



# SEANAD ÉIREANN

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*Dé Máirt, 27 Bealtaine 2008.*

*Tuesday, 27 May 2008.*

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Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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*Paidir.*

*Prayer.*

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## **Business of Seanad.**

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

The need for the Minister for Finance to outline the works that are intended to be undertaken on Killarney House to restore the house to a satisfactory state that would allow it to be re-opened, in view of its appalling state of repair.

I regard the matter raised as suitable for discussion on the Adjournment and it will be taken at the conclusion of business.

## **Order of Business.**

**Senator Donie Cassidy:** The Order of Business is No. 1, Civil Law (Miscellaneous Provisions) Bill 2006 — Committee Stage. It is proposed that it be taken at the conclusion of the Order of Business.

**Senator Frances Fitzgerald:** On the Civil Partnership Bill 2004, it appears that the Minister for the Environment, Heritage and Local Government, Deputy John Gormley, said the Bill would be delayed when he launched the “Pride 08” festival in Dublin last night. It seems the Department of Justice, Equality and Law Reform is unable to confirm if the draft legislation will be available before the summer recess. There was a very good debate in the House on this issue and the then Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan promised that the heads of the Bill would be published before 31 March. What is happening with this legislation, why has it reached an impasse and will it be brought before the Dáil and Seanad before the summer recess as promised? This is important legislation as there is significant inequality here. It is important if a Minister gives a promise that the public see that he keeps it. The commitment was clear and I remember the Leader saying this too. I ask the Leader to clarify what is happening with this legislation, which has been promised for a long time. I hope it will not be delayed again.

I raise the issues of increasing costs for the consumer, consumer protection and what the Government is doing to protect consumers. Last week the Minister of State at the Department of Enterprise, Trade and Employment, Deputy John McGuinness, agreed on the Adjournment that consumers are being ripped off. He said that prices here for a wide range of goods have been higher than those in the United Kingdom and that, even after adjustments to take account

[Senator Frances Fitzgerald.]

of different rates of VAT, a basket of internationally branded goods cost 22% more here than in the eurozone. He then went on to say that Ireland is not a low-cost economy but there are justifiable grounds for scepticism about the claim that higher prices here are attributable solely to higher costs. The Minister of State agrees that consumers are being ripped off and that there is no logic to this. I would like to know the outcome of the meeting between the Minister for Enterprise, Trade and Employment and the organisation concerned with this matter, the National Consumer Agency, following the request from the Taoiseach last week. What actions do the Government propose to examine the price rip-off affecting consumers here? The “Today with Pat Kenny” radio programme this morning carried out a survey of prices comparing a typical basket of food. The price of the average shopping basket has increased by approximately 20% since the end of last year. People are feeling this in their pockets. I wish to hear about the Government’s role and its view of its role. It is one thing to tell consumers to shop around, which has been the response so far. That is fair enough but the responsibility does not rest only with consumers. What actions can be taken by Government? Has it talked to the retailers? What is the National Consumer Agency doing to tackle this issue?

Regarding the comments of the Taoiseach on the referendum campaign, I remind him of the work Fine Gael did in campaigning for a “Yes” vote since February.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Frances Fitzgerald:** I remind him of the public meetings, the distribution of literature and the national campaign. The absence of campaigning by other parties in several places is striking. We have to work together on this issue to highlight the benefits of Europe and the Lisbon treaty for Ireland. I do not think the attitude he took will be effective in that regard.

**Senator Joe O’Toole:** It would be helpful if the Leader clarified the status of the Civil Partnership Bill 2004, which my colleague, Senator Norris, has pushed from the beginning. It has been suggested to us in quiet conversations that all is not well in the serried ranks of Fianna Fáil on this issue and that the Government is stepping back from the policy end because its Members are not as comfortable as heretofore. We certainly noticed that on the vote we previously took on the Bill. Perhaps the Leader can reassure us that the Government has not changed its position on that issue.

An interesting but little noticed report issued last week on an incident which took place last year involving a helicopter in Athlone. According to this report, somebody landed a helicopter on a carpark in the Golden Island shopping centre in Athlone in order to get a key cut. This was clearly a dangerous manoeuvre and the pilot ignored orders not to land given by the carpark supervisor, who was injured while trying to get out of the helicopter’s way. I raise the matter because the helicopter in question is registered in the US and consequently does not come under this country’s safety legislation, which imposes stringent maintenance rules on aircraft. Given the growing numbers of helicopters in this country, I want reassurance that such aircraft, all of which are potentially dangerous, can be regulated and inspected in Ireland and are required to comply with our regulations. This is a gap in the market which needs to be investigated.

Last year and the year before that, we held long debates on the groceries order. It is ironic that, despite all the wonders its abolition was predicted to bring, nothing has changed and, as Senator Fitzgerald noted, even in respect of goods sold in the same supermarket chain on both sides of the Border, prices are unacceptably higher in the South than in the North. I would welcome a debate on the issue and an explanation as to why these differences exist.

**Senator Alex White:** I, too, would like clarification from the Leader on the Government's intentions in regard to the civil union legislation which was promised following several debates in this House and elsewhere. The frustration that the leader of the Green Party and Minister for the Environment, Heritage and Local Government appears to display gives us cause for concern in that regard, and I would welcome the Leader's clarification of the matter.

I ask the Leader to communicate my views, and those of my colleagues, to the Minister for Foreign affairs on foot of the shocking report issued this morning by Save the Children in respect of what appears to be a significant incidence of abuse of young children by small numbers of peacekeepers and aid workers in various parts of the world. Early this morning, I listened to an affecting report on the BBC World Service about the matters which Save the Children exposed. The report described the case of a 12 year old child who had been gang raped by UN peacekeepers in the Ivory Coast. This was raised by the child's parents and other community leaders but nothing was done. Clearly, Save the Children is correct in calling for an urgent inquiry and, if necessary, the establishment of an international watchdog on this serious issue. I ask the Leader to communicate my views to the Minister and to consider arranging a short debate on the matter in the House.

I wish to refer to an issue that is raised *ad nauseam* in the House. I will not request a debate on it because we will have the opportunity to discuss it tomorrow when it will be the subject of a Private Members' motion tabled by the Labour Party. I refer to the future of the Health Service Executive. I invite all my colleagues on the opposite side of the House who have expressed their frustration regarding the operations of the HSE on many occasions to support the motion the Labour Party will be tabling.

I invite the Leader and the Deputy Leader not to put forward the usual amendment that is tabled in respect of such a motion and which essentially involves deleting everything after the term "Seanad Éireann" and replacing it with something anodyne. I call on them to genuinely support what we are proposing, namely, a serious set of reforms regarding the HSE. The motion is not a personal attack on the Minister, the Government or anyone else, nor is it a rereading of old arguments. It is comprised of a positive set of proposals regarding how the HSE can be reformed. This issue has been raised on numerous occasions by Senators on the opposite side of the House and I invite them to support the Labour Party motion.

**Senator Dan Boyle:** I take this opportunity to respond to some of the requests made by the leaders of the other groups in respect of the current status of the civil partnership Bill. The position is largely unchanged. The Bill is being prepared and further discussion is taking place in respect of certain elements of it. The delay has occurred partly because of those ongoing discussions and also because there is a new Minister for Justice, Equality and Law Reform who is in the process of reading himself into his brief. We had hoped there would be a full consultation period that would run from the end of March or the beginning of April until the Bill's eventual publication. It is likely that the heads of the Bill will be forthcoming by the end of the summer session but this will shorten the consultation period. It is still hoped that the Bill will be published in September or October. There is still a firm commitment to the legislation becoming law with the agreement of both Houses.

**Senator Ivana Bacik:** There was a definite proposal to publish it by September.

**Senator Frances Fitzgerald:** It was March.

**Senator Paul Coghlan:** It has been moved back slightly.

**Senator Dan Boyle:** It would be useful to engage in a debate on pricing and the difference between prices in Northern Ireland and the Republic. Some of us attended the Mitchell conference in Belfast last week and I encountered one notable discrepancy in prices, namely, that charged in respect of *The Irish Times*. North of the Border, that newspaper costs £1 sterling. Under current exchange rates, this amounts to €1.20, which is a full 65 cent less than people in the Republic are obliged to pay for *The Irish Times*. These discrepancies in pricing appear to work both ways. It would be a good use of the House's time to debate this matter.

**An Cathaoirleach:** That completes the contributions of the leaders of the various groups. I wish to advise other Members that they should put questions to the Leader. If they are not prepared to obey this direction, I will be obliged to cut across their contributions. A large number of Senators wish to make contributions and I want to afford them the opportunity to do so. In that context, I ask Members to be brief, to put questions to the Leader and to afford him the opportunity to reply to them.

**Senator Paul Coghlan:** Members on this side of the House warned last week that we are, perhaps, heading back into rip-off Ireland territory. I support everything Senators Fitzgerald and O'Toole said with regard to what is happening *vis-à-vis* prices across a range of foodstuffs and, unfortunately, other goods. We would like to know what happened at the meeting that took place between the Tánaiste and Minister for Enterprise, Trade and Employment, Deputy Mary Coughlan, and the National Consumer Agency. In view of the importance of this matter, I wish to propose an amendment to the Order of Business in order that we might debate this matter today and hear the Tánaiste's views on it.

I regularly travel to the capital by train. I did so again this morning on perhaps what was the only train to leave Mallow today. I was obliged to travel to Mallow by car to ensure I caught the train and I facilitated several Members of the Lower House by giving them a lift to the station.

