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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Tuesday, 26 *April* 2005.

SEANAD ÉIREANN

Dé Máirt, 26 *Aibreán* 2005.
Tuesday, 26 *April* 2005.

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Paidir.
Prayer.

Business of Seanad.

An Cathaoirleach: I have received notice from Senator Ulick Burke that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

> The need for the Minister for Health and Children to outline when she intends to restore the school dental service to the national schools in the Ballinasloe area, County Galway.

I have also received notice from Senator O'Meara on the following matter:

> The need for the Minister for Justice, Equality and Law Reform to reconsider his refusal to award funding to Templemore community services under the Equal Opportunities Childcare Programme for the development of a community school in Templemore, County Tipperary.

I have also received notice from Senator Bannon on the following matter:

> The need for the Minister for Justice, Equality and Law Reform to clarify the position on funding for Ballynacarriga community and child care services, County Westmeath.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, Investment Funds, Companies and Miscellaneous Provisions Bill 2005 — Committee and Remaining Stages, to be taken on the conclusion of the Order of Business and to conclude not later than 5.30 p.m.; No. 2, statements on competitiveness and consumer protection (resumed) to be taken on the conclusion of No. 1 or at 5.30 p.m. if No. 1 has not concluded earlier, and to conclude not later than 7 p.m., with the contributions of spokespersons not to exceed 15 minutes and those of all other Senators not to exceed ten minutes. A spokesperson for one of the groups in the House did not speak during the previous debate. The Minister is to be called upon to reply not later than five minutes before the conclusion of statements.

Mr. B. Hayes: In recent months the Government has adopted the Opposition's position on the early release of the killers of Detective Garda Jerry McCabe. I very much welcome the Government's change of heart and the fact that all of us now sing from the one hymn sheet. Can the Leader discover from the Minister for Justice, Equality and Law Reform the reason those responsible for the killing of Detective Garda McCabe in Adare in 1996 remain as special status prisoners within the Irish Prison Service? It is an issue which must be addressed, not least because it was raised by the Garda Representative Association over the past 24 hours. The prisoners in question are common criminals who should be treated no differently to the other criminals within the prison system. It would be utterly wrong for their special status to continue to be observed and I ask the Leader to raise the matter with the Minister for Justice, Equality and Law Reform. If time is available over the course of the next two or three days, I would like the Minister to issue a short statement in the House outlining his rationale for the continuation of special category prisoner status.

Last week, a very useful debate took place from the perspective of all sides on the Fine Gael Private Members' motion on the Government's plans for a second terminal at Dublin Airport, to which 20 of the 60 Members contributed. Can the Leader raise with the Minister for Transport the very serious matter which subsequently arose? When the Minister rose to speak in the House, he made — and I do not say this disrespectfully — a meaningless speech on the motion but the next day in County Wicklow opened his heart to the world and spoke of his preference for the governance of the new terminal.

Mr. Norris: Hear, hear.

Mr. B. Hayes: What is the point in raising very important matters in the House if Ministers decide not to reveal their positions to Members but to describe them instead to the media within 24 hours? It is a disgrace to Parliament and unfair to the Leader who has made time available. While not all Ministers are offenders, the Minister for Transport, Deputy Cullen, is very much offside on this issue.

Mr. Ross: Hear, hear.

Mr. B. Hayes: A serious debate took place last Wednesday to which one third of the membership of the House contributed over the course of two hours. The Minister, however, decided not to explain his or the Taoiseach's position to Members but to tell the media the next day. It is

[Mr. B. Hayes.]
a serious disrespect to this House and to Parliament which we must address.

Mr. Ross: I thoroughly agree with what Senator Brian Hayes said. What we were treated to by the Minister, Deputy Cullen, last week was insulting. I do not say it with the same feeling of respect as Senator Hayes. I have no respect whatsoever for Ministers who come to the House and behave the way Deputy Cullen did last week, followed by members of his party who waffled in exactly the same way. There is very little point in us having motions of this kind if Ministers are going to come in, stonewall and then go off and say something else the next day.

Perhaps the Leader of the House could reply specifically to this point. If we are going to have these ritual pieces of nonsense in this House of going through the motions of discussing such subjects, could we have a question and answer session? When a Minister comes to the House, can we have questions and answers about specific matters instead of motions? Would the Leader consider that, because as Senator Brian Hayes said——

An Cathaoirleach: That would require a change in Standing Orders.

Mr. Ross: Correct. That is exactly what I would like.

Mr. Norris: Hear, hear.

Mr. Ross: I thank the Cathaoirleach for helping me on that point. As Senator Brian Hayes rightly said, this came out in a question and answer session after the Irish Management Institute conference. The Minister did not say it in his speech. He waffled in his speech at the conference in the same way as he did here but when he was asked questions by Olivia O'Leary he spouted it all out. The whole plan came out while we were insulted the previous night. If necessary, let us have Ministers come to the House to answer questions like they do in the Dáil. Let us hold them accountable to Parliament instead of having them come in here to insult us. In effect, that debate was a waste of time. The contributions from this side of the House were very good but it was a complete waste of time from that side of the House. It treated the House with total disdain.

Perhaps the Leader can assist in the other matter I wish to raise. We do not appear to have a very full timetable this week. There is a story in today's newspapers about higher education which Senator Henry rightly raised here some time ago but it has now gone further. It appears the Government has responded to the report of the OECD on higher education in a way which may be anti-university. That may not be the case but it sounds as if it has resonances of being anti-university. I do not mean just Dublin University, I mean all universities and institutes of technology.

I would like to have a full debate on what is being called an innovation fund for which universities would have to compete. This may be a very good idea but it would be a major culture shock for the universities of Ireland if they have to engage in such a process. It is no coincidence and I suppose it is motivated by the report which says that Irish universities are falling out of the top international league.

I do not know whether the solution is to set up a fund and announce that all universities will have to compete for it but this House could usefully debate the issue. The Minister for Education and Science should come to the House. She is a thoroughly conscientious Minister who is putting a great deal of work into this issue. She should come to the House for a question and answer session about university education. We will get a great deal more out of her than we did from the Minister for Transport last week.

Mr. Leyden: I wish to raise the unprecedented level of the current price of diesel and petrol. It has reached an all-time record of 105.9 cent——

Mr. U. Burke: Senator Leyden failed on that one himself.

Dr. Mansergh: It depends on where one buys it.

Mr. Leyden: ——for a litre of diesel or petrol. It would be appropriate as we have a discussion later on competitiveness and consumer protection.

Mr. U. Burke: It is the name and shame campaign again. Senator Leyden balked.

An Cathaoirleach: Order, please.

Mr. Leyden: The Fine Gael Party's rip-off Ireland campaign has not been a great success either.

Will the Leader invite the Minister for Finance to the House to discuss the price of fuel because it has a direct effect on the economy, especially with inflation and the strength of the euro *vis-à-vis* the dollar, which is the price in which oil is quoted. It would be worthwhile to go through in detail the real cost of diesel and petrol. If we must name and shame I will resume that campaign again. I thank the senators for their encouragement. The Fine Gael Party copied my idea. Of course, it is good at plagiarism.

Mr. B. Hayes: Next time we will charge the Senator.

Mr. U. Burke: The Senator should put up the names.

An Cathaoirleach: I apologise to Senator Tuffy. I should not have called Senator Leyden before her.

Ms Tuffy: I wish to raise the plans by the Minister for Education and Science to link the funding of third level colleges to a college's performance and whether it cuts back on costs. I would like to hear more on these plans before I judge them. More important than placement in university leagues is a college's function to educate students, and it is our performance in that area over the years that has given rise to our successful economy.

A survey was carried out by the Department of Health and Children on the health of students. The results showed a high incidence of students binge drinking. Other areas covered included whether students practised unsafe sex. It is important that the Minister for Education and Science backs colleges in providing support to students to help them with worries and mental health problems so they do not resort to binge-drinking. I would also like to debate this topic with the Minister for Justice, Equality and Law Reform.

In a related story, newspapers have reported that a member of the task force on alcohol has drawn attention to the fact that the Government has not implemented the task force's reports, something for which the Minister for Justice, Equality and Law Reform has significant responsibility. A task force member also questioned the Minister's plans for café bars, stating it is in contradiction with the recommendations of the task force. There are high levels of binge drinking in the country and it seems they are even higher among students. We would like this matter debated in the House with the Minister.

Mr. Glynn: The issue of suicide does not give me pleasure, nor will it any Member of this House or society. At the coroner's court in Tullamore yesterday, out of the seven deaths considered by the county coroner, five were suicide. It brings into focus the adverse impact this has on society. Few families have not been touched in some way by the cold fingers of suicide.

Are people aware that help is available? The former Midlands Health Board had a helpline which still exists and whose slogan is "Don't Get Down, Get Help". It is a sensitive area and even though everything else has been tried and this House has debated the issue before, we should do so again to establish what we, as parliamentarians, can do to help. Perhaps some positive suggestions might emanate from that debate.

The spiking of drinks is now common practice. Early last Sunday afternoon, I saw a young man take his pint of beer off the counter and into the toilet. This indicates the serious level to which this goes on. I ask the Minister for Justice, Equality and Law Reform, who has been very proactive in other areas, to come to this House to debate this issue; perhaps some positive suggestions might be made to help stamp out this serious practice.

Mr. Coghlan: Does the Leader agree that café style bars are in direct conflict with one of the key recommendations of the task force on alcohol, as referred to by Senator Tuffy? The task force recommends a restriction on the number of outlets selling alcohol but the introduction of café style bars will make alcohol more readily available. I note that a very eminent member of the legal profession has stated these new licences are not intended to increase the availability of alcohol, but rather to limit its use. Many people will have difficulty with that logic. Will more marshmallows be available to disguise alcohol in coffee or tea?

We already have a proliferation of wine bars and we have the traditional pub. Most traditional pubs and other licensed premises serve food, tea and coffee. I do not think we need this new development and I believe the matter is a serious one. This is not suited to the Irish psyche, custom and tradition and it is unnecessary. Food and hot beverages are already widely available in licensed premises. I ask the Leader to give her opinion on the matter.

Dr. Mansergh: It is not often that those involved in bulk production want to move their product by rail. However, the beet growers in the midlands wish to do so because it is cost effective. There is a public interest in this. I urge the Minister for Transport to bring this matter to a positive conclusion because I do not wish to be held up behind slow moving, heavy beet lorries heading south from Portlaoise.

On the subject of environmentally friendly transport, I regret there are objections to the modification of DART stations, which will ensure that weekend travel will be impossible for several more months. This is another instance of An Taisce attempting to win friends and influence people. I urge An Taisce to examine other ways of making its views known.

I had an opportunity on Friday last to use a form of transport one hears about every week in this House, the western rail corridor. I travelled on the beginning of that corridor, from Limerick to Ennis. The service is excellent and well used, with eight trains per day in each direction. I would like to send this message to the Minister for Transport — are you right there, Martin, are you right?

Mr. B. Hayes: The Minister will not give the Senator an answer.

Mr. Norris: I wish to comment briefly on two matters raised by Senator Ross. The Senator is correct and with the help of the Committee on Procedure and Privileges, we could have a question and answer session with a Minister instead of a speech. I have protested on many occasions when Ministers talk for a lot longer than any individual contributor in the House would be permitted to — Ministers are not stopped and can talk for three quarters of an hour if they so wish —

[Mr. Norris.]
and that is taken out of the debating time allocated for the Members of the House.

An Cathaoirleach: The Senator must agree that I often notify Ministers their time is up and they conclude at that point. I do not let the Ministers off all of the time.

Mr. Norris: I accept that.

An Cathaoirleach: I know that Ministers may be given some latitude at times.

Mr. Norris: I am very glad to say that the Cathaoirleach is definitely a latitudinarian in these matters, but it is wrong and unfair. It would be much more efficient to have a question and answer session. Often Ministers simply read a prepared script, which may or may not address the main issues of the motion, or may seek politically to evade them. A script cannot possibly address the arguments raised during the debate in the House. A question and answer session would be much better. I agree with Senator Ross about the need for a debate. We have a good Minister for Education and Science, Deputy Hanafin. She could give the House more information about this innovation fund. Universities have been undergoing a painful restructuring and I hope this will assist them in being more efficient. However, it is important that we are in the top league. Only one of our universities — I am glad it is Trinity — is in the top 100 listed. We should ensure that as many as possible get into this listing. As regards the innovation fund, what concerns me is that it may be principally directed at science. I hate to think the humanities might be left out.

There are two issues I should like to raise. I ask the Leader to either organise a debate or express the House's concern to the Minister for Justice, Equality and Law Reform about the possible closure of the Coolock Law Centre. It is a very important adjunct to society in this marginalised area. I was listening to Mr. Turlough O'Donnell, the head of this operation, on the radio. It struck me that he was so complimentary about Government, lawyers and the manner in which barristers come in and help, for nothing. It is unusual to hear somebody being so positive. However, while he spoke about how wonderful the Department had been in supporting the law centre, the funding was frozen in 2002.

An Cathaoirleach: Has the Senator another issue to raise?

Mr. Norris: Yes, I have and will move on to that very quickly. I hope the Leader will raise these concerns with the Minister. Will she give some indication when No. 19, motion 6 on the Order Paper in the names of Senators Norris, Ross and Henry will be raised? It is about overseas development aid. The Leader and I were at a very interesting meeting of the Joint Committee on Foreign Affairs. Once again, and perhaps the Cathaoirleach's good office could be used in this matter, it clashed with the Order of Business in the Seanad.

The Minister of State at the Department of Foreign Affairs, Deputy Conor Lenihan, was giving a report to the meeting on overseas development aid. Both the Leader and I had to leave. We could only listen to part of the Minister of State's speech. He raised the question of the 0.7% of GNP target, but did not give a commitment in terms of a year. The Government had given a clear commitment as regards 2007. Now it wants to move the target to 2012. I am informed, however, that the mathematics indicate clearly that unless something radical is done it will be 2028 by the time this target is reached. It is important to have a debate in this House, so we may tease the matter out and get clear facts from the Minister of State.

Dr. M. Hayes: I support Senator Glynn's request for a debate on suicide, and also Senator Ross's call for a debate on higher education. These are both very pressing issues. It was reported in the newspapers last week, that the effect of a European directive was that retail butchers could only sell direct to the so-called "end users". As such, they were precluded from selling to chefs and restaurants. If that is true, it is not the way good chefs do their business and it could have a deleterious effect on some very good small specialised butcher shops, which might be delivered into the hands of the multiples.

Will the Leader ask the Minister of State with responsibility for Europe whether this is a wrong interpretation of the directive or if it is something that has slipped through, unnoticed, in the scrutiny process? Does it tell us anything about how we might improve our scrutiny and can anything be done about it?

