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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 12 *October* 2005.

SEANAD ÉIREANN

Dé Céadaoin, 12 *Deireadh Fómhair* 2005.
Wednesday, 12 *October* 2005.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer

Business of Seanad.

An Cathaoirleach: I have received notice from Senator Brian Hayes 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 respond positively to the Childhood Development initiative, a community-based project to develop an integrated child care programme in the west Tallaght area of Dublin 24, and to outline the action the Government intends taking to facilitate this initiative on the ground.

I have also received notice from Senator Henry of the following matter:

> The need for the Minister for Health and Children to outline the information which has come to hand in recent days on negotiations which are taking place in third level institutions regarding direct entry into midwifery nursing.

I have also received notice from Senator Morrissey of the following matter:

> The need for the Minister for Education and Science to give an update on progress to reduce the pupil-teacher ratio in our schools; particularly in rapidly developing towns such as Swords in north Dublin, where the population has recently risen by 22%.

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

> The need for the Minister for Arts, Sport and Tourism to clarify the position regarding funding of genealogical projects by the Irish Genealogical Project, IGP, as funding of projects other than its own seems not to be within the remit of the IGP, precluding all other projects and effecting a situation that is adverse to the advancement of Irish genealogy as a whole.

I have also received notice from Senator Browne of the following matter:

> The need for the Minister for Health and Children to indicate the steps that are being undertaken to honour her commitment in July 2005 to provide additional capital funding to St. Luke's Hospital in Kilkenny.

I regard the matters raised by Senators Brian Hayes, Henry, Morrissey, Bannon and Browne as suitable for discussion on the Adjournment. I have selected those raised by Senators Brian Hayes, Henry and Morrissey and they will be taken at the conclusion of business. Senators Bannon and Browne may give notice on another day of the matters they wish to raise.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, a procedural motion to discharge the order which was originally made for tomorrow to allow Committee Stage of the Employees (Provision of Information and Consultation) Bill 2005 be taken today on the conclusion of the Order of Business until 5 p.m.; No. 2, Employees (Provision of Information and Consultation) Bill 2005 — Committee Stage, to be taken on the conclusion of the Order of Business until 5 p.m.; and No.17, motion No. 27, to be taken from 5 p.m. until 7 p.m. There will be a sos from 1.30 p.m. until 2.30 p.m.

Mr. B. Hayes: Yesterday, a number of Members raised the issue of age discrimination in the House. I can give the Leader an example of how our legislation contains concrete and inexplicable age discrimination. Recently, I discovered that people over the age of 70 are ineligible to serve on a jury. This matter relates to the Juries Act 1976. It seems crazy that people over 70 are completely ineligible to serve on a jury. This legislation must be amended quickly. Such people are wise, probably have time on their hands and have acquired great judgment from their years of experience. Why are they disbarred from serving on a jury? It is acceptable for a person to go into a jury box and be challenged by either the prosecution or the defence. However, making someone ineligible on the basis of age appears to be quite a ridiculous notion. I ask the Leader to request the Minister for Justice, Equality and Law Reform to introduce a short amendment to the Juries Act 1976 enabling people over 70 years of age to serve on juries. It should be introduced in this House, as the matter has been raised here. If he will not introduce an amendment, I will. We must root out this kind of age discrimination which exists in our legislative code.

Mr. O'Toole: Before the summer recess, the House discussed the developments in Marino College at some length. I have become aware of some disquieting developments in the college over the past month. They entered the public

[Mr. O'Toole.]

domain today so I thought I should raise the issue. Put simply, the authorities in the Department of Education and Science entered discussions with the authorities in Marino College. They came to a certain level of agreement as to how business should be conducted in the college and how it should be run in the future. This was an accepted and agreed position and on that basis, a member of staff agreed to accept the position as interim college president. However, when it came to establishing that individual's contract, all the demands and conditions which had been set down by the Department of Education and Science were reversed to such an extent that the person rejected the offer. Two senior members of staff have also resigned on the same basis.

I do not want to open the discussion here but rather wish to give Members a flavour of my concerns. It would be appropriate for the Minister for Education and Science to address the House and bring it, as much as possible, up to date. She now has information she did not previously possess. An investigation was held and many attempts have been made to get this working correctly but there are still difficulties. Public money and students' careers are involved and we must know where we are going on the issue.

I asked whether we could debate another matter, namely, where Ireland stands on environmental issues, the Kyoto Agreement, etc. Much of the discussion focuses on the area of oil, the costs to our economy and what we are doing wrong. We must take a positive view in respect of this matter. I would welcome a debate with the Minister for Communications, Marine and Natural Resources on his views concerning wind energy, solar energy, wave energy and geothermal heating. I particularly wish to know how these can be made attractive to ordinary householders. Grants were available to householders not too long ago, perhaps sometime during the past 25 years, for making certain improvements to their houses. We could meet many of our Kyoto targets were every house in Ireland to have a 1 kilowatt wind generator, be properly insulated and have some element of solar power. How can we make this attractive and give support? Taking a proactive approach to this issue rather than keeping the debate centred on the cost of oil would save us money in the long term.

Mr. Ryan: Perhaps the Minister for Health and Children or the Minister for Finance should clarify to the House elements of the high level group that will oversee the appointment of IT consultants. Is it intended to appoint consultants to vet other consultants or are we now claiming that the expertise to deal with these matters already exists in the public service? If that is the case, why did we employ consultants in the first instance, however badly employed they were? I am concerned that a mess may be compounded by a further mess of centralisation.

The myth the Department of Finance likes to promote is that it has expertise on every matter in order for it to micro-manage the way schools are built in Castletownbere and bridges are built elsewhere. It cannot have this expertise. All the Department will do is introduce another layer of decision-making, which will slow everything down. What Ireland needs, and what we must discuss, is obliging those who are paid well to manage our public services to do so. This means people taking decisions, assuming responsibility and being publicly accountable for those decisions. If we do not do so, the habit of saying that the Minister will decide will lead to disaster.

Will the Leader arrange a debate on Ireland's rating in the World Economic Forum's competitive countries list? If we allow IBEC to decide how to discuss competitiveness, we will be here for a week listening to its woes. We should discuss an international forum's adjudication on the matter because it places eight small European countries ahead of us, which is cause for concern. With a sole exception, none of those eight has lower taxation levels than Ireland and they all have better environmental standards. The usual excuses about regulations or costs are not the issue. Rather, competitiveness is fundamental in this regard and I would welcome a debate.

Dr. Mansergh: In response to Senator Ryan, there are many such tables. *The Economist* recently placed us as the top country for standards of living and quality of life.

Mr. B. Hayes: Its staff do not have to live here.

An Cathaoirleach: Senator Mansergh will speak on the Order of Business.

Dr. Mansergh: I will move on. There are mornings when there is not much to be said for editorial writers. I am sick and tired of media organs that present themselves as champions of democracy against threats from republican subversion and so on——

Mr. Dardis: Hear, hear.

Dr. Mansergh: ——taking every opportunity to denigrate the work of whole classes of elected representatives. The editorial writer in the *Irish Independent* has no clue about the workload undertaken by councillors.

Mr. Dardis: Hear, hear.

Dr. Mansergh: Most of the work to which I refer is unsung. I welcome the efforts that have been made in recent years to improve the terms and conditions of those representatives.

Mr. MacSharry: Hear, hear.

Mr. Finucane: I welcome Senator Mansergh's raising of the quality of life issue as it is nearly a year since the Tánaiste promised 20,000 extra medical cards. Despite her promise, there has been a reduction of 10,000 in the number of such cards.

Mr. B. Hayes: She promised 200,000.

Mr. Finucane: Yes. She promised 200,000 special doctor-only medical cards. Negotiations were delayed as a result of talks between the Department of Health and Children, the Health Service Executive and the Irish Medical Organisation. We thought recently that the matter had been resolved but the IMPACT trade union is now holding it up on behalf of its members. I cannot understand why, if the Department had difficulties with the IMO, it did not then anticipate that it would need extra staffing or foresee the necessity to hold parallel talks with the union.

Mr. B. Hayes: Hear, hear.

Mr. Finucane: We now have the farcical situation of the matter being held up again despite the commitment to introduce the cards. Parents are currently neglecting their health. While they take care of their children and bring them to doctors, in many instances they cannot afford the same expenditure on themselves. Will somebody get off his or her backside and resolve this issue, once and for all?

Mr. B. Hayes: Hear, hear.

Mr. Norris: I was relieved yesterday to hear on the radio that the Leader has no intention whatsoever of retiring from politics. I am sure the Chair and the rest of the House will welcome her announcement. Will she——

Mr. Ryan: Has Senator Norris decided to continue?

An Cathaoirleach: Senator Norris on the Order of Business.

Mr. Norris: I have not changed my mind at all and will run in the next election.

Dr. Mansergh: In a reformed constituency.

Mr. Norris: I am sure my colleague, Senator Mansergh, after he has spoken so manfully in defence of the independence of Irish politicians, will write a column about me in *The Irish Times*.

An Cathaoirleach: Senator Norris on the Order of Business.

Mr. Mansergh: Senator Norris will run in a reformed constituency.

Mr. Norris: Yes. I will try to reform Senator Mansergh's constituency, which will be the end of him.

An Cathaoirleach: Senator Norris will speak on the Order of Business.

Mr. Norris: The Leader promised a debate on Iraq. It is a subject that is close to her heart and I ask her to name the day. We do not have much of significance to do this week. We could, therefore, have the debate, particularly in light of the fact that, while I noticed yesterday she indicated she would put a motion on the Adjournment about the manifests of certain aircraft passing through our airspace, she did not have the opportunity or time to set a date.

Ms O'Rourke: The debate will be held tomorrow.

Mr. Norris: I am delighted. Well done. I would not doubt the Leader.

Ms O'Rourke: In which case, what is the Senator seeking?

Mr. Norris: It would be helpful——

Mr. Dardis: The Senator would be a brave man if he did doubt the Leader.

Mr. Norris: Senator Norris, without interruption.

Ms O'Rourke: The Senator is self-regulatory.

Mr. Norris: I am.

Mr. B. Hayes: His is a benign dictatorship.

Mr. Norris: To that end, after all the warnings the House has given, this country has been reported to the Security Council of the United Nations.

An Cathaoirleach: The Senator will address the Chair and confine himself to the Order of Business.

Mr. Norris: Certainly. I wish to refer to motion No. 19 of No. 17, in my name and those of the other Independent Members, on the Order Paper. It is appropriate that the Seanad, which had as one of its past Members the founder of the Abbey Theatre, the late W. B. Yeats, should request the Minister for Arts, Sport and Tourism to give an account to the House of what is happening regarding the theatre's restructuring and relocation. The Abbey Theatre is a national asset

[Mr. Norris.]

and it is not appropriate that businessmen, however distinguished, should regard it as they did in their previous attempt to filch it from its historic site on Abbey Street as a "cultural key in a commercial development". It is a national asset and should not pass into the commercial arena without a debate in this House.

I support my colleague, Senator O'Toole, in his call for a debate on the Kyoto Agreement. We will not meet the targets set by the Kyoto protocol and even if we did, all the protocol does is slow down the rate of increase. It is rather sad that we are not doing this. Many people this morning may have heard the Minister for the Environment, Heritage and Local Government, Deputy Roche, give a not particularly distinguished interview because he evaded every question by engaging in flummery. This is not the way to address the very serious problem of climate change, which we have noted with the Arctic ice cap melting. We are now supposed to be at what is termed a tip-over point where the world's climate may never recover. I therefore strongly support Senator O'Toole's call for a debate on the issue and on No. 17, motion No. 23, on the Order Paper.

Mr. U. Burke: Last week, I asked for a debate on the BMW region. We see this morning that as a result of the visit of a delegation to Brussels yesterday, the Government has repeatedly failed to draw down fundings that are available for various projects. A total of €50 million was returned because no suitable tourism and sports projects were put forward by the Government or the Minister for Arts, Sport and Tourism, Deputy O'Donoghue, and €24 million was returned because universities failed to utilise available funding in the area of research and development, although they claim they are underfunded.

The Government and respective Ministers have neglected the area of infrastructure. The area of agriculture is already in total disarray and suffering from a continuing flight from the land, yet the Minister for Agriculture and Food has returned the funding with the result that expected funding of €4.5 billion for the next seven years has been reduced to €1 billion. This means that many projects, particularly in the BMW region, will not be forwarded and processed, which is a shame. The sooner the relevant Minister comes to the House to account for the miserable failure on his or her part to provide adequate funding in those areas, the better.

Mr. B. Hayes: Hear, hear.

Mr. U. Burke: The results of the appeals against grades awarded in this year's leaving certificate have been released today. The fact that 2,600 candidates received an upgrade six to eight weeks after the start of the academic year is leading to chaos. It means that people who would have been in particular faculties and following particular courses if the proper accreditation had been given to them originally cannot avail of them now. Eight of the 26 weeks in the academic year have already passed and it will cause confusion if people apply now for a change. A total of 30% of candidates in higher level geography, 27% of people in higher level biology and 21% of people in higher level English have received upgrades.

An Cathaoirleach: The Senator has been given due latitude.

Mr. U. Burke: Procedures in this area are loose and it is the responsibility of the Minister for Education and Science to devise a plan whereby this delay will not recur. It is good that there is an appeals mechanism but it is unsatisfactory and I am asking that the Minister review it.

Labhrás Ó Murchú: I support the call for a debate on Iraq. This House was very much to the fore in debating different situations throughout the world and Iraq was always top of the agenda. Like most major items, it only remains on the agenda for a certain period of time yet there is so much taking place there at the moment. There should be a monitoring debate every so often on Iraq.

I support Senator Mansergh's view regarding the media reaction to public representatives. I was taken aback by the vitriolic attack on county councillors, who are easy prey at present. The manner in which they were referred to in this morning's edition of the *Irish Independent* is not right. I would like to repeat a point made by councillors themselves. They are very much at the coalface are appointed in consequence of a democratic system. No group of people in the country should be criticised because they are looking for improved conditions. The same principle applies to people in the media. It is time that Members spoke on behalf of those who do not have a national forum to respond to such attacks.

Mr. B. Hayes: Hear, hear.

Dr. Henry: Today is World Population Day and I take this opportunity to thank the Government for its continued support for the international agencies which are trying to reduce maternal and infant mortality. At the same time, this week is International Mental Health Week and we have little to congratulate ourselves for on this issue. I am sure Senators have seen reports in newspapers where it was stated that 14 beds in the Mater Misericordiae Hospital, which were set aside for people with mental illness, particularly homeless people with mental illness, have now

been cancelled due to lack of funds and space in the hospital. In addition, the job of a psychiatrist who was appointed to give psychiatric care to homeless people in north Dublin has been subsumed because he stated that he needed some backup staff, such as psychiatric social workers and psychiatric nurses. This is an extremely serious and I ask the Leader to ask the Minister for Health and Children to come to the House for a discussion on mental health and the homeless, particularly in Dublin.

Mr. Feighan: In an article in a leading Sunday newspaper, a very respected and influential journalist raised the notion that the IRA is able to smuggle large quantities of fuel into this country through ports in the Republic of Ireland and Northern Ireland. Apparently, the IRA is involved in such an extensive smuggling operation that the original godfather himself, Don Corleone, would be very proud. The journalist also speculated that this mega-industry is able to operate with impunity because the Customs and Excise Service is either incredibly inefficient or has been infiltrated by the IRA. This is possibly one of the most serious allegations I have heard in the last number of years.

Given these remarkable allegations, there needs to be an immediate investigation into IRA smuggling at ports in the Republic of Ireland and the customs service in Northern Ireland. These damning allegations are destructive to the credibility and impartiality of the Customs and Excise in this country and I ask the Minister to carry out an immediate investigation to ensure that they are untrue.

Mr. B. Hayes: Hear, hear.

Mr. Glynn: I ask the Leader to urgently provide for a debate on men's health. Recent statistics indicate that young men are particularly vulnerable to suicide. Anyone will attest that statistics show that the incidence of prostate and colon cancer among men is rising at an alarming rate.

I support the points made by Senators Mansergh and Ó Murchú regarding the editorial in today's edition of the *Irish Independent.* It is very interesting to note that two councillors retired at the last local elections with over 100 years service between them without a pension. This is wrong and must be changed, a position I know Members support.

Ms O'Meara: I am also disappointed by the editorial in today's edition of the *Irish Independent* because it showed an extraordinary lack of appreciation for the work done by councillors and the value we should place, but clearly do not, on local democracy. The word has clearly not got through to the offices of the *Irish Independent* about the work done by local councillors. We, as Senators elected by councillors, have a role in promoting awareness of their role and should examine it.

Could the Leader advise on the current status of the Parental Leave (Amendment) Bill 2004? The Bill was passed in this House with a minimal increase in the amount of parental leave made available and no change in the status of parental leave — it is still unpaid. My inquiry is based on several remarks made by Ministers and Ministers of State in the media as late as yesterday evening that parental leave is on the Government's agenda for tackling the child care crisis. It leads me to believe that there may be a change of heart on parental leave and that this Bill will come back to the Seanad in hopefully a much amended form.

I support the calls for a debate on mental health, particularly because of concerns regarding the effect of the reorganisation of the health service, through the Health Service Executive, on the need for improved delivery of services for people — particularly those in rural communities — suffering from mental illnesses. We have not yet had an indication as to what it will mean.

11 o'clock

An Cathaoirleach: Seven minutes remain in the time allocated for the Order of Business and seven Senators are offering. I will try to accommodate all of them but I would like them to be brief.

Mr. Norris: That is one minute each.

Mr. Hanafin: I request that the Minister for Finance come before the House prior to the budget to discuss changing the situation with regard to agricultural and industrial diesel. We have white and green diesel and an opportunity exists for criminal elements to change the colour and, therefore, the value of the fuel. Would it be more appropriate to introduce a rebate system whereby a farmer or a truck driver on vouched expenses would receive a rebate, rather than giving criminals a opportunity to earn a lucrative income from this source?

Mr. McHugh: Many nurses who complete their training in the United States find it extremely difficult to obtain nursing positions in Ireland. Many of these nurses are Irish, they are aware that a demand for nurses exists in Ireland and they find it quite frustrating and distressing that An Bord Altranais states that the degree course at Villanova University does not contain adequate clinical hours. I wish to cite one example of a nurse who qualified from Villanova University. She has 16 years experience of accident and emergency departments in the United States and has dealt with gunshot wounds, stab wounds and amputations. That nurse wishes to return to

[Mr. McHugh.]

Ireland to work and she has been informed that she does not have enough clinical experience from Villanova University. I ask the Leader of the House through the Cathaoirleach to directly intervene in this matter. I will give her the details of this particular case. From the point of view of the individual in question, it is frustrating and distressing, when such a demand for nurses exists, that 16 years of valuable experience is not taken into consideration. We need nurses and Irish nurses want to return home.

Mr. Quinn: The World Health Organisation can rarely be accused of scaremongering. Yesterday it criticised the lack of international co-operation in preparing for the avian flu and the serious risk that it may become pandemic. This does not merely affect birds, it affects humans. The World Health Organisation has compared it to what happened in 1918 when a flu swept the world and killed millions of people. It believes that we are not co-operating well enough. I ask the Leader to draw the attention of the Minister for Health and Children to this matter to ensure that we are not open to such an accusation.

Mr. Bannon: As a former secretary of the Local Authority Members' Association, I was extremely disappointed this morning to read the mean attack on local public representatives throughout the country.

Senators: Hear, hear.

Mr. Bannon: It was shameful and disgraceful. I call on the people who wrote that report to stand up and be counted by putting their names on the ballot paper at the next local elections.

Senators: Hear, hear.

Mr. Bannon: Our councillors are the foot soldiers of democracy and they are paid buttons. That is a fact. I join my colleagues in condemning the editorial and the other comments in the newspaper today that criticised local public representatives.

Mr. Dooley: Bring them in here.

Mr. Bannon: We have a jaded and weak Government.

Mr. Dooley: Second only to a jaded Opposition.

Mr. Minihan: That is a jaded line from Senator Bannon.

Mr. Bannon: We have a Tánaiste and Minister for Health and Children who failed to appear on current affairs programmes.

An Cathaoirleach: Does Senator Bannon have a question on the Order of Business?

Mr. Bannon: She was asked to appear on "The Late Late Show" recently——

Dr. Mansergh: That is not a current affairs programme, it is an entertainment programme.

Mr. Bannon: ——to discuss the health situation. She wanted to appear on——

An Cathaoirleach: RTE programmes have no relevance. Does Senator Bannon have a question for the Leader?

Mr. Bannon: Yes.

An Cathaoirleach: Senator Bannon should put the question to the Leader.

Mr. Bannon: The Tánaiste wanted to appear on the programme, control events and dictate——

Mr. Bannon: Senator Bannon must put a question to the Leader.

Mr. Bannon: I want the Leader to invite the Minister for Health and Children to come before this House to update us on the position regarding the processing of claims for refunds of nursing home charges. That is a long-playing record.

Mr. Dooley: The big payout.

Mr. Bannon: Many families were victims of those charges and they should be compensated at once rather than being obliged to go through legal channels.

Mr. Bradford: I support Senator O'Toole on the question of a debate on energy. We must concede that much discussion has taken place on the cost of energy since the significant increase in oil prices during the summer. However, we have not had the quantity or quality of debate we urgently require on energy conservation and alternative energy sources. I would like the Minister for Communications, Marine and Natural Resources to come before the House to discuss the many steps that can be taken at Government level by way of providing grants for energy conservation and research and the development of alternative energy sources, such as biofuels, biodiesels, geothermal supplies and solar energy.

We must also address the question of energy conservation which was raised by Senator O'Toole. Grants were issued 20 or 30 years ago for house improvement programmes. We should have grants for insulation and conservation in houses, particularly in our older housing stock. This debate should not be about energy costs

only. It should also encompass reducing consumption and providing alternative sources of supply. That debate is urgently required because we must face the fact that worldwide energy prices will remain high and we must put a domestic solution in place.

Mr. Coghlan: Senator Mansergh is quite perceptive with regard to how small a clue editorial writers possess in respect of certain subjects, and what was written this morning in the editorial of the *Irish Independent* with regard to councillors is one such glaring example.

We read this morning of appointments to the Garda Complaints Board. I understand that these will be on a full-time basis. Will the Leader comment on this or give the Government's view, particularly with regard to the appointment of the Director of Consumer Affairs to the Garda Complaints Board?

An Cathaoirleach: It is not fair to refer to any appointee.

Mr. Coghlan: I apologise and will rephrase the question. The Cathaoirleach's guidance is always appreciated. What does this say with regard to the Government's commitment to consumers? A vacancy exists at the top of the Competition Authority. Will the Director of Consumer Affairs position also be vacant?

With regard to the Housing (Stage Payments) Bill which was voted down in the House in May 2004, the relevant Minister accepted at that time that it was an anti-consumer measure which had a negative impact and consequence for consumers, particularly first-time buyers. He promised that the Government would introduce legislation within six months but there is no mention of it in the legislative programme. Will the Leader comment on this matter?

Ms O'Rourke: The Leader of the Opposition, Senator Brian Hayes, raised the matter of age discrimination with regard to people who serve jury duty. Those over the age of 70 cannot serve on Irish juries. It seems to be a major anomaly in an era when ageism is being wiped out. I will contact the Minister for Justice, Equality and Law Reform and put the matter to him. It may be the case that jury duty might have been excluded from Bills on equality. I do not know and I cannot remember. I will inquire about it because the position should be rectified. As Senator Brian Hayes suggested, a simple amendment would be sufficient and if it came before this House I would support it.

Senator O'Toole raised the issue of Marino College and referred to it as a house of mystery, which is certainly the case. The Senator mentioned that the stipulations and conditions laid down by the Department of Education and Science have been reversed and, as a result, the person due to take over the position of interim president is extremely wary of doing so.

Senator O'Toole also requested debate on environmental issues and on how different types of energy can be made attractive. He mentioned that schemes used to exist to do that and requested that the Minister for Communications, Marine and Natural Resources come before the House to discuss this matter.

Senator Ryan sought an explanation from the Minister for Finance of the new rules on IT consultants. They are very simple; the Minister for Finance will not give money in the budget for inordinate demands for consultants. He also sought a debate on the international forum on competitiveness.

Senator Mansergh explained that in a poll in *The Economist* Ireland was at the top of the quality of life category. He also raised one of the issues in today's *Irish Independent* editorial, which referred in scathing terms to local councillors. As one would expect, that was correctly echoed all over the Chamber. I was a councillor in the days when one got nothing for going anywhere or doing anything but even now what is given to councillors is very modest. An appreciation of the role of local councillors is overdue. That was a disgraceful intervention.

Senator Finucane wants the provision of doctor-only medical cards to be expedited. The IMPACT matter appears to have come up late in the day. The difficulties with the medical practitioners have been overcome. The Senator just wants the cards to be issued and I agree with him.

I was most disappointed that Senator Norris said nothing of importance would be done in the House this week. We are dealing with an important Bill today about employees and their rights, to which there are 78 amendments. I consider that of major importance. The Bill was taken here first. Domestic violence, also an important issue, will be discussed tomorrow. The Taoiseach will come to the House tomorrow afternoon to discuss European affairs, another subject of immense importance. The debate on the undocumented Irish in the United States was also an important one. I consider this week's work most compelling in its range and scope. I am most disappointed with Senator Norris because he has not got what he wants. One cannot get what one wants every day.

I am rather surprised to hear Senator Norris is looking for another constituency as I consider Trinity College to be a delightful one.

Mr. Norris: I am not looking at all. I am very happy with what I have and I have been encouraged by Senator Ross to stand again. It is thanks to him that I have decided I will give it another go.

Ms O'Rourke: I am sure he will too.

An Cathaoirleach: We cannot have a debate on the Order of Business.

Ms O'Rourke: No, we cannot, but let us note that the Senator made his declaration here. He sought a debate on No. 17, motions Nos. 19 and 23, all of which he has sponsored.

Senator Ulick Burke asked that the Minister for Arts, Sport and Tourism come to the House. I expect he will be in the House this evening as Private Members' business is on that matter. He also spoke at length about the appeals system for the leaving certificate and how losing marks can cost students places in universities and third level colleges. Time constraints come into play and alternative people have to be found to correct the papers. Most of those who marked the papers originally will have gone back to school. I do not know how the procedure can be compressed, concertina-like, into a shorter period. However, I agree the issue is worth reviewing.

Senator Ó Murchú called for a debate on Iraq. That is on the agenda. He agreed with Senator Mansergh on public representation. Senator Henry reminded us that this is mental health week. She sought a debate, especially on psychiatric care in the community. Senator Feighan referred to the IRA smuggling empire which, thankfully, appears to have been stymied. Senator Glynn spoke about men's health and also raised the issue of today's *Irish Independent* editorial.

Senator O'Meara also focused on that matter. I expect councillors' telephones will be busy this morning with all of the Senators calling them to say they do not agree with what was said in the *Irish Independent*. Senator O'Meara asked what is the status of the Parental Leave (Amendment) Bill. It is on the agenda in the Dáil but has not yet been reached. She inquired if changes would be made to it. We put forward many changes to that Bill here which were not taken on board and perhaps they could be now, given the change in the approach to child care. Senator O'Meara also referred to mental health.

Senator Hanafin inquired if agricultural diesel could be operated on a rebate system rather than the way it is at present. I look forward to getting the details from Senator McHugh. Villanova is deemed not to give enough clinical hours to nurses who wish to come back here in spite of having years of experience. Senator Quinn asked if we are prepared for the avian flu. I hope so because the 1918 one was disastrous for the whole world. I will endeavour to establish from the Tánaiste and Minister for Health and Children if we are adequately prepared.

In his previous life, Senator Bannon, was secretary to LAMA. I am sure he was an excellent secretary. I mean that genuinely.

Mr. B. Hayes: Of course he was, he ended up here.

Ms O'Rourke: Many years ago now, I was the original secretary to LAMA. Senator Bannon wants the Tánaiste and Minister for Health and Children to come to the House. We are not one bit jaded on our side of the House, as he alleged we were. We are quite the opposite.

Mr. B. Hayes: It is the Government that is jaded.

Ms O'Rourke: Senator Bradford referred to the oil crisis. He is right. We must have a proper debate on what we can do, as oil prices will not go down. There is no doubt about that. They may go up or down a few cent but they will not go down to previous levels. I support Senator O'Toole's call for a general debate on that matter and on conservation.

Senator Coghlan supported Senator Mansergh. He need not fret that the position of Director of Consumer Affairs will be left idle for long. I am sure it will soon be filled. It is an estimable position and the woman who currently holds it is an estimable woman from Athlone.

Order of Business agreed to.

Employees (Provision of Information and Consultation) Bill 2005: Motion.

Ms O'Rourke: I move:

That notwithstanding anything in Standing Orders, Committee Stage of the Employees (Provision of Information and Consultation) Bill 2005 be taken on the conclusion of the Order of Business until 5 p.m.

This is a procedural motion to discharge the order which was originally made for tomorrow to allow Committee Stage of this Bill to be taken today.

Question put and agreed to.

Employees (Provision of Information and Consultation) Bill 2005: Committee Stage.

SECTION 1.

Mr. O'Toole: I move amendment No. 1:

In page 3, subsection (1), to delete lines 15 to 17.

I welcome the Minister of State, Deputy Killeen. I realise he has put a great deal of work into the legislation. As I said on Committee Stage, this is crucial legislation, elements of which must be examined, tweaked and perhaps changed. In a sense, the effect of the amendment is to throw out the baby with the bath water. What I really want to get rid of is the last phrase which reads

"or appointed by the employer on a basis agreed with employees". People should be elected in all cases. I would be happy to accept a lesser amendment that would simply get rid of the entitlement of an employer to appoint the representative, which I consider unacceptable.

The whole context, thrust and spirit of the legislation requires an election. I do not consider it acceptable that the appointment be made by the employer. There should be an election. It may be the case that only two names would go forward for two places which means that an actual election would not have to take place but it still would be an electoral process the same way as in any other system. Moving it away from that would allow a situation to develop where unfair pressure could be put on employees to accept something with which they might not agree. It is not necessary to have that provision and in the context of what the Minister of State said in setting out the Bill on Second Stage, it is appropriate to look on this as an important election, an exercise in democracy and that this would be the only way we could move this forward.

Mr. McDowell: I second the amendment proposed by my colleague, Senator O'Toole. It concerns the definition of "appointed" in section 1, which states that the word "appointed" means, "in the absence of an election, appointed by employees...". The word "employees" is plural and therefore the appointee would be appointed by more than one person, that is, by ten, 20 or 30 people. Perhaps I am missing some Jesuitical distinction between "appointment" and "election" but I do not understand how one can be appointed by 50 people without having an election. If it is intended that the appointee be appointed by election, we should surely call a spade a spade and simply provide for it. This is basically what the Bill does.

I endorse what Senator O'Toole said about one's being appointed directly or indirectly by the employer. Deciding who should represent workers is a matter for the workers alone. We accept and acknowledge that the assistance and co-operation of employers is necessary to allow an election take place in the workplace, but how the election is run and who is elected should be determined entirely by the employees.

Mr. Quinn: I, too, welcome the Minister of State and the work he has done on the Bill. I apologise for some of the words I used on Second Stage, during which I criticised the Minister of State for announcing he would be tabling amendments. I have looked through the amendments and, as the Minister of State said, they are practically all of a technical nature.

Yesterday morning I was in the business lounge at Heathrow Airport, in which there were quite a few other business people, at least half a dozen of whom were reading *The Economist*. I looked at a particular page, at which the business people may also have been looking, and noted an advertisement from Austria encouraging businesses to set up in that country. The advertisement stated: "If you are on a quest for countries in Europe with the lowest corporate tax rate, you usually start in the outermost regions of the northwest." Clearly, the advertisement did not want to refer to Ireland by name but alluded to it nevertheless. Those who want to set up in business question whether they should come to Europe in the first place and, if they so decide, they must determine which of the various 25 member states they should set up in. We must recognise we are in a competitive global market and that, even within Europe, we are competing with another 24 countries.

I make this point because I believe the Minister of State has listened very carefully to those who are the customers in this case. It is quite normal and logical to say "appointed by the employer on a basis agreed with employees". It is surely the correct way to proceed in this way rather than by tying the hands of potential employers by saying to them that even if they agree with their employees they are not allowed to appoint somebody. We cannot afford to adopt the latter approach. It seems the Minister of State has thought through this provision well. I urge him not to accept the amendment proposed by Senator O'Toole because his wording is exactly right.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen): I understand the points made by Senators O'Toole and McDowell on this amendment and understand why they have some concerns. I welcome Senator Quinn's comments on my having stated I would table technical amendments. One of the amendments is not technical but I will deal with it later. It arises from an agreement with the social partners and, as I indicated on the last occasion we dealt with this matter, the agreement is probably unique in that it may be the only agreement with the social partners regarding this legislation. This makes the job considerably more difficult.

We must have a definition of the word "appointed" because the term arises later in the Bill. Senator O'Toole acknowledged that and indicated he has difficulties with the provision for appointment by the employer. We have included the current definition because it already exists in several Acts. We expect that in many enterprises, or undertakings, as I should say in respect of this legislation, employees will choose to have the same people represent them on the information and consultation forum as already represent them at other fora. By allowing this, I hope people will embrace the concept of providing information

[Mr. Killeen.]

and consultation much more quickly. In any event, the principle behind the inclusion of the reference to appointment by the employer on a basis agreed with the employees already works extraordinarily successfully in respect of other legislation.

Mr. O'Toole: My objection does not hinge on the employee and employer having some agreed basis for agreeing the appointment, it hinges on the fact that the agreement may not include an electoral process. Will the Minister of State or Senator Quinn state if there is a way of agreeing the appointment that would not include some form of electoral process? One elects somebody by way of putting names forward for election. If only one name is put forward an election does not have to take place, but it still involves an electoral process. If a name or names are not put forward, somebody is selected — this is what I am concerned about. I do not mind there being an agreed basis provided it includes an electoral process of some description. I will be happy enough if the legislation includes the words "democratic" or "electoral".

I am not trying to outlaw an agreement between a good employer and a workforce to the effect that they want to proceed in a different way — that is not my objective. My objective is to ensure that the agreement be made in a democratic way. I cannot think of a way other than a democratic or electoral way. If it exists, it must simply involve selecting an appointee. Perhaps I am missing the point and I therefore want somebody to outline to me the process by which an appointment could be made other than through democratic or electoral means.

Mr. Quinn: Senator O'Toole has asked if I could explain a system for appointment. I recently talked to an entrepreneur who has businesses around the world and approximately 3,000 employees, a couple of hundred of whom are employed in Ireland. The entrepreneur has a choice where to go. He contrasted the manner in which Ireland enforced certain European legislation with the manner employed in Britain. It took us four months to get it through whereas it was done in three weeks in Britain. He stated an employer, given a choice where to set up in business, is much more likely to favour a state with less bureaucracy and red tape. Senator O'Toole states he is unhappy with the term "appointed by the employer on a basis agreed with employees" and insists on there being an election, but this is exactly what would cause delays, red tape and bureaucracy. The wording "agreed with employees" is exactly right. It is perfect for the occasion and the Minister of State is correct to leave it as it is.

Mr. McDowell: We must acknowledge the reality that legislation will be largely troublesome in multinational corporations where there are no unions and where there will frequently be no agreed basis for appointment. In such circumstances, we must ensure employers do not pick some soft employee of their choosing in circumstances where there is really no representative way in which to deal with employees. It is all very well to say the appointment can be made by the employer on an agreed basis but the agreed basis will largely exist in companies with trade unions. Frankly, these are not the companies about which I am concerned. I am much more concerned about the sometimes quite large companies in which there is no representative basis for dealing with employees. In such companies it is essential that there be, at the very least, a guarantee that there be an election to ensure employees are represented by the person by whom they want to be represented.

Mr. O'Toole: I know the points Senator Quinn is making and I have heard them many times from entrepreneurs and others. It would be very helpful if the Minister of State could put on record certain facts so Senator Quinn can convey to the people he meets in future that Ireland has the best or next best strike record in western Europe. It holds this record because many people put much blood, sweat and tears into achieving it. It is only done on a basis of trust and confidence. That is the way it works throughout. The reason people set up in Ireland is that they can deal with a trade union that can, for example, listen to proposals, deal with them in a mature fashion and move forward. They are not looking to precedent established 100 years ago to determine how to deal with today's business. That is enormously important and it is crucial for outsiders to see how we do our business here.

