depending on individual circumstances, in order to facilitate greater operational flexibility. In addition, where a combined planning permission and agreement to connect to water services is provided, the water services authority, for the avoidance of doubt, is enabled to require the inclusion of such conditions as it considers necessary in the planning permission, consistent with its powers generally under this section.

Section 61(6) enables a water services authority to require a proposed service connection to be opened for inspection prior to being attached to its waste water collection network, or that of its agent. The reference to "otherwise inspected" is intended to facilitate remote or robotic testing without recourse to excavation where that is feasible. The obligation is not confined to the connecting pipe. It is intended that it can be applied also in respect of any related pipe which the water services authority, at its absolute discretion, wishes to inspect prior to the services connection being connected to its supply. Thus, the drainage pipe network of successive interconnected stages of a housing development could be subjected to opening for inspection prior to connection to the water supply service if necessary, or indeed pipes within a premises itself if required.

Section 61(7) provides that pipes opened up for inspection under subsection (6) shall not be connected until the water services authority is satisfied that they are up to standard and that the connection will be carried out properly. Subsection (8) provides that subject to any regulations under subsection (10) regarding works or materials standards, an authorised person may give directions on materials specifications, standards of workmanship or work practices for the purposes of ensuring that pipes and accessories are installed to his or her satisfaction. He or she may also carry out such inspection and testing as necessary to verify compliance.

The purpose of section 61(9) is to remove any doubt as to the right of a water services authority or its agent to close a connection made to its water services without its agreement, or in contravention of related directions. It will also enable them to recover any costs arising from such incidents from the perpetrator, or from the person on whose behalf a connection is made. It is intended that liability for costs would accrue, either to the premises' owner or a relevant contractor acting on his or her behalf, effectively at the discretion of the water services authority. The provision is based, broadly, on section 258(5) of the Planning and Development Act 2000, which provides similar powers in relation to unauthorised connections to sanitary authority sewers. The Planning and Development Act provision is being repealed and incorporated into section 61, as amended.

Subsection 10 will enable the Minister to make regulations regarding standards of workmanship and work practices or specification of materials and fittings for the purposes of this section. Subsection 11 enables water services authorities to recover all costs under this section from the person making a connection. Subsection 12 provides that it is an offence to make a connection unless the relevant water services authority is satisfied that the pipes and fittings are up to standard, can be connected properly and are not contrary to any related direction from an authorised person. This subsection also makes it an offence to contravene a regulation under subsection (10). It is envisaged that these could be tried summarily or on indictment.

12 o'clock

Amendment No. 27 is a technical amendment consequent on amendment No. 107. It provides that offences under section 61(10) may be prosecuted summarily or on indictment.

I regret that the explanation of these amendments was long, detailed and technical. The Government is convinced that these amendments will make this a much better Bill.

Mr. McCarthy: Could the Minister of State repeat that?

Amendment agreed to.

An Leas-Chathaoirleach: On the list of amendments, an asterisk alongside amendment No. 28 has been omitted and the amendment appears as being in the name of Senator Bannon. This is an error. Amendment No. 28 is a Government amendment and is consequential on amendment No. 170. Both may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 28:

In page 16, subsection (2), line 31, to delete "or *79(5)*" and substitute ", *79(5)* or *103(11)*".

Mr. Gallagher: As we are discussing amendments Nos. 28 and 170 together and as amendment No. 170 is the substantive amendment I will deal with it first.

The purpose of the new section introduced by amendment No. 170 is to prohibit building over another person's water pipes without the consent of the relevant water services authority. It applies to building over water mains, sewers, distribution systems, drains, service connections or related accessories. Building without or in contravention of a consent and failure to comply with a follow-up enforcement notice is an offence.

In addition to prosecution in respect of such an offence, a water services authority may seek enforcement via a High Court injunction. Alternatively, it may carry out remedial works itself in the first instance and recover its costs from the offending party. Remedial action may constitute anything from re-routing effective pipes to provision of alternative pipes, alternative access to demolition or alteration of related structures.

The provision is based generally on section 29(1) of the Public Health (Ireland) Act 1878 and section 51 of the Local Government (Sanitary Services) Act 1948, both of which are being repealed. The 1878 Act provides for penalties for unauthorised building over urban authority sewers together with related powers to alter, demolish or otherwise deal with such structures and recover any costs incurred. The 1948 Act extends these provisions to all public sewers and water mains.

Construction, generally, is subject to control under the Planning and Development Act 2000. However, certain exceptions and regulations under that Act enable small extensions below a specified floor area, such as sheds or extensions to the rear of a house under a specified area, to be built without recourse to specific planning authorisation procedures. In any event, individual planning permissions would not, necessarily, fully address the issue of building over another person's pipes. Building regulations under the Building Control Act 1990 provide only for the application of specified standards in the course of building, to protect pipes from being crushed by the weight of a building overhead. They do not provide for issues relating to protection of access or provision of alternative access to such pipes, which will vary from site to site depending on location and proximity to other structures. In the circumstances, the consent procedures of the 1887 Act are still necessary. Some modernisation of the provisions of the 1887 Act is envisaged to reflect present day water services practice.

The prohibition on building over pipes without consent applies additionally to pipes belonging to authorised water service providers, such as group water services schemes, and to persons acting on behalf of a water services authority or authorised water services provider in the public private partnership. Individual consumers are also protected against inappropriate building by third parties over pipes connecting them to their water services. I can give detailed information on the other subsections if the House requires them.

Amendment No. 28 is a technical amendment consequential on amendment No. 170. This provides that offences under the new section 103 connected to building over specified water pipes without the consent of a water services authority under the new section 103(1) or failure to comply with an enforcement notice under the new section 103(4) may be prosecuted summarily or on indictment.

Amendment agreed to.

Mr. Bannon: I move amendment No 29:

In page 16, subsection (2), line 31, to delete "shall be" and insert "is".

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 173, 175, 177, 178, 180, 182, 184, 185, 187 to 190, inclusive, 192 and 194 to 198, inclusive, are related to amendment No. 30 and all may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 30:

In page 16, subsection (2)*(a)*, line 33, to delete "12" and substitute "6".

Mr. Gallagher: These amendments reduce from 12 months to six months the maximum term of imprisonment which may be imposed following conviction for a summary offence under the Act. The six months maximum term of imprisonment is in line with standard practice in all modern legislation. A 12 month sentence is considered to be outside the scope of summary jurisdiction.

Amendment agreed to.

Mr. Bannon: I move amendment No. 31:

In page 16, subsection (3), lines 41 and 42, to delete "shall be" and substitute "is".

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9.

Mr. Bannon: I move amendment No. 32:

In page 17, subsection (3), line 25, to delete "Act of" and substitute "Petty Sessions (Ireland) Act".

Amendment agreed to.

Mr. Bannon: I move amendment No. 33:

In page 17, subsection (3), line 38, to delete "five" and substitute "three".

The amendment seeks to substitute the word "five" with the word "three". The Petty Sessions (Ireland) Act 1851 requires a prosecution to be taken within a six month period. It is common for legislation to extend this provision to one year and, in some cases, to two years. However, an extension to five years is exceptional and is not warranted. People who are to be prosecuted are entitled to put their best case. Taking a case based on five year old evidence is unacceptable. The 1851 Act stipulates that a case must be taken within a six month period and the furthest we should divert from that is three years as proposed by the amendment, which the Minister may perhaps consider accepting.

Mr. Gallagher: While I am aware Senator Bannon tabled this amendment in good faith, it is necessary to flesh out the matter. There are a number of situations whereby an offence committed may not come to light for some time. An example is damage caused by a breach of a duty of care regarding a discharge or damage caused to a pipe during building works which may not become apparent until some time after the offence was committed.

In the circumstances, it is considered appropriate and necessary to provide for the maximum reasonable period of time during which proceedings may be commenced following the commitment of an offence. I believe that in this instance five years is a reasonable period. I refer to previous legislation in this regard such as the Environmental Protection Agency Act 1992 and the Waste Management Act 1996. The five year requirement, which is included in the examples given, is a standard provision in environmental legislation.

We are all aware, from practical experience, that damage caused may not come to light for a considerable time. In that regard, the wastage of water in Ireland immediately comes to mind. Local authorities in many parts of the country are unable to account for approximately 48% to 50% of water which leaves the source and never comes out at the other end of the pipe. They are providing billions of euro for new water schemes. It is important that we try to in some way reduce that loss in monetary terms because, more important, it would allow for developments which are unable to take place until such time as new schemes are up and running. That is why the Department provides so much to local authorities for water conservation purposes. Funding is now being made available to assist in reducing water wastage. Even a reduction of a couple of percentage points each year is extremely important.

It may take some time before the offence committed comes to light and in that regard the provision of five years is reasonable. Some would say the time limit should be longer but we must realistic. Such offences should come to light within a five year period. This provision mirrors that contained in the Environmental Protection Agency Act 1992 and the Waste Management Act 1996. While I am extremely anxious to accommodate Senator Bannon, I must take the practical view on this matter.

Mr. Bannon: The Minister of State appears to be saying that it becomes more difficult to prove a case with the passage of time in terms of identifying a particular person as the culprit who caused the burst mains and so on.

I agree with the Minister's remarks regarding the wastage of water which is not cheap to produce. Local authority maintenance bills in terms of water production and reservoirs are very high. Approximately 50% of the water produced is wasted. Many companies and individuals are negligent in that regard. The matter is, perhaps, one for the local authorities rather than Government. Local authorities must deal with the problem of water wastage which is becoming a burden on their finances. There should be greater conservation of water produced through the different local authority systems.

Amendment, by leave, withdrawn.

Section 9, as amended, agreed to.

Sections 10 to 16, inclusive, agreed to.

SECTION 17.

Mr. Bannon: I move amendment No. 34:

In page 20, subsection (3), line 7, to delete "a scheme" and substitute "regulations".

It would be more appropriate that the Minister make regulations rather than a scheme which he does by way of regulations. Perhaps the Minister of State will accept this sensible and more appropriate wording.

Mr. Gallagher: I have studied the amendment and appreciate the point Senator Bannon makes. I have consulted on the matter with the Office of the Attorney General.

The purpose of subsection (3) is to remove any doubt as to the power of the Minister to amend or revoke a scheme of financial assistance. It is unnecessary to insert such a provision regarding the amendment or revocation of regulations as the necessary powers for this purpose are already

provided under section 15(3) of the Interpretations Act 1937. Section 17(1) provides for the making of a scheme in accordance with regulations and where the relevant regulations may in due course be amended or revoked in accordance with the provision of the Interpretations Act. Technically speaking there is no similar general power as regards schemes *per se*. Subsection (3) is intended to remove any doubt in this regard by providing explicitly for the amendment or revocation of a scheme as required. In the circumstances, I am unable to accept the amendment.

Senator Bannon will be aware that the intent of his amendment is already covered by the general power given to the Minister as regards amendments or revocation of regulations under the Interpretation Act 1937.

Mr. Bannon: The word "schemers" can have a different definition from the one implied here in certain parts of the country. One often hears the term, "a bit of a schemer".

Mr. Gallagher: It is not a word peculiar to Donegal.

Amendment, by leave, withdrawn.

Section 17 agreed to.

Section 18 agreed to.

SECTION 19.

Government amendment No. 35:

In page 21, subsection (1), line 9, to delete "one" and substitute "any".

Mr. Gallagher: This is a technical amendment to facilitate the smooth operation of the process for serving notices. As previously worded, a notice may only be served by one of the methods provided for in section 19(1), paragraphs (*a*) to (*f*). This restriction could conflict with the proviso in paragraph (*f*) which requires a notice to be served by supplementary means to verify service of a notice by facsimile or e-mail under that paragraph. The effect of the amendment will be to leave it to the discretion of the issuing authority whether to issue a notice by more than one method, subject to the requirement in paragraph (*f*) to do so where facsimile or e-mail is involved. Of course, many will not have facsimile or e-mail and, therefore, to tie a local authority to any one means would be wrong. The intention is to give discretion to the authority to serve the notice as it sees fit.

Amendment agreed to.

Mr. McCarthy: I move amendment No. 36:

In page 21, subsection (1), lines 27 to 34, to delete paragraph (*f*).

E-mail is one of the methods described in the Bill by which notices can be served, however, the serving of notices by electronic mail is unworkable. First, it more or less imposes a legal requirement on every person in the country to check his or her e-mails. Given the difficulties people can experience in this regard and the endemic spam problem, I do not believe it is practical or reasonable to make effectively make it a legal requirement to check e-mails. It is totally unworkable.

Mr. Brady: Section 19(1)(*f*) makes clear that e-mail is only one of the ways that can be used to serve notices. It can be used in conjunction with other methods. It is the same as sending a facsimile. If one sends a hard copy in the post, it will be received two days later. We should not go down the road of technophobia, although many people use e-mail in the ordinary course of business on a daily basis. I suggest that the wording of paragraph (*f*) is appropriate.

Mr. Gallagher: Senator McCarthy's amendment would delete paragraph (*f*), which provides for e-mail or facsimile transmission of notices. It is difficult to accept the proposition that significant modern legislation, designed to place 1878 legislation — old 19th century legislation from the time of Queen Victoria — on a 21st century footing should intentionally exclude provision for the service of notices by the most modern means of communication available. The Bill has been drafted against the backdrop of an ongoing and comprehensive programme of regulatory reform. The intention of that programme is to make legislation generally more accessible and to facilitate the conduct of administrative affairs in the most efficient manner possible. It would be contrary to the spirit of that programme to prevent the service of notices under the Bill by the most modern and efficient means.

As pointed out by Senator Brady, the purpose of paragraph (*f*) is to facilitate the quickest and most convenient possible service of a notice. It enables it to be sent either by facsimile or e-mail. These are two of a number of options available to the authority issuing the notice. It is clear that if the person to whom the notice is addressed does not have facilities to receive it by a certain means — there are many who do not have facsimile or e-mail facilities, as I believe Senator McCarthy is contending — the issuing authority will have to opt for alternative means of delivery in the first instance. In addition, to avoid possible oversight or breakdown in electronic delivery, paragraph (*f*) also provides that where a notice is served by facsimile or e-mail, it must also be served by one of the more traditional ways provided for in the preceding paragraphs. This is intended as a fail-safe mechanism to ensure that notices are delivered in all circumstances.

The point of providing for the delivery of notices by electronic means is to facilitate speedy and efficient delivery. This could be advantageous to both sides and to all the stakeholders.

[Mr. Gallagher.]
Where a person requests that a notice be provided to him or her electronically, it would reflect badly on a modern modernised regulatory process if such a request could not be facilitated.

This provision is based in the first instance on similar provisions for the service of notices under section 56 of the Food Safety Authority Act of 1998. Similar provisions are also to be found in the Europol Act 1997, the Air Navigation and Transport Indemnities Act 2001 and the Extradition (European Union Conventions) Act 2001. An earlier amendment to section 6 provides the Minister with powers to make regulations on the provision of information or documentation in electronic format by any person for the purposes of the Act. Such regulations may provide for any requirements regarding the retention of records and related technical or procedural requirements. It is envisaged that they will enable the Act to be kept abreast of developments in the area of electronic communications, in this world of IT, while ensuring that all necessary controls and safeguards are brought to bear.

When I first examined Senator McCarthy's amendment, I believed it made sense and that everyone must be facilitated, bearing in mind that there are more who do not have facsimile or e-mail facilities than those who have. However, those with e-mail and facsimile facilities will also receive a hard copy and those who do not have such facilities will receive notice by the traditional means or, to put in another parlance, there will be a VVPAT.

Mr. McCarthy: I thank the Minister of State for his reply, which I accept. However, I reiterate that the service of notices by electronic mail is a dangerous thing. I understand the context in which the Minister of State puts it and I accept his reply, but we must bear in mind that the failure to respond to the notices in question can result in jail. The issue is more grave than the amendment might suggest.

Amendment, by leave, withdrawn.

Section 19, as amended, agreed to.

Sections 20 and 21 agreed to.

SECTION 22.

Government amendment No. 37:

In page 22, subsection (2)(*b*), line 20, after "environment,", to insert "or that an offence under this Act is being or is about to be committed,".

Mr. Gallagher: The purpose of this amendment to subsection 2(*b*) is to broaden the scope of application of the power to halt a vehicle to include circumstances where there are reasonable grounds for believing that an offence is being or is about to be committed. For example, such an offence could occur if a bulk tanker illegally discharged its load into a sewer through a roadside manhole. It may not always be possible to link such incidents with a threat to human health or the environment. Consider the example of the bulk tanker, for instance. While its contents may not adversely affect the waste water treatment process *per se*, it would nevertheless be essential for an authorised person to have the appropriate powers of intervention before evidence was disposed of down the sewer. It is very sensible and practical to include this amendment and I hope the House will accept it.

Amendment agreed to.

Government amendment No. 38:

In page 22, subsection (2)(*c*), line 28, after "may require" to insert ", or of performing a function under this Act".

Mr. Gallagher: Section 22 provides generally for the powers of authorised persons. This amendment specifically provides authority to enter premises for the purposes of performing any function under the Act in addition to obtaining information. It is considered that the existing wording of section 22(2)(*c*) was cast too narrowly in the first instance as it provided only for obtaining information. It did not provide a sufficiently clear link between the functions of an authorised person and his or her powers to enter premises. I believe this improves the Bill.

Amendment agreed to.

Government amendment No. 39:

In page 23, subsection (5)(*i*), line 9, after "repairs" to insert "or remedial works".

Mr. Gallagher: Section 22(5) sets out in detail the powers of authorised persons on entering premises or boarding a vehicle, including at section 22(5)(*i*) provision for powers to carry out repairs. The purpose of this amendment is to enable an authorised person also to carry out other such remedial works as may be considered necessary to make good any damage to the surrounding area which may in itself be contributing to further risk. Such powers could be necessary, for example, where an inspection disclosed an immediate risk to public health or the environment from the poor state of repair of drains or water pipes. Repair of a pipe or drain alone might not be sufficient to rectify the problem in the light of resultant damage to the surrounding area.

Amendment agreed to.

Government amendment No. 40:

In page 23, subsection (5), lines 10 to 14, to delete paragraph (*k*) and substitute the following:

"(*k*) install or ascertain the course or condition of any sewer, drain, water main, distribution system, service connection or related accessories, or carry out maintenance, repairs or renewal on them, or".

Mr. Gallagher: To avoid doubt, this amendment expands the scope of the original section 22(5)(*k*) to enable the powers of authorised persons, for the purposes of investigating the connection of and ascertaining the course of pipes, to be applied to distribution systems, water mains and related accessories. The amendment arises from previous amendments to clarify references to various types of pipes under section 2. As distribution systems and water mains are now defined separately in section 2, it is considered necessary to make specific reference to them in section 22(5)(*k*) to ensure they come within the necessary scope.

For the avoidance of doubt, the powers of authorised persons will now also apply to related accessories, for example valves or meters. To avoid frustration of the provision, the revised paragraph also provides for maintenance generally as well as renewal and repair of pipes in anticipation of cases where a maintenance check might not lead to any repair or renewal works. The amended paragraph will also provide for the installation of all such equipment in the first instance to cover all eventualities. We want to ensure this is all-embracing.