Mr. Cummins: I would like to refer, again, to the task force on alcohol. The House had a very good debate on that subject last year. The task force made a number of recommendations, practically none of which have been acted upon as yet. There have been murmurings from the Minister for Justice, Equality and Law Reform about other items which are contrary to the task force's recommendations. When will these recommendations be acted upon, or is the Government going to treat them seriously?

I support my colleague, Senator Brian Hayes, as regards his comments on the special status being given to the killers of Detective Garda Jerry McCabe. We must remember that photographs were taken with prominent Sinn Féin members in the prison and this gravely offended the McCabe family and members of the Garda Síochána. We need quick answers on why this special status continues to apply to these people.

3 o'clock

Mr. Moylan: I support Senator Glynn's comments on the suicide problem in Ireland. Of the seven deaths considered in Tullamore yesterday at the coroner's court, five were caused by suicide. It is very worrying and many people are concerned. Helplines and freefone numbers must be given greater publicity. Some slippage may have occurred following the new changes in the Health Service Executive in the midlands. There should be a greater concentration on local advertising of these helpline numbers.

I also support Senator Mansergh's comments on the difficulties facing beet growers in the midlands. There has been much talk of developing a depot in Portlaoise, but CIE should quickly disclose the real cost of such a move if it is to happen. There are rumours that a new rail line will have to be put in place for the development at Mallow. If that is the case, there is no use in fooling farmers. It should be spelt out clearly and quickly.

Dr. Henry: I support the call by Senator Ross for a debate on the Minister's hopes for the universities. I hope that the institutes of technology are addressed. The newspaper reports of the Minister's comments do not seem to cover these institutes, but the recent OECD report stated that they had a very important role to play in education.

We debated problems in accident and emergency departments last week when the Tánaiste was in the House. I supported her views that all vacant beds in hospitals throughout the country should be used to ease the situation in the acute hospitals. The Minister for Defence recently stated that St. Bricin's hospital could be used. Some people have apparently had a look at the hospital and have decided that it is not fit for public patients. Why, therefore, is it fit for Defence Forces personnel? What is the matter with it?

Senators: Hear, hear.

Dr. Henry: Surely Defence Forces personnel are entitled to the best of treatment. Approximately €1 million was spent recently on rewiring the hospital and on improving wheelchair access. What is going on? Can the Minister for Defence explain to us why this money was spent, yet the place is apparently unsuitable for the treatment of patients?

Mr. U. Burke: I support the call made by Senator Ross for a debate on third level education. If this funding is to lead to increased competition within the colleges for funds, it will only highlight the current inadequacy of funding by the Government. It will also lead to the demise of certain faculties in the universities, especially the humanities. There is, without doubt, a concentrated effort by industry and by the Government towards research and development in the universities. This has been very successful in bringing in funds from outside sources. However, some academics have claimed that it has been at the expense of arts and the humanities. The Minister should move quickly to rectify any adverse situation that could arise from such a development. The OECD indicated clearly a 10% cutback in funding for current expenditure within the university sector. The Minister should take steps to ensure that those funds are restored to adequately resource the colleges. She should then let the element of competition come into play for the extra funding, rather than use this funding method which promotes survival of the fittest and to hell with the rest. I am very concerned about the Minister's statement on the matter.

Ms O'Rourke: Senator Brian Hayes raised the matter of the killers of Detective Garda Jerry McCabe. He asked now that both Government and Opposition are singing from the one hymn sheet, why the killers have special status prerogatives. He wants me to ask the Minister for Justice, Equality and Law Reform why they are in that special category. I will do that because it jarred with me when I heard it on the radio, as I am sure it did with those who read about it in the newspapers.

The Senator also raised the issue of the Minister for Transport's speech in this House last week on Private Members Business, on the Fine Gael motion. I listened on and off to the debate in my office. In the main I have found that the Ministers who come here do a good job and give us good value in what they have to say. Senator Brian Hayes said the speech was meaningless. I presume, as he made the speech, that it was meaningful to the Minister. He would, perhaps, say — I do not hold with this so Senators should not all jump until they have heard me out — that he was going to the Irish Management Institute the following week and that, perhaps, he had his speech prepared with all his points laid out. I do not hold with that. If he had, the Oireachtas Chamber was the place to unveil this, and that is the point made by the Senator.

Senator Ross took up the matter with regard to the second terminal at Dublin Airport. He said the Minister's speech showed disrespect to this House and that he was waffling. He asked why there should not be a question and answer session on these occasions. The Cathaoirleach stated that would require the Committee on Procedure and Privileges to change Standing Orders. I think that would be interesting. However, I remind Senator Ross that Dáil Reform proposals suggested that Ministers should answer on the hoof, so to speak, on issues of the day in the House. I thought this a great idea because I would love answering on the hoof, but apparently the suggestion did not find favour in the Cabinet ranks.

The suggestion seems fair, but the procedure would need to be well managed so that it would not dissolve into a shambles. It is one of the points suggested with regard to Seanad reform. We think it should, perhaps, be discussed at the

[Ms O'Rourke.]

next meeting of the Committee on Procedure and Privileges. This does not mean the Ministers will accept it if, and when, it is activated.

Mr. Ross: They will have to.

Ms O'Rourke: Senator Ross also seeks a debate on the Government's response to the OECD report on higher education. The Minister for Education and Science, Deputy Hanafin, was here on 16 February and again on 22 March to discuss the report. I accept this was prior to the issuing of this statement. When the Minister came here she stayed for the length of the debate.

With regard to the idea she has put forward for an innovation fund for which the universities will bid, I hope, taking up Senator Ulick Burke's point, the humanities and the arts are not put to one side. I firmly believe that we cannot measure education input or output according to how institutions bid for money. The arts, humanities and associated disciplines should be predominant in all institutions. However, the innovation fund is a long time coming. The provost of Trinity College, which nominates the Senator, has made great strides in the face of a great deal of opposition to changes to disciplines and mergers of schools and so on. Perhaps he knew this was coming. If an institution demonstrates it has done such work, it can bang the door louder on the ground of innovation. A balance must be maintained in the debate because university education should have general education as its basis, above all else, before one branches off into a particular sphere.

Senator Leyden called on the Minister for Finance to come to the House for a debate on the price of oil. He is on his hobby horse again about prices.

Senator Tuffy referred to the Minister for Education and Science's plans to link funding of third level institutions to performance and their impact on students and I would share her views on that issue. She also raised the health survey, binge drinking and café bars. The issue of café bars is being raised as if it is a new idea. However, we had a long debate on the issue when the intoxicating liquor legislation was before the House. I disagree with the eminent member of the task force who stated more drink outlets are not suitable. As Senator Coghlan said, tea, coffee and food are available in most public houses.

However, café bars involve a different approach to drinking. They will have a different ambience and it will not be case of people drinking pint after pint after pint. It is a more muted way of approaching our favourite pastime and that will be for the better. Café bars sound ideal. Somebody said they are not suitable for Ireland but I do not know why not. One does not have to sit outside and I agree that might not be suitable given our climate. However, the idea behind it is good. When men, in particular, enter bars, they tend to adopt the approach of, "My goodness, how many pints can I have before I have to leave this premises?" whereas one could have a glass of wine, a cup of coffee and a meaningful conversation in a café bar. Would it not be wonderful to have meaningful conversation?

Senator Glynn raised the issue of suicide. I took on board the comments of the County Offaly coroner yesterday and we will seek to have a debate on this issue. The Senator also sought a debate on the spiking of drinks but I do not know how we could debate that issue.

Mr. Glynn: It is a major problem.

Ms O'Rourke: I know but how could one fill two hours on the spiking of drinks? I will try to schedule a drink-related debate and include that issue.

Senator Coghlan does not agree with café bars, as he prefers the full blooded variety. However, the legislation on them was fully debated.

Senator Mansergh raised the issue of transporting bulk products by rail. I agree it would be better than heavy trucks transporting products such as beet in front of cars on the road. He stated there are objectors to the modifications of the southside DART stations. Imagine objecting to something which will do so much good if the service operates better. He also referred to the western rail corridor and the rail link between Limerick and Ennis. He invoked Percy French, which was very good.

Senator Norris sought a questions and answers session on the plans for performance-related funding of third level institutions and wondered about the innovation fund. He raised the closure of the Coolock community law centre. I put a question mark beside this when I took my note on it because I do not know how correct is the Senator's assumption. He also referred to No. 19, motion 6 regarding overseas development aid. We will seek to have the Minister attend. He was at this afternoon's meeting of the Joint Committee on Foreign Affairs, and it is too bad they persist in holding the meeting at a time when we can stay only for five minutes. It had promised to be quite a lively debate, but Senator Norris and I had to leave.

Senator Maurice Hayes called for a debate on suicide, echoing Senator Glynn, and higher education. He also raised the EU directive that butchers may send only to the end consumer, that is, the purchaser, and asked if this is being interpreted correctly. Senator Cummins spoke on the task force recommendations on drink. I believe the recommendations were misunderstood.

The issue of according special status to the killers of Garda Jerry McCabe was also raised. I will raise that directly with the Minister for Justice, Equality and Law Reform, Deputy McDowell.

Senator Moylan called for a debate on suicide and what the county coroner said in Offaly yesterday. He echoed what Senator Mansergh had said about beet growers and traffic on the roads. Senator Henry said that the institutes of technology were not mentioned in the piece we saw

in the newspaper. However, I am sure we saw only a snippet of the whole. Some excellent work is being done; yesterday the Tánaiste was in Athlone at the new nursing school, which is a credit and absolutely wonderful. The Senator also asked why, if Defence Forces personnel were fit to lie in the beds in St. Bricin's, others could not do the same; I do not understand that either — perhaps it simply needs a lick of paint.

Senator Ulick Burke raised the demise of arts and the humanities. I would not like to see the innovation fund set everyone scrambling to be the best class in town, with what might be seen as the more workaday disciplines of the arts and humanities not followed up. Perhaps the Minister should intervene.

Order of Business agreed to.

Investment Funds, Companies and Miscellaneous Provisions Bill 2005: Committee and Remaining Stages.

Section 1 agreed to.

SECTION 2.

An Cathaoirleach: Amendments Nos. 28, 29 and 31 are related to amendment No. 1 and may be discussed together.

Government amendment No. 1:

In page 8, line 1, after "Act" to insert "(other than *sections 75* and *76*)".

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Ahern): I said on Second Stage that we would propose some amendments to the Industrial and Provident Societies Acts in connection with financial limits on co-operative societies. Under the Industrial and Provident Societies Acts of 1893 to 1978, there are statutory limits on the maximum amount a member of a society may have by way of interest in the shares of a society and on the amounts that may be distributed by way of testamentary nomination or on intestacy. The limits were last adjusted in 1985 and 1990, and the co-operative movement has requested that they be increased.

The effect of amendment No. 28, if accepted, will be to increase the limits concerned to the amount stated in the text of the amendments. In the case of shares, that is €150,000, or 1% of the total assets of a society. In the case of nominations and intestacy, it is €15,000 and €10,000, respectively.

In the course of preparing the financial limits, it became evident that the power of the Minister to alter the statutory limits by means of regulations had been inadvertently removed by the Credit Union Act 1997 and that the regulations then in place had lapsed. The purpose of amendment No. 29 is to validate the financial limits provided in the regulations. The limits will be replaced by the new limits provided in amendment No. 28, which, by virtue of amendment No. 1, will immediately come into operation on the enactment of this legislation. The amendments necessitate a change in the Long Title of the Bill, which is reflected by the contents of amendment No. 31. I commend the amendments to the House.

Mr. McDowell: I do not quite understand the impact of the amendment on section 2. Perhaps the Minister of State can indulge me by telling me what is "an industrial and provident society". What are the essential characteristics of such a society? Frankly, I do not really know.

Mr. M. Ahern: Co-operative societies and credit unions, for example, are covered under the Industrial and Provident Societies Acts. The amendment will increase the value of the shares that a member of a society may have to €150,000 or 1% of the society's total assets. An inadvertent omission in the Credit Union Act 1997 meant that an increase in one's shareholdings, testamentary nominations or intestacy transfers was not allowed. The amendments under discussion will correct that mistake.

Mr. McDowell: Am I right to state that credit unions and building societies will not be affected by the amendments?

Mr. M. Ahern: Yes.

Mr. McDowell: What type of institution will be affected?

Mr. M. Ahern: Co-operative societies will be affected.

Mr. McDowell: Okay.

Mr. Coghlan: I welcome the Minister of State's amendments, which are being introduced as an enabling measure for co-operative societies. I am happy to welcome the changes, which have been approved by the Irish Co-operative Organisation Society.

Mr. Leyden: I welcome the Minister of State to the House. I commend him and his staff on the amendments they have proposed. The co-operative movement, particularly the Irish Co-operative Organisation Society, has been seeking an increase in the current limits on co-operative shares for some time. The proposed new limits should meet the development needs of the co-operative movement for some years to come. I welcome the Minister of State's proposals.

Amendment agreed to.

Section 2, as amended, agreed to.

Sections 3 to 5, inclusive, agreed to.

SECTION 6.

Question proposed: "That section 6 stand part of the Bill."

Mr. McDowell: Will the Minister of State clarify the references in section 6(2) to "a management company" and "a custodian"? I understand that a custodian will act as a trustee, in effect, but I am not quite clear about it. I would like to know how the respective roles of a management company and a custodian are defined. I understand that a custodian will act as a trustee, but I do not understand it fully. Perhaps the Minister of State will help me in that regard.

Mr. M. Ahern: Section 6(2) clarifies the meaning of references to "a management company" and "a custodian". Any reference to "a management company" is construed as a reference to the person in whom the powers of management relating to property of the fund are invested. Any reference to "a custodian" relates to a person in whom such property is entrusted for safe keeping.

Mr. McDowell: The custodian acts as a trustee.

Mr. M. Ahern: Yes.

Mr. McDowell: Ownership is vested in the trustee but the management company basically deals with it.

Mr. M. Ahern: Yes.

Mr. McDowell: I do not understand the wording of sections 6(3) and 6(4). It seems to apply section 18 of the UCITS regulations to the authorisation or non-authorisation of the non-UCITS CCFs being established in this Act. Is that a reasonable interpretation? It seems that the amendment is plucking out one section of the other regulations and applying it to this legislation. It seems to be a strange way of dealing with the issue.

Mr. M. Ahern: Under section 18 we have regulations 63, 77-85 and 98-105 already in operation under the UCITS regulations. They will now apply under the non-UCITS regulations. That is what section 18(3) does. Subsection 4 provides for the relevant provision of the UCITS regulations as applied by section 18 of this part to be jointly construed with this Bill. The set regulations already in place for UCITS will apply also in the case of non-UCITS regulations.

Mr. McDowell: They are the ones listed under section 18 of this Bill.

Mr. M. Ahern: Yes.

Question put and agreed to.

SECTION 7.