**An Cathaoirleach:** The Senator should put a question to the Leader.

**Senator Paul Coghlan:** Of course. I will take the Cathaoirleach's advice in that regard. I am concerned with regard to the management of unions in this country. How is it possible to have this kind of wildcat unofficial industrial action in the first instance, which was allegedly caused by one person, and then have matters inflamed further by someone placing a document in front of workers when they had committed to return to work? People on both sides are in the wrong. I would like to hear the Leader's comments on the subject and perhaps we need a debate on it. This should not be happening. As we know, the Minister had to speak on it yesterday. It is disgraceful.

**Senator Ann Ormonde:** We will have an opportunity to discuss the Lisbon treaty next week. Perhaps we could discuss its positive aspects, including the enhanced co-operation of national parliaments. The public will understand very clearly the key role of national parliaments in the decision making process. I ask the Leader to facilitate that debate next week in order to clearly reinforce those points.

I would also like a debate on planning with the Minister for the Environment, Heritage and Local Government put on the agenda at some future date. Perhaps planning legislation should be revisited, particularly the relationship between An Bord Pleanála and planners. The whole process must be reviewed because the public is uneasy about how rural life is developing, the role of An Bord Pleanála with regard to one-off housing and the role of the planners in the process.

I would like the Leader to put the matter on the agenda at some later stage in order that we can have a full discussion.

**Senator David Norris:** I join Senator Ormonde in asking again for a debate on the Lisbon treaty, although not quite in the light she wants it. I would like a more balanced debate and I look forward to an opportunity to provide some of that balance. We have not had a balanced debate on the matter in the House. I will say more about that later.

I am very grateful to my colleagues, including Senators Frances Fitzgerald, O'Toole, Boyle and others, for commenting on the absence of legislation about civil partnership. This is extraordinary, and the remarks of the Minister, Deputy Gormley, last night are very worrying. They at least prove I was right to remove my Bill as a mark of the distress I feel at the contempt with which this subject is being treated. The House was clearly misled.

It is not good enough to say we will now have it in September and it was affected by a change of Government. It cannot be just that as we were told the matter would be resolved by 31 March, which was well before the change. We have not got the heads of the Bill yet. We were told clearly and categorically that we would have them, and this is necessary for us to have the debate.

It has also been suggested that the problem may be due to changes in the Cabinet, particularly in the post of Minister for Justice, Equality and Law Reform. It is more than a decade since we had a debate in this House which led to decriminalisation in this regard. The then Fianna Fáil Government distinguished itself, and in particular the then Minister, Máire Geoghegan-Quinn, in her strong cry for liberty and equality. This was reinforced subsequently by the then Taoiseach, Deputy Bertie Ahern.

The remarks of Deputy Bertie Ahern on that subject in that debate were recently resurrected. A group of people from various parties came out with equally regressive attitudes. I will say without naming anybody that one of the most vociferous people there subsequently approached me and told me he had revised his opinion in light of the fact that his son told him he was also gay. There is not a single Member whose extended families are not touched by this. We should show a little human decency in this regard.

**An Cathaoirleach:** The Senator has made his point.

**Senator David Norris:** The majority of my colleagues on that side spoke very well on that.

**An Cathaoirleach:** The Senator has made the point to the Leader.

**Senator David Norris:** The other person suggested was Deputy Coughlan, a very intelligent person. Let it be remembered that within the course of the last Government, she had the unenviable distinction of being the only Minister in Europe to have introduced legislation discriminating against the social rights of gay citizens in this country. That is why people like myself are worried.

**An Cathaoirleach:** The Senator has made his point.

**Senator David Norris:** I acknowledge that we will be discussing Thornton Hall on Thursday, which I welcome. It would be foolish not to acknowledge the document, Patients, Not Prisoners, produced by the Central Mental Hospital carers' group, the Irish Mental Health Coalition and Schizophrenia Ireland. I ask other Members to acquire it. It discusses co-location of the mental hospital, which is very worrying to many people.

[Senator David Norris.]

We should consider Burma again in light of the appalling fact that the junta has extended by six months the imprisonment of Aung San Suu Kyi.

**An Cathaoirleach:** The Senator's time is up.

**Senator David Norris:** It has also refused to allow non-governmental organisations to travel beyond Rangoon.

**Senator Larry Butler:** I want to raise the issue of the public private partnership position regarding Dublin City Council and developments proposed in recent years. It is time the Minister for the Environment, Heritage and Local Government called in the developer and the people in question regarding that development. This has been going on for four or five years. The public private partnership can play a major part in the development of our city but not under the current process because of the way it is being handled. It is taking far too long. There has been four years of debate on St. Michael's Estate. That project was ready to proceed, but because the other part of the agreement was not reached it cannot proceed. Having reached agreement on the PPPs, planning permission must then be applied for. I suggest we ask the city council to use the paragraph VIII provision, which means that planning and the PPP could be agreed together, instead of waiting a further two years.

**Senator Alex White:** No.

**Senator Larry Butler:** That is a reasonable proposal.

We cannot change horses in mid-stream when it comes to the PPP and the council changing building regulations. That is what happened in this case. The regulations have changed in terms of bigger apartments, in some cases by 20% to 30%, and we have had the energy increases. How can we have a PPP in place and then change the regulations? The whole process is a mess and the Minister must either come into the House for a debate or call together the parties in question——

**Senator Alex White:** Another split.

**Senator Larry Butler:** I have not heard any good solid proposals from the Senator or from the Labour Party regarding housing.

**Senator Alex White:** The Senator has not been listening.

**An Cathaoirleach:** Senator Butler, please.

**Senator Larry Butler:** When I consider that the Senator's party and the Fine Gael Party have led the city council, it is a poor reflection——

**An Cathaoirleach:** On the Order of Business, please.

**Senator Jerry Buttimer:** What about the Galway Races——

**Senator Larry Butler:** ——on the regulations they have stood over for many years.

*(Interruptions).*

**Senator Larry Butler:** If I were you, Senator White, I would not be so smug. You have not delivered to the people on housing.

**An Cathaoirleach:** Through the Chair please, Senator Butler.

**Senator Maurice Cummins:** Luxury hotels and tents.

**Senator Jerry Buttimer:** No wonder the tent is gone.

**A Senator:** It is meant to be going back up again.

**Senator Larry Butler:** He has not delivered to the people on housing in Dublin city. There are 4,500 people on the housing list. I ask that this situation be expedited immediately.

**An Cathaoirleach:** Is the Senator calling for a debate on PPPs?

**Senator Larry Butler:** Not only do I want a debate, I want the Minister to get together with Dublin City Council and the developer because I believe this problem could be sorted out. There will not be a problem if a reasonable approach to the PPP is taken. When we consider that the development of Ballymun has an overrun of €0.50 billion, it is important we get the PPPs right.

**Senator John Paul Phelan:** On one of the points Senator Butler raised, Dublin City Council is controlled by a group containing Fianna Fáil and the Labour Party, not Fine Gael. He should check that matter.

I want to ask the Cathaoirleach a procedural question about the leaders of the groups in the House. Perhaps I misread Standing Orders and the rules of the House but I was not aware that Senator Boyle is the leader of a group as outlined under the procedures of the House. The Cathaoirleach might correct me on that issue.

**An Cathaoirleach:** He is Deputy Leader of the House.

**Senator John Paul Phelan:** He is not the leader of a group.

**An Cathaoirleach:** He is leader of his party but he is the Deputy Leader of the House.

**Senator John Paul Phelan:** He is not the leader of a group.

**An Cathaoirleach:** He is leader of the Green Party and Deputy Leader of the House.

**Senator John Paul Phelan:** That is not a group. They are not a group within the House, which is what you said they were.

**An Cathaoirleach:** It is part of the Government side.

**Senator John Paul Phelan:** It is just a technical question but I accept the Cathaoirleach's point.

I agree with Senator Butler. Virtually every day in the House Members of the Opposition raise the issue of public private partnerships and the apparent collapse of such initiatives in respect of social housing in Dublin. Will the Leader explain why this debate is not on the Order of Business this week? Since it is not scheduled for this week, will he do his utmost to have it on the Order of Business for next week, or at the earliest possible opportunity?

I second the amendment of my colleague, Senator Coghlan, to the Order of Business to the effect that the House should discuss the area of rip-off, with particular reference to the National Consumer Agency and the sterling price difference, which has spiralled out of control in recent months. Before finishing, I want to echo the calls of other Opposition Senators who have

[Senator John Paul Phelan.]

expressed disappointment at the words attributed to the Taoiseach at the weekend in terms of his criticisms of the Opposition campaign on the Lisbon treaty. In my constituency it is the Fine Gael campaign alone that has any presence on the ground. The Taoiseach attended a public meeting organised by his party in a neighbouring village to mine last week, where he barely referred to the Lisbon treaty. That turned out, in effect, to be a Fianna Fáil party meeting.

**An Cathaoirleach:** The Senator should address the Leader on the Order of Business.

**Senator John Paul Phelan:** Virtually no reference was made to the Lisbon treaty during his entire contribution. Perhaps it is possible that the remarks attributed to him at the weekend were misquoted, and the Leader might give the House his opinion in that regard. However, it would be more appropriate for the Taoiseach to lead the Government campaign rather than concentrating on what the Opposition is doing.

**Senator Cecilia Keaveney:** I have a couple of questions for the Leader. Given my nice colour from the good weather in Donegal, I want again to ask about the co-ordination of marine activities. Because of the good weather in the past couple of weeks we have had jet skiing, fishing, swimming, yachting and various other activities in the same patch of water, which is quite dangerous. Some of those activities come under the remit of the county council and others come under the remit of various Ministers, such as the Minister for the Communications, Energy and Natural Resources, Deputy Eamon Ryan, the Minister of State with responsibility for fisheries and forestry, Deputy Tony Killeen, the Minister for Agriculture, Fisheries and Food, Deputy Brendan Smith, the Minister for the Environment, Heritage and Local Government, Deputy John Gormley, and perhaps one other Minister. It is vital that all activity to do with the water should be brought under the remit of one Department. The Leader might bring this to the attention of the Taoiseach, as it might be his responsibility to examine this issue.