Amendment agreed to.

Government amendment No. 41:

In page 23, subsection (6)(*a*), line 23, to delete "services activity" and substitute "supply or waste water or any associated infrastructure".

Mr. Gallagher: As currently worded section 22(6)(*a*), which enables an authorised person to direct the owner or occupier of premises to take corrective measures to remove a risk to human health or the environment, could be interpreted as applying only to water services providers regarding the water services activity carried out by them. This is not the intention of this subsection, which is intended to apply in respect of all premises. Such powers are essential to enable water services authorities adequately to carry out their public health protection role under the Act.

This amendment therefore removes the reference to service activity in line 23 and provides explicitly that the powers of authorised persons to require corrective action to be taken applies in respect of water services or waste water present in any premises and to any associated infrastructure in premises.

Amendment agreed to.

Section 22, as amended, agreed to.

Sections 23 and 24 agreed to.

SECTION 25.

Government amendment No. 42:

In page 26, subsection (7)(*b*), line 30, to delete "he" and substitute "be".

Mr. Gallagher: This is a technical amendment to correct a typographical error.

Amendment agreed to.

Section 25, as amended, agreed to.

Section 26 agreed to.

SECTION 27.

Mr. McCarthy: I move amendment No. 43:

In page 27, subsection (1), line 4 after "*(2)*" to insert "and provided that the Minister is satisfied that democratic accountability for the function concerned will be ensured".

This section could possibly result in the privatisation of water services through the transfer from local authorities to "another person prescribed", which could be a private company. The issue here relates to democratic accountability. Following a high turnout in the local and European elections, it is obvious that people expect an element of accountability and transparency in how local government provides services to and for the people. This amendment reflects that type of spirit and I want to ensure that adequate controls are introduced if this is to be the case.

Mr. Bannon: I support this amendment, as I do not want to see our water services go in the direction they have gone in Britain in recent times, where private companies have come in and imposed huge charges on the public.

Mr. Gallagher: Section 27 provides for the transfer of functions from a water services authority to the Minister or other prescribed body, or from the Minister to a water services authority or prescribed body as required. It anticipates, for example, possible changes as arrangements are developed for implementation of the EU water framework directive. Such provision is desirable to leave flexibility for the ongoing development of best administrative practice in the implementation of the directive.

Having said that, I confirm there is no intention that the level of democratic accountability for any transferred function will be diminished. For that reason section 27(1) provides for the authorisation of such a transfer of functions by regulations rather than, for example, by administrative order. The purpose of the Minister to authorise a transfer of functions is therefore governed by section 18(5), which provides that every regulation made by the Minister must be laid

[Mr. Gallagher.]
before both Houses of the Oireachtas and that either House may pass a resolution to annul it within 21 sitting days.

The Minister is accountable to the Oireachtas in the first instance for any proposal to transfer functions. It will be a matter for the Oireachtas, if it considers that democratic accountability for any function is being diminished by a regulation under section 27(1), to exercise its powers under section 18 to prevent such an occurrence.

Senators Bannon and McCarthy made reference to privatisation. It should be absolutely clear that privatisation of our water services is not being contemplated. Any involvement by the private sector other than in group water services schemes will be as appointed agents of a water services authority under contract to a public private partnership. Indeed, design, build and operate arrangements are now standard in all capital water service investment functions funded by my Department. I had the pleasure of opening a number of schemes in Monaghan recently where I was more than impressed with the success of design, build and operate procedures. It is a great tribute to all involved in group water schemes who consented to the procedures as well as to the officials of my Department and the companies that will maintain and operate schemes for a 20 year period. This does not mean any of the assets will be transferred to any private company. They will remain in our hands.

Public private partnerships will operate on the basis of a contract between a water services authority and a private operator for the provision of services or between a joint water services authority and private sector interests providing the service. In either case, the water services authority will retain overall responsibility for conformity with statutory requirements and exercise its authority through the relevant contracts or legal agreements. Public private partnerships and design, build and operate procedures play an important role and anyone who visits a scheme employing these approaches will be very envious of the quality water being provided. To allay any fears Senator McCarthy has in tabling his amendment, there is nothing in the legislation which points to privatisation nor is it a precursor to such a process.

Mr. McCarthy: The spirit of my amendment is to ensure democratic accountability in the delivery of services by local authorities. The Minister of State and his team will be aware that the section I seek to amend will inspire fear. There has been a significant tightening of the public purse and we have seen a spate of public service cutbacks due to the fiscal situation. A section of this nature in a Bill like this leads us to think credibly that an element of privatisation for obvious financial reasons will lead to a lack of democratic accountability. When people elect their local government representatives they are not voting for a situation in which some services will be privatised.

The Local Government Act provided for the removal of Oireachtas Members from local authorities. Other legislative provisions introduced by the Minister of State's Department have facilitated the removal of decision-making powers to set charges for refuse collection from local authority members. The power rests exclusively with management now. The shift in executive functions is a retrograde step for local government which erodes the reputation of local authorities and demeans the role they play. The spirit of my amendment is to ensure that there is democratic accountability. It does not ask for much more.

Mr. Gallagher: I appreciate the point the Senator made about waste management. The powers were transferred as a result of legislation enacted by the Oireachtas. If this or a future Government were to contemplate privatisation of water schemes, it would not rely on this Bill which features nothing to give power to a Minister in this regard. The enactment of further legislation would be absolutely necessary. I wish to allay fears by pointing out that there is no question of considering privatisation. The situation is the same as it was in terms of domestic water charges which we debated earlier in the day. We made it abundantly clear that the matter comes under financial provisions and there is nothing in this Bill of that nature.

Primary legislation would be required to introduce water charges but that is not on the agenda. Privatisation, which would also require primary legislation, is not on the agenda either. I could fully appreciate the Senator's point if this legislation were providing the Minister with the power to privatise by way of regulation or secondary legislation.

Amendment, by leave, withdrawn.

Acting Chairman (Dr. Henry): Amendments Nos. 44, 45 and 46 are related and may be discussed together, by agreement.

Mr. Bannon: I move amendment No. 44:

> In page 27, subsection (1)(*b*), line 9, after "Minister" to insert ", save for functions associated with or connected with the agreement or imposition of water service charges,".

These amendments are designed to ensure the Minister cannot delegate his dirty work to other bodies or persons including local authorities, councillors, directors of services and managers. I am sure the Minister is well aware of the anger which has been vented by local authority members from his own party up and down the country who lost their seats last Friday. Many of them are very angry about the imposition of development charges which they had to introduce on foot of the Minister's regulations. If the Minister wants to introduce charges, he should do it

himself and let it be on his own head rather than on the heads of others. There are a great many sick heads up and down the country after last weekend's results. The amendments seek to ensure that the Minister takes full responsibility for any charges he may introduce.

Mr. Brady: The Minister has pointed out on numerous occasions that there is no intention to introduce charges. I point out to Senator Bannon that a 0.5% increase on his party's last local election performance does not exactly constitute a victory. The Senator can be sure that the Minister will take on board the message we were given over the weekend and deal with it appropriately.

Mr. Gallagher: Section 27 provides for the transfer of functions conferred under this Bill. The legislation does not provide for any power to raise water charges. Such powers are provided separately under existing local government financial provisions legislation which I referred to earlier. In the circumstances, the insertion of the proposed words would be superfluous given that the function referred to is not provided for in the first place.

Section 28 provides for the assignment of new functions in addition to those provided for in the Bill. Its purpose is to keep the legislation abreast of ongoing developments in the EU and at international level generally without recourse to primary provisions whenever something new arises. It is anticipated that any such proposals will be discussed in advance by the Joint Committee on European Affairs during the development of relevant measures. As there are provisions on water charges in existing legislation, it is not possible to introduce by regulation any provisions purporting to make changes in this regard. Recent case law attests to this fact. As it is not possible to meet a requirement through regulations to change provisions on water services charges, the proposed amendment is unnecessary. As this Bill does not deal with water charges, I ask the House to acknowledge that I cannot accept amendment No. 44.

Acting Chairman: Is the amendment being pressed, Senator Bannon?

Mr. Bannon: No, but I wish to address the point raised by Senator Brady. I point out to him that my party has overcome Fianna Fáil for the first time since 1927. In the European constituencies, we have five seats and Fianna Fáil has four.

Acting Chairman: Senators, we will stop discussing the elections and stick to the Bill.

Amendment, by leave, withdrawn.

Section 27 agreed to.

Amendments Nos. 45 and 46 not moved.

Section 28 agreed to.

Section 29 agreed to.

SECTION 30.

Acting Chairman: Amendment No. 47 in the name of Senator Bannon has been ruled out of order because it involves a potential charge on the Revenue.

Mr. Bannon: If the Minister is honest in his assurance that the Bill will not result——

Acting Chairman: I cannot allow the matter to be discussed.

Mr. Bannon: That is interesting.

Acting Chairman: The Cathaoirleach has ruled on this matter.

Mr. Bannon: The Minister should have little difficulty in accepting this amendment.

Amendment No. 47 not moved.

Government amendment No. 48:

In page 29, subsection (1), lines 2 to 6, to delete paragraph (*b*) and substitute the following:

"(*b*) the planning and supervision of investment programmes for the provision of water services; and",

Mr. Gallagher: This amendment to section 30(1)(*b*) provides that the Minister shall have overall responsibility *inter alia* for the planning and supervision of investment programmes for the provision of water services. The amendment is necessary because as currently drafted, the wording of paragraph (*b*) could be interpreted so as to involve the Minister in day to day supervision of works projects including maintenance projects. This is not intended as such matters will be the responsibility of a water services authority. The amendment reflects current practice in accordance with which the Minister provides funding for water services projects while the decision to have the work undertaken, for instance to engage consultants, sign contracts and so on resides with the relevant sanitary authority. Relevant investment programmes at present would be the water services investment programme, the water conservation sub-programme of that programme and the rural water programme.

Amendment agreed to.

Amendment No. 49 not moved.

Acting Chairman: Amendment No. 50 has been ruled out of order because it involves a potential charge on the Revenue.

Amendment No. 50 not moved.

Government amendment No. 51:

In page 31, subsection (4), between lines 13 and 14, to insert "and this paragraph shall neither be construed nor operate to enable the Minister to direct the provision of water services to an individual household or person,".

Mr. Gallagher: This amendment is tabled to avoid doubt and to prevent paragraph *i* (viii) being interpreted as enabling the Minister to direct a water services authority to provide water services to specific individuals. Section 30(4) sets out in detail the functions of the Minister under the Bill, which include under paragraph *i* (viii) power to direct a water services authority on the general performance of its functions. It is not intended that these powers should extend to issuing directions to individual water services authorities regarding provision of water services to specified individuals. Such an interpretation could place the Minister in an invidious situation regarding his or her general powers of supervision over water services authorities. This amendment is based on similar wording in section 66 of the Housing Act 1965 regarding the Minister's powers to direct housing authorities on schemes or priorities for letting housing accommodation.

Amendment agreed to.

Acting Chairman: Amendments Nos. 52 and 53 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 52:

In page 31, subsection (4)(*j*), line 18, to delete "or its agent or partner,".

Mr. Gallagher: Section 30 places overall responsibility with the Minister to facilitate the provision of safe and efficient water services and associated water services infrastructure, and provides for the necessary associated powers. Subsection (4) sets out a broad menu of powers which may be exercised by the Minister in the course of exercising his or her functions under this Bill. These include *inter alia* powers to carry out inspections and assessments of equipment, machinery, pipes, management and operating standards of water service providers. As this is currently worded, the powers of inspection under paragraph (*j*) apply only with regard to water services authorities and their agents and to licence holders under the Act. The combined purpose of these amendments to subsection (4)(*j*) is to ensure that the Minister's powers to examine or carry out inspections of water services authorities, their appointed agents and authorised providers of water services apply only to the agent of an authorised provider of water services. This will also prevent frustration of the enforcement of the Act by the appointment of agents.

Amendment agreed to.

Government amendment No. 53:

In page 31, subsection (4)(*j*), line 19, after "this Act," to insert "or their agent or partner,".

Amendment agreed to.

Section 30, as amended, agreed to.

SECTION 31.

Acting Chairman: Amendments Nos. 54 to 56, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Mr. McCarthy: I move amendment No. 54:

In page 32, subsection (2), between lines 31 and 32, to insert the following paragraph:

"(*a*) the right of each person within the functional area of the authority to have access to water services;".

The Bill is quite bureaucratic in parts. One cornerstone of public policy has been omitted, and is obvious by its absence. That is the public's right of access to water services. Amendments Nos. 54 and 55 both relate to the individual's rights. I can accept the mechanics of the Bill along with the various controls and intentions of the Minister but there is no reference to the individual's rights to access water services. That should be of paramount importance and enshrined in the Bill.

Mr. Bannon: Section 32 of this Bill is designed to make non-textual amendments to the Act of 1885 and it modifies that Act without changing the wording. My understanding of best practice is that we should make textual amendments wherever possible and that is proposed by means of amendment No. 56. I would appreciate it if this amendment were accepted by the Minister of State.

Mr. Gallagher: I understand the intent behind the three amendments under consideration and readily agree that in a modern society every person should have access to a safe water supply. However, I am concerned that the approach suggested could lead to an impossible burden being placed on water services authorities regarding the performance of their function under the Water Services Act. If accepted, these amendments could be interpreted in due course by the courts as requiring each water services authority to provide a water supply and sewage collection and disposal service in the remotest and most inaccessible areas regardless of other considerations

such as cost or the sustainability of such an approach. Obligatory intervention by a water services authority into the provision of both water supplies and waste water collection and treatment in remote rural areas could also interfere with the ongoing development of the independent group water services scheme sector. That sector is the mainstay of water services provision in many rural areas and one of the primary objectives of this Bill, particularly under Part 6, is to put in place a suite of provisions to support and encourage its ongoing development. We know the important role that group water schemes and the providers of water in most rural areas have played. We want to ensure and support its ongoing development.

The general thrust of amendment No. 54 is implicit in the existing wording of section 31(2) without imposing an explicit obligation with the dangers this involves. Public policy in regard to proper planing and sustainable development and protection of human health and the environment presupposes the availability of adequate water services. However, it is not appropriate to express this in terms which could impose an unacceptably heavy burden of duty on a water services authority without regard to particular local circumstances.

1 o'clock

With regard to amendments Nos. 55 and 56, the purpose of section 31(19) is to remove any possibility of a conflict between the provisions of section 7 of the Housing and Working Classes Act 1885, which obliges every local authority to secure the proper sanitary condition of all premises within its functional area. Depending on its interpretation, it could be used to force a local authority to provide water services even in the most unreasonable circumstances, for example, in an isolated inaccessible rural area where the cost or technical difficulty of providing a water supply or waste water collection and treatment might be prohibitive. Such indiscriminate application of a duty to provide services could undermine the ability of a water services authority to provide water services generally. It could also lead to abuses being perpetrated against the interests of water services authorities by the placing of unreasonable demands on them for service.

The alternative wording to subsection (19), proposed by Senator Bannon under amendment No. 56, is in the form of a new section 32. It does not have any material effect on the existing provision under subsection (19) and I am inclined to retain the existing wording. However, I am willing to reconsider the amendment and to consult further with the Attorney General. I suggest we could return to this on Report Stage and I would appreciate time to consult with the Attorney General.

Mr. McCarthy: I thank the Minister of State for his reply. I reiterate the importance of reflecting in the Bill the fundamental right of access to water which is the intention of the amendment. The Bill does not refer to this right and could take a narrow approach to it if the amendment is not considered.

Amendment, by leave, withdrawn.

Amendment No. 55 not moved.

Section 31 agreed to.

SECTION 32.

Amendment No. 56 not moved.

Acting Chairman: Amendment No. 57 is a Government amendment. Amendments Nos. 67, 69, 77, 82, 92, 97, 101, 104, 150, 162 and 164 are related and these amendments may be discussed together by agreement.

Government amendment No. 57:

In page 36, lines 20 and 22, to delete all words from and including "a person authorised" in line 20 down to and including "services authority" in line 22 and substitute "an authorised provider of water services or a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services".

Mr. Gallagher: The purpose of these amendments is to apply relevant functions under the Bill to the public private partnership partners of authorised water services providers. In all of the provisions identified, the relevant functions currently apply only to a water services authority, an authorised provider of water services, in effect a group water services scheme, or somebody acting jointly with or on behalf of a water services authority, for example, under a design, build and operate scheme. It is considered appropriate and equitable where such functions apply to a water services authority and an authorised provider of water services, and where they have been extended to include a public private partner of a water services authority, that they should also be extended to the public private partner of an authorised water services provider. While the issue is quite detailed, that is the basic principle. As with other amendments, this will improve the Bill.

Amendment agreed to.

Government amendment No. 58:

In page 36, subsection (3)(*c*), line 36, to delete "domestic" and substitute "internal".

Amendment agreed to.

Government amendment No. 59:

In page 37, subsection (3). lines 34 and 35, to delete paragraphs (*v*) and (*w*) and substitute the following:

"(*v*) procedures for dealing with consumer complaints;

(*w*) measures to protect public health or the environment; or

(*x*) related and ancillary matters.".

Mr. Gallagher: The purpose of this amendment is to enable regulations under section 32(2) and (3), in regard to the provision of water services, to provide additionally for measures necessary to protect public health and the environment. It is possible that existing provisions for regulations at section 32(3)(*b*), on duties of persons providing water services, and section 32(3)(*e*), on performance standards for the provision of water services, could include measures to protect public health and the environment. However, the additional provision in paragraph (*w*) will put this beyond doubt. Such regulations might, for example, be necessary to provide for measures to prevent the spread of water borne diseases through the drinking water supply.

Amendment agreed to.

Section 32, as amended, agreed to.

SECTION 33.

Government amendment No. 60:

In page 37, subsection (1), line 43, to delete "water works" and substitute "waterworks".

Mr. Gallagher: This is merely a technical amendment for consistency with the rest of the Bill.

Amendment agreed to.

Section 33, as amended, agreed to.

Section 34 agreed to.

SECTION 35.

Mr. McCarthy: I move amendment No. 61:

In page 38, subsection (3), line 22, to delete "the relevant part" and substitute "such provision".

This is a drafting amendment. I want to ensure consistency of language in the Bill and I hope the Minister of State will accept it.

Mr. Gallagher: The change suggested by Senator McCarthy to the wording of subsection (3) brings an additional increment of clarity to it and removes any possible difficulty of interpretation. I am happy to recommend acceptance of the amendment.

Mr. McCarthy: I thank the Minister for his reply.

Amendment agreed to.

Section 35, as amended, agreed to.

SECTION 36.

Mr. McCarthy: I move amendment No. 62:

In page 38, subsection (3), line 37, to delete "executive" and substitute "reserved".

The amendment pertains to the roles of the executive, officials and members of local authorities. There is a serious issue in regard to the functions and powers of elected members of local authorities, to which I referred earlier in regard to the exclusive authority which the Minister now has to set the price of refuse collection. This occurs in many local authorities, including my own, and has resulted in the price of refuse collection soaring, yet there is little the elected members of local government can do about it.