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

Mr. McDowell: This is a fundamental section which sets up the non-UCITS CCFs. It defines it in an entirely negative fashion. It says that a non-UCITS CCF is one that is not a UCITS CCF, or one that is not a partnership or a trust. For those of us who are not experts in these matters it is quite difficult to imagine what it is. It is an investment fund vehicle that does not fall into any of the other categories.

Perhaps the Minister of State can give us some background on the usual structure for investment funds in this country. I understand that UCITS are a minority sport and are often dealt with as unit trusts or as partnerships. In his response perhaps the Minister of State can provide the House with an outline of the structure of a non-UCITS CCF. I understand it is not a company but a contractual management system of some kind. As it is defined solely in a negative way one does not get an idea of what the Minister of State envisages.

Mr. M. Ahern: I take the Senator's point. Subsection 2 contains an express statement that non-UCITS CCFs will not constitute a partnership under the Partnership Act 1890 or a unit trust under the Unit Trust Act 1990. This ensures that it will not be subject to the provisions of those Acts. Unless an express statement was included to this effect, the CCF vehicle might otherwise be subject to the provision of the Partnership Act 1890 or the Unit Trust Act 1990. Perhaps I could come back to this topic if the Senator wants a more detailed definition.

Mr. McDowell: I do, because this is important. The whole purpose of this part of the Bill is to set up the concept of a non-UCITS CCF.

Mr. M. Ahern: It is only a fund. It is a common contractual fund. As the Senator has pointed out it is not under the company legislation or the Partnership Act. It is a separate entity.

Mr. McDowell: The whole point of it is that it is to be regulated in a different way. This House has difficulty in that it allows Irish Financial Services Regulatory Authority to set out the form of regulation that will apply. We assume this will be a lighter form of regulation than the regulations that apply to UCITS. We are not told the expected form of the CCFs nor what the regulations will be because that is an enabling power that is given to the bank. It is very difficult to get an idea of what is intended.

Mr. M. Ahern: I will rehearse paragraphs from my Second Stage speech which deal with the different vehicles of investment as this may clarify matters for the Senator. In 1989 EC regulations on undertakings for collective investments on

transferable securities, UCITS, were signed into law, transposing the relevant EU directive which makes provision for collective investment vehicles capable of being sold throughout the European Union. In the ensuing years a number of other types of fund vehicles were legislated for and existing law was updated so that today the funds industry can offer its products through entities established under the Unit Trust Act 1990, Part 13 of the Companies Act 1990, the Investment Limited Partnership Act 1994 or the 2003 EU regulations on undertakings for collective investment in transferable securities which include four amending regulations.

With a view to providing the greatest flexibility to the funds industry while at the same time keeping appropriate controls in place, the Bill makes a number of changes to the existing law. It provides for the introduction of a new type of investment fund vehicle which is the non-UCITS common contractual fund. It also provides for the introduction of cross investment and segregated liability.

Mr. McDowell: I do not intend to pursue this matter but I do not have a mental picture. It is not a trust, partnership or company and is not covered by UCITS regulations. It is not a political party. I do not know what it is.

Mr. M. Ahern: It is an investment fund.

Mr. McDowell: Managed by a management company and maintained by a trust.

Mr. M. Ahern: As a solicitor, the Senator will be aware of what happens when a contract is signed.

Mr. McDowell: That is the cause of my trouble.

Question put and agreed to.

Section 8 agreed to.

SECTION 9.

An Cathaoirleach: Amendments Nos. 2 and 3 are related, and may be discussed together by agreement.

Government amendment No. 2:

In page 11, lines 33 to 35, to delete subsection (2) and substitute the following new subsections:

"(2) The Bank shall ensure that the register is kept at a specified office of the Bank and is made available for inspection by members of the public during the ordinary business hours of that office.

(3) If the register is kept in a form that is not immediately legible, the Bank shall make available a version of it that is in legible form.

(4) A person who, during the ordinary business hours of the Bank, attends the office at which the Bank keeps the register is entitled—

(*a*) to inspect the register without charge, and

(*b*) on payment of a fee (if any) prescribed under section 33K (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942, for the purposes of this subsection, to obtain a copy of any entry in the register.".

Mr. M. Ahern: Section 9 is based on section 3 of the Unit Trust Act 1990. However, section 3 of that Act was amended by the Central Bank and Financial Services Authority of Ireland Act 2003, Part 14 of Schedule 1 and consequential amendments to other Acts. Amendment No. 2 is framed to reflect the changes made by the 2003 Act, which were not taken into account when the Bill was drafted. The import of the provision is self-explanatory.

Amendment agreed to.

Government amendment No. 3:

In page 11, lines 44 to 48 and in page 12, lines 1 to 5, to delete subsections (5), (6) and (7) and substitute the following new subsections:

"(5) The Bank shall include in its annual report to the Minister of Finance under section 6I (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942 a report on the performance of its functions under this Part.

(6) The Bank shall give to the Minister a copy of the report on the performance of its functions under this Part referred to in *subsection (5)*.".

This is a related amendment concerning the reporting arrangements for the Central Bank under this part. The current draft provides for reporting to the Minister for Enterprise, Trade and Employment. However, under the Unit Trust Act 1990 the bank reports to the Minister for Finance. For consistency it is proposed to change the provision to require the bank to report on its functions to the Minister for Finance but to give a copy of this report to the Minister for Enterprise, Trade and Employment. This will avoid duplication of information being laid before the Oireachtas, given that the bank's annual reports to the Minister for Finance is required to be laid before the Oireachtas under section 6(1) of the Central Bank Act 1942, inserted by section 7 of the Central Bank and Financial Services Authority of Ireland Act 2003. I commend the amendment to the House.

Amendment agreed to.

Section 9, as amended, agreed to.

SECTION 10.

Question proposed: "That section 10 stand part of the Bill."

Mr. McDowell: This section concerns the powers of the banks to regulate the UCITS which are currently regulated in a number of ways. The diversification of the assets that they manage is specified in the regulations so that some may be held as stocks or shares and other as transferable securities in particular jurisdictions or in other forms. I am interested to learn how the Minister of State envisages the Central Bank to apply these regulations in terms of the diversification of assets to the new structure. I am also unclear on the enforcement of the regulations. The Bill does not appear to contain a provision allowing for the imposition of penalties in situations where regulations by the bank are disobeyed.

Mr. M. Ahern: Differences exist among the legal vehicles used by the funds industry to meet investors' requirements. In this regard, some management companies are concerned with pooling investments. Some investors may wish to expose to particular markets or may be prepared to take a long-term view and others may need the investment for a short period or may be prepared to take risks in the hope of higher returns. These variables must be considered when determining the most suitable vehicle for a particular investor. However, it remains the case that the vehicle must be authorised by IFSRA and will remain subject to ongoing supervision by the authority. In this context, while there may be greater flexibility for non-UCITS, whether part 13 companies, unit trusts, investment limited partnerships or, under Part 2 of the Bill, non-UCITS CCFs, in the areas or percentages of their investments which may be invested in particular assets, products or markets they remain subject to authorisation and supervision by the regulatory authority.

Mr. McDowell: I thank the Minister of State for the explanation. I understand UCITS regulations specify that all UCITS diversify their assets so they do not put all their eggs in one basket. Is it intended to specify in the regulations that all non-UCITS CCFs will be obliged to diversify or is it intended to deal with it by authorising particular investments on a case by case basis?

Mr. M. Ahern: IFSRA will issue notice in the first instance on the compliance requirements of the CCF. Through a combination of sections 10 and 19, IFSRA can ensure compliance.

Question put and agreed to.

Sections 11 to 17, inclusive, agreed to.

SECTION 18.

Question proposed: "That section 18 stand part of the Bill."

Mr. McDowell: I again wish to pursue the issue of regulation. Currently under the UCITS structure investors with a certain level of assets are afforded protections in terms of the risks that may be taken with the investment. No such constraints effectively exist for institutional investors. Is it intended to maintain this discrimination between different types of investor? The majority of customers for these vehicles are expected to be large companies so it perhaps does not apply.

Mr. M. Ahern: IFSRA has not yet decided upon the content of notices. I understand discussions are ongoing between the officials and the industry but a decision has not been made yet on the approach they will adopt.

Mr. McDowell: I do not want to sound pernickety but in a sense this goes back to where we were on Second Stage. We are looking to create a more lightly regulated form of CCF. That is fair enough in so far as it goes but if we have any purpose at all in this House it is our duty to try to ensure that a satisfactory level of regulation is maintained. Essentially, the Minister of State is telling me to trust IFSRA because it will do the business. Perhaps that is what we have to do, although I am not suggesting all the regulations should be set down in primary legislation. I accept we cannot do that but will the Minister of State indicate what he believes will be contained in the regulations? I do not want chapter and verse but perhaps he could give me some idea of what they will contain.

Mr. M. Ahern: I accept the point the Senator is making and understand the query about what will be contained in the regulations.

Mr. McDowell: I do not want the detail.

Mr. M. Ahern: I cannot say what will be contained in the regulations because this is a new instrument that is being introduced. The Senator is correct in that it is a more lightly regulated form of investment than the UCITS but at the same time they will be dependent on IFSRA's authorisation. IFSRA will also be the body responsible for regulating. We have to wait for details of the regulations to come forward.

Question put and agreed to.

Sections 19 and 20 agreed to.

SECTION 21.

Question proposed: "That section 21 stand part of the Bill."

Mr. McDowell: I appreciate that we are talking about summary offences and I assume the provisions in this section constitute the maximum sentence for summary offences but is there provision in the amendments for indictable offences? If we are talking about the creation of summary offences, these are fairly light fines in an industry where people have very deep pockets. The maximum fines that can be imposed are €5,000 or €15,000.

Mr. M. Ahern: Under section 21(*b*) a person shall be liable on conviction on indictment to a fine not exceeding €15,000 or imprisonment for a term not exceeding five years.

Mr. McDowell: In an industry where hundreds of millions of euro change hands or potentially are at risk if investment is carried on in a reckless fashion, these fines appear to be fairly low.

Mr. M. Ahern: I take the Senator's point. Perhaps that is something we can examine.

Question put and agreed to.

Sections 22 to 24, inclusive, agreed to.

SECTION 25.

Question proposed: "That section 25 stand part of the Bill."

Mr. McDowell: The Minister will have to help me with this section. This is the section that essentially deals with the business of segregated liability. My understanding is that it does not apply retrospectively; it will only apply in so far as sub-funds are created going forward or if a management company agrees to do that.

I appreciate that this section is intended to encourage speculative investment but is there a danger in creating the possibility for a fund to hive off its most high-risk investment where the risk of insolvency is greatest, which is what we are principally concerned about, and where there is, in effect, no recourse to the rest of the assets of the fund for an investor if that sub-fund becomes insolvent? I can almost anticipate the Minister of State's response. He will say that if somebody is investing in something that is high risk, it is probably no harm that everybody else is to be segregated from them. Nonetheless, there should be a warning with this, so to speak, in that the Minister of State is telling people that if they go down this road there is a far greater risk that that particular sub-fund will become insolvent at some time in the future, which is tough. Am I correct in my understanding of the purpose of the section?

Mr. M. Ahern: Section 256A of the principal Act provides a mechanism by which segregated liability will apply to umbrella funds, that is, that the assets of one sub-fund are protected from claims arising against other sub-funds. To protect creditors, section 256A includes a mechanism pursuant to which any existing umbrella fund that wishes to avail of the benefits of segregated liability must obtain approval by way of special resolution of the members. The creditors of an umbrella fund may apply to a court for an order delaying the implementation of the special resolution. Any such special resolution will not take effect if a creditor has successfully applied to a court for an order delaying the commencement date of the special resolution. Umbrella funds that convene a meeting for the purposes of passing the special resolution necessary to give effect to segregated liability must also notify their creditors at the time of the proposal.

Section 256E of the principal Act sets out the requirement to be complied with by umbrella funds to which section 256A applies, that is, those availing of segregated liability. Subsection (1) requires a statement to that effect on letterheads used by the umbrella fund and disclosure of that fact in any other dealings with third parties.

Mr. McDowell: That can only be done prospectively. Can it be applied to existing assets? If, for example, a fund has a stock of Russian property can it suddenly decide to say that this is a sub-fund which it is now creating for its Russian property in the border regions of Chechnya or whatever? In other words, does it apply to existing assets or only to assets acquired after the Act is in place?

Mr. M. Ahern: The new funds and so on that the Senator referred to have to go through the procedure under section 256A.

Mr. McDowell: There is no prohibition on including existing assets in it, is that right?

Mr. M. Ahern: Under section 256B they have to give the notices as well. People can then apply to court if they are not happy with what is being offered to them. They have to go through all the procedures.

Question put and agreed to.

Sections 26 and 27 agreed to.

SECTION 28.

An Leas-Chathaoirleach: Amendment No. 4, which is a Government amendment, is consequential on amendment No. 5 and amendment No. 6 is related. Is it agreed to take amendments Nos. 4 to 6, inclusive, together? Agreed.

Government amendment No. 4:

In page 24, subsection (1), line 21, after "1972" to insert ", regulations under *section 29*".

Mr. M. Ahern: The purpose of these amendments is to allow the Minister make regulations under this Act for the purpose of implementing

[Mr. M. Ahern.]

the EU market abuse directive, market abuse regulation and supplemental directives. It is recognised that it can be particularly difficult to sustain and prosecute an allegation of market abuse, so much so that the new EU directive focuses on administrative sanctions rather than requiring member states to have criminal sanctions. In the case of Ireland, such administrative sanctions will be provided for in the transposing regulations.

While that is the case, it is considered that the criminal sanction regime that was provided for in Part V of the Companies Act 1990 should be retained. It had been intended to make these regulations under the European Communities Act 1972. However, section 3(3) of that Act states that regulations under section 3 shall not create an indictable offence. Consequently, for legal certainty it is proposed to use the power in the new section 29 and under the European Communities Act 1972 to transpose the market abuse directive.

Amendment No. 5 gives the regulation making power to the Minister. Amendment No. 6 creates the penalty that can be imposed for a person found guilty of an offence in this context. Amendment No. 4 is a consequential amendment. I commend these amendments to the House.

Ms White: While the new regime of administrative sanctions is welcome, it is important to retain a criminal sanction regime similar to the one which is currently in operation. While provision is made in Part V of the Companies Act 1990, it will be repealed in the regulations transposing the market abuse directive. We should use whatever mechanism provides maximum legal certainty for that purpose.

Mr. Coghlan: For the sake of our country, economy and growth, we must put in place the strictest regime on market abuse, manipulation and insider trading. Without being specific, we are all aware of instances of what Senator McDowell alluded to as "very big boys behaving badly". We must, therefore, be very stringent and correct in our approach.

Mr. McDowell: Subsection 2 of the new section 29 appears to give the Minister the power to create indictable offences by regulation, which is a dubious if not undesirable way to proceed. The usual practice has been to create indictable offences through primary legislation. The power is now being given to the Minister and perhaps even to IFSRA. Indictable offences can incur fines of up to €10 million. If such offences are to be created, it should be done through statute law.