I do not have a problem with an agreed basis. I merely question how something may be agreed that has not been determined on the basis of some type of election. How can there be an agreed basis without an election or without some representative body dealing with it? Who says it is an agreed basis? If there are, for example, 100 people in a company, how is what constitutes an agreed basis decided upon? That is the issue as far as I am concerned. There must be some democratic means for arriving at that conclusion. If everyone decides by election to adopt a system — which I do not understand — without an election, that is fine. However, I do not want this to be left open to challenge in the courts at some future date, with a particularly smart lawyer citing this legislation and saying, in effect, that there was an agreed basis — agreed with ten, four, 20 or whatever number. There is no need for even a majority. The manner in which it is written is wrong.

I do not object to the points made by Senator Quinn. I appreciate that a balance must always be found. Perhaps the Minister of State might take me out of my difficulty and insert a further interpretation of what an agreed basis means and indicate perhaps, that it must mean a natural majority. There must be some system that is democratically or electorally based. If the word "election" frightens people to some extent, I cannot do anything about that. However, there must be some democratic system for an agreed basis. Such a basis must involve finding the views of the majority of employees. I cannot envisage any other type of agreed basis and that is my difficulty. I am not trying to twist it around or to make matters more difficult for employers. I want to be able to do what Senator Quinn wants to do. I want to be able to assure employees or employers that this is fair. I just want it to be fair and to be seen to be fair, absolutely open and above board, so that nobody can argue otherwise. That is all I am trying to achieve and also that we will know that constitutes an agreed basis.

Mr. Killeen: As Senator O'Toole pointed out, the word "election" frightens many people. It will be a cause of concern for some Members of the Oireachtas in approximately 18 months time. Later in the Bill provision is made — in considerable detail — for all types of terrible things such as returning officers, polls, etc.

I have two concerns. First, I am happy with the way this system operates in at least two areas of legislation, namely, the Transnational Information and Consultation of Employees Act 1996 and that which applies in respect of health and safety. What the Senators have said in a sense illustrates the enormous range of practices and of companies that operate in this country. I know Senator McDowell indicated that this is potentially troublesome on FDI companies. The sense I have, from engaging with the social partners on both sides, is that it will be anything but troublesome with the FDI companies. To be fair to them, they have engaged very strongly with the provisions of the directive and with what is required in the legislation. I do not expect that there will be any particular difficulty in that regard. However, there will, perhaps, be enterprises where a forum already exists. In order to ensure that they comply with the directive and the legislation, when it is passed, they need to have an information and consultation forum. It has worked as regards the other two areas of legislation that I have mentioned where people have been prepared, by agreement, to be nominated to do the job when candidates have not been offering for election.

If I did not have the experience of the other two areas of legislation to fall back on, I confess that I would be quite taken by the point made by Senator O'Toole. I note the point he makes as regards a majority of employees and I certainly will examine the position in that regard. My understanding is that it is inferred but if that is not the case, I will return to this matter on Report Stage.

As regards the other aspects, I am more than happy that it operates particularly well. The Senator is quite right. If one was inventing a system of social partnership, it is highly unlikely that one would opt for the Irish model. However, that model is enormously successful, particularly, as the Senator stated, in respect of the number of strike days lost, which is at a record low at present. That will hopefully continue to be the case. It is somewhat dangerous to highlight this because it might draw a mí-ádh on us. However, that is certainly the case. It has worked extraordinarily well. This legislation will have an impact, not dramatically, in a big-bang sense, but gradually over time.

Mr. O'Toole: I take the Minister of State's points. I will also examine how that model works in other places and return to the matter on Report Stage.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 2 is a Government amendment. Amendments Nos. 52 to 62, inclusive, are related. Amendments No. 2 and 52 to 62, inclusive, will be discussed together. Is that agreed?

Mr. Quinn: Are a number of amendments being taken together here?

An Leas-Chathaoirleach: Amendments Nos. 2 and 52 to 62, inclusive.

Mr. Quinn: We normally receive a list of the amendments that are being taken together. Perhaps that is what we are getting now.

Government amendment No. 2:

> In page 3, subsection (1), between lines 17 and 18, to insert the following:
>
> " 'Commission' means the Labour Relations Commission,".

Mr. Killeen: Amendment No. 2 provides for the involvement of the Labour Relations Commission at an intermediate stage between the local set-up within a company for dispute resolution and the final Labour Court judgment on the issue. On the basis of my experience during the past year, I thought it advisable to provide for this intermediate step. It will help to iron out any difficulties, including those to which we just referred, that may arise as well as others that will emerge as regards further aspects of the Bill. It will be a very positive development.

Mr. Quinn: I notice that amendment No. 52 is being taken with amendment No. 2. Does that mean that when the House comes to amendment No. 52, Members may not speak on it again?

An Leas-Chathaoirleach: That is correct. Senators may speak on amendment No. 2 and on amendments Nos. 52 to 62, inclusive, now.

Mr. McDowell: Is it proposed to vote on them all separately?

An Leas-Chathaoirleach: Senators may vote on them separately but, for the purposes of debate, we are taking them together.

Mr. Quinn: I am caught on the hop with this. I had not realised what was happening. Amendment No. 52 is in the name of Senator O'Toole. I do not quite understand why that should be taken with amendment No. 2, which stipulates that the word "Commission" refers to the Labour Relations Commission. To take amendment No. 52 with this amendment——

Mr. O'Toole: On a point of order, I was also unaware that these amendments would be taken together. We did not have notice of this until now and I am not blaming anyone for that. Can the House deal with amendment No. 2 now? When we reach amendment No. 52, we can take amendments Nos. 53 to 62, inclusive, with it. This would give Members an opportunity to consider what is involved. Is that acceptable to the House and to the Minister of State?

Mr. Killeen: It is acceptable.

An Leas-Chathaoirleach: Does the House agree with that because it made a decision to take amendments Nos. 2 and 52 to 62, inclusive. Is it proposed to reverse that decision?

Mr. O'Toole: That is correct.

An Leas-Chathaoirleach: Is that agreed? Agreed. Did Senator Quinn wish to speak to amendment No. 2?

Mr. Quinn: No, I am happy with that.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 3, 7, 48 and 49 are related and may be discussed together. Is that agreed? Agreed.

Mr. O'Toole: I move amendment No. 3:

> In page 3, subsection (1), line 20, to delete paragraph (*a*).

I will deal with amendment No. 3 first. I am trying to make life easy for Senator Quinn and the people he might meet in respect of this matter. In order to ensure that he does not have to contact every person in the shop and talk to them alone or in pairs, I suggest that much time may be saved simply by meeting the employee representatives or representative. That should be acceptable to Senator Quinn on this occasion.

In a slightly more serious vein, I am not trying to stop employers talking to one or two employees at a time. That is not my objective. However, for the consultation that is required under the Bill, as referred to in the text throughout, I am seeking that this should be done with the people appointed. That is what we have been debating for the past 20 minutes and it is the real issue in question. Otherwise the legislation will be turned on its head. What I am trying to achieve by amendment may be done in a different way. I accept that. The purpose of the amendment is not to prevent an employer from speaking to one or two employees on an issue, even one related to the matters under consultation, but to ensure that consultation under the terms of the legislation will take place with the appointed person, whether he or she is elected or, as Senator Quinn seeks, appointed by the employer on an agreed basis. Regardless of which approach is decided, consultation must take place with such persons on the basis provided for in the amendment as any other approach would undermine the legislation and fail to meet the requirements of the directive. Amendment No. 3 addresses this crucial issue.

An Leas-Chathaoirleach: Are amendments Nos. 3, 7, 48 and 49 being discussed together?

Mr. McDowell: Amendments Nos. 3 and 7 have been tabled in my name and that of Senator O'Toole, whereas amendments Nos. 48 and 49 are in the names of Senators White, Quinn and Coghlan. The two sets of amendments pull in opposite directions, even though they address the same issue.

Mr. O'Toole: While I have no problem with amendments Nos. 3 and 7 being taken together, I agree with Senator McDowell that amendments Nos. 48 and 49 are different. As such, I suggest we deal with the first two amendments only.

An Leas-Chathaoirleach: While the line taken in amendments Nos. 48 and 49 differs from that taken in amendments Nos. 3 and 7, all four amendments address the same issue.

Mr. Quinn: I support Senator McDowell's proposal to take amendments Nos. 3 and 7 together now and amendments Nos. 48 and 49 together later.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Mr. O'Toole: Amendment No. 7 proposes to define the word "information" as "the transmission by the employer to employee representatives of data in order to enable them to acquaint themselves with the subject matter under discussion;' ". As the Minister of State will note, the amendment proposes a slight change to the current wording in that it deletes the words "one or more employees". The amendment would apply only for the purposes of the Bill and would not prevent an employer from speaking with employees, either generally or about the issues covered in the Bill. The purpose is simply to provide that consultation and the provision of information, as defined under the Bill, will take place in a particular manner. It must only take place with persons elected or appointed on an agreed basis because consultation and the receipt of information is the purpose for which such persons will be elected or appointed.

The notion that an issue would be discussed with one or more employees on a selective basis hardly reflects the spirit of the legislation, nor is it in the interests of any of the parties involved because it is divisive, sidelines people and does not address the provisions of the Bill. I reiterate that the purpose of the amendment is not to prevent an employer discussing any issue with an employee, even the matter on which consultations are taking place, but to ensure that the consultation and provision of information, as provided for under the Bill, must take place with those who are appointed, selected or elected in the manner the Oireachtas decides. As this is a reasonable proposition, I do not envisage that anyone could object to it.

Mr. McDowell: With respect to my colleague, Senator O'Toole, the amendment is more far-reaching that he has outlined. My difficulty with the direct involvement scheme, as set out in the Bill, is largely based on the failure to define it, although I also have difficulty with the attempt to do two things at the same time. The Bill provides that the provision of information requirement can be satisfied in two separate ways, either by direct involvement, in other words, through direct communication with the employees concerned, or by dealing with their representatives through a forum or similar body. This, to describe it at its mildest, is an unnecessary complication. If the requirements of the directive are to be satisfied successfully, trust is to be built and highly sensitive information imparted to employees to enable them, through changes in work practices and so forth, to try to prevent risk to employment, the process must involve face-to-face meetings in a forum with representatives of employees. In addition, the forum should meet much more frequently than twice a year, the minimum provided for in the standard rules. This, however, is another issue to be discussed later. The requirements cannot be satisfied simply by sending an e-mail twice a year, a practice which, on the face of it, would be sufficient to satisfy the requirements of direct involvement. If information is provided by e-mail, newsletter or other printed material, it cannot be important or sensitive. As such, this option would hardly satisfy the requirements of the directive. To build on trust employers must, at a minimum, meet employee representatives face to face. In essence, the amendments seek to undermine, if not eliminate, the direct involvement system. While I do not have a problem with people receiving information directly from employers, this practice should not be deemed sufficient to satisfy the requirements of the directive.

Mr. Quinn: I remind Senators that the legislation is entitled the Employees (Provision of Information and Consultation) Bill 2005. The Bill covers solely the provision of information and is unrelated to negotiation. The danger is that the amendments will lead to a significant increase in bureaucracy. Given the possibility that only one or two employees will be in interested in receiving information on an issue, the current wording is appropriate. Any additional provisions would introduce red tape and make good relationships more difficult to maintain. Good employers already provide information to employees and do not need further regulation in this area. The Minister of State is correct, however, to ensure Ireland complies with European regulations in this area in a manner which allows companies to operate competently. He is correct to leave the wording as it stands.

Mr. Killeen: The definition in this instance is adapted from the directive under Article 2 and seeks to meet the requirements on its transposition. It also takes account of current practice in this area. As Senators O'Toole and McDowell indicated, they do not wish to diminish the current level of contact between employers and employees. In some instances, these contacts constitute good practice, while in others they may not be sufficient to meet the terms of the directive because it includes a requirement that employees be in a position to present their opinions and have them heard. There is, therefore, a two-way process, even if it applies only to an individual employee or small group of employees.

A significant number of companies have arrangements in place which are likely to meet the requirements of pre-existing agreements. Many of these companies have been to the fore in exchanging information with their employees. We should value good practice in this area and avoid removing from employees a facility they

[Mr. Killeen.]

greatly value. Senator O'Toole pointed out that this is not his intention but my advice is that failure to include this provision would make it difficult for current good practice, some of which could be developed, to continue. While I understand the Senators' points on consultation with representatives of employees, we are trying to transpose the provisions of the information and consultation directive. We already have good practice in some instances, while in others, such as the cases about which the Senators expressed concern, practice must improve if the terms of the legislation are to be met.

Mr. O'Toole: I am taken aback slightly by the reasons set out for rejecting the amendments. Amendment No. 48 tabled by Senators White, Quinn and Coghlan seeks to insert a requirement that employees "be informed and consulted through their representatives (as defined under this Act)". I am happy to support this amendment because it achieves my objective. I am not trying to exclude anything from happening. We are only talking about the purposes of the Act here. We are only talking about what is happening around the terms "consultation" and "information", which are required under the Act. I am happy to go along with what is being suggested in another part of the Bill by Senator Quinn, to use the representatives who are being selected under section 1.

While I am not asking the Minister of State to anticipate his views on amendment No. 48, am I to take from this that he will be supportive of that amendment or that Senator Quinn and Senator White will be taking an opposite view on that amendment? One can see why they are two separate issues and why we did not want to discuss them altogether, but this is certainly an instance of being betwixt and between. We need to know where we stand. How is it that the representatives are useful at one point but a danger at another? It seems to me they are useful on both occasions.

Mr. McDowell: I am not quite sure I understood the Minister of State. We all are in favour of good and enhanced practice but what does this mean? Is the Minister of State saying it is sufficient that a newsletter or an email is sent out twice a year? That is hardly what the directive intended.

The Minister of State referred to Article 2 of the directive. I thank him for providing me with a copy of the directive yesterday. Article 2 says nothing of any meaning. It just gives enormous scope to member states to define almost everything they want to define, including employer, employee, employees' representatives, etc. It allows us to do what we want and let us not suggest that we are constrained by the directive in how we choose to make it work. In fact, the directive does not make any reference to direct representation or dealing directly with employees. It is quite clear, from reading the directive, that it is intended or expected that member states will provide for a system of representation. That, in essence, is the thrust of this amendment and a number of other amendments in my name.

Consultation is not meaningful unless it is dealt with on a face to face basis. The Minister of State has not answered that point other than to suggest that good practice could lie elsewhere. Employees must sit down in a room within four walls and deal, on a confidential basis if needs be but on a basis of trust, with employees or their representatives. We are saying it should be dealt with on a representative basis and that is the minimum required in order to satisfy the directive. If the Minister of State is stating that it is sufficient to provide a newsletter twice a year, he might put that on the table and say so. I do not accept that such is the case.

Mr. Quinn: There is a difference of opinion here between my colleagues and myself. Only 25% of private businesses are unionised. If we are not careful, the trend will almost be to state that one must have a union. It is not necessarily traditional. There is a voluntary system which has worked well in Ireland. The number of trade union members as a percentage of the total workforce has reduced considerably in recent years. That is a trend which some may not like. It may be a trend with which employees are happy because they benefit from not incurring the cost if they do not wish to do so.

However, that is not a matter in which we should be involved. We must be careful that we are not automatically stating to potential employers that they must have representation in this area.

The Minister of State's wording is correct. It positions collective representation by trade unions or by their nominees as a mainstream method of information and consultation. We are not talking about negotiation here. It would be wrong to force employers in that direction when there may be no need whatsoever for it. On this basis, the wording is correct and we should not change it. It will be helpful to the traditional voluntary method of information, which, I agree with Senator McDowell here, most good employers have used for years anyway.

Mr. O'Toole: There may be a misunderstanding on the part of Senator Quinn. This has nothing to do with trade unions. I am not talking about trade unions or unionised workplaces here. I am simply stating that under section 1(1) the Bill defines appointed representatives of employees, the same people who are referred to in amendment No. 48 of Senator White and

Senator Quinn, which inserts "to be informed and consulted through their representatives (as defined under this Act)". It is not referring to the Trade Union Acts. It is simply referring to the people who have been selected, appointed or elected by the employer depending on whichever way it is done under section 1(1). All I am stating is that they should not be excluded. For the purposes of this Act, they must be the ones who are involved in the consultation and receive the information. That does not block the employer, if he or she wishes to do so, from speaking with individuals or groups. If for the purposes of this Act it is okay to talk about the representatives under amendment No. 48, I do not see why it is not okay for me to talk about the same representatives. It is not about outside people at this point. I am talking about the people who have been selected under section 1(1). Nobody has asked what is wrong with doing this. It certainly does not stop anybody from doing anything they want to do but it is a requirement that the people who have being selected to do a job are allowed do it.

I say the following with absolute clarity. This is not blocking anybody. This is not taking in anybody from outside. This is simply saying that having gone through the process of selecting, electing or appointing people on an agreed basis, they are then part of the consultation and the information flow. Why is that not acceptable? I seek a direct understanding of the problem being created here. If we go the first step, why not the second step, which does not block anybody from talking to anybody and which only means for the purposes of the Act?

Mr. Quinn: The only change Senator O'Toole is suggesting, in amendment No. 3, is the removal of the words "one or more employees". That, one or more employees, is exactly as it should be and is what is intended. That is how it should remain.

Mr. Killeen: There is some confusion arising from the fact that we are dealing with a definition of consultation. To deal with the question raised by Senator McDowell first, the definition of consultation means an exchange of views and establishment of dialogue between the three. It means much more than circulating a newsletter or sending an e-mail. It is a quite different process from the fear expressed by Senator McDowell.

To respond to the point made by Senator O'Toole, in this definition section I seek to provide for a choice. Subsequently there are situations where the trigger mechanism, which Senator O'Toole will oppose strongly and which brings a different kind of process into effect in some instances, comes into play and where Senator Quinn will state strongly to me that the trigger mechanism is set at far too low a threshold. There will be strong disagreement when we come to that stage but that is irrelevant in this context of the definition of "consultation". It would be entirely wrong to preclude employees, who currently have an arrangement in place or who might want in the future to have an enhanced arrangement in place to deal directly with their employers, from doing so. My understanding is that if it is not included in the definition, it is effectively excluded.

There are subsequent provisions in the legislation which will deal specifically with cases where representatives come into play. Obviously since we have left the choice "the employees' representative or representatives" here, we provide for that as well. In fact, the fears of the Senators on the inclusion of "one or more employees" are misplaced in this instance because we are dealing with the definition. I will disagree with the same point when they make it in the case of the trigger mechanism at a later stage in any event.

12 o'clock

Mr. O'Toole: The belt and braces approach. It is not my intention that consultation, discussions or any engagement between an employer and one or more employees should be excluded. What the Minister of State said is new to me. He stated that if it is not included there, it is effectively excluded. I want more information on that. I would trust the Minister of State's view on it but I can assure him that I would not have tabled the amendment if I believed that were the case. I do not believe that is the case. If a Bill is silent on a matter, I cannot understand how that means it is excluded. I would like to get the information which brings him to that conclusion and we can revisit the matter on Report Stage. My view is that being silent on something does not necessarily mean it would be excluded. I would not want it to be excluded. The greater the flow of information between employers and employees, the better, whether it be between two people, groups or representatives.

Mr. McDowell: What sort of good practice would be excluded if we removed these words?

Mr. Killeen: There are two meanings that can be taken for the word "excluded" and Senator O'Toole seems to have the opposite view to me. It may not be excluded in terms of being allowed as a practice, but it would be excluded as an option under the provision of information and consultation for the purposes of the directive on the legislation. This is different from being excluded in a general sense, which appears to be the fear of Senator O'Toole.

Mr. McDowell: What sort of practices are involved?

Mr. Killeen: Practices such as might be agreed. We are required to provide for an exchange of

[Mr. Killeen.]

views and establishment of dialogue between any of the three.

Mr. McDowell: Would it be fair to say that if we removed the words, one would be required to deal with representatives in order to satisfy the directive?

Mr. Killeen: That might well be the case and we will come to this when dealing with the trigger mechanism.

Amendment, by leave, withdrawn.

Ms White: I move amendment No. 4:

In page 3, subsection (1), line 32, after "employment" to insert the following:

"(excluding an individual supplied for the temporary use of an employer by an employment agency within the meaning of the Employment Agency Act 1971)".

Mr. Quinn: Senators Coghlan, White and I have proposed a number of amendments. I feel strongly about this amendment because it seeks to define more precisely who exactly is an employee under this legislation. Many companies rely from time to time on temporary staff supplied to them by employment agencies. Over the years, particularly coming up to Christmas or at similar times, my company would get people to come in and work for a short period. It is now an established principle of employment law that these temporary workers are regarded as the employees of the employment agency and not of the company that makes use of their temporary services. This principle should be followed in the Bill and it is for that reason I propose this amendment under which temporary employees will enjoy their rights of information and consultation with their actual employer, the agency, and not the company for which they happen to be working on a temporary basis. The amendment is understandable and logical and I do not foresee any difficulty with it. It does not suggest these temporary employees are not entitled to consultation, but it should be with their employer, the agency, and not the company that has taken them on for a temporary period.

Mr. Coghlan: The amendment makes sense because we are dealing with information and consultation. If someone from an employment agency is working with a company on a temporary basis for a month or two, that person will not have the same attachment to the business. Whether they want the information, the amendment makes sense. These people are transient and are engaged by the agency rather than the firm to whom they are assigned for a temporary period. We should be able to agree on this.

Ms White: My experience is that a person who is recruited through an agency and who becomes a full contractual employee is different from somebody sent for a temporary period to a company. It does not make sense that temporary agency workers would be seen as employees of a company as it is the agency that is their employer. This is important.

Mr. Killeen: The definition of employee in the Bill does not exclude temporary agency workers. My understanding is that an agency worker must have a contract of service with the employer for the legislation to apply to him or her. Effectively, there is an existing definition in this area which states that the worker is the employee of the company under whose direction and control he or she is working. We already have definitions in place, for example, with Revenue, the Department of Social and Family Affairs and elsewhere. In this instance it is clear, although I may have difficulty explaining it, that there is a distinction between a contract of service and a contract for service. This is understood across different areas of employment legislation. The situation under this legislation is that if employees are under a contract of service, they are entitled to this information and consultation from the company. In the event they are not, they are entitled to it from the agency that employs them.

Mr. Quinn: I am not sure I fully understand the difference between contract of service or contract for service. Let me give an example. In the business with which I am associated we often need temporary employees, such as security people over the Christmas period. I am not sure if these people have a contract of service or for service. Am I to understand that a person who got a job through a contract agency but who is working for a few days or weeks for a company is entitled to the same amount of information and consultation as a full-time employee? If that is the case, I am unhappy with the legislation. It is different if the person comes in as a permanent employee. Could the Minister of State explain the situation in words I can understand?

Mr. Killeen: Or words I can understand. The key requirement is that the person under whose direction and control the person is working is obliged to provide the information and consultation, as is the case, for example, with Revenue and the Department of Social and Family Affairs. Who the employer is depends on what exactly has been agreed between the individual, the agency and the undertaking with regard to matters such as remuneration, performance of the work, discipline and dismissal.

What I want to ensure under this legislation is that in the event that all the other criteria are met, that either the employer at the place of employment or the agency is required to provide information and consultation under this legislation. The legal distinction that is made on these criteria is whether the person is working on a contract of service or for service. There is considerable case law in this area and this is already established practice. I am not in a position to elaborate further than this. We are at a fairly advanced stage with regard to updated temporary worker legislation. This may well be one of the areas amended or further elaborated on under that legislation.

Mr. Quinn: I will not press the amendment now, but will examine what the Minister has said so as to understand it better. If necessary, I will raise it again on Report Stage.

An Leas-Chathaoirleach: Is it agreed that amendment No. 4 be withdrawn?

Ms White: No, I want to see the change made. The word "employee" here could include an individual employed on a temporary basis for one or two weeks while the legal relationship is with the agency. The situation is different if the employer sets up a contract with a person who has been recruited through an agency. However, if a person is employed in a temporary position for just one or two weeks, the agency that sent them is the legal employer. When an employer recruits an employee from an agency he or she sets up a contract with the person before they are fully engaged, but it is totally different for someone coming into a company on a temporary basis.

Mr. Coghlan: I think Senator White is quite right in this instance. We have to make a distinction in the case of a person who is engaged by an employment agency on a very temporary basis. As such a person does not belong to the company to which he or she is sent, he or she will not have a feeling for the company or its business. As Senator Quinn has explained, temporary agency staff are sometimes recruited on security detail for a week or two at Christmas. With all due respect, the Minister of State should acknowledge that an important distinction needs to be made. He has said he will deal with the matter in due course in the context of other legislation, but he should take the opportunity presented to him in this Bill to ensure that he stands his ground in the manner outlined by Senator White.

Mr. Quinn: I would like to withdraw my comments of some moments ago. It is obvious that it was not appropriate for me to withdraw an amendment that is in the name of other Senators as well as in my name. I ask the House to ignore what I said about the amendment, about which Senator White feels very strongly.

Ms White: I ask the Minister of State to reconsider this important matter in advance of Report Stage.

Mr. Killeen: I imagine that an employee in the category mentioned by Senators White and Coghlan is likely to be recruited on what is termed a "contract for service", in which case responsibility would lie with the agency. If the amendment before the House is accepted, it will preclude all employees placed by an agency with a company from getting information from that company. People may be placed with a company for a period of two years or considerably longer in some instances. It would be entirely wrong to exclude such people from the right to information and consultation that will be given under this Bill to their fellow employees who are working for the same company. I am not prepared to exclude them in that way. If people are operating under a contract of service, they are included in this Bill under the main employer. If the definition of "contract for service" applies to them, as it does to the employees mentioned by Senator Coghlan who are employed for a week or two, I am perfectly satisfied that the agency is responsible. I am not prepared to treat differently people who have been working for a company for a long time, and who meet the terms of a contract of service, just because they happen to be agency workers.

Mr. Hanafin: The Minister of State's explanation, which is entirely clear, should be taken on board.

Ms White: We should give further consideration to this matter off-site. I accept the Minister of State's comments about a person who is employed under a two-year contract. It would not be sensible to give the same rights to a person who is employed under a one-month contract. I will not press the amendment. I ask the Minister of State to re-examine this complex matter.

Mr. Coghlan: Perhaps the Senator should press the amendment, which refers explicitly to employees supplied for the temporary use of employers.

Ms White: I will not press the amendment. I will discuss it with the Minister of State off-site.

Mr. O'Toole: The Senator is walking away from it.

Ms White: I am not walking away from it.

Mr. Quinn: I will withdraw the amendment because the Minister of State has given a better explanation of the difference between a "contract

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for service" and a "contract of service". Perhaps he can reflect on the matter before Report Stage to confirm that his interpretation of the matter is exactly correct. Senator White and I can also consider our approach to the matter before Report Stage.

An Leas-Chathaoirleach: Do the Senators agree to withdraw the amendment?

Ms White: Yes.

Mr. Coghlan: I reluctantly agree in this instance.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: As amendments Nos. 5 and 6 are related, they may be discussed together by agreement.

Government amendment No. 5:

In page 4, subsection (1), line 4, to delete "to it".

Mr. Killeen: Amendments Nos. 5 and 6 are technical amendments which have been tabled on the basis of the advice of the Office of the Chief Parliamentary Counsel.

Amendment agreed to.

Government amendment No. 6:

In page 4, subsection (1), line 8, to delete "to it".

Amendment agreed to.

Amendment No. 7 not moved.

Government amendment No. 8:

In page 4, subsection (1), line 18, to delete "of this Act".

Mr. Killeen: This technical amendment proposes to delete the reference in this section to the superfluous phrase "of this Act".

Amendment agreed to.

Mr. Quinn: I move amendment No. 9:

In page 4, subsection (1), between lines 25 and 26, to insert the following:

" 'trade union' means a trade union which is the holder of a negotiation licence under Part I of the Trade Union Act 1941;

'undertaking' means a public or private undertaking carrying out an economic activity, whether or not operating for gain.".

The purpose of this amendment is to add precision to the legislation. I propose that a definition of "trade union" be included in the Bill, as trade unions are referred to on many occasions in it. We all know what a trade union is, but it should be formally defined in this instance. There is nothing contentious about the definition I propose. I also propose that we formally define the word "undertaking", which, unlike the term "trade union", is highly ambiguous. It is clear that we need to define precisely what is meant by an "undertaking" in so far as it is used in the Bill.

Does the Minister of State intend that the Bill will apply to the public sector as much as it will apply to the private sector? I believe it should apply equally in both instances. Therefore, we should define the word "undertaking" accordingly. Equally, does the Minister of State intend that the Bill will apply to not for profit organisations as much as it will apply to commercial undertakings? As I think it should apply equally in both cases, I feel that the definition of the word "undertaking" should be inclusive of not for profit organisations. I am familiar with the joke about non-profit making organisations — they did not start out that way, but they finished up that way. The term "not for profit", rather than "non-profit making" is used to refer to organisations which do not seek to make profits. We need to define the word "undertaking", which causes me some concern. I would like the Minister of State to put my mind at rest about his intentions in that regard.

Mr. Coghlan: Senator Quinn's argument makes total sense. I am sure Senators McDowell and O'Toole, who know more than me about such matters, would not disagree with the proposed definition of a "trade union". Senator Quinn is right to ask for a definition of the word "undertaking" to be included in the Bill. While it is not defined in the Bill, I understand the word is defined in the relevant EU directive. I am not familiar with the EU definition, but I ask the Minister of State to confirm that it exists. I agree with Senator Quinn that the definitions in question are needed.

Ms White: My experience suggests that there is a need for clarity in legislation about the meaning of a "trade union" and an "undertaking". This amendment has been proposed because there is a need to fill the gaps in the Bill's definition section and make matters clearer.

Mr. McDowell: I do not have any difficulty with the proposed amendment. I would like the Minister of State to outline why he has chosen to use the term "undertaking", rather than the term "establishment", in this legislation. The relevant EU directive allows member states to choose between the terms. Having read the directive's

definitions of both terms, the distinction is not terribly clear to me. It appears that the definition of "establishment" is somewhat broader — it certainly involves organisations other than those which are involved in economic activity, regardless of whether they are doing so for financial gain. When the Bill was discussed on Second Stage, Senator Leyden asked whether a public hospital, for example, would be covered under its the terms. Perhaps the Minister of State will share his thoughts on the matter with the House.

Mr. Killeen: I would like to respond to Senator McDowell's query before replying to Senators Quinn, Coghlan and White. The EU directive being transposed in this legislation allows for either of the terms "undertaking" and "establishment" to be used. The vast majority of those who contributed to the process of consultation on the matter favoured the use of the term "undertaking". It was more or less agreed before I became involved in this matter that the term "undertaking" would apply if 50 or more people were employed and the term "establishment" would apply if 20 or more people were employed. The term "undertaking" found favour when the time came for the choice to be made.

The amendment before the House contains two separate provisions. I see some merit in the proposal to include in the Bill a definition of the term "trade union". I am prepared to examine the matter in advance of Report Stage to decide whether such a definition should be provided for. It has also been proposed to define the term "undertaking" in this legislation. It is understood that if a term which appears in the directive also appears in the legislation, the same meaning is ascribed to it. I have been advised, therefore, that it would be superfluous to include a definition of the term "undertaking" in the Bill. I have said that I will examine the proposal to include a definition of the term "trade union". I will also examine the other half of the amendment, which proposes the insertion of a definition of the word "undertaking", but I am not as well disposed towards it.

Mr. Quinn: I would like an answer to my queries in respect of this amendment. I was impressed by the Minister of State on Second Stage because it was clear that he had done a substantial amount of work on the Bill. I criticised him when he said he intended to table some amendments to the Bill on Committee Stage, but it is clear today that almost all of his amendments are technical in nature. The amendment I have moved is quite important. We need to know whether the Minister of State intends that the provisions of the Bill will apply to profit-making undertakings as well as not for profit organisations. Does he intend that public sector and private sectors undertakings will be affected? I have proposed this amendment because my definition of the term "undertaking" will clear up the matter. I agree with the Minister of State that it is accepted that a "trade union" is "a trade union which is the holder of a negotiation licence under Part I of the Trade Union Act 1941". The Minister of State does not have any problem with that and I do not think anyone else will. However, it is important that we know whether it is a public or private undertaking and whether it applies to those acting in pursuit of profit.

Mr. O'Toole: I welcome the amendment. I compliment Senator White on picking up on the point. With regard to the term "undertaking" being used in the directive, it is not unusual for terms to be taken from directives and transposed into legislation. I do not have any difficulty with this. However, it is important, as Senator Quinn stated, that the Bill should relate to public and private undertakings. The House owes a debt of gratitude to Senator White for picking up on this important issue.

Ms White: The Senator is speaking tongue in cheek.

Mr. O'Toole: No, I am very serious. It is the kind of thing that will also be useful to the Senator in the Lower House.

Mr. McDowell: I do not want to be unduly harsh on the Minister of State but it is frustrating when a question in asked and the answer is "It is this way because other people have agreed it". I am asking why the Minister of State chose to use the term "undertaking" rather than "establishment" in the Bill. Perhaps the social partners have agreed on this but I would like to know the Minister of State's view.

Mr. Killeen: It is fairly solid ground in the sense that, unusually in regard to this legislation, the issue is not one that is causing any difficulty between the social partners. Ultimately, the choice had to be made between the words "undertaking" and "establishment".

Mr. McDowell: Is the word "undertaking" more restrictive than that of "establishment"?

Mr. Killeen: That is not my sense of it. I understand that most of the submissions came down strongly in favour of the term "undertaking".

Mr. McDowell: Why?

Mr. Killeen: I am satisfied that, in transposing the directive, it is legal to use either term. The view taken was that "undertaking" has, if anything, slightly more merit than the alternative. There was no clear distinction between the two terms but a choice had to be made. It was made

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mainly on the basis that most of the submissions favoured it.

Mr. McDowell: It would help if we understood the distinction, which is not clear. I get a sense that the term "establishment" would infer a broader definition than that of "undertaking". If so, why did the submissions favour the term "undertaking"?

Mr. Killeen: I should have explained that point. The definition of "undertaking" is a legal entity, such as a company, partnership, co-operative, trade union, friendly society or charity. The definition of "establishment" is a distinct physical entity, such as a factory, branch office or retail outlet, which is part of a larger legal entity. An undertaking is a familiar concept in Irish law and is used in the Competition Acts. For example, an undertaking with 400 employees might have many branch offices or parts, each of which would be an establishment with fewer than 20 employees. In that instance, the undertaking has a requirement under the legislation which its many establishments might not have had.

Mr. McDowell: I did not understand that the distinction was as meaningful as that. Is the Minister of State suggesting that, for the sake of argument, the definition of "establishment" for a major supermarket chain would apply to each individual supermarket whereas the definition of "undertaking" would apply to the supermarket chain as a whole. Is that reasonable?

Mr. Killeen: That is my understanding. If it is not the case, I will discuss the matter further with the Senator on Report Stage.

The other part of the argument concerns whether the definition needs to be included in the legislation as well as in the directive. However, whether it is included will not make any difference to the distinction between the terms "undertaking" and "establishment". I am advised that neither does it make a difference with regard to the application of the term under the Act. The term is also used in the directive and, unless the context requires otherwise, it has the same meaning. I will revisit the matter on Report Stage.

Mr. McDowell: Perhaps I have unwittingly wandered into an area which is more interesting than I thought it was. I would have thought it was best practice to deal with employees at workplace level. For example, the staff working in factory A, located in Dublin, should get information relevant to them and this should be dealt with by their employers in their place of work, whether the factory is owned by the same company that owns factory B, which is located in Cork. In other words, the workplace is optimal. The Minister of State seems to suggest that employees should be dealt with in the context of the whole company, which may own factories all over the country. To use the European terminology, a bit of subsidiarity would have done no harm.

Mr. Killeen: We will return to this matter later because one of the proposed amendments essentially seeks to do what Senator McDowell suggests. While it is my view that the Bill already deals with this issue, we can argue the point later. There is provision for this to happen. Had the "establishment" definition been accepted, a large bank, for example, might have many branches with fewer than 20 employees while being well within the limits corporately. However, the bank would have requirements under the Act, given the definition based on "undertaking", which it would not have had in many of its branches in light of the definition of "establishment". That is my understanding of how the alternate possibilities might have worked. In the event of different provisions being required in different sub-areas of an undertaking, this is provided for. We will have a battle about this point because the proposers of the amendment will not be satisfied that it is sufficiently dealt with in the Bill.