In a broader context, the amendment takes into account the transparency that should exist in local government. The Government has been inconsistent in its treatment of local government and if it is serious about reform and handing real power to elected members it should accept the amendment. Those of us who came through the system know how restrictive and frustrating it is to discover that in many areas we can only make recommendations or plead with the city and county managers. Managers have too much power and members do not have enough.

Although there is an argument to be made when we see the filth emerging at the tribunals as a result of the activities of a select few in the system who abused their powers, the general experience is that the vast majority of members of local authorities are hard working and decent people. They are supported at election time and then they win the prize, namely the faith and trust of the electorate. Those of us lucky enough to be in such a position have a responsibility and are required to deliver for the electorate. The Minister of State should remember that when considering this amendment. We must show a commitment to local government and the Government must mend the fences with it by not removing any more of the powers that are already so scarce.

Mr. Cummins: Local government has had far too many powers removed from members, with more executive functions given to city and county managers. It is bad for democracy and removes councillors' accountability to the electorate.

Mr. Gallagher: The purpose in providing that the making of water services strategic plans is an executive function and not a reserve function, as suggested in the amendment, is to draw a clear distinction between the various strands of the strategic planning process for water services. It will ensure that input into each is provided at the appropriate stage and as part of the overall planning and development process. Members are not

excluded from the process but their input to the process must be pitched at the appropriate level.

These are management and operational rather than policy plans. If they were policy plans I would have no difficulty with the amendment. The primary role of councillors is to outline the demand for water services in their areas and the level of response or proposed response to that demand by the water services authority. The water services strategic planning process will be based on a partnership between my Department and each water services authority to ensure that national and local water service agendas are fully synchronised.

This relationship complements the Minister's overall supervisory role in national water services provision. It will also help to ensure that plans for adjoining functional areas are properly integrated with each other to maximise potential synergies and efficiencies and guard against any cumulative impacts which might have an adverse effect on sustainable development or environmental protection in the broader surrounding region. Ultimately, therefore, the Minister will have the final say as to what goes into a water services strategic plan.

It would not be appropriate to involve members directly in such a process when they are already indirectly involved. Members' input into the process will be pitched at the appropriate level. Involvement by members of the council in planning for water services will more appropriately take place on a broader, strategic level in the context of their input into planning and development issues affecting their areas generally.

The Bill requires that water services authorities must have regard to proper planning and sustainable development of their areas when making a water services plan. In particular, they must have regard to relevant county development plans and the members have a major input into those. They must also take into account regional or spatial planning guidelines, housing strategies, special amenity orders, river basin management plans among others and consultations will take place with the strategic policy committees.

In the course of making a plan to facilitate its co-ordination with strategic policy issues affecting the functional area of a water services authority, all of these inputs, including the SPCs, the county development plans, housing strategies, special amenity orders, river basin management plans, will be given an opportunity for an input. This will ensure that the strategic overview of councillors is ultimately taken into account in the formation of water services strategic plans. I doubt if any manager in any local authority will not take into consideration the views expressed by councillors, particularly those on SPCs.

Mr. McCarthy: There have been occasions in the past and there will be in the future where county and city managers will disagree with the elected members. I can accept that but often there is good reason for a member of a local authority to make representations to or to plead with a manager to make a decision based on advice given by the member. When such a situation prevails in the context of a reserve function, the elected member has one hand tied behind his back because he does not have the power to make the decision or to be involved in the decision making process.

This amendment is as much about local government in general as it is about water service provision. The role of the elected member has been denigrated in recent times and that disconnects him from the public. There is cynicism abroad about politics for a variety of reasons and we must recognise what needs to be done by the Government to invigorate local government and to lessen the gap between the public and the political system. This system could be used to reconnect people with politics. We talk about it often enough, particularly when there are low turn outs at elections, but this small step could result in a turn about in how local government does its business, how politics is perceived by people and how people participate in the democratic process.

Mr. Gallagher: Senator McCarthy raises an important point. Many of us have come through the council system and it is not the intention to remove power from councillors. It is not a question of their having no input, they will have a major input. The manager must have regard to the relevant county development plans and the regional or spatial planning guidelines, whether housing strategies, special amenity orders or river basin management plans. There will be a direct input through the strategic policy committees. While the input of members into the process will not be excluded, it is a question of pitching them at the appropriate level. In view of this, while I appreciate the intentions behind Senator McCarthy's amendment, which is supported by Senator Cummins, I regret I cannot accept it.

Amendment, by leave, withdrawn.

Government amendment No. 63:

In page 40, subsection (9), line 15, to delete "public".

Mr. Gallagher: This is a technical amendment. Section 36(9) enables the Minister to make regulations to prescribe detailed procedural arrangements for making water service strategy plans, including arrangements for public consultation and notification during the course of their preparation. Deletion of the word "public" in line 15 is a precautionary measure for the avoidance of any doubt that the Minister's powers to make regulations apply to all consultations, that is, both with the public generally and with specified bodies.

Amendment agreed to.

Acting Chairman: Amendment No. 64 is consequential on amendment No. 168, therefore, amendments Nos. 64 and 168 may be discussed together by agreement.

Government amendment No. 64:

In page 40, between lines 17 and 18, to insert the following subsection:

"(10) Nothing in this Act shall entitle a water services authority to discontinue providing water services which it provided prior to its enactment, save as may be provided for in a relevant water services strategic plan approved by the Minister.".

Mr. Gallagher: As amendment No. 168 is consequential, I will first address the substantive issue in amendment No. 64. The purpose of this amendment is to ensure consumers of water services provided by sanitary authorities prior to enactment of the Bill will continue to receive such services from their water services authorities after enactment unless the Minister approves a water services strategic plan which provides for alternative arrangements. With the Minister's general powers to direct water service authorities under section 30(4)(*i*), the amendment, for the avoidance of doubt, further protects the position of individual consumers by preventing a water services authority unilaterally from discontinuing services to existing users on enactment of the Bill unless the suspension sanctioned by the Minister is part of a strategic plan for the effective and efficient provision of water services in the surrounding area.

For clarity and the avoidance of doubt, amendment No. 168 confirms that the application of section 101 is subject to section 36(10), inserted by amendment No. 64. Section 101 provides that a provision in any other statute, which obliges a water services authority to provide water services outside of its functional area, will in future be interpreted only as enabling it to do so. This amendment links that provision with the new section 36(10) and will ensure that action such as ceasing to provide services cannot be taken unilaterally by a water services authority under section 101 and must await sanction by the Minister under section 36 in the context of the orderly strategic planning of water services for the area. The interests of consumers continue to be protected as a result of these amendments.

Amendment agreed to.

Section 36, as amended, agreed to.

Sections 37 to 40, inclusive, agreed to.

SECTION 41.

Acting Chairman: Amendments Nos. 65, 66, 68, 70 and 71 are related and may be discussed together by agreement.

Government amendment No. 65:

In page 42, subsection (1), between lines 18 and 19, to insert the following definition:

"'pipes' includes sewers, drains, water mains, distribution systems, service connections or their accessories.".

Mr. Gallagher: Amendments Nos. 65, 66, 68, 70 and 71 have several aspects which arise from a series of amendments to the definitions of water services and infrastructure in section 2. Amendment No. 65 inserts a definition of 'pipes' for the purposes of the section. The amendment arises from the series of amendments in section 2 to streamline and clarify the distinction between drains, sewers, water mains, distribution systems and service connections and ensures, without the need for tedious repetition, that all are included within the scope of the section. The second and third amendments derive from the first amendment and replace existing references to sewers, drains, water supply pipes and their accessories within the text of the section, with a reference to pipes as previously defined.

Amendments Nos. 70 and 71 to subsection (12) will enable water services authorities to enter into joint agreements to interconnect any pipes and their pipe infrastructure networks. The amendments broaden the original provision, which was confined to sewers or water supply pipes, to cater for all eventualities. This aligns it with the approach of the rest of the section. The several aspects to these complementary amendments improved the Bill.

Amendment agreed to.

Government amendment No. 66:

In page 42, subsection (2), lines 26 and 27, to delete "any sewer, drain or water supply pipe or their accessories" and substitute "pipes".

Amendment agreed to.

Government amendment No. 67:

In page 42, subsection (3), line 35, after "water services" to insert "or any person providing water services jointly with or on behalf of that person,".

Amendment agreed to.

Government amendment No. 68:

In page 42, subsection (3), line 36, to delete "any sewer, drain or water supply pipe or their accessories", and substitute "pipes".

Amendment agreed to.

Government amendment No. 69:

In page 42, subsection (4), lines 46 and 47, to delete "other person acting jointly with it or on its behalf or on the authorised provider of water services" and substitute "authorised provider of water services or person providing water services jointly with or on behalf of the water services authority or authorised provider of water services".

Amendment agreed to.

Government amendment No. 70:

In page 44, subsection (12), lines 22 and 23, to delete "sewers or water supply".

Amendment agreed to.

Government amendment No. 71:

In page 44, subsection (12), line 23, to delete "sewers" and substitute "pipes".

Amendment agreed to.

Section 41, as amended, agreed to.

SECTION 42.

Government amendment No. 72:

In page 45, subsection (4)(*a*), line 20 after "another person," to insert "or where an authorised provider of water services has entered into such an agreement,".

Mr. Gallagher: Section 42 enables a water services authority to require that a premises in its functional area be connected to its waterworks or waste water works located nearby subject to the right of appeal to the District Court. Subsection (4) expands these powers to enable a water services authority to require a premises to be connected to the services of its contracted agent or that of an authorised provider of water services, subject to the agreement of the water service provider.

The purpose of the amendment to subsection (4) is to apply the powers of direction under the section to require connection of a premises to services provided by a person operating on behalf of an authorised water services provider. For example, this could include a person operating under an EBO contract for a group water services scheme. The amendment is part of a series of similar amendments to apply relevant functions under the Bill to the public-private partnership partners of authorised water service providers. This will ensure equity of treatment to all water services providers.

Amendment agreed to.

Acting Chairman: Amendment 74 is an alternative to amendment No. 73 and amendments Nos. 73 and 74 may be discussed together by agreement.

Government amendment No. 73:

In page 45, subsection (5), lines 35 and 36, to delete ", whose decision shall be final and binding, including any decision as to costs" and substitute "and a decision from the District Court under this subsection shall be final, save that, by leave of the Court, an appeal from the decision shall lie to the High Court on a specified question of law".

Mr. Gallagher: The provision in section 42(5) is based on section 8(7) of the Local Government Sanitary Services Act 1962, which is being repealed and consolidated into this Bill. Subsection (5) enables a person who has been directed to connect his or her premises to a waterworks or waste water works to appeal that direction to the Circuit Court. The intention behind providing that no further appeal is possible is to put a limit on the number of appeals a person may make against a direction. One avenue of appeal is considered adequate to ensure that natural justice applies and that the rights of the individual premises owners are protected. Indeed, such an approach is normal in appeals mechanisms, for example the planning appeals system.

The amendment proposed by the Senators seeks to remove the reference to the decision of the Circuit Court being final in such appeals. In doing so, it could open the appeals mechanism to a constant series of appeals through the courts system. This would place an unnecessary burden on the courts and hamper the efforts of water services authorities to provide efficient and effective water services in their areas.

However, it is not intended to deny access to a higher court for the purposes of establishing a point of law with regard to a decision of the District Court under subsection (5). While I doubt that the present wording of subsection (5) would be interpreted by the courts so as to deny such access, it is proposed, for the avoidance of doubt, to provide explicitly to this effect. Accordingly, amendment No. 73 provides that a decision of the District Court on an appeal may be further appealed to the High Court but only on a point of law. This expanded provision should clarify the intent of subsection (5) while avoiding any disruption to the orderly running of the courts system. In the circumstances, I am unable to accept the amendment.

Progress reported; Committee to sit again.

Sitting suspended at 1.30 p.m. and resumed at 2.30 p.m.

Central Bank and Financial Services Authority of Ireland Bill 2003: Second Stage.

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

Minister of State at the Department of Justice, Equality and Law Reform (Mr. B. Lenihan): This Bill is complementary to the Central Bank and Financial Services Authority of Ireland Act 2003 which, as Senators will be aware, was signed into law last year. That Act established the Irish Financial Services Regulatory Authority to oversee the activities of financial institutions, including their treatment of customers.

This Bill provides for the establishment of a financial services ombudsman to deal with consumer complaints about financial institutions; the establishment of consumer and industry consultative panels to advise the financial services regulator; new reporting and auditing obligations for financial institutions; power for the financial services regulator to impose penalties on financial institutions for failure to comply with regulatory requirements; a right of appeal to the appeals tribunal in the matter of certain supervisory decisions of the authority; new regulatory requirements for money transmission and *bureau de change* businesses; and miscellaneous amendments to financial services legislation.

The greater part of the Bill is based on the recommendations of the report of the implementation advisory group on the establishment of a single regulatory authority for the financial services sector. This report, known as the McDowell report, recommended a new architecture for financial services regulation in this country. The Act passed last year put in place a key component of that architecture, the new financial services regulator. This second piece of legislation provides the remaining pieces of the architecture recommended by the McDowell report.

The new reporting and auditing obligations for financial institutions arise from the report of the review group on auditing. The main recommendations of the group have been implemented in the Companies (Auditing and Accounting) Act, which was enacted at the end of last year. The group's recommendations that related specifically to financial institutions are being implemented in this Bill. The new regulatory requirements for money transmission and *bureau de change* businesses implement recommendations of the financial action task force, an OECD-related body, on the prevention of money laundering and the financing of terrorism.

The miscellaneous amendments are mainly technical in nature, correcting flaws and errors in existing financial services legislation that have emerged in the course of practice. They are further pointers to the need for a consolidation of financial services legislation, something that was also recommended by the McDowell group. I am happy to tell Senators that a consolidation Bill is now included in the Government's legislative programme.

The drafting of the Bill has benefited greatly from the public consultation process on its contents. The consultation process has led to significant changes, especially in the part dealing with the financial services ombudsman. I thank the many organisations and individuals who took the trouble to comment on the original draft heads.

The Bill as presented to the House has also benefited from detailed scrutiny in the Dáil and has been significantly amended in its passage through that House. Many helpful and constructive amendments were put forward by Opposition Deputies, some of which the Minister was happy to accept. I mention in particular significant improvements made to the provisions of the Bill dealing with sanctions, the ombudsman and the Consumer Credit Act. The result of this is a more considered set of legislative proposals.

The financial services ombudsman will deal with complaints from consumers about their individual dealings with financial institutions. Broader issues of consumer protection are the responsibility of the financial services regulator and specifically of its statutory Director of Consumer Affairs. The Bill provides for close cooperation between them and with the pensions ombudsman. This will allow the financial services ombudsman to bring patterns of complaint to the attention of the financial services regulator so that the consumer director can consider whether regulatory action is necessary to deal with the issues highlighted.

Codes of conduct issued by the financial services regulator will form one of the important criteria against which the ombudsman will assess complaints. There is also provision for close cooperation with the Registrar of Credit Unions within the financial services regulator when dealing with complaints involving credit unions. Some amendments to the Credit Union Act are also provided for so that members of a credit union will have the same right of access to the ombudsman as customers of other financial institutions.

In terms of how the ombudsman will deal with complaints, the intention is that a customer should first make her or his complaint to the financial institution concerned. It is in everyone's interest that financial institutions deal with their customers in a fair way and treat their complaints seriously. If a customer is not satisfied with the response of the financial institution, he or she can refer the complaint to the ombudsman. The ombudsman will try to reach an agreed solution between the customer and the financial institution. If this fails, the ombudsman will make a formal determination on the complaint. The ombudsman's determination will be binding on both parties, subject to their right to appeal to the High Court. The overall intention is to provide a simple means for aggrieved consumers to have their complaints dealt with fairly and quickly by an independent person.

The Bill provides for the ombudsman's office to be overseen by a council. The Minister will appoint the members of the council after consul-

tation with his colleague, the Minister for Enterprise, Trade and Employment. The council will consist of up to ten people and people from both consumer and industry backgrounds must be included. The council will be responsible for appointing the ombudsman and any deputy ombudsmen. It will also be responsible for laying down the detailed rules governing the scheme, including the levying of charges on financial institutions to fund its operation.

There are strong accountability arrangements built into the Bill's provisions. There is a requirement for the ombudsman to produce an annual report as well as an annual strategy statement, both of which will be laid before the Houses of the Oireachtas. Both the chairman of the council and the ombudsman are obliged to appear on request before a joint committee of the Houses of the Oireachtas.

The structure set out in the Bill differs from that originally proposed. This reflects the comments received during the consultation process and subsequent contact with the present ombudsman schemes for the insurance and banking sectors. The existing ombudsman schemes have agreed in principle to amalgamate with the new statutory scheme, with their staffs transferring to the statutory scheme. This should prove a highly advantageous arrangement for all concerned, not least the consumer. The statutory scheme will be able to build on the track record and expertise of the existing schemes and their staffs, avoiding what would otherwise be a loss of continuity and expertise. Specific provisions are included in the Bill to facilitate the amalgamation. The Bill also provides for investigations commenced under the existing schemes to be continued under the new scheme.

I now turn to the provisions for the appointment of consumer and industry panels to advise the financial services regulator. The establishment of such panels was recommended in the McDowell report. It is desirable that the financial services regulator pays close attention to the views of those whose interests it is mandated to promote, namely the consumers of financial services, and the providers of those services, the financial institutions.

The provisions in the Bill have been altered significantly in light of the comments made in the course of the public consultation process. The Minister will appoint the panels only after consulting the Minister for Enterprise, Trade and Employment and, in the case of the industry panel, the Taoiseach. The financial services regulator will be obliged to consult the panels on all general policy matters. The Minister for Finance is also obliged to consult both panels before approving the annual budget of the financial services regulator. Reports and opinions of the panels will be published.

The financial services regulator can be obliged to state its reasons publicly if it does not agree with a recommendation from a panel. The regulator is obliged to provide appropriate support to the activities of both panels. Either or both panels can appoint specialist advisory groups on specific issues. The consultative panels will provide a useful reality check for the financial regulator on how its activities are affecting consumers and financial institutions. Again, the public consultation process has provided the impetus for change in the proposals set out in the Bill, which should further enhance the effectiveness of the panels.

The general recommendations of the review group on auditing have been given legislative expression through the provisions of the Companies (Auditing and Accounting) Act, which passed into law at the end of last year. Apart from establishing the new Irish Auditing and Accounting Supervisory Authority, the Act also contributes a further important chapter to the strengthening of corporate governance standards in Irish companies. Of particular importance are the provisions for an annual statement from directors, covering the company's compliance with company, tax and other laws that are material to the company's financial position. The compliance statement must be reviewed by a company's auditor who is obliged to give a view on its reasonableness or otherwise.

The provisions in this Bill cover the add-ons recommended by the review group regarding financial institutions. It provides that the Financial Services Regulatory Authority can require financial institutions to provide it, or another statutory authority, with reports on compliance with obligations under financial services and other legislation. It provides that auditors must make an annual positive statement that they have not come across anything in their examination of a company's finances that would trigger a duty to report to the financial services regulator under various existing statutory provisions. It also gives the regulator the power to require an auditor to provide it with information relevant to its statutory duties. The provisions in this part should be viewed in the context of the Government's determination that we must do all we can to promote the highest standards of corporate compliance in the financial sector.