Perhaps the Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern, might be invited to address the Seanad, since he announced today that €61 million would be made available under the equality for women measure of the national development plan, which will actively support women. One of the four strands is to improve women's participation in decision making. We have talked often in the House about the numbers of females involved in politics. Perhaps the Minister might outline to the House details of the four strands targeted under the effective doubling of the money allocated and how it may impact on female participation in decision making at the political level.

**Senator Phil Prendergast:** The HSE has announced no further embargo on the number of employees who are trying to return to work, following leave of absence, but whose jobs no longer exist because of budgetary constraints. These highly qualified professionals are in limbo because, although technically they have jobs, they cannot work. The fact that most health areas are now overspent on their budgets leaves these people in the invidious position of not knowing to what they can have access in terms of getting back to work.

I also want to raise the issue of psychology services, which are now at a critical level within the health service. Many individuals with serious but treatable psychological or psychiatric disorders must remain untreated or go on waiting lists for excessively long periods. We need to have a debate on vital services that might not be measurable in discrete terms. Proper early intervention, as we all know, can have positive effects for people suffering from such conditions, which cannot always be measured in a budgetary context. In cutting front-line services one is

not seeing the full picture. One is certainly doing those concerned a disservice. I would be grateful if we could have a debate on this issue.

**Senator Déirdre de Búrca:** Will the Leader invite the Minister for the Environment, Heritage and Local Government to the House to address the issue of planning enforcement? I raise this because there is a report in the national newspapers today on a case in County Wicklow involving an unauthorised development beside the N11. It has been unauthorised for many years and is to be the subject of a material contravention procedure on the part of Wicklow County Council next week. This is extraordinary because the same site was the subject of High Court proceedings on the part of the local authority which at the time deemed it to be unauthorised. The High Court ruled in favour of the local authority and the owner of the business in question was ordered by the court to close it by the end of April. Having taken legal action successfully and invested time, money and resources in doing so, the county council has now changed its mind and decided that the site which is in breach of the NRA's rules on direct access to the N11 merits planning permission. It is recommending to its elected members that they support the application. I would appreciate it if the Leader invited the Minister to the House to debate this matter. It is very important that the public see local authorities enforcing planning legislation, as they are supposed to, and not being selective in the sense of pursuing small people over seemingly unauthorised developments while allowing larger operators who seem to be flouting the law but are well connected to receive permission for retention, despite the strong arguments against it.

I share the concerns of Senator Butler and others who referred to the apparent collapse of the public private partnership arrangements for social and affordable housing on St. Michael's estate in Inchicore, Sean McDermott Street and a number of other areas. It is of concern because the position is so unclear. The impression was created initially that the developer in question had pulled out of the public private partnership arrangements but it now appears he has not and that there are changes afoot. Whatever happens, the residents in the affected areas who legitimately expected the projects to be delivered will have to be reassured in this regard. I ask that the Minister be invited to the House to address the issue.

The House should address the issue of public private partnerships. My colleague, Senator Boyle, produced an excellent report, on behalf of the Committee of Public Accounts, that considered many of the disadvantages of such partnerships in certain instances, in addition to the advantages. We need a full discussion on the issue in the House.

**Senator Fidelma Healy Eames:** I wish to talk about the Lisbon treaty as an advocate of a "Yes" vote. Like many others, I have spent considerable time coming to terms with the treaty and, on balance, believe it has much to offer Ireland. It is worth debating in the House. That said, there remains a lack of understanding and considerable confusion, which factors are feeding into a "No" vote. The Leader knows that if voters are in doubt, they sometimes vote "No". In this context, I was very disappointed to witness what I considered to be the unnecessary and unhelpful sidetracking by the Taoiseach to the effect that Fine Gael had not been campaigning vigorously for a "Yes" vote. It was the Government which was late out of the traps due to internal leadership problems. Some 91% of the people I surveyed in Galway just ten days ago felt the Government had not explained the treaty adequately. As a Member of the Oireachtas, I am asked on the doorsteps in Galway whether Fianna Fáil is engaged in any campaigning. I ask that we work together on the treaty. What is required is not bravado or coercion by the Taoiseach or the President of the European Commission, Mr. Barroso, but a calm, consistent presentation of the facts that will increase dramatically people's understanding of the treaty by 12 June to ensure the electorate will make an informed choice.

[Senator Fidelma Healy Eames.]

I certainly welcome the comment made yesterday by the Minister for Foreign Affairs, Deputy Martin, that the WTO is presenting an unbalanced and unacceptable deal for European agriculture. I call on the Leader to ask the Cabinet and the Minister for Agriculture, Fisheries and Food to step up their response another gear by providing a clear ruling that the Government will use its veto if an unacceptable deal for Ireland—

**An Cathaoirleach:** The Senator has made her point.

**Senator Fidelma Healy Eames:** —emanates from the WTO talks. We do not need any further hardening of farmers' attitudes against the Lisbon treaty. They have always supported Europe. Neither Members nor farmers should be strung out any longer and such clarification should be given.

**Senator Feargal Quinn:** Is the Leader able to provide an update on the organ donation proposals I suggested some months ago? Perhaps he recalls that in France all citizens are on the register automatically unless they opt out. Moreover, I understand such a proposal is being given serious consideration in Britain. This matter is worthy of discussion, debate and consideration by the Minister and I seek clarification on whether it is receiving serious consideration.

A number of people await organ transplants and as matters stand, one is unable to use an organ unless the person involved has given consent. The position in France, which is now under consideration in Britain, is that everyone is on the register automatically unless one opts out. This proposal is worthy of consideration and Ireland should be ahead of the field in this regard instead of always following. Objections can come from a family member or from an individual who directs that in the event of his or her death, the organs should not be used. Otherwise, the organs would be used automatically. I believe this might save lives because it would avoid the long delays that sometimes occur in this regard. I would like to believe that serious consideration is being given to this matter.

**Senator Eugene Regan:** I second Senator Coghlan's proposal to amend the Order of Business to discuss consumer issues. This is a highly important matter both in respect of consumer protection and of the competitiveness of our economy.

I also refer to the Civil Partnership Bill because I was involved in the debate in this House attended by the then Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan. Whatever one's views on this legislation, a promise was made last October that the heads of the Bill would be published before the end of March in a joint statement by Fianna Fáil and the Green Party. I understand this was included in the programme for Government at the insistence of the Green Party. A debate was held in this House and although the then Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan, confirmed the heads of the Bill would be published by the end of March, it appears this will not happen until September or October.

Either Members can trust what they hear in this House from Ministers or they cannot. I do not understand the purpose of Members' debates if such a response is received and no follow-through takes place. Will the Leader address this issue? For example, in respect of the issue concerning the WTO and the Lisbon treaty, while Members received confirmation that this would be clarified by the Minister, it did not happen. As for the aforementioned Bill, it is important that debates in this House should be frank and a firm commitment should be met. This is what destroys trust in individual Ministers and in the Government.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Eugene Regan:** I question whether the Government can be trusted on this and other issues.

I wish to make one point on the statement made by the Taoiseach on the failure of Fine Gael and the Labour Party to pull their weight on the Lisbon treaty. This was a most unfortunate comment. The Taoiseach had an opportunity to be a statesman in respect of the Lisbon treaty. For some months, Deputies Enda Kenny and Eamon Gilmore have stated emphatically and repeatedly in public meetings throughout the country that they want their supporters to vote for the Lisbon treaty and should not allow domestic political and partisan issues to get in the way. This was done in a statesmanlike fashion and the heavy work has been done by both parties in recent months.

It was an unfortunate comment by the Taoiseach, Deputy Brian Cowen, and I urge Fine Gael voters to ignore him and vote “Yes” on the Lisbon treaty. It is important that we deal with what appears to be a holy alliance of Sinn Féin, the CIA and Opus Dei in the arguments put forward regarding the treaty. The Government and the Opposition should pull together on this issue and I ask the Leader to address this matter because he has made similar comments in this House. Fine Gael and the Labour Party are doing their work on this treaty and it is important that, at this late stage, we work together.

**Senator Paudie Coffey:** I, too, support calls for further debate on the Lisbon treaty. We are now on the run-in to the referendum and in the next few weeks there must be renewed focus on the treaty and its contents. We must encourage balanced and informed debate, not only in this House but everywhere else.

I, too, was disappointed to hear the Taoiseach engage in the blame game. He should focus on the ball rather than take his eye off it. In this regard I commend the National Forum on Europe on the role it has played in engaging the public in informed, balanced debate around the country, under the chairmanship of Maurice Hayes, a former Member of this House. I participated in a National Forum on Europe event with the youth of Ireland almost six months ago and I can assure Members that the youth of this country are well informed and interested in hearing what the future and the Lisbon treaty hold for them. I encourage renewed focus in the coming weeks on the Lisbon treaty. Let us have balanced debate and let the leader of the country give a balanced and objective view, rather than engage in the blame game.

The Leader of the House mentioned posters and I also noticed “No” campaign posters that did not mention the organisation behind them. I seek the Leader to clarify whether these posters are legal or illegal. I think they are illegal and should be taken down because they are sensationalist. Some claim the Lisbon treaty threatens our freedom and I feel that putting such information in the public domain is scandalous. These posters are misleading, grossly unfair and insulting to the intelligence of our citizens.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Paudie Coffey:** Senator Norris suggested a debate on the proposed relocation of the Central Mental Hospital from Dundrum to Thornton Hall and I support this. More than 29 organisations on the front line promoting issues relating to mental health are seriously concerned by this issue. They say patients are not prisoners and I fully support that statement.