Mr. Quinn: I do not fully understand the Minister of State. My two points referred to private and public undertakings and not-for-profit organisations. Is it the Minister of State's intention that the Bill would apply in these two cases?

Mr. Killeen: That was the second point I made. With regard to the definition of "undertaking", regardless of whether it is only in the directive or in the Act or both, it is the same definition. On the basis of the definition, it is a matter of determining whether a company or undertaking comes within the terms of the requirement. As the definition includes the phrase "whether or not operating for gain", it would be likely to include rather than exclude undertakings in the vast majority of cases.

Mr. Quinn: We need clarity. I thought the Minister of State would be quite clear and would provide a yes or no answer to my query. On the basis of what he said, I think the Bill would be improved by the amendment. I do not know why my colleagues in the House should not propose that this item should not be put off until Report Stage. I wait to hear the views of Senators White and Coghlan.

Mr. Coghlan: I agree with Senator Quinn on this point.

Mr. Killeen: Regardless of whether the definition is in the legislation, which is the only effect of passing this amendment, it remains the same

definition. The clarity sought by Senator Quinn will not, therefore, arise from including the amendment in the legislation *per se* but from the interpretation of the definition. It is the same definition in both cases. This is a slightly different matter and there might be some merit in pursuing it further on Report Stage.

Amendment put.

The Committee divided: Tá, 20; Níl, 26.

Tá

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.
McDowell, Derek.
McHugh, Joe.
Norris, David.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Quinn, Feargal.
Ross, Shane.
Ryan, Brendan.

Níl

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
MacSharry, Marc.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Moylan, Pat.
Ó Murchú, Labhrás.
O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
Walsh, Kate.

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

Amendment declared lost.

Question, "That section 1, as amended, stand part of the Bill", put and declared carried.

Section 2 agreed to.

SECTION 3.

An Cathaoirleach: As amendment No. 72 is consequential on amendment No. 10, the two will be discussed together. Is that agreed? Agreed.

Government amendment No. 10:

In page 5, subsection (2), lines 11 to 13, to delete "Protection of Employment Act 1977 (Notification of Proposed Collective Redundancies) Regulations 1977 (S.I. No. 140 of 1977), the".

Mr. Killeen: These amendments are necessary to ensure that the correct reference is made in the Bill to the Protection of Employment Act 1977, as amended. On the advice of the Parliamentary Counsel, the regulations named in the proposed deletion do not amend the Protection of Employment Act 1977, so the amendments are required for technical reasons.

Mr. Coghlan: The Minister of State is a reasonable man. We will agree to his amendment.

Amendment agreed to.

Mr. O'Toole: I move amendment No. 11:

In page 5, subsection (2), between lines 29 and 30 to insert the following new paragraph:

"(e) the provisions and procedures contained in the Industrial Relations (Amendment) Act 2001 and the Industrial Relations (Miscellaneous Provisions) Act 2004.".

This may simply be an inadvertent omission from the list of legislation but the Minister of State will agree that everything in this Bill must be without prejudice to the Act — namely, the Industrial Relations (Miscellaneous Provisions) Act 2004 — to which I referred in my amendment. It was a difficult item of legislation in respect of which all the social partners had great difficulty in coming to agreement. No one would want anyone to be in a position to play games with the Act at this stage or to use the provisions of the proposed legislation as a method of not becoming involved in collective bargaining or not dealing with the

[Mr. O'Toole.]

issues pertaining to that Act. In particular, as other legislation is listed in the Bill, it must also be without prejudice to that Act. Perhaps the Minister of State will accept that the Bill is also without prejudice to the Act.

Mr. Killeen: The purpose of section 3(2) is to comply with Article 9 of the directive which states that it shall be without prejudice to certain directives that deal, *inter alia*, with information and consultation to employees in certain situations, such as, for example, collective redundancies or transfer of undertakings in European works councils. It specifically states that this implementation must not lead to any regression in respect of the existing protection of workers in the areas to which it applies, that is, to information and consultation. Accordingly, any obligations to inform and consult under this directive are in addition to existing obligations in respect of information and consultation under other legislation.

The Industrial Relations Acts 2001 and 2004 provide for issues completely distinct from information and consultation. The legislation of 2001 and 2004 was enacted as a result of commitments made under the social partnership agreements. Hence, the point is that the nature of the legislation listed in section 3(2) is that which has an information and consultation element to it whereas the two additional Acts proposed by the Senator do not have an information and consultation content. I am advised that they are not relevant to this Bill.

Mr. O'Toole: I appreciate the clarification provided by the Minister of State. Am I correct in saying that nothing in the Bill can in any way prevent, interfere with or interrupt the operation of the 2001 and 2004 Acts? In other words, the proposed legislation cannot be used to delay, interrupt, or prevent an engagement in any way under those Acts? That is all I am trying to establish. If the Minister of State gives me a commitment that this interpretation is correct, I will be happy to withdraw the amendment,

Mr. Killeen: I am assured that this is the position.

Amendment, by leave, withdrawn.

Section 3, as amended, agreed to.

Section 4 agreed to.

SECTION 5.

Mr. O'Toole: I move amendment No. 12:

In page 6, subsection (1), line 2, to delete "a relevant workforce threshold" and substitute 2

" 'the relevant workforce threshold' set out in section 4(2)".

Again, I am seeking clarity. The section I am attempting to amend uses the phrase "in determining whether employees are employed in an undertaking that meets a relevant workforce threshold". I want to be assured that this refers to section 4(2). The amendment aims to ensure that it does so. I want to insert a reference to section 4(2) to confirm that it is being referred to. Can the Minister of State accept the amendment on that basis or would it cause difficulty to do so?

Mr. McDowell: My name is also on the amendment and my motivation was somewhat different, inasmuch as I specifically seek to effectively remove any reference to thresholds in section 11. Section 11 effectively also has a threshold which is required to get around the direct system of providing information. Since the thrust of some of the amendments in my name and that of Senator O'Toole is to eliminate that way of doing things, there is no need for any reference to thresholds such as those listed in section 11.

Mr. Killeen: If the amendment was to be accepted, its impact would be to replace the word "a" with the word "the". The reason the word "a" has been used is that three different threshold levels, namely, 150 employees, 100 employees, and 50 employees will be used up to 2008. They will be introduced at different stages, at yearly and biannual intervals, up to 2008. In that context, the term, "a threshold" was used because it refers not to one threshold but to three. I am advised that was the reason. As far as the principal point made by Senator O'Toole regarding the reference to section 4(2) is concerned, section 5(1) refers to it. That is the position.

Mr. O'Toole: Therefore, the House will at least be aware that it makes reference to section 4(2).

Mr. Killeen: That is my understanding. I referred to the threshold issue and said that, when it arose, I would take the view the threshold would stay in place.

Mr. McDowell: Does the reference to threshold in this section also refer to section 11 or is it merely a reference to section 4?

Mr. Killeen: I believe section 11 stands alone in that regard but I will examine the matter before Report Stage.

Amendment, by leave, withdrawn.

Mr. O'Toole: I move amendment No. 13:

In page 6, subsection (1), lines 7 to 8, to delete paragraph (*b*).

The paragraph does not add anything to the Bill and is a danger we could do without. Will the Minister of State explain how necessary it is or accept this amendment?

Mr. Killeen: Section 5 sets out the method of calculating workforce thresholds for the purpose of determining whether the legislation applies to a particular undertaking. The section imposes an obligation on the employer to provide details of the workforce numbers to one or more employees, to the Labour Court or its nominee following receipt of a request. The amendment would seek to delete the obligation on an employer to provide the workforce numbers to the Labour Court or a nominee of the court. This obligation would afford anonymity to employees who do not wish to make a request directly to the employer. Amendment No. 25 seeks to amend the process for establishing information and consultation arrangements, which is the trigger mechanism to which I referred previously. The right to make the request for employee numbers directly to the court is a necessary and important provision in the Bill in the context of the trigger mechanism.

Mr. Quinn: I am impressed by Senator O'Toole's attempted removal of the right of an employee to go to the courts. Obviously, he has had a change of heart from his traditional way of thinking but I wonder whether he is wise to do so. Is it not a constitutional right that an employee can go to court? I am not quite sure why the Senator proposes to remove this right from employees.

Amendment, by leave, withdrawn.

Mr. O'Toole: I move amendment No. 14:

In page 6, subsection (2), line 9, after "from" to insert "a trade union or excepted body or".

I spoke on the matter of the recognition of a trade union earlier. We have attempted to insert a definition of a trade union in amendment No. 9. My amendment recognises the partnership process and its deepening into workplace levels. Trade unions or excepted bodies should be in positions to make requests under section 5. It relates to normal industrial relations practices and operations that would take place within an undertaking or a workplace. It strengthens the Bill from the point of view of everyone involved as they will deal with other people they know. It does not force anything on employers but refers to places where unions have members in those particular workplaces.

Mr. Leyden: Will the Minister consider Senator O'Toole's point? Will he also clarify why the section does not include a provision stating this could be done by employees, trade unions or representatives?

Mr. Killeen: Were the amendment accepted as presented, it would have the effect, which Senator O'Toole said is unintended, of providing a right for a trade union or excepted body to make a request to an employer for details of employee numbers even if it had no members working in that particular undertaking, which would not be desirable. We must remember the context as we are merely discussing establishing the number of workers in the undertaking for the purpose of the Bill. It relates to the method of calculating workforce thresholds. I have gone a considerable distance, as far as anyone could reasonably ask, to safeguard the anonymity of employees who seek this type of information and their ability to use the Labour Court or its nominees. There is no difficulty for individual workers or groups of workers who seek this information, as it is very well addressed by the Bill. The situation resulting from this amendment would not be reasonable.

Mr. O'Toole: That is not the intention of the amendment. What would be the Minister of State's view on a Report Stage amendment that clarified this could only occur in the case of a union already with members in the undertaking? We could discuss this on Report Stage. I accept that the amendment could lead to the interpretation cited by the Minister of State, which was not my intention.

Amendment, by leave, withdrawn.

Section 5 agreed to.

SECTION 6.

Acting Chairman (Mr. Moylan): Amendments Nos. 15 to 22, inclusive, are related and it is proposed to discuss them together. Is that agreed? Agreed.

Mr. Quinn: I move amendment No. 15:

In page 6, lines 24 and 25, to delete subsection (1) and substitute the following new subsection:

"6.—(1) Without prejudice to *section 11*, and subject to *subsections (3)* and *(4)*, the employer shall arrange for the election or appointment of one or more than one employees' representative under this section.".

This group of amendments has two purposes. First, there is a need to clarify that employee representatives are not to be taken as managerial in all circumstances. We touched on this subject earlier. Approximately 25% of private sector employees are trade union members and we

[Mr. Quinn.]

should, therefore, not automatically assume that everyone will be in the future. The Bill makes it clear that a direct system of communication with employees is equally acceptable but the section as it stands seems to imply that a system of employee representatives must be established in all cases.

Second, we must clearly spell out that, in all cases, the employee representatives are people who are employees of that employer and not outsiders, for example, trade union employees. In industrial relations, it is quite appropriate for employees to be represented by professional trade unions or other workers but not so in this case. We are discussing information and consultation, not negotiation. The issue is one of informing and consulting the employees in that particular company. When we speak about such, we should make it clear that we mean organisational insiders are the people involved.

I spoke about the fear of those who consider coming to Ireland to open their businesses. We are in competition with countries inside and outside Europe. We should not automatically assume that someone who holds the tradition of taking care of one's employees' relationships to such an extent the employees do not feel obliged to have a trade union should have one. If we are not clear on this issue, there is a danger that we will walk into a situation whereby we would be installing and enforcing trade unions on employees who do not necessarily want them. The big difference is that this relates to consultation and information rather than negotiation. I made the point on Second Stage that nobody should be in any doubt that it is not the employees' job to accept responsibility for running the company; that is the employer's job. It is the employees' job to be involved, consulted and informed about this area. It is important to realise that if the employees do not wish to have a trade union, they should not be obliged to have one.

1 o'clock

Mr. O'Toole: The amendment in my name and that of Senator McDowell stipulates that employees' representatives means such trade unions as are representative of the employees where there is such a trade union or persons who are directly elected by the employees in the undertaking. I am taking into consideration the point made by Senator Quinn that not all workers or workplaces will be organised into trade unions. He also made the point very clearly that where the employees wish their trade union to represent them in any of these matters, they may do so.

Unions are always presented as stumbling blocks in much of the discussion about employer-employee relations and union-business relationships. Trade unions are a service industry. In the same way as a person at a certain level of management who is offered a severance or buy-out package would take it to his or her accountant to get advice on it, the person at the bottom of the line will very often go to his or her trade union for information, advice or guidance as to how to deal with whatever problem he or she faces. There is a certain view that we should be in some way afraid of trade unions. Trade unions and business can be very similar. As my colleague Senator Ross would say if he were here, sometimes it is hard to see the difference between IBEC and ICTU because they must fight the same battles together regularly. They come from different perspectives but they must recognise each other's function. We must also recognise that the best advice a worker will get is often from his or her trade union; it might be the only advice received. Half of the time, this advice will suit management far better than people trying to work matters out on their own because people will have a clearer and broader view, which is important to bring to bear on the matter. When an employee wishes to be represented or have the information passed through his or her trade union, this should be recognised, enacted and enshrined in the Act.

The other amendment in my name and that of Senator McDowell stipulates that the employer shall arrange for the election or appointment of one or more than one employees' representative under this section. In our earlier discussion, I said that I wanted an election and that I did not like the idea that an employer could select a person as a representative. The earlier definition stated that somebody could be appointed by the employer on the basis agreed by the employees. This is where the meat of the issue lies and where my concern arises. If there are 100 people on the staff and an unscrupulous boss decides that he or she will deal with two of them and sets up arrangements, any fair-minded person would say this was completely wrong. This is what the Minister of State is allowing to happen by allowing these words in there; this is a fair interpretation of what is written. The section is not balanced and is anti-worker. It allows something to be done by an unscrupulous employer; an employer with a bad mind about it, who does not want to do business with employees and who wants to run rings around the Act. This provision provides an opening for such an employer to do this; it is a gap in the fence and should not be there. There is no case for doing this in any way other than an electoral or democratic manner. If the Minister of State can reassure me about another method, I will be happy. It is not that I am hung up on a particular way. I am hung up on allowing a piece of legislation through that allows somebody to run rings around, misinterpret or reinterpret it. It does not seem acceptable that we would go down this particular road. I ask the Minister of State to

listen carefully to what I have to say on these issues.

Mr. Coghlan: I do not see anything wrong with direct consultation. There is no conflict between what Senators Quinn and O'Toole said because employees can consult one another about who they want as their representative. It is quite reasonable that the employer should arrange for the election of the employees' representative. Employees might come together and appoint from among themselves without an election. We are not talking about bargaining and negotiations; we are talking about information and consultation.

Ms White: One cannot make legislation for the very small number of rogue employers. In general, Senator O'Toole takes a negative approach towards employers in this House.

Mr. O'Toole: Oh?

Ms White: That is my observation since I came to the Seanad. I sat on the national women's committee of the Federated Workers Union of Ireland in the mid-1970s so I do not have a problem with trade unions. We must be very careful with these amendments. We do not want to intrude on existing first-class relationships between employers and employees achieved through the direct method or frighten people into thinking that the only way they can negotiate is through the trade union. A trade union is necessary to cope with a bad employer. In general, most employers will not succeed in a global, competitive market unless they have first-class relations with their employees.

Mr. McDowell: There are a number of different amendments that pull in different amendments, which makes it slightly difficult to get one's head around the issue. We must be straight about what is intended in the amendments in my name and the name of Senator O'Toole. These amendments aim to ensure that if there is a trade union that has members in a particular undertaking, the employer should deal with it. The amendments contain nothing more complicated than that. We are not saying that trade unions must move in and we are not looking for closed shops or compulsory membership of trade unions. We are simply saying that where a trade union already exists within a particular undertaking, that trade union should be entitled to nominate somebody to the employer's forum. This seems to be a very reasonable principle. It does not make sense for us to seek to reinvent another system if a system where the trade unions represent the workers already exists. If this system already exists, it is perfectly adequate that it should continue. The Minister of State will probably refer to subsection (3) and tell me that it already guarantees it but it does not. There is a clear get-out element which looks to give succour to the Michael O'Learys of this world where they can claim that while there are trade unions in their workplace, there is no system of collective bargaining in play, which may be the case. We should be fair and upfront about this. We are saying that if there are members of trade unions in an undertaking, irrespective of whether there is a collective bargaining system in place, the workers should be entitled to nominate the trade unions as their representatives for receiving information and consultation.

Mr. Quinn: I did not realise amendment No. 21 was to be included with the other amendments when I spoke earlier. This amendment, which was proposed by Senator White, would insert "in that employment" after "members" in page 6, subsection (3), line 34. This is rather like the Minister's amendment in that it is technical, and it should apply. Section 6(3) would then read:

> Without prejudice to *section 11*, where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body, employees who are members of a trade union or excepted body that represents 10 per cent or more of the employees in the undertaking shall be entitled to elect or appoint from amongst their members in that employment one or more than one employees' representative for the purposes of this Act.

It is a useful technical amendment that would be of benefit.

Mr. Killeen: Section 6 as it stands represents a good balance between the interests of employers, employees and their representatives. I assure Senators that no section in this Act took more time, examination or attempts to reach agreement with the various parties. This section seeks a number of fair and equitable balance in terms of the interests of both employers and employees by achieving what is required in the directive and what we want to achieve in the work place in terms of information and consultation.

The definition of "employee representative" in the Bill is an employee elected or appointed for the purposes of the Act. We dealt with that when we discussed definitions and we must bear that in mind. In essence, this means that for the purposes of information and consultation, all employees in the undertaking elect or appoint the relevant number of representatives. I believe this is the most democratic approach to adopt in terms of identifying employees representatives. This was discussed to some extent in the context of definitions at the beginning of the Bill. The concerns then expressed by a number of Senators are addressed in the provisions of section 6.

[Mr. Killeen.]

The Bill recognises the role of trade unions in undertakings where it is the practice of the employer to engage in collective bargaining with them. There is no impediment on trade union representatives or members who are employees of the undertaking from standing for election on an equal basis to other employees. Our approach takes account of the views expressed by ICTU.

Amendment No. 17 is a relatively minor technical Government amendment, which somewhat clarifies the situation. I will briefly deal with each of the amendments in so far as I can. Amendment No. 15 proposed by Senators White, Quinn and Coghlan is superfluous in that the appropriate place to have the reference to section 11 is in section 6(3), which is where it is. That suffices in this instance.

Amendment No. 16, in the name of Senators O'Toole and McDowell, is entirely covered by the provisions of section 6(3), which refers to the fact that employees who are members of a trade union or excepted body that represents 10% or more of the employees in the undertaking shall be entitled to elect or appoint from among their members one or more than one employees' representative. That is a considerable concession and people generally accept that, although some outside the House have difficulties in acknowledging it.

Amendment No. 17 is a Government technical amendment. Amendment No. 18 has been changed and has been replaced by the new amendment No. 21, to which Senator Quinn referred. I understand that the phrase "in that employment" is already covered in the section and is entirely clear from the beginning. Amendment No. 19 reads:

> In page 6, lines 26 to 28, to delete subsection (2) and substitute the following new subsection:
>
> "(2) Subject to the provisions of *subsection (3)* and *Schedule 2* of this Act, the employer shall arrange for the election of employees representative under this section.".

We might agree that is provided for, both at definition level and in section 6.

We have not dealt with amendment No. 22, in the names of Senators O'Toole and McDowell. Arguments have not been made in favour of amendment No. 22, which states:

> In page 6, lines 36 to 39, to delete subsection (4) and substitute the following new subsection:
>
> "(4) A person elected to the position of employee representative shall hold that office for a period of no longer than three years.".

I cannot pretend I am well disposed to it, but I am interested in hearing the arguments in its favour.

Mr. O'Toole: The argument in favour of amendment No. 22 is that it is good practice to move roles among different people so that it would not become similar to a role of club secretary held for 40 years. In such circumstances it becomes difficult to remove somebody because it becomes confrontational. It is better if someone must seek re-election. Requiring that somebody be re-established in the position is better than apparently appointing somebody for life. It does not make sense. It is not a question of deep principle. Both sides should examine this. I would be happy to hear arguments against it.

I am still not certain on the first issue. Is it correct that in a situation such as that in the example I gave, in a company with 100 employees, agreement on the representative could be reached with a number of them, and they would then be complying with the Act without any election? Perhaps I am misinterpreting it.

Subsection (4) states the number of employees' representatives shall be determined on a pro rata basis, but that is governed by the word "appointed" and by the definition of "appointed" under section 1. Unless I am completely misinterpreting it, I do not understand why we would allow a situation to continue whereby an election is not necessary. That is stated clearly. I do not agree with it but I understand it. There are no limits or description of the basis on which it can be agreed. It does not need to be agreed with all of the employees.

The Minister of State is leaving this issue open. An agreement can be made on behalf of everybody by people with no authority to make such an agreement. That is wrong no matter how one examines it. I am not pulling any tricks. It is wrong but somebody somewhere will do it. It will then end up in the Labour Court and we will be required to sort out the mess that has been created by people working within the legislation.

Senator White mentioned my views on employers. I can tell Senator White that over the years I have had more rows with trade unionists than employers, and I continue to do so. When I discuss issues here, people on both sides of the argument can turn matters upside down. It is not beyond the wit of man to consider a small group of workers within the workplace approaching the employer and stating they can agree to work in a certain way. An innocent employer may be convinced to act in a way that would cause a problem for him or her in the future. This works both ways.

Senator White can take it that when I state this can be abused, I mean that I have see both sides abuse situations and it can happen in any way. This is about certainty. The reason the Labour Court exists is to get closure on issues, and to ensure certainty. It is not to make life more difficult for employers or easier for employees. It is about having a reasonable adult relationship that

works in a company with or without trade unions. That is not the issue.

I am arguing against some of my more basic principles. What I am proposing is what many multinationals did in order to keep trade unions out. They set up their own elections and presented that as more democratic than what the big trade union barons could propose. The Minister of State is well aware of the language they use. I am trying to achieve a balance that works. I feel strongly on this, not only because of principles but also for practical reasons.

A trade union official may get a telephone call from a worker who states he or she is not happy with how the representatives in a company have been appointed, selected or elected. He or she might explain that a few workers in one section, who have been there longer than anyone else, pulled a fast one by approaching the boss and explaining the way in which it should be done. The boss agreed without giving it much thought, and a mess was created.

In another situation, the worker might explain to the trade union official that the boss is far too smart for some of the other workers, took them out for lunch and they returned with an agreement to set up an undemocratic structure. The trade union official would have to deal with whatever argument is made. It might be member against member or members against the boss. Let us be clear about this. If he or she consults the legislation, he or she will conclude that it has been done precisely under the terms of the section which states "appointed by the employer on a basis agreed with employees". It does not even state "with the employees" or "with all the employees" but rather "with employees", which could mean any number of them. Where do we go from here? Now we have a row on our hands. Everybody knows this was never envisaged in the legislation. Everybody knows this was never meant to be the outcome. We have gone beyond that stage. People will say that that was then and this is now, that they did it correctly and that those with a problem should just buzz off. It will then go through all the processes of industrial relations and the various complaints procedures. People's time will, utterly unnecessarily, be wasted in the courts and elsewhere.

One might well ask who wins in such a situation. There is no gain for employers in what I am suggesting, nor are there any negative implications. It strengthens their position as much as it strengthens the union position. I honestly and firmly believe that to be the case. I accept Senator Quinn's point that this approach may be more cumbersome than two people agreeing something without going to any bother but what we are talking about is the cumbersome nature of democracy. We all find elections something of a nuisance at times but we have to go through them in order to obtain a result. A problem exists which will raise its head if we leave matters as they stand. I will say in the corridor to the Minister of State, Deputy Killeen, that we discussed it and that is what they are trying to sort out in the Labour Court and that it is also causing a problem somewhere else. Everybody would be tied up as a result, which would be a waste of creativity, productivity and time. I urge the Minister of State to take on board my amendment.

Ms White: I totally agree with Senator O'Toole that a person should not hold an office for longer than a period of three years. However, I am totally opposed to the notion that the representative should always be elected and never appointed. It is fine for Senator O'Toole. He is in a forum where elections take place all the time but some people are not used to seeking election. In some cases people would be fearful of the idea of going for election and would not like to do so. In any gathering it is possible to deduce who would like to be a representative without being elected but regardless of whether they are elected or appointed, people should not hold positions for longer than three years. I feel very strongly about this as people can easily get into a rut. I agree with the principle but I am totally opposed to the notion of employee representatives only being elected.

Mr. Quinn: On balance, it appears the Minister of State has got it right. Senator O'Toole referred to my concern about the process being cumbersome and bureaucratic. I agree that there is a danger of this happening. Some 75% of employees in the private sector are not represented by trade unions. Even in general elections, a large proportion of the population no longer vote. The voting tradition is less strong and I would like to see that change. However, it is wrong to almost insist on having elections when it is agreed between employees that those who are interested will have a say on that basis. Let us not assume that every employee wants to be actively involved in these issues. We should encourage it. A good employer will encourage it anyway. I do not believe we should enforce elections that would involve, to paraphrase Senator O'Toole, cumbersome methods.

I am interested in the notion that a representative would not hold office for more than three years. At the time of the last Seanad election, a proposal was put forward at a meeting in UCD that no university Senators should be allowed hold office for more than two terms. I think it was put forward by a new candidate. It is a reminder that if the prevailing culture is democratic in nature and if an incumbent is doing a good job, he or she is unlikely to be removed from his or her position. That is usually what happens. If a person is not doing a good job, there will clearly be a move against him or her. On that

[Mr. Quinn.]

basis, the Minister of State is right not to accept that amendment. I do not hear any enthusiasm for the amendment in any event. The Minister of State has it right about the employer agreeing with the employees rather than necessarily having an election in all cases.

Mr. McDowell: I endorse what has been said by Senator O'Toole. It is an important argument to which I expect we will return. I wish to broaden the discussion on trade unions. On reading subsection (3) it appears that trade unions will have the right to appoint or elect a representative from among their members, subject to several different conditions. First, there must be a system of collective bargaining within the undertaking in the first instance. Second, the union must represent at least 10% of the workers within that undertaking. Third, as I understand it — the Minister of State should correct me if I am wrong — it appears to exclude the possibility that a trade union official who is not actually working in the undertaking, would be the representative.

Several important linked principles are in evidence here. For the sake of argument, I am willing to live with the threshold, although we could say it should be lower or whatever. Given that we are talking about big corporations, I would have argued for a lower threshold. We are then left with two basic principles. One is that a system of collective bargaining must be in operation. There are companies where more than 10% of the workforce are represented by a trade union, which, effectively, will not deal with a trade union. They accept, reluctantly, that workers have the legal right to join trade unions but they do their level best to frustrate them. They discourage them from joining in the first place and, effectively, they will not negotiate with them in any meaningful way. I assume that, under this subsection, those companies would be entitled to turn around and say that although more than 10% of the workers are represented by a trade union, it is not their practice to deal with them so, therefore, this section does not apply and they will not deal with a trade union in the context of information and consultation. That is fundamentally wrong. If somebody working in a particular workplace wants to be represented by a trade union or a trade union official, that is his or her right and he or she should be entitled to do that.

My second point relates to trade union officials. If my reading of the subsection, which is somewhat convoluted, is correct, it appears to insist that the employee representative must him or herself be an employee of the particular undertaking. It is not open to a member of SIPTU to say that he or she wants the SIPTU representative from Liberty Hall to represent him or her in terms of obtaining information. It will be said that the people in the workplace will have the primary interest in getting the information but we are talking about large companies and we must adopt a sense of reality. If one takes Aer Lingus as an example, the type of information that has been provided in the fora involving the employers' and employees' representatives is very detailed. It is commercially sensitive and convoluted. If one provides it to somebody in the workforce, he or she may not be able to understand it. It appears to be a basic right that staff would be entitled to bring in people whose full-time job is to understand such matters. In other words, they are entitled to expert support and assistance from their trade unions because that is why they joined them in the first instance. If the subsection means what I think it means, that they cannot do this. That is fundamentally wrong.

Mr. O'Toole: Before the Minister of State replies, I wish to clarify an issue for Senator White. She made an important point to the effect that people are not used to seeking election and that in many workplaces, big or small, people would not want to put themselves forward for such a role. In my previous job I had responsibility for 3,500 primary schools throughout the country. Some schools were very big while others were very small with only two or three teachers in the school. The Minister of State can explain to Senator White how he had to do this in his former life, very often with reluctant employees, teachers in this case, who did not particularly want to take on responsibility but who nevertheless accepted. Every one of those 3,500 workplaces got together and organised to elect a member to serve on school boards of management. Similarly, the parents, who were also reluctant as they did not want to have anything to do with it and were happy to let the teachers or the board run the schools, also got together and elected people to serve on those boards. I say that because whether people are interested in being elected or have experience of it, this is not an impossible task to implement. What we are talking about today is far easier than what both the Minister of State and I have experienced in former lives. We should dispose of that particular objection.

In answer to Senator Quinn's remark on the terms of office, there is nothing in my amendment to prevent somebody from being re-elected to a term of office. That Deputies and Senators are elected for a period of not more than five years does not stop them putting themselves forward for re-election. My amendment does not prevent candidates opting for re-election although people might interpret it that way. It is a matter of there having to be an electoral process at the end of each period in office. The period does not have to be three years. This was chosen quite arbitrarily and perhaps it is too short — I do not have

a view on that. If we deal with the issues of principle, the implementation difficulties will be dealt with easily.

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

An Cathaoirleach: We are debating section 6, amendment No. 15.

Mr. McDowell: A number of amendments were being debated at the same time.

An Cathaoirleach: Amendments Nos. 15 and 16 are related and amendment No. 18 is an alternative to amendment No. 15. Amendments Nos. 17 to 22, inclusive, are related, which means that amendments Nos. 15 to 22, inclusive, may be discussed together.

Mr. McDowell: Amendments Nos. 16, 19, 20 and 22 are in my name. Before the suspension of the sitting I had put a few questions to the Minister of State, specifically relating to the role of trade unions and the effect of section 6(3). Assuming there was a 10% threshold in place, I was seeking to inquire whether it was open to employers to tell employee members of a trade union that they were not going to deal with the union in circumstances where that was not the practice within a particular undertaking. I was also anxious to tease out whether section 6(3) means, in effect, that trade union officials could not be representative of employees within a particular enterprise.

Mr. Killeen: The question about trade union officials is not covered under the legislation because the requirement specifies the representative should be an employee of the undertaking.

Mr. McDowell: It is not possible for a worker to say that he or she wants to be represented by a trade union official if that person is not employed in that undertaking.

Mr. Killeen: That is correct as regards the provision of information and consultation. The legislation provides that it must be an employee. The other point raised by Senator McDowell relates to cases where an employer does not conduct collective bargaining negotiations with a trade union or other accepted body. As the Cathaoirleach and Senators McDowell and Quinn will be aware, that is an issue for different legislation some time in the future. A voluntary system is currently in place which will continue. It would not be appropriate to depart from that in the context of this legislation. That is a fundamentally different issue.

A number of points were raised by Senators Quinn and White. Senator White had concerns about the process of election and whether people might be willing to embrace that concept. I was interested in the examples given by Senator O'Toole as regards small schools, etc., where people might not have been too enthusiastic about embracing the procedure but nevertheless did so. I am also interested in the workplace context, at the manner in which the appointment or election of safety officers is undertaken. People tend to be quite proactive in that area and I am pleased about that.

Senator Quinn raised the point, which he has highlighted a number of times, about a very cumbersome bureaucracy. It is a fair point but it is possible to implement this legislation in a manner that manages to comply with the directive, encourages good practice and is not overly cumbersome. We have come close to that objective in the Bill. By the time the Bill has been passed by the Oireachtas we will have legislation that is user-friendly on both sides of the industrial spectrum. That is certainly my hope.

A couple of issues were raised by Senator O'Toole. One related to amendment No. 22, which I confess I entirely misunderstood. I thought he was proposing that people should be precluded from serving after three years. He clarified that. One of the reasons this rang alarm bells is that there is a provision in the Fianna Fáil Party rules that officers must retire after a four-year term. Having seen the amount of angst that creates, I would have been reluctant to accept the Senator's amendment. However, he has clarified that people should be entitled to seek another term of office. That is dealt with separately in the Bill in terms of the entering into new agreements.

The other point Senator O'Toole makes is about the entire process and is, in a sense, also being made by those who are represented as being somewhat more concerned on the employer side. Naturally on Committee Stage we are reviewing section 6 in its own right. However, sections 8 and 9, in particular, impact very strongly on section 6. Under these sections all negotiated and pre-existing agreements must be approved by the majority of the employees, therefore, the concern which Senator O'Toole expressed about section 6(1), on employee representatives, is dealt with under both sections 8 and 9, which specify that a negotiated or pre-existing agreement must be approved by a majority of the employees or a majority of employee representatives.

Mr. McDowell: I am glad the Minister of State has clarified the fact that trade union officials are effectively precluded from this. This is a return to the bad old days. We are dealing with large companies, not small concerns. If the information to be provided is to be meaningful, it is likely that it will be technical and complex. It is asking too much to expect individual employees in the workplace to be in a position to understand or appreci-

[Mr. McDowell.]

ate the information they are given or bring to bear the expertise needed to make sense of it. I come back to the example of Aer Lingus where the trade unions have dealt in a very responsible way with management and look to effect change over a period of time based on the information that has been given to them by the employers. It cannot reasonably be expected of fulltime workers in a company that they will be in a position to assimilate such information and have the expertise to deal with it. It is, therefore, entirely unreasonable to exclude by legislation the possibility that people who are members of a trade union might choose to be represented by that body. That seems to be a very basic principle which it is within the power of the Minister of State to accept. I urge him to think twice about it.

I accept the point made by the Minister of State regarding collective bargaining and recognition. It is a much bigger issue. I do not expect him to suddenly do a *volte-face* in the context of this Bill, but it is an important matter. It is frustrating to consider legislation that is fine in principle but which will still enable employers who are seeking to frustrate worker organisations by allowing them to insist that it is not their practice to deal collectively. They may opt to appoint people of their own choosing who may be in a position for life, with whom they will deal exclusively, regardless of whether there is a trade union. I ask the Minister of State to think again. I appreciate he is not going to concede on the collective bargaining and recognition issue. However, he should consider allowing trade union officials to represent workers who are union members.

The Minister of State noted the requirement that pre-negotiated agreements be sanctioned or approved by a majority of workers voting in a ballot. As he will be aware, this is not the case because section 8 also provides that a majority of employee representatives may approve such agreements. Under section 8(3)(*c*), they can also be approved by some other predetermined mechanism not set out in the Bill. As a result, trade union members or employees may use means other than a vote to approve or extend pre-negotiated agreements.

Mr. Killeen: I apologise for my error in omitting to mention that a majority of employee representatives or employees could approve such agreements. I thought I had referred to this option. While I understand the Senator's point on the complexity of the information in certain circumstances, the provisions of the legislation arising from the directive apply to employees in a particular work environment. It is entirely reasonable, therefore, to confine the transfer of information and the process of consultation to the employer and employees. Although one could argue that trade union officials are excluded, one could also argue that the parish priest, bank manager or solicitor is also excluded from the process. The Bill provides for employees to have access to the information and consultation process. It is not reasonable to suggest that a specific category of person is excluded from participation in the process.

Mr. McDowell: The Minister of State's comparison is spurious. Let us take Irish Ferries, assuming it will be governed by the legislation, as an example, although this may not be the case given the flag of convenience under which its vessels sail. No employee of Irish Ferries will bring a bank manager or parish priest along to consultations but he or she may well want to be accompanied by a professional trade union representative. Union officials are no longer militants on the shop floor but professional, trained individuals who spend considerable time and effort learning negotiating skills and trying to assimilate information which previously only accountants could understand. In this regard, I endorse Senator O'Toole's comments because it is also my experience that trade union officials spend much more time having rows with their members than with their employees. These days one must try to be reasonable and take the centre ground much of the time. Incidentally, this is also true of Labour Party politicians.

Mr. Killeen: It also applies to politicians of other parties.