The McDowell report recommended that the financial services regulator should have the power to impose penalties directly on financial institutions, subject to a right of appeal. At present, the financial services regulator can generally only do so through the courts. The Bill provides for penalties that may be imposed on a financial institution if it breaches a requirement of an Act, regulation or code of conduct. The penalty can take the form of a reprimand, a fine or both. The regulator is also given the power to direct the refund of a charge incorrectly applied. There is also provision for managers to be disqualified from employment in the financial services sector. There is a right of appeal to the appeals tribunal already provided for in the Act passed last year.

The McDowell report also concluded that the appeals tribunal provided a suitable mechanism

[Mr. B. Lenihan.]

for review of the financial services regulator's supervisory decisions. The Minister has therefore provided in the Bill for amendments to existing financial services legislation to provide, in general, for a right of appeal to the tribunal rather than to the High Court.

The system of authorisation that at present applies to *bureaux de change* is being extended to persons engaged in money transmission business. The main purpose of the authorisation system is to facilitate the effective implementation of the anti-money laundering and anti-terrorist funding provisions of the Criminal Justice Acts. The present authorisation regime that applies to *bureaux de change* is also being amended to encompass the objective of preventing the financing of terrorism. The new provisions address international concern at the possible use of such businesses as conduits for the financing of terrorism.

The Bill includes a wide range of mainly technical amendments to various pieces of financial services legislation. A small number of these amendments are more substantive in nature, as I will now describe.

Some of the amendments to insurance legislation go beyond the purely technical. I refer in particular to the amendments designed to restore the right of an administrator appointed to an insurance company in difficulty to have access to the insurance compensation fund. While we have not had a failure of an Irish insurance company for almost 20 years, it is important that we have in place a range of options to deal with such a situation. The amendments restore the option that was availed of by the then Government when PMPA and ICI got into difficulties in the early 1980s.

I also draw attention to the proposed amendment to section 77 of the Central Bank Act 1989 on mergers and acquisitions in the banking sector. The heads of the Bill provided for the removal of the role of the Minister for Finance in this area, as recommended in the banking sector strategic issues report published in August 2000. While the Minister respects the arguments put forward by the distinguished members of that working group, he has decided, with Government approval, that it would be going too far to remove totally the element of political judgment and accountability that the current arrangement provides. The proposed revision to the 1989 Act sets out the criteria that the Minister for Finance must use when exercising her or his judgment.

I should also draw attention to five proposed amendments to the Consumer Credit Act 1995. One amendment provides that the Minister may extend the provisions of the Act to cover business consumers. This arises from a McDowell report recommendation that non-consumer money-lending should be treated in the same way as consumer lending. The Minister would only intend to exercise this power after consultation with the financial services regulator and careful consideration of the arguments for and against.

Another amendment arising from the McDowell report provides that all institutions who lend on the security of a borrower's principal home be made subject to Part IX of the Consumer Credit Act. Part IX provides protection to a borrower by imposing various obligations on housing loan lenders — for example, to warn the borrower explicitly about the danger of losing the family home if repayment conditions are not met.

The third amendment to the Consumer Credit Act extends the definition of mortgage intermediary to cover so-called introducers. This amendment is being made on foot of a recommendation from the Director of Consumer Affairs.

The fourth amendment gives the regulatory authority the discretion to issue multi-annual authorisations to mortgage intermediaries, as is the case with other types of intermediaries. Finally, it is being made an offence for a financial institution to charge a customer in excess of rates notified to the regulator.

With the passage of this Bill, we will have put in place the essential building blocks of a modern, consumer-focused regulatory system for the financial services sector in Ireland. We will also have contributed significantly to the objective of maintaining Ireland's reputation as a business-friendly, but well regulated, domicile for international financial services activity.

I should add that recent events in the banking sector have highlighted the significance of the provisions of the Bill relating to compliance, consumer complaints and the power to impose sanctions.

I commend the Bill to the House.

Mr. J. Phelan: I echo what the Minister said in his conclusion. It is appropriate that we should be discussing this Bill today, a number of weeks following further serious revelations in the financial services sector. I agree wholeheartedly with the comment he made in his final remarks there. I broadly welcome the Bill, which is a step in the right direction. I note from the Minister's comments that we are to have a consolidation Bill as part of the Government's legislative programme. I welcome that because there is certainly a need for it.

The Bill contains a number of key provisions, outlined by the Minister, which are welcome. The creation of a financial services ombudsman is certainly a move in the right direction. Such a facility will represent consumers in complaints against banks, building societies and other financial institutions. In light of recent events, the establishment of the consumer and industry consultative panels is also a key component of this Bill. The Minister referred to the new reporting and auditing obligations and the new powers which will be given to the Irish Financial Services Regulatory Authority to impose sanctions for breaches of regulations and codes of conduct. These four key

elements of the Bill are to be wholeheartedly welcomed.

It is time a financial services ombudsman was appointed. For too long consumers have appeared unimportant in the context of financial services. Fine Gael recognises at first hand the level of frustration that exists among consumers dealing with financial institutions. Last November we launched the website *ripoff.ie*. Since its launch the website has had many thousands of visitors. They have listed several examples in different parts of the economy but certainly in the financial services sector of how they have been ripped off. One Irish man was charged €4 by one of the major banks here for every ATM transaction he made while in Britain; another bank charged one of its customers €12.70 for the renewal of an existing overdraft facility upon which the bank would make money. We are all familiar with the ridiculously high costs of credit card interest rates which can be anything up to 18% when the current ECB rate is less than 4%. It is important that customers are represented. I am, therefore, glad that a financial ombudsman is to be appointed to look after the interests of customers.

The Irish banking sector has serious questions to answer. The AIB scandals which emerged about a month ago have the capacity to endanger the Irish financial services sector. If I were not here, I would probably be in that sector. There are many people like me who currently earn their living from that sector. Over the past ten years that sector has seen major increases in employment and in the services it provides. It is vital that we act now to ensure the reputation that has been established in this country is reaffirmed. The establishment of a consumer ombudsman will go a long way towards re-establishing and reaffirming the reputation we have built up over the past number of years. For a long time people have felt that there is no one there to fight their corner. The big financial institutions are very large corporate bodies and it can be often difficult for a consumer who has a grievance with an institution to get that grievance heard and to get fair play. The new provision is to be welcomed in that sense.

There are other issues that need to be addressed such as the costs in this country of changing bank accounts. There is a need for proper scrutiny of companies involved in debt consolidation and for banks to pass on interest rates cuts as soon as they receive them from the ECB and not a week later as they currently do, thus pocketing millions of euro of consumers' money in the process. These issues need to be tackled. The ombudsman should develop a role in that area in the next few years.

In view of what we have seen in the past few months the role of the consumer and consultative panels in the Bill has taken on an even greater significance. In his remarks, the Minister referred to these panels providing a reality check. That is welcome. The Opposition wants to be reassured that they will not be made up of people who are appointed on the basis of party politics. These people should be leaders in their field and should provide impartial practical authority on important areas. In other sectors, we have seen where boards and panels have been set up and packed with party political appointments. It is important that the brightest and best people in the financial services sector would be encouraged to take part in these panels.

This is a good Bill and Fine Gael agrees with it. It contains some flaws but these can be addressed. There is a sense of frustration among consumers with the rip-off Ireland that has developed over the past few years. We need to ensure the consumer becomes central to the financial services system. The Bill is a step in the right direction and I have no problem in supporting it.

Dr. Mansergh: I welcome the Minister and wish him a happy Bloomsday. *Ulysses* has references to a number of financial scandals, one of which Senator Ross might be aware. Joyce referred to the name Dubedat, and Dubedat was a stockbroker in the 1880s. He used clients' funds to build a large house in Killiney that was recently put on the market, albeit refurbished, for approximately €8 million. One day it collapsed so he headed for South Africa and acquired an exotic partner having deserted his wife. The House will be reassured to hear that when he came back he spent a few years in prison. The only reason it comes to my mind is that when I am in Dublin I live in the house in Killiney that was built for the deserted wife.

Disappearing with clients' funds is an extreme example of the dangers that have to be faced. A good regulatory system should stop practices that lead to that. There is still a certain amount of anecdotal evidence that the cash flow generated from clients' funds is used purely for private purposes. That is an extremely dangerous practice and we have seen far more recent examples of it since the 1880s.

There are two angles to this issue, one of which is domestic while the other centres on international financial services. As clients of banks, credit institutions and so on, we all have an interest in their regulation. Equally, the international financial services sector is very important to this economy. It employs approximately 16,000 people. The continued good regulation and operation of that sector is important, not only for the employment it provides, but also for the irreplaceable revenues that it generates for the Exchequer.

It is has not been explicitly stated by the Minister of State in his speech to the House nor in the debate that took place in the other House that this legislation is a product of a consensus following a lengthy consultation process. The financial institutions and the various consumer interests are reasonably happy with it. Its genesis was in the McDowell report which took some time to

[Dr. Mansergh.]

put together and on which it took even more time to get a Government decision.

On the domestic front, we have unfortunately moved away from an age of innocence which existed 40 or 50 years ago, where people trusted the financial advice given to them and respected the bank as a figure of authority. As the country has become more prosperous, people are looking for places to put their savings. There is a variety of financial instruments including investment funds and pension funds. The ordinary person has some difficulty distinguishing between what is good and what is not. Confidence is not increased when instances occur of overcharging, loaded advice and the recommendation of duff funds, which depreciate a few years later and which will provide a miserable pension, notwithstanding the glowing terms in which they were sold. We have seen recent examples of favouritism with the placing of investments by insider privilege groups in institutions while the ordinary customer just gets the leavings. At worst it reminds me of the song of the master of the house in *Les Miserables,* who takes a little slice here, a little slice there and a little slice everywhere.

Products are peddled without the integrity one might expect. People feel that they are in a situation of *caveat emptor* rather than one where they can place trust in the advice given. It is a good thing that people ask questions and have become more critical. In the case of offshore accounts, we have seen instances where people were led up the garden path. I am not denying personal responsibility. However, some people who put their faith in the advice they were given found, when they were the victims, that the people who had advised them were nowhere to be seen.

3 o'clock

The appointment of an ombudsman will help establish more trust in the system. If a dispute or complaint about a product is not resolved there will be a recourse to the ombudsman and if patterns of difficulty emerge the regulator can take consequential action. It is a good thing that the regulator will be advised by both consumers and industry and that accountability will be required. The point was made validly in the other House that when a new office is established the officer concerned should be accountable to the Oireachtas. It should not be within such an officer's discretion to refuse to appear at an Oireachtas committee.

I also welcome the fact that the regulator will have power to direct the refund of a charge incorrectly applied. We have seen instances of that in the very recent past. I also welcome the fact that it will be an offence for a financial institution to levy a charge, often without the knowledge of an account holder, which has not been notified to and authorised by the regulator.

The *bureaux de change* provision has particular significance in the Northern context but also in a wider international context. This is something which needs to be properly controlled.

The Minister of State evoked debates, which I well remember, about the collapse of PMPA and ICI. Fortunately, we have not had similar repetitions since but one can never be certain, either in good times or bad, that situations might not arise which would have to be dealt with.

Despite contrary recommendations, I agree with the decision that the Minister should retain the power for mergers and acquisitions of banks. That provision is of potential major public interest and it is important that the Minister retain this responsibility. Ministers need to be careful about divesting themselves of too many powers so that if some major crisis happens they are entirely powerless to affect or influence the situation.

May I correct an underlying assumption in what Senator John Phelan said? He said it was important that the panel contain the brightest and best rather than party political nominees. The implicit assumption of that is that a party political nominee must be the dimmest and worst.

Mr. J. Phelan: No.

Dr. Mansergh: Of course, that is not the case at all. We ought to recognise that there are people who are very well qualified who may also have a party affiliation. The practice in filling panels of these kinds has been that the vast majority of nominees do not have strong political affiliation. There have been instances in the recent past where people who have been appointed to the chair of bodies have come from Senator Phelan's party. I am thinking of former Deputy Alan Dukes and the ten year review of agricultural policy.

I welcome the Bill. It is important from a domestic point of view because of the difficulties we have had with banks. It is equally important as underpinning our now very important financial services sector which has come from absolutely nowhere in 1987 to become a major and significant European and international financial services centre.

Mr. Ross: I welcome the Bill in a limited way. The speeches made on the Bill and the reactions of Members of the House are, understandably, a response to recent revelations about AIB. However, if one returns to first principles of regulation of the financial services sector one finds that the Bill is lacking in the kinds of solutions needed for what is a large and fundamental problem.

I say this because the principle benefit flagged in today's debate is the penalties the Bill gives to the Irish Financial Services Regulatory Authority. I am doubtful about the value of those penalties. I see a virtue in plugging a gap in the original Bill by giving powers to the regulatory authority to punish those who offend the consumer in the ways we have seen. It looked somewhat ridiculous in certain instances where consumers were offended and ripped off by various

banks and branches when the regulator, who was then the Director of Consumer Affairs, went into various banks which had offended in serious ways, ticked them off, got them to remedy the situation and then found that she could do absolutely nothing about the situation by way of penalties or prosecution. We are all responsible for allowing the 1999 Act to go through without that sort of penalty.

In Dublin Airport I spotted that a bank was doing something illegal. I complained to the Director of Consumer Affairs about it and it was found that the operation, a company called ICE, had taken either $21,000 or £21,000 from consumers over a very short period. The Director of Consumer Affairs forced ICE to remedy the situation and to close the gap, which was too wide and illegal, between the buying and selling prices.

They paid the money to charity, a suitable remedy. However, no penalty could be imposed on them and no prosecution could be taken against them. That was unsatisfactory. I was surprised to learn, because I thought I was well versed in such matters, that no action could be taken against them and that the money was then voluntarily donated to various charities.

The Bill remedies that type of situation. However, the penalties will not in any way act as a deterrent to banks intent on ripping off the public, as most of them are. I will explain my reasons for saying so. The great advantage of being a bank on which a penalty is imposed for the committing of an offence is that it can be paid off with other people's money. It is a simple advantage which arose in the case of DIRT taxes and others. The major offender in the DIRT tax case was AIB although the Bank of Ireland was also an offender. What happened to them in that regard was that they willingly and happily paid up vast sums of money — AIB paid €90 million while Bank of Ireland paid €30 million — the most painless penalties ever imposed. If the Minister or I were to commit parking offences in a company car and the company continuously paid the clamping fees and so on, we would not be too worried about committing that offence if we did not get ticked off about it and we retained our jobs. I cannot recall the maximum penalties which can be imposed under this legislation but I do not believe they are punitive to a bank. In the current situation, the bank will be paying with shareholders' money. Nobody cares all that much about other people's money.

It does not make sense to include a protection which states that the penalty should not be so high as to cause the bank any financial difficulties. That is simply saying that the amount must be one which is relevant to the bank. That causes a bit of a problem for us because we are continuously reminded in this and the other House that the argument in this regard must be balanced. We must continuously balance consumer interests with the interests of having a sound and secure banking system. Therefore, we cannot impose on the bank a penalty which would shake its foundations or solvency. I understand the maximum penalty that can be imposed under this legislation is €5 million for a body corporate, a pittance to a major bank. It is a laughable amount which will not threaten banks, result in anybody losing a night's sleep or be a deterrent to banks engaging in any of the malpractices in which they have willingly indulged. A €5 million penalty when one is making profits of several million every day is a small amount.

The argument continuously made by those in Government — it is extraordinary how the knee-jerk reaction between Government and Opposition changes in this regard — is that nothing must be done to threaten the Irish financial system. The Irish financial system is not threatened by anything that has happened in recent times. The offences uncovered have been a gross embarrassment to one bank in particular and, by association, to some others. The idea that the solvency of banks has been affected is nonsense. That has not happened. The only thing that will happen is that they will have to repay the money. There has not been a run on the bank's shares, something which could provide an indication of what might happen. I and others expected that when the continuous drip of bad information regarding AIB came out there would be a signal from abroad of lost confidence in AIB resulting in the selling of shares by overseas shareholders. However, there is no evidence that has happened even though the overseas shareholders could sell their shares as a protective measure.

Let us lay the myth that the banks are threatened by anything that is happening or that we might do. That is not true. The provision of greater rather than smaller penalties for such offences would result in more confidence among overseas investors in the financial services sector. I do not believe a mega-scale type problem exists regarding the primary or secondary solvency ratios for the banks. They are the markers at which people from overseas look. There is a problem of credibility, for customers and for AIB. Where will young people wishing to open a bank account go now? They will quite rightly think twice before going to AIB because of their fear of being ripped off. That is fair game. That will happen given the events of the past few weeks. However, such issues will not threaten the solvency of AIB or anybody else. That argument should not enter into today's debate.

The Irish banks solvency ratios are strong, share prices have remained strong throughout the crisis and there is no threat whatsoever. Therefore, they should not be treated with kid gloves, as is happening here today with the introduction in this Bill of small penalties. They should be treated far more severely. A problem arises in terms of the fundamental attitude of IFSRA. Let us not condemn it at this stage but let us issue one or two warnings about it.

The Irish Financial Services Regulatory Authority was set up following a row between the prudential and consumer sides regarding who would

[Mr. Ross.]

assume overall charge of the sector. There are may serious questions which must be asked of IFSRA. IFSRA was welcomed by the public following the split between the prudential and consumer divisions of the Central Bank. It was hailed as the saviour of the consumer. The case can be made that IFSRA let down the consumer in this instance. That is not a helpful thing to say but we are not here to say helpful things. We must not ask what IFSRA is doing now these offences have been discovered but why it did not discover them.

IFSRA was set up to regulate and, if one likes, to interfere with, inspect and examine our financial services on behalf of the consumer. However, not one of the many serious revelations, damaging to the consumer, was discovered by this regulatory body. What we have seen is a reactive body coming in heavy on the bank once offences were identified. What is worse is that this practice was endemic in one particular bank and not one of the 90 people involved in the retail section of IFSRA spotted it. It should have been reasonably easy to work out whether AIB foreign exchange rates coincided with the amount it should have been charging. The offence lay in the fact that they did not coincide. One wonders what IFSRA was doing in its checking. Why did it not spot the activities of the British Virgin Islands company, Faldor, in the case of the people at the top of AIB? One must ask whether IFSRA considers it to be in its remit to look at the top people at all. If a bank is being regulated, it does not just mean regulating its charges but ensuring that people are not on the fiddle as well. It means ensuring employees are not taking advantage to the detriment of the consumer or the shareholders.

This is a very serious problem for the new regulator. If the new regulator is very hot on penalties and reaction and very good on public relations, as it has been, but never finds out anything that is going wrong, it will invite people to continue with the jiggery-pokery that was taking place but to cover their tracks a little more carefully. This is a real danger. The lesson to be learned from the latest scandals is that if somebody wishes to indulge in illegal practices in a bank, there is really nobody to stop him.