Mr. M. Ahern: The offence is set out in section 30 which provides that a person guilty of an offence created by Irish market abuse law shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable on conviction on indictment to a fine not exceeding €10 million or imprisonment for a term not exceeding ten years or both. As the regulations must be cross-referenced with the section, the Minister will not set out the offence himself or herself.

Mr. McDowell: What does subsection 2 of the new section 29 mean? It does not make much sense to me. It stipulates that regulations under the section may contain such incidental, supplementary and consequential provisions as appear to be necessary or expedient for the purposes of those regulations, including provisions creating indictable offences. It seems to provide the Minister with the power to create indictable offences in regulations.

Mr. M. Ahern: Subsection 2 is for the most part a copy of the provision set out in the 1972 Act, including provisions creating indictable offences. The provision was set out on the advice of the Office of the Attorney General. Further advice has been requested and the matter will be clarified when we receive it.

Amendment agreed to.

Section 28, as amended, agreed to.

NEW SECTIONS.

Government amendment No. 5:

In page 25, before section 29, to insert the following new section:

"29.—(1) The Minister may make regulations for the purposes of giving effect to the 2003 Market Abuse Directive, the Market Abuse Regulation and the supplemental Directives.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to be necessary or expedient for the purposes of those regulations, including provisions creating indictable offences."

Amendment agreed to.

Government amendment No. 6:

In page 25, before section 29, to insert the following new section:

"30—A person who is guilty of an offence created by Irish market abuse law shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both.".

Amendment agreed to.

Section 29 deleted.

SECTION 30.

Question proposed: "That section 30 stand part of the Bill."

Mr. McDowell: While those of us who are not expert in the field or who do not have much connection with it think we know what constitutes insider trading, I have no recollection of a high-profile prosecution under market abuse law in Ireland. Are the provisions theoretical or does it happen? How frequently have prosecutions taken place under market abuse law and what has been the typical outcome? We have all read of instances in which insider trading has been alleged, but I do not recall anything serious coming before the courts or criminal sanctions being imposed.

Mr. M. Ahern: While a number of people have been alleged to have taken part in insider trading, I am aware of only one case which has been successfully prosecuted. I said speaking to sections 28 and 29 that the purpose of the amendments was to allow the Minister to make regulations. I continued:

> It is recognised that it can be particularly difficult to sustain and prosecute an allegation of market abuse, so much so that the new EU directive focuses on administrative sanctions rather than requiring member states to have criminal sanctions. In the case of Ireland, such administrative sanctions will be provided for in the transposing regulations.

While the Senator was right to think significant numbers of people had not been prosecuted due to difficulties with the current legal framework, it is hoped that the changes implemented in regulations will make it easier to bring successful prosecutions.

Mr. McDowell: Section 30 seems to provide a civil remedy in so far as it allows a person to seek compensation in the event that he or she has lost out as a result of the use by another person of insider knowledge. The provision seems to be contingent on it being proved in the first place that somebody has contravened the law. It will not be a question of taking a civil case in the normal way where one must prove that on the balance of probability someone has done something wrong or been negligent. Under the provisions of section 30, it appears one must sustain a suit for damages against a person who has already been convicted of a civil offence or has contravened the law.

Mr. M. Ahern: Section 30 deals with civil cases. Section 109 of the Companies Act 1990 makes provision for civil liability for unlawful dealing. The action currently before the High Court involving Fyffes and DCC is such a case. It is considered that the capability should be retained in Irish company law going forward. As it does not arise directly from a requirement in the market abuse directive, it is being included in this legislation in primary law.

Mr. McDowell: Are we providing that a person must first be shown to be guilty of an offence under market abuse law before he or she can be sued for compensation by somebody who has lost out? Is it a requirement to first convict a person?

Mr. M. Ahern: No.

Mr. McDowell: Can one take a case for compensation and allege during its course that somebody has contravened the law without that having previously been proven?

Mr. M. Ahern: Yes.

Question put and agreed to.

Section 31 agreed to.

SECTION 32.

An Leas-Chathaoirleach: As amendment No. 8 is consequential on amendment No. 7, the amendments may be discussed together, by agreement.

Government amendment No. 7:

> In page 27, paragraph (*g*), line 2, to delete ";" and substitute ",".

Mr. M. Ahern: Section 33AK of the Central Bank Act 1942, inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003, lays down the rules for the bank and IFSRA on the disclosure of confidential information. It is considered that the same considerations arise regarding the prospectus directive. Section 32 has already added the relevant market abuse directives to the directive listed in section 33AK of the Central Bank Act and amendment No. 8 adds the prospectus directive to the list. I commend amendments Nos. 7 and 8 to the House.

Amendment agreed to.

Government amendment No. 8:

> In page 27, between lines 2 and 3, to insert the following new paragraph:
>
> "(*h*) the 2003 Prospectus Directive (within the meaning of *Part 5* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005)*;".

Amendment agreed to.

Section 32, as amended, agreed to.

SECTION 33.

Question proposed: "That section 33 stand part of the Bill."

Mr. McDowell: What markets is it intended to include?

Mr. M. Ahern: Section 33 allows the Minister to proscribe by provisional order any market to which market abuse law shall apply. It is important that requirements under the market abuse directives should be capable of being applied to any new market. Any provisional order made by the Minister must be confirmed by an Act of the Oireachtas. It is understood that the Irish Stock Exchange proposes to establish a new market, the Irish Enterprise Exchange, for smaller companies which will not fall within the definition of "regulated market" as defined at present in the investment services directive, nor as redefined in the revisions being made by directive 2004/39 to the investment services directive 93/22 which is due for transposition by member states by 2006.

The exchange's action is understood to be a direct response to a similar initiative taken by the London Stock Exchange. Following discussions with the IFSRA it is our view that the market abuse directive requirements should be capable of being applied to any such new market. This section will allow the Minister to prescribe any market to which the market abuse regulations should apply. Subsection (1) gives the Minister authority to provide by a device called a provisional order that one or more provisions of Irish market abuse law may apply to any market specified in that order. The Minister must consult with the competent authority, namely IFSRA, before making the order.

4 o'clock

Subsection (2) allows the Minister to amend or revoke any order made under this section. As this type of order is different from those provided for in section 4 of the present Bill a separate right for amendment or revocations needs to be provided for. Subsection (3) provides that any such order must be confirmed by an Act of the Oireachtas and shall not come into effect until so confirmed.

Mr. McDowell: Will the effect of this power in practice be that insider trading legislation will apply to more smaller companies? Is that, in effect, what we are saying?

Mr. Coghlan: My understanding is that the market abuse directive will apply to all new markets and funds.

Mr. M. Ahern: It applies to all regulated exchanges at present. As Senator McDowell is aware, the Irish Enterprise Exchange has been established very recently by the Stock Exchange. We can apply the regulations if we so wish.

Question put and agreed to.

SECTION 34.

An Leas-Chathaoirleach: Amendment No. 9 is consequential on amendment No. 12 and No. 11 is consequential on amendment No. 13. Amendment No. 13 is related to amendment No. 12 and amendment No. 14 is consequential on amendment No. 12. Amendments Nos. 9 and 11 to 14, inclusive, may be taken together by agreement. Is that agreed? Agreed.

Government amendment No. 9:

In page 27, subsection (1)(*a*), line 42, after "1972" to insert ", regulations under *section 42*".

Mr. M. Ahern: The purpose of these amendments is to allow the Minister to make regulations under this Act for the purpose of implementing the prospectus Directive and prospectus regulation. Section 42 provides for penalties on convictions on indictment for offences under Irish prospectus law. This would cover a situation where securities are offered to the public or listed without issuing a prospectus. Again, like the market abuse transposing regulations I spoke about earlier, it had been intended to make these regulations solely under the European Communities Act 1972. However, section 3(3) of that Act states that regulations under section 3 shall not create an indictable offence. Consequently, for legal certainty, it is proposed to use the powers under the new section 42 and under the European Communities Act 1972 to transpose the prospectus directive. I commend these amendments to the House.

Amendment agreed to.

Section 34, as amended, agreed to.

Section 35 agreed to.

SECTION 36.

Government amendment No. 10:

In page 30, subsection (1), line 8, to delete "sections 43 to 52," and substitute "sections 43 to 47, 49 to 52,".

Mr. M. Ahern: The amendment corrects an error in the text which had come to our notice. Section 48 was already repealed by the Companies (Amendment) Act 1983 and for legal certainty it should not have been included here. I commend the amendment to the House.

Amendment agreed to.

Section 36, as amended, agreed to.

Section 37 agreed to.

SECTION 38.

Question proposed: "That section 38 stand part of the Bill."

Mr. McDowell: The Leas-Chathaoirleach is racing ahead of me. I made this point on Second Stage but we did not have time to tease out. The directive applies only to public offerings of €2.5 million or more. I am no expert on these matters but I would be interested to know how often we would have offerings of this kind. I suspect we would not have more than a few a year. This would appear to exclude from the scope of the directive most cases where shares are sold to the public. Has the Minister given any thought, for example, to the possibility of lowering the limit so as to provide some protection to people who subscribe in circumstances where the offering is less than €2.5 million?

Mr. M. Ahern: I outlined the approach we were taking to offers of securities to the public. In essence, we are moving to a situation of accepting the threshold set out in the prospectus directive as the threshold that should determine whether a full prospectus must be prepared. Where securities are offered to the public or listed on a recognised stock exchange, the prospectus directive provides that where the offer is for securities of less than €2.5 million it is not necessary to prepare a prospectus.

Section 42 is designed to require the inclusion of certain warnings for potential investors. It is difficult to know what use will be made of the reduced requirements that this approach will generate. It removes bureaucracy for the company seeking to raise investment and to that extent it is a welcome reduction in regulation for entrepreneurs to raise capital. Investors do not have as much information as they would get in a full prospectus but they must be aware that such investment may be riskier. It can be costly to raise capital and for small entrepreneurs this could prove to be a significant step in their growth. This is an initiative that can be monitored and reviewed after it has been in operation for a number of years. I do not know how many people have invested.

Mr. McDowell: Does the Minister of State have any idea?

Mr. M. Ahern: I do not.

Mr. McDowell: Is it reasonable to say fewer than a dozen in any given year would be over that threshold amount?

Mr. M. Ahern: We have no idea. We have no statistics on this area.

Mr. McDowell: The point I am trying to make is that we are talking about the exception rather than the rule.

The Minister of State is correct, section 44 provides that various warnings are to be given to potential investors to the effect that past performance may not be a realistic guide to future performance, simulated performance may not be a reliable guide to future performance and so on and so forth. After a while these things become meaningless. We hear them every day on the radio. I am not altogether sure people pay a great deal of attention to them.

When people are acquiring securities or shares they should know there is a measure of risk but I am not convinced that including these *pro forma* warnings actually adds much to the information provided. At least the directive sets out the requirements under the EU directive and also gives a comeback against the various individuals responsible for drawing up a prospectus. A greater degree of protection is provided to members of the public subscribing to securities. If we are, in effect, excluding most offers from the requirement to produce a prospectus then we are back to these *pro forma* warnings.

Mr. M. Ahern: The philosophy behind this particular section is to make it less costly for small entrepreneurs to raise money and not to have them tied up in the considerable red tape and detail required under the prospectus directive. As Senator McDowell stated and as I said, there is a certain amount of risk involved in this area but we are not talking about large amounts of money. The people who would invest that type of money would weigh up the risks against the advantages. I do not believe this type of investment would be for the ordinary investor. That is my personal belief.

Mr. McDowell: The purpose of the directive is to give some sort of comeback against individuals who are involved in drawing up the information included in the prospectus. We are then going on to say that, in fact, most companies offering shares need not bother doing this, which appears to me to devalue the whole purpose of the directive in the first place. I understand where the Minister is coming from.

Mr. M. Ahern: The threshold of €2.5 million was set by the EU. We are accepting that in our legislation.

Question put and agreed to.

SECTION 39.

Government amendment No. 11:

In page 32, line 46, to delete "a relevant offence within the meaning of *section 42*" and substitute "an offence created by Irish prospectus law".

Amendment agreed to.

Section 39, as amended, agreed to.

Sections 40 and 41 agreed to.

NEW SECTIONS.

Government amendment No. 12:

In page 34, before section 42, to insert the following new section:

"42. (1) The Minister may make regulations for the purposes of giving effect to the 2003 Prospectus Directive and the Prospectus Regulation.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to be necessary or expedient for the purposes of those regulations, including provisions creating indictable offences.".

Amendment agreed to.

Government amendment No. 13:

In page 34, before section 42, to insert the following new section:

"43.(1) A person who is guilty of an offence created by Irish prospectus law shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.

(2) In proceedings for an offence created by Irish prospectus law, it shall be a defence for the defendant to prove—

(*a*) as regards any matter not disclosed in the prospectus concerned, that he or she did not know it, or

(*b*) the contravention arose from an honest mistake of fact on his or her part, or

(*c*) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, he or she ought otherwise reasonably to be excused.".

Amendment agreed to.

Section 42 deleted.

SECTION 43.

Government amendment No. 14:

In page 35, subsection (4), lines 9 and 10, to delete "a relevant offence within the meaning of *section 42*" and substitute "an offence created by Irish prospectus law".

Mr. McDowell: The purpose of these sections is to put an onus on individuals drawing up a prospectus to ensure that its contents are correct, but we seem to be going out of our way to make this onus a light one, as this amendment allows people to evade responsibility if they did not know that something was wrong. We do not put them under any obligation to determine, or at least make reasonable inquiry, as to whether something was wrong.

Section 42 states that it shall be a defence to say the contravention arose from an honest mistake of fact on the part of an individual, and that with regard to any matter not disclosed in the prospectus concerned that he or she did not know it. We are facilitating people to wash their hands of any responsibility and liability. If people are responsible for drawing up a prospectus they should have some responsibility for what is in it. They should not be allowed to walk away simply on the basis that they were not aware of what was in it in the first place.

Mr. M. Ahern: This retains what is in existing law. Under the directive we were not required to do this, but to ensure there is a comeback against people who would abuse the law we are retaining section 49.

Mr. McDowell: Has anyone ever been convicted or sued on foot of a misstatement or a wrong—?

Mr. M. Ahern: I might know a lot but I do not have all of those statistics in my head.

Mr. McDowell: I do not want statistics. I would like an indication that the section has been applied in any serious sense.

Mr. M. Ahern: Would it be cost-effective to investigate that, or would it be a waste of taxpayers' money?

Mr. McDowell: We are transposing a directive which puts responsibility on people drawing up a prospectus. It is partly replacing or replicating existing law. It would be useful for the debate — I appreciate that the Minister of State does not have the information here — if we had some idea of whether the existing law is applied. Perhaps I should know that, but I do not. It would be helpful to inform our debate if we had some idea of whether this is purely academic or whether it has any real meaning.