**Senator David Norris:** Hear, hear.

**Senator Paudie Coffey:** Patients, especially those involved in rehabilitation, need support and should not be put in isolated areas like Thornton Hall. A certain stigma is already attached to mental health and mental health patients and we should not exacerbate it by putting such

[Senator Paudie Coffey.]

people in a facility adjacent to a prison. That would amount to criminalisation by association and I feel mental health patients need better support from the State. The present proposals amount to a policy of “out of sight, out of mind”. I ask that the Minister responsible for these proposals come before the House, before it is too late, and give mental health patients the proper treatment they deserve. I request the Leader to ensure this happens.

**Senator Jerry Buttimer:** I join Senator Coghlan in asking the Leader to bring the relevant Minister before this House to ensure the commuters of Munster, in particular Cork and Kerry, are not forced to further endure the hardship they have experienced in recent days. It is crazy and unacceptable that a wildcat strike has disrupted thousands of commuters. As an advocate of trade unionism I subscribe to the need for unions to negotiate on behalf of their members. However, to discommode many thousands of commuters from Cork and Kerry is farcical.

I join Senator Fitzgerald in asking the Leader to bring the Minister for Enterprise, Trade and Employment to the House to give an account of the Government’s plans to reduce the shopping basket cost for the ordinary citizens of Ireland. The 20% increase in prices cannot be blamed on fuel costs and currency exchange rates alone. We need answers from the Government. We do not need soundbites from other Chambers but real action. Citizens today are enduring hardship and making sacrifices on behalf of their families. That is the legacy of the Fianna Fáil Government whether we like it or not. Let us have this debate urgently.

I ask the Leader to invite the Minister for Arts, Sport and Tourism, Deputy Martin Cullen, to the House to make a statement about the Irish Open golf tournament. This is an important part of our sporting calendar and I am concerned, as I am sure is the Leader, who is a keen golfer, that it could be lost due to a lack of sponsorship from corporate Ireland. Perhaps the Leader would organise a debate on this issue.

**Senator Dominic Hannigan:** I join other Senators in asking for legislation to be introduced on civil marriages. We were promised the heads of a Bill on this issue some months ago but we have still not seen them. I look to the Green Party members in particular as it is up to them to deliver on this one. They made a commitment and we will make sure they honour it. We seek the introduction of such a Bill as soon as possible.

**Senator Dan Boyle:** It will be delivered.

**Senator Dominic Hannigan:** I also join the calls for an emergency debate to be held on the issue of prices, particularly diesel prices. We have raised this issue in the House in the past. Diesel prices have risen excessively and somebody is making enormous profits. Suppliers are riding on the back of the fact that many people have switched to diesel cars because of the perceived environmental benefits and are making unhealthy profits as a result. We need a debate on this issue.

I ask the Leader to bring the Minister for Arts, Sport and Tourism to the House to discuss how the Arts Council awards grants. I will give one example of an incident that is causing concern. The Upstage Theatre Project in Drogheda saw its grant reduced in the last year. It appealed this and an independent assessor who reviewed the appeal found in favour of the said arts company. Yet the Arts Council chose to ignore the result because it did not like it, and refused to give the full grant. We need to have a discussion on the acceptance of decisions of independent arbitrators by the Arts Council.

**Senator Nicky McFadden:** I did not think I would get a chance to speak and I thank the Cathaoirleach for his indulgence.

I would like to raise the issue of primary care teams and services. We all saw “Prime Time Investigates” last night and heard Professor Drumm clarifying his position this morning. If one were to listen to Professor Drumm one would think everything was hunky dory in this country. A number of primary care centres have been set up and teams put in place, but sadly there are two — in Ballyfermot and Athlone — which, according to a document I have read, are still in the planning stage. Since I became a Senator I have raised this issue on the Adjournment and on the Order of Business about ten times, but nothing has happened. In 2002 a site was purchased for a primary care centre in Athlone at a cost of €1.2 million, yet now, in 2008, all we have is a site with nothing on it.

Yesterday in my constituency I dealt with a patient who has a brain injury. He was in hospital for many weeks and after his release a primary care and rehabilitative team was put in place for six weeks. He received excellent care. However, after that, everything was cut. He now has almost no access to services. His family are rallying around and doing the best they can. He has two hours of services per week. This does not represent a primary care team working as it should. We also heard about the number of therapists who leave college with excellent qualifications but have no jobs.

**Senator Jerry Buttimer:** Hear, hear.

**Senator Nicky McFadden:** There is no joined-up thinking here. In providing services for patients, the key factor was that the discharge of patients from hospitals would create a greater throughput — I hate that word, but that is what we are trying to achieve. We have got the throughput but the patients are being left high and dry with no services.

**Senator Paschal Donohoe:** I join other Senators, particularly Senator Butler, regarding the role of public private partnerships, PPPs, in housing projects. During the debate, which I hope the Leader will arrange soon, I will stress the point that the process did not collapse because the apartment standards were changed. The change may have been a contributory factor, but greater factors were at play, many of which fall within the remit of the Government. They must be addressed, particularly given the further housing and infrastructure valued at €12 billion to be delivered under PPPs. Even if the change in design standards played a role in placing the process under pressure, we must apply the new energy conservation and housing quality standards to new housing, even in respect of people who are in desperate need. There is no point in delivering new housing only to discover that it does not meet the targets applied to everyone else.

**An Cathaoirleach:** The point is made.

**Senator Paschal Donohoe:** The belief that the process collapsed because new standards were applied to deliver good quality housing is the reason a debate is necessary.

**Senator Joe O'Reilly:** I join with Senators who argued cogently that the Taoiseach should be leading the nation and seeking to create a consensus on an important issue for Ireland's future instead of engaging in divisive party politics in terms of the Lisbon treaty.

**An Cathaoirleach:** Questions to the Leader.

**Senator Joe O'Reilly:** Will the Leader appeal to the Taoiseach to become a statesman for the next three weeks for the sake of Ireland?

**Senator Paul Coghlan:** The Leader could make the appeal in his own best statesmanlike fashion.

**An Cathaoirleach:** Senator O'Reilly, without interruption.

**Senator Joe O'Reilly:** I second Senator Coghlan's proposal for a debate on prices. It is necessary given the cost of energy. Will the Leader arrange a debate on energy during which we could consider the cost of oil and our carbon emissions reduction target of 20% by 2020?

We should develop a network of co-operative wind farms. Farmers should be brought together in groups to set up co-operative wind farms, as other co-operatives have served the country well. The wind farms should be given State support, the relevant Minister should lead the initiative and access to the grid should be provided to allow us to avail of the electricity generated. This initiative has the potential to reduce energy costs, to provide farmers with a local income during difficult times in the agricultural sector and to reach our carbon emissions target.

**An Cathaoirleach:** The point is made.

**Senator Joe O'Reilly:** I appreciate the Cathaoirleach's indulgence. Will the Leader arrange an urgent debate on solutions to our energy situation and on prices?

**Senator Donie Cassidy:** Senators Fitzgerald, O'Toole, Alex White, Boyle, Norris, Regan and Hannigan made their opinions on the Civil Partnership Bill known. It was correctly stated that the heads of the Bill will be prepared and ready in a maximum of three or four weeks. I will do everything possible to have the Bill initiated in the Seanad, as it would be important to do so.

The deputy leader of Fine Gael, Senator Coghlan, proposed an amendment to the Order of Business in respect of consumer issues. Senators John Paul Phelan, Buttimer, O'Reilly, Hannigan, Fitzgerald and O'Toole expressed serious concerns regarding consumer issues, such as prices exceeding equivalent prices in the eurozone. There are issues in this regard. There should be an emergency meeting of the Joint Committee on Enterprise, Trade and Employment to discuss this issue. Members on both sides of the House should make the case for such a discussion at tomorrow morning's meeting. I will certainly do so. The meetings of that committee take place at 10 a.m., which is not convenient for the Order of Business. Nevertheless, I will attend tomorrow's meeting to request that this discussion take place.

When I was Chairman of that committee, as Senator Coghlan will recall, we had a thorough discussion of all the economic challenges facing the State. As an island economy, all goods must be transported by land and sea. Senator Quinn knows this better than anybody in the House. Another factor is the cost of wages. Thankfully, our minimum wage is at a level which ensures everybody a decent remuneration. However, in other eurozone countries, such as Spain and Portugal, the minimum wage is as much as 150% below our rate. We must confront the challenges facing those who are generating and providing employment. Some of these issues are unique to Ireland. They are not in business for the good of their health but in order to make a profit. Nevertheless, they have a responsibility to provide value for money to customers.

Energy costs are an important factor. Like myself, Senators O'Reilly, McFadden, Glynn and Wilson are all based in the same midlands area. It is a question of access to the grid by the ESB. The potential for wind farming is one of the natural advantages available to us. I have no difficulty in agreeing to a debate on energy. However, legislation must take precedent as we approach the end of this parliamentary year. We must deal with legislation on those days we are requested to do so by the Government. However, a debate on energy is one of my priorities and I will do all I can to allow it to take place.

Several speakers referred to the all-party commitment, with one exception, to a "Yes" vote in the referendum on the Lisbon treaty. In the midlands, one sees posters from only one group. The Taoiseach sees the same. He is travelling the same roads as the rest of us in the midlands.