It appears there is a culture in at least AIB in which nobody really blows the whistle on anybody else. It is absolutely inconceivable that a large number of people did not know exactly what was taking place. I refer to everyone from top to bottom because there was significant malpractice at the top in the case of Faldor and malpractice at the bottom in the case of the consumer abuses. That people were turning a blind eye to the malpractices means there is a real culture problem extending from top to bottom in AIB, dictated and approved by the top and practised by people throughout. However, the regulator, which was in office for 12 months, spotted neither form of malpractice for some reason. This is a sobering thought and the problem will not be resolved by just whacking those involved on the heads with a penalty of €5 million. This sounds like an awful lot but is actually a pittance. Will the Minister take this thought away with him and respond to it in his reply?

The second area which I find so difficult to tackle and which this Bill does not tackle adequately is financial services, about which I can speak with some experience because I worked in the area for many years. The biggest enemy of the consumer is ignorance. The capacity of people to throw their money at institutions and request that they do what they like with it is quite staggering. I noticed it when I was a stockbroker and saw it in other areas. It is quite stunning and people still do it. One could place advertisements in the newspapers and, regardless of what they state, hundreds of thousands of euro would come into one's bucket shop the next day. People are almost relieved to find others who say they know what to do with their money. That is a serious human problem which we must resolve. I notice it specifically in areas that have been tackled by various regulatory bodies.

Consider tracker bonds in this regard. The appetite for tracker bonds in Ireland is quite stunning at present. However, if one challenges somebody to state how they work, he will not be able to tell one. They are the most complicated possible instrument one could imagine, involving some very sophisticated transactions with derivatives that nobody understands properly except those who have created them. What happens is that they are sold as absolutely riskless on the basis that people will get their capital back. They understand the message that they will get their money back — they probably will — but they do not understand very much else.

If IFSRA is to mean anything and if it is to have a long-term mission, it should explain to people who have small amounts of money that they are putting their money in great danger wherever they put it. The financial world is full of high-risk counterparties, as they are called, whereby one is not guaranteed any return at all. There is always a very large health warning on all these particular instruments. Some, of course, are less dangerous than others, Government bonds being an example. Even Irish Government bonds have little risk attached at present. People can certainly avail of them but it is important that they understand how they work and that they will only get back 3% and that the possibility of capital growth is virtually zero.

An Leas-Chathaoirleach: I ask the Senator to conclude. The Chair has been generous.

Mr. Ross: The Chair has been very generous. We are in an uncompetitive market. IFSRA and this Bill, which I am not opposing because it represents a small improvement, but not enough, are not tackling the fundamental problems of a cartel that is keeping prices high and consumers in trouble, ignorance on the part of consumers and the terribly flawed history of the banks. They

should address the need for protections for consumers and, above all, the need to send in squads to the corrupt financial institutions to prevent malpractices from recurring rather than penalising them afterwards.

Mr. Hanafin: The financial services industry in Ireland employs approximately 50,000 people and if our indigenous industry is the backbone of our economy, the financial services sector is the nervous system. Over the years, certainly throughout my lifetime, we have witnessed very significant changes to the financial services sector, many of which have been very positive. The development of the credit union movement, the development and evolution of the building society movement and the development of the banking movement and the dockside centre have all been positive.

Along with these changes there has been regulation, some of which was very necessary. Some time ago, we needed to regulate the APR because people needed to know the real rate of interest they were paying. Charges were hidden but existed nevertheless, including application fees, processing fees, etc. Institutions levied any fees they liked to obtain some money. We regulated and did a good job because it is now law that institutions must show all their charges. There are other ways in which we ensured the financial services sector was better regulated. We did away with redemption fees, which are criminal. Why should somebody have to pay a six month redemption fee because he is in a position to clear his mortgage early? There is no sound basis for it.

The evolution of the financial services sector has been positive, by and large. We should consider the building society movement in early 1960 and the credit union movement set up in Derry by John Hume, bearing in mind how many it has helped and employed, how many businesses it has started and how many holidays, cars and houses it has helped to provide. These developments have all been very positive.

This Bill represents a further enhancement for the consumer but there are still serious problems in the industry. Senator Ross alluded to malpractice associated with Faldor and AIB. It is very difficult to comprehend how those in privileged positions, who have so much and so many perks and of whom so much is expected, would have offshore accounts of the kind in question.

I wish to refer specifically to offshore accounts. There is considerable talk about and finger wagging at people holding offshore accounts. However, there is a major difference between a person claiming to live in Jersey, whom members of the bank staff knows lives down the road, asking to open an offshore account and a bank recommending that a customer should have an offshore account, which is what happened. People were actively sold offshore accounts by their banks and financial institutions.

We must address the issue of foreign exchange overcharging and repayment protection being sold to those holding mortgages, which were unnecessary charges on people. This is why we introduced the Central Bank and Financial Services Authority of Ireland Act 2003 and this Bill further enhances that Act. The Bill provides for the establishment of a financial services ombudsman, to deal with consumer complaints about financial institutions; the establishment of consumer and industry consultative panels to advise the regulatory authority; new reporting and auditing obligations for financial institutions; power for the regulatory authority to impose penalties on financial institutions for failure to comply with regulatory requirements; a right of appeal to the appeals tribunal over certain supervisory decisions of the authority; new regulatory requirements for money transmission and *bureaux de change* businesses; and miscellaneous other amendments to financial services legislation.

On 1 May 2003, the financial services regulator was formally established. The structure, which established the regulator, is virtually unique in Europe. As well as bringing the regulation of all financial services into a single organisation, it combines two distinguishing features in one organisation. The mandate puts consumer protection at the heart of regulation by integrating, defending and promoting the interests of consumers ensuring that financial institutions behave correctly in their dealings with consumers and ensuring the safety and soundness of the financial institutions. This enables a free flow of information to the benefit of all and an intelligent integrated approach that balances the different pressures. The alternative of megaphone policymaking between separate institutions has already been shown to be ineffective

On a deeper level, prudential supervision, often dismissed as protecting the rights of investors, is often misunderstood in that it safeguards the funds of depositors, investors and policyholders who are themselves consumers. This is well known to the clients and consumers of failed financial providers. The financial services regulator is independent in its function with its own independent board and management. It is also formally linked to the Central Bank through the now overarching Central Bank and Financial Services Authority of Ireland. This again enables a free flow of information between the prudential supervision arm of the financial services regulator and the financial stability arm of the Central Bank, which in turn links with Ireland's membership of the European system of central banks.

The approach to consumer protection is to: provide accessible information to the consumer, which encourages the proper functioning of a competitive market; monitor competition between providers and work closely with the Competition Authority; agree and enforce codes of conduct for providers; provide help to consumers with problems and complaints; and approve and monitor a range of bank charges. The approach to prudential supervision is to emphasise the responsibilities of boards of man-

[Mr. Hanafin.]

agement to uphold the principles which underpin safety and solvency in a fair market, for which probity and integrity of key personnel are prerequisites; and ensure the processes and systems adequately monitor and report risk and carry out regular reporting and on-site inspections.

The mandate also includes the regulation of Ireland's 438 credit unions, registered under the Credit Union Act 1997. The credit union movement is one of the most important parts of the national financial infrastructure and serves the needs of more than 2 million members. The financial services industry is a vital component of the Irish economy and of Irish society. It is therefore in all our interests for it to be competitive. As well as employing 50,000 people in banks, building societies and insurance companies and contributing significant tax revenue, it represents the central nervous system of the economy and is an important element of our international image and reputation.

The financial services industry must be accountable to the public and us, the elected representatives; be open transparent and accessible; benchmark itself continually against best international practice; and provide ongoing value for money.

Ms Tuffy: While I also broadly welcome the legislation, I was interested in what Senator Ross had to say, especially about the impact of the legislation and whether it has teeth. I agree it is good to have penalties. This compares with the Ombudsman who deals with local authority issues etc., in which penalties are generally not involved. In many ways that Ombudsman does not have teeth and has more to do with shaming of local authorities, hospitals etc. when they fail to treat their customers properly.

In light of what Senator Ross said about the fines representing a pittance, we need to ask whether the penalties are for show and would not really impact on the overall problem of financial institutions and their dealings with the public. We need legislation that makes the banks and other financial institutions afraid of the possible outcome of complaints to the Ombudsman.

These kinds of accountability measures for financial and other institutions are welcome and necessary. However, sometimes they represent a veil giving the appearance that something is being done when the overall problem still remains and is not addressed significantly. I have had considerable experience of the Ombudsman in my dealings with local authorities. While it is good that the Ombudsman exists, that office represents a drop in the ocean. Even though so much of the practice of local authorities in their dealings with customers is wrong, they carry on regardless. Having an Ombudsman to address local authority issues is not enough and I hope that it will not be the same with the ombudsman for financial institutions.

I support calls by Senator John Phelan and others that consumers should have a role on the panels. While amendments were tabled in the Dáil on this matter, as far as I know the Minister did not accept them. I hope he might reconsider these in the Seanad. As this legislation is for the benefit of consumers, it is very important that consumer interest plays a very significant role. Irish consumers do not question matters sufficiently often. However, they are far more likely to question dealings with other commercial interests than those with banks. Senator Ross mentioned cartels. Competition in financial services is not enough and will not stop the problem. Much more needs to be done to help consumers in their dealings with financial institutions.

Many consumers dealing with financial institutions do not question interest charges or analyse their statements and accept outrageous credit card charges etc. When dealing with financial institutions, consumers feel they lack knowledge and work from the premise that all the knowledge is on the side of the financial institutions and they do not go back to financial institutions if they have been overcharged. When we hear of scandals such as AIB overcharging, we recognise how little people question what happens. Having been self-employed for a period, I recognise that small businesses need protection in their dealings with financial institutions.

It is very important in this legislation to ensure people use the ombudsman. We must promote the office as much as possible and do much more to encourage questioning of the dealings of financial institutions with the public. I hope the Minister will give further consideration to the question of accountability to the Houses of the Oireachtas and make provisions whereby we can review the legislation to ensure it is working.

Minister of State at the Department of Communications, Marine and Natural Resources (Mr. J. Browne): I thank Senators for their comments on the ombudsman's council. The Minister's intention is to provide for a broad balance between representatives of the financial services industry and consumers. The chairman should have knowledge or experience of consumer issues. Given its central role, it is important that the council should have the confidence of consumers and the industry. The provisions on the appointment of its members are drafted accordingly. In this regard, Senators referred to the consultative panels in respect of which the Bill obliges the Minister to consult the Tánaiste and Minister for Enterprise, Trade and Employment. In the case of the industry panel, the Bill obliges the Minister to consult with the Taoiseach due to the close involvement of the Department of the Taoiseach with the international financial services sector. The Bill also obliges the Minister to consult industry and consumer representative groups.

Senator Ross raised the issues of adequacy and fairness and asked why a limit of €5 million was being set given that a fine of this amount might

not constitute sufficient punishment in some cases. Section 33AQ(4) provides that this amount can be increased by ministerial regulation if it is considered necessary. It should be borne in mind that the limit of €5 million applies only to the direct punishment inflicted on an institution which has contravened a provision of financial services legislation. The authority also has the power under Section 33AQ(3) to order a refund of a charge for the provision of financial services. Based on recent history, one can easily envisage circumstances in which the cost to an institution in refunding its customers in respect of a charge incorrectly imposed could considerably exceed €5 million.

A number of Senators raised the issue of relevance to the AIB. While Senators will appreciate that I do not wish to refer to the details of matters which are currently the subject of investigations, the following aspects of the Bill and last year's Act are relevant. First, if it is suspected that a financial institution has not been complying with its obligations under legislation, the regulator may under section 23 of the Bill require its directors to report on whether they have complied with their obligations over a specified period. In such cases, the directors will be obliged to acknowledge any instances of non-compliance and if they fail to do so the auditor will be obliged to contradict them in his or her report. The regulator could also require the directors to indicate what measures they have taken to ensure full compliance in the future.

Second, if the regulator suspects that a financial institution has breached a provision of financial services legislation or an IFSRA code or direction, the provisions of section 10 can be initiated leading to the imposition of an administrative penalty. The penalties are potentially very severe. A fine of up to €5 million may be imposed on an institution and up to €500,000 on a manager who may also be disqualified from employment in the financial services sector. The regulator may also publicly reprimand an institution and order it to refund any charges improperly imposed. Third, the Central Bank and Financial Services Authority of Ireland Act 2003 imposes clear obligations on the regulator to report to the Revenue Commissioners any suspicion that a financial institution is engaged in tax evasion. The Act removed all confidentiality constraints on the regulator other than those laid down in EU law.

The financial regulator is currently carrying out a review of codes of conduct and has recently completed a process of public consultation. The purpose of the review is to ensure a consumer-focused standard of protection for purchasers of financial products and services and put in place the same level of protection for consumers regardless of the type of financial services provider they choose. It is also sought to facilitate competition by ensuring a level playing field. I understand the authority will complete its review this year and subsequently publish revised codes of conduct. In finalising its review, the authority will doubtless consider the implications of the events to which different Senators referred this afternoon to ensure the new codes are sufficiently robust.

According to the consultative document, the Central Bank and Financial Services Authority of Ireland Bill proposes to provide the financial services regulator with the power to impose sanctions on firms which fail to comply with their regulatory obligations. When the regulator has been given that power in law it intends to ensure that regulated entities understand clearly what is expected of them in terms of compliance. The authority is entering new territory with powers to impose heavy administrative penalties on financial institutions for breaches of legislation and codes of conduct. Happily, the authority can easily amend its codes in light of new developments.

We must remember that the aim is to ensure that financial institutions put systems in place to treat their customers fairly. Further developing a consumer-focused compliance culture in financial institutions rather than penalising them for non-compliance represents a major challenge. It is one the authority and the majority of financial institutions have shown a willingness to meet head on.

I thank Senators for their contributions. I am sure the points they raised will be further considered on subsequent Stages.

Question put and agreed to.

Committee Stage ordered for Tuesday, 22 June 2004.

Sitting suspended at 3.50 p.m. and resumed at 5 p.m.

Housing (Stage Payments) Bill 2004: Second Stage.

Mr. Coghlan: I move: "That the Bill be now read a Second Time."

I welcome the Minister of State to the House for this important Bill which I am delighted to introduce. As the House is aware, it aims to address a serious loophole in the law which leaves consumers at a distinct disadvantage when purchasing houses. In particular it reduces their bargaining power, adds considerably to their costs and involves them spending up to 90% of the price of their house before getting possession of the property.

This Bill proposes to abolish the practice whereby developers demand stage payments from house purchasers for houses built on housing estate developments. Such houses are generally built to the specification, timescale and requirements of the developer and are not specifically constructed for individual purchasers. This Bill seeks to address the demanding of stage payments by the developer for such developments. It does not seek to outlaw the provision and contracts for stage payments where a single house is being built to the specification of a con-

[Mr. Coghlan.]

sumer, particularly for one-off housing. In such instances the practice of stage payments may be justified, given that the consumer is intimately involved in the design, construction specification and financing of the project. In that case the builder is constructing the house specifically for an identified named consumer and payments are made on certification by the client's architects.

The practice of stage payments being demanded for houses in housing developments occurs only in certain parts of the country. I am sure the Minister of State will agree that the country is a little too small to be lacking in uniformity. In most cases house purchasers pay a deposit of 10% on a new house and pay the balance when they occupy the premises. This is the normal practice throughout most of the country. However, in Cork, Limerick, Galway, Sligo and Mayo, purchasers of new houses in housing estates are required to make stage payments before and during the construction phase of such houses. There is also evidence that the practice is re-emerging in other areas and that must be of concern to the Minister of State and his Department.

This practice is wholly one-sided and entirely anti-consumer. It is entirely inequitable that a consumer ends up paying up to 90% of the price of a house before gaining possession of it. As a direct result of stage payments being demanded in such circumstances, purchasers end up paying their mortgage repayments well in advance of living in the house. This is entirely unfair. I am sure the Minister of State agrees.

The fact the consumer has paid over the bulk of the purchase price of the house before the house is completed inevitably lessens the consumer's bargaining power with the builder and provides little incentive for the builder to complete the project on time and to specification. It also involves transferring certain financial risk inherent in the stage payments system to the consumer in addition to imposing unwarranted costs on consumers. This is unreasonable and incompatible with the ability of many consumers to carry such one-sided impositions.

A recent report commissioned by the Law Society outlined the cost of stage payments to consumers. This report was prepared by an eminent firm of accountants, Peelo & Partners. It determined that stage payments cost consumers an e€tra 7,000 each. The majority of these additional costs come in the form of extra interest on obligatory payments drawn down before the consumer got possession of the house. In addition there were certification and survey costs that had to be met. When one considers the 25,000 new houses being built annually in the affected counties, the total cost to consumer€ is 75 million annually.

It is rare that we in this House can implement legislation that can have such a direct and immediate benefit for consumers. By accepting this Bill and allowing it to survive beyond Second Stage we can alleviate a considerable burden for house buyers. I appeal to the Minister of State. He can take heed of his own expert advice if the Bill needs amendment and we can live with that.

The reality of stage payments in these instances was brought home to me by an article in the *Irish Examiner* yesterday. None of us could fail to be moved by the plight of the two families who purchased houses in housing estates that were subject to stage payments. One woman purchased a house in October 2002 yet along with her boyfriend and six year old daughter is still living in a flat attached to her parents' house. The total house purchase price was €146,000 and the couple paid the builders €110,000 in three stages for the house in Castledermot in County Kildare. The mortgage payments are already costing the couple €500 per month, but the house is not ready for occupation. The purchaser believes the house will not be ready for another few months. In addition to the costs imposed on this couple, they are also unhappy with the specification of the house. The purchaser was quoted as saying: "The fireplace, windows and sockets are all in different places and the survey includes a six page list of defects". I cannot help thinking that if the builder had only received 10% of the purchase price as a normal deposit, the house would have been completed on time and to the specification required. Another ancillary aspect to the stage payments system is that the couple missed the deadline for the first-time buyer's grant because the house was not completed and occupied by 2 April this year. In this case, the stage payments system is likely to cost the couple nearly €10,800 at a time when their finances are already stretched.

Another woman purchased a house from the same developer and was due to move in in April 2003, several months before her wedding last September. However, her house is still not complete and her husband is now sleeping in the dining room of her parents house while she shares a room with her sisters. The couple's wedding presents are being stored by friends and relatives.

No Member of this House can be satisfied that a loophole in the law is causing such direct and avoidable hardship for consumers and house purchasers. There is no justification for continuing the system of stage payments. It is imposing additional cost, inconvenience and heartache for purchasers of houses around the country. I was encouraged that the Consumers' Association of Ireland is steadfastly against the practice and has told me, thorough its general secretary, that it supports this measure wholeheartedly. It is a one-sided practice that offers no benefit to consumers.

I do not accept the arguments advanced by some in the construction sector that abolishing the practice of demanding stage payments would result in dearer houses for consumers. Due to an absence of transparency, there is no evidence that house prices in counties where the practice persists are any cheaper than those in other parts of the country where it does not. This is a plain and

simple rip-off which consumers must continue to endure unless the practice is outlawed.