Mr. M. Ahern: I understand the Senator is asking whether section 49 has ever been applied. If it is possible to find that out, I will do so.

Amendment agreed to.

Section 43, as amended, agreed to.

SECTION 44.

Government amendment No. 15:

In page 36, between lines 22 and 23, to insert the following new subsection:

"(4) No offering document prepared for a local offer shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy of the offering document has been delivered to the registrar for registration.".

Mr. M. Ahern: This amendment provides that an offering document prepared for a local offer must be sent to the Companies Registration Office, CRO, for registration. It is considered that the CRO should be the place that all information on companies is disclosed to third parties. The CRO have invested heavily in ICT systems and processes and where information is filed in the CRO it can be viewed on-line within a short time of receipt.

Amendment agreed to.

Government amendment No. 16:

In page 36, subsection (4), line 25, after "law" to insert "or by the registrar of companies".

Mr. M. Ahern: This amendment allows the registrar of companies to bring summary proceedings for an offence under this section.

Ms White: Given that it is intended that local offering documents should be filed with the CRO the registrar should be in a position to take proceedings if the need arises.

Amendment agreed to.

Question proposed: "That section 44, as amended, stand part of the Bill."

Mr. Leyden: In light of the advance of e-commerce it seems the following wording is old-fashioned, "An offering document prepared for a local offer shall contain the following statements in print in clearly legible type". Would it be possible for that to be downloaded from the Internet? This would remove the need for all of this paperwork and could perhaps be provided for on Report Stage.

Mr. M. Ahern: We will investigate whether e-commerce legislation covers the points made by Senator Leyden.

Question put and agreed to.

Section 45 to 48, inclusive, agreed to.

SECTION 49.

Government amendment No. 17:

In page 38, to delete lines 6 and 7 and substitute the following:

"(*b*) in subsection (3), by substituting 'section 53' for 'the said sections 53 and 54'.".

Mr. M. Ahern: This amendment corrects an error in the text in section 36. It is section 54 that is being deleted. Consequently, in (*b*) it is section 53 that replaces the said sections 53 and 54.

Amendment agreed to.

Section 49, as amended, agreed to.

Sections 50 to 53, inclusive, agreed to.

SECTION 54.

Question proposed: "That section 54 stand part of the Bill."

Mr. McDowell: I know the Minister of State will be familiar with the fact that for some years now the CRO has been striking off companies for not filing returns. Perhaps he can give us some information on that. Is that campaign still continuing and to what extent has it been successful? I assume that this section and the following section are intended to facilitate that.

Mr. M. Ahern: As Senator McDowell stated, the CRO approached the concept of striking off companies with great vigour some years ago and returns improved significantly following that mission. The CRO is not pursuing companies to strike them off as it did in the past but it has the power to do so if it feel necessary.

Mr. McDowell: Why is it considered necessary to introduce the power to reserve a name? The procedure for incorporating a company is a relatively simple one and I do not understand why it is necessary to have an initial procedure of reserving a name.

Mr. M. Ahern: Sections 54 and 55 provide for the reservation of a company name with the CRO. An application may be made to the registrar to reserve a company name and a fee must be paid. A name may be reserved for 28 days and an applicant may seek an extension of this period for another 28 days only. The CRO checks the suitability of all proposed names, having regard among other matters to the similarity of the proposed name to company names already on the register. A company name could be checked and reserved while the documentation for incorporation was being prepared. The registration of the final documents would be greatly expedited. A name reservation facility would assist with incorporation and would also facilitate almost immediate incorporation of a company electronically. It

[Mr. M. Ahern.]
would be undesirable however if a name could be reserved indefinitely and repeatedly.

The CLRG, at paragraph 7.3.3 and 7.3.4 of its first report recommended the introduction of a company name reservation service. The group recommended that the name reservation fee should be offset against the incorporation fee if the person who reserved a name went on to incorporate a company with that name because the pre-approved name would not have to be checked by the CRO on receipt of the application for incorporation. The group further recommended that it should be possible to reserve a name for 28 days and, if requested by the applicant, for one further period of 28 days.

Mr. McDowell: I do not understand how this makes the process easier. At present, all that is required to incorporate a company is a secretary, a number of directors, a registered office and a name. I cannot see how reserving the name first and carrying out the other processes at a later stage makes company incorporation any easier. There is no issue of principle involved here, I simply do not understand how this will simplify matters in practice.

Mr. M. Ahern: The Senator is aware of the Company Law Review Group, which comprises people from different professions. The first report of the CLRG recommended this type of reservation system. The group was of the view that this would improve the registration process and that is why it is included in the Bill. Time will tell how it will work in practice.

Question put and agreed to.

Sections 55 to 60, inclusive, agreed to.

NEW SECTIONS.

Government amendment No. 18:

In page 44, before section 61, to insert the following new section:

"61.—Section 22 of the Companies (Amendment) Act 1986 is amended—

(*a*) in subsection (1)—

(i) in paragraph (*a*), by substituting 'shall be guilty of an offence' for 'shall be liable on summary conviction to a fine not exceeding £1,000', and

(ii) in paragraph (*b*), by substituting 'Summary proceedings' for 'Proceedings',

and

(*b*) in subsection (2), by substituting 'in respect of each such failure be guilty of an offence, but—' for 'in respect of each offence be liable on summary conviction to imprisonment for a term not exceeding 6 months, or, at the discretion of the court to a fine not exceeding £1,000 or to both so, however, that—'.".

Mr. M. Ahern: This amendment seeks to make it possible for the offences dealt with in section 22 of the Companies (Amendment) Act, 1986 to be prosecuted on indictment. It is considered that such an option should be available in more serious instances where, for example, a company fails to follow fundamental accounting principles under section 5 of the Act, or where, having opted not to follow such principles, the company fails to publicly draw attention to that decision, the reasons for it and the financial consequences thereof under section 6 of the Act. The option of dealing with such offences summarily will remain.

Amendment agreed to.

Section 61 agreed to.

Government amendment No. 19:

In page 44, before section 62, to insert the following new section:

"62.—(1) Subsection (3) of section 20 of the Act of 1990 is repealed.

(2) Notwithstanding the repeal by this section of subsection (3) of that section 20, that subsection (3) shall continue to apply to material information (within the meaning of that section 20) seized under that section before the commencement of this section.".

Mr. M. Ahern: Subsection (3) of section 20 of the Companies Act, 1990 provides that any material information seized by officers of the Director of Corporate Enforcement, under subsection (2) of the section, may be retained for a period of six months or such longer period as may be permitted by a judge of the District Court or if within that period any proceedings have commenced to which the information is relevant until the conclusion of those proceedings. The Office of the Director of Corporate Enforcement has had considerable difficulties with the operation of section 20(3) of the Companies Act 1990, as inserted by section 30 of the Companies Act 2001.

The position under all criminal justice legislation, other than for the ODCE and the Competition Authority, is that material seized on foot of a search warrant is retained until the conclusion of the relevant proceedings. There is no valid reason for the exception that currently pertains to the ODCE and the Competition Authority.

The ODCE is currently applying to the District Court on a weekly basis to renew warrants, with all of the associated arrangements, such as preparing court documents, alerting the other parties, briefing counsel, attending court and so on. It is a disruption to genuine investigative work, halts the progress of the invest and is completely unwarranted. It also gives rise to an increased

threat of successful legal action by companies and others under investigation. Not only does the ODCE have to defend the validity of the original warrant, it has to secure each retention application, as well as defending the validity of the resultant retention decisions in the subsequent criminal proceedings. The ODCE is also exposed to the risk of missing a renewal application date through an administrative oversight. The burden of criminal proof is already very high and section 20(3), as it stands, is adding to the difficulties of the ODCE. This amendment provides for the repeal of section 20(3).

Subsection (2) of the proposed new section is required to preserve the entitlement of persons whose documents were seized under a regime involving the ongoing judicial control of the duration for which the documents could be seized. For example, where the ODCE holds documents on foot of a warrant which requires that, in order to retain them, it is obliged reappear before a judge within six months, the outright removal of this obligation is considered inappropriate.

Amendment agreed to.

Sections 62 to 65, inclusive, agreed to.

SECTION 66.

An Leas-Chathaoirleach: Amendment Nos. 20 and 21 are consequential on amendment No. 22 and amendment No. 23 is related to amendment No. 22, therefore, amendments Nos. 20 to 23, inclusive, may be discussed together by agreement.

Government amendment No. 20:

In page 46, line 25, to delete "and".

Mr. M. Ahern: The purpose of these amendments is to correct the typographical error in section 37(*d*) of the Companies (Auditing and Accounting) Act 2003. The purpose of that provision was to remove the reporting requirement for auditors under section 194(5) of the Companies Act 1990, as inserted by section 72 of the Company Law Enforcement Act 2001 in respect of indictable offences under section 125(1) and 127(12) of the Companies Act 1963**.** While the reference to section 127(12) is correct, the reference to section 125(1) should have been to section 125(2). Subsection (1) of section 125 creates an obligation. Non-compliance with that obligation is a breach under subsection (2) and hence it is the latter subsection that creates the offence.

Mr. McDowell: I am tempted to ask the Minister of State a question.

Amendment agreed to.

Government amendment No. 21:

In page 46, line 27, to delete "." and substitute ", and".

Amendment agreed to.

Government amendment No. 22:

In page 46, between lines 27 and 28, to insert the following new paragraph:

"(*d*) in section 194(5), (inserted by the Company Law Enforcement Act 2001) by inserting '(other than an indictable offence under section 125(2) or 127(12) of the Principal Act)' after 'an indictable offence under the Companies Acts'.".

Amendment agreed to.

Government amendment No. 23:

In page 46, between lines 27 and 28, to insert the following new subsection:

"(3) Paragraph (*d*) of section 37 of the Companies (Auditing and Accounting) Act 2003 is repealed.".

Amendment agreed to.

Government amendment No. 24:

In page 46, line 33, to delete "No's." and substitute "No.".

Mr. M. Ahern: This amendment corrects a typographical error in the Bill.

Amendment agreed to.

Section 66, as amended, agreed to.

NEW SECTIONS.

An Leas-Chathaoirleach: I draw attention to the fact that there is a printing error in Government amendment No. 25, in subparagraph (*a*)(ii). The word "and" should appear after the first occurrence of "1999" and not at the end of the subparagraph.

Government amendment No. 25:

In page 46, before section 67, and in Part 6, to insert the following new section:

"67.—Section 110A of the Company Law Enforcement Act 2001 (inserted by the Companies (Auditing and Accounting) Act 2003) is amended—

(*a*) in subsection (1)—

(i) in paragraph (*c*), by deleting 'and',

(ii) in paragraph (*d*), by substituting '1999, and' for '1999;,'

(iii) by inserting the following after paragraph (*d*):

'(e) in respect of functions that, under the Companies Acts, are to be performed by the Central Bank and Financial Services Authority of Ireland—

(i) the Chief Executive of the Irish Financial Services Regulatory Authority,

or

(ii) a person appointed by some other person to whom the Chief Executive of the Irish Financial Services Regulatory Authority has delegated responsibility for appointing persons for the purposes of this section;',

(*b*) by inserting the following after subsection 8:

'(8A) A document purporting to be a copy of, or extract from, any document kept by the Central Bank and Financial Services Authority of Ireland and that is certified by—

(*a*) the Chief Executive of the Irish Financial Services Regulatory Authority, or

(*b*) any person by the Chief Executive of the Irish Financial Services Regulatory Authority,

to be a true copy of, or extract from, the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the document so kept.'.".

Mr. M. Ahern: Given the new functions assigned to the Central Bank, IFSRA, under Parts 3 and 4 in particular, the bank sought equivalent provisions to those already afforded to the ODCE, CRO, officers of the Minister and inspectors, to facilitate the discharge of its functions under company law. The powers in question of the existing bodies are set out in Section 110 A of the Company Law Enforcement Act 2001, inserted by section 52 of the auditing and accounting Act 2003 and relate to the certification of certain matters pertaining to documents and related issues. It is intended that IFSRA will be the competent authority for market abuse and prospectus and this amendment gives IFSRA equivalent powers.

Amendment agreed to.

An Leas-Chathaoirleach: Amendment No. 30 is consequential on amendment No. 26, therefore, amendments Nos. 26 and 30 may be discussed together by agreement.

Government amendment No. 26:

In page 46, before section 67, and in Part 7, to insert the following new section:

"67.—(1) Subsection (6) of section 45 of the Competition Act 2002 is repealed.

(2) Notwithstanding the repeal by this section of subsection (6) of that section 45, that subsection (6) shall continue to apply to any books, documents or records seized or obtained under that section before the commencement of this section.".

Mr. M. Ahern: This amendment is similar to amendment No. 19 concerning the Office of the Director of Corporate Enforcement. Section 45(6) of the Competition Act 2002 provides that any books, documents or records that are seized or obtained under subsection (3) of that Act may be retained for a period of six months or such longer period as may be permitted by a judge of the District Court, or if within that period any proceedings commence have commenced to which the books, documents or records are relevant, until the conclusion of those proceedings.

The Competition Authority has been experiencing difficulty with this provision. Section 45(6) permits the relevant District Court judge to make only one order for continued retention of evidence seized. In the event that the judge gives an order granting a short time period in which it is not possible to begin proceedings, for whatever reason, then the evidence which is the subject of the particular retention will be almost certainly lost to the Competition Authority and to the DPP as it is unclear if the court can grant further retention periods. The time period for retention does not take into account the complexity of cartel investigations.

The 2002 Act makes allowances for the time consuming nature of these investigations by extending the normal time limit within which to bring summary prosecutions from six months to two years. However, the authority is merely allowed to retain evidence for a period of six months, after which it must seek an order from the court for continued retention of this evidence. The Act is silent on how long the District Court can extend this period. It has been the authority's experience on at least one occasion, however, that a continued retention period of 18 months has been deemed excessive and this was reduced to 12 months. The authority can therefore only retain the evidence seized in this instance for a maximum period of 18 months. The provision in section 45(6) effectively defeats the provision in the Act allowing up to two years for summary prosecutions and severely restricts the position of the DPP in bringing cases on indictment. There is also an inconsistency in that different District Courts grant different time periods for the continued retention of evidence in the same investigation. This amendment necessitates a change to

the Long Title and amendment No. 30 reflects this. I commend these amendments to the House.

Mr. McDowell: I understand the Minister's explanation, but I do not quite understand what is the effect of the amendment. Are we doing away with any retention period altogether, or what provision are we actually making? Are we just abolishing or repealing subsection (6)?

Mr. M. Ahern: Subsection (6) of section 45 of the Competition Act 2002 is repealed. Despite that, subsection (6) shall continue to apply to books, documents or material obtained before the commencement of the section.