Mr. McDowell: In often complex circumstances, in which employees must deal with employers who have a range of expert advice available to them, it is not unreasonable that employees have the professional advice of trade union officials at their disposal, on condition that trade unions are organised in the workplaces in question. It is open to the Minister of State under the terms of the directive to make such provision and I urge him to do so.

An Cathaoirleach: Is the amendment being pressed?

Ms White: I ask the Minister of State to reflect on the matter before Report Stage.

Amendment, by leave, withdrawn.

Mr. McDowell: I move amendment No. 16:

In page 6, lines 24 to 25, to delete subsection (1) and substitute the following new subsection:

"(1) 'Employees' representative' means such trade unions as are representative of the employees or where there is no such trade union, such persons that are directly elected by the employees in the undertaking.".

Amendment put and declared lost.

Government amendment No. 17:

In page 6, subsection (1), line 24, to delete " 'Employees' representative' " and substitute "In this Act, 'employees' representative' ".

Amendment agreed to.

Amendments Nos. 18 and 19 not moved.

Mr. McDowell: I move amendment No. 20:

In page 6, lines 29 to 35, to delete subsection (3) and substitute the following new subsection:

"(3) A trade union or excepted body who has members in the undertaking and employees in the undertaking shall be entitled to nominate persons for election to the employee forum.".

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

Amendment declared lost.

Amendments Nos. 21 to 23, inclusive, not moved.

Mr. McDowell: I move amendment No. 24:

In page 6, between lines 43 and 44, to insert the following new subsection:

"(6) If the Court finds that the complaint referred to it under *subsection (5)* is well founded it may direct the respondent to take measures which may include the organisation of new elections.".

This amendment specifically provides that in circumstances in which a court receives a complaint about any aspect of an election, it will have the power to direct that new elections be held in the organisation in question. This power appears implicit in the section in any event because it provides that a court will have power to make an investigation and issue a recommendation. It should, however, explicitly provide that a court may recommend that a new election take place.

Mr. Killeen: Having examined the amendment carefully, I am assured that the Bill, as drafted, provides discretion for the Labour Court as regards the determination it may issue under this section. The amendment is not necessary.

Mr. McDowell: While I accept that the Bill does not place constraints on the recommendations a court may make, it strikes me as sensible to explicitly provide that a court be able to direct that another election be held. Nevertheless, I am happy to accept the Minister of State's assurance that this option is already sufficiently provided for in the Bill.

Amendment, by leave, withdrawn.

Section 6, as amended, agreed to.

NEW SECTION.

An Cathaoirleach: Amendments Nos. 25 to 31, inclusive, are related and may be discussed together.

Mr. McDowell: I move amendment No. 25:

In page 7, before section 7, to insert the following new section:

7.—(1) An employer shall enter into negotiations with the representatives of employees to establish information and consultation arrangements.

(2) Within 6 months from commencing negotiations, the parties shall agree to establish an information and consultation arrangement by means of—

(*a*) a negotiated agreement under *section 8*, or

(*b*) the Standard Rules set out in *Schedule 1*.

(3) The period of 6 months referred to in *subsection (2)* may be extended by agreement of the parties.".

These amendments deal with the trigger mechanism, an extremely important principle. The Bill provides for a complex and unnecessary trigger mechanism. In establishing a right to information and consultation, it is reasonable to provide that this entitlement be automatic. The Bill, by including a trigger mechanism under which a certain number of workers must request the establishment of the new arrangements, effectively allows employers to opt out, at least temporarily, of the requirements to provide information and engage in consultation. This arrangement could have serious effects. If an enterprise is functioning well, employees will be happy to allow existing arrangements to continue. As a result, companies will not be required to engage in crisis talks or crisis management of any kind and demand for information and consultation of the type provided for in the legislation will be minimal. Only when something goes badly wrong — for example, changes in work practices are mooted or the possibility of redundancies is raised — will employees decide they need to invoke the provisions of the Bill. Unfortunately, the Bill provides that the information and consultation mechanism may take up to six months to kick in, by which time the initial crisis will be long over and new work practices or redundancies imposed.

I was somewhat surprised when I read this because it is not in keeping with most of the labour legislation, which normally does not allow

[Mr. McDowell.]

opt-outs. I would be interested to hear why it was felt necessary to allow employers, to all intents and purposes, to at least delay the implementation of the Bill and the implementation of an employees' forum and make it likely that it is almost meaningless because a six-month delay, if it occurred, would be far to long a period in which to react to a crisis or any particular difficulty arising within an enterprise. In summary, I and my party, whatever about the complexities involved, are opposed to the notion of there being a trigger mechanism in the first instance. It really should not be in the legislation; this should be an automatic right.

Mr. Quinn: I, on the other hand, have a different view entirely to that expressed by Senator McDowell. Setting aside the rights of employees and employers, the amendment proposed is disproportionate and it should be rejected because it is counterproductive to the ethos that the Bill sets out to establish.

We are not talking about negotiation. I am aware that I stated this previously and that I am repeating what I said. We are talking about consultation and information. It seems, therefore, that amendment No. 25 is changing the entire ethos of the intention in the Bill and in the European directive.

The concept in use in Ireland for many years is not to force an employer, without good reason and some consensus, into information and consultation when it might not be appropriate or the timely course of action. The amendment, combined with those others on the employee representation, would mean that a trade union representing a tiny minority of employees could force an employer unreasonably into negotiation. That is not why we are here.

We will discuss the trigger mechanism in a moment because we are covering a range of topics at this stage. However, I wish to touch on that point in respect of the amendment proposed by Senators O'Toole and McDowell. It is correct to turn this down. It would change the ethos of the objective of this legislation, which is about consultation and information, not negotiation. The Minister of State must hold firm on that particular area.

Ms White: Section 7 is entitled——

An Cathaoirleach: We are discussing amendments Nos. 25 to 31, inclusive, together.

Ms White: Yes, but this relates to section 7.

An Cathaoirleach: No. We will discuss section 7 when we reach it. We are discussing the amendments now.

Ms White: The acceptance of this amendment involves the deletion of section 7. The amendment is designed to force an employer, without good reason and consensus, into information and consultation when it would be neither appropriate nor timely. This amendment, combined with those on employee representation, would mean that a trade union representing a tiny minority of employees could force an employer unreasonably into negotiations in circumstances where the amendment would, in addition, deprive the employer of access to the Labour Court on the number or percentage of employees involved. In setting aside the employer's rights, this disproportionate amendment must be rejected as counterproductive to the ethos sought by the Bill and the EU directive. I remind Senators that the purpose of this article of the directive is to promote social dialogue between management and labour.

Mr. Killeen: The note kindly provided to me deals with the entire group of amendments.

Mr. Quinn: If the Minister of State will reply to all of the amendments together, I wish to make one or two observations because we tabled a number of amendments.

An Cathaoirleach: All right.

Mr. Quinn: I apologise, a Chathaoirligh, but I find it difficult to discuss a number of matters, which I understand may be related, together. Amendment No. 26, in the names of Senators White, Coghlan and me, seeks, in page 7, line 1, to replace the word "nominee" with the term "a nominated officer". When I looked at that first, I wondered why that needed to be done. The object of the amendment is simply to bring clarity in terms of who might be a nominee of the Labour Court. As drafted, the Bill provides that the Labour Court could nominate anyone it liked. That is much too broad and we could do with a little more precision. Surely the intention is what we would commonly understand it to be, namely, that the person nominated would be an official from the Labour Court support service. If that is the case, that is what should be stated in the Bill. That is the application of that amendment.

My other amendments relate to the trigger mechanism. Amendments Nos. 27 and 29 involve replacing "10 per cent" with "15 per cent". Amendment No. 30 involves increasing "100 employees" to "250 employees". These amendments refer to an issue raised on Second Stage, namely determining a desirable level for the number of employees requesting an information and consultation system which would trigger the provisions of this legislation. We must guard against a non-representative minority and I certainly have had some experience in the past that

where others are not necessarily terribly interested in the topic, a tiny active and vocal minority suddenly take over a concern. The threshold level of 10% is too low in this respect and we would be far better off setting it at 15%.

More important, we need to adjust the absolute number set for the threshold. In the section, the threshold can be as low as 100 employees. In the case of a big firm such as one with 5,000 employees of which there are a few in the country, the threshold would effectively be set at 2% of the total number working in the company, which is far too low. My amendment proposes to increase the threshold to 250 employees. This would bring the percentage threshold in a company of 5,000 employees to 5%, which is still too low in my opinion but it would at least would be better than the 2% proposed.

3 o'clock

Those are some of the amendments included in this group. The Minister of State should give serious attention to changing the figures and increasing 10% to 15% and 100 employees to 250.

Mr. Coghlan: In large companies with the considerable numbers of employees to which Senator Quinn referred, the proposal that the number should be increased, that it would not be an unrepresentative minority or that the measure would not be open to mischievous abuse, would be worthy of consideration by the Minister of State. I wish to hear the Minister of State's view on that matter.

Mr. McDowell: Although I discussed the amendment in my name, which I moved, I did not address the other amendments and wish to do so before the Minister of State replies. I am sitting here in bewilderment listening to colleagues on the IBEC side of the argument. This is unreal. On one hand, they are stating that information and consultation is a wonderful proposal, that it is good practice and that all organisations should already have it in place. They are stating that we all talk to our employees, which of course is good and fine, and that they all are happy. On the other hand, however, they are taking every possible measure to ensure that the mechanism, however restrictive, becomes even more restrictive so that it is not used at all in most cases. Either this is a right and a good practice or it is not. Colleagues are stating that it is a good practice while also trying to make it as difficult as possible. They are talking about mischievous intent and trouble-making. It is information and consultation. It is a basic right. I am bewildered by the thrust of the argument and, with due respect to colleagues, of course one knows from where it comes. Either they accept that there is such a right or they do not. If they accept that such a right exists, then let us make it easy to exercise and put in place a fair framework within which this can be done.

Ms White: With respect, we are not here just for talk and rhetoric. We are discussing the country's future.

An Cathaoirleach: Senator White should address the Chair.

Ms White: I remind Senator McDowell that there are 240 companies, mostly high-tech and pharmaceutical companies, that employ more than 1,000 people. Therefore, I believe the 10% figure required to set off these discussions is dangerous and far too low.

Mr. McDowell: How is it dangerous?

Ms White: It is dangerous because 10% or 100 employees is a very low number in a large company. I speak from practical experience, as do the others who support this change. It is a serious matter and the Minister should reflect seriously on it. The figure should be 15% or 250 employees. Otherwise it will give a wrong signal to large companies. When international investment grew here in the 1970s and 1980s we had 18% or 19% unemployment. I am not confident our economy will stay robust unless we remain competitive. As Senator Quinn said earlier, we do not want to give wrong signals to future investors. We must be careful not to be a rigid bureaucracy. The reason the IDA was so successful in bringing international companies into Ireland was because decisions were made quickly by the IDA and Government. It is very important that we do not send out a wrong signal by saying the figure of 10% or 100 employees is fine.

Mr. Killeen: Government amendment No. 28 is a technical amendment recommended by the Parliamentary Counsel, as is amendment No. 31. This amendment adds clarity to the subsection and provides that the Labour Court shall notify the employer and the employees whether the employment threshold has been met in terms of a request from the employees for the establishment of information and consultation arrangements.

If the Senators' amendments were to be adopted they would fundamentally change some important points in the Bill. Amendments Nos. 27, 29 and 30 seek to increase the minimum employee threshold to 15% and the maximum number of employees to 250. On the other hand, amendment No. 25 proposes removing the employee thresholds from this section of the Bill and proposes other amendments related to the Labour Court. Amendment No. 26 proposes replacing a "nominee" of the court with "a nominated officer".

[Mr. Killeen.]

The directive refers to the right of employees to be informed and consulted about certain matters that affect them. Employees can choose whether to exercise this right. The Bill, as drafted, sets out the minimum and maximum number of employees needed to initiate negotiations to establish information and consultation arrangements. The minimum employee threshold, which is the lesser of 10% or 15 employees, ensures that a minimum level of support from employees must exist before an information and consultation arrangement is introduced. The maximum threshold, which is the greater of 10% or 100 employees, ensures that where a sufficient interest exists, employees in large organisations do not face an overwhelming obstacle in obtaining the requisite number to make a request. A precedent for an employee threshold already exists in section 10(1) of the Transnational Information and Consultation of Employees Act 1996. The same threshold, 10% of employees, is used in that legislation, without causing problems.

The majority of submissions received on foot of the consultation paper issued in July 2003 favour an opt-in mechanism for the exercise of the right to information consultation under the Bill. These submissions, together with the wider consultation process, helped inform the drafting of the Bill which I believe is a balanced reflection of the needs of Irish employees and businesses in the context of our economy and society.

I would now like to deal with some of the points raised by individual Senators. Senator McDowell and other Opposition Senators do not believe this is a fair framework. Members' contributions illustrate how difficult it is to strike a reasonable balance in finding a way to provide information and consultation. It came down to choosing percentages and numbers and it was convenient for me that there happened to be a formula in this regard in pre-existing legislation. I did not have to invent it and it was even more attractive because it was a formula that has not caused difficulties, one of the reasons I recommend it.

Senators Coghlan, Quinn and White believe the trigger level is too low. I appreciate people on the employer or trade union sides have made a strong case to Senators on both sides of the argument and they must bring those concerns to the House. As Senators are fond of telling each other, but not so fond of admitting, the legislation is about information and consultation and neither a panacea for all our ills nor the end of the world. We must strike a reasonable balance. I believe the balance we have chosen in this regard is reasonable.

I know Senator Coghlan and others believe the upper limit of 100 employees allows for a mischievous minority to set the process in train. In my experience, if 100 employees seek something of this nature, it is unlikely they are a mischievous minority. The requirement of 100 is a fairly large number. It would be no more difficult to get 250 from a certain number than it is to get 100 from another number or no more difficult to get 15% than 10%. The figures of 10% and 100 employees are a reasonable compromise position. They are, after all, only in the context of setting in place the information and consultation process.

Senator Quinn raised the question of who the Labour Court nominee might be with regard to amendment No. 26. I am mindful of the court's wonderful record and the positive contribution it has made to industrial relations here. I do not have a difficulty with what is proposed, but I am happier to allow the Labour Court to come up with its nominee. It is difficult to visualise circumstances where that might not be along the lines outlined in the amendment, but there might be circumstances where somebody familiar with the company who would be acceptable to both sides might as a nominee bring matters to a speedy and effective conclusion more quickly than somebody else.

I have confidence in the Labour Court to discharge its obligations under this legislation in a sensible and constructive fashion. We had a previous amendment I did not accept for this same reason. I am confident the Labour Court is capable of dealing with the issue sensitively. The occasion would be sensitive and would need to be progressed without offending any of the parties involved. The Labour Court is more than capable of doing that.

Senator White mentioned the number of high-tech companies employing over 1,000 people. Those employees are likely to be highly responsible and sensible and it is unlikely they would be the kind of mischievous minority that would seek to do something that would undermine their jobs or damage the company. Our capacity to compete is not adversely affected or diminished by the provision of information and consultation. All the research we have in this area suggests that our ability to compete is enhanced rather than diminished in situations where there is good quality information and consultation. This is the huge plus of this legislation, but we seem to have a mental block with regard to acknowledging it when it comes to the detail of the Bill. I urge Members to acknowledge that we have mulled over the issue for a long time, considered all the angles and come up with what we believe is sensible, workable and fair from the perspective of both employer and employee.

Mr. Quinn: I listened carefully to the Minister of State's comments about my suggestion of a nominated officer, rather than a nominee. I take his point that he has confidence in the Labour Court's ability to make an appointment. I ask the Minister of State to reflect on the 10% minimum requirement currently contained in section

7(1)(*b*) of the Bill. I am concerned about what will happen when 10% becomes 2% in the case of a very large company. I imagine that 2% of almost any group could be classified as wildcats or as inconsiderate individuals who do not have their feet on the ground. I suggest that the Minister of State should give further consideration to the 10% provision. I would live with a minimum requirement of 10%, as opposed to 15%, if I thought the figure was not limited to that number. I am worried that the minimum provision of 100 employees will be changed to 2% of a large number. If the Minister of State retains the 10% requirement, I will live with that as long as no other number is provided for instead. Perhaps the Minister of State will give some consideration to that. I fear that 2% of the workforce of a large company could act in a manner that is not in the interests of the other 98% of employees. Therefore, it would not be democratic to provide for a minimum requirement of 100 employees.

Ms White: I support fully Senator Quinn's comments about the 250 employees. This is an important issue. I am not asking the Minister of State to make a decision on the matter today, but to state that he will give the matter further consideration and to outline his thoughts again on Report Stage.

Mr. McDowell: A fundamental issue is at stake in this group of amendments. It is clear that there are significant differences between my opinions on the matter and those of my colleagues. The Minister of State said that employees have "a right" to information and consultation. If we all agree that it is a good and fine thing that they have such a right — every Senator who has contributed to this debate seems to thinks so — there is absolutely no need for us to introduce a trigger mechanism to bring that right into force. Why can we not agree to give people that right by obliging enterprises and employers to put in place the necessary mechanisms to make it a reality? I do not understand the argument that to do so would create a capacity for mischief-making. I am making the case for the provision of information and consultation, possibly on the basis of just two meetings per year. Despite the fact that everyone seems to think that is a good thing, certain people seem to find it necessary to try to put in place mechanisms to make it very difficult, or almost impossible in some cases, to facilitate it. If one has the right to information and consultation, why is it mischievous for one to want to invoke that right? If it is a good thing to legislate for that right, why do people think that the providers of foreign direct investment, such as IT companies, will leave this country if they have to confer that right on their workers, or if they have to work within the framework being set out in the Bill?

I wish to highlight the fundamental contradiction within the approach being adopted in certain quarters. If the right to information and consultation is a good thing, we should make it easy for workers to invoke that right by removing the trigger mechanism. I oppose any suggestion that the minimum requirement within the trigger mechanism be increased to give some sort of comfort to companies involved in foreign direct investment. Those who favour an increase are essentially saying to such companies that although they understand that the EU directive cannot be ignored and that something needs to be done about it, they are trying to make it as meaningless as possible. I fundamentally disagree with the suggestion that we should send such a message to companies involved in foreign direct investment.

Mr. Hanafin: I agree with the Minister of State. It is entirely appropriate that workers should be given every opportunity to access information and consultation in the manner outlined in the Bill. We all have to make conscious decisions about marriage, work and voting, etc. People are well capable of working towards targets. The Minister of State correctly said that people are much better workers when they are empowered.

Ms White: I remind the Senator that the vast majority of Senators were originally nominated by nominating bodies. I was nominated by the Irish Exporters Association. I have to reflect on my experience as a businessperson as well as the advice of those involved in the bodies which nominate candidates to the industrial and commercial panel.

Mr. Killeen: I inadvertently said that the maximum employee threshold is the greater of 10% of employees, or 100 employees. I should have said that it is the lesser of 10% of employees, or 100 employees. I am sure some Senators noticed my error.

Senator Quinn made a reasonable point about the provision as it will apply to 2% of employees in a large company. However, I remind him that 100 employees constitute a substantial number of people in any event. If the employees invoke the right, it is only a right to information and consultation. Senator McDowell made the opposite point to Senator Quinn. A certain percentage of people choose to exercise the right to vote, for example. We would usually prefer if many more people exercised that right. In this instance, it does not seem particularly onerous to require that the process will not be set in train unless 10% of people invoke their right to set it in train. The Senators who have listened to the contributions of their colleagues who have disagreed strongly with them will appreciate that it is difficult to find some middle ground in this regard. The Bill reflects the compromise that has been reached. I played a role in striking that balance. I was

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helped by the fact that an existing formula contained in other legislation has worked very well. Some people will never accept a need for a trigger mechanism. Others will never accept that the minimum requirement within the trigger mechanism is big enough. I think we have struck a reasonable balance between those positions and I hope to proceed on that basis.

Ms White: If I were the Minister of State — I hope he does not construe this as a personal remark — I would seriously consider engaging in discussions with the 240 key companies which employ more than 1,000 people. He needs to listen to the opinions of the companies in question to ensure that we do not have excessive bureaucracy and regulation. I have made my suggestion with all due respect to the Minister of State, who I am sure understands where I am coming from.

Mr. McDowell: I can give the Minister of State's answer for him. It is interesting and instructive to read the EU directive, which is clearly intended for the companies about which Senator White is talking. This matter originally arose at EU level in the context of globalisation and the movement of capital. It was necessary to take account of the fact that many of the multinational corporations operating within the EU, but which originate from countries outside the EU, have different practices. It was felt there was a need to prescribe basic minimum standards of consultation and the provision of information to apply to the type of companies described by Senator White. The standards in question will have to apply throughout the European Union. In essence, we are telling US multinational corporations that if they want to do business in the EU, they must meet very low standards of information and consultation. I do not think we should make it any more difficult than it already is for employees to invoke their rights in this regard.

Ms White: I am fascinated by Senator McDowell's comments. As I understand it, the Labour Party is proposing to go into coalition with Fine Gael, which is a right-wing party. However, it is going back to its——

An Cathaoirleach: We are not discussing the Labour Party. We are discussing the Employees (Provision of Information and Consultation) Bill 2005.

Ms White: Senator McDowell is pursuing a form of left-wing ideology that is wrong. He is playing games with private business. As I said earlier, only 25% of private enterprises in this country are unionised. I am in favour of unions, when they are needed. What Senator McDowell is doing is wrong. He is playing games at the moment. He is returning to left-wing policies, rather then joining his Labour Party colleagues in moving to the right wing.

An Cathaoirleach: I think I have allowed plenty of time for the discussion on this group of amendments.

Amendment put.

The Committee divided: Tá, 17; Níl, 27.

Tá

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.
Henry, Mary.
McDowell, Derek.
McHugh, Joe.
Norris, David.
O'Toole, Joe.
Phelan, John.
Terry, Sheila.

Níl

Brennan, Michael.
Callanan, Peter.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
MacSharry, Marc.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Moylan, Pat.
O'Rourke, Mary.
Ó Murchú, Labhrás.
Ormonde, Ann.
Phelan, Kieran.
Quinn, Feargal.
Ross, Shane.
Scanlon, Eamon.
Walsh, Kate.
White, Mary M.

Tellers: Tá, Senators McDowell and O'Toole; Níl, Senators Minihan and Moylan.

Amendment declared lost.

SECTION 7.

Amendments Nos. 26 and 27 not moved.

Government amendment No. 28:

In page 7, subsection (2), line 6, to delete "means" and substitute "shall be construed as meaning".

Amendment agreed to.

Amendments Nos. 29 and 30 not moved.

Government amendment No. 31:

In page 7, subsection (3), line 22, to delete "that" and substitute "whether".

Amendment agreed to.

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

Mr. McDowell: The section provides for the trigger mechanism and since I have objected, in principle, to the whole notion of such a mechanism, it is appropriate to oppose the section.

Question put and declared lost.

NEW SECTION.

An Cathaoirleach: Amendment No. 35 is related to amendment No. 32 and both amendments may be discussed together by agreement.

Mr. McDowell: I move amendment No. 32:

In page 8, before section 8, to insert the following new section:

8.—(1) An agreement establishing information and consultation may be negotiated by the employer and the employee representatives (to be known and in this Act referred to as a 'negotiated agreement').

(2) A negotiated agreement shall be—

(*a*) in writing and dated,

(*b*) signed by the employer,

(*c*) approved by the employees,

(*d*) applicable to all employees, and

(*e*) available for inspection by those persons and at the place agreed between the parties.

(3) For the purposes of *subsection (2)(c)*, the agreement shall be regarded as having been approved by the employees where a majority of those employees employed in the undertaking who cast a preference do so in favour of the terms of the agreement.

(4) The employer shall ensure that the procedure for the casting of a preference referred to in *subsection (3)* is confidential and capable of independent verification and of being used by all employees.

(5) A negotiated agreement shall include reference to the following matters—

(*a*) the duration of the agreement and the procedure, if any, for its renegotiation,

(*b*) the subjects for information and consultation,

(*c*) the method and timeframe by which information is to be provided,

(*d*) the method and timeframe by which consultation is to be conducted, and

(*e*) the procedure for dealing with confidential information.

(6) At any time before a negotiated agreement expires or within 6 months after its expiry, the parties to the agreement may renew it for any further period they think fit.

(7) If no new negotiated agreement is made by the parties then the Standard Rules set out in *Schedule 1* of this Act will apply.

(8) A negotiated agreement renewed under *subsection (6)* within the period of 6 months referred to in that subsection shall be deemed to have remained in force from the date it would otherwise have expired.".

Amendment No. 32, in effect, repeats section 8 except it leaves out a couple of subsections on which I could perhaps elaborate. The section deals with pre-existing arrangements and how they are to be confirmed. This amendment specifically seeks to provide that where a pre-existing arrangement is not endorsed or, effectively, expires, we revert to the standard rules as provided for in the Schedule. This section as it stands is silent as to what happens in circumstances where a pre-existing arrangement ceases to apply. Rather than allowing, or providing for, a hiatus in such circumstances, we thought it would be useful to provide that the standard rules in the Schedule would come into play.

Perhaps more important is how pre-existing arrangements are endorsed. We touched on this earlier when the Minister of State said they had to be approved by a majority. There is provision in the section for pre-existing arrangements to be endorsed by a majority, as we would wish. It is a basic principle of democracy and of the Bill that if a mechanism is in place in a particular workplace, it should have the support of the employees. Our amendment relies solely on that particular mechanism for endorsing pre-existing arrangements.

We are unhappy about the other two provisions in the Bill as it stands, namely, that a

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majority of employee representatives should be allowed to endorse the arrangement or that any other procedure agreed to by the parties for determining whether this agreement has been so approved discloses that it has been so approved. I do not know what section 8(3)(*c*) means. It clearly seems to envisage that there is some other mechanism whereby an agreement can be approved which is not a plebiscite and is not by a majority of representatives. I would like clarity from the Minister of State as to exactly what section 8(3)(*c*) means. The basic principle we seek to establish in our re-draft of section 8 is that any pre-existing arrangement should be put to a ballot of the workforce before it is endorsed.

Mr. Killeen: There would be a number of effects of accepting this amendment. For example, by deleting the wording "establishing one or more information and consultation arrangements", it reduces the flexibility allowed to employers and employees to agree different information and consultation arrangements to govern different branches or units within an undertaking. We had this debate earlier and I referred to the fact it would come up later. I suspect Senator McDowell would like to see this flexibility continued in the Bill in any event. It also removes the option for employees to carry out direct negotiations with their employers on the type of agreement they wish to put in place. The Bill provides for direct involvement systems which are a common feature of many multinational and indigenous companies. The amendment removes a basic right of employees to negotiate their own agreements and arrangements directly with the employer.

In general in the debate, we have tended to down play the value many employees place on having the facility to have their own arrangements for information and consultation. We have also failed to comprehend the extent to which that happens at present. The amendment removes options the Bill provides in relation to approving an agreement. The Bill allows three options and the proposed amendment reduces this to one. I am a little confused or surprised that it deletes the option allowing for an agreement to be approved by the employee representatives. I would have thought that would have been one of the options which would have been somewhat attractive to people looking for trade union support.

The amendment imposes the standard rules on the parties if no new agreement is negotiated. This is very important because I do not find many people telling me they want to be consigned to dealing with the standard rules. It is important we allow the flexibility for people to reach agreement by the other means in the interim. This amendment does not provide the flexibility and autonomy to the parties to decide the approach to take in terms of renewing agreements. On balance, I do not believe the amendment improves the Bill. Government amendment No. 35, which is being taken with amendment No. 32, is a technical amendment and is the only change I wish to make.

Senator McDowell asked about section 8(3)(*c*) which states: "where the result of employing any other procedure agreed to by the parties for determining whether this agreement has been so approved discloses that it has been so approved." The reason we included this subsection is that we are very cognisant the fact that in many employment situations for a long time, systems have evolved which have been agreed and which work particularly well. We were very anxious to ensure that where such systems are in place — clearly it would be difficult to specify them in legislation — they could also be used or benefited from in the context of information and consultation. Even under the option in section 8(3)(*c*), the procedure would have to be agreed by the parties.

I do not see any underlying danger that some cloak and dagger approach might be taken which would undermine the intent or the operation of the Bill. It is sensible to allow for something which we know to be a *de facto* situation in many companies at present.

Mr. Quinn: During the course of this debate I had grown to admire Senator McDowell in regard to almost everything he said and the cases he made. However, I fear he has lost it in this case. He made a very strong case earlier for subsidiarity and passing responsibility back to closer to where the action is. In this case I think he said he would eliminate approval of agreements by employee representatives majority methods. I would have thought that is exactly what any trade union or employee representative would have wanted. Hence, it seems wrong that the requisite flexibility is not being provided here. The Minister of State's wording is quite correct and I support his comments wholeheartedly.

Mr. McDowell: One could argue that I am not acting to type in this respect. However, my basic argument is simple. Members are discussing the establishment of a mechanism which will continue for ten or 20 years. My point is that, at the outset of the implementation of that mechanism for information and consultation, it should have the approval of the people to whom it applies, namely, those working in that particular enterprise. That seems to be a simple principle to endorse.

If one accepts that a majority of employee representatives would have an equal entitlement, that assumes that each employee representative represents the same number of people. There is no such requirement in the Bill and it is quite

possible that one employee representative might, for example, represent 100 people working in Carlow while another might represent 1,000 people working in Naas. On the face of it, under that subsection they would have equal right to decide whether to accept a particular mechanism. In order to avoid such potential complications, I am setting out a basic principle, namely, that each worker has an equal right to endorse or otherwise an arrangement before it is put in place. From a bureaucratic perspective, it is not asking much to request that a single plebiscite be carried out as a once-off measure to approve the mechanism. Once it is done, it will not need to be repeated.

Mr. Killeen: The final point made by Senator McDowell is interesting. It may well be that because of the situation with undertakings and because there is provision for people in different areas to have slightly different agreements and arrangements, representation will not be *pro rata* between the various branches and the main part of a company's operations. On the other hand, it would be a pity to preclude a local arrangement in a branch if it was suitable for its circumstances and agreed by the majority of its employees, if that was beneficial to the company. There is a *pro rata* provision in the legislation in respect of the provision for trade union representatives.

Senator McDowell's point about the various representatives not necessarily representing the same number is interesting and I had not thought of it. I will examine it to see if has merit. It would be an extremely complex matter to reach some kind of a formula to overcome the problem. For example, there might be one branch with 120 people and another with 20. In that situation, a common sense approach must be taken. However, the Senator has made a point which I had not considered and I will examine the issue.

Mr. McDowell: Possibly, it could become even more complicated. For example, it is possible that a minority of workers in a particular enterprise would be unionised and recognised, would have a system of collective bargaining within the enterprise and would be entitled to nominate someone as an employee representative. They might constitute 20% of the workforce. Effectively, a different system, by way of directly elected representatives, would operate for the remaining 80%. Hence, one could encounter a lack of balance between the different sections of an enterprise. While one could have ten people in a room, obtaining the votes of six of them would not necessarily guarantee that they represented anything resembling a majority of the workforce. This complication is best avoided by simply going directly to the workers and asking them to endorse it.

Mr. Killeen: I want, in so far as it is possible, to maintain flexibility. I will examine the implications of the Senator's proposal, which I had not previously considered. I will see if I can take cognisance of it in some way. Although it will be difficult, if not impossible, to so do, I will examine it.

Mr. McDowell: I am happy to withdraw the amendment in the context of the Minister of State's assurances.

Amendment, by leave, withdrawn.

SECTION 8.

Acting Chairman (Ms O'Meara): Amendments Nos. 33, 36, 37, 47 and 69 are related and may be discussed together. Is that agreed? Agreed.

Ms White: I move amendment No. 33:

> In page 8, subsection (1), line 1, to delete "An agreement" and substitute "Agreements".

I propose that the word "agreement" be changed to "agreements". As it stands, the Bill does not make clear whether a suitable arrangement within an employment could consist of separate agreements to cater for diverse groups such as unionised or non-unionised workers in order that there could be collective arrangements or direct arrangements within a company. We must include the term "agreements". The amendment to paragraph 8(2)(*d*) proposes to change the wording to "applicable to all employees covered by that agreement". It would be important to do that. Perhaps Senator Quinn will discuss the remaining amendments.

Mr. Quinn: I always have problems when dealing with many different amendments at the same time. I will discuss amendment No. 33.

Ms White: Amendments Nos. 33 and 34 have already been dealt with.

Mr. Quinn: They have not yet been dealt with.

Ms White: The Senator should move on to the other amendments.

Acting Chairman: To clarify, we are discussing amendment No. 33.

Mr. Quinn: Yes, but we must discuss amendments Nos. 36, 37, 47 and 69 at the same time.

Acting Chairman: We are discussing them together, by agreement, but the Senator may discuss them individually if he so chooses.

Ms White: Members will be here all day doing so.

Mr. Quinn: I will discuss amendment No. 36 as the point has been made about amendments Nos. 33 and 34. Amendment No. 36 proposes that the term "an agreement" be deleted from section 9 and replaced with the word "agreements", while amendment No. 37 proposes the deletion of "exists" and the insertion of "exist". It is also proposed to insert, on page 9, line 17, after the term "employees", the phase "covered by that agreement".

The phrasing I seek to correct is based on what I believe to be a false assumption, namely, that a suitable arrangement within an employment must necessarily consist of a single unified agreement that applies to everyone in that company. Members touched on this earlier today and in particular circumstances the objectives of the legislation could best be served by having a number of separate agreements to cater for diverse groups. For example, one might have separate agreements with employees at different levels of seniority within a company. In certain circumstances, the company might wish to share more information with those at a relatively senior level than with the general mass of employees. This approach should be welcomed and facilitated in the legislation. This agreement would legitimise such separate arrangements. I stress it would not require them but would merely facilitate them if a company wished to do so. Accepting this amendment would add an element of flexibility to what can happen which would be desirable. I believe Senator McDowell would also support it.

I will also touch on amendment No. 69 which proposes the insertion of the phrase "internal structures" in Schedule 1. This amendment accompanies the proposed amendment to section 10, although I am unsure if I can discuss them together. Senator McDowell made a good point earlier in respect of a company that might have a number of branches with a small number of people working in any one of them. I refer to larger companies with different levels of seniority. It could well be that an employer might wish to share some information with employees at some levels but not with those at other levels. The Minister of State could accept the amendment to change the wording to "agreements that exist" rather than "the agreement". In other words, it might not be simply one agreement but could be a number of agreements. The amendment is logical and sensible and the Minister of State may well be able to support it.

Mr. Killeen: I thank Senators for their views in this regard. There is a considerable overlap with the matters which the House has just dealt with in respect of Senator McDowell's amendment. There is considerable merit in amendments Nos. 33, 36 and 37. Clearly, in view of the point raised previously by Senator McDowell about the *pro rata* element, I must examine the implications of accepting these amendments more closely. However, I do not have difficulty with them in principle. Clearly, our intention is to have the maximum level of flexibility with the undertaking. I accept Senator Quinn's point, which is obviously correct. It would be highly unlikely that the same arrangements would be ideal in each of the subsidiary branches. I will consider a suitable wording and will consult with the Parliamentary Counsel. I will return on Report Stage in respect of amendments Nos. 33, 36 and 37.

As for amendments Nos. 47 and 69, I have been strongly advised that they are unnecessary. The points they seek to cover are already adequately dealt with in the text of the Bill.

Mr. Quinn: I thank the Minister of State for his remarks. I would have preferred it if he had accepted the amendments immediately. If, however, his desire is to get the wording exactly right and introduce it on Report Stage, I must accept that.

Amendment, by leave, withdrawn.

Acting Chairman: Amendments Nos. 34 and 39 are related and may be discussed by agreement.

Mr. Quinn: I move amendment No. 34:

In page 8, subsection (2)(*d*), line 9, after "employees" to insert "covered by that agreement".

This is a technical amendment and has been addressed by the Minister of State's previous statement.

Mr. Killeen: These amendments are both technical in nature and the advice of the Parliamentary Counsel is that neither is necessary and clarity would not be improved by accepting them. The points are covered adequately.

Amendment, by leave, withdrawn.

Government amendment No. 35:

In page 8, subsection (3), line 21, to delete "this" and substitute "the".

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9.

Amendments Nos. 36 and 37 not moved.

Acting Chairman: Amendment No. 38 is a Government amendment. Amendments Nos. 40 to 44, inclusive, are related; therefore, amendments Nos. 38 and 40 to 44, inclusive, may be discussed together by agreement.