In recent weeks, as we have campaigned in the local and European elections and since the results were announced, there has been comment on the need to be responsive to consumer needs. I understand from today's newspapers that there was also comment at the Fianna Fáil parliamentary party meeting yesterday about the plight of first-time buyers and the need to be responsive to them. This measure, if adopted by the Government, could go a considerable distance towards helping first-time buyers. Allowing this system to persist for even another month will be to perpetuate a continued injustice against consumers.

From discussions with the Minister of State, I know his heart is in the right place on this issue and that he is in agreement with me, and I respect his interest in the subject. Therefore, I hope he is willing to accept this legislation. Some 25,000 house purchasers and their families will be interested in the response of the Minister of State, and they have long memories. The Government can amend this legislation in any way it sees fit. It has been discussed on the Order of Business in the House and there is broad agreement on it. Nobody is claiming a monopoly of wisdom on this issue and I see no divisions between us. I commend the Bill to the House.

Mr. B. Hayes: I commend the Bill to the House. The Minister of State, Deputy Noel Ahern, is an accomplished Minister with a distinguished record in his Department and considerable experience in trying to help first-time buyers take their first step on the housing ladder. I ask him to take this Bill on to Committee Stage. There is no need for the House to divide on this matter. There is unanimous support for this pro-consumer measure that my colleague, Senator Coghlan, has so eloquently outlined. I commend the Senator for his endeavours in bringing this matter to the attention of the House.

It is frequently asked in the House what can be done for first-time buyers and young couples faced with difficult financial situations due to the price of housing. The truth is that the best way to control house prices is to have more supply, to build more houses as a means of stemming house price inflation. If this has been the general principle since the first Bacon report, there must be another part of the deal to ensure accountability in property transactions and in the way in which the building industry deals with those who are trying to take their first step on the housing ladder. The problem, which is only a problem in Munster, flies in the face of that deal and in the face of fairness and ordinary consumer rights for people who are making the most important choice and biggest financial commitment of their lives. The Minister of State would be well advised to accept the Bill on Second Stage, move it on to Committee Stage and bring forward the amendments he sees fit.

It is important for this House that this measure should be debated here because we have time available above and beyond the theatre which takes place in the Dáil. I was a Member of the Dáil for some years and believe the time-wasting there is as never before. The Seanad does not have the same wastage of time because Members are less party political. Therefore, we have a real obligation to do serious work in areas such as this and to reform out-dated anti-consumer practices by means of Private Members' Bills and good legislation from the Government side. It would be to the credit of the Minister of State and the Government if, in the course of his reply, he stated the Government would accept the Bill at Second Stage and, as all Members could be part of a Committee Stage debate, the House would then deal with the Bill as expeditiously as possible.

If the Government accepts Second Stage, it could bring forward Committee Stage completely at its own discretion. It is possible that more work needs to be done on the Bill although the net point is clear, as is the practice we are trying to outlaw. The Government should be generous in its response. The Seanad has the time to deal with legislation which the Dáil does not have. Too often, Bills are not properly debated in the other House due to the time-wasting and theatre that regularly occurs.

I was privileged to be my party's spokesperson on housing for two and a half years in the last Dáil. At that time, I brought forward a Bill to outlaw the practice of gazumping in the housing market. I readily admit it is a difficult issue to resolve and that my puritanical legislative response at that time was probably not adequate. However, the effect of bringing forward a Private Members' Bill led the Government to invite the Law Reform Commission to report on the practice of gazumping in the housing market. When the commission reported, not only did it give its view on the issue of gazumping but also on a range of anti-consumer practices that exist in the building industry and housing market. As far as I am aware, stage payments is one of the issues it reported on.

This is long overdue. The Law Reform Commission report was published four years ago but the Government has not responded. We are giving the Government an opportunity, in the context of this debate, to deliver the kind of response the commission made clear should be delivered for first-time buyers. I ask the Government to respond because many eminent bodies, including the Law Reform Commission, have highlighted this practice as unacceptable. If it is unacceptable in Dublin, Donegal and Galway, why are young house buyers in Munster subject to this anti-consumer practice? If there is one housing market, there should be one law for property transactions covering the rights and obligations of the purchaser and the vendor in all of those circumstances. This bad practice has existed for too long

[Mr. B. Hayes.]
and it must be remedied through Senator Coghlan's Bill.

If I buy a new house on an estate in Dublin, I am asked to give 10% of the contract deposit up front, which is fair enough. The other 90% is given on completion, which is fair business practice. It is palpably unfair, however, to ask young people trying to buy a house in parts of the country to give the whole price of the house up front without even their living in it. That only adds to the cost of one of the most expensive decisions anyone will have to countenance in his or her life and it gives the builder additional money on which he earns interest.

This practice is unjust and I ask the Minister of State in his response to ensure we have one housing market that is well regulated, fair and accountable and that the Government will intervene in this minor area to ensure good consumer practice and to stand up to those people who are screwing young couples for thousands of euro they cannot afford at a time when they are trying to save money to buy a house. It would be a good day's work if this Bill was accepted.

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. N. Ahern): I welcome this opportunity to clarify the Government's thinking regarding stage payments. We share many of the concerns expressed by Senators Coghlan and Brian Hayes, particularly those relating to the needs of consumers.

This Government has made it a priority to tackle the housing market and, in particular, to support first-time buyers. We want to ensure that home purchasers benefit from increased supply and increased choice in the housing market, while also ensuring they are not disadvantaged by any practices in the market that might make it more difficult to access a home. In this regard, the Government's effort has been to increase housing supply to its present record levels.

The Bill proposed by Senator Coghlan seeks to ban the system of stage payments for newly constructed houses in housing estates. The Bill does not seek to interfere with stage payments in the case of one-off houses. We appreciate fully the intentions of the proposed Bill and I have discussed this matter in the past with Senator Coghlan and other Members from the south. I have a feel for what they are saying and I find it difficult to understand why the situation should be different in Cork from that in Dublin. The question, however, requires more rigorous examination before the House should be asked to enact legislation of this kind. The Government is prepared to have such an examination undertaken, taking into account the various views that have been presented.

In opposing the Bill today, I am not ruling out an appropriate legislative intervention, but further work needs to be carried out. While drafting the Housing (Miscellaneous Provisions) Act 2002, consideration was given to taking a legislative approach to ban stage payments in speculatively built new housing estates. Legal difficulties were identified with regard to putting in place appropriate legislation. These difficulties related to its possible effectiveness, its potential consequences on the housing market and difficulties regarding ensuring compliance and effective enforcement. There is a range of potential legal complexities relating to the use of definitions aimed at limiting the application of the proposed legislative approach. These also require further work to ensure that they have the effect intended.

The Senator will agree that it would be important to ensure that any legislative route should avoid such potential obstacles. However, before coming to a legally-based approach, we need to have a closer examination of the practice and its real effects. We all want to ensure we do not hinder or interfere with the supply of houses in any part of the country. I am not saying the Bill would do that but we cannot be sure how some people in the business will react.

While there are currently no legislative provisions governing stage payments, there is a voluntary code of practice regulating these. The Irish Home Builders Association, under the auspices of the Construction Industry Federation, operates a code of practice on stage payments. The code provides that the cumulative value of a stage payment should not exceed the value of works completed at that date and it sets out a schedule indicating appropriate levels of payment at different stages of construction. While this code is voluntary, it applies to approximately 80% of home builders and it includes a complaints procedure regarding members who breach the code.

I am aware that there is public concern about stage payments and that they can present some additional costs. In other cases, they may offer purchasers additional flexibilities. These are the issues we must explore further. For example, I understand that among the complaints which the IHBA has received generally, none of these related to stage payments since the introduction of the code in 1999. In addition, I understand that stage payments have not been an area of significant complaint to the Office of the Director of Consumer Affairs.

While I recognise the code of practice does not currently prohibit stage payments in the case of newly constructed houses in housing estates, it does demonstrate that measures such as a voluntary code can be a very effective tool to shape these matters without recourse to legal measures. Often it is better to secure agreement on all sides on codes of practice for these issues rather than to wave the legislative stick.

The question of stage payments was also considered in a High Court case regarding unfair contractual terms taken by the Office of the Director of Consumer Affairs and supported by my Department. While the court did not consider the propriety of stage payments, it ruled that stage payments that exceed the percentages stipu-

lated in the IHBA code of practice shall not apply.

The Law Society has released a report on stage payments that claims the system adds up to €7,000 to the price for a purchaser but the exact basis for this claim is not spelled out. Under stage payments, purchasers do not necessarily pay additional interest charges, although they may, of course, begin paying part of their mortgages earlier than would otherwise be the case. In particular, purchasers find themselves making stage payments before they are in a position to live in their new homes. That is a burden because some purchasers may also have to pay additional rental or other costs at the same time.

Concerns have also been expressed about the possible risks that the stage payments approach may carry for home buyers. While there are a couple of private schemes that can offer some insurance in the case of stage payments, it is not clear whether this would be sufficient in all cases.

In considering the question of stage payments, the overall impact on home buyers must be the central consideration. This impact occurs at a general market level where our aim is to ensure a healthy supply of quality housing. There is also an individual impact where the aim is to make quality housing as affordable as possible having regard to both purchase and transaction costs. We know it suits some people to make stage payments in one-off houses or where they are retaining a lot of flexibility in the design or individual fit out of their house. In some cases, it is suggested that the existence of stage payments has facilitated smaller developments with fixed price contracts to go ahead more quickly. This may be of particular relevance where smaller local builders are involved. We need to examine all of these aspects. The record house completions in recent years and the measures introduced to assist first-time purchasers speak for themselves. I assure the House that the Government did not achieve these successes to have the benefits undermined by unnecessary market practices. However, given the legal questions that arise, it is vital that we rigorously pursue all potential options to ensure the most effective action can be taken where required.

My Department has already had discussions with the construction sector and the Director of Consumer Affairs on this issue. These consultations are crucial in identifying the exact nature of the problems that may be experienced by consumers, considering all potential solutions and assessing the effectiveness of the current code of practice. The construction sector, which has benefited from the increased demand for housing in the current market, must share responsibility for the impact of its practices on the consumer, particularly if its construction colleagues in other parts of the country do not feel the need to adopt the same practices. In this regard, we consider this Bill is premature and should await the outcome of our exploration of all potential measures.

I assure the House that if the outcome of the rigorous review now proposed and the associated consultations demonstrate the need for legislative action, the Government will deliver. If it becomes clear that the legislative route is the only viable option, we will also take the opportunity to consult with other stakeholders, including the Law Society, to ensure the best legislative option is developed. Let there be no doubt the Government is concerned to ensure house buyers get the best deal and all necessary measures to protect consumers are taken.

I note Senator Brian Hayes said he would prefer if the House did not divide on the issue, a sentiment I share. It is difficult, if not impossible to understand why the system of buying a house in Dublin differs from that in Cork. I would like to carry out an in-depth examination of the system, pursue talks with the CIF or the Home Builders Association and follow through with the Director of Consumer Affairs. I am not convinced that legislation is the appropriate way to go. I would prefer to talk as an equal to members of the construction industry rather than under the threat of legislation. Waving a big stick too soon might not necessarily be the right way to go. It might rub some people up the wrong way.

Mr. O'Toole: That is what is happening to young people for the past ten years.

Mr. N. Ahern: It will take some months, perhaps to the end of the year, to conclude the examinations that are taking place.

Ms O'Meara: It will take years, if it is ever done.

Mr. N. Ahern: If the other routes to which I referred do not lead to potential success, I will support the legislation if we decide it is the only route to take. I suggest a period of approximately six months to see if the other routes are successful. I agree with the basic idea in the legislation. I find it difficult to disagree with what Senator Coghlan and others in the House to whom I spoke recently are trying to achieve. It is a case of how to reach a solution on applying the same system to buying a house in Dublin as in Cork. I hope we can proceed but I would not like to talk to people under the threat of legislation. If I do not make progress within approximately six months, I will consider the Senator's Bill.

Mr. O'Toole: I compliment my colleague, Senator Coghlan, on bringing forward the Bill. It is a tribute to him and a practical example of how politicians can remain in touch with the world around them and put their finger on the pulse of need. While I welcome the Minister of State to the House, I have great difficulty with his concluding remarks. I do not understand why he is worried about waving a big stick over builders who have been kicking youngsters around this country for the past ten years at least. These

[Mr. O'Toole.]

people have been scrimping and scraping to buy a house sometimes without even knowing the price of it. Sometimes the price of houses increase after people have had a verbal agreement to purchase them. Sometimes people must go to court to try to force agreement on the price of a house. This happened recently. I would go along with what the Minister of State said if he promised to introduce a *pro tem* regulation next week to stop this happening.

I fail to understand what the examination is about because it is a clear-cut issue. The Minister of State asked why buying a house in Dublin is different from buying a house in other parts of the country. The answer is very simple, it is the market. Government backbenchers have spoken about the party being pushed too far to the right, being market driven, and this is the outcome of it. It is wrong and unfair. As stated in the memorandum, it is fine for someone who owns a site and gets a builder to build. That is a different arrangement, because whatever happens, the person will always be behind with the payments, will at least own the site and the completed work, and the only difference will be to conclude the work.

This issue is not dealt with in the legislation. The legislation should protect people in the event of a builder going bust. Approximately three years ago, when the price of houses increased, many people could not afford to buy them. This happened to people in Drogheda and north Dublin. Builders went bust and people who had paid money for houses did not get their money back. The money was part of the assets of the company which went bust and people who had paid a deposit lost out. There is nothing to examine in this regard. The Minister of State and I know this is happening and he has not given a logical reason for not supporting the legislation. While he agrees with the proposals in the Bill, he will not support it. The answer is very simple: the Minister of State is afraid of his officials. I know of no one on the opposite side of the House who does not agree with the legislation. I suspect the Minister of State also agrees with it but he finds himself in an awkward position. As the Tánaiste said during the week, it is time people made decisions. They should say to Departments what they want and ensure it is delivered. The Minister of State should be saying this is good legislation and the Government parties will make it even better. If necessary he should say he will table 24,000 amendments on Committee Stage to improve the legislation beyond recognition, make it Government legislation and produce results. This is what needs to happen.

This is the type of thing young people talk about. Why are they always being buried by the big people in society? Why can big builders look down on small buyers, call the shots, insist they get the money and, if not, sell to the next person? This is not the only daft practice. I recently met people from the European Construction Federation. They told me they are amazed and secretly appalled at the practice in Ireland of people buying property off the plans. It is commonplace in Ireland. People are now coming here from Budapest, Prague and other places, putting charts up on the wall of a fancy hotel and Irish people are queuing up to give money for it. It does not happen anywhere else in the world. This is done in the context of the common law *caveat emptor* so there is no protection whatever. It is bad enough having to buy something without protection but having the dice loaded against one is completely unfair.

Most builders throughout the country share my views on this, for the reasons outlined by the Minister. Most builders who are building a couple of houses at a time expect to be treated reasonably and treat their clients reasonably. The people who are involved in the practices at issue in this Bill are the big boys, those who want to upgrade their helicopters to make life a little more comfortable for themselves.

This legislation could be an example of the Government reaching out to the little people, of Fianna Fáil finding its roots and reaching the people who did not know where Fianna Fáil was last week. These are the issues the party must tackle. Senator Coghlan placed the ball at the Minister's feet today and all he had to do was kick it into the net. However, he has done a David Beckham with it and kicked it wide. This is the type of thing that will be remembered.

The argument I am making is the preferred position of everybody on the Government side of the House but the Minister has employed the classic Fianna Fáil tactic of speaking in favour of the legislation but voting against it. That will not work. It is wrong and it does not become the Minister. He has said many positive things and has stood up to people on the housing issue. I have supported him in that. I have regularly told the House that there were more housing completions in this country last year, approximately 70,000 houses, than in all of Britain which, with a population 16 times larger than ours, only had 150,000 house completions. It is extraordinary. No other country in Europe has managed to supply as many houses as were supplied in this country last year and the Government can take credit for that.

However, the large builder-developers are sitting on land and "releasing" pieces of it into a confined market. They are interfering with supply and demand by ensuring that supply will never meet demand. This Bill is one way in which life could be made easier for the people who are struggling to put a roof over their heads and establish themselves in the community. They are already at the mercy of banks, non-mutual building societies and other financial institutions which are making big profits at the expense of people earning low salaries. This is our chance to do something for those people and it appears that the Government is walking away from it. Shame on the Minister.

Mr. Brady: I commend Senator Coghlan on the Bill. However, I have some concerns about it. We are regularly told that hard cases make bad law and Senator Coghlan outlined a particularly bad case. Nevertheless, what about the many people who have benefited from stage payments? I have not heard of even one person in Dublin who, over the last 20 years, has taken advantage of a stage payment.

Mr. Coghlan: It does not exist in Dublin.

Mr. Brady: I am sure people throughout the country have benefited from it.

Mr. B. Hayes: They are paying thousands of euro.

Mr. Brady: We have been warned umpteen times in both Houses of the Oireachtas about interfering with the market. If we do so, we are accused of trying to influence it.

Mr. O'Toole: This is consumer protection, not interfering with the market.

Mr. Brady: We cannot do it. In fairness to the Minister, it is a good idea to take the time to consider this. The Department is in discussions with the builders. There is also the attitude that every developer is bad. Every developer is not bad. There is 80% compliance with self regulation. As for the other 20%, like in every other industry there will always be cowboys.

Mr. O'Toole: That is like saying that 90% of people do not rob so we should not have any laws against robbery.

Mr. Brady: That is not the issue.

An Cathaoirleach: Senator Brady without interruption.

Mr. Brady: Somebody has to build and provide the houses; somebody has to develop the sites. We cannot simply sit back and claim they are all corrupt and so forth.

People have benefited from this scheme but questions can be asked about it. There appears to be a lack of statistics on this. How many cases have gone wrong and how many have succeeded? There is no information on this.

Mr. O'Toole: The Senator's party leader has said how difficult it is to get figures.

Mr. Brady: There are no details on the outcomes in these cases. Everybody agrees that we should assist first-time buyers. However, every house owner in the country was a first-time buyer. It has never been easy to buy a house. Ireland has a culture of home ownership which is probably unique. People in some countries in Europe find it hard to believe that the ideal in Irish culture is to own one's own home. In Holland, people rent for a lifetime.

Ms O'Meara: That is because it is secure.

Mr. Brady: Yes, but we have to deal with what is here. Look at the assistance that is given to first-time buyers. The first-time buyer's grant was abolished because it was not effective. We may have paid a price for that last weekend but being in Government means making hard decisions. That was a hard decision. There were internal arguments about it because some members supported the abolition while some opposed it. Ultimately, however, the decision was made to try to benefit first-time buyers in a better way. The annual ceiling on the amount of mortgage interest relief available was increased by more than 25% and there is reduced stamp duty for first-time buyers. These are practical ways of assisting people to buy their first houses.

We should examine the reasons for this so called housing crisis. It has always been difficult to buy a house. I took on three jobs so I could get a Housing Finance Agency loan to buy a house. At that time, after ten years I would have owed three times the amount I borrowed. That was the reality. It is not any easier now. Given the economic progress that has been made, people should not be surprised that there is a huge demand for new housing. There is a range of reasons for that, including the economy and demographics. People change jobs now the way people used to change cars. A young person might work in a job for one or two years and then move on.