Mr. McDowell: I understand that but what is the effect of this? The Minister of State was saying that six months was not sufficient time even with the add-on of another 12 months by the District Court. In repealing this subsection, is no period provided any longer for the retention of documents or are we prolonging it until such time as an offence is prosecuted or what are we doing?

Mr. M. Ahern: There will not be any period of retention for the future. As regards what is in the pipeline, the *status quo* will be maintained.

Mr. Coghlan: I understand the Minister of State to be saying that this will assist in bringing uniformity to bear on the manner in which District Court judges operate and on how they deal with these matters.

Mr. M. Ahern: It will be taken out of the District Court's hands altogether under the new legislation.

Mr. Coghlan: Where will it be?

Mr. M. Ahern: Such cases will not have to go to court. The Office of the Director for Corporate Enforcement and the Competition Authority will be able to seize the goods and retain them for as long as necessary, pending prosecution.

Mr. Coghlan: I understand.

Mr. McDowell: Is there any obligation after the documentation has been completed, to hand back the goods and documentation?

Mr. B. Ahern: I am sure this is already in the legislation, but we will check this out to ensure that goods may not be held on to *ad infinitum*.

Mr. McDowell: The purpose of ceding documents is to facilitate prosecution. Once the prosecution is over, there should surely be an obligation on the Competition Authority to hand back the documentation.

Mr. M. Ahern: We will check this out to ensure it is already provided for. If it is not, we will see that this is amended.

Amendment agreed to.

Section 67 agreed to.

SECTION 68.

Government amendment No. 27:

In page 47, line 7, to delete "€5,000" and substitute "€50,000".

Mr. M. Ahern: This is to substitute an increased maximum fine. The original intention was that the maximum would be €50,000 and not €5,000, as it appears in the Bill. I commend the amendment to the House.

Amendment agreed to.

Question proposed: "That section 68, as amended, stand part of the Bill."

Mr. McDowell: This section and a number of subsequent sections simply increase the fines for various offences under a number of different Acts that are consumer related. Neither the Bill nor the explanatory memorandum specifies the offences. If the Minister of State has this information in his speaking notes, it would be useful to know. Specifically on this section, I would like to know precisely what is the offence regarding which we are increasing the potential fine.

Mr. M. Ahern: My briefing states that section 68 amends section 26 of the Prices Act 1958 to increase the maximum penalties, on conviction, under the prices Acts. It goes on to state the maximum penalty for a summary conviction is from €127 to €3,000. For a conviction on indictment, the penalty is increased from €635 to €50,000.

Mr. McDowell: Do we know what the offence is?

Mr. M. Ahern: I presume that is outlined in the Prices Act 1958.

Mr. McDowell: I should know this but I do not. Is the offence a breach of the prices order? The Minister of State will recall there has been some discussion as to whether the prices order as it relates to certain groceries should be retained. Can we interpret the fact that the Minister of State appears to be increasing the potential fines as meaning he has taken a view on the retention of the order in the first instance?

Mr. M. Ahern: As I mentioned earlier, and this has been confirmed to me, the offences are outlined in the original legislation. In effect, we are just increasing the level of fines.

Mr. McDowell: I know that. In a sense we are wandering in the dark here. We are increasing the fines for offences, but we do not know what these

[Mr. McDowell.]
are. I appreciate the offences already exist. In a sense, if we are to make any serious assessment as to whether the fines should be increased, we should know what the offences are in the first place. Specifically on this section, is the offence we are talking about covered under the prices order and does that imply that the Minister of State has decided he is going to retain that order, which effectively restricts below-cost selling?

Mr. Coghlan: The groceries order.

Mr. McDowell: Yes, the groceries order.

Mr. Coghlan: That is the only order that remains, in effect.

Mr. M. Ahern: Senators will be aware that the Restrictive Prices (Groceries) Order 1987 was one of the issues considered by the consumer strategy group and was the subject of recent deliberations before the Joint Committee on Enterprise and Small Business, as to the merits or otherwise of the order in managing grocery prices. In any event, all arguments as regards the groceries order will be considered by the Government before any action is decided on. All interested parties will be invited to submit their views as part of the national consultative process. I understand some parties have interpreted the provision to increase fines for breaches of the groceries order as a signal of some type about the future of the order. This is not the case.

What we are seeking to do in sections 68 to 74, inclusive, is to bring outdated fines for breaches of consumer protection legislation up to date. As long as legislation is on the Statute Book, there is an onus on Government to keep it relevant and up to date. It would not be appropriate to neglect this particular provision because it happens to be the subject of public debate at this time.

What the Senator is asking about is outlined in the consumer protection legislation.

Mr. McDowell: The order should be retained. It is a necessary guarantee of protection against the abuse of a dominant position by large supermarket chains. While it would be nice if ordinary competition were to regulate these matters, the fact is that if an organisation has deep pockets, it is in a position to sell below cost and remove competitors. That is an abusive position and so the order should be retained.

It seems strange the Minister of State is seeking to amend legislation he is not sure will be retained. However, I will let that pass.

Mr. Coghlan: As I indicated on Second Stage, I take a similar view on this to Senator McDowell. The Joint Committee on Enterprise and Small Business is unanimous on this point. We were struck by some of the submissions we received, especially those from consumers represented by Crosscare, Combat Poverty and the Society of St. Vincent de Paul.

Question put and agreed to.

Sections 69 to 74, inclusive, agreed to.

NEW SECTION.

Government amendment No. 28:

In page 49, before the Schedule, to insert the following new section:

"75.—The Industrial and Provident Societies Act 1893 is amended—

(*a*) in section 4(*a*), by substituting '€150,000 or an amount equal to 1 per cent of the total assets of the society, whichever is the greater' for the amount standing specified in that section,

(*b*) in section 25 (as substituted by section 5(1) of the Industrial and Provident Societies (Amendment) Act 1913)—

(i) in subsection (1), by substituting '€15,000' for the amount standing specified in each place where that amount occurs in that subsection, and

(ii) in subsection (3), by substituting '€15,000' for the amount standing specified in that subsection,

(*c*) in section 26(1) (as substituted by section 5(2) of the Industrial and Provident Societies (Amendment) Act 1913), by substituting 'the limit specified in section 4(a) of this Act' for the amount standing specified in that subsection,

(*d*) in section 27(1), by substituting '€10,000' for the amount standing specified in that subsection, and

(*e*) in Schedule II, in paragraph 5, by substituting 'the limit specified in section 4(a) of this Act' for the amount standing specified in that paragraph.".

Amendment agreed to.

Government amendment No. 29:

"76.—(1) Notwithstanding the repeal of section 35(1)(*i*) of the Credit Union Act 1966 by the Credit Union Act 1997, the specified regulations made under that section continue, and shall be deemed always to have continued, to have full force and effect from the coming into operation of the specified regulations until the passing of this Act.

(2) Nothing in this section shall affect any proceedings commenced in any court concerning the validity of the specified regulations where those proceedings were commenced before the passing of this Act.

(3) In this section 'specified regulations' means—

(*a*) the Industrial and Provident Societies (Financial Limits) Regulations 1985 (S.I. No. 392 of 1985), and

(*b*) the Industrial and Provident Societies (Financial Limits) (Amendment) Regulations 1990 (S.I. No. 246 of 1990).".

Amendment agreed to.

Schedule agreed to.

TITLE.

Government amendment No. 30:

In page 7, line 23, after "2003;" to insert "TO AMEND THE COMPETITION ACT 2002;".

Amendment agreed to.

Government amendment No. 31:

In page 7, line 27, after "CONSUMER"to insert "; TO AMEND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1893".

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments and received for final consideration.

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

Mr. Leyden: I thank the Minister of State and his officials for their attention to this Bill. He has a great record in bringing legislation before this House. It was a very technical Bill, but it was necessary to comply with European regulations. The Minister of State has received tremendous support from the Department of Enterprise, Trade and Employment. I received such support myself in the 1990s. I never had to rely on any advisers from the then Department of Industry and Commerce, but I always found that the services there were second to none. The civil servants there are very sharp and *au fait* with their briefs. I commend the Minister of State on the Bill and I thank colleagues on all sides of the House for their co-operation with this legislation.

Mr. Coghlan: I compliment the Minister of State and his officials for the manner in which they dealt with this Bill. Ireland is already a significant international jurisdiction for these funds. This legislation is necessary to allow Ireland to compete in this important marketplace. It provides much direct and indirect employment and we need the framework in place to allow it to grow and flourish. I welcome the Minister's action in referring some regulatory matters to the Company Law Review Group. Those matters which do not directly involve financial and accounting matters should not impinge on the daily business of people, especially those who are non-executive directors. If there are breaches of any particular law outside of the accounting area, the companies deserve to be prosecuted. Given his profession, I think the Minister of State has an appreciation of this fact. He has referred these issues to the group and hopefully they will be back before us in a desirable fashion.

Mr. McDowell: I agree with Senators Leyden and Coghlan. The Bill is important as it sets up an entirely new structure and facilitates cross investment and segregated liability. In essence, we have been asked to repose our trust in IFSRA to ensure that this new structure is properly regulated. I am happy enough to do that. The Houses cannot go any further than that. We cannot reasonably expect that regulations can be set out in detail in legislation.

Nonetheless, the message should be clear that we expect a balance. We have a duty to facilitate this industry as it brings much investment and employment into this country. However, we must safeguard our reputation as a well regulated environment for investment funds. I understand the difficulties which non-executive directors have with the directors' compliance statement. However, I take a slightly different view to Senator Coghlan as I believe it should at least serve as an amber light to directors to pay some attention to issues which they might not have done previously. I hope the Company Law Review Group does not prove to be a black hole from which it will never emerge. We may need to look at the detail of the statement of compliance, but some provision is appropriate and I hope the Minister of State has not just buried it. I am happy to support this Bill and I wish the Minister of State well in bringing it before the Dáil.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Ahern): We have had a very useful debate in this House on the Bill for the past week. This is quite a technical and complicated Bill and I appreciate the input of Senators to the debate.

Part 2 introduces a new contract fund structure, called the common contractual fund, or CCF. A CCF is a contractual arrangement established under a deed which provides that the investors participate as co-owners of the assets of the fund. It is a regulated investment fund structure which will allow for the pooling of assets of a number of pension funds. The CCF is not a separate legal entity and is transparent for Irish legal and tax purposes. It is called a non-UCIT CCF to distinguish it from a CCF authorised under the UCIT regulations.

Part 3 introduces investment funds segregated liability and cross investments, facilitating the ring-fencing of liability at sub-fund level and allowing for cross investment between sub-funds in an umbrella structure. The legislative pro-

[Mr. M. Ahern.]
visions in Parts 2 and 3 are required to be enacted as a matter of urgency in order to maintain Ireland's position as a centre of excellence in the provision of financial services. They will also allow the IFSC to maintain its leading position in a competitive world market.

As reflected during the debate on Second Stage, the financial services industry plays an important role in the economy. We have been exceptionally successful in attracting international financial services companies and we want this trend to continue. Therefore, we must continue to be innovative and develop the appropriate skills and expertise. A flexible, responsive and business-focused regulatory system has been the cornerstone of Ireland's development. Our regulatory environment is a key component, both of our competitiveness and our international reputation.

Parts 4 and 5 of the Bill facilitate the implementation of the EU market abuse and prospectus legislation. Part 6 makes a number of amendments to the Companies Acts. These arise from difficulties with the operation of existing provisions in the law, facilitate operators under electronic technology and rectify incomplete or incorrect cross references in existing law.

Part 7 makes some necessary amendments to consumer law, mainly increasing the level of fines that can be imposed on conviction for breach of consumer protection legislation. In the House today we also agreed amendments to the Competition Act and to the Industrial and provident societies legislation.

Should any further amendments be made in the Dáil, I will bring the Bill back to the Seanad and Senators will have a further opportunity to give their views. I thank the Senators for their valuable contributions. I also thank the staff of the Office of Parliamentary Counsel and the Office of the Attorney General for their assistance in the drafting of the legislation. I say a special word of thanks to my officials in the Department of Enterprise, Trade and Employment.

Question put and agreed to.

Competitiveness and Consumer Protection Policy: Statements (Resumed).

Ms Terry: I welcome the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Michael Ahern, to the House. This debate is important in terms of our economy and confidence in it. It is important consumers have confidence in the economy. Nobody can deny that the economy has done well and we are all proud of how well the country has done over the past number of years. However, we want to ensure the economy continues to grow and that growth is sustained through good infrastructure, whether in terms of law or the built environment. We must put systems in place that will make the economy work well for the business person, employers and consumers.

I wish to mention a number of areas where our competitiveness is not as it should be or where there is room for improvement. We need much work on our infrastructure. I live in a part of Fingal which has seen tremendous growth over the past number of years, due in no small part to Dublin Airport, of which we are proud. It has brought inward investment to the Fingal area, the eastern region and Ireland generally. It is important we make the necessary changes and improvements to Dublin Airport to ensure its competitiveness is maintained. Monopolies do not help competitiveness. When we talk about redevelopments or improvements at Dublin Airport and the provision of a second terminal, we must ensure that through our decisions we provide a competitive environment and do not maintain the current monopoly.

We should also look at our public private partnership arrangements which deliver major infrastructure to the country. We need to ensure that they work properly and that structures are put in place to ensure they will deliver the best infrastructure possible. Improvements can be made in this area.

We must also examine our communications system. It is not delivering a competitive environment. Take, for example, the position of broadband. In November 2004 broadband was in only 6% of our homes. This falls way behind the European average. We should be near the top of the league in this respect and should ensure we are to the front with our communications. We are falling behind. There are many companies that would be more competitive and better equipped if they had broadband. Many people who work from home, whether for pleasure or business, should be connected to broadband. The sooner we tackle that problem and provide broadband nationwide, the better it will be for us all in ensuring we can be a competitive nation.

The phrase "rip-off Ireland" has been well used and is well deserved. Ireland has reached a stage where it is very expensive to do even the simplest things. To move about and to purchase even the basic necessities costs more than elsewhere in Europe. Between 2001 and 2002, Ireland overtook the United Kingdom and Sweden to become the third most expensive country in the European Union for consumer goods and services. By 2003, Ireland was almost on a par with Finland as the most expensive country within the eurozone. Both countries were significantly more expensive than the next group of eurozone countries.

Dublin is now the 21st most expensive city in the world, a placing that does not give us any reason to be proud. The capital city is more expensive than Los Angeles, Miami, Singapore, Honolulu, Vienna, Helsinki and Abu Dhabi. Dublin is the fourth most expensive capital in the European Union, behind only London, Paris and Copenhagen. This situation does not provide for competitiveness. We are falling behind. We need

to tackle the impediments to our competitiveness and provide rights to our consumers so that they have confidence in the economy.

The National Competitiveness Council said Irish prices rose 22% more than those in other EU countries in the years 1999 to 2003. Mr. Jim Power, the chief economist with Friends First, has stated: "Irish competitiveness has been seriously eroded by a sharp increase in the overall cost base, which will not be reversible." That does not inspire confidence in the consumer and the Government's response has not been adequate.