Government amendment No. 38:

In page 9, subsection (1), to delete line 12 and substitute "section, the employer is not obliged to comply with a request under *section 7*.".

Mr. Killeen: With the exception of Senator O'Toole's amendment, these are technical in nature. Amendment No. 40 involves a serious change we have discussed in some respects. It would remove some of the options provided by the Bill for approving a pre-existing agreement. This is the three options issue we dealt with in section 8.

Mr. McDowell: We have already held a lengthy debate on this matter. The amendment seeks to reduce the three options to one.

Amendment agreed to.

Amendments Nos. 39 and 40 not moved.

Government amendment No. 41:

In page 9, subsection (3), line 23, to delete "are" and substitute "do so".

Amendment agreed to.

Government amendment No. 42:

In page 9, subsection (3), line 24, to delete "or".

Amendment agreed to.

Government amendment No. 43:

In page 9, subsection (3), line 29, to delete "this" and substitute "the".

Amendment agreed to.

Government amendment No. 44:

In page 10, subsection (7), line 1, to delete "the following" and substitute "reference to the following matters".

Amendment agreed to.

Section 9, as amended, agreed to.

SECTION 10.

Acting Chairman: Amendments Nos. 45 and 46 are related and may be discussed together by agreement.

Mr. McDowell: I move amendment No. 45:

In page 10, subsection (1), lines 11 to 14, to delete paragraph (*b*).

It is not my intention to pursue this matter. The amendment would be consequential on removing the trigger mechanism and, as the Minister of State is clearly intending to retain the mechanism, would not be an option for employers to refuse to negotiate.

Amendment, by leave, withdrawn.

Government amendment No. 46:

In page 10, subsection (1), line 15, after "agree" to insert "to the establishment of an information and consultation arrangement".

Amendment agreed to.

Mr. Quinn: I move amendment No. 47:

In page 10, subsection (1), line 18, to delete "Consultation Forum"' and substitute "Information and Consultation Forum internal structures, in accordance with *Schedules 1* and *2*,".

I am unsure whether this amendment should have been discussed with amendment No. 33 as it deals with section 10 and is dependent on the Minister of State's expressed view on that section.

Acting Chairman: We are on section 10.

Mr. Quinn: This amendment aims for more precision. The issue here is the internal structure of an information and consultation forum rather than the actual forum itself. It would be a healthy change and would lend clarity. Will the Minister of State consider the amendment?

Mr. Killeen: This is one of the provisions we examined closely. The legal advice is that there is already a clear link with Schedules 1 and 2, which Senator Quinn is trying to achieve in this instance. It would be superfluous to make this amendment to section 10 now.

Amendment, by leave, withdrawn.

Section 10, as amended, agreed to.

SECTION 11.

Acting Chairman: Amendments Nos. 48 and 49 are related and may be discussed together by agreement.

Mr. Quinn: I move amendment No. 48:

In page 11, subsection (2), lines 1 and 2, to delete "collective representation" and substitute "to be informed and consulted through their representatives (as defined under this Act)".

I hope no one minds my choice of words but this amendment aims to correct defective wording, as it strays a million miles from both the wording

[Mr. Quinn.]

and the intent of the directive we are transposing into law. What is at issue here is not the matter of collective representation, which is a much wider and complicated area that this Bill should not regulate. This legislation would deal with the right of employees to be informed and consulted through their representatives. We should spell this out instead of using what I refer to as inappropriate and misleading language to convey the point. The case for the amendment is a valid one and the Minister of State should take it into account.

Mr. Killeen: We originally intended to discuss this amendment with amendment No. 3 and I am experiencing difficulties chasing down my notes. Section 11 provides that employees can change from direct involvement to a system of collective representation. We have discussed many of the arguments on that matter, such as the 10% trigger mechanism. Once 10% or more of employees request something, a majority of employees must then approve a change from a direct involvement system to a collective representation system. The majority referred to is the majority of those employees in the undertaking who are operating under the direct involvement system.

This approach ensures a minimum number of employees support a change from a direct involvement to a system of collective representation while the trigger of 10% is sufficiently low to ensure employees are not hindered in making the request. There are other safeguards in the form of the Labour Court and so forth. The Bill makes it an offence for an employer to fail to put in place a collective system. The amendment as proposed does not improve the situation in this regard. If anything, it could considerably worsen it. Advice I have received is that the approach taken in the Bill is better.

Mr. McDowell: I wanted to hear the Minister of State's answer before I made it easy for him to say the Members disagree with each other and that, as he is in the middle, he will keep the Bill as is. We have obvious difficulties in so far as Senator Quinn is seeking to make it more difficult for people to move from direct involvement to collective representation, whereas we do not believe there should be direct involvement in the first place. There should only be a system of collective representation.

I do not quite understand what direct involvement means. Will the Minister of State give examples of where he thinks direct involvement works well? Perhaps it is an old-fashioned notion but my idea of consultation involves at least two people sitting in a room with one giving information, the other receiving it and then both discussing it. The Minister of State may say this could be exercised by someone sending out an e-mail or newsletter but if we set the threshold this low and say that sending an e-mail twice a year to employees is sufficient by way of information, we render the entire Bill meaningless.

I am interested in hearing about examples where the Minister of State considers that direct involvement amounts to best practice and why he considers it so. It is not unreasonable to require direct face-to-face involvement and if there is direct face-to-face involvement — clearly it cannot be achieved with everybody — it must be done on a representative basis.

4 o'clock

Ms White: It is worthwhile reminding ourselves that the aim of this directive is to promote social dialogue between management and labour. I do not understand Senator McDowell's arguments regarding direct involvement.

Acting Chairman: Senator White must address her remarks through the Chair.

Ms White: The wording in the Bill regarding the meaning of the term "collective" is defective and the directive does not mean to be so blunt. We know what the term means and believe that the amendment is more in line with the directive.

Mr. Killeen: The central point made by Senator McDowell relates to the discussion we had earlier on the definition of consultation when I said very clearly that sending out an e-mail or a newsletter does not meet the requirements of the definition in this regard. Part of the difficulty in this section lies in the question of using direct involvement or having representatives. The Bill strikes a very fair balance in that it provides for direct involvement up to the point where people are dissatisfied with it and opt for the representative model.

Mr. McDowell: What does direct involvement mean? Could the Minister of State give me an example of good direct involvement?

Mr. Killeen: The companies which have been under the strongest attack appear to have made considerably better efforts than many other companies to make information available to their employees. Perhaps in the past they tended to do so almost exclusively or to great extent through one method of delivering information. This will clearly not meet the requirements of this directive. There is now a requirement for a consultation element. These companies have largely operated a system of information that is considerably more open than many of their counterparts. It does not seem as difficult a challenge for them to move one step forward and to have a system of consultation as well as information as it might be for companies with no tradition or culture of disseminating information to their employees.

It is very difficult to prescribe a model that could be used across a range of companies and I am not in a position to do so. I am more than satisfied that such a model could be invented within a workplace and operate extremely successfully, either through the direct involvement model or the representative model. We have provided for this in the legislation, which meets the requirements of the directive and seems to reflect the requirements of the very diverse workplaces operating in this country in the best and most open and sensible way.

Ms White: I agree that direct involvement does not mean sending out an e-mail or a newsletter. However, it could involve sitting down once a week with employees. Senator Quinn spoke about a meeting he had with his staff last week. Direct involvement could involve meeting with employees in a staff canteen and the management engaging socially in dialogue with staff to resolve any misunderstandings or explain company policy or performance. As the Minister of State noted, there is no particular model but it is about meaningful discussions for the good of the staff, management and the company. The aim is that the company grows and ideally provides more employment. Direct involvement can take many forms, depending on the size of the company. I am simplifying matters excessively.

Mr. McDowell: The difficulty will arise with large companies. The minimum number of employees we are talking about is 50. I do not have a problem with the canteen meetings that Senator White described but it will not be practical to hold them in larger undertakings. It will not be possible to hold a fireside meeting with several thousand employees of Microsoft. The normal way such a company would choose to consult with its employees would be on a pyramid basis, which involves an employee's line manager talking to him or her if there is a particular problem affecting his or her part of the employment. My difficulty with this is that it is not very transparent; it is almost on a one-to-one basis. It is not possible to find out what has been said, the process is not very prescriptive and it is impossible to ascertain if everyone is getting the same information or standard of information. This is why it is so much easier to provide that it should be done on a collective or representative basis that we can set out.

There is not much point in providing for a representative structure, as we do elsewhere in the Bill, if we do not insist that it be invoked for the purposes of consultation. I am pleased by the Minister of State's assurance that it will not be sufficient to simply send an e-mail and tell employees to contact the human resources manager if they have any views on it. It would not surprise me if some companies thought this was adequate by way of consultation. It is important that it is put on the record of this House and the other House that this is insufficient. I ask the Minister of State to go further because, at the very least, it is necessary that there be at least two people on a representative basis within four walls talking about a particular issue and that there be a mechanism of talking and listening which does not simply involve exchanging e-mails.

Ms White: It is possible to hold meetings with 50 or 60 people. They could be held in boardrooms in the case of small companies. Regarding the question of larger companies and the pyramid model described by Senator McDowell, there are master's degrees in human relations and personnel courses that people pursue in larger companies to learn to engage directly and appropriately with employees. No company, other than the few rogue companies, is self-destructive. Companies wish to engage with their staff in the most direct and transparent way possible and clear up any misunderstandings.

Senator McDowell makes direct involvement out to be more of a problem that it is. This is probably the fifth time I have spoken about a visit I made to the US for four months in 1980 to examine how multinationals ran themselves. I wrote back to the National Building Agency, where I worked at the time, that there was more socialism in US multinationals than we dreamt about in Ireland because the US companies did not take a "them and us" approach. Unfortunately, the management style in many indigenous companies in the past was based on the British style of management, which, as I have said before, involved a them and us approach, including the provision of separate canteens and car parks for management and staff. I still see evidence of separate car parks for management and staff, not necessarily in businesses. We now have an American model of management, which is much more open and stresses togetherness, rather than the antagonistic, class-based relationship between management and staff that was characteristic of the British model.

Mr. Killeen: Senator McDowell is right to seek to establish exactly what is involved in consultation. The definition of consultation is "an exchange of views and establishment of dialogue". Senator McDowell's central point is that consultation must be active, which is what is intended in this instance. My ignorance about possible models has been ameliorated somewhat because I have just received some research from the National Centre for Partnership and Performance, which contains some interesting examples that I would never have thought about. It could include an amalgam of some or all of these models. It could include employee briefings; team, business unit or department level large-scale staff meetings; interdepartmental meetings; organis-

[Mr. Killeen.]

ation-wide breakfast or lunch briefings; management chain; information cascades; performance reviews; training or development reviews; employee appraisals; 360 degree systems; one-to-one meetings; attitude and employee surveys; and suggestion schemes. That is an entire range of schemes. However, no matter what it is, it must meet the requirement that it be an active two-way process. In view of the diversity in experience of practice in the country, it is advisable that this legislation allow the existing models to be developed, and to provide for the representational model if the day comes that a number of employees are dissatisfied.

Mr. Quinn: I am impressed with what the Minister of State said. He left out one very popular type of communication, known as the "huddle meeting", whereby people meet in huddles. It is marvellous way of communicating with colleagues in a company. It has had great success throughout the world. Wal-Mart, one of the biggest companies in the world, uses the huddle as a system of two way communication in Britain.

The aim of the legislation is exactly right. I would have preferred to strengthened it with the words I suggested, "to be informed and consulted through their representatives (as defined under this Act)" instead of using the phrase "collective representation". As long as it is left open to include direct communication rather than limited to a requirement to appoint and deal with a representative, the employee representatives can deal directly with the employer. It is important not to push this in a direction that forces them to do it through somebody else.

Acting Chairman: We have exhausted the debate on this amendment.

Mr. McDowell: We have exhausted the debate but I thank the Minister for the list. It is helpful and instructive. I am acquainted with the practice of appraisals and performance on an annual basis between managers and line workers. Is that sufficient to meet the requirements of the Act? If we are discussing the interests of one particular worker, then dealing with his or her immediate manager is well and good. However, if we are discussing a much broader picture in which an entire enterprise is affected, such as if a multinational corporation relocates, does this mean that information must be transmitted on a one-to-one basis from each line manager to each individual worker? Will there be a requirement to gather worker representatives and explain plans to relocate or downsize to them? It is perfectly appropriate to deal with some information on a one-to-one basis, but broader information must be dealt with between employers and representatives of the workforce.

Mr. Killeen: I should have acknowledged the role of the NCCP in preparing this information. It has done considerable work and I thank it. My impression is that it would not be confined to annual meetings. We will have a row about how many meetings should be held later. In my view, the system to operate with regard to individuals would not be confined to a single process. It seems far more likely that it would be conducted at department or team unit level, or perhaps in a "huddle meeting" as mentioned by Senator Quinn. It is important that we do not underestimate the value of these systems. They have a positive role to play. We must also clearly state at this juncture that it will not be sufficient to implement a pie in the sky proposal that hardly ever happens. This legislation contains clear consultation requirements which must be met. If they are not met it is open to the employees to take the other route.

Amendment, by leave, withdrawn.

Amendment No. 49 not moved.

Question proposed: "That section 11 stand part of the Bill."

Acting Chairman: Section 11 is opposed.

Mr. McDowell: I do not wish to pursue the argument any further.

Question put and agreed to.

SECTION 12.

Mr. Quinn: I move amendment No. 50:

In page 11, line 19, after "When" to insert "preparing for or entering negotiations or".

This is a simple amendment and I will not speak on it for too long. It extends the scope of this section in an effort to require the parties to act reasonably and is worthy of consideration. It would be a helpful addition to the Bill.

Mr. Killeen: The amendment seeks to impose an additional obligation on the parties to work in a spirit of co-operation when preparing for or entering negotiations as well as when defining or implementing the practical arrangements for information or consultation. We all certainly would wish it were the case, but the legal advice I received suggests it does not strengthen the legislation; it is unnecessary, it is considered unlikely to add much to the process and goes beyond the requirement of the directive.

Mr. Quinn: I will take the Minister of State's word for that.

Amendment, by leave, withdrawn.

Question proposed: "That section 12 stand part of the Bill."

Mr. McDowell: I know section 12 is lifted from the directive and that is fine but it is merely aspirational in effect as there is no penalty if people do not observe this section and no way of enforcing it. Perhaps I am wrong about that.

Mr. Killeen: Section 12 states:

> When defining or implementing practical arrangements for information and consultation under this Act, the employer and one or more employees or his or her representatives (or both) shall work in a spirit of co-operation, having due regard to their reciprocal rights and duties, and taking into account the interests both of the undertaking and of the employees.

It is not unreasonable to state it is somewhat aspirational. However, it is fair to point out that various aspects of the legislation provide for matters to be referred to the Labour Court. I proposed a new provision which we have not discussed yet, which provides that when internal systems to resolve issues have been exhausted, the Labour Court may involve the LRC prior to making a determination. That moves it from being aspirational to being more practical in terms of achieving an agreed outcome.

Question put and agreed to.

NEW SECTION.

Acting Chairman: Amendment No. 51 is a Government amendment proposing the insertion of a new section.

Mr. McDowell: Amendment No. 51 is in my name.

Mr. Killeen: The amendment is in Senator McDowell's name; it is not a Government amendment.

Mr. McDowell: I move amendment No. 51:

> "In page 11, before section 13, to insert the following new section:
>
> 13.—(1) An employer shall not do any act (whether of commission or omission) that, on objective grounds, adversely affects the interests of the employee or his or her well being in relation to the performing of his or her functions as an employee representative in accordance with this Act.
>
> (2) An employee representative shall be afforded any reasonable facilities, including paid time off, that will enable him or her to perform his or her functions as employees' representative promptly and efficiently. Employee representatives will also, subject to the provisions of section 14, have the facility to avail of the assistance of experts and such experts may accompany the employee representative to meetings of the employee forum when requested. Following the passing of this Act and no later than six months following its enactment, the Minister following consultations with representatives of employers and workers will make regulations setting out the minimum facilities to be afforded to employee representatives by their employers.
>
> (3) An employee, a trade union, an excepted body on behalf or with the consent of the employee may present a compliant to a Rights Commissioner that the employer has contravened subsection (1) in relation to an employee.
>
> (4) A complaint under subsection (3) shall be presented by giving notice of it in writing to a Rights Commissioner.
>
> (5) Where a complaint is presented to a Rights Commissioner under subsection (4) the Rights Commissioner shall
>
> (*a*) give the parties an opportunity to be heard and to present any evidence relevant to the complaint;
>
> (*b*) give a decision in writing in relation to the complaint;
>
> (*c*) communicate the decision to the parties; and
>
> (*d*) furnish the Court with a copy of the decision.
>
> (6) A decision of a Rights Commissioner under subsection (5) shall do one or more of the following:
>
> (*a*) declare that the complaint is or, as the case may be, is not well founded;
>
> (*b*) direct that the conduct, the subject of the complaint cease;
>
> (*c*) require the respondent to take such action as in the opinion of the Rights Commissioner is just and equitable in the circumstances and which may include the payment to the complainant of compensation of such amount which in the opinion of the Rights Commissioner is just and equitable but not exceeding 2 years remuneration in respect of the employee's employment.
>
> (7) A complaint under this section may not be presented to a Rights Commissioner after the end of the period of 6 months from the occurrence or, as the case may require, the most recent occurrence of the conduct to which the complaint relates.

[Mr. McDowell.]

(8) Notwithstanding subsection (6), a Rights Commissioner may entertain a complaint under this section presented to him or her after the expiration of the period referred to in subsection (6) but not later than 6 months after such expiration, if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(9) Proceedings under this section before a Rights Commissioner shall be conducted otherwise than in public.

(10) A Rights Commissioner shall maintain a register of all decisions made by him or her under this section and shall make the register available for inspection by members of the public during normal office hours.

(11) A party concerned may appeal to the Court a decision of a Rights Commissioner under section 5 and if the party does so, the Court shall

(*a*) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

(*b*) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and

(*c*) communicate the determination to the parties.".

This amendment rewrites section 13 but retains the bulk of what is included therein. I will point out the major changes proposed. The amendment includes the word "paid" before "time off". This section obliges employers to give employee representatives time off to discharge their duties and to attend meetings. It is useful to clarify that any time off which employees might get would be paid and replace the phrase "time off" with "paid time off".

This amendment also seeks to expand on the reasonable facilities and help that may be provided to representatives in order to assist them discharge their responsibilities under the Act. The amendment states employee representatives should be able "to avail of the assistance of experts and such experts may accompany the employee representative to meetings of the employee forum when requested". This touches on another issue we discussed earlier. We strongly feel that employee representatives should be entitled to avail of expert assistance. Let us be blunt and straight up on this and state that in some cases that would involve the assistance of trade unions or assistance provided by trade unions, be they accountants or otherwise. It is unreasonable to insist, as the construction of the Bill does, that employees from a particular workplace would be required to attend meetings blind and without assistance. In many cases, they will not have the expertise to make sense of lists of figures regarding profitability and so on. It is important that employees representatives be given the facility of bringing experts with them, for example, to any meetings which might take place in the context of this consultation.

We also thought it was appropriate to expand a little further on the redress that might be available in cases of victimisation. The section states that individual workers who are party to this process should not be victimised but it does not go on to say what will happen in circumstances where there is a complaint. In subsections (5) and (6) we have set out a mechanism whereby a complaint can be made to a rights commissioner who, in turn, can make a recommendation. The Minister of State may respond that the existing legislation already provides for a mechanism in case of victimisation. We would be happy to see that replicated, as we felt it might be necessary to put it into this Bill. However, if the Minister of State can assure me that those provisions will apply in cases of victimisation under this Bill, well and good.

Acting Chairman: I wish to clarify something. I thought amendment No. 51 was a Government amendment when, in fact, it is an Opposition amendment in the names of Senators McDowell and O'Toole. I now call Senator Quinn after which the Minister of State may respond to the points raised.

Mr. Quinn: This amendment is an excessive overreaction to what is a relatively inconsequential issue and it should not be considered. It is unlikely that when a forum has been agreed with the employees that an employer would subsequently act at that forum in a way that would adversely affect the well-being of an employee representative. I cannot say it too often. This is not negotiation. We are discussing an information and consultation forum. We are discussing the principle. I do not understand why those who moved the amendment would seek shadows and pitfalls where none exists.

Moreover, the amendment seeks to introduce the role of expert into the proceedings. I can understand Senator McDowell's point about people not understanding figures in the context of negotiations, but when it comes to consultation and information it would be damaging to our ability to compete in the marketplace if we are the only country in Europe that is insisting on outside experts being able to fulfil the employee representative role. It goes against all the rules of common sense to have so-called outside experts brought in for the purpose under discussion.

I began my contribution today by referring to my experience yesterday of reading that advertisement from Austria. We are in competition with other countries that are all going to incor-

porate the terms of this directive. Let us make sure the directive is not put through in such a manner that it inhibits others who are likely to come here to set up business. We must make sure this is an attractive place to carry on a business while holding on to everything we are doing. What is proposed here follows the directive. The directive can be adopted without being hindered by what is proposed in the amendment.

I am totally opposed to the concept of what is proposed here although I understand the good intention of those who proposed the amendment, Senator O'Toole and Senator McDowell. It reminds me of what happened in France when a 35-hour week was proposed to overcome unemployment problems. The 35-hour week did not work and now there is a far higher unemployment than was the case before. While the intention may be good in many of these things, the end result is just not workable. I am totally opposed to the concept proposed here. The amendment foolishly introduces an adversarial context in an area where information and consultation is concerned. Relations may well be adversarial in the context of negotiations but not in the forum with which we are concerned, where the purpose is information and consultation. The amendment should be rejected.

Mr. Killeen: Section 13, as drafted, makes it an offence for an employer to penalise an employee representative for performing his or her functions under the legislation and that is fair and reasonable. A code of practice already exists with regard to employee representatives. Strong penalties are imposed for this type of offence, including up to three years' imprisonment on conviction and indictment. The section specifies the circumstances in which penalisation of an employee representative could occur. Senator McDowell and others would say the Bill has no teeth if that provision was not there. It must be there.

Some Members complained on Second Stage that the penalties in this regard are excessive. I do not accept that is the case either. It is important that we bear in mind that a code of practice already exists in regard to employee representatives, which is most useful. I will look at the ones which cause concern to Senator Quinn in advance of Report Stage. In general, the original section 13 deals in a sensible fashion with any difficulties that might arise. The key ones appear to be more than sufficient to deal with the circumstances as envisaged.

Mr. McDowell: Does the Minister of State have any difficulty with including the word "paid" before "time off"?

Mr. Killeen: It is one of the areas I am prepared to examine but I do not promise anything.

Mr. McDowell: Does the Minister of State have any difficulty spelling out the facilities that might be given to employee representatives?

Mr. Killeen: If I were being facetious I would suggest that I have no difficulty, as it will be my successor who will do it. However, that area is quite fraught and difficult. I would be most reluctant to leave it as a legacy for a successor. I do not consider it to be a central issue in regard to the operation of the information and consultation system. I would be most reluctant to go that route.

Mr. Quinn: If the Minister of State is considering the area of paid time off, he should be careful about it because it can be abused and has been abused in the past. The vast majority of employers recognise that if their employees are attending a meeting that they would be paid during that period. They would not be expected to do it at a time when they were off duty. It would be a dangerous precedent to enforce this in law.

Amendment, by leave, withdrawn.

Sections 13 and 14 agreed to.

SECTION 15.

An Cathaoirleach: Amendments Nos. 52 to 62, inclusive, will be discussed together by agreement. Is that agreed? Agreed.

Mr. McDowell: I move amendment No. 52:

In page 12, lines 28 to 42, to delete subsection (1) and substitute the following new subsection:

"(1) Disputes between an employer and a trade union or excepted body or his employees or his or her representatives concerning:

(*a*) negotiations under *section* 8 or 10,

(*b*) interpretation or operation of any agreement under *section* 8 or 9,

(*c*) interpretation or operation of the Standard Rules set out in *Schedule 1* or the procedures for election of employees' representatives set out in *Schedule 2*, or may be referred by the employer, a trade union or excepted body, one or more than one employee or his or her representatives (or both) to the Court for investigation.".

Amendment No. 52, if accepted, would have deleted the requirement to go through the internal mechanisms before going to the Labour Court. To be honest, I have thought again about this and I have decided not to press the issue.

Amendments Nos. 56 and 58 are also in my name. There is one essential point in these amendments, namely, that they would allow a

[Mr. McDowell.]

trade union to refer disputes to the Labour Court. The section as currently drafted, as far as I recall, provides simply that the employee or employee representatives would be entitled to do this. We are looking to provide that, in circumstances where there is a trade union, it would also be entitled to refer disputes to the Labour Court for determination. I will not pursue amendment No. 52.

An Cathaoirleach: I remind Senators that we are discussing amendments Nos. 52 to 62, inclusive.

Mr. Quinn: I wish to speak on amendments Nos. 54 and 57. The purpose of these two amendments is to avoid circumstances in which one employee, even in a case where there is an employee representative, could refer a matter to the Labour Court and to reserve that option only for the direct model where I agree it is appropriate.

Amendment No. 54 states:

> In page 12, subsection (1), lines 39 and 40, to delete "one or more than one employee or his or her representatives (or both)" and substitute the following:
>
> "or the majority of employee representatives, or by written request of at least 15 per cent of employees".

Amendment No. 57 states:

> In page 12, subsection (2), line 46, after "dispute." to insert the following:
>
> "Where a system of direct involvement operates only, the referral to the Labour Court may be from one or more than one employee after the internal dispute resolution procedure (if any) usually used by the parties concerned has failed to resolve the dispute.".

The purpose of these amendments is solely to avoid circumstances where one employee could make a reference to the Labour Court and to preserve that option only for the direct model. Both are worthy of consideration.

Mr. Killeen: I take it that we are discussing amendments Nos. 52 to 62 together.

An Cathaoirleach: That is correct.

Mr. Killeen: Amendment No. 52 is not being pressed by Senator McDowell. It would have involved the deletion of section 11 in any event. Amendment No. 53 requires the insertion of ", subject to *subsection (2)*," after "may" in page 12, subsection (1), line 39. The amendment was proposed on the advice of the parliamentary counsel and it provides a cross-reference to subsection (2), which is amended by amendment No. 55. That cross-reference is necessary.

Amendment No. 54 would remove the right of one or more than one employee or his or her representatives to refer a dispute to the court and would provide that it could be done by a majority of employee representatives or by the written request of at least 15% of employees. The employer's right to refer a dispute would be unchanged under this provision. I am unhappy with the amendment and will return to it.

Amendment No. 55 is to provide for a stage in the dispute resolution process in advance of referral to the Labour Court. This is to allow parties as much support as possible in reaching a voluntary agreement on the issues in dispute. It means the Labour Court will not hear a case referred without first receiving certification from the Labour Relations Commission that no further efforts by it will advance matters. I feel very strongly that it is advisable to make this provision because the Labour Relations Commission has a very good record in this regard.

There is an error in the instructions in this amendment in that "line 45" should read "line 46".

An Cathaoirleach: I should have referred to that but the Minister of State has now done so.

Mr. Killeen: Amendment No. 56 seeks to delete to delete section 15(2), which provides that the court can appoint a mediator. However, amendment No. 55 will achieve this, if accepted.

Amendment No. 57 states:

> In page 12, subsection (2), line 46, after "dispute." to insert the following:
>
> "Where a system of direct involvement operates only, the referral to the Labour Court may be from one or more than one employee after the internal dispute resolution procedure (if any) usually used by the parties concerned has failed to resolve the dispute.".

Government amendment No. 55 also provides for this interim step involving the Labour Relations Commission. It might meet the requirements of those who proposed amendment No. 57.

Amendment No. 58 follows from amendment No. 56, which seeks to delete subsection (2), which is to be replaced by the new subsection provided in amendment No. 55.

Amendment No. 59 follows from amendments Nos. 56 and 58. It has the effect of removing the reference to "one or more employees" and refers to "disputes between an employer and a trade union or excepted body". I do not propose to accept this amendment either. Amendment No.

60 follows from amendments Nos. 56 to 59. The same applies to this amendment.

Amendment No. 61 proposes, in page 13, subsection (6)(*b*), line 30, to delete "a" and substitute "any". It seeks to ensure the subsection does not contradict the procedure set out in subsections (3) and (5). We have discussed this with the Parliamentary Counsel who has advised that an alternative wording may be required. The deletion of "a" and its replacement by "any" may not be sufficient in this instance. I will return to this matter on Report Stage, if that is acceptable to Senator Quinn. I will ascribe the amendment to the Senator — he should not worry.

Mr. Quinn: I am disappointed. I would love to have had one amendment accepted today. I believed the substitution of "any" for "a" would have been the easiest to accept.

Mr. Killeen: It may not deal with an issue it raises. If it does, I will accept it on Report Stage.

Amendment No. 62 is a technical amendment to introduce consistency throughout the Bill. There is no provision for appeals to the Labour Court in the Bill — it provides only for disputes to be referred.

On amendment No. 55, I am proposing a role for the Labour Relations Commission. The purpose of the amendment is to provide for a stage in the dispute resolution process in advance of referral to the Labour Court to allow parties as much support as possible in reaching a voluntary agreement. Disputes under section 15(1) would be referred to the Labour Court only after recourse to the internal dispute procedure usually used by the parties concerned has failed to resolve the dispute, and following a referral to the Labour Relations Commission. This is in line with current processes, as the Senators will be aware.

Amendment, by leave, withdrawn.

Government amendment No. 53:

In page 12, subsection (1), line 39, after "may" to insert ", subject to *subsection (2)*,".

Amendment agreed to.

Amendment No. 54 not moved.

Government amendment No. 55:

In page 12, subsection (1), to delete all the words from and including "investigation" in line 40 down to and including "dispute." in line 46 and substitute the following:

"investigation.

(2) Such a dispute may be referred to the Court only after——

(*a*) recourse to the internal dispute resolution procedure (if any) usually used by the parties concerned has failed to resolve the dispute, and

(*b*) the dispute has been referred to the Commission which, having made available such of its services as are appropriate for the purpose of resolving the dispute, furnishes a certificate to the Court stating that the Commission is satisfied that no further efforts on its part will advance the resolution of the dispute.".

Amendment agreed to.

Amendments Nos. 56 and 57 not moved.

Mr. McDowell: I move amendment No. 58:

In page 13, lines 1 to 3, to delete subsection (3) and substitute the following new subsection:

"(3) Where, in the opinion of the Court, a dispute that is the subject of a recommendation under this section has not been resolved, the Court may, at the request of——

(*a*) an employer, or

(*b*) a trade union or excepted body, or

(*c*) one or more employees or their representatives (or both), and, following a review of all relevant matters, make a determination in writing.".

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

Amendment declared lost.

Amendments Nos. 59 to 61, inclusive, not moved.

Section 15, as amended, agreed to.

SECTION 16.

Government amendment No. 62:

In page 14, subsection (6), line 35, to delete "an appeal" and substitute "a dispute".

Amendment agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

NEW SECTION.

An Cathaoirleach: Amendments Nos. 64 to 66, inclusive, are consequential to amendment No. 63, and amendment No. 67 is related. Amendments Nos. 63 to 67, inclusive, may be discussed together, by agreement.

Government amendment No. 63:

In page 15, before section 18, to insert the following new section:

18.—(1) In this section 'inspector' means a person appointed under *subsection (2)*.

(2) The Minister may, in writing, appoint as many persons as the Minister thinks appropriate to be inspectors for the purposes of this Act.

(3) Subject to this section, an inspector may do all or any of the following things for the purposes of this Act——

(*a*) enter at all reasonable times any premises or place where the inspector believes on reasonable grounds that——

(i) an employee is employed in work, or

(ii) the work that an employee is employed to do is directed or controlled,

(*b*) make such examination or enquiry as may be necessary for ascertaining whether this Act is being complied with in respect of an employee employed in those premises or that place or an employee whose work is directed or controlled from the premises or place,

(*c*) require the employer of an employee, or the representative of the employer, to produce to the inspector any records the employer is required to keep under any other enactment that are relevant to the employer's obligations under this Act and inspect and take copies of entries in the records (including, in the case of information in a non-legible form, a copy of or an extract from that information in a permanent legible form),

(*d*) require any person the inspector believes on reasonable grounds to be or to have been an employee or the employer of an employee to furnish such information to the inspector as the inspector may reasonably request,

(*e*) examine with regard to any matters under this Act any person the inspector has reasonable cause to believe to be or to have been an employer or employee and require the person to answer such questions (other than questions tending to incriminate the person) as the inspector may put relative to those matters and to sign a declaration of the truth of the answers.

(4) An inspector shall not, except with the consent of the occupier, enter a private dwelling (other than a part of the dwelling used as a place of work) unless he or she has obtained a warrant from the District Court under *subsection (7)* authorising the entry.

(5) Where an inspector in attempting to exercise his or her powers under this section is prevented from entering any premises, he or she may apply under *subsection (7)* for a warrant authorising the entry.

(6) An inspector, where he or she considers it necessary to be so accompanied, may be accompanied by a member of the Garda Síochána when exercising a power conferred on an inspector under this section.

(7) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that information required by an inspector under this section is held on any premises or any part of the premises, the judge may issue a warrant authorising an inspector accompanied by other inspectors or a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production, if so requested, of the warrant, to enter the premises (if need be by the use of reasonable force) and exercise all or any of the powers conferred on an inspector under subsection (3).

(8) A person who——

(*a*) obstructs or impedes an inspector in the exercise of any of the powers conferred on an inspector under this section,

(*b*) refuses to produce a record which an inspector lawfully requires the person to produce,

(*c*) produces or causes to be produced, or knowingly allows to be produced, to an inspector a record which is false or misleading in a material respect, knowing it to be so false or misleading,

(*d*) gives to an inspector information which is false or misleading in a material respect knowing it to be so false or misleading, or

(*e*) fails or refuses to comply with a lawful requirement of an inspector under *subsection (3)*, shall be guilty of an offence.

(9) Every inspector shall be furnished by the Minister with a certificate of his or her appointment and, on applying for admission to any premises or place for the purposes of this Act, shall, if requested by a person affected, produce the certificate or a copy of the certificate to that person.".

Mr. Killeen: This amendment provides for the appointment of inspectors and proposes the inclusion of a new fairly long section in the Bill, which is similar to other sections in other legislation. It provides power for the Minister to appoint inspectors for the purpose of the Bill. It

also lists the powers of the inspectors so appointed and includes the power to make such examination or inquiry as may be necessary for ascertaining whether this legislation is being complied with, the conditions under which they may enter certain premises and require certain individuals to produce information, and require certain records to be produced. This section also makes provision in respect of offences associated with non-compliance.

The amendment is required to provide a mechanism for the Minister to bring and prosecute proceedings for an offence, as outlined in section 19(3) of the Bill, as initiated. This is necessary to allow for the practical steps in the prosecution of such cases by the Minister.

Mr. McDowell: I seek more information on how exactly the Minister of State intends this to work. In many cases where consultation has taken place, there will not necessarily be a large amount of documentary evidence to prove this. There will not be a paper trail, as it were, that might satisfy an inspector. Does the Minister of State intend to have a separate inspector within his Department or will he give this power to people already empowered under various other Acts? How will he ensure that this is more than just a gesture and represents a serious effort to ensure that the Act is fulfilled in its intent?

Mr. Killeen: It was initially believed that sufficient powers were in place to carry out whatever inspections might be needed. Subsequently, it was decided that provision should be made in the Bill to provide directly for inspectors. It is not necessarily the case that an inspector should be provided exclusively for this purpose. However, the advice is that whatever inspectorate is employed would need to have the support of the legislation for the work that arises, however little that might be. In normal circumstances one might expect difficulties as regards information and consultation which might arise to be brought to the attention of the Minister or the Department. In the event of such a complaint, it is necessary to ensure that somebody is in a position to examine the evidence and decide whether a *prima facie* case exists and whether the requirements of the information and consultation legislation are being adhered to and to report back to the Minister.

Mr. McDowell: How does the Minister of State intend to progress this in practical terms? If the section allows the Minister to appoint in writing as many persons as he or she may deem appropriate, what does the Minister of State intend to do when the Bill is enacted? Does he intend to designate a certain number of inspectors within the Department with responsibility to do this or will he simply react to any complaints that may be received?