Look at what this Government has done. It is not by chance that this country is in the ninth successive year of record house building. This country has a higher rate than the UK, despite the size of the population. It is due to the culture of home ownership so it is something we must do.

However, I agree with the Minister that measures such as this Bill must be considered carefully. I commend the Senator on introducing the Bill but if six months are required to deal with it in greater detail, particularly if there are legal difficulties, so be it. There are other options. As the Minister said, it might not require legislation. The legal issues that will be examined are complicated and must be sorted out.

Self regulation by the industry is a problem and will require further work. We regularly hear about the hard cases but it is not unlike car insurance for young people. When a young person is seeking car insurance, he or she must shop around for the best deal available. People have to be sure they are adequately insured. The same applies to housing. Six months of a delay will not change matters a great deal. The market is booming at present but even the Central Bank agrees that it is stabilising. Other options include examining the role of the Director of Consumer Affairs and the Irish Home Builders Association code of practice.

[Mr. Brady.]

I commend the Senator on the introduction of this Bill but I have some queries about it.

Ms O'Meara: I am taken aback by the attitudes of the Minister of State and Senator Brady to this simple but effective legislation. It attempts to address and overcome a difficult problem for a number of people, albeit probably a small number, which needs to be sorted. Instead, the Minister of Sate is telling us there is no problem, that everything is rosy in the garden of the building industry and we simply need to have talks with the builders and with the Director of Consumer Affairs. The Minister of State said we must avoid interference with the market through regulation of the building industry. Senator Brady spoke as if it is inevitable that customers are ripped off by a busy building industry. It is not inevitable. Our job it to protect people. The Minister of State and Senator Brady alluded to the proposition that one of the reasons the Government parties fared so badly in last week's local and European elections is because the Government is perceived as being on the side of big business, including builders. The small person is not only being ignored but is being kicked around and effectively screwed and expected to take the hit while many builders make large profits without being held to account.

My point is illustrated by an article in yesterday's *Irish Examiner*, which was referred to by Senator Coghlan. The article details the circumstances of some house buyers in County Kildare, who have been waiting more than 18 months to move into homes they bought through stage payments. One couple has paid €110,000 to a builder in three stages, out of a total price of €146,000. One result of this is that they have missed the first-time buyer's grant. The house is not near completion and the work that has been done does not correspond to the original plan that was agreed. The new house is unoccupied while the couple is forced to pay for rented accommodation as well as interest on the amount of the mortgage already drawn down. These people are being screwed into the ground. Despite the Minister of State's claim to the contrary, the builders' code of practice is not working. The article mentions a married couple who are sleeping on the dining room floor in the house of the woman's parents because this couple's home is nowhere near completion. This is not good enough but the Minister of State has learned nothing from last week's election results. His attitude is that there is no problem and that he will have a chat with the builders to sort it out.

The Consumers' Association of Ireland maintains that the stage payments scheme should be abolished. This short and concise Bill would do that. Its objective is to abolish the stage payment practice in housing schemes. It does not apply to one-off housing involving a small builder, an ideal situation which is used by many people. The Bill is concerned with housing schemes where the stage payment process is exploiting people significantly. A report on stage payments referred to in this newspaper article claims that those buying houses under the scheme are paying an extra €175 million in interest per year. The Law Society of Ireland reports that 25,000 houses were purchased under the stage payment scheme each year, although this figure does not indicate the breakdown in terms of one-off housing and housing schemes. Although the newspaper article deals with house buyers in County Kildare, this practice is clearly widespread in some parts of the country.

There is a problem and having a chat with the builders about their code of practice will not offer a solution. This code was introduced a number of years ago but the examples I have given are current. The Opposition pointed out several weeks ago that house prices have trebled in the last seven years; almost half of new families cannot afford to buy a house; council housing lists have doubled and now stand at over 60,000; and there are twice as many homes as existed in 1997. The affordable housing scheme has not yielded the necessary numbers and the 10,000 affordable houses promised by the Government after the 2002 general election have simply not been delivered. Four years after its publication, the report of the Commission on the Private Rented Residential Sector has not been implemented. The Minister of State and Senator Brady referred to the culture of home purchase in this country whereby people like to be owner-occupiers. This is not surprising considering the low level of security afforded to tenants in the rental sector. People can only attain security through purchasing their own homes, despite the fact that it is very expensive and puts them under extraordinary pressure. The abolition of the first-time buyer's grant has exacerbated this difficulty.

I support this simple and straight-forward legislation, which seeks to address the evident problem with regard to the stage payment process where it is implemented in housing schemes. One is forced to advise home buyers not to utilise the stage payment scheme when purchasing a home in a housing estate. Unfortunately, people often have no choice as such a house may be the only one they can afford and the builder is imposing a stage payment process. These people end up paying more interest than they should while simultaneously paying rent on other accommodation for a considerable length of time. I appeal to the Government to get real, to observe the difficult reality for home-purchasers and to start listening to people.

Mr. Minihan: I welcome and congratulate Senator Coghlan's initiative in introducing this Private Members' Bill. I have spoken to the Senator on this matter on a number of occasions outside the House and was surprised that the Bill was moved so quickly. I would have liked to have had further discussions prior to its introduction.

Having experienced stage payments in County Cork, where the scheme is normal practice, I have

a certain insight. The problem has been the abuse of stage payments. There have been many cases where stage payments have operated effectively to the benefit both of the consumer and the builder. My concern is that a knee-jerk reaction in changing a practice which has operated in parts of the country for over 40 years would suddenly result in us tweaking the housing market in a way which could damage or interrupt supply which is so important. Due to initiatives taken by the Minister, on which I compliment him, we have increased the supply of housing. I am a little concerned that enforcing this legislation at this time could interrupt this process, particularly for smaller builders. It is true that the big builder should be able to carry the cost, but if we are to limit major housing developments to large builders only, we are in a way being anti-competitive.

It is interesting to consider the variation in practices throughout this small country. These have grown up over the years. There are two particular types of stage payments. In one type, the title to the site is transferred on completion of the transaction; in the other, the title is transferred before completion. In my experience, and according to the people to whom I have spoken, the practice has been to transfer the title before completion of the transaction.

6 o'clock

The site purchase is a separate transaction and the site is transferred at a very early stage, thereby giving the house purchaser security of the site. A few years ago in Cork the builder of a large and expensive development went bust when the development was 75% built. As the code of practice, as outlined by the Minister, had been adhered to, the purchasers of the partially built houses, after a period of deliberation, were able to continue the development. That was the stage at which I became involved. I was concerned at the possibility that the rights of the consumers might not be protected, but after a wobbly period of a few weeks it was found that their rights were upheld according to the code of practice.

Senator Coghlan outlined the cases highlighted in yesterday's newspaper. Nobody can stand over cases such as these and I would like to hear an explanation from the developer responsible. Certainly, legislation should be enacted to protect the consumer in this regard. My concern, however, is that if we were to enact this Bill in a short timeframe, we would disrupt and interfere with the out-turn of houses in the areas in which the system of stage payments is practised. I am not concerned about big developers but about small and medium-sized builders who are building badly needed houses. I would like to emphasise that the code of practice as agreed is something that needs to be considered and developed further. I welcome the statement of the Minister of State that he intends to enter into discussions and consider the issue carefully.

In Cork, the financial institutions have set up a system under which mortgages are released at an early stage, thereby avoiding the bridging finance that is otherwise required, and paid in stages where the institutions are satisfied that the money advanced does not exceed the value of the work carried out. The financial institutions that have been supporting house purchasers in the areas where stage payments take place have embraced this.

The system also has legal implications. There is no doubt that the amount of legal work for a solicitor operating on behalf of a consumer who has entered into a contract involving stage payments is greater. There is less work involved if there is only a deposit stage and a completion stage. If a solicitor is working for a scaled fee based on the purchase price of a house, he must do more work for the same fee in the case of a client who is purchasing in staged payments. This means the legal profession will be interested in streamlining the system.

We have a responsibility to protect the consumer. I sincerely believe that is Senator Coghlan's aim and I commend that. Equally, however, we have a responsibility to ensure we do not take swift action that results in an interruption in the housing supply at this time. For that reason, I am disappointed that the Bill was introduced so quickly. I support the Minister of State's somewhat cautious approach. I acknowledge his statement that if he feels there is a need to enact legislation in this area he will do so. He has given a commitment to this effect. I urge the Minister to continue his talks with the Construction Industry Federation and those in the legal profession. Ms Carmel Foley, the Director of Consumer Affairs, has taken a court case in this regard, as a result of which there may be legal difficulties in trying to enact this legislation. For these reasons, we need much more discussion on this issue. We should support the Minister in his endeavours. I commend Senator Coghlan on his initiative. His motivation is right, but we need a little more time to discuss the issue further.

Mr. Moylan: I welcome the Minister of State. I acknowledge the importance of this issue and the amount of work Senator Coghlan has put into the Bill. The Senator has highlighted this issue for quite some time. There are problems with the system of stage payments and he has met people who are very much affected by them. The purpose of the Bill is to abolish the practice of stage payments for certain types of newly constructed properties, thereby reducing the cost to purchasers of such housing and eliminating the risks associated with such practices.

We all welcome the possibility of a reduction in cost to the consumer. However, I support the Minister of State's position. He has given us clearly to understand that the Government is carefully considering this issue and is prepared to take the contents of the Bill into account. In light of this the Bill may be premature as the issue will be dealt with later. Builders must initially buy land and pay for the house to be built. If we cannot continue with stage payments for builders the

[Mr. Moylan.]
contract price will be increased. That is the bottom line. Stage payments are essential for builders, who plan accordingly for meeting their commitments to their suppliers. Suppliers are paid in stage payments. If we were to abolish this system, we would create a bigger problem down the road.

The Law Society and the issue of contracts were mentioned earlier. Are we to open that door? In many cases contracts are involved but if we are to provide more and bigger contracts for the Law Society the consumer will end up paying more money to solicitors and others. I have not encountered the problems others have in bigger cities and towns. However, for the private single house builder in rural areas, stage payments have been the normal practice over the years. That was understood before the contractor went on site. Developers and many small builders have always insisted on a payment when the foundation was laid, at the roofing stage, or when second fixing started, and some moneys were always held over in case of a problem later. The other side of the coin is that on the construction side, builders and developers must have bonds in place and guarantee that houses will be completed to a particular standard. If that does not happen, the bond kicks in.

The practice of buying a house off the plans was mentioned. I know people who bought houses off the plans at a fixed price and paid a deposit and not much more, and by the time they were moving into their house some 12 or 18 months later the house was worth €50, €60 or €70 more than when they paid the initial deposit on it. Many of them told me that had they waited for the house to be completed, they would not have been in a position to buy it.

Stage payments must be examined in the context of the cost of housing and from the perspective of people who work on those schemes. In some cases they are big builders. However, there are also small contractors, bricklayers, plumbers, electricians. They cannot go very long without money. They must pay the people who are working for them. However, in order for developers to pay them, they must be paid in stages. What the Minister has outlined to us this evening should, therefore, be very acceptable.

Senator Coghlan and others have highlighted problems that can arise in certain parts of the country. However, it is often the case that when there is one bad experience in an area it is highlighted again and again on radio programmes such as Joe Duffy's "Liveline" on RTE in the same way as happens when someone experiences difficulty in getting a bed in a hospital. The thousands of good jobs that are completed and the thousands of people who are being well treated in our hospitals are never mentioned. We always tend to talk about the one problem that arises.

The Minister was very fair in recognising the points made by other people. He agreed to return to the House with solutions that will address the problems. Thousands of people are buying houses under this system and I have not met many who were disappointed. There are codes of practice in place on all sites with which builders must comply. They must have insurance and they must comply with the health and safety regulations and so on.

Senators on the other side of the House also referred to the housing lists. Affordable and social housing is coming on stream only now because much of the land in respect of which planning permission had been sought in the past did not become available until recently. It is only now that we are seeing the benefits of the affordable and social housing in our large towns, and substantial amounts of money have been made available to local authorities to provide other sites and other developments and that is very worthwhile.

The abolition of first time buyer's grant was also mentioned. However, in my county only a very small percentage of the houses being built at that time qualified because the inclusion of the garage meant they exceeded the limit for a grant.

As I have the ear of the Minister and his officials I would ask him to consider the reintroduction of what was in the past a very valuable reconstruction grant to help in carrying out essential repairs. Over the past ten years quite a number of people bought their houses in local authority housing estates. However, the windows and doors put into these houses when they were built were often of red deal or in some cases white deal and were of very poor quality. The Government should give consideration to the possibility of introducing a reconstruction grant for people in that category, many of whom have borrowed from banks and credit unions to put proper windows and doors in their houses. That needs to be considered because, although the tenant purchase scheme was a very good scheme that enabled people to buy their houses at reasonable cost, they are now under pressure in regard to providing adequate doors and windows.

I support the Minister and hope Senator Coghlan will take on board the Minister's undertaking to come back to the House if required or if the problem worsens.

Mr. U. Burke: I welcome the Minister. However, I regret that he has been so negative and is so obviously avoiding tackling the very real problem of house prices. I commend Senator Coghlan on bringing this Bill before the House, but it is regrettable that the Minister has avoided the real issue of the need to take immediate action. It is unbelievable that so many Senators on the other side of the House do not see what the system of stage payments means to people. It means that young couples must pay on average an additional €7,000 per annum for their house without getting access to it. I cannot understand how they can say it will not make any difference to wait six months more before deciding what to do and that nothing can be done because of the increasing red tape or because it would, perhaps,

cause an increase in price or a decline in supply. If ever I heard warped logic uttered in this House, I have heard it tonight.

It is regrettable that the first thing this Government did in its first days in office was to abolish the new house grant and interest subsidies for young buyers. Now it will not act because it might increase the price of houses and cause a decline in supply. I remind the Minister that the Department, through the local authority, demands that in turnkey projects stage payments are not allowed and that if there is an agreed price for a house, it is up to the builder to turn it out within the timescale agreed on contract. Why is it then that the Department will allow this to continue for individuals who buy houses directly from a builder in the circumstances referred to in Senator Coghlan's Bill? It is unbelievable that there are double standards once more. Has anybody within the Department investigated the contributory factor of constantly increasing house prices in increasing inflation? The increase in house prices is obviously a contributory factor in increasing inflation. That is going on daily. To say the responsibility for this rests more with the Consumers Association of Ireland than with the Minister is a clear indication that he is afraid to tackle the reality that is blatantly obvious to young people buying houses. The Minister claims he is prepared to listen and to take action. While he is delaying, rip-off Ireland is flourishing and he is not showing a willingness to tackle the problem. All the vested interests involved are unfortunately playing the same game. The Minister and his Department are not allowing it to happen through the local authorities. One instance that I remember quite clearly is the turnkey project, where the Minister allowed the builder to sell the houses directly to the local authority on his behalf so that they can be provided as social or affordable housing. That does not apply in this case, so why does he allow it to continue for individual house buyers?

The Minister claimed that €7,000 per annum is insignificant to individuals. Everyone has said that and that is what the report stated. The Minister cannot contradict that because there are several examples. For instance, the Law Society gave 15 examples of the situation where the average additional payments on the interest on loans was €7,000 and where the occupants had not yet even got access to their house. That is a major contributory factor to inflation in house prices. If we allow that to continue, it will show that there are double standards within the Department. On the Order of Business this morning, everyone was of the opinion that the Minister was going to accept this Bill while making necessary adjustments or changes to it. The word was out that it was the departmental officials that were holding firm on this issue. The Minister has responsibility for housing under this Government and if he allows the permanent government to dictate to him, then he is not listening. It was reiterated time and again yesterday after the Minister's own parliamentary party meeting that the Government was now going to listen. Yet the Minister has come here today and is not listening. He is prepared to allow this to continue and should ask himself serious questions on his determination to support young people who are trying to provide a home of their own. It does not matter if it is in Cork, Galway or wherever, the practice is widespread throughout the country. I am not too sure if it is here in Dublin, but if it is not, I am sure there is some other facility that can be used by builders to compensate them, although not as blatantly as this.

I plead with the Minister to introduce some mechanism whereby this practice can be eliminated from the whole process. If that is done even as an interim measure, many people can avail of it, including young couples who are in dire straits. If €175 million has to be paid in interest per annum by young people, it is time the Minister took notice. He cannot easily fob off the notion that we can wait six months or a year. That is displaying arrogance to the young people who are trying to make ends meet to buy a house for themselves. I support Senator Coghlan's Bill. If the Minister is not accepting this Bill, I ask him to indicate that he will put in place, in the interim, some other mechanism whereby the market will be rid of this particular scam. This cannot be allowed to continue.

Mr. Hanafin: While I welcome any Private Members' Bill, the Opposition always tells us to reflect on what is coming through, to be sure of what is there and to check and to double check. The one time we do it, they criticise us. It is only prudent that the Minister would wait. He has made it clear that he fully appreciates the intentions of the proposed Bill. He stated that it requires more rigorous examination and I accept his view.

The Bill proposed by Senator Coghlan seeks to ban the system of stage payments for certain types of newly constructed properties, namely newly constructed houses in housing estates. The Government considers that such a legislative approach may not provide the best method of achieving this goal and that all potential measures should be rigorously explored before opting for the legislative route. Draft provisions in the Housing (Miscellaneous Provisions) Act 2002 with a similar objective of abolishing staged payments were not proceeded with due to legal difficulties indicated by the Office of the Attorney General at that time. It is quite possible that some of the same legal difficulties may apply to this proposal. It is entirely appropriate that the Minister should be prudent and wait.

While there are currently no legislative provisions governing stage payments, a voluntary code of practice regulates these. The Irish Home Builders Association, under the auspices of the Construction Industry Federation, operates a code of practice on stage payments. While this code is voluntary, it demonstrates that such

[Mr. Hanafin.]

measures can be a very effective tool without recourse to legal measures. While it is often recognised that the practice of stage payments may have provided benefits to home buyers, for example through enabling them to enter into fixed price contracts at an early stage, concerns have also been expressed about the financial burden and risk which stage payments may carry for home buyers. The Government is concerned to ensure that house purchasers are not being disadvantaged by any practices that might make it more difficult to access a home. The Department is currently in discussions with the construction sector on this issue to identify the exact nature of any problems that may be experienced by the consumer, and to consider all potential solutions and to assess the effectiveness of the current code of practice. Therefore, it is right that the Government consider this Bill to be premature and that it is advisable to await the outcome of its exploration of all potential measures. If the outcome of this rigorous review identifies a need for legislative action, this Government will deliver.

The Government has a proud record in housing. Its housing policy is to enable every household to have available an affordable dwelling of good quality, suited to its needs, in a good environment and as far as possible, for the tenure of its choice. The unprecedented demand for housing, fuelled mainly by rapid economic growth and demographic changes, for which the Government can take great credit, has been the major driver of house price increases in recent years. The Government's strategy is to increase housing supply to meet demand and to improve affordability, particularly for first time buyers, and in this way to seek to bring moderation to house price increases. The Government will continue to focus on measures to maintain a high level of housing supply and the prospects for another good year in the housing sector are positive. In other words, supply is meeting demand.