Budget 2005 was the latest opportunity the Government had to tackle increased prices and taxes and competitiveness. Since the last election, the Government has hit the taxpayer 34 times with new and increased taxes and charges. For example, in 2002 VAT increased by 8%; the drug refund scheme threshold increased by 31%; bank card charges increased by 108%; ESB bills soared by 13%; bus fares increased by 9%; VHI charges increased by 8.5%; and many other charges were increased, including those for accident and emergency department visits and waste disposal. Many stealth taxes are being imposed on the consumer and his or her final tax bill does not reflect the total tax he or she has paid when stealth taxes are taken into account. The increases in such taxes in recent years is worrying. They sneak up on people. Many people do not even realise the amount of additional tax they pay. This leads to high inflation. Is it sustainable? How far can the Government go?

Ireland has fallen in the World Economic Forum's global competitiveness report from fourth in 2002 to 32nd, due mainly to the Government's failure to control prices. A great deal needs to be done to tackle increasing costs. If the Government fails to do so, many businesses will close and jobs will be lost. Traffic congestion in Dublin and other cities is costing employers heavily as employees experience delays getting to and from work. Many people who live outside Dublin but work in the city centre spend two hours commuting in each direction daily. What a waste of money. Dublin Chamber of Commerce regularly comments on how much traffic congestion costs the economy. If the Government took decisions on infrastructure quickly, the competitiveness issue would be tackled. We need a Government that will take such decisions to put the infrastructure in place and, for example, reopen the rail line between Navan and Dublin all the way to Navan and not only to Dunboyne, provide more buses and expand the Luas. Other countries less well off than Ireland have such infrastructure in place. These decisions need to be taken quickly or the economy will suffer and jobs will be lost. American companies, in particular, cannot understand why decisions are not being taken to tackles the congestion on our roads. I ask the Minister of State to address that as soon as possible.

Ms Cox: I welcome the Minister of State to the House and am pleased to contribute to the debate. I will address consumer protection later, as I would like to focus on the competitiveness issue, which is creating insecurity about the future of the economy on a daily basis. According to media reports of the recent IMI conference and various other conferences over the past number of months, the greatest issue affecting businesses is competitiveness. We are facing a grim future. Ireland used to compete on the basis of lower wage costs but our wage bill is more expensive than the US. Irish companies are losing the fight on production cost per module to companies based abroad. They are also losing the battle in terms of overhead costs, including rent, insurance and training and development. They are creating the most incredible headaches for organisations who set up in Ireland because we have educated, flexible and hard working employees. While they are still willing to work hard, companies cannot compete on cost, particularly wages.

Businesses in Ireland must comply with 161 Acts, 65 of which have been enacted in the past 14 years. How are companies supposed to manage? Under the working time directive, it is the responsibility of the employer to ensure an employee does not work more than 65 hours on average every week. In addition, if an employee, unknowingly, exceeds this number of hours, the employer will be fined or face a prison sentence. It is ridiculous. The onus is on the employer and, while workers' right must be protected, their freedom must be ensured. We must not create a State where as soon as one turns a page, one must wonder if he or she is doing it right or wrong.

A raft of equality legislation has been introduced, which is important and necessary to protect people. However, is the implementation of the legislation reviewed or analysed? If people make job applications and they are turned down because they are not suitable, they bring case after case to the Equality Tribunal claiming discrimination, thereby, wasting the time of the tribunal and the companies against which they bring cases. However, no one is preventing them from bringing false claims or penalising them for doing so.

I refer to company law. I spent two and a half hours earlier this month in the presence of an auditor at a cost of €300 an hour. I was asked to outline whether the company I run in Galway had anything to fear under the Companies (Auditing and Accounting) Act 2004 and to sign a statement, as a company director, that I had done nothing wrong under this legislation. This is regulation gone mad. Mr. Ken Lay of Enron, who started it all in the United States, must be blamed for a great deal. If I had him here right now, I know what I would do; it would not be introducing more legislation. It is absolutely insane.

We spoke of competitiveness, and we must get that back on track in this country. We are a tiny nation in the global economy, and we will only stay successful, benefit and have the money to spend on social welfare, education, disability and health if we have the kind of economy that gener-

[Ms Cox.]

ates wealth and allows us to pay tax at 20% or 40% for the top rate. That is possible because we have enough people paying tax. That our tax base is so large allows us to justify corporation tax of 12.5%. We can bring in a low-tax regime because we have so many people paying tax.

I challenge those members of the Opposition who say there have been stealth taxes over the past few months and that we are paying more and more. Let us look at that in a different way. We are paying tax on services provided, but we all have more money in our pockets because we are paying less income and corporation tax. Let us focus on creating a tax regime that charges those at the lower end of the scale less in income tax and then pay tax as we spend. There may be a need to re-examine some of those charges to ensure they are not having an undue impact on the less well-off.

However, if I earn €100,000 a year, I may contribute a great deal more in tax than someone on €20,000 because I am paying a greater percentage. Ultimately it does not matter what percentage of one's income one pays in tax if one pays more tax than the other person because one is earning more. It is a simple philosophy that is neither right nor left wing but common sense. Percentages do not matter if one is paying the right amount in tax.

I will return to the issue of the minimum wage, with which I have a difficulty. We can cite statistics which suggest that only a certain percentage of people in the country are on the minimum wage, but there are relativities. Anyone in a low-skilled job at the lower end of the pay scale in a manufacturing or service industry who was on €8 an hour before the increase in the minimum wage will now seek an immediate increase in his or her pay equal to the minimum wage increase. There is a knock-on effect. We spent many years dealing with the issues of relativity in all sectors — public service, tradesmen and trade unions. We moved away from that issue and yet we are returning to it. If the minimum wage goes up to €7.65, someone who was on €8 three months before will say that he or she should now get €8.65 — or a little more if one applies a percentage increase — since the person who was on €7 is now on €7.65. What is that doing to our competitiveness?

Senator Terry was right when she spoke about infrastructure. I will not blame the Government, but if one flies into Shannon Airport, one does not know when one lands if one will reach Galway in 45 minutes, 55 minutes or two hours and 55 minutes, since the roads let one down time and time again. One gets into the car, and for the first few miles one thinks that one is in Nirvana, since there is a beautiful motorway as far as Dromoland Castle, and then all of a sudden it disappears from the face of the earth. Imagine Americans and Europeans arriving in our country and seeing that. They come off the motorway and get into a three or four-mile tailback into Clarecastle and remain bumper to bumper until they reach the outskirts of Ennis. What are we to do? They come to Dublin Airport and get a taxi that takes them all the way around the city before it brings them into the city centre. Buses from the airport, which I get quite regularly, are excellent. It takes them 35 minutes on a good day, to an hour and 15 minutes on a bad day in the bus lane.

We are severely hampered by our infrastructure. We need a defined, ring-fenced Government investment programme to deal with those issues, and not merely in Galway. We must redress inequalities. Development must be balanced between east and west. We must see it in the north west and all down the west coast. This is the single biggest challenge to the future of Ireland — for my children and grandchildren. We are sitting on our laurels and not dealing with it properly. I feel sorry for the Minister, given the challenges. However, if we can keep that in mind, it might help frame the debate.

Mr. Hanafin: Competitiveness is vital to our economy. We are a successful and very open island economy. We have also been very successful at redistributing that wealth. To ensure we continue to grow at the level of recent years means there is a need for competition which will assist us with innovation and value for money. Our inflation rate is currently at the average for the EU and the eurozone. Our unemployment rate, at 4.3%, is half the EU average. Long-term unemployment is 1.5%, an historically low level. Since 1997, real gross national product growth has averaged 5.7% per annum, and this year and next it is estimated that it will grow by at least 5%.

It appears that many aspects of the economy need to be addressed. I suggest that the Government is taking on board whatever is necessary and listening to what the Competition Authority is saying to us. The Government is already taking several steps to address prices and costs in Ireland. It avoided inflation-fuelling increases in indirect taxation for the second year running in the 2005 budget, thus minimising its contribution to the problem. The most recent consumer price index figures from the Central Statistics Office show that inflation fell to 2.3% in January, compared with 2.6% in December.

Last year, the Government established the consumer strategy group to advise and make recommendations for the development of a national consumer policy. In the performance of that role, the group has carried out a range of activities, including studies that investigate issues of special concern. Price trends in other parts of Europe have been examined, and some prices have been the subject of additional investigation, including those of fruit and vegetables, alcoholic beverages and pharmaceuticals.

High insurance premiums have adversely affected all businesses operating in Ireland for the past few years. However, the National Competitiveness Council acknowledged that the cost of insurance for many businesses and consumers has come down over the past year as a result of deter-

mined Government action, including the establishment of the Motor Insurance Advisory Board and the Personal Injuries Assessment Board.

Furthermore, the Government is committed to increasing competition in all areas of the economy. It recognises that the key to reducing prices and maintaining them at optimum levels in the long term is to ensure vibrant competition in all sectors of the economy. That is why we have strengthened the powers and resources of the Competition Authority, which is charged with combatting anti-competitive practices in the economy.

I will refer to one or two reports that the Competition Authority has issued. One concerned the legal profession. Over 40 proposals to remove or amend unjustified anti-competitive restrictions in the legal profession were made. Among the most significant were the abolition of the monopoly enjoyed by King's Inns and the Law Society regarding professional legal education and the removal or amendment of the rule requiring barristers to be sole traders. When those were introduced, they were badly needed, but times have changed and the Competition Authority has recognised that fact.

The Competition Authority suggested that those changes should take place for the benefit of the consumer. The changes included the following: the broadening of the Bar Council's direct professional access scheme, which abolishes the prohibition on direct access by the public to barrister services; amendment of the restrictions on the provision of conveyancing services; removal of the restriction on partnerships between barristers and solicitors; removal of the restriction on lawyers holding the title of barrister and solicitor simultaneously; new criteria to allow the entry of lawyers who qualified outside the EU; and the provision by barristers of fee information to clients in advance. All those seem very practical and necessary today. The Competition Authority is taking them on board, and I am certain the Government will follow.

Similarly in the banking sector, the authority found that customers were locked in and it was difficult for them to change banks. This was particularly the case for small businesses. It was difficult for banks to offer new or innovative services. Small businesses were not getting the benefit of lower interest rates. The source of such problems was the structural arrangements within the banking sector. The behaviour of the banks was affecting the small business community and costing up to €85 million per year. One of the recommendations made was that a customer switching code be put in place to allow customers to move from one bank to another quite easily. The Government will examine the recommendation that the Department of Finance should revise the stamp duty levy so that it does not penalise those who switch accounts. The Department of Finance should propose legislation to eliminate IFSRA's price controls on charges and fees to ensure consumers benefit.

Senators have spoken exclusively about price during this debate, but I would like to talk about innovation, which is an essential part of competitiveness. A distinguished American economist, Dr. Paul Krugman, once described price competitiveness as a dangerous obsession. He was right, to a large extent. In the medium term, countries compete with each other on the basis of innovation, rather than price. While it is important that we do not allow our wages or prices to differ greatly from those of our competitors, we should not lose sight of the fact that our prosperity will ultimately be determined by the quality of our capital endowment and the skills of our people. Far-sighted economic policy should reflect that reality.

The Government is placing an emphasis on the skills of our people and the development of our capacity for research and development. While technological innovation is vital, we should bear in mind that we are challenged each day with being innovative in all sectors of the economy. The Government has demonstrated its commitment to innovation by pursuing a programme of public service modernisation and regulatory reform. The level of competitiveness within our economy can be measured by the quality of our public administration, the flexibility of our regulatory system's responsiveness and the openness of our policy process to the changing international context. The Government has done more than any other Government to ensure our economy remains broadly competitive, which can be measured by our economic growth, our price competitiveness and our level of innovation. I commend the Minister of State on his work in this area.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Ahern): I thank Senators Terry, Cox and Hanafin for their contributions this evening. I also thank the other Senators who spoke earlier in this debate. I am glad the Seanad has given time to and focused attention on important subjects like competitiveness and consumer protection. We need to increase our understanding of the various factors which contribute to competitiveness, which is a broad subject. This discussion has helped to improve our comprehension of this complex topic.

I would like to begin by citing some macrostatistics, which tell their own story. Ireland returned to strong economic growth last year, when GNP increased by 5.5%, total employment increased by an average of 3% and domestic demand increased by a substantial 4.4%. There has been a significant decrease in consumer price inflation over the past 12 months. Ireland's rate of inflation is close to the euro zone average and it looks likely that the economy will continue its robust performance. Rates of growth of between 5% and 6% have been forecast for 2005 and 2006. Labour market conditions are expected to remain buoyant during the rest of this year and in 2006.

[Mr. M. Ahern.]

It is likely that the positive environment for investment and employment will keep unemployment hovering around the historically low rates of approximately 4% in 2005 and 2006. Such statistics are hallmarks of a successful economy.

Despite the positive outlook I have outlined, we cannot afford to be complacent. Competitiveness is the lifeblood of a modern open economy. Given that foreign direct investment is increasingly mobile and depends on changing global economic circumstances, Ireland's future prosperity will be determined by its competitiveness. Ireland's competitive success continues to be built on key competitive strengths such as its taxation regime, which is one of the lowest in Europe, its well-educated and skilled workforce and its history of pursuing policies which are probusiness and proactively support enterprise. Globalisation means it is easier for our competitors to copy the competitive strengths which led to our remarkable economic success over the past decade. If we are to retain our competitive edge, we need to protect our strengths and develop new bases for competitive advantage, at national level and in every company.

The Government recognised, when it established the enterprise strategy group, that Ireland faces the direct and demanding challenge of moving from an economy driven by investment to one driven by innovation and knowledge. The recommendations contained in the group's report, Ahead of the Curve, will be pivotal in mapping the direction of Ireland's enterprise policy, ensuring its long-term competitiveness and increasing its corporate profitability. The recommendations aim to give the economy the capacity to move quickly to counteract emerging threats to business and to exploit the opportunities being presented by technological developments and the internationalisation of business. The Government is committed to the implementation of the recommendations. If we are to remain competitive, we must address our increasing cost base. That will continue to be a high priority for the Government, which has enacted several provisions to tackle increasing costs in a wide variety of sectors of the economy.

The Government has vigorously pursued a policy of introducing regulatory reform in the insurance sector. The establishment of the Motor Insurance Advisory Board and the Personal Injuries Assessment Board has led to a significant reduction in the cost of motor insurance. Statistics issued by the Central Statistics Office indicate that the average cost of motor insurance has decreased by 15% over the past 12 months.