Mr. Killeen: This, as already stated, will initially serve as an enabling provision. It will allow the Minister of the day to designate officers to follow up complaints that might be made as regards the information and consultation requirements. At this stage, I am not in a position to say exactly what this might entail. However, it is really important to provide for it in the legislation so that the Minister of the day will be in a position to appoint or issue warrants to people charged with this responsibility. That is all we are attempting to do at this stage.

Mr. Coghlan: This is really only in place if the need arises.

Mr. Killeen: That is correct.

Amendment agreed to.

Section 18 agreed to.

SECTION 19.

Government amendment No. 64:

In page 15, subsection (1), line 22, after "*section 18*", to insert "*or 18*".

Mr. Killeen: Amendments Nos. 64 onwards are technical and ensure that offences provided for in the new section 18 are linked to the penalty and prosecution proceedings provided in the rest of the Bill. They arise from the provisions of section 18.

Amendment agreed to.

Government amendment No. 65:

In page 15, subsection (2), line 30, after "*section 18*", to insert "*or 18*".

Amendment agreed to.

Government amendment No. 66:

In page 15, subsection (3), line 36, after "*section 18*", to insert "*or 18*".

Amendment agreed to.

Government amendment No. 67:

In page 15, subsection (3), lines 37 and 38, to delete "for Enterprise, Trade and Employment".

Amendment agreed to.

Section 19, as amended, agreed to.

NEW SECTION.

An Cathaoirleach: Amendment No. 77 is consequential on amendment No. 68 and the two

[An Cathaoirleach.]

may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 68:

In page 15, before section 20, to insert the following new section:

20.—(1) For the purposes of this section—

'Council Directive' means Council Directive No. 2001/23/EC of March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertaking, businesses or parts of undertakings or businesses;

'Regulations' means the European Communities(Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003);

'transfer' means the transfer of an economic entity that retains its identity;

'transferee' means any natural or legal person who, by reason of a transfer within the meaning of the Regulations, becomes the employer in respect of the undertaking, business or part of the undertaking or business;

'transferor' means any natural or legal person who,by reason of a transfer within the meaning of the Regulations, ceases to be the employer in respect of the undertaking, business or part of the undertaking or business.

(2) A word or expression that is used in this section, and which is also used in the Council Directive or the Regulations, as appropriate, has, unless the context otherwise requires, the same meaning in this section as it has in the Council Directive or the Regulations, as appropriate.

(3) The transferor shall notify the transferee of all the rights and obligations, arising from a contract of employment existing on the date of a transfer, which will be transferred to the transferee, so far as those rights and obligations are, or ought to have been, known to the transferor at the time of transfer.

(4) A failure by the transferor to notify the transferee of any such right or obligation shall not affect the transfer of that right or obligation and the rights of any employees against the transferee or transferor in respect of that right or obligation.

(5) If——

(*a*) a failure of the foregoing kind consists of a failure to provide information or documents to the transferee the provision of which is necessary in order for the transferee to fulfil an obligation of the transferee owed to an employee,

(*b*) the transferee is, in proceedings finally determined under the Regulations, required by a decision of a rights commissioner or a determination of the Employment Appeals Tribunal to pay an amount of compensation to that employee in respect of a complaint that the transferee has not fulfilled that obligation, and

(c) the transferee has paid that amount of compensation to that employee,

then, subject to *subsection (6)*, the transferee has a right of action in any court of competent jurisdiction to recover from the transferor such proportion of that amount of compensation as the court determines to be attributable to the failure of the transferor to provide the information or documents concerned.

(6) An action under *subsection (5)* shall not lie unless it has been preceded by—

(*a*) service of a notice in writing on the transferor—

(i) indicating, in everyday language—

(I) the particular obligation the transferee considers he or she owes to one or more employees of the transferee, and

(II) the class of information or documents that the transferee believes may be in the possession or under the control of the transferor (and which is not also in the possession or under the control of any of the employees of the transferee), being information or documents of a class which the transferee considers an employer must possess in order to fulfil the obligation concerned,

and

(ii) requesting the transferor to provide to the transferee, within a specified period (not being less than 21 days beginning on the date of the service of the notice), information or documents falling within that class of information or documents,

and

(*b*) compliance by the transferee with any reasonable request in writing of the transferor for further details to be furnished to the transferor as to the particular items of information or documents that are being referred to in that notice (and any period which elapses before that request is complied with shall be not reckoned in calculating the period specified in that notice).

(7) An action under *subsection (5)* shall, for the purposes of this section and any other enactment, be regarded as an action founded on quasi-contract.''.

Mr. Killeen: This amendment involves the insertion of a new section 20 and arises from EU Council Directive No. 2001/23/EC of 12 March 2001. It relates to the safeguarding of employees rights in the event of transfers of undertakings or businesses or parts thereof. In all, a total of nine optional provisions arose from that requirement. Only one of these has been agreed with the social partners in respect of transposing it into legislation. We have decided to avail of the opportunity presented by this Bill to transpose that provisional option.

Under a Government commitment contained in Sustaining Progress, the Department was also required to consult with the social partners and revert to Government for decisions on whether to transpose all or any of the optional provisions. This consultation process was carried out last year and I am finalising a memorandum for Government on the other optional requirements. This requirement has been agreed and I thought it sensible to include it at this stage.

Amendment agreed to.

Section 20 agreed to.

SCHEDULE 1.

Amendment No. 69 not moved.

An Cathaoirleach: Amendments Nos. 70 and 71 are related and may be taken together by agreement. Is that agreed? Agreed.

Mr. Quinn: I move amendment No. 70:

> In page 16, paragraph 2(1)(*a*), lines 20 to 23, to delete all words from and including "but" in line 20 down to and including "representatives" in line 23.

Amendment No. 70 proposes to delete the words after "representatives" in line 20 because they are superfluous and unnecessary. It is a matter of conciseness rather than anything else. This means removing the phrase "but the employer may not unreasonably withhold consent to proposals made by employees or their representatives". It is not necessary to say that and the Bill would be improved by taking it out.

Mr. McDowell: I will address the amendment in my name and that of Senator O'Toole. Schedule 1 provides for the default mechanism. It provides for the standard rules in circumstances where there is not another negotiated in-house arrangement. Our amendment simply provides that the forum should meet a minimum of four times rather than twice a year. It appears that twice a year is a pretty perfunctory requirement. If it is to develop any animus of its own or means of doing its work, the requirement of quarterly meetings is not unreasonable. I ask the Minister of State to consider that.

Needless to say, I disagree with the amendment proposed by Senator Quinn. It is all well and good to provide that arrangements shall be agreed but if they are not, what can be done? The section, as currently drafted, gives some assistance by at least providing that the employer cannot unreasonably block agreements on arrangements or proposals made by employees.

Mr. Killeen: The Senators are somewhat at odds as regards the two amendments. On amendment No. 70, the Bill imposes an obligation on employers not to unreasonably withhold consent to proposals from employees as regards the forum's meeting arrangements. That ties in with Senator McDowell's requirement that they should meet more frequently than twice a year. On that point, a key qualification is that in exceptional circumstances extra meetings can be requested and should not be unreasonably refused by the employer. The Bill strikes a very reasonable middle ground. In the spirit of co-operation provided for in the directive and the proposed legislation, it is incumbent on employers to seriously consider all requests from employees regarding meeting arrangements. I certainly cannot accept amendment No. 70 in that regard.

As regards amendment No. 71, the intention there is clearly provided for in the Bill and it is open to the parties to increase the number of meetings, depending on the particular needs of the undertaking and its employees. It is sensible to allow some leeway in that regard and I do not believe it presents any difficulty when particular meetings are sought on issues, as will be the case from time to time.

Mr. McDowell: The provisions of the Bill are most important in the case of crisis management, significant problems or impending difficulties. I fully accept that when a major problem arises, it is open to employees or their representatives to request a meeting. Is it not sensible to provide for a regular flow of information to ensure that the onset of a crisis does not become a precondition for a meeting taking place? The ethos behind the Bill suggests that information should flow on a regular basis. In that case, it is not sufficient to hold two meetings per annum. We are dealing with two easily distinguishable, albeit not entirely distinct, issues, namely, crisis management and ordinary day-to-day or month-to-month flow of information. If information is to flow on a regular basis, meetings must be held more than twice a year.

Mr. Killeen: It is important to bear in mind that the Bill provides for methods of disseminating information and receiving feedback other than

[Mr. Killeen.]

meetings. I regret it is necessary to include a provision requiring that two meetings be held each year because it is unduly prescriptive and runs counter to the ethos we are trying to create in the workplace. It is not unreasonable to qualify this requirement by including a provision regarding meetings to be held in unusual circumstances, nor is it unreasonable to require an employer to accede to requests for a meeting when employees have a concern.

Mr. McDowell: While I agree with the Minister of State to some extent, the difficulty is that the requirement to hold a minimum of two annual meetings will result in twice-yearly meetings becoming the norm. Perhaps it would have been preferable to stick with a formula which would allow regular meetings to be held, rather than prescribing a specific number of meetings. Having opted to prescribe, I hope two meetings per annum will not become the maximum number or the norm.

Mr. Killeen: Perhaps the inspector likes the number.

Amendment, by leave, withdrawn.

Amendment No. 71 not moved.

Government amendment No. 72:

In page 17, to delete lines 13 to 16 and substitute the following:

"by the Protection of Employment Order".

Amendment agreed to.

Mr. Quinn: I move amendment No. 73:

In page 17, paragraph 4(2)(*e*), line 41, to delete "powers." and substitute "powers to raise within the timeframe at *paragraph (a)*, and within the competence to respond within the rationale required at *paragraph (d)*.".

The purpose of the amendment is to seek protection for management in companies in Ireland where immutable decisions are taken at a head office in another country. In such circumstances, it is necessary to restrict the role of management to areas in which they have competence. The head office of an organisation at which decisions are made and from which instructions are issued to local management may well be located abroad. On that basis managers in Ireland will not have control of company activities and will act as they are obliged to act. For this reason, it is reasonable to include the proviso that managers in such circumstances act "within the competence to respond within the rationale required at *paragraph (d)*". The sole purpose of this amendment is to ensure the legislation takes account of the fact that in some cases company decisions are taken abroad.

Mr. Killeen: I acknowledge the concerns raised regarding the provision of information and consultation on matters which do not fall within the direct competence of Irish management. It is interesting that the directive owes its origins to cases of this nature which arose in Belgium involving a French company and France involving a British company. While these cases had transnational implications, they happened to be within the European Union. I have listened carefully to the Senator. As was acknowledged in the House last week, the many advantages flowing from having good quality information and consultation far outweigh the specific weakness highlighted by Senator Quinn. The legislation would be better left in its original form.

Amendment, by leave, withdrawn.

Mr. Quinn: I move amendment No. 74:

In page 17, paragraph 5(2), line 45, to delete "financial resources" and substitute "facilities".

This amendment aims to avoid making too sweeping a commitment and thereby unduly raising expectations. The provision, as framed, is too broad and all-encompassing as it equates to writing a blank cheque. For this reason, substituting the term "financial resources" with the word "facilities" would be helpful.

Ms White: The purpose of the amendment is to reduce employers' exposure by including a broader definition and thereby avoid the possibility that disputes will arise as a result of a *carte blanche* presumption by employees.

Mr. Killeen: I should have referred to this amendment when I dealt with an earlier new section proposed by Senator McDowell. The amendment seeks to limit the obligation on employers to provide financial resources to members of the forum to assist them to perform their duties. It is reasonable that the employer provide such financial resources and the requirement does not impose an unduly onerous obligation. The mechanism can only work in this way because no one other than the employer has the relevant information and is in a position to disseminate it. The inclusion of the term "financial resources" meets the requirements of the Bill much better than the word "facilities", which would only cover meeting places and so forth. The risk in the amendment is that it could result in an employer deciding only to make available a canteen or similar facility when much more is required, including the provision of information. The term "financial resources" is much more complete in this regard.

Amendment, by leave, withdrawn.

Schedule 1, as amended, agreed to.

SCHEDULE 2.

Amendment No. 75 not moved.

Mr. Quinn: I move amendment No. 76:

In page 18, paragraph 3, lines 19 to 22, to delete all words from and including "by" in line 19 down to and including "representation." in line 22 and substitute the following:

"on the basis of any appropriate in-house arrangements. In the absence of in-house arrangements voting in the poll shall take place by secret ballot on a day or days to be decided by a returning officer.".

The purpose of the amendment is to widen the scope of polling methods available and leave the proportional representation method as a fall-back. The current provision ties down organisations and is too restrictive. I urge the Minister of State to accept the amendment which proposes to introduce greater flexibility.

Mr. Killeen: It puts me in bad humour to read about polls and returning officers. I am advised the amendment is not necessary. The wording used in the published text has been used in previous legislation, for example, the Transnational Information and Consultation of Employees Act, and has not presented any difficulty. When a mechanism has worked previously one tends to place some faith in it.

Amendment, by leave, withdrawn.

Schedule 2 agreed to.

TITLE.

Government amendment No. 77:

In page 3, line 11, to delete "UNDERTAKINGS" and substitute "UNDERTAKINGS, TO IMPLEMENT ARTICLE 3(2) OF COUNCIL DIRECTIVE NO. 2001/23/EC OF 12 MARCH 2001[2] ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO THE SAFEGUARDING OF EMPLOYEES' RIGHTS IN THE EVENT OF TRANSFERS OF UNDERTAKINGS, BUSINESSES OR PARTS OF UNDERTAKINGS OR BUSINESSES.".

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

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

Mr. Hanafin: Next Tuesday, 18 October.

Report Stage ordered for Tuesday, 18 October 2005.

National Sporting Facilities: Motion.

Mr. K. Phelan: I move:

"That Seanad Éireann:

— congratulates the Government for giving unprecedented political priority to sport and recreation combined with record investment;

— welcomes the substantial increase in the annual sports budget to €130 million in 2005 compared to just €17 million in 1997;

— acknowledges sport was first given a seat at the Cabinet table back in 1997 and notes by the end of 2005, Government spending on sport since 1997 will be over €740 million;

— notes too that the Sports Council budget in 2005 is €34.4 million, taking the total funding since its establishment in 1999 to almost €158 million;

— maintains that significantly increased funding under the Sports Capital Programme has ensured the provision of high quality sport facilities in many locations throughout Ireland;

— welcomes the fact that since 1998, over €385 million has been allocated to 4,899 sports capital projects;

— congratulates the Government for investing in the development of facilities which cater for national needs, for example the National Aquatic Centre at Abbotstown, the National Boxing Stadium; the National Rowing Centre at Inniscarra, County Cork, the National Hockey Stadium in UCD and the Tennis Ireland National Centre in Glasnevin;

— supports the policy of developing top class regional facilities serving all sports which are being developed through the provision of regional sports centres all over Ireland; and

— asks the Government to continue to place a special emphasis on sport and recreation as this will have significant benefits in fostering healthier lifestyles and stronger communities."

[Mr. K. Phelan.]

I welcome the Minister for Arts, Sport and Tourism, Deputy O'Donoghue, to the House for this evening's debate. I am delighted to be able to speak here in support of this Fianna Fáil motion. We should congratulate the Government on giving unprecedented political priority to sport and recreation, combined with record investment.

We, in Ireland, are blessed to have a wonderful sporting tradition in every townland, parish and city. This comes in the form of a variety of different sports, not merely team but also individual sports. No matter where one goes throughout the length and breadth of Ireland sport plays a significant part in the lives of the old and young, whether as a participant, a supporter or a manager. In this regard am proud that the Government has played an important role in supporting our sporting organisations at national level. For example, as the motion explains, in 1997 the total annual sports budget was €17 million whereas this year's sports budget is €130 million.

5 o'clock

Although the motion refers to sporting facilities that cater for national needs, we cannot talk about national sporting facilities without addressing the issues associated with local sport and local sporting organisations. Over the past number of years I have been delighted to see the amount of money that the Government has put into local sport and community organisations. This year alone, through the sports capital programme, my county of Laois has received €721,500 for projects such as GAA, rugby, boxing and athletics.

There was further good news announced in my county in June when the Minister approved the contract documents for replacement swimming pools in Portlaoise and Portarlington. This funding is under the local authority swimming pool programme where grants of up to €3.8 million are available to cover 80% of the cost of the projects.

As a member of a local GAA club, I know only too well the role the GAA and other local sporting organisations play in the life of rural Ireland. In many areas of the country there are few, if any, sporting and recreational facilities apart from those provided by the GAA. That is why I disagree with those who slam the Government for giving money to the GAA and, indeed, for the development of Croke Park.

Croke Park is beyond doubt one of the finest sporting stadiums in the world. I have attended it on many occasions. Unfortunately, this year I did not get to attend that many games when Laois went out of the championship early, but I will leave that matter aside. I have been struck by the quality, size and comfort of the stadium. Every member of the GAA can be proud of their stadium which is a monument to the men and women who run the GAA as a voluntary organisation, but it is worth remembering that substantial Government funding was given to the GAA to assist in this project.

The Government has also worked hard to improve sporting facilities across the country and the Department of Arts, Sport and Tourism has allocated significant amounts of funding under the national lottery funded sports capital programme. In this regard one of the main policies of the Government in the development of sport and recreational facilities is to increase participation, particularly in disadvantaged areas. The sports capital programme is the primary vehicle for supporting the development of such facilities for voluntary sporting organisations at local, regional and national levels. Grants are allocated towards projects such as multipurpose sports halls, athletics stadiums and GAA, soccer and rugby pitches.

As the motion outlines, since 1998 the sports capital programme has been the catalyst for the delivery of modern well equipped facilities in all counties and has provided grants to the value of €385 million to 4,900 projects throughout the country. Examples include the following projects listed in the motion — Strong penalties are imposed for this type of event, including up to three years' imprisonment on conviction and indictment. the National Aquatic Centre, the National Boxing Stadium, the National Rowing Centre, the National Hockey Stadium and the Tennis Ireland National Centre. However, I am aware of many more projects that have been funded by the Government in the past number of years such as the swimming pool in Limerick and sports centres in Dublin, Athlone, Letterkenny, Ennis, Galway, Ballina, Navan, Bray and Waterford.

I am confident that the Government is doing a wonderful job in the promotion of sport and the provision of sporting facilities where necessary. Much more can be done at local level to continue promoting sport and recreation. That is why I fully support the motion which calls on the Government to continue to place a special emphasis on sport and recreation as this has been proven to have significant benefits in fostering healthier lifestyles and stronger communities.

All the health experts warn us that we, as a society, are becoming less active and the danger from obesity and illness has increased. We need, therefore, to continue supporting each and every organisation that attempts to promote sport and the involvement of young and old in exercise. If we do that the health of our country will continue to be in good shape. That is why I commend the Minister for continuing to secure significant funding from the Department of Finance for redirection to sport and recreation facilities throughout the country.

Last January the Minister announced a package of €191 million towards the cost of the construction of the new stadium at Lansdowne Road.

The Irish Rugby Football Union, the Football Association of Ireland and the Government have drawn up wonderful plans for the Lansdowne Road project and I look forward to seeing the stadium completed on time and on budget. Both the IRFU and the FAI need to be complimented on the manner in which they have come together to pool their resources in the interests of Irish sport. The Government will not be found wanting in our desire to see the opening of the stadium in December 2008.

A number of upcoming significant projects and events are worthy of mention. We all remember the Special Olympics here in 2003 and the way in which it helped promote our special athletes and encourage new people to get involved in sport. In the same way I see a great opportunity with the announcement that the 2012 summer Olympic Games will be held across the water in London. We, in Ireland, should benefit from the positive impact that will come from these games. By 2012, thanks to the Minister, Deputy O'Donoghue, a range of modern well-managed facilities of the highest quality may be used by competitors of other countries for training. From our own point of view, it will offer Irish athletes an opportunity to perform at an Olympic Games in a familiar and supportive environment, without issues like travel, diet and temperatures with which to contend. I hope this will allow young people to see top athletes perform here and may help to create a new buzz in this country for all sports of the Olympic Games.

Next year will be significant, with the Ryder Cup coming to Ireland and no doubt the Minister will help in every way to make that a momentous success as well. I again offer him a special word of thanks.

Labhrás Ó Murchú: Is mian liom cuidiú leis an rún. Cuirim fáilte roimh an Aire chomh maith chuig an Teach. I second the motion and welcome the Minister to the House.

I avail of the opportunity to pay tribute to the Minister for the high profile which he has given sport during his term of office. No doubt he has reflected the importance of sport in the life of the community and of the nation. He has done this particularly well at community level. Anybody who has observed the Minister closely in this regard will have seen that he has travelled the length and breadth of the country to show his support, not only for the highlighted events but also for the activities at community level, which are particularly important. We should also give him credit for succeeding in obtaining approximately €149 million for sport in one year. Some years ago, the figure for sport was approximately €17 million. There has been a huge increase in the past six or seven years and that is due to the Minister's ability and commitment.

Various reports have been produced on sport and its importance to the nation. It is good that this is acknowledged because we often take this aspect of our lives for granted as a result of the fact that we have, to some extent, grown up with it as part of our communities. It is important, in challenging times, when considering the social aspects of life, to examine the social aspects of sport and the contribution it makes to the enhancement of people's lives. If we do not do this, we miss out on acknowledging one of the best vehicles we have for countering anti-social behaviour. We often talk about young people who do not participate in positive pursuits. Where young people take part in sporting activities, they grow up to be responsible citizens and make an important contribution to life.

While it is important to highlight the commercial side of sport, which is important for the country's image internationally, there is also a voluntary aspect to it. I was glad to see that the GAA was selected for particular mention in recent reports. This is only right because it has contributed through its framework from club level up to the great scenes we witness in Croke Park each year. It may seem like old hat but historically the GAA has played a major role, for example, in healing the wounds of the Civil War. This is often overlooked. It is highlighted in the GAA museum in Croke Park that people on opposing sides in that conflict participated on the same teams, whether hurling or football. As a result, people of different backgrounds and perspectives on life were brought together. This should not be forgotten. The GAA has also contributed to national life by focusing on helping the economy, for example, in encouraging people to buy Irish made goods or to take part in other such activities.

To return to the main issue regarding the availability of sufficient finance for sport, any contribution made to the sporting bodies in this country — not just to the GAA but to soccer, rugby and other sporting bodies — is repaid a hundredfold to the nation. While it is obviously repaid in financial ways, it is also repaid through the manner in which people respond to the needs of the country.

Without financial aid we would not have some of the exceptional sports arenas we have, not all based in Dublin but throughout the regions. Despite the voluntary input we had in the past and the best will in the world, if the finance had not been made available, it would not have been possible to reach the standards essential in this regard. We must be proud of Croke Park's current stage of development. It must be one of the finest sporting arenas in the world.

I know the Minister has plans for the future development of other facilities and arenas. It is great to see the enthusiasm and excitement in every village and town when the news comes

[Labhrás Ó Murchú.]

through that he has made his announcements of sporting grants. People are not always looking for 100% or 75% grants but often just want enough to tip the scales to bring a project to fruition. It is probably the greatest legacy of the Minister and Government that they allow this money to permeate down through the communities to provide vital facilities.

It gives me great pleasure to second this motion and I am proud to do so. The figures and the response of recipients speak for themselves. Above all else, the image we have of being a sports-friendly nation and Government is accepted by most people.

Mr. Feighan: I move amendment No. 1:

To delete all words after "Seanad Éireann" and substitute the following:

"— criticising the €7 million reduction in funding under the Sports Capital Programme for 2005, a reduction of 13% on last year;

— disappointed at the obvious regional disparity and inequity in the manner in which monies are allocated under the Sports Capital Programme;

— condemning the fact that even though the National Aquatic Centre cost more than €60 million, an independent report concluded that the roof did not comply with the normal design codes or building regulations;

— highlighting the numerous reports of other serious structural problems at the National Aquatic Centre;

— deploring the lack of basic sports facilities throughout the country, and at many primary and secondary schools;

— acknowledging that even though 300,000 of our children are overweight or obese the provision of physical education facilities at our schools has been totally neglected and constitutes a tiny fraction of the capital budget;

— noting the OECD findings which showed conclusively that Ireland ranks as one of the lowest in the OECD in terms of funding and support for physical education and that only 4% of school time is allocated to physical education compared to 9% in other OECD countries;

— condemning the scrapping by this Government of grants for purchasing school sports equipment;

— concerned that there is a far lower participation in sport by women than by men, even though research has clearly shown that weight-bearing physical exercise is a strong preventative measure in the incidence of certain medical conditions, like osteoporosis, which particularly affect women;

calls on the Government to:

— ensure that the Sports Capital Programme monies, which are raised by all of us through the National Lottery, are administered by the Irish Sports Council and not by the Government;

— undertake to provide all future national sports infrastructure on time, on budget and to the highest standard so that the costly and shambolic delivery of the National Aquatic Centre will not be repeated;

— give urgent priority to the development of physical education facilities, and the purchasing of sporting equipment, in primary and secondary schools;

— devote greater school time to physical education and sporting activities, and make PE compulsory at both Junior and Senior cycles in second level education;

— adopt the Brighton Principles as a matter of priority, which aim to ensure equity and equality in sport; and

— raise the profile of the health benefits of sport for women with special reference to osteoporosis and other ailments."

I listened to Senator Kieran Phelan speak about the wonderful facility in Croke Park and I join him in congratulating the GAA authorities there. We in Roscommon, just like the people of Laois, do not see Croke Park often enough, certainly not as often as the people from Kerry, the Minister's county. We live in hope.

The Government has invested in Croke Park but in recent years its involvement has not been the best. Sport and politics should be kept separate. Some years ago, the Taoiseach interfered with a democratic process, which was not helpful towards opening up Croke Park to other sports at the time. That is in the past and Croke Park has been opened up. I look forward to the day when Roy Keane or any rugby player will play there. I am sure other Senators join me in this.

In 2004 the sports capital allocation was €61 million. The announcement of €54 million for this year is a significant reduction of €7 million, down almost 13% on 2004. This is disappointing for sporting organisations that have once again been passed over for funding. I appreciate that many of the sporting organisations were happy with the allocations but some were passed over.

The money invested in the National Aquatic Centre was not well spent. The facility, which cost €62 million, leaks, lost large parts of its roof soon after opening and was closed as a result for many months. A report commissioned by the OPW confirmed that damage to the roof was caused by the failure of elements within the roof assembly. Some 11 pages of an independent engineering report into the structural soundness of the facility identified 126 cracks in the pool walls and a leakage of 50 million litres. Media eyewitnesses and reports from inside the facility confirm the existence of leaks, cracks in the floor and visible corrosion on walls and metal surfaces. That is not money well spent. We must spend the taxpayers' hard-earned money better in the future.

I am very concerned that 300,000 Irish children are overweight or obese. Many problems, including the obvious health problems, result from childhood obesity. I refer, for example, to issues like a lack of self-esteem and an increase in bullying. The increase in obesity among children constitutes a time bomb in our health services. I do not believe the Government is doing enough to tackle the serious issue of obesity among adults and school children. If one examines the records of the Department of Education and Science to ascertain the percentage of its capital expenditure budget that is spent on sport and physical education halls, one will learn that PE has been totally neglected. The consequences of that neglect are becoming evident as the percentage of schoolchildren who are obese increases. Just €3 million of the €154 million that was spent by the Department of Education and Science on capital projects in 2000 was spent on PE halls. While the amount of money spent on PE halls had increased to €7 million by 2002, that figure was halved in 2003 and had decreased to just 0.5% of the Department's capital budget by 2004. I do not think the Government is doing enough to tackle the problem of obesity among schoolchildren. The Government needs to offer more support to those who are tackling such problems.

I would like to speak about the problems caused by the tuck shops and vending machines found in many schools throughout the country. I suggest that such problems are linked to the lack of funds in many schools. The finances of many schools are in such a poor state that they need the commission that accrues to them from such shops and machines. We need to tackle this issue by replacing vending machines with facilities which offer healthier alternatives. I know of a company that is going to schools to install vending machines which sell water. The schools agree to the installation of such machines not because they offer students a healthy product, but because the schools can earn a percentage of the money that is put into the machines. They can earn a similar percentage by selling certain sugar-based branded products which cause obesity. I repeat that we need to work together to make a serious effort to tackle obesity among school-going children.

It is wrong that women in sport do not receive the same level of recognition or funding as their male counterparts. National and international research reveals that women have a lower level of participation in sport and other recreational activities. Those women who do participate in sport are more likely than men to drop out of their sporting activities. Although there are many good sports centres in Ireland, the positive phenomenon of women engaging in exercise elsewhere continues to be noticeable. If one drives along any country road tonight, one will notice women, and sometimes men, walking along the roads. I do not think such people like to walk along country roads, but they have no choice other than to do so because facilities which are appropriate to their needs do not exist. We should ensure that new bypasses which are built near urban areas cater for the needs of such people. When a bypass was built around my home town, no footpaths were constructed and no public lighting was developed. The women and fellows who like to walk along bypasses often have to do so without the assistance of footpaths or lighting. Agencies like the local authorities, the National Roads Authority and the Department of Arts, Sport and Tourism should work together to help people to get fit by ensuring that provision is made for footpaths and lighting when new bypasses are being built.

The sports capital programme should be administered by the Irish Sports Council, thereby taking decisions on allocations to sporting bodies out of the realm of political influence. The Arts Council is responsible for managing arts funding and the Heritage Council is responsible for decisions on the heritage grants programme. The Irish Sports Council should be responsible for the management of the sports capital programme.

Mr. J. Phelan: Hear, hear.

Mr. Feighan: If the Minister gives that responsibility to the Irish Sports Council, we will not be able to hassle him by saying that certain decisions were too political or not political enough.

Mr. J. Phelan: I formally second the amendment moved by Senator Feighan in the names of the Fine Gael Senators. I welcome the Minister, Deputy O'Donoghue, to the House. It is appropriate that the House is having a debate on sport on the same evening as an important soccer match in Lansdowne Road. I am sure the Minister is planning to go to the match — it is only right that he should be in attendance.

Mr. Feighan: Does the Minister have any spare tickets?

Mr. J. Phelan: I was unable to get a ticket for the match. If the Minister has a spare ticket, he might send it in my direction. It is appropriate that the Minister with responsibility for sport should attend the match on this important night for Irish sport.

The motion proposed by the Government Senators this evening is typical of the motions they have tabled during Private Members' time since I was elected to the House. A number of contradictions can be found in the motion, as is usually the case. The most glaring and obvious contradiction is in the second paragraph of the motion, in which the Government Senators congratulate the Government "on the substantial increase in the annual sports budget to €130 million in 2005". The Minister for Communications, Marine and Natural Resources, Deputy Noel Dempsey, said last week that the €150 million spent on the PPARS computer system was nothing, not even a drop in the ocean. If €150 million is nothing, surely the same can be said of the €130 million that is being spent on sport this year.

I agree with those who have said that much more than €130 million needs to be spent on sport each year. I do not disagree with the comments of other Senators who highlighted the value of sport in the Irish context. Irish people have always been attracted to, interested in and involved in sport, for some reason. The GAA, for example, is probably the most fantastic amateur organisation of any sort anywhere in the world. I do not think one will find a better amateur sporting organisation anywhere. I say that as a playing member of the GAA. I am sure Members will be delighted to learn that I won a divisional junior B hurling medal earlier this year with my home club, Tullogher-Rosbercon.

Mr. Moylan: Good man.

Mr. J. Phelan: Unlike my colleagues, Senator Kieran Phelan from County Laois and Senator Feighan from County Roscommon, I am in the fortunate position as a Kilkenny man of being able to support my home county in Croke Park on a few occasions every year.

Mr. McCarthy: Kilkenny did not play enough games in Croke Park this year.

Mr. J. Phelan: We did not reach the all-Ireland hurling final, unfortunately.

Mr. K. Phelan: There was a good Laois man coaching Kilkenny this year.

Mr. J. Phelan: I agree with the comments of Senators about the facilities in Croke Park, which is a fantastic stadium. Full credit needs to be given not only to those who had the vision to propose the redevelopment of the stadium in the first instance, but also to the successive Governments which helped to fund the project. The proportion of the overall cost of the redevelopment of Croke Park that was met from national resources is quite small. I am somewhat taken aback by the emphasis that is placed by Fianna Fáil Members on its party's record in respect of Croke Park. When Deputy Quinn was Minister for Finance during the term of the rainbow coalition between Fine Gael, the Labour Party and Democratic Left, that Government was criticised left, right and centre by Fianna Fáil when it decided to give a grant to the GAA to help with the cost of the initial stages of the redevelopment of Croke Park. I do not refer to the representatives of Fianna Fáil who are present in the Chamber. I recall that members of that party criticised the decision on the national airwaves. I am sure they made similar protests in this Chamber and in the other House. They cannot have it both ways by praising the project now. Credit is due to the successive Governments which helped to fund Croke Park, which is an excellent facility. We should not be hypocritical in this regard, however. I remember that members of the current Government were less than satisfied when funding was allocated by my predecessors almost ten years ago, when the redevelopment of Croke Park was getting up and running.

I am disappointed that the Government motion before the House does not place any emphasis, until its final paragraph, on the level of participation in sport, which is a crucial issue. Senator Feighan spoke about women in sport. I agree with his remarks about a phenomenon that can be noticed throughout the country. Crowds of young people gather to engage in exercise, particularly in urban areas, even though appropriate sporting facilities are not available to them to allow them to spend their time more fruitfully. Such people would be willing to use such facilities if they were available.

In a recent budget, the Government slashed the level of funding available for the development of new municipal swimming pools. It is wrong that a significant town like Thurles does not have a local authority swimming pool, as far as I am aware. That is what I was told by a resident of the town when I visited it during the summer for a hurling match. When one considers that the level of funding for such swimming pools has been slashed by the Government, it is no wonder that other towns throughout the country are in a similar position to Thurles.

All Senators will agree that the involvement of local authorities in proper planning and development is a crucial aspect of the debate about the

level of participation in sporting activities. It cannot be denied that an unsatisfactory number of active green spaces is being provided by local authorities. Senator Feighan was correct to refer to the need to take the demands of walkers into account when new bypasses are being developed. The ring road around Kilkenny city was constructed 20 years ago, when Fine Gael and the Labour Party were in Government. The Government has so far failed to provide the bypass. The project is said to be ongoing but no work is being done. Senator Feighan was correct to point to the use of roads and bypasses as a walking facility by many. The future development of roads and bypasses throughout the country should take account of these needs because they have not been considered heretofore.

It is worth reminding the House that with this Government, the €130 million referred to in the motion would get a third of a PPARS system, two national aquatic centres or a bit of a new national stadium. While the funding is undoubtedly an increase on previous spending, it is a paltry amount when it comes to addressing the sporting needs of the country. It is a shameful figure when one considers how much money the Government wasted on schemes that have delivered little, particularly in the health services. I fully support my colleague's amendment. Rather than engaging in self-congratulation, I urge the Government to engage in real activity on the ground.

Minister for Arts, Sport and Tourism (Mr. O'Donoghue): I am delighted to be back in the House and to concur with the wide-ranging motion. The House could hardly have selected a more opportune time to discuss the importance of sport to the people of Ireland. Throughout the country today, two topics of debate dominate all others. The first is whether Ireland will beat Switzerland in the World Cup qualifier tonight. The whole country is fervently wishing that the boys in green will again come good. The second topic is whether Tyrone will win the next 31 all-Ireland senior football titles——

Mr. J. Phelan: Or Cork.

Mr. O'Donoghue: ——so that by the end of the year 2036, they will equal Kerry's record of 33 senior titles. In that respect, I understand two or three fellows from Tyrone were in Waterville, County Kerry last week, regaling the barman in a local hotel as to how they beat Kerry and how they would continue to do so, and advising him as to how Kerry should approach all-Ireland football titles in the future. Late in the night the barman gave one of the Tyrone men his change. Looking at the change, the Tyrone man said: "Hold on a minute. That's not change. It's a medal." The barman replied: "Give me that back. It happens all the time around here. It's an all-Ireland senior football medal."

Ba mhaith liom mo chomhghairdeachas a ghabháil le Tír Eoghain, ceann de na foirne is fearr dá bhfaca mé i bPáirc an Chrócaigh. It was great to see Tyrone, from the land of the great O'Neill, win the all-Ireland title in such a splendid fashion, even if it was at my county's expense on this occasion.