There has been a record housing output. Measures implemented to boost supply include significant investment in infrastructure. In many cases that infrastructure was necessary because we had given planning permission but there was no benefit to the planning permission as given, as the infrastructure was not in place for the population that was to ensue. The measures pursued have improved planning capacity and promoted increased residential densities and these benefits are already obvious. The year 2003 was the ninth record year for house completions, with 68,819 units completed showing an increase in output of 19.3% on 2002.

Mr. U. Burke: How many local authority houses were built?

Mr. Hanafin: Ireland is now building, at the fastest rate in Europe, 17 houses per 1,000 of the population. This is an outstanding achievement. Our sizeable investment in the servicing of land has delivered more than five years supply of serviced residential land nationally and more than eight years supply in Dublin.

The Government has a proud record in the provision of social and affordable housing. The Government is concerned to ensure that the needs of low income groups and those with social and special housing needs are addressed. Almost €5.32 billion was spent in the first four years of the national development plan on social and affordable housing measures to meet the needs of low income groups and those with social and special housing needs, which is more than 10% ahead of the forecast for the period.

Mr. U. Burke: Does the Senator have the housing waiting lists?

Mr. Hanafin: The year 2003 saw the highest level of housing provision under the full range of social and affordable housing measures for over 15 years. The needs of more than 13,600 households were met, compared with almost 8,500 in 1998. The Government is putting in place five year action plans to address housing needs and priorities through new multi-annual programmes, with €1.8 billion being available in 2004. In addition to the shared ownership scheme, the 1999 local authority affordable housing programme and Part V affordable housing schemes, a new affordable housing initiative was introduced under Sustaining Progress last year to further increase the supply of affordable housing. Together with affordable housing coming through Part V arrangements, the sites so far identified have the potential to deliver 6,100 housing units. This answers the interruptions from Senator Burke.

Mr. U. Burke: How many people are on the housing lists?

Mr. Hanafin: The Government is also committed to supporting first-time buyers through a range of targeted measures. We have increased the annual ceiling on the amount of mortgage interest relief available to first-time buyers by more than 25% and the period in which mortgage interest relief is available from five years to seven years. We have introduced reduced stamp duty rates for first-time buyers and a higher stamp duty exemption limit for first-time buyers. We introduced the rent a room scheme, which can also help first-time buyers by allowing them to rent a room or rooms in their home and earn up to €7,620 per annum tax-free.

Mr. U. Burke: That is all they can afford now.

Mr. Hanafin: While the rate of house price increases is still problematic, this has moderated considerably since the late 1990s when price increases peaked at 40% per annum in 1998. A number of market commentators, including the Central Bank, are now predicting greater balance in the housing market over the next few years, as

increased supply has a dampening effect on house prices. Indicative data available to the Department shows that first-time buyers continue to have a significant presence in the housing market. This is supported by the CSO quarterly national household survey for the third quarter of 2003, which indicates that almost 50% of house purchasers since 1996 were first-time buyers.

I welcome the introduction of a Private Members' Bill. I commend the Minister of State on avoiding a knee-jerk reaction, something for which the Opposition often criticises the Government. The Minister of State is prudent and is waiting until everything is in order before he brings a Bill before the House.

Mr. U. Burke: There was a great urgency about things yesterday.

Dr. Henry: I commend Senator Coghlan for bringing this Bill before the House. Like other Senators, I had hoped there would be all-party agreement on it.

This is a serious issue. I have constituents all over the country, many of them young people who are trying to buy houses and set up homes. That housing has become so expensive is very hard on people who are at the early part of their careers and are trying to establish themselves in jobs and frequently trying to establish themselves in marriage. The additional amounts of money young people must pay out before they have anywhere to live is a terrible stress on them. Some people are fortunate enough to be able to live with their families but others are trying to pay rent on one premises while making repayments on a house which they cannot inhabit. The stress of this financial burden is huge.

The fact that people sometimes cannot occupy houses when they are finished and have to let them and go back to live with their parents has also been brought to my attention. It is not a joke to say there is no longer such a thing as the empty nest because people are moving back in with their parents. Sometimes this is because of really serious financial problems and the fact that young people cannot meet repayments. Loss of a job, even for a short time, makes the situation even worse.

I am glad Senator Hanafin mentioned two things about which I have been concerned. One is infrastructure. These houses are sometimes built in places where little or no infrastructure has been put in place and some of the estates on which the houses have been built are very badly finished.

The other matter mentioned by Senator Hanafin is the Department's social and affordable housing action plans for 2004 to 2008. I welcome them warmly because they are intended to give transitional housing in some cases and long-term housing in others to people who have been homeless or who need support so that they can live independently. I hope to see better progress than has happened to date. Simon recently communicated with me to tell me that three houses were built for such people in Galway last year but it looks as though only one will be built this year. With that sort of speed of building we are not going to make a great deal of progress in housing homeless people. I ask the Minister of State to ensure these are included in all his plans because the lack of housing is a terrible loss of human rights.

I often walk down Baggot Street, which must have more homeless people on it than many parts of Dublin. As I came in this morning I saw several people sleeping rough in the street. To see that in Dublin 4 and Dublin 2 on this Bloomsday was not a great advertisement for the city where Leopold Bloom made his peregrinations.

Ms O'Rourke: I welcome the Minister of State and the introduction of Senator Coghlan's Bill. Senator Coghlan has had the Bill available for some time and talked to us about it on several occasions. The House was keen that he put forward a Private Members' Bill on this matter. I also thank the Minister for his support for the Bill. He has said he approves of the thrust of the Bill while the legalities, technicalities and wording of the legislation need to be altered to make it a proper Bill. That is not to denigrate Senator Coghlan's Bill but simply to make it kosher, so to speak.

I have always been a supporter of Private Members' Bills, whether in this House or in the Dáil. We have not been very good about accommodating Private Members' Bills here. When I was a member of the last Government I took three Private Members' Bills, even though the Civil Service, and I do not wish to fault the officials who are present in the Chamber this evening, were totally against them and did not want me to take them. One Bill died by the wayside and never reappeared, one we were able to bring forward in its proper technicalities and one went to a committee. Why should enterprise in individual Members, be they Senators or Deputies, be stifled? It is a fine spirit. Members should not sit back, take every Government Bill and nod like the figure on a collection box.

On the Order of Business this morning, Senators Coghlan and Brian Hayes asked what would happen to this Bill this evening. I went to see the Minister for the Environment, Heritage and Local Government and he told me, as the Minister of State has also said, that he has no difficulty in agreeing with the thrust of the Bill but that its legislative provisions and language, of which drafting people are enormously protective, would need to be tightened.

Following that meeting, the Minister of State, Deputy Noel Ahern, has expressed his support for the thrust of the Bill and has said that he would be prepared to bring forward an amended Bill in approximately six months.

That is quite a step forward. I am well aware of housing needs. A significant amount of my time is spent dealing with matters such as social, council and private housing, construction of housing, planning matters and local authority loans. I am sure all Members deal with such matters in their constituencies.

This issue is of particular concern in rural areas where people are anxious to obtain a house in

[Ms O'Rourke.]

which they can live and of which they can be proud. It is an issue which takes up a great deal of rural Members' time. Members in Dublin may also deal with such matters. It is certainly a major part of constituency work in rural areas.

The Bill, as proposed, is filled with goodwill and is a measure which would ease people's burden, something which we all wish to do. The issue of bridging finance also arises. However, I do not think banks charge a great deal on such loans anymore. I remember when interest rates reached as high as 17% and when bridging finance was expensive. However, bridging finance is now taken out in smaller amounts, an issue which could also be examined in a more favourable light in order to ease people's burden. Housing remains an enormous issue in a country which prides itself on one's ability to purchase one's own home.

I fully respect Senator Coghlan's diligence in bringing forth this Bill. It is a matter for him if he wishes to press it; it is his right as an Opposition Senator to do so. I would harry and harass the particular Minister as regards his commitment in this regard so that by the end of the year we will have a proper Bill before the House. I am not suggesting the Senator's Bill is not proper but the new one will be kosher in legislative terms. I have advised the Senator of the Minister's commitment in this regard but it is for him to decide whether to press it. The Minister of State's speech was positive. Why should a good measure not be implemented? I hope Senator Coghlan will make his mark on the Seanad, as he has done in various other ways, when this Bill returns to the House with the harp upon it albeit under the flagship of Government.

I ask the Opposition to accept my commitment while fully respecting its position.

Dr. Mansergh: I had not intended contributing to the debate. I came to the House to listen to what was being said on this important issue. In the spirit of the Leader, I compliment Senator Coghlan on producing this legislation. It is a remarkable tribute to the Leader that she effectively went to the Minister for the Environment, Heritage and Local Government, Deputy Cullen, to act as advocate for it. That is in the best tradition of the cross-party spirit which reigns on many subjects in this House.

It is clear the stage payment system as applied to housing estates is an abuse. It takes advantage of young couples wishing to acquire their first home. In principle, it is wrong. I accept that in certain instances such as one-off housing, to which the Minister of State referred, there may be a case for a limited operation of this system. However, there is no case for it in medium or large private housing developments. The principle of the Bill is good.

Senator Hanafin referred at length to the Government's housing achievements which are strong in terms of supply. However, there is no doubt that a serious problem exists regarding the provision of affordable housing which is accessible to young people. I have no doubt that was an issue in the recent local election, especially in the greater Dublin area. I am told it was an issue in certain constituencies where local authorities failed to engage in the provision of social and affordable housing. It cannot be to the satisfaction of anybody in this House, especially those who belong to a party which has been in Government for some time, that it is so difficult for young people to purchase a home. Most things are easier for today's generation than they were for us and our parents. However, that is, unfortunately, not necessarily the case when it comes to acquiring a home. It is becoming more difficult to do so. Young people are frustrated because they are unable to follow in their parents' footsteps.

Sufficiently well-off people may be able to assist their children and so on. It ought to be the case that people can access the housing market without having to commute 60, 80 or 100 miles to do so. The current situation is deeply unsatisfactory. I am not interested in discussing this issue in a party political broadcast manner. It is an issue to which we have not yet found a solution. I was present at some of the previous Government's deliberations and know the issue of housing policy was given a great deal of priority. The three Bacon reports dealt with this issue which is of great concern and worry to the Taoiseach and Government. Increasing supply to the maximum extent is part of the answer. There may not be immediate results; one may only see them when one has sustained supply over a number of years much the same as happened in terms of unemployment in the late 1980s and 1990s when following a period of sustained growth, the jobs came. Perhaps that is what will happen with housing.

A social problem exists to which there are no easy or obvious answers. If there were, we would, between us, have adopted them. I encourage the Minister to continue to monitor the issue and to try to bring social and affordable housing more into focus. There is no point in entering into a war or confrontation with builders and developers which may result in supply drying up. In housing, as in health, we run the risk sometimes of listening more to the suppliers than those who need and buy houses. We must sharpen our focus on policy in the years ahead. There is much unfinished business in this area. I hope that in the next two or three years we will make substantial inroads into dealing with the problem and that young people will not feel so aggrieved that at a time of plenty and better opportunities and income they are unable to access affordable houses.

While Senator Coghlan's Bill deals only with a small part of the problem, he is to be commended for bringing it forward. Its principle is good and should be adopted with, perhaps, some exceptions and nuances. Obviously, it is the prerogative of the Government to incorporate the principle into some broader legislation. I do not have a difficulty with that. I compliment Senator Coghlan on bringing the matter to debate.

Mr. P. Burke: I agree completely with Senator Mansergh that we have not yet found the solution

to this problem. For the Government to vote down this Bill is certainly not the answer. I compliment Senator Coghlan on introducing this legislation. It is a basis on which to work and represents the way forward. If the Government accepts Second Stage, the Minister can, in his own time, make any amendments he regards as necessary to make the Bill better. There is no point in kicking it to touch and we all know the problems that exist. There is absolutely no doubt that stage payments are anti-consumer. There is a raft of problems concerning housing estates and anybody who has served on a local authority and any public representative will know quite well the problems that have been created in housing estates in recent years in regard to the taking over of roads, footpaths, public lighting and green areas. These problems have concerned local authorities greatly and have generated rows between developers, builders, local authority members and local authority staff.

Ultimately, the person who has borrowed the money to buy a house is the one paying the piper all the time and ends up with all the problems. We all know of people who have borrowed heavily and of cases where there are two people working to provide for their family. Such people have huge mortgages and problems in that the councils have not taken over the housing estates and the developers have not completed the work. All these problems have persisted and will continue.

As Senator Coghlan stated, further problems will arise for those who have made stage payments who have not yet moved into the houses for which they are paying mortgages of 60% or 70%. The quicker we can put something together for those people, the better. As Senator Coghlan pointed out, this is not the case in Dublin. However, it is the case in many parts of the country where people are living in rented accommodation and making stage payments. There is a huge burden on them. In most cases, both parents or partners have to work.

The Bill Senator Coghlan has brought before the House represents a good basis on which to work. The Minister of State knows quite well that he can introduce amendments to improve it, if necessary, and that there is no need to kick it to touch or vote it down.

Mr. Coghlan: I thank everyone who has contributed to this worthwhile debate. I have been overwhelmed by——

Ms O'Rourke: By kindness.

Mr. Coghlan: ——by kindness and support.

Mr. B. Hayes: And the stage payments.

Mr. Coghlan: I totally accept the Minister of State's bona fides because, as I said at the outset, he and I have had several discussions in recent months since this Bill was placed on the Order Paper. I believe we have seen eye to eye. He agrees with me in principle and I welcome 99% of what he said on the matter——

Ms O'Rourke: But——

Mr. Coghlan: I will not come to the "but" because I hope there will not be one. We live in hope. Is that not what we should do? The Leader is always cheerful about this matter and I thank her for her personal support from the outset. She seems to have done a lot — fair dues to her because I did not request it — and she has been very kind in her efforts. I appreciate everything she has said this evening.

However, I have a few small corrections to make. My good friend Senator Moylan should note that this Bill does not apply to once-off housing, but only to housing developments. Senator Minihan referred to speed but the Bill has been on the Order Paper for a long time. We were running out of time this week and maybe the call was not totally mine. However, we cannot get bogged down in this issue. The Senator is well aware that all his colleagues in Cork are concerned about it. Several of them have discussed it with me and offer considerable support, as the Minister of State is well aware. I do not claim any monopoly of wisdom whatsoever in this matter but I know that some of the Minister of State's colleagues from Cork discussed it with him before the Bill was introduced.

Senator Henry referred to various problems and Senator Mansergh referred to unfinished business. We all know about this and it is taken as read. It is great that everyone is so supportive and in agreement. I accept there may be some legal matters to be considered, as the Minister of State mentioned, but this is just a one-page Bill. Would Albert Reynolds not be proud of this single sheet? The explanatory memorandum is slightly longer. I think the Minister of State and his officials agree totally with the explanatory memorandum. I accept that some fine tuning is required regarding the Bill's drafting and I appeal to the Minister of State to let the Bill survive Second Stage — he probably feels this is a good idea in his own heart. Let us not divide the House on it and take the six months to which he has referred to make the necessary amendments. As Senator Brian Hayes said, the entire House will get involved on Committee Stage. The Government has the numbers and, in any event, perhaps the Opposition would not disagree with the amendments the Minister of State would introduce. Why have a separate measure when we have the nucleus and the seed corn in this measure?

We are all pro-consumer. The Minister of State is concerned about the punter, as he would say himself, and that is why he is in the other House with a huge vote behind him. I am sure he concurs totally——

Mr. B. Hayes: He had it behind him.

Mr. Coghlan: The Minister of State knows what I am saying. There are not many differences between us over this matter. I am sure we all agree it is totally inequitable and unacceptable that a small country such as ours should carry out the practice we have been discussing. It is not car-

[Mr. Coghlan.]

ried out in Dublin but only in pockets in the rest of the country, particularly Cork and Limerick. I am not saying a word against builders and developers and I accept the cowboys in this business comprise a tiny minority, but it is totally inequitable and unjust that citizens, particularly newly married couples, should be subjected to the practice.

I accept that hard cases make bad law. However, all of us, including the Minister of State's colleagues from Cork and Limerick, and with the exception of those of us from Dublin, have listened to countless cases in this regard in our clinics. We have noted that some citizens pay no more than 10%, at most, as a deposit on their houses and not another bob until they have possession of them, thus ensuring that the snag lists etc., are attended to before they pay the balance, while others, over a period of a year or more, will have paid up to 90%. They are crucified with interest and have to obtain bridging finance in some instances. They are in considerable difficulty and are at the mercy of the builder-developer in regard to the snag list. It is not proper that this discrepancy obtains. As I said earlier, the country is too small for this lack of uniformity and I am sure the Minister of State feels this himself.

I accept what the Minister of State said. If the experts say the Bill contains some drafting errors, let us take some time to deal with them before Committee Stage. Nobody will disagree with that. Second Stage should be passed so the Bill can be considered during the summer and autumn. Based on what everyone has said, we are all agreed on the principle on which there is no division in this House. The necessary time can be taken to fine tune whatever amendments the Minister of State believes appropriate.

The Minister of State said the Government wants to ensure house buyers get the best deal and that all necessary measures to protect consumers should be taken, as we all agree. We want the best deal for consumers and this is patently not the best deal. I believe the Minister of State and all Members opposite agree.

7 o'clock

We should not divide on this issue on which we are *ad idem*. I accept the Minister's good nature and all he has said to me in our brief discussions in recent months. I make a final appeal not to divide the House. We should let the Bill survive and take as many months as the Minister of State needs. He can then return with the amendments the experts recommend and they will be accepted so the Bill can be passed unanimously.

Question put.

The Seanad divided: Tá, 11; Níl, 23.

Tá

Bradford, Paul.	Hayes, Brian.
Browne, Fergal.	Henry, Mary.
Burke, Paddy.	McHugh, Joe.
Burke, Ulick.	O'Toole, Joe.
Coghlan, Paul.	Phelan, John.
Finucane, Michael.	

Níl

Bohan, Eddie.	MacSharry, Marc.
Brady, Cyprian.	Mansergh, Martin.
Callanan, Peter.	Minihan, John.
Cox, Margaret.	Morrissey, Tom.
Daly, Brendan.	Moylan, Pat.
Dooley, Timmy.	Ó Murchú, Labhrás.
Feeney, Geraldine.	O'Rourke, Mary.
Fitzgerald, Liam.	Ormonde, Ann.
Glynn, Camillus.	Phelan, Kieran.
Hanafin, John.	Walsh, Jim.
Kenneally, Brendan.	Wilson, Diarmuid.
Lydon, Donal J.	

Tellers: Tá, Senators U. Burke and Coghlan; Níl, Senators Minihan and Moylan.

Question declared defeated.

An Cathaoirleach: When it is proposed to sit again?

Ms O'Rourke: Next Tuesday, 22 June, at 2.30 p.m.

The Seanad adjourned at 7.15 p.m. until 2.30 p.m. on Tuesday, 22 June 2004.