Anyone in the area who has not been active up to now — there are a few — must do more. Representatives of Fianna Fáil will be in Kilbeggan next Sunday, along with the “Yes” bus. I ask members of all parties to join us on the campaign trail instead of stating things in the House. In the midlands area, all the posters have been put there by one party, with the exception of those erected yesterday by Mr. Jim Higgins, MEP, to advertise a meeting in Mullingar this week. One meeting has taken place in Athlone. I know of only one party that is knocking on doors.

**Senator Frances Fitzgerald:** That is a ridiculous claim.

**Senator Donie Cassidy:** Where was the Taoiseach last Saturday?

**Senator Frances Fitzgerald:** The Leader is taking the same old approach. It is ridiculous.

**Senator Maurice Cummins:** The Leader never learns his lesson.

*(Interruptions).*

**An Cathaoirleach:** The Leader should be allowed to reply on the Order of Business.

**Senator Jerry Buttimer:** He is propagating untruths.

**Senator Donie Cassidy:** Challenges have been issued to the Taoiseach on behalf of the Opposition. I am responding on behalf of the Government side. I am allowed to do so.

**Senator Frances Fitzgerald:** The Taoiseach issued an appeal for us to work together to secure a “Yes” vote.

**Senator Donie Cassidy:** I can only refer to the roads in the midlands on which the Taoiseach and I are travelling. Where are the posters of colleagues who are supposed to be supporting the campaign?

**Senator Nicky McFadden:** The posters are there.

**Senator Donie Cassidy:** They are not there.

**Senator Frances Fitzgerald:** Our posters were up before those of Fianna Fáil.

**Senator Donie Cassidy:** I am stating the reality.

**Senator Nicky McFadden:** The posters are up.

*(Interruptions).*

**An Cathaoirleach:** If the Leader is not allowed to continue without interruption, I will have to ask Members to leave the House.

**Senator Donie Cassidy:** I welcome the appearance of colleagues’ posters yesterday.

**Senator David Norris:** What about the posters calling for a “No” vote?

**Senator Donie Cassidy:** On that point, I have seen three posters calling for a “No” vote in my area which give no indication of the party or individual making that call. I call on the Deputy Leader of the House to seek clarification from his colleague, the Minister for the Environment, Heritage and Local Government, and the Referendum Commission as to whether this is legal.

**Senator Nicky McFadden:** Hear, hear.

**Senator Donie Cassidy:** Let us be fair about this. Senator Norris might be able to assist the House.

**Senator David Norris:** I assure the Leader those posters are not mine. My comments have not even been reported when I have spoken against the treaty.

**An Cathaoirleach:** The Leader should be allowed to continue without interruption.

**Senator David Norris:** Let us have some balance in this Chamber.

**Senator Donie Cassidy:** I know the Senator did not climb any poles.

**Senator David Norris:** Unlike some of the Leader's colleagues.

**Senator Donie Cassidy:** My point is that those campaigning for a "No" vote might like Senator Norris's assistance in clarifying the position.

**Senator David Norris:** I would welcome a debate on the Lisbon treaty. That would be excellent.

**An Cathaoirleach:** Members should allow the Leader to continue without interruption.

**Senator Donie Cassidy:** Senator O'Toole correctly stated that the aircraft which landed in Athlone was registered in the United States. I understand the Department and its counterpart in the United States are examining this matter to see how the legislation and regulations in this area can be changed.

Senator Alex White called on the Minister for Foreign Affairs to respond to the Save the Children allegations regarding the abuse of children by peacekeepers in various locations. I fully support the Senator's call for a debate on this issue and I will endeavour to have it take place at the earliest possible time.

Senators Alex White, Prendergast and McFadden highlighted their serious concerns regarding matters pertaining to the Health Service Executive. I intend to invite the Minister to attend a debate on this issue before the end of this session.

Senators Coghlan and Buttimer expressed their disappointment at the current disruption to train services, particularly for passengers in counties Kerry and Cork. Such disruption is unacceptable, particularly when it is difficult to understand what the problem is. I wish everyone involved in today's talks well. Some of us thought the days of these wildcat strikes were over. Why should there be a need to strike when all concerned know an agreement must be ultimately negotiated? I wish all concerned well and look forward to a speedy resumption of the excellent service that both employees and employers are providing. There has been a significant increase in rail travel as a result of improved services and comfort for passengers. It is encouraging to see the comfortable, air-conditioned carriages now operating on the Sligo line. We were previously used to seeing such comforts only in other countries.

Senators Ormonde and Norris called for a debate on the implications of the Lisbon treaty for the role of national Parliaments within the EU. I have tabled this to be consideration for inclusion in next week's schedule. Senators de Búrca and Ormonde asked for a debate on planning enforcement and other planning issues. I agree with the sentiments expressed forcefully by both Senators.

Senators Buttimer, John Paul Phelan, de Búrca, Butler and Donohoe referred to a man of great experience in the area of public private partnerships. I listened with great interest to what Mr. McNamara had to say on Marian Finucane's radio show last Sunday morning. I do not normally refer to people by name who are not Members of the House.

**An Cathaoirleach:** I would prefer if persons outside the House were not named.

**Senator Donie Cassidy:** I did so reluctantly. This situation is causing great difficulties for the residents of St. Michael's estate and elsewhere. I understand meetings took place yesterday and further meetings will take place on Thursday. The Oireachtas Joint Committee on the Environment, Heritage and Local Government should, as a matter of priority, discuss the outlook for the public private partnership projects in which the group I mentioned was involved. Dublin City Council was fortunate to secure the involvement of a group that is held in such respect. Having listened to this person speaking on the radio, I was enlightened as to the difficulties that exist. It seems the problems are not just on one side, as was clearly stated for most of last week. It was unprecedented to hear a private person of his calibre stating what he did, the amounts of money, tenders and so on. There is great hope that these projects can get up and running soon. He outlined the various scenarios whereby it could and would happen. I wish everybody well in that regard.

**Senator Maurice Cummins:** Let him go and build them.

**Senator Donie Cassidy:** Senator Keaveney called for a debate on the marine. I have no difficulty with organising such a debate. Five Departments have responsibility for marine activities and there was good sense in the Senator's suggestion that marine issues be brought together under a single Minister of State. The Senator also suggested that the Minister for Justice, Equality and Law Reform be invited to the House to discuss his announcement of the allocation of €61 million to support women's equality issues and where this money will be spent.

Senator Quinn sought a debate on organ donation proposals, particularly the concept of their automatic use. As time is limited towards the end of this session, perhaps it could be debated during the Independent Senators' Private Members' time. That would ensure the matter is discussed during this session. It is an important proposal and I fully agree with the Senator's sentiments with regard to automatic use of organs. If people do not wish their organs to be donated, they should clearly state that, otherwise the organs should be automatically used.

I can assure Senator Coffey that Thornton Hall will be debated on Thursday. Senator Buttimer asked that the Minister for Arts, Sport and Tourism, Deputy Martin Cullen, come to the Seanad to discuss the Arts Council and tourism matters, particularly the Irish Open. I look forward to inviting the Minister to the House to discuss this issue. The Irish Open is a huge tourist attraction. It generates up to 30 hours television viewing throughout Europe when it is being held and it shows Ireland at its brilliant best in the month of May. It was a great honour and privilege to be present in Adare this year to see the effort and planning that went into holding the event.

Senator Hannigan asked for a debate on how the Arts Council allocates its funding. He mentioned the Drogheda group which appealed its grant but was still given the same funding. I will convey his views to the Minister.

**An Cathaoirleach:** Senator Paul Coghlan has moved an amendment to the Order of Business: "That a debate on rising consumer prices be held today." Is the amendment being pressed?

**Senator Paul Coghlan:** Yes.

Amendment put.

The Seanad divided: Tá, 22; Níl, 26.

**Tá**

Bacik, Ivana.  
Burke, Paddy.  
Buttimer, Jerry.  
Coffey, Paudie.  
Coghlan, Paul.  
Cummins, Maurice.  
Donohoe, Paschal.  
Fitzgerald, Frances.  
Hannigan, Dominic.  
Harris, Eoghan.  
Healy Eames, Fidelma.

McCarthy, Michael.  
McFadden, Nicky.  
Norris, David.  
O'Reilly, Joe.  
O'Toole, Joe.  
Phelan, John Paul.  
Quinn, Feargal.  
Regan, Eugene.  
Ross, Shane.  
Ryan, Brendan.  
White, Alex.

**Níl**

Boyle, Dan.  
Brady, Martin.  
Butler, Larry.  
Callely, Ivor.  
Cannon, Ciaran.  
Carty, John.  
Cassidy, Donie.  
Daly, Mark.  
de Búrca, Déirdre.  
Ellis, John.  
Feeney, Geraldine.  
Glynn, Camillus.  
Keaveney, Cecilia.

Leyden, Terry.  
MacSharry, Marc.  
McDonald, Lisa.  
Ó Domhnaill, Brian.  
Ó Murchú, Labhrás.  
O'Brien, Francis.  
O'Malley, Fiona.  
O'Sullivan, Ned.  
Ormonde, Ann.  
Phelan, Kieran.  
Walsh, Jim.  
White, Mary M.  
Wilson, Diarmuid.

Tellers: Tá, Senators Paul Coghlan and Maurice Cummins; Níl, Senators Déirdre de Búrca and Diarmuid Wilson.

Amendment declared lost.

Order of Business agreed to.

**Civil Law (Miscellaneous Provisions) Bill 2006: Committee Stage.**

**An Leas-Chathaoirleach:** There is a typographical error in the Bill as passed by the Dáil. I wish to bring to the attention of Members an error in section 9. On page 13, line 46, the reference to section 8 should read section 9.

SECTION 1.

**An Leas-Chathaoirleach:** Amendments Nos. 1, 2, 5, and 12 are related and will be discussed together. Is that agreed? Agreed.