Just a week ago the Economic and Social Research Institute, commissioned by the Irish Sports Council, published a report, The Social and Economic Value of Sport in Ireland. This study addresses a vital gap in our knowledge in terms of measuring the impact and importance of sport in Ireland. The Government has always been cognisant of the social impact of sport and its effect on the health and well-being of the nation. For that reason it was the first Government to recognise that by putting a Minister at the Cabinet table in 1997, sport would truly come to the fore. The ESRI report does not merely indicate a social impact but concludes that sport is the major contributor to social capital in Ireland today. This conclusion is largely based on the volunteer contribution to sport, with three people engaged in support activities to every four actively participating. Statistically, an extraordinary figure of 400,000 people, or 15% of the population, offer their services in a voluntary way to sport. Given the genuine concerns expressed in many quarters about the nature of modern Celtic tiger Ireland, this statistic offers hope and assurance about the nature of our country.

The report puts a total economic value on sport in this country for the first time ever — it is estimated at €1.4 billion a year. The volunteer sector, if all involved were paid even at the minimum wage level, is valued at €267 million a year, subscriptions to sports clubs are valued at €200 million a year, the costs of playing sport for participants is estimated at €413 million a year and the revenue generated by attendance at sporting events estimated at €525 million a year. The total value of €1.4 billion is a significant amount by any standards even within the dynamic economic environment of modern Ireland. As the report points out, this is a modest estimate, not including every possible impact from all aspects of sporting life, such as sports tourism, which it tentatively values at €350 million.

The Government spent the past eight years addressing what only now can be seen as neglect of the sector. My budget for sport this year is over €149 million, compared with an amount of just €17.4 million in 1997. By the end of 2005, the Government spend on sport since 1997 will be €740 million. This hugely increased investment in sport has resulted in a considerably enhanced range and quality of programmes and top class facilities, from national level to local community clubs and centres throughout the country.

[Mr. O'Donoghue.]

The Government's support for sport has not just been a matter of simply making more money available. Improvements have had to be made in a strategic way. The establishment in 1999 of the Irish Sports Council as the statutory body with responsibility for the organisation and development of sport was a vital leap forward in this regard. The Government is committed to providing the necessary infrastructure on which the Sports Council's strategy, based on the three pillars of participation, performance and excellence, can be delivered. The budget for the Irish Sports Council has increased from €13.2 million in 2000, its first full year of operation, to €34.4 million in 2005. In all, the council has received almost €158 million since its inception. Additional funding in 2005 included €1.5 million for an initiative being taken to preserve and develop the games of hurling and camogie on a nationwide basis, €1 million to support initiatives aimed at the development of Gaelic games in Dublin and €750,000 to commence programmes which attract women into sport.

The foundation for the much-improved sporting infrastructure of the country under the Government has been the sports capital programme, which is administered by my Department. In all, a total of €386 million in sports capital funding has been allocated to just over 4,900 projects from 1998 to the present. In terms of value for money to society, the sports capital programme as operated since 1997 is undoubtedly one of the best schemes operated by the State. The majority of the projects funded under the sports capital programme are at local level where the massive and often unheralded efforts of the volunteers keeping clubs and projects afloat received the boost of funding for new or improved facilities. This support has been vital and will be even more so in the future in attempting to ensure that the extraordinary level of volunteerism in Irish sport, as identified by the new ESRI report and to which I referred earlier, can be maintained. An important and strategic feature of sports capital funding is that the local and grassroots funding is complemented for regional and multi-sport projects and for projects at national level, particularly those required by the national governing bodies of sport, many of which are required for international competition.

Significant levels of sports capital funding has been provided for a number of municipal and multi-sport centres for the general public on a regional basis throughout the country. These centres are ideal for family-oriented sport and exercise, are particularly important for those people who are not affiliated to a specific sports club and would often provide a combination of indoor sports halls and, in some cases, swimming pools, leisure centres and outdoor facilities such as all-weather pitches. Examples of such facilities which have been allocated sports capital funding include the Finglas sports centre, lrishtown stadium in Ringsend, Sportslink in Santry and the DFRC in Dundrum; Waterford regional sports centre; Duneske leisure centre in Cahir; Killarney leisure centre; Lees Road sports centre, Ennis; Galway regional sports centre; Trim recreational needs centre; Ballina sports centre; Letterkenny sports centre; Ballywaltrim centre, Bray; Athlone regional sports centre; and Leisurelink centre, Navan.

Mr. Bannon: Did the Minister omit Longford?

Mr. O'Donoghue: Apart from the sports capital programme, our other national stadiums and facilities are progressing to the point where, when combined, the nation's sporting needs at this level will be well catered for. The redevelopment of Croke Park——

Mr. Bannon: On a point of order——

Acting Chairman (Labhrás Ó Murchú): The Minister, without interruption.

Mr. Bannon: I understand Longford swimming pool was included for capital funding. It is not on the list.

Acting Chairman: That is not a point of order. The Senator will have his opportunity to speak. He should allow the Minister to continue.

Mr. O'Donoghue: The redevelopment of Croke Park has been a spectacular success from every conceivable point of view. Since 1998 the Government has provided €103.49 million in funding towards making Croke Park the truly magnificent venue it is now.

Speaking of Lansdowne Road — most of the nation's thoughts will be directed towards it for the rest of this evening — proposals to redevelop that stadium were agreed in 2004 and grant aid of €191 million has been committed by Government to this project. Work on developing the conceptual design for the new stadium has been proceeding since then. I will be launching the new detailed design next Monday. It is expected that a planning application for the project will be lodged by the end of this year and that construction work will commence in early 2007, subject to planning. The project is meeting all of the target schedule dates set for it.

The National Aquatic Centre, the flagship of the campus at Abbotstown, opened in 2003 and successfully hosted the swimming events of the 2003 Special Olympics World Summer Games in June 2003 and the European Short Course Championships in December 2003. There have been media reports of alleged leaks at the National Aquatic Centre in late June of this year which

were repeated here this evening. I repeat for the umpteenth time that these reports are completely unfounded and untrue. Following a number of unsuccessful attempts to gain access to the centre, an inspection was finally carried out by a team led by Rohcon and including S&P Architects, URS Structural Engineers, Euro Pools specialist subcontractors, Davis Langdon PKS project managers and Kavanagh Mansfield & Partners, consulting structural and civil engineers represented CSID at the inspection. Rohcon found that there was no evidence of any structural defects or of any water leaking into the plant room as had been alleged in the media. Rohcon found some leakage through pipe joints and valves which in its view were operational matters. In addition, a test was carried out and confirmed that there were no leaks from the swimming pools. URS Structural Engineers confirmed that the concrete works were designed and constructed to meet the British standard 8007. It confirmed that any cracks that existed were not leaking, were not of a structural nature and were entirely normal for a building of this type. Rohcon published the results of its findings on 7 July. CSID received a separate report from its own structural engineers, Kavanagh Mansfield & Partners, which supported the Rohcon findings.

In 2004 the Government agreed to proceed with the development of a campus of sports facilities at Abbotstown. Campus and Stadium Ireland Development Limited, CSID, having consulted widely with the major governing bodies of sport, stakeholders and interest groups, put forward proposals for the development of a sports campus. This development control plan represents phase one of a wider programme for sports facilities. It proposes the development of pitches and ancillary accommodation catering mainly for the three major field sports — rugby, soccer and Gaelic games — as well as an indoor sports centre to cater for a range of indoor sports with spectator accommodation and also includes publicly accessible all weather floodlit synthetic pitches. This phase of the programme has been costed at €119 million and will have a four or five year delivery schedule. The funding of the project is currently being considered in the context of the multi-annual capital framework.

The Government is committed to providing a range of sports facilities, both locally and nationally, to meet the needs of the people, whether at elite level, at the more basic level of sports for health and enjoyment, or as spectators. To assist in the identification of new facility requirements an inter-agency steering group has been established to oversee the development of the sports facility strategy.

One of the first challenges facing the group is to oversee the commencement of a national audit of sports facilities. Once completed, the audit will enable policy makers to map the location of the various sports facilities throughout the country, leading to a more effective targeting of new or additional facilities which will complement what is already available. In this way, an efficient use of financial resources can be achieved and a fostering of greater co-operation between complementary facility providers can be encouraged. It is envisaged that the process for developing a sports facility strategy will identify any gaps in key major sports facilities required and prioritise their future delivery. This work will be carried out in consultation with the main sporting bodies.

Two of the most successful sports in Ireland have been those of horse and greyhound racing. The Government has shown its continued commitment to the ongoing development of the Irish horse racing and greyhound industries. In 2001, following the establishment of the horse and greyhound racing fund under the Horse and Greyhound Racing Act of 2001, a major period of development of both racing industries has resulted. In the five years to date, this fund has provided a guaranteed level of funding to Horse Racing Ireland and Bord na gCon which by the end of 2005 will amount to €261 million and €65 million, respectively. This money has been well invested leading to undeniable benefits for both sectors and has marked a revival of interest in both sports to the benefit of the whole economy. It has not only helped towards providing some top class racing venues and facilities but it has also underpinned significant employment in both industries and the prize money it has facilitated has been an important boost for both horse and greyhound breeding.

Under the initial legislative provision, an aggregate total for the fund was set at €254 million. This limit was reached before the end of 2004 and I was pleased to announce in November of 2004 that the Government agreed for the aggregate total of the fund to be increased to €550 million to cover the period up to 2008 and to continue its support of the industries. This will ensure that both the horse and greyhound racing industries will have the necessary secure financial framework for the next few years to enable them to bring about completion of their major development initiatives.

It would be remiss of me if I did not mention the tax relief that exists with regard to stallions covering mares in Ireland and, indeed, in the greyhound industry, which is of enormous importance in developing both industries. It is sometimes forgotten in the debate which ensues any infringement on this issue that Ireland is the third most important producer of thoroughbred foals in the world after Australia and the United States of America. As a result of this tax exemption, Ireland produces more thoroughbred foals than Britain and France combined. The industry, directly and indirectly, employs 25,000 people. It would not have been possible for our bloodstock

[Mr. O'Donoghue.]

industry to have been developed to the sophisticated stage to which it has been without this exemption. It is now under threat from the EU Commission having been classed as a state aid.

It must be remembered, however, that the elimination of such an exemption at the behest of the Commission will neither benefit Ireland nor Europe. The standing of mares and stallions in Ireland benefits the bloodstock industry not only in this country but throughout Europe. The elimination of such incentive can only result in these thoroughbreds breeding in other parts of the world and not in Europe. It is not to the advantage of Europe to eliminate such an incentive but it is to the advantage of countries far away from the European Union. It is a terrible mistake for the European Union to grasp at certain issues in the belief that it is assisting competition when all it is doing is creating a greater level of competition for itself and, indeed, ensuring that the playing field in respect of such an industry is not level for its own member states.

The Government's international sports tourism initiative targets events which have the capacity to enhance the attraction of Ireland as a major sports tourism destination. Ireland has shown that it is a perfect venue for hosting major sporting events. One has only to look at the hugely successful World Special Olympic Summer Games to appreciate this. Other events such as the Women's World Hockey Cup, the European Men's Hockey Cup and the World Cross Country Championships have enhanced our reputation for hosting such events. Next year in 2006 we will host the biggest golf tournament in the world, the Ryder Cup, which will be televised to approximately 700 million homes in no fewer than 42 countries.

The link between participation in physical activity and sport and the enhancement of health and quality of life has been clearly established. Physical activity and sport not only play a very significant role in the development of individuals but also provide invaluable social, educational and recreational opportunities for every participant. Sport has the potential to enrich the lives of all people and no one, regardless of age or background, should feel that they could not benefit from physical activity. The importance of sport to society generally was recognised by the first ever provision for sport in the new EU treaty agreed during the Irish Presidency in 2004.

The swimming pools programme was mentioned and I am pleased to say there are 55 different projects at varying degrees of completion in the system at present. Some 18 pools have been completed and approximately 11 are at tender stage and we have received the contract documents. The other projects are either at preliminary report stage or some other stage of the process. It has been an extremely successful programme and I sincerely hope it is one which can be renewed in the future because the provision of swimming pools in provincial towns, in particular, has been of enormous benefit to children and adults alike.

In that context, the provision of sporting facilities in cities, in particular in disadvantaged areas, has proven to be an enormous success. It is true to say young people are faced with greater opportunities and have more advantages than any generation. However, it should also be remembered that they are also faced with far greater challenges than any previous generation. In this context, the twin threats of drugs and alcohol have a huge bearing on the social development of our children. The perfect antidote to drugs and alcohol and other anti-social behaviour is unquestionably sport. Our objective has been to take children away from the PlayStations and on to the playing fields. I believe that with continued and serious investment in Irish sport, we will continue to be successful in doing so.

Dr. Henry: I thank the Minister for coming before the House tonight and for his speech. While the Fianna Fáil motion is most interesting and full of congratulations for the Government, I was particularly interested in the last part which asked the Government "to continue to place a special emphasis on sport and recreation as this will have significant benefits in fostering healthier lifestyles and stronger communities". Before I address some points made in the amendment, I want to know if, given the congratulations being given to the Government for what it has done for sport, it will also accept congratulations for some statistics drawn up since it took office.

When the Government was first elected in 1997, the level of obesity in Irish adults was less than 10%. By the time the Government was re-elected in 2002, it was more than 13% and is now approximately 16%. The Taoiseach has promised that the next election will not be until the end of the Government's full term. If we continue to eat as we do and take as little exercise as at present, by then we could well be at approximately 17%. We could be getting near to where the Tánaiste wants us to be, namely, nearer to Boston than to Berlin. Boston has an obesity rate of 30%, while it is just over 10% in Berlin. I presume this is part of the Government's sports policies' success story.

The situation with children is even worse. There has been a doubling in the incidence of obesity in the past ten years, during most of which the Government has had what Fianna Fáil describes as its excellent sports policies in operation. They have been an absolute disaster. We now have a generation of people which is less fit than ever before. It is terribly serious.

I attended a lecture given by Professor John Nolan last night in Trinity College. He is pro-

fessor of endocrinology in St. James's Hospital. I will admit to an interest as I am president of the Diabetes Federation of Ireland. He spoke about the increase in the incidence of type 2 diabetes in this country which is directly associated with obesity and lifestyle. The rates here are shooting through the stratosphere. We are doing so well we will soon be top of the league. It is particularly serious that we now have more children with type 2 diabetes in this country than with type 1 diabetes. When I studied medicine, well over a generation ago, I never saw a child with type 2 diabetes.

Senator Feighan rightly pointed out the problems with junk food at school. As children of this generation get so little exercise and eat such unhealthy food so frequently, we are allowing them to grow into human beings without anything like the hopes of a lifestyle like ours. Can Members imagine being obliged to begin injecting oneself with insulin when one is eight, ten or 12 years of age? Who wants that for any of our children? It is appalling.

The Fine Gael Members were correct to include the point about 300,000 of our children being overweight or obese and the lack of provision for physical exercise facilities in our schools in their amendment. Former Senator Therese Ridge used to talk about a school in west Dublin which has been in existence for 20 years but still has no sports hall. What sort of planning subjects children to growing up in an atmosphere like that? We must stop the sort of congratulation expressed in this motion because it is entirely wrong. I wish more Members had attended Professor Nolan's lecture last night with Senator Browne and myself to listen to what he had to say because it was profoundly depressing.

We should also show some common sense about particular matters. I was very disappointed to hear the Minister state that two of the most successful sports in Ireland are horse and greyhound racing. I have been involved with both, but unless one is walking the greyhounds, riding the horses, mucking them out or something similar, one is not getting much exercise. Shuffling around in the stands at Leopardstown or Shelbourne park does not provide one with a great deal of exercise. In fact, smart new dining rooms where one can sit, eat, drink and fatten up have now been installed. To describe these activities as two of the most successful sports in Ireland is somewhat rich.

I accepted the Minister's point when he went on to refer to these past times as important industries. I am delighted for their success and they bring in a considerable amount of money. There have been a great deal of improvements in prize money, in the facilities of the various racecourses and so forth. That has been worthwhile because a day out at the races is now much more pleasant than it was for decades, when one stood freezing to death in the cold in Mallow. It is now the smart Cork racecourse where one can go and have a really good time and partake of good food and drink. Nevertheless, much of the motion's content is out of tune with what is required to give us significant benefits in fostering healthier lifestyles. It is ridiculous.

Those Members supporting the amendment were quite right to raise the issue of walking in Ireland. This is a very difficult problem, particularly in rural areas, because we have a great number of one-off housing developments being built with no access to the local town by way of a footpath. This was first brought to my attention by representatives of the Irish College of General Practitioners who suggested to me that when people in these housing areas get older, they will be incapable of walking as far as their local shop and will become extremely isolated. This assumes that local shops will still exist, thanks to all the marvellous new shopping centres under construction. The situation regarding people who try to get exercise by risking their lives walking around rural Ireland is also important.

We have done some great things and I wish they had been included in this motion. The initiatives taken with Coillte to enable people to walk on Slí na Sláinte walking routes was fantastic. This is the sort of thing we need to do if we wish to encourage a healthier lifestyle, not congratulating ourselves on the amount of money that has been given to the horse racing industry. I regret the tone taken in this motion. This situation is so serious that it should not be a party political issue. We really are in a dire situation.

When I suggested a halving of the portion size of the puddings in the Oireachtas restaurant, I got into terrible trouble, particularly with my friend Senator Norris, who cried "shame" at the suggestion. The Leader thought it was a good idea. If we are to begin to really examine what sport and exercise can do for the health of the people, we need a little less self-congratulation and a little more effort to tackle what is an incredibly serious health issue which will cost us a fortune.

Professor Nolan ended his lecture last night with a cartoon. Members will be aware that it is difficult nowadays to get children to go outside and take exercise as they love being inside playing with PlayStations, computers and other gadgets. In the cartoon, the mother stood over her child as he played on his computer and asked him to go outside and get some exercise. He replied that he would, if she gave him a lap-top computer.

Mr. Brady: I welcome the Minister of State at the Department of the Environment, Heritage and Local Government, Deputy Batt O'Keeffe, to the House and I welcome the opportunity to speak on this motion. The motion includes one item for which Members on this side of the House

[Mr. Brady.]

should not apologise, namely the unprecedented political priority which has been given to sport since the Government took office. I congratulate the Minister because he has brought this a step further than his predecessor. As has been noted in the House, we cannot underestimate the importance of sport and recreation in social and economic terms. The Minister remarked that the ESRI report estimated the value of the social aspects of sport to be €1.4 billion. Recently, Fianna Fáil Members had the pleasure of hearing Professor Robert Puttnam speak on the subject of social capital. Sport is the major contributor to social capital in this country. Approximately 400,000 people or 10% to 15% of our population volunteer week in, week out to support others in sport, which is a large base for us to work from. We have the experience gained from hosting the Special Olympics, which brought out a certain spirit of volunteerism at all levels in the public for possibly the first time. We should not apologise for supporting this spirit.

From the start, the Government recognised that sport must be supported, not just rhetorically but financially. The €750 million spent since 1997 is a shrewd investment in the future, the benefits of which I see at first hand. In areas around the north inner city, the increase and improvement in facilities from sports halls to all-weather pitches has been phenomenal over the past five to ten years. Were it not for this investment, some young children and teenagers would find themselves dragged into lives of drug abuse and crime with dire consequences. The investment has enabled local community activists, particularly gardaí, to divert these youths away from the possibility of falling into such traps.

6 o'clock

Whenever I encounter children lounging around streets or on corners I make a point of asking them whether they could be somewhere else or why they are there. The answer I get 99% of the time is that there is nothing for them to do or nowhere to go. The root of many problems children fall into is boredom. The more we can do to counteract that boredom, the better. Children today have high expectations and we must attract them towards these measures. The investment in top class, fully equipped facilities is crucial in this regard. The sports capital programme has been successful because of this investment and its 4,900 projects will continue to reap benefits.

We must continue in our support and strengthening of sports infrastructure. We in this country are blessed with a solid infrastructural base, particularly in sporting terms. This includes voluntary and statutory bodies, whether it is the GAA or the Irish Sports Council, the VECs or schoolboy leagues. We are lucky to have a framework that does not exist in other countries. At weekends, clubs in my area collect hundreds of young boys and girls, give them kits, bring them to games, bring them for small snacks afterwards and drop them home. This may be for only one day per week but the difference it makes in a child's life is immeasurable. Clubs such as these comprise the backbone of our sporting infrastructure.

My recent experience is that the most beneficial improvements have been in the links between sporting clubs, people involved on a voluntary basis and statutory bodies, particularly local authorities. Significant strides have been made in Dublin City Council's area regarding the allocation of sports officers, play areas, whether they are playgrounds or all-weather pitches, and sports halls, which have been built and run by Dublin City Council. These have made profound differences to whole communities in the inner city. It is a mark of progress for which we should not apologise. We must encourage and build on it.

I was not going to mention schools but after listening to Members of the Opposition speak about school children and obesity, it is a fact that a school child spends 20% of his or her time in school and the other 80% in the loving arms of his or her family. Physical education and gym classes are parts of the curriculum whether it is a private or religious ethos school, a community college or a VEC. Parents must take responsibility for their children sitting at PlayStations for several hours per day and what their children eat. Schools can only do so much and, in fairness to them, they make every attempt to do their best.

Another interesting statistic is that every €1 of Exchequer expenditure supports the equivalent of an additional €2.7 in corresponding investment by clubs, community groups, schools, colleges and local authorities. This is fantastic as it means that €316 million of State funding supports €1.2 billion in sports and community facilities around the country. It is a testament to the policies this Government and its predecessor followed and I do not apologise for the unprecedented political priority given to sport.

Mr. McCarthy: I welcome the Minister of State at the Department of Health and Children, Deputy Brian Lenihan, and acknowledge the attendance of the Minister for Arts, Sports and Tourism, Deputy O'Donoghue, and the Minister of State at the Department of the Environment, Heritage and Local Government, Deputy Batt O'Keeffe. I remember my first attendance during Private Members' time in this House, which began with Senator O'Toole eloquently highlighting how much he deplored any Government motion that begins by congratulating the Government, as it was probably not worthy of much support from the Opposition. I have difficulty with the wording of this motion and we will support the Fine Gael amendment.

Ireland has made significant inroads in this area in recent years, largely due to the ways in which various Governments have seriously addressed the issue of sport. Exchequer funding for sport has experienced a growth and our economy has been healthy recently, allowing the State to seriously support the many worthwhile projects in the various sporting industries. As a Corkman, I am particularly proud of Ms Sonia O'Sullivan and Mr. Roy Keane, who have brought great honour and glory to their clubs, home towns, counties and country, particularly in the case of the latter's ongoing success. This debate is opportune as Ireland faces a very important international soccer match and I wish the team the very best.

We could examine and debate a number of areas, such as the worrying levels of obesity, not just in young people but many others. Generally, there is a laid back attitude regarding people's diets and there is not enough emphasis on exercise or healthier eating. We are all aware of the need for healthier eating but it is very easy to slip back into fast food ways. If dispensing machines in schools will give young people the opportunity to have fizzy drinks instead of milk and natural drinks or the option to have crisps and chocolates, which are foods with high fat contents, the Government is not examining the issue constructively.

We are not doing enough as responsible adults and as a society, although I have recently noticed a number of people who have grown more active in terms of healthier eating, walking and engaging in exercise more. It is a product of our society that everyone rushes to work, rushes home and drives cars. It is a more frantic age. People do not allow themselves the time to engage in healthier lifestyles such as walking, exercise and other activities that are important. Doctors are blue in the face from warning people but there is a certain amount of responsibility on individuals to ensure their lifestyles reflect this growing issue, no pun intended.

Senator Henry made an important point about one-off rural housing and footpaths to towns. Many thousands of young people have been subjected to exorbitant development charges since the Minister for Transport, Deputy Cullen, increased them in his previous role by as much as 500% or 600% in some cases; the development charge for a one-off rural house of approximately 2,000 sq ft after psychological warfare with local authorities, much expenditure on planning agents and trips to one's local politician to deal with the issue typically costs upwards of €3,000. I would be disgusted to think this development money would not go some way towards providing infrastructure such as footpaths, public lighting and playgrounds. Unfortunately, I have not seen the benefit of these development charges yet. If facilities are provided which encourage people to walk, this would be beneficial.

I will briefly discuss the GAA. I never played Gaelic football or hurling as I am one of those people who was not lucky enough to possess the knack of playing many sports. The GAA is one of the finest organisations in this country and one of the few organisations — probably the only organisation — that boasts a superb organisational structure in every parish in the country. It possesses clubhouses, pavilions, pitches, changing rooms and handball alleys. It is a great tribute and credit to the many people who worked down through the years and got out at community and voluntary level. These people marked pitches, washed jerseys, provided facilities, trained teams, organised buses and made sacrifices even though they were criticised locally when their team did not perform. This is the backbone of the GAA and I would not begrudge it one ounce of the funding it has received from the State in recent years. I say this in particular because there is a project in the offing in my home town of Dunmanway, the home of Sam Maguire, after whom the most coveted prize in Gaelic football, the Sam Maguire cup, is named. I hoped the Minister for Arts, Sport and Tourism, Deputy O'Donoghue, would be present to hear about a project to renovate Sam Maguire's home. I hope he will not be found wanting regarding the funding that will inevitably be sought in order to restore the house and provide a monument to recognise the man's achievements.

It is a shame that we have lost many fine athletes down through the years because of a lack of facilities. There were other equally talented athletes in parts of County Cork in the early 1980s when Sonia O'Sullivan was winning her events. Unfortunately, no facilities were available at primary and second level. We were faced with issues like unemployment and emigration so matters like this were low priorities on various checklists. It was scandalous to allow that talent to escape the arena in which it could have shone but we are now in an era where we can ensure that this no longer happens. We must begin this type of investment at national school level and ensure we exploit in a good sense demand, need and potential where it exists. It is important for the Government to provide funding in these areas.

I must again be parochial on two points. A namesake of mine, John McCarthy, who is also from Dunmanway, won a silver medal in the discus competition at the Paralympics. I have yet to witness at any other level the amount of pride any town can have when its most famed son or daughter returns home with that type of prize. It is a wonderful tribute to the person involved and to sport in general to see that type of glory, not because of the pursuit of glory for glory's sake but because people can prove their ability rather

[Mr. McCarthy.]

than disability. It was a particularly proud moment for all who were present to witness it.

The Minister touched on the issue of funding for swimming pools. Funding for the swimming pool in Dunmanway was announced by the former Minister, Deputy Jim McDaid, in November 1999. This project has still not advanced beyond tender stage, which is disgraceful. It is not the Department's fault; it is a matter of funding at local level. This pool is built to the standard of the late 1970s and cannot compete with private facilities in the west Cork area. I have written to the Minister for Education and Science, Deputy Hanafin, regarding a proposal from a number of people in the locality. Aquatic sports now feature strongly in the school curriculum and the complex to which I have referred is on the same site as the campus of Maria Immaculata secondary school, a fine school and a testament to public-private partnership operating well. The inability of students to have this pool at their disposal is akin to having an equestrian centre beside a school which fails to produce champion jockeys. Every school in the locality and district would benefit from an upgraded pool. I have asked the Minister to consider a joint partnership between her own Department and the Department of Arts, Sport and Tourism and Cork County Council with a view to providing financial assistance to get the project moving. I am glad to be able to put this on the record and I hope that the Minister of State, Deputy Brian Lenihan, will convey this to the Minister for Arts, Sport and Tourism.

Dr. Mansergh: Senator McCarthy need not apologise about being parochial. If sport is not about the parish, I am not sure what it is about. Tonight, it is obviously about the country. A few Sundays ago, I had the pleasure and honour of presenting the Mansergh cup to my own town club, Clanwilliam rugby club. The cup was presented by my grandfather in the 1920s when Clanwilliam beat Thurles.

We are discussing, certainly for its scale, one of the most successful Government programmes in existence. I welcome the Minister of State and pay great tribute to the Minister for Arts, Sport and Tourism, Deputy O'Donoghue, for his interest and commitment and the scale of what has been achieved. According to the motion, €17 million was spent on sport and recreation in 1997. I consulted the Book of Estimates for 1981 in my library upstairs where I discovered that £1.4 million was spent on sport and recreation in the days when Jim Tunney was Minister of State. He did his best in the context of the resources that were available at the time. The development of that project has been colossal. A total of €12 million has been given under the sports capital scheme in my county of Tipperary since 1997. In my experience, approximately 80% of the applications have succeeded and the 20% that do not succeed usually have a technical problem with their application in that their proposal does not have anything to do with sports or the 30% of local funding is not present. Most clubs are successful the second time around if they get their act in order. I compliment the Minister on the way this programme is run.

No speaker in this debate has suggested there are particular political motivations connected with the funding of clubs. It is sometimes said of certain clubs that they are run by a particular individual who is associated with a particular political party. This makes no difference to the success or failure of their applications for funding. I can think of one or two clubs that include people closely associated with Senator Bannon's party that have been successful in their quest for funding for two years running.

Money has also gone into intermediate facilities, which are large and ambitious projects. An example would be the Duneske Leisure limited project, which has received money from the Department of Arts, Sport and Tourism and, I think, the Department of Education and Science because it is a complex of facilities. The Government has also supported the development of facilities at national level. The Opposition parties made heavy weather of a number of issues with regard to Government support for sports. Their message is neither one they would necessarily want to send nor is it to their advantage. At any rate, some of those at the leading edge of this criticism are not particularly interested in, or committed to, sport. This is by far the most sports-driven Government we have ever had, and that is of huge benefit.

Mr. Bannon: Will Senator Mansergh elaborate on the National Aquatic Centre fiasco?

Dr. Mansergh: Speakers are correct to state that more must be done, particularly with regard to sports facilities in schools where a great deal remains to be done. In many cases community facilities are available to schools and *vice versa*, as often schools which have good facilities make them available to the community.

I warmly thank the Minister for his vigorous and unscripted defence of the tax relief with regard to stallions and its importance for not only the industry in Ireland, but also in Europe. While it was ring-fenced by Mr. Charlie Haughey when he was Minister for Finance in 1969, I believe it dates back to 1938. It has been in place for a extremely long time. Whether it falls into the category of a State aid is dubious. It is interesting and encouraging to note the amount of recent support coming from breeding industries in other countries, notably Britain, and a statement by a European breeders' federation that interference with the incentive would be to the detriment of

Europe. The Irish industry provides a service to the breeding industry across Europe. The European Commission must lift its sights and consider this matter strategically.

I regret the attempts to make political capital on this issue. For a long time, the Leader of the Labour Party in the other House, Deputy Rabbitte, seemed to make a living out of it. That is ersatz socialism; I do not regard him as representing any form of serious socialism. However, opposing the tax relief with regard to stallions can give the impression that he is a serious socialist and that his heart is in the right place. The Minister and the Government must consider extremely carefully what they do. This is an industry in which Ireland is a world leader. It has major economic and social benefits for the country and employs many people. An extremely good case can be made to leave well alone, if it is possible. I support the motion.

Mr. Bannon: I welcome the Minister of State to the House. When Senator Mansergh momentarily left the Chamber earlier, I thought he had gone to get his guitar to sing "Congratulations" to the Government.

Dr. Mansergh: It would be well deserved.

Mr. Bannon: The electorate is singing "bye bye Government" and "bye bye Bertie". That is the message I hear as I travel up and down the country.

It is difficult to understand whether this motion is designed as a late attempt for Ireland to host the Olympic Games in 2012, or a pre-Olympic bid to attract visitors and athletes attending the Olympic Games in London to Ireland. It may be the usual Government spin, calculated to confuse and cover up its continual ineptitude and financial mismanagement. I join with my colleagues, Senators Feighan and Phelan, in strongly criticising the €7 million reduction in funding under the sports capital programme for 2005. That is a reduction of 13% on last year, a fact conveniently submerged in this trumpet-blowing motion. As we know, empty vessels make the most noise and lame duck Governments produce the most spin.

The National Aquatic Centre fiasco allied with the electronic voting machine fiasco and the PPARS fiasco, to name but a few, make us fully aware of the Government's financial mismanagement track record. One could almost say there was something poetic and appealing about water dripping through a collapsing swimming pool roof, were it not for the fact that the pool in question has been paid for by the taxes of the hard-working citizens of this country.

The main point of this fiasco is that the simplest question has never been answered by any Minister of this Government, nor did the Minister answer it today. Why was Waterworld UK, a company with virtually no assets and no trading record, selected to run the Abbotstown Aquatic Centre? A total of €62 million has gone down the drain, or perhaps one should say it has dripped into the pool. The only answer possible from my perspective is that it is just one item in the appalling trail of financial disasters which will long be remembered as the hallmark of this Government.

The country's leading sports organisations are becoming increasingly concerned about the Government's delaying tactic in signing off on the national sports centre of excellence also proposed for Abbotstown. That was agreed in principle at Cabinet level last year. Is this yet another broken promise by the Government?

In order for Ireland's elite sports people to compete on a level playing field with their international rivals, they need a national training centre such as that envisaged for Abbotstown. Such a facility could also be a draw to Olympic teams to train in this country and attract some of those travelling to the Olympic Games in London, which would be of great benefit to the Irish economy. However, an empty promise will attract no one and will do nothing for our own top athletes.

No country of comparable wealth gives as little to sporting provisions. Our facilities are non-existent in an international sense and it is amazing to see how well our sports teams have performed on the world stage, despite Government neglect. This motion, which is as self-congratulatory as we have come to expect, lauds the Government's commitment to funding for sports and recreational facilities. The people in my constituency of Longford-Westmeath, who have waited many years for a new and safe swimming pool, should be informed of that. It was promised in 1997, the year that was the start of the world as we know it according to the wording of this motion. The Government would have us believe that year was the start of eight years of plenty for sporting organisations. The figures and facts prove otherwise.

The pool in Longford town is a relic of the 1960s, and if it stands as a monument to Government support for sports and leisure facilities it makes a certain mockery of the claims of this motion. Currently more than 12 sporting organisations throughout Longford-Westmeath are awaiting funding necessary for their facilities. Will the Minister make an announcement on the situation with regard to funding for Longford's swimming pool? It is omitted from the list of 15 projects detailed in the Minister's reply.

Mr. Leyden: Senator Bannon should contact Deputy Peter Kelly.

Mr. Bannon: Someone must be aware of the situation with regard to Longford's swimming pool and this lie must be nailed once and for all.

[Mr. Bannon.]

On an occasion when a former Minister with responsibility for sport, Deputy McDaid, was in Longford, he stated to a local elections candidate that it would be delivered within a year. Almost four years have passed since then and it still has not been delivered.

Mr. Leyden: Deputy Kelly will deliver it.

Mr. Bannon: I am conscious of the lack of a Minister in my area of Longford-Westmeath. If there were a Minister in the constituency, it would be delivered.

Mr. Moylan: Is that Senator Bannon's plan?

Mr. Bannon: Funding for our elite athletes is also derisory. We saw the row last year when many top athletes were not provided with funding. Senator Mansergh referred to past Governments. We have more money than at any time in history. We are in the era of the Celtic tiger yet money is not being spent in the appropriate manner on sporting facilities.

Mr. K. Phelan: Deputy Kelly will deliver it.

Mr. Bannon: It was evident last year that the Government had tightened the purse strings of the Irish Sports Council. The Government's record to date on the provision of recreational facilities and youth clubs for teenagers has been dismal. In particular, community-based groups in larger cities and suburbs claim they are frustrated at the shortage of resources to maintain and expand existing youth services. If these services were in place, we would have less crime.

Given the proven correlation between the provision of youth facilities and the reduction in vandalism and drug and alcohol crime among young people, this is inexcusable, especially now when, like every country in the world, we have a youth obesity problem. It was stated earlier that we have 300,000 overweight children countrywide. It is scandalous that only 4% of school time is allotted to physical education, as opposed to 9% in other OECD countries. The simple reason is that recreational facilities are not in place in 90% of our schools.

The key findings of the new study by the Economic and Social Research Institute, published last week in association with the Irish Sports Council, highlights that sport reaps enormous social benefits, comparable to its benefits as physical exercise, and it stressed that this must be recognised in the levels and patterns of investment in sport. We saw the wonderful spirit engendered in this country during the Special Olympics, yet once the euphoria had died down, so too did the Government's commitment to sports funding. I was most disappointed to hear the Minister refer to the 400,000 volunteers. They will be sick to hear that there is full and plenty and that the Government is congratulating itself on funding facilities for young people. Unless they are aligned to the Fianna Fáil or Progressive Democrats parties, most of the volunteers who are working in sport are disgusted and frustrated at the lack of funding.

Senators: Hear, hear.

Mr. Bannon: I am disappointed that capital funding for the Longford swimming pool and leisure project is not listed among the 15 centres gaining funding from the sports capital programme.