Any discussion on competitiveness must be concerned with the level of competition in the marketplace and the protection afforded to consumers operating there. A marketplace is said to be effective if traders can compete robustly to sell their goods and services and consumers can readily avail of the choices offered by such competition. Markets which restrict competition or choice are ultimately self-defeating. For that reason, the policy of successive Governments has been to promote competition and consumer choice. Some of the measures which have been taken in support of that policy include a wide range of laws aimed at bolstering competition and providing certain protections to consumers when buying goods and services. Dedicated bodies, such as the Competition Authority and the Office of the Director of Consumer Affairs, have been established to enforce such laws.

One of the Government's primary responsibilities is to ensure that its policies and statutes remain effective and robust. Competition policy has been reviewed and developed in recent years for that reason. Senators will be aware of recent changes to strengthen competition law. Significant additional resources have been allocated to the Competition Authority to assist it in enforcing the law and carrying out its wider remit. The Government's initiatives in this area demonstrate its determination to ensure that those operating in the marketplace can do so on a level playing field and that traders who seek to abuse the marketplace are brought to book.

Competition and consumer protection are closely entwined and interdependent. Consumers can exercise choice only if the market offers a choice. Having strengthened competition policy to enable traders to compete and offer choice, it is incumbent on the Government to examine its policies which protect consumers when they are purchasing goods and services in the market. Some people claim that price control should be the cornerstone of consumer protection policy, but I do not accept that price control has a part to play in a modern economy. It is a failed policy of the past that should remain in the past.

The Government's view is that the interests of consumers are best served if they use the power of their pockets. I do not claim that standards should not be in place to protect consumers from unscrupulous traders who use unfair practices or false statements to mislead consumers into making ill›informed choices. As I have said, a large body of consumer protection legislation has grown up in this area over time. Unfortunately, the evolution of consumer protection law has meant that the current legal framework is somewhat fragmented and dated in some instances.

The Department of Enterprise, Trade and Employment is undertaking a critical review of existing consumer protection statutes to ensure that consumer protection laws are attuned to modern markets and consumers. The review is intended to create a more comprehensive, effective and modern framework of consumer law. While work on the review is ongoing, the Department is anxious to update consumer law wherever possible, particularly to deter rogue traders who seek to mislead or abuse consumers. I am pleased to include specific provisions in the Investment Funds, Companies and Miscellaneous Provisions Bill, which was discussed earlier this afternoon in the House, increasing the fines for breaches of a

range of consumer protection legislation to more realistic levels.

In addition to the aforementioned legislative initiatives, my Department also established a consumer strategy group in March 2004 to advise and make recommendations on developing national consumer policy and strategy. The group presented its final report to the Minister for Enterprise, Trade and Employment, Deputy Micheál Martin in early March 2005. The report is currently being considered by Government and I understand it may be published shortly. I am certain it will greatly assist in the development and modernisation of current consumer policy.

Competitiveness and consumer protection are key to our future growth and success. A vital element of economic growth is consumer confidence. Competitive economies, where traders actively compete for business, invariably maintain the confidence of consumers. To ensure our economy remains dynamic, innovative and competitive this Government is determined that its policies in these areas are robust and effective.

Senator Terry raised the question of infrastructure and I can confirm that the Government is committed to spending 5% of GNP on infrastructure over the next ten years. That covers roads, public transport, regional airports and all necessities for an economy that is growing at such a rate as ours is today.

I accept Senator Terry's point that Ireland's broadband service does not rank highly compared to other countries. In the recent past progress has been made. It is very important that broadband be available throughout the country. I understand it is now more widely available at a competitive price than it was six months ago. We need to have the necessary equipment and resources available to us if we are to maintain our competitiveness. The 2004 budget was deliberately non-inflationary and the inflation rate has been falling steadily since then. We are now on a par with the average in the euro zone and we will maintain our place in that league table.

Notwithstanding the recent reduction in inflation the Government appreciates that consumers are concerned about prices. The consumer strategy group met to advise and make recommendations to the Government. The report contains over 30 recommendations involving all sectors of the economy impacting on the consumer. I hope that the Government will be in a position to publish that report in the near future. A recent report on better regulation required the Government to conduct analysis of existing and future laws according to a number of criteria including whether the proposal is necessary and the effects it will have on employment. The Government fully supports that legislation should be subject to regulatory impact analysis.

As Senator Cox points out, it is important to protect workers' rights. Labour protection laws in Ireland are mirrored by laws in every developed country in the Organisation for Economic Cooperation and Development, OECD. This is the case in the United States, where there are minimum wage regulations and equality laws. The Organisation of Working Time Act 1997 was implemented in a practical, pragmatic manner. I am not aware of problems with the Act. If Senator Cox has any examples or cases where there is a problem I would be happy to investigate.

I wish to thank the Leas-Chathaoirleach for the opportunity to address the Seanad on these important issues and I look forward to discussing them with Senators in the years ahead.

An Leas-Chathaoirleach: When is it proposed to sit again?

Mr. Leyden: At 10:30 a.m. on Wednesday, 27 April 2005.

Adjournment Matters.

School Dental Service.

An Leas-Chathaoirleach: I welcome Minister of State at the Department of Health and Children, Deputy Sean Power to the House.

Mr. U. Burke: I thank the Leas-Chathaoirleach and join in welcoming the Minister to the House. This Adjournment matter concerns the need for the Minister for Health and Children to outline her intention to restore the school dental service to national schools in the Ballinasloe area, County Galway. Since the beginning of the school year the national schools in the area have been without school dentists. The vacancy has arisen through the resignation of the previous incumbent and her return to private practice in Northern Ireland. The consequences are very serious for pupils in both the urban and rural schools in the area. Some 25 national schools are served by the centre in Ballinasloe. As a result of this resignation and the failure to appoint a replacement there will be no school visits during this year. That will have serious consequences. Parents only have access if the child is in severe pain. These cases are referred to a centre in Galway. Every year 20 to 30 cases are referred for orthodontic treatment. This year, to date, no such referrals have taken place. There has been a deterioration of a service that should be available on demand.

This problem has occurred throughout County Galway over a number of years. We are allowing this service to grind to a halt. If it disappears, parents will have to seek private treatment for their children at huge cost. Both the Minister of State at the Department of Health and Children and the Minister for Health and Children have promoted preventative care. How can that be reconciled with the current situation?

There will be a part-time worker in the position for two days a week. That will provide a service

[Mr. U. Burke.]
with no school visits. Pupils now in sixth class will leave the primary cycle without any referral for necessary treatment. When they are referred to the centre in Galway they will be dismissed. The consequences will be very serious. I ask that action be taken immediately. Why can the Health Service Executive in the western area not appoint dentists to the position to provide orthodontic and dental treatment? If it does, why do the dentists not remain in the position? Why is this area less attractive than others? A similar situation to that of Ballinasloe was highlighted in Loughrea two years ago. What is wrong? Why does a school dental service not exist in this area? I ask the Minister of State to take immediate steps towards a permanent appointment to serve the needs of the many children in the area who have lost out this year.

Minister of State at the Department of Health and Children (Mr. S. Power): As the Senator is aware, the Health Act 2004 provided for the Health Service Executive, which was established on 1 January 2005. Under the Act the executive has the responsibility to manage and deliver or arrange to be delivered on its behalf health and personal social services. This includes the delivery of school dental services. Nonetheless, I am happy to explain the development of policy in this area and to convey the information provided by the chief officer for the executive's western area on the specific question raised.

Under section 67 of the Health Act 1970 and the Health (Dental Services for Children) Regulations 2000 (S.I. No. 248 of 2000), preschool children and children attending national school are eligible to receive dental treatment for defects noted at child health examinations. Child health examinations are provided by the Health Service Executive to children attending national school in accordance with section 66 of the Health Act 1970. Under the Act and regulations the HSE provides free dental examinations and limited treatment to children under six years of age, children attending national school and children up to 16 years of age who have attended national school.

In general the dental services provided are limited to oral examinations in schools, usually at second, fourth and sixth class and to emergency services provided at clinics or health centres. In certain circumstances and as an oral health promotion measure, fissure seals are provided in HSE clinics for children identified as requiring them during an oral health examination. These services are provided by public health dentists. In 2003, the latest year for which figures are available, there were approximately 450,000 children attending national schools in Ireland. All of these children are eligible to avail of the services provided under this scheme. I am informed by the chief officer of the HSE's western area that a vacancy arose late last year which affected the provision of the national schools service in the Ballinasloe area. The routine screening of national schools services in the area was particularly affected. As 14 dental teams are allocated to the school screening services in the western area of the HSE, vacancies will inevitably arise on occasion.

Mr. U. Burke: Constantly.

Mr. S. Power: When they arise, recruitment must take place in accordance with the appropriate procedures and this can take time. However, I understand that the HSE's western area has at all times made provision for emergency treatment for all children under 16 years of age to be available where required. Through this service patients can access where necessary the general anaesthetic extraction service in University College Hospital Galway. Furthermore, the HSE's western region has contracted a private dentist to cover the Ballinasloe area on a two day per week basis as of Friday 22 April 2005. Finally, the HSE's western area is currently engaged in a recruitment process for a salaried public service dentist for the area. I trust the position will be filled in the near future.

Child Care Services.

Ms O'Meara: I thank the Minister for State for taking this Adjournment matter. I received an impassioned plea from Templemore community services for help, support and advice after capital funding under the equal opportunities child care programme was refused for the Templemore community child care service. This service, which has operated for 25 years, provides a vital service to the community despite inadequate temporary accommodation. Users include a disabled child, which has led to requests from the parents of other disabled children to avail of the service. Traveller children are also accommodated. This service plays a role in supporting equality and reducing disadvantage in the Templemore community. The providers, who form part of Templemore community services, are distraught at the future prospects for the service and stunned to learn that they cannot access necessary capital funds under this programme.

I am aware that the equal opportunities child care programme is limited. However, considerable allocations have recently been made by the Minister for Justice, Equality and Law Reform under the capital funding budget for the programme. While a number of child care projects in north Tipperary have been allocated funding, the Templemore project has not. Despite conducting fundraising activities, it has incurred debts in meeting the criteria set by Area Development Management Limited. New staff have been hired as the service expanded. An application for planning permission entailed the payment of significant sums to architects and other professionals. The service, having been refused funding, is now

in debt. I am sure the Minister for State will appreciate the difficulties that it faces.

This House has discussed child care recently and I have asked for a debate on the equal opportunities child care programme. It is a great programme without which less would be achieved by communities. It is the Government's response to the crisis in the supply of child care places. I acknowledge the work carried out by the Department of Justice, Equality and Law Reform to support services in communities. However, the Templemore situation reveals the shortcomings of the programme. This Government must spend money to develop the child care services we want. Many facilities currently await news of staffing grants from the Department, officials of which informed the Joint Committee on Justice, Equality, Defence and Women's Rights that they in turn await clearance from the Department of Finance. The issue of Templemore and other facilities is clearly one of money. I appeal to the Minister to allow the Templemore service to hold out hope for developing future services. It has appealed the decision and I hope there will be favourable news.

Mr. S. Power: I thank Senator O'Meara for raising this Adjournment matter. I am surprised to take the impression from her that she heard bad news on occasion in this House.

Ms O'Meara: No comment.

Mr. S. Power: I represent the Minister for Justice, Equality and Law reform because he must attend to other business. I am delighted to have the opportunity to respond. Child care is an important priority for the Government and we have increased the funding provision for this sector on a number of occasions since we first made commitments to the broad child care sector in 1998.

The Equal Opportunities Childcare Programme 2000 to 2006 is a key element of the national development plan which aims to increase the availability and quality of child care to support parents in employment, education and training. The equal opportunities child care programme's original funding package of €318 million allocated in 2000 has now increased to just over €499 million to be spent within the life of the national development plan or before the end of 2007.

The funding package has increased because the Government is aware of the importance of providing child care to support the economy and to support social inclusion through labour market participation. This Government has listened to requests from the many groups throughout the country seeking to build child care facilities to meet local need. The Government has responded to those requests by making more capital funding available immediately to build on the momentum generated to date by the current equal opportunities child care programme in community groups throughout Ireland rather than await a new follow-on EOCP programme post-2006. Senator O'Meara may be aware that the Templemore Community Services Group was approved staffing grant assistance under the EOCP totalling €132,410 in November 2003, which provides it with an annual support of over €44,000 towards its staffing costs.

The Minister for Justice, Equality and Law Reform has informed me that the Templemore group has submitted a capital grant application for funding under the EOCP to his Department. An assessment of the group's application against the EOCP criteria was carried out by Area Development Management, ADM, Limited which is engaged by the Department to carry out thorough assessments of all applications for grant assistance. The application was further considered by the programme appraisal committee, chaired by the Department, which did not recommend to the Minister that he fund the project on the basis that it did not adequately meet the criteria of the programme in respect of the levels of service provision being proposed.

Specifically, it was considered that the planned project did not represent good value for money as it proposed a limited range of service types and operating hours and did not propose to offer a full day care service. The service will provide two sessional services running from 8.30 a.m. to 12 noon and from 12.30 p.m. to 4 p.m., thus providing part-time child care places only.

I am also informed by the Minister for Justice, Equality and Law Reform that the Templemore group recently appealed the decision not to grant funding. ADM Limited will reassess the application in light of the appeal, take full account of any additional information the group may wish to offer in support of its application and consult with the group if necessary during the reassessment process. The outcome will then be considered by the programme appraisal committee, chaired by the Department, which will make a recommendation to the Minister regarding funding. Templemore Community Services will be informed of the outcome as soon as possible.

Funding under the equal opportunities child care programme is prioritised for those projects which most closely focus on the aims and criteria of the programme and clearly support the child care needs of parents in employment, education and training. Every county has benefited from considerable support for new child care facilities under the EOCP. In all, funding to create some 36,000 new places has been approved to date. When fully drawn down, this funding will bring an increase of over 63% in the number of centre-based child care places throughout the country since the start of the programme in 2000, which is well ahead of our original expectations.

Efforts are being made to achieve a good geographical spread through the appraisal and approvals process. County Tipperary has already been approved over €14.4 million under the child care programme with 42 capital grants approved

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to establish either new or quality-enhanced, community-based, not for profit or private child care facilities. The county has also benefited from 42 staffing grants to community groups which have a focus on disadvantage. This funding to child care providers in County Tipperary is leading to the creation of almost 1,400 new child care places and to the support of almost 1,000 existing places. Tipperary County Childcare Committee also receives an average of €400,000 in annual funding to support its developmental work through the implementation of its annual action plans.

The programme also makes grant assistance available towards the staffing costs of community-based, not for profit child care facilities which have a clear focus on disadvantage and support disadvantaged families who are in work, training or education. Such funding has already been made available to this group for its existing service.

I would like to reaffirm that the EOCP is the Government's response to the need to develop a child care infrastructure to support parents. I can inform the Seanad that there has been very significant progress in the creation of a good child care infrastructure and I hope Senator O'Meara will acknowledge the progress made to date, particularly in her own county of Tipperary.

The Seanad adjourned at 5.55 p.m. until 10.30 a.m. on Wednesday, 27 April 2005.