Government amendment No. 1:

In page 10, subsection (4), line 13, to delete “23 and 24” and substitute “27 and 28”.

**An Leas-Chathaoirleach:** Does the Minister of State wish to speak on the amendment?

**Minister of State at the Department of Justice, Equality and Law Reform (Deputy Conor Lenihan):** Not particularly, no.

Amendment agreed to.

Government amendment No. 2:

In page 10, lines 21 and 22, to delete subsection (8) and substitute the following:

“(8) The Employment Equality Acts 1998 to 2007 and *Part 16* may be cited together as the Employment Equality Acts 1998 to 2008.”.

Amendment agreed to.

Section 1, as amended, agreed to.

Sections 2 to 13, inclusive, agreed to.

#### SECTION 14.

**An Leas-Chathaoirleach:** Amendments Nos. 3 and 4 are related and will be discussed together. Is that agreed? Agreed.

Government amendment No. 3:

In page 16, line 16, after “his” to insert “or her”.

**Deputy Conor Lenihan:** These amendments are designed to comply with current drafting practices. The normal form of drafting since the passing of the Interpretation (Amendment) Act 1993 is to try to ensure where possible and appropriate that both sexes rather than the male sex are referred to explicitly.

Amendment agreed to.

Government amendment No. 4:

In page 16, line 41, after “his” to insert “or her”.

Amendment agreed to.

Section 14, as amended, agreed to.

Sections 15 to 17, inclusive, agreed to.

#### SECTION 18.

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

**Senator Eugene Regan:** Are amendments being taken in groups?

**An Leas-Chathaoirleach:** We are debating the Bill section by section.

Question put and agreed to.

Sections 19 to 22, inclusive, agreed to.

#### SECTION 23.

Question proposed: “That section 23 stand part of the Bill.”

**An Leas-Chathaoirleach:** This section is opposed by Senators Alex White, McCarthy, Ryan, Prendergast, Hannigan and Kelly.

**Senator Alex White:** It is not clear that the provisions in this section will constitute an improvement to our jurisprudence. The section proposes to repeal the requirement that a District Court judge must keep a note of the evidence before him or her. We do not have a system for universal transcription in the courts, so it is questionable to say the least not to require a formal note of the evidence presented to a judge. The Minister for Justice, Equality and Law Reform has given no rationale for dispensing with the requirement and considerable support was expressed in previous debates for a proposal to retain the requirement.

The Minister made the self-evident point in the other House that an appeal of a District Court judgment is a complete rehearing of a case, so a judge's note is not necessary in that instance. However, it may be necessary in a case stated in a judicial review of a District Court judgment, which is a relatively frequent occurrence, or on the rare occasion of a complaint being made against a District Court judge. For example, an issue may arise before the proposed judicial council. It is not entirely clear why this admittedly ancient provision in the Petty Sessions (Ireland) Act 1851 is to be dispensed with. What is the problem with retaining the requirement that a District Court judge shall keep a note of the evidence before him or her?

**Deputy Conor Lenihan:** The 1851 Act is more often honoured in the breach and, at least since the foundation of the State, it has not in fact been the practice of District Court judges to keep notes or records. An obligation to keep such notes or have stenographers formally record decisions and evidence would impose a significant administrative burden on the District Court.

As a lawyer, Senator Alex White will be aware that an entirely new hearing takes place when an appeal issues to a judgment of the District Court, so the decision of a judge of the lower court is immaterial. Section 14(1) of the Courts Act 1971 provides that in any legal proceedings, regard shall not be had for any record pertaining to a decision of a judge of the District Court in any case of summary jurisdiction. This means that even if a note had been kept of the evidence presented to the court, it could not be used in an appeal.

District Court judges are very busy people. In 2006, for example, 560,155 cases were heard before the District Court. To introduce the entire panoply of recording and minute taking for what a District Court judge may say is, in a sense, pointless because the evidence is reheard *de nova* in the Circuit Court. I acknowledge the Senator's argument in respect of disciplinary proceedings against a judge but that is a matter for the court system itself.

The Government is rolling out the digital audio recording system for the Courts Service on a phased basis. The District Court is phase three on this, with the more weighty courts having priority. However, digital audio recording will only assist in one respect, namely, where a prosecution for perjury is taken against a witness. Digital records might be helpful where gardaí discover subsequent to a hearing in a District Court that a witness perjured him or herself.

It is not necessary from an evidential point of view to keep a record of the decisions of District Court judges because appeals are reheard entirely in the Circuit Court. In addition, it would be somewhat vexatious and expensive in administrative terms. The ruminations of District Court judges do not go entirely unrecorded because the media on occasion add to the gaiety of the nation by recounting their views on various issues.

**Senator Eugene Regan:** Senator Alex White has made a strong case in regard to this provision. If digital recording is being introduced and the District Court represents phase three of

its roll out, a case can be made at that juncture to delete the provision. However, the requirement could provide for a healthy level of discipline given that most aspects of the law are administered in the District Court. It is perhaps premature to delete this provision and notwithstanding the Minister of State's argument that it is complex administratively, an extensive record is not necessary. It would be no harm to retain it until such time as the recording of District Court proceedings is introduced. Serious work is done in the District Court in licensing and other areas and it is appropriate to have some sort of record of judges' decisions. That the requirement may not be observed in all cases is not sufficient reason to remove the provision.

**Senator Alex White:** I concur with Senator Regan that the fact the requirement is more honoured in the breach is not sufficient reason to remove it. The Minister might remind District Court judges of the legislative requirement rather than simply abolish it.

I am simply opposing this provision and I am not proposing by way of amendment or otherwise the panoply of technology to which the Minister of State referred. I agree with him on the desirability of having digital audio recordings of court proceedings and welcome its development, but that is not at issue. The requirement is somewhat old-fashioned in that the District Court judge takes a note of the evidence before the court. It is not about the ruminations of a District Justice — to which the Minister of State so aptly referred and which, from time to time, amuse or disturb us — it is about some reliable note being kept of the evidence before the court. Solicitors, counsel and others will sometimes take a note of the evidence. However, the most reliable and impartial note would be that kept by a judge. In such circumstances, I do not see a compelling argument for the removal of the provision. Perhaps the Minister of State could instead reinforce the provision as it stands.

**Deputy Conor Lenihan:** At present, it is entirely at the discretion of a District Court justice to keep his or her personal notes. I am sure some of them keep such notes for the purposes of clarity or, as with an *aide memoire*, to assist them, particularly in circumstances where cases involving similar matters might arise. The work of the District Court is extremely pressurised and varied. The 1851 obligation was introduced because district court justices were not dealing with such a large volume of cases at that time. I am not sure it would be of assistance to require a District Court justice to act as a stenographer or record-keeper, particularly because matters are revisited in their entirety — without reference to what may or may not have been said in the court of first instance — when they go to the higher court.

If, for some reason, the keeping of notes might prove helpful from the perspective of managing the court system in general, I would, like many people, be open to persuasion on the matter. However, there is no clear reason note-taking would add to the efficiency of the courts in any respect.

We received legal advice from the Attorney General, who noted that in the cases of *Friel v. McMenamin* 1990 and *Hegarty v. Fitzpatrick* 1990 the court refused to permit the applicants to have access to the note of the evidence required under section 24 of the Act of 1851 and expressed the opinion that if the current law, *de facto*, renders irrelevant the note of evidence pursuant to section 24, it might impose too onerous a burden on the District Court to make that section important again. In other words, there have been rulings in certain cases which render redundant the notion — I would not call it a requirement — under the 1851 Act to have notes kept because the provision does not currently operate and has no particular relevance. I do not see what efficiencies would be gained by its reintroduction, other than allowing certain people to request the production of such notes.

I do not see the value of keeping notes such as those to which we are referring. Anyone who visits the District Court will be aware that one is obliged to do a great amount of learning and unlearning when observing its proceedings.

**Senator Alex White:** The Minister mentioned a couple of authorities to which he did not previously refer. I will take the opportunity to consider the cases to which he referred and I will revisit the matter on Report Stage.

Question put and agreed to.

Sections 24 to 27, inclusive, agreed to.

#### SECTION 28.

Government amendment No. 5:

In page 26, line 36, after “2002)” to insert “of the Court Officers Act 1945”.

Amendment agreed to.

Section 28, as amended, agreed to.

Sections 29 and 30 agreed to.

#### SECTION 31.

**An Leas-Chathaoirleach:** Amendment No. 6 in the names of Senators Alex White, McCarthy, Ryan, Prendergast, Hannigan and Kelly is out of order as it involves a potential charge on the Revenue.

Amendments Nos. 7 and 8 are cognate and may be taken together by agreement of the House. Is that agreed? Agreed.

Government amendment No. 7:

In page 28, line 3, to delete “as substituted” and substitute “inserted”.

**Deputy Conor Lenihan:** These are technical drafting amendments.

Amendment agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

#### SECTION 33.

Government amendment No. 8:

In page 28, line 29, to delete “as substituted” and substitute “inserted”.

Amendment agreed to.

Section 33, as amended, agreed to.

#### NEW SECTIONS.

**An Leas-Chathaoirleach:** Amendments Nos. 9, 13, 14 and 18 are related and may be taken together by agreement. Is that agreed? Agreed.

Government amendment No. 9:

In page 28, before section 34, to insert the following new section:

“34.—The Solicitors (Amendment) Act 1960 is amended by the insertion of the following section after section 6:

“6A.—(1) For the avoidance of doubt it is hereby declared that the Society have, and always have had, a power to investigate alleged misconduct by a solicitor.

(2) If subsection (1) would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.”.”.

**Senator Eugene Regan:** It would be useful if the Minister of State could indicate the motivation behind these amendments.