Last but by no means least, I congratulate the Longford masters on their fine achievement in winning the all-Ireland final.

Mr. K. Phelan: It is the only all-Ireland Longford will ever win.

Mr. Moylan: Senator Bannon should get real. If he checks with Deputy Kelly, he will inform him of the current position on the Longford swimming pool.

Mr. Bannon: Deputy Kelly is a long time swimming with the birds and Senator Moylan knows that.

Mr. Moylan: I welcome the Minister of State, Deputy Conor Lenihan. I welcome the commitment to sports funding outlined in the speech of the Minister for Arts, Sport and Tourism, Deputy O'Donoghue. I support the Government motion. There are many facets to what can and cannot be done in certain areas. Other speakers referred to problems arising and the issue of fitness levels among young people. A significant number of facilities are in place. It is not always necessary to spend a great deal of money to ensure those facilities are utilised and can make a major contribution to people's lives.

Many speakers have focused on young people. We must examine the fact that in so many towns, school gymnasia are closed at 4 p.m. or 5 p.m. in the evening and no access is provided to the local community. This must change. Local people must get access to those facilities. Previous speakers referred to boredom among young people. There is no reason for any young person to feel bored. A considerable number of voluntary organisations do an excellent job to ensure that those young people who want to participate in sports can do so. They must be given encouragement to get involved in sport by their parents and also their peers.

Many speakers referred to the GAA and the tremendous facility at Croke Park. The GAA has also provided facilities in every town and parish

in the country. These projects have been assisted by lottery funding. In many areas, local lotteries are run to make a contribution to GAA, soccer and rugby clubs. No matter to which political party they belong, the people involved in those organisations work as volunteers. We must recognise their outstanding contribution to encouraging young people to get involved in sport. There is an onus on everyone, regardless of whether he or she is involved in politics, to make a contribution to ensure young people have an opportunity to play whatever sports or games they like at local level.

A significant number of minority sports have been grant aided through lottery funding. That must be recognised and appreciated. The Government must look at some of the smaller sporting bodies that will encourage and give young people an opportunity to participate in other sports. Athletics is not a minority sport but it is one that does not require a great deal of finance for people to participate in it. It is a valuable sport in terms of allowing people to keep fit for life. Clay pigeon shooting has become popular in recent years with young people. Some of the people involved would not have had much of an interest in sports but young people are now competing at a high level internationally in the sport. We must support more of them. Scuba diving has also become a very popular sport. A hidden benefit to participation in this sport is that when drowning accidents, unfortunately, occur, these people make themselves available to carry out search and rescue operations. All these sporting endeavours require support.

Reference was made earlier to swimming pools. The Minister outlined the substantial funding allocated to swimming pools. We must support the right of every pupil in primary schools to learn how to swim. Perhaps it should be compulsory. Those facilities should be accessible to everyone, if not in every town they should be available in an adjoining town. Tennis and handball are two other minority sports. I met a group yesterday from Tullamore that was seeking funding for skateboarding facilities. One might ask why. I was in Galway during the summer holidays and noticed very good skateboarding facilities provided near the cathedral. I assume they were provided by either Galway County Council or Galway Corporation. The number of young people enjoying themselves at the facilities was unbelievable. We must consider giving such young people further opportunities in this area if that is what they want.

Other Ministers have made moneys available to provide playgrounds for children. In this regard, we talk about obesity and the opportunities young people have to go to playgrounds. In the past there were problems with playgrounds because of children hurting themselves and the associated insurance claims. However, the facilities in playgrounds are now of a very high standard such that very few accidents occur. Playgrounds are now surfaced with soft board-type flooring. We must make more such playgrounds available.

Other Senators have mentioned walking and the availability of footpaths. Local authorities have a lot to answer for in this regard. Housing developments are being built and major contributions are being paid by developers but county managers or local authority members are not ensuring that adequately lit link footpaths are put in place such that people in towns and villages can walk safely thereon at night rather than on the public roads. We must consider this issue very seriously.

There are many demands being made but we welcome the amount of money that has been allocated in recent years. I support the previous speakers on the Government side and thank Senator Kieran Phelan, our spokesperson on tourism and sport, for moving this motion. I thank the Minister for Arts, Sport and Tourism for what the Government has done regarding the provision of sports and recreational facilities.

Mr. U. Burke: I welcome the Minister of State, Deputy Conor Lenihan, to the House. I support the amendment to the motion, as tabled by Senator Feighan on behalf of the Fine Gael Party.

The motion states, "acknowledges sport was first given a seat at the Cabinet table back in 1997". When one reflects on this, one can say we have had a Minister with responsibility for sport at the Cabinet table for the first time, but we must question what we have to show for it. In this year alone, there has been a €7 million reduction in the grant to the Irish Sports Council, yet speakers from the other side of the House have said a wonderful job has been done.

The Minister used the favourite trick of many Ministers under pressure — he compared current expenditure to that of 1997. We know the expenditure in 1997 but the reality is that we are talking about a different era in which there is a different amount of money available to the Government. Were it not for the fact that there has been such a waste of funds, I would say the Minister for Arts, Sport and Tourism had adequate resources to make a positive impact in terms of providing facilities to young people. If one listens to gardaí at any community meeting, one will note they always say the first priority is to address the lack of facilities for young people. They have no place to go other than to the pub where they waste their time.

Where facilities exist, they are not available to the young people because of the high cost of insurance. Many committees throughout the country have, on a voluntary basis, provided facilities through collecting money in whatever way they could. They ask the Government for

[Mr. U. Burke.]

matching funds or any funds with which to run them but they are told to wait until the following year.

An examination of circumstances throughout the west of Ireland, where most of the grants have ceased to be allocated, is a clear indication that the Minister has used the funds of the national lottery as a slush fund. This charge has been made for years. There was a time when the funds went to Kildare predominantly but we now see that the Minister for Arts, Sport and Tourism has allocated more than his fair share to Kerry. While this continues to happen, there will be inequality in the provision of resources for the youth.

How many national schools throughout the country have proper physical education facilities? Few do despite the fact that the Department of Education and Science has paid lip service to this issue by claiming additional resources and facilities must be provided for primary schools so kids can be given a proper physical education. The reality is that the OECD has said quite clearly that Ireland is towards the bottom of a list of 27 or 28 OECD countries in a table outlining national provision in this area. Ireland has a figure of less than 4% while the national average in the other countries is nearly 10%. How can we justify the Government's position on sports funding given that we have had plenty of resources available to us?

This morning in the House I indicated quite clearly that the Minister has failed miserably to spend money. That is unusual for this Government. We charge it with having wasted money in a series of projects, including those associated with sports facilities, yet some €50 million was returned to the European Union because the Minister failed to nominate a worthy project on which it could be spent along the western seaboard, either on tourism or a sports-related project. This is a damning indictment of a Minister who sits at the Cabinet table and we need say no more about his commitment to sports and sports facilities.

Will the Minster of State relay to the Minister that he should, in conjunction with his colleague the Minister for Education and Science, formally and finally put together a scheme whereby every national school, rural and urban, disadvantaged and otherwise, would be treated equally with regard to the provision of facilities and resources such that a meaningful physical education system can be provided for young children at school? Such a scheme does not exist. Even where facilities do exist, insufficient time is allowed in the curriculum for teachers to participate adequately in helping young children to enjoy physical education, as should be the case.

Consider what is happening in the country today with regard to the GAA. Without the voluntary contribution of many such bodies outside the schools, what would happen the general population of young people? Despite the fact that some 300,000 of them suffer from obesity, this figure would rise to 1 million or more in a short time. Teachers nowadays are literally afraid to take children out because of the fear of an accident, the sense of responsibility and the insurance claims that may follow. The Minister of State with responsibility for sport and the Minister for Education and Science must tackle that problem. Where there are community or other sporting facilities to which people have access, the Government should think of a scheme to either support or exempt them from insurance cover and rates. This might encourage physical education programmes to be put in place within such structures at any time of the year, particularly in winter when young people can be taken off the streets and enjoy such facilities during the long dark evenings.

The tabling of this motion on sport would indicate Government Members were afraid to touch health, the environment and other matters. They did a bad day's work for their party and the Government.

Debate adjourned.

Visit of Croatian Delegation.

An Leas-Chathaoirleach: Before calling on Senator Leyden to address the House, I want to welcome Mr. Darko Lorencin, a member of the Regional Council for International Co-operation and European Integration of the Republic of Croatia. I hope he has a very successful visit to Ireland.

National Sporting Facilities: Motion (Resumed).

The following motion was moved by Senator Kieran Phelan:

"That Seanad Éireann:

— congratulates the Government for giving unprecedented political priority to sport and recreation combined with record investment;

— welcomes the substantial increase in the annual sports budget to €130 million in 2005 compared to just €17 million in 1997;

— acknowledges sport was first given a seat at the Cabinet table back in 1997 and notes by the end of 2005, Government spending on sport since 1997 will be over €740 million;

— notes too that the Sports Council budget in 2005 is €34.4 million, taking the total funding since its establishment in 1999 to almost €158 million;

— maintains that significantly increased funding under the Sports Capital Programme has ensured the provision of high quality sport facilities in many locations throughout Ireland;

— welcomes the fact that since 1998, over €385 million has been allocated to 4,899 sports capital projects;

— congratulates the Government for investing in the development of facilities which cater for national needs, for example the National Aquatic Centre at Abbotstown, the National Boxing Stadium; the National Rowing Centre at Inniscarra, County Cork, the National Hockey Stadium in UCD and the Tennis Ireland National Centre in Glasnevin;

— supports the policy of developing top class regional facilities serving all sports which are being developed through the provision of regional sports centres all over Ireland; and

— asks the Government to continue to place a special emphasis on sport and recreation as this will have significant benefits in fostering healthier lifestyles and stronger communities."

Debate resumed on amendment No. 1:

To delete all words after "Seanad Éireann" and substitute the following:

"— criticising the €7 million reduction in funding under the Sports Capital Programme for 2005, a reduction of 13% on last year;

— disappointed at the obvious regional disparity and inequity in the manner in which monies are allocated under the Sports Capital Programme;

— condemning the fact that even though the National Aquatic Centre cost more than €60 million, an independent report concluded that the roof did not comply with the normal design codes or building regulations;

— highlighting the numerous reports of other serious structural problems at the National Aquatic Centre;

— deploring the lack of basic sports facilities throughout the country, and at many primary and secondary schools;

— acknowledging that even though 300,000 of our children are overweight or obese the provision of physical education facilities at our schools has been totally neglected and constitutes a tiny fraction of the capital budget;

— noting the OECD findings which showed conclusively that Ireland ranks as one of the lowest in the OECD in terms of funding and support for physical education and that only 4% of school time is allocated to physical education compared to 9% in other OECD countries;

— condemning the scrapping by this Government of grants for purchasing school sports equipment;

— concerned that there is a far lower participation in sport by women than by men, even though research has clearly shown that weight-bearing physical exercise is a strong preventative measure in the incidence of certain medical conditions, like osteoporosis, which particularly affect women;

calls on the Government to:

— ensure that the Sports Capital Programme monies, which are raised by all of us through the National Lottery, are administered by the Irish Sports Council and not by the Government;

— undertake to provide all future national sports infrastructure on time, on budget and to the highest standard so that the costly and shambolic delivery of the National Aquatic Centre will not be repeated;

— give urgent priority to the development of physical education facilities, and the purchasing of sporting equipment, in primary and secondary schools;

— devote greater school time to physical education and sporting activities, and make PE compulsory at both Junior and Senior cycles in second level education;

— adopt the Brighton Principles as a matter of priority, which aim to ensure equity and equality in sport; and

— raise the profile of the health benefits of sport for women with special reference to osteoporosis and other ailments."

—(Senator Feighan).

Mr. Leyden: I welcome the Minister of State at the Department of Foreign Affairs, Deputy

[Mr. Leyden.]

Conor Lenihan, and commend him on his excellent work as regards many issues that have arisen and particularly the situation in Kashmir, Pakistan and India. I encourage him to keep up the good work. While we have a great developing country we must keep in mind the problems of the Third World. The Minister of State is aware of that. The funding should be expanded for that particular tragedy. The situation there appears to be worsening in so far as I can see, and is critical.

I wish to support the motion tabled by my party in this regard. It is time we congratulated the Minister for Arts, Sport and Tourism, Deputy O'Donoghue and his staff in the Department on their extra work in this particular regard. Bear in mind that nothing can be done without the national lottery from where the funding comes. As a Member of the Dáil at the time, I supported the former Minister of State with responsibility for sport, Deputy Creed, who brought the National Lottery Bill to the House. Reservations were expressed as to the possibility of people becoming hooked on gambling, but in fact it has worked out relatively well. The problems that some people expected at the time have not materialised. It was a different era. It is nearly 20 years since the Bill was enacted and we supported that particular motion at the time. The country has benefited greatly from the funding realised by the national lottery. Senator Feighan will be delighted to know that CLÁR funding is coming to Roscommon for the projects announced under the national lottery. Senator Ulick Burke's area is not being forgotten. Creggs, which is in his area, is getting additional funding as well. I will not announce that formally tonight, except to reiterate that the Senators have not been forgotten.

Mr. U. Burke: There will be little left to announce by the time the Senator is finished.

Mr. Leyden: Quite a number of the projects in which Senator Feighan is interested and which he supports are also benefiting. Areas such as Kilglass are getting an additional €20,000 on top of the €100,000 already approved. Is that not very welcome? I thank the Minister for Community, Rural and Gaeltacht Affairs, Deputy Ó Cuív, who brought about this initiative. Not only is the lottery grant being allocated to areas such as Kilglass, but an additional percentage is being allocated under the CLÁR programme. That was and is a Fianna Fáil initiative. When Senator Feighan gets the *Roscommon Herald* ——

Mr. U. Burke: We want more than that.

Mr. Leyden: ——he will be delighted to see the effect.

Mr. Feighan: I am sure it will be on Shannonside Radio in the morning.

Mr. Leyden: I am just trying to find references to Galway here. Creggs rugby club is to get another €14,000, so that will help. Many Senators have outlined the benefits that have derived to projects in their particular areas. Nothing comes to mind more than the massive swimming pool and recreation centre in Roscommon town. The former Minister for Tourism, Sport and Recreation, Deputy McDaid, was an extremely good friend of Roscommon when that was approved. The Department of Arts, Sport and Tourism should now consider the whole question as to the maintenance of approved projects. The capital costs have been provided, but the ongoing costs of developing projects should be considered. For example, in Ballaghadereen, where more than €300,000 has been collected for the erection of a swimming pool, it will be very difficult to build it without prior commitment as to the maintenance costs. I support that project in Ballaghadereen, which is a growing town. I am sure Senator Feighan will join with me in supporting it as well. An application has been made to the Department by Roscommon County Council for funding for that particular project. I hope that it will be provided.

From a national viewpoint the €103.49 million for Croke Park is a worthy investment. That amount of money has been provided by the Government for Croke Park since 1998. It is a truly magnificent venue and the GAA deserves to be congratulated on its investment in that particular project. It is a state-of-the-art location, providing all the facilities. The GAA showed initiative in taking on the project. Next Monday the detailed design for the Lansdowne Road stadium will be announced, a venue that everyone will be watching tonight. I am sure the Minister of State will be anxious to get away to watch the match at some stage. Again, the Minister is very involved in that particular project. The aquatic centre in Abbotstown, as well, is a great success, irrespective of the teething problems that arise in any project. Anyone who has built a house will have found that problems always arise in this particular regard. The centre was opened in 2003 for the Special Olympics and in time will be a great success.

The Special Olympics was a great indicator of the support for voluntary work in this country. Everyone involved deserves to be congratulated. It was one of the most magnificent events ever witnessed in Ireland. For those of us who were present at the opening and closing ceremonies, it was the great event of 2003. It is to be hoped that in the future, given the investment in sport, we will host the full Olympic Games in Ireland. I am delighted at London's success in getting the Olympics. it will

7 o'clock

mean a massive spin-off here. Tourism organisations should now be gearing up towards the benefits that will accrue to Ireland because of our proximity. I am sure the national airline will be active in providing fast direct flights.

An Leas-Chathaoirleach: I must ask the Senator to conclude.

Mr. Leyden: I am grateful to the Leas-Chathaoirleach. I was going finish with some good news for him, too, which I am trying to locate. However, he will have to wait to read the local newspapers to see the amount of money that is being allocated. It is embargoed until tomorrow, so I cannot say too much about it. Again, I thank the Minister of State and wish him continued success in his portfolio.

Mr. K. Phelan: I want to say a special word of thanks to the Minister for coming to the House. I compliment the Government on the tremendous work it is doing. I am not going to delay. There is a very important match on at 7.30 p.m. and I am sure people are anxious to get away to it. I also thank the Minister of State.

Amendment put.

The Seanad divided: Tá, 17; Níl, 24.

Tá

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Coonan, Noel.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.
Henry, Mary.
McCarthy, Michael.
McHugh, Joe.
Norris, David.
Phelan, John.
Ross, Shane.
Terry, Sheila.

Níl

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
Ó Murchú, Labhrás.
O'Rourke, Mary.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Kate.
White, Mary M.
Wilson, Diarmuid.

Tellers: Tá, Senators Feighan and B. Hayes; Níl, Senators Minihan and Moylan.

Amendment declared lost.

Motion put and declared carried.

An Cathaoirleach: When is it proposed to sit again?

Ms O'Rourke: Tomorrow at 10.30 a.m.

Adjournment Matters.

Tallaght Childhood Development Initiative.

Mr. B. Hayes: I thank the Cathaoirleach for selecting this important matter in my area in the Dublin South-West constituency and I welcome the Minister of State at the Department of Justice, Equality and Law Reform, Deputy Brian Lenihan, who has responsibility for quite a number of these issues.

The childhood development initiative is a long-term project that has been put in place by in excess of 23 different organisations, groups and individuals in the Tallaght west area over the past two years. The Taoiseach was in Tallaght west on Monday to formally launch the next phase of the strategy document they published and he saw for himself the significant support which exists for this initiative in the Tallaght west area.

Briefly, this is a ten-year strategy which has been put in place by a large number of people to improve the health, safety and learning experience for children in the Tallaght west area, which is a significant area of Dublin, and west Dublin in particular. It is an area which has almost 8,000 homes most of which are provided by the local authority, a large number of one-parent families and substantial problems of educational disadvantage. It is an area that has worked closely with

[Mr. B. Hayes.]

this initiative to find the best programme to put in place over a ten-year period to help children from disadvantaged backgrounds.

This initiative is based, not on a whim but on eight separate published reports to date setting out concrete data concerning the different age cohorts in the Tallaght west area. It is also worth noting that their partner in this area is Atlantic Philanthropies, an organisation which has given significant charitable funding to various organisations in this country over recent years. It is a significant partner and the Government is conscious of the fact that this organisation has come behind the childhood development initiative.

The key objective is that children in the area can achieve their potential. It is the same objective that every child in any part of the country would have but because of disadvantage in this community, we must embrace the initiative taken and use this as a pilot project for communities in other areas. It involves the question of child care, the need for safe playing areas, the importance of school attendance and its enforcement and the importance of home support and how parents, and lone parents in particular, can be given support to ensure that their children stay in the formal education sector. Crucially, it also makes provision for after school homework clubs and after school supervision so that parents can grasp the economic opportunities offered by working in the new economy and, therefore, bettering themselves and their families. It also makes provision, as is critical in this area, for surveying the money that will be spent to ensure that the outcomes clearly identified in the strategy document are achieved for children. It is a holistic approach to the first 12 years of a young child's life.

The initial investment for the first three years of the programme is in the order of €15.6 million. The Taoiseach was struck by the professionalism of this initiative and by the considerable community support that exists for it. I ask the Government to continue to give this initiative its support and to meet all of the financial commitments that are being sought in this initiative.

It is fair to say that in terms of child care, there is not one particular Department dealing with this, even though I suspect it is has its origin in the Department of Justice, Equality and Law Reform. A number of other Departments also have a relationship with this initiative — the Departments of Education and Science, Health and Children and Social and Family Affairs. We are looking for a co-ordinated positive Government response to the excellent initiative that has come from the ground up in this community. I ask the Minister of State to respond positively to that this evening.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. B. Lenihan): I am pleased Senator Brian Hayes has raised this matter on the Adjournment and I am pleased to reply to him about it. I always have had a positive attitude towards this project and was delighted to be able to intervene and secure some funding to ensure that this valuable research continued after a previous parliamentary discussion about the subject which took place in the other House.

I am also glad that Senator Hayes has given me an opportunity to outline to the House the position of the Government on the launch of this ten-year child care strategy for Tallaght west. The objective of the strategy, as the Senator outlined, is to improve children's health, safety, learning and achieving and to increase their sense of community belonging. I welcome its goals and its aims.

Given the research, planning and consultation, including consultation with children that has gone into this project, it is clear that the strategy is based on a realistic picture of life for children in Tallaght west. It emphasises the need for joined-up thinking across Departments and agencies, together with co-operation from the local community and from the local authority, South Dublin County Council. The Taoiseach, in launching this ten-year strategy entitled "A Place for Children" on Monday last, indicated that it is his view that this strategy points in the right directions.

Despite the real progress that has been made in Ireland in recent years with increased investment, spending and planning, many children continue to experience poverty and disadvantage in their daily lives. The problems which lie behind this poverty and disadvantage are often complex and do not lend themselves to simple solutions. To address these problems, social policy must be based on a strategic approach and must target those in need. In the case of children and young persons, the Government has put a number of initiatives in place with the ultimate aim of improving children's lives. I will outline some of these.

As a Government designated geographic area of disadvantage, namely, a RAPID area, it has been estimated that approximately €27 million was spent in the year 2004-05 by statutory bodies on children's services in the part of it covered by the strategy. I know the project recognises this. This is a substantial sum in the area concerned.

The National Children's Office is in place to co-ordinate the implementation of the children's strategy, including consultation with children and hearing their voices and the Ombudsman for Children provides an independent voice on their behalf.

Ireland is one of the first countries in the world to have a national policy on play. The Government wants to build more playgrounds and parks with spaces to play and to make playgrounds and play areas safer for children. Part of this can be

done through direct provision from the Exchequer and part by good forward planning on the part of local authorities. In Tallaght west, grants of €72,000 each have been provided to Jobstown, Fettercairn and Killinarden for playgrounds under the RAPID scheme.

Having launched the national play policy, Ready, Steady, Play, in the spring of 2004 and having secured funding for it, I now know that a large number of objections have been made to the location of playgrounds throughout the country. I take heart from this because it is a sign that the policy is being implemented and that a proper play infrastructure is being put in place. When the policy was being drawn up, I took a keen interest in the provision for play in the different local authority areas. There was a wide variation in provision with the urban authorities having a better record, by and large. One rural authority, Roscommon, had an outstanding record but some had made no provision at all for a play infrastructure. The policy has resulted in local authorities addressing this issue, both in their planning and in negotiations with those developing space in their communities.

The provision of early childhood care and education services is identified as central to positive outcomes for children. The Government is reviewing options for future child care policy taking account of the work of the high level working group on early childhood care and education and other reports on the issue. The National Children's Office, under my direction, was asked to prepare the high level working group report that I presented it to Government last week. Funding of over €10.6 million under the equal opportunities child care programme has been allocated to the Tallaght-Jobstown area since the beginning of the programme. School age child care is also being addressed under the EOCP, under an initiative announced by my colleague, the Minister for Justice, Equality and Law Reform, Deputy McDowell, earlier this summer. The Health Service Executive is also involved in developing and supporting a number of child care and family support services in the Tallaght area.

Education is the key to young people reaching their full potential. It can provide them with the confidence to participate actively in society. Tackling educational disadvantage continues to be a key priority for the Government. This is reflected in the new action plan on educational disadvantage, DEIS, delivering equality of opportunity in schools, launched by my colleague, the Minister for Education and Science last May. The new action plan aims to ensure that the educational needs of children and young people from disadvantaged communities are prioritised and effectively addressed in a more targeted, coherent and integrated way.

Another priority for the Government is reform of the youth justice system. I have taken a personal interest in this and the Minister for Justice, Equality and Law Reform, Deputy McDowell, has asked me to examine the issues featured in recent debate on youth justice and to bring proposals to the Government. Young people are subject to many pressures. Drugs, alcohol and social disadvantage can lead to a cycle of poverty, antisocial behaviour and getting into trouble.

The Government is working to identify those at risk as early as possible and build their capacity to become responsible citizens. The Children Act 2001 provides us with unique and specific opportunities. Major principles enshrined in the Act include the need for early intervention and the provision of community alternatives to detention and the principle that custody must remain a measure of last resort. The review of the structures of our youth justice system is being finalised and the results will be brought to Government shortly.

These developments at national level are mirrored in the approach outlined in the childhood development initiative's ten-year strategy. The strategy will support steps already being taken to improve outcomes for children in this area and play an active role in seeking new solutions to emerging issues. As the Taoiseach indicated at the launch, the strategy and its proposals will be considered by relevant officials of Departments, drawing on the involvement of many local agencies in its preparation.

Nursing Qualifications.

Dr. Henry: I thank the Minister of State for again coming before the House to discuss the issue of direct entry into midwifery courses at third level, a matter we discussed when he was here last week. A few hours before our discussion, a meeting had taken place between interested parties and officials from the Department of Health and Children. They discussed the negotiations regarding the involvement of the third level sector which the Minister said would take place "to reduce the costs being sought by the higher education institutions for the transfer of midwifery and children's nursing education to the third level sector". The Minister of State also said last week that the Tánaiste was committed to bringing forward the recommendations of the commission on this issue. He may remember that the commission recommended entry into universities.

The Department of Health and Children is, of course, consulting with the Department of Education and Science, the Higher Education Authority and the Health Service Executive. At the meeting that took place last week, which was attended by some members of the Conference of Heads of Irish Universities, there were developments that were alarming from the point of view of Trinity College school of nursing. Those

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present were told that the Dundalk Institute of Technology was to institute a course on direct entry into midwifery, with Our Lady of Lourdes Hospital in Drogheda being the relevant health facility, and that this was to begin next September.

When Trinity College was asked by the Department of Health and Children in the year 2000 to set up a pilot project for direct entry into midwifery, the Drogheda hospital and the Rotunda were to be the health facilities used. A relationship has been built up between Drogheda and Trinity College and some important research is being carried out by them. A randomised control trial was established to see if the outcome of midwifery-led services were better, worse or equal to consultant-led care. This is of great interest because it is the only research taking place in this area on a world basis. It is very important this initiative should carry on.

There has also been an overarching development between Trinity College's department of health science and the HSE north eastern area, which, as the Minister of State knows, has had serious problems in the recent past. Judge Harding Clark, who is carrying out an investigation into obstetric practice in the area following the unfortunate cases dealt with by Doctor Neary in the Drogheda hospital, has said that association with Trinity College has been most helpful in encouraging audit and the development of evidence based procedures. There is general agreement in this regard.

The Trinity pilot programme for direct entry is to be the template for courses that are set up throughout the country. The institutions that were recommended in the report were universities. While all the third level institutions have their place, I would be sorry to think that the recommendations of the commission would be disallowed because of a cheaper course being put forward by the Dundalk institute. The Minister of State has said that cost benefits are important. Of course they are but so is the quality of the courses being brought forward.

We are trying desperately to get people to enter midwifery courses. It is disappointing, in a profession which brings such joy to so many people, that we have such trouble but this is an international problem. We have a commission which has made its best effort to recommend what should be done to encourage people into direct entry but, unfortunately, we now have one of the most serious recommendations of the commission apparently being disregarded by the Tánaiste and Minister for Health and Children in that the recommended institutions will not be those in which the courses will be brought forward.

Mr. B. Lenihan: I thank Senator Henry for raising this matter on the Adjournment. I had the honour of opening the schools of nursing at Dundalk Institute of Technology and Trinity College on behalf of the Tánaiste and Minister for Health and Children. They are the only two schools of nursing I have opened. I do not want to trespass too far into the issue raised by the Senator.

I am responding to Senator Henry on behalf of the Tánaiste and Minister for Health and Children. The Senator has asked for an update on the implementation of the recommendations of the expert group on midwifery and children's nursing education in relation to midwifery. The expert group, which presented its report to the Tánaiste in late December 2004, was established in September of that year to develop a comprehensive strategy for the future of midwifery and children's nursing. Its establishment followed the introduction in 2002 of a four-year undergraduate degree programme in general psychiatric and intellectual disability nursing. The report's major recommendation was for the introduction of a four-year undergraduate midwifery programme offering 140 places per annum. The report recommended that postgraduate courses for midwifery be transferred to the higher education institutions. When the Tánaiste welcomed the expert group's report, she made it clear that while it is intended that both programmes will commence in autumn 2006, she is concerned about the scale of the additional costs of the implementation of the two programmes, having regard to the significant resources in place to support nursing education.

The Government has provided for capital investment of over €240 million for the provision of purpose-built infrastructure for undergraduate nursing students, including state-of-the-art clinical skills and human science laboratories. Having seen the facilities at Trinity College, in the old gas company property, and at Dundalk Institute of Technology, I assure the House that they would repay visitation. The outstanding facilities in Dundalk include a simulated accident and emergency section. I appreciate that such facilities do not pertain to midwifery. The Department of Health and Children is in negotiations with the higher education institutions representing the universities and the institutes of technology about reducing the cost of the transfer of midwifery and children's nursing education to the third level sector. The Department has consulted the Department of Education and Science, the Higher Education Authority and the Health Service Executive about the issue.

I would like to give the House details of the developments which have taken place since it was given an update on the implementation of the recommendations in the expert group's report on 5 October last. Negotiations with the higher education institutes have progressed and are well advanced. The Tánaiste is not in a position to give

the House further details, however, as the negotiations are ongoing. As she has said previously, she hopes that the negotiations will offer a way forward for the introduction of the direct entry midwifery and integrated children's general nursing degree programmes in the autumn of next year.

Dr. Henry: This is all about costs.

Mr. B. Lenihan: Yes.

Dr. Henry: It is outrageous, when one considers the Department of Health and Children's extraordinary waste of money on many different projects, that the training of midwives to help Irish women and women of other nationalities to deliver Irish babies may be hindered by cost issues. It is a sad day when cost considerations are of more importance in this country, which has prided itself on its maternity care, than the quality of the programmes to be introduced.

Pupil-Teacher Ratio.

Mr. Morrissey: I thank my former constituency colleague, the Minister of State, Deputy Brian Lenihan, for coming to the House this evening. I am grateful that this matter is being discussed on the Adjournment. As my query is quite simple, I will be brief. The Government is to be commended on its efforts to continue to reduce the pupil-teacher ratio in Irish schools. I understand that maximum class size guidelines will be introduced over the next five years. I hope they will help to reduce the average class size for children under the age of nine below the international best practice guideline of 20:1. Over 4,500 additional teachers, including more than 3,000 resource teachers, have been employed in our primary schools since 1997, which is to be welcomed. I acknowledge that the average class size at primary level has been reduced from 27 in 1997 to 24 in 2004. That the pupil-teacher ratio at second level declined from 16:1 in 1997 to 13.5:1 in 2004 must also be applauded.

I am concerned about pupil-teacher ratios in areas of rapid expansion, development and population growth. The last census reported that the population of Dublin city and its suburbs has exceeded 1 million for the first time. The populations of many major suburban towns, including Swords, are included in that figure. Housing, schools, general services and facilities in north Dublin are becoming stretched and strained, meaning that the challenge of providing school infrastructure and addressing class sizes is more difficult. I thank the Minister of State for coming to the House to outline what the Department sees as the most appropriate and expeditious way of addressing these concerns.

Mr. B. Lenihan: I will respond to the Senator on behalf of the Minister for Education and Science. As Senator Morrissey pointed out, I was on the same ballot paper as him on three occasions. It appears that he will not join me on the ballot paper at the next general election, if both of us are preserved until then.

Mr. Morrissey: I decided that it was a lost cause.

Mr. B. Lenihan: The Senator and I represent various parts of Fingal county. I understand that he has opted to contest the next general election in a different part of the county. It is important that he is staying in the county, which has seen spectacular economic and housing growth in recent years. That growth has been concentrated in several locations, including Swords. Senator Morrissey is no stranger to managing such growth and coping with and addressing the problems it raises. The Government has increased the number of teachers in our schools since 1997. At primary level more then 4,500 additional teachers, including almost 2,500 resource teachers, have been employed. At post-primary level approximately 1,900 additional teaching posts have been allocated since 1997. The additional teaching posts have been used to reduce class sizes, to tackle educational disadvantage and to provide additional resources for children with special needs.

The pupil-teacher ratio at primary level, which includes all the teachers in the school including resource and learning support teachers, has fallen from 22.2:1 in the 1996-97 school year to a projected level of 17.1:1 in 2004-05. The ratio at post-primary level decreased from 16:1 in the 1996-97 school year to 13.6:1 in the 2003-04 school year. The increase in the number of teachers since 1997 has been so substantial that it has contributed in part to the current school accommodation difficulties. The decision to reduce class sizes was taken without sufficient forward planning of the level of physical infrastructure required to accommodate it. I am sure Senator Morrissey appreciates better than most people the problems which exist in places like Swords when attempts are made to match accommodation facilities with the growing levels of need. The entire education system requires additional accommodation facilities as a consequence of the significant increase in the number of staff deployed in schools. Not only has there been an increase in the number of staff deployed in the typical classrooms with which we are familiar, but there has also been a substantial increase in the number of teachers recruited as special needs teachers. Specific classroom arrangements, including smaller rooms, are needed for the latter group of teachers.

The average class size at primary level decreased from 26.6 in 1997 to 23.9 in 2004. Sig-

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nificantly smaller classes have been introduced in disadvantaged schools involved in the Giving Children an Even Break and Breaking the Cycle programmes. Some 47,700 pupils in 243 participating schools are availing of reduced class sizes of either 15 or 20 pupils. Senator Morrissey is familiar with the new action plan for educational inclusion, Delivering Equality of Opportunity in Schools, which will result in a reduction in class sizes to 24:1 at senior level and 20:1 at junior level in 150 primary schools serving communities with the highest concentrations of disadvantage.

Other improvements in staffing for primary schools in recent years include a reduction in the appointment and retention figure for the first mainstream class teacher to 12 pupils, the appointment of administrative principals to ordinary schools with nine or more teachers including ex-quota posts, a reduction in the enrolment figures required for the appointment of administrative principals to ordinary schools and gaelscoileanna, the allocation of teaching posts to schools in which 14 or more pupils with significant English language deficits are identified and the allocation of additional learning support teachers. The staff allocation system at primary level is based on ensuring an overall maximum class of 29 in each school. If some classes in a school have class sizes of more than 29, it is generally because a decision has been taken at local level to use the teaching resources to have smaller numbers in other classes in the school. As a result of the decrease in the overall maximum class size by reference to the staffing schedule from 35 to 29, the number of children in classes of 30 or more has decreased substantially.

I salute Senator Morrissey for raising this issue because there is no doubt that the substantial reduction in class sizes at national level has led to a higher concentration of large class sizes in areas of rapid growth, including parts of Fingal county. With regard to providing for children with special educational needs, there are now over 5,000 teachers in our primary schools working directly with children with special needs, including those requiring learning support. This compares to under 1,500 in 1998. Indeed, one out of every five primary school teachers is now working specifically with children with special needs.

Teacher allocations to second level schools have also improved significantly. In 1999 an ex-quota allocation was made to all second level schools in the free education scheme in respect of remedial education, and the home-school community liaison scheme was extended to all schools designated disadvantaged. In 2000 a decision was made to reduce the general pupil-teacher ratio for appointment purposes from 19:1 to 18:1 and additional posts were also provided for the leaving certificate applied, the junior certificate programmes and the guidance enhancement initiative, resulting in approximately 1,000 additional posts in the sector.

The number of teaching posts allocated to cater for pupils with special educational needs has increased from 559 whole-time equivalents in 2001 to 1,599 whole-time equivalents in the current school year. The number of teaching posts allocated to schools to cater for non-national pupils with significant English language deficits has also increased from 113 whole-time equivalents in 2001 to 242 in the current school year. In addition, the Department has provided for an additional allocation of 100 posts to guidance from September 2005.

In line with the commitment in the programme for Government, class sizes will be reduced still further. The deployment of additional posts will be decided within the context of the overall policy that priority will be given to pupils with special needs, those from disadvantaged areas and junior classes.

The Seanad adjourned at 7.45 p.m. until 10.30 a.m. on Thursday, 13 October 2005.