**Deputy Conor Lenihan:** Each of these amendments relates to the Law Society’s powers of investigation into alleged misconduct either by solicitors or by apprentice solicitors.

The Law Society has, for many years, investigated allegations of misconduct by solicitors arising either from complaints made by clients or as a result of its own routine inspections of solicitors’ practices. However, there is no express provision in the Solicitors Acts giving to the Law Society the power to investigate misconduct on the part of a solicitor. The Law Society’s power to investigate alleged misconduct is implied in various existing provisions, including sections 10 and 14 of the Solicitors (Amendment) Act 1994, which give the society powers, for the purposes of such an investigation, to require the production of documents and to attend at a solicitor’s place of business to inspect documents.

Amendment 9 removes any doubt arising from the absence of an express provision by declaring in the new section 6A(1) that, for the avoidance of doubt, the Law Society has, and always had, the power to investigate complaints of misconduct against solicitors. Section 6(2) is a standard provision which is made when existing statutory provisions are being amended for the purpose of the avoidance of doubt and where the removal applies retrospectively.

Amendment 13 clarifies that the Law Society has the power to investigate alleged misconduct by a solicitor whether a complaint was made to it by a client of a solicitor or where the alleged misconduct comes to its attention in the course of carrying out its regulatory functions. Breaches of the Solicitors Acts may come to the attention of the Law Society during routine inspections of solicitors’ practices. The purpose of the amendment is, therefore, to formalise the position. By way of example, inquiries under the Law Society’s solicitors’ accounts regulations may disclose conduct which constitutes a breach of the Solicitors Acts and which warrants full investigation under the Act’s disciplinary provisions.

Amendment No. 13, therefore, removes any possible doubt that the Law Society’s powers to investigate misconduct extends to complaints generated internally by the society itself, as well as to complaints made to it by clients of solicitors. In other words, it provides clarity and allows the society, where it comes into possession of evidence of what might be construed as malpractice or misconduct, to engage in fulsome investigations.

On amendment No. 14, section 9 of the Solicitors (Amendment) Act 1994 provides for the receipt and investigation by the Law Society of complaints made by clients in respect of excessive charging of fees by solicitors. The section obliges it to take all appropriate steps to resolve complaints by way of agreement between the parties. In the event that a solicitor issues a bill of costs that is excessive but subsequently settles the matter by agreement with the client, there is no statutory power available to the Law Society to treat the solicitor’s actions as a case of misconduct. It is necessary to empower the society to continue to investigate a complaint under section 9 and, if justified by the results of this investigation, to proceed with disciplinary sanc-

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tion against a solicitor for overcharging notwithstanding the fact that the solicitor and client may have resolved the matter by agreement, as I have stated. Otherwise the public interest would not be served by facilitating the frustration of a Law Society investigation by way of the solicitor coming to an agreement with the client, perhaps by a financial settlement.

That is not entirely fanciful, as Senator Regan can imagine, being a practising lawyer himself. The client and solicitor could conspire, with one of the parties doing well financially from it. It would thwart the public interest investigation of an issue where a serious aspect of misconduct occurs.

Section 19 of the Solicitors (Amendment) Act 2002 provides for the extension of the solicitors' disciplinary regime to alleged misconduct on the part of apprentice solicitors. Amendment No. 18 replicates for apprentice solicitors the provisions proposed in amendments Nos. 9 and 13 for solicitors. Section 19 of the 2002 Act commenced on 1 January 2003, hence subsection (2) provides that the amendment will have retrospective effect to that date.

Amendment agreed to.

**An Leas-Chathaoirleach:** Amendment No. 17 is related to amendment No. 10 and amendment No. 29 is consequential on it, so all will be taken together by agreement. Is that agreed? Agreed.

Government amendment No. 10:

In page 28, before section 34, to insert the following new section:

“34.—Section 8 (inserted by section 18 of the Solicitors (Amendment) Act 1994 and amended by section 10 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960 is amended—

(a) in subsection (1)(a), by the substitution of “the High Court, after consideration of the report and the submissions (if any) made to it by the Society under subsection (1A) of this section” for “the High Court, after consideration of the report”, and

(b) by the insertion of the following subsection after subsection (1):

“(1A) The Society may make submissions to the High Court in relation to—

(a) the opinion of the Disciplinary Tribunal as to the fitness or otherwise of the solicitor to be a member of the solicitors' profession, having regard to the findings of the Disciplinary Tribunal, and

(b) the recommendations of the Disciplinary Tribunal as to the sanction which in the opinion of the Disciplinary Tribunal should be imposed, having regard to their findings, to any finding of misconduct on the part of the solicitor previously made by them (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and to any order made by the Court under the *Solicitors Acts 1954 to 2008* in respect of the solicitor.”.”.

**Deputy Conor Lenihan:** The Law Society is required by section 7 of the Solicitors (Amendment) Act 1960 to bring the report of the solicitors' disciplinary tribunal to the High Court in cases where the tribunal has found that there has been misconduct and where the tribunal leaves the question of the sanction to be imposed to be decided by the High Court. Typically this occurs in the more serious cases of misconduct where the question of the solicitor's fitness to continue to practise arises. The amendments clarify that the Law Society is entitled, on bringing a report of the disciplinary tribunal to the High Court in a finding of

misconduct against a solicitor — amendment No. 10 — or against an apprentice solicitor as provided for in amendment No. 17, to make submissions to the court on any sanction the court may impose.

The right of the Law Society to address the High Court in such matters is not expressly provided for in the Solicitors Acts, although this has been the practice for many years and is regulated in court rules — Rule 8 of SI 701 of 2004, Rules of the Superior Courts (Solicitors (Amendment) Act 2002). Rule 8 provides that the Law Society may seek such order for sanction as it deems appropriate and reasonable having regard to the findings and recommendations of the disciplinary tribunal.

Recently the High Court considered, as a preliminary point, the right of the Law Society to address the court on the sanction to be imposed in a particular case. The judgment cast doubt on the society's practice of addressing the court on the sanction to be imposed in the absence of an enabling provision, although the court decided that Rule 8 should be applied to the case before it. The purpose of the proposed amendments is to make such an enabling provision and to remove any possible future doubt.

Amendment No. 29 adds the Solicitors (Amendment) Act 2002 to the Long Title of the Bill, consequent on amendments Nos. 17 and 18.

Amendment agreed to.

**An Leas-Chathaoirleach:** Amendments Nos. 11 and 15 are related and may be taken together by agreement. Is that agreed? Agreed.

Government amendment No. 11:

In page 28, before section 34, to insert the following new section:

“34.—Section 2 of the Solicitors (Amendment) Act 1994 is amended by the substitution of the following subsection for subsection (2) (inserted by section 12 of the Solicitors (Amendment) Act 2002):

“(2) References in sections 10, 10A (inserted by section 13 of the Solicitors (Amendment) Act 2002), 12 (inserted by section 14 of that Act) and 22 of this Act to complaints made to or received by the Society include references to any complaints made to the Society by the registrar under section 14B of this Act, and those provisions of this Act shall have effect accordingly.”.

**Deputy Conor Lenihan:** These amendments are similar in purpose to amendment No. 13 in that they confirm the Law Society's powers to generate internally complaints against solicitors. The amendments confirm the statutory role of the Registrar of Solicitors in generating internally a complaint of misconduct against a solicitor and extend the definition of misconduct for this purpose to include “any other conduct tending to bring the solicitors' profession into disrepute”.

Certain functions have been delegated to the Registrar of Solicitors by the Council of the Law Society. These functions include the power to initiate an investigation under the solicitors' accounts regulations and the power, as a result of a complaint or otherwise, to attend with or without notice at a solicitor's practice to inspect documents. In carrying out these functions, matters may come to the attention of the registrar which merit the commencement of formal disciplinary proceedings.

Section 2(2) of the Solicitors (Amendment) Act 1994, as inserted by section 12 of the Solicitors (Amendment) Act 2002, was intended to give to the registrar the power to make com-

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plaints to the society against solicitors for breaches of the Solicitors Acts. However, section 2 is an interpretation provision and is definitional of the term “complaint”. As such it does not confer the intended substantive power on the registrar. Amendment No. 15 rectifies this by providing that the registrar may make a complaint to the society alleging a contravention by a solicitor of any provision of the Solicitors Acts or alleging any conduct tending to bring the profession into disrepute. Amendment No. 11 makes a consequential amendment to the definition of a complaint. In effect, it strengthens legally the registrar’s position relative to the Law Society on complaints of misconduct.

Amendment agreed to.

#### SECTION 34.

Government amendment No. 12:

In page 29, line 19, to delete “subsection 8(1)(*da*)” and substitute “subsection (1)(*da*)”.

Amendment agreed to.

Section 34, as amended, agreed to.

#### NEW SECTIONS.

Government amendment No. 13:

In page 29, before section 35, to insert the following new section:

“35.—The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14:

“14A.—For the avoidance of doubt it is hereby declared that the power of the Society to investigate alleged misconduct by a solicitor may be exercised whether or not the Society receive a complaint in relation to the solicitor.”.”.

Amendment agreed to.

Government amendment No. 14:

In page 29, before section 35, to insert the following new section:

“35.—The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14A:

“14B.—Notwithstanding anything in this Part the issue by a solicitor of a bill of costs that is excessive may constitute misconduct.”.”.

Amendment agreed to.

Government amendment No. 15:

In page 29, before section 35, to insert the following new section:

“35.—The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14B:

“14C.—The registrar may make a complaint to the Society in relation to a solicitor alleging—

(a) a contravention by the solicitor of any provision of the *Solicitors Acts 1954 to 2008* or any order or regulation made thereunder, or

(b) any conduct by the solicitor tending to bring the solicitors' profession into disrepute."."

Amendment agreed to.

Section 35 agreed to.

#### NEW SECTIONS.

Government amendment No. 16:

In page 30, before section 36, but in Part 3, to insert the following new section:

"36.—The Solicitors (Amendment) Act 1994 is amended by inserting the following after section 26:

"26A.—(1) Subject to subsections (2) and (3), a contract between a solicitor and a client of the solicitor that any description of civil liability incurred—

(a) by the solicitor arising from his or her practice as a solicitor in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract, or

(b) by a partner, clerk or servant or former partner, clerk or servant of the solicitor arising from that solicitor's practice as a solicitor in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract, shall be binding on and enforceable by—

(i) if paragraph (a) is applicable, the solicitor and the client, and

(ii) if paragraph (b) is applicable, the partner, clerk or servant or former partner, clerk or servant of the solicitor and the client.

(2) Nothing in subsection (1) shall affect the operation of—

(a) section 40 (as amended by section 31 of the Restrictive Practices (Amendment) Act 1987) of the Sale of Goods and Supply of Services Act 1980, or

(b) Regulation 6 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995).

(3) The amount referred to in subsection (1) in respect of a description of civil liability the subject of the contract concerned shall be not less than the minimum level of cover, as specified from time to time in regulations under paragraph (b) of section 26(4), for indemnity against losses arising from those classes of claims which fall within that description of civil liability and, accordingly, any such amount which is less than such minimum level of cover shall, by virtue of this subsection, be deemed to be increased to such minimum level of cover, and such contract shall be binding and enforceable accordingly.

(4) Section 7 of the Attorneys and Solicitors Act 1870 is repealed on the commencement of section 36 of the *Civil Law (Miscellaneous Provisions) Act 2008*."."

**Deputy Conor Lenihan:** Solicitors carry on business either as sole traders with unlimited civil liability or as partnerships with collective and individual unlimited civil liability. The provisions of section 7 of the Attorneys and Solicitors Act 1870 restrain a solicitor in seeking to limit his or her liability in a contract agreed with a client. This puts Irish solicitors at a competitive

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disadvantage in commercial law against UK law firms who may limit their liability by contract with clients consequent on the repeal of the 1870 Act in the UK some years ago.

UK law firms who are active in Ireland in commercial law matters limit their liability as a matter of routine. The anomalous nature of the current position becomes especially apparent when in substantial projects an Irish firm of solicitors must join with other professional advisers to provide a multidisciplinary team where the other advisers can limit their exposure while the Irish solicitor cannot.

In practice this acts as a disincentive to an Irish firm to organise or lead a consortium of advisers since the primary responsibility for services provided by the consortium will often have to be accepted by the leading firm. Section 26A(1) will update the existing 19th century statutory provisions, which the UK has repealed, to take account of current commercial and competitive realities. The change will bring Irish law into line with current UK law and allow Irish law firms to seek and do business in competition with foreign law firms on equal terms. It will address the anomalous position where an Irish and a UK firm agree a limit on liability which can then be enforced by the UK firm but may not be enforceable by the Irish firm owing to the continued application of the 1870 Act.

Subsection (2) clarifies that the existing consumer protection provisions in the Sale of Goods and Supply of Services Act 1980 and the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000 will continue to be available to clients of solicitors in the event that they make a contract which limits their solicitors' liability. In addition, subsection (3) includes a safeguard for the client's protection in the form of a provision preventing the enforcement of such a contract to the extent that it falls below the general statutory minimum amount of professional indemnity cover required of solicitors, which currently stands at €2.5 million, as provided for in SI 122 of 2005 made by the Law Society. This safeguard would, in particular, continue to protect the interests of non-commercial clients of solicitors in areas such as conveyancing.

Amendment agreed to.

Government amendment No. 17:

In page 30, before section 36, but in Part 3, to insert the following new section:

“36.—Section 19 of the Solicitors (Amendment) Act 2002 is amended—

(a) in subsection (3)(d), by the substitution of the following for subparagraph (iv):

“(iv) their opinion as to the fitness of the apprentice, having regard to their finding or findings, to be admitted as a solicitor either at any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness, and the Society shall bring the report before the Court.”,

(b) in subsection (5), by the substitution of “The High Court, after consideration of the report of the Disciplinary Tribunal and the submissions (if any) made to it by the Society under subsection (5A) of this section” for “The High Court, on consideration of the report of the Disciplinary Tribunal”, and

(c) by the insertion of the following subsection after subsection (5):

“(5A) The Society may make submissions to the High Court in relation to the opinion of the Disciplinary Tribunal as to the fitness of the apprentice, having regard to the finding or findings of the Disciplinary Tribunal, to be admitted as a solicitor either at

any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness.”.”.

Amendment agreed to.

Government amendment No. 18:

In page 30, before section 36, but in Part 3, to insert the following new section:

“36.—(1) The Solicitors (Amendment) Act 2002 is amended by the insertion of the following section after section 19:

“19A.—(1) For the avoidance of doubt it is hereby declared that the Society have a power to investigate alleged misconduct by an apprentice.

(2) The power of the Society referred to in subsection (1) of this section may be exercised whether or not the Society receive a complaint in relation to the apprentice.

(3) If subsection (1) of this section would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.

(4) In this section ‘misconduct’ has the same meaning as it has in section 19 of this Act.”.

(2) This section shall be deemed to have come into operation on 1 January 2003.”.

Amendment agreed to.

## SECTION 36.

**Senator Alex White:** I move amendment No. 19:

In page 30, between lines 24 and 25, to insert the following subsection:

“(2) Where a tenant has, on or after the 12th day of December 2007, effected a renunciation as referred to in *subsection (1)*, the tenant shall be deemed not to be entitled to a new lease for a period of 20 years, and any lease for a shorter period effected on foot of such renunciation shall be deemed to be valid.”.

I would be interested to hear the Minister of State’s response to this matter because it arises in respect of a particular case that has been brought to our attention. The amendment is designed to ensure renunciations of the right to a new lease, pending the passing of the Bill, would be recognised as valid. Otherwise, some tenants would have their tenancies terminated and hardship might be created. I am keen to hear the Minister of State’s response on that and in particular ask him to explain the rationale for removing the words “prior to the commencement of the tenancy” from the section. It may be that his response will be convincing and in those circumstances I will take a view on the amendment we are proposing but I would like to hear from the Minister of State in that regard.

**Senator Eugene Regan:** On the same issue, the current provisions in the Landlord and Tenant Acts are designed to provide for renunciation of a long-term lease prior to a lease for offices would be entered into. That provision has worked well and it is intended that it be extended to all commercial lettings, if I understand the motivation for the amendment, but we are deleting the words “prior to entering into a lease”. I would welcome an explanation for that change,

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whether that aspect of it has been thought through and the reason that particular qualification or condition is being deleted.

**Deputy Conor Lenihan:** In effect, this amendment is proposing that a change to the law affecting business tenancies be made retrospective. The proposed change to the Landlord and Tenant (Amendment) Act 1980 contained in the Bill amends sections 17 and 85 of that Act. Section 17 deals with restriction on right to new tenancy and section 85 covers void contracts. The purpose of these amendments is to enable parties to a business tenancy to contract out of the provisions of Part II of the 1980 Act which covers the right to a new tenancy, provided that the tenant or would-be tenant has received independent legal advice. The provision draws upon section 4 of the Landlord and Tenant (Amendment) Act 1994 and section 191 of the Residential Tenancies Act 2004.

Senator Regan will be interested to know that unlike the provision in the 1994 Act, the ability to contract out is not confined to cases where the renunciation has been completed prior to the commencement of the tenancy. This is a deliberate policy choice since it is intended to facilitate existing business tenants who, in the absence of an ability to renounce their statutory right to a 20-year tenancy, might face eviction as the period of five years, after which the right accrues, draws to a close.

The question of further amending the Landlord and Tenant Act to provide for the opt-out to be retrospective to a specific date is, I take it, an effort to accommodate some whose tenancies are governed by existing legislative provisions but who would like, in effect, to avail of the new provisions in this Bill before those provisions become law. By definition, the existing provisions would have been in force when the original tenancies were entered into; when there was no proposal to change the law in the manner now contained in this Bill; and when there would have been no reasonable expectation that such a change would come about. In other words, tenants in such leases are no worse off now than they were when they entered open-ended into their tenancy agreements.

A difficulty with this amendment is the somewhat arbitrary nature of the date from which the renunciation would be given retrospective force. Accepting the amendment would privilege some categories of tenant whose tenancies expire on or after the date in question while discriminating against all those whose tenancies expired before that date and who, in consequence, have had to make alternative arrangements in respect of their business activity.

There are good reasons retrospective legislation is resorted to only on very rare occasions. When it is necessary, it is desirable that the rationale be very clear, that adequate notice be given to all parties and that the maximum effort be made to avoid invidious discrimination. In the current case, the focus is on commercial arrangements where the need for legal certainty is especially acute. In my view, that certainty is best served by adhering to the well-established rule that a provision will generally apply only from the date of its commencement. While I understand the motivation underlying the amendment, I cannot accept it.

**Senator Alex White:** The Minister of State made a number of fair points in his response. I do not propose to pursue the amendment today. I will reflect on what he has said and may return to it at a later stage.

**Senator Eugene Regan:** This aspect must be looked into further and I reserve the right to table an amendment on Report Stage. I accept that the explanation is helpful. Where it is a relieving provision I do not see any problem with retrospective legislation in this connection but it requires more examination and we will deal with it on Report Stage.

Amendment, by leave, withdrawn.

Section 36 agreed to.

Sections 37 to 42, inclusive, agreed to.

#### NEW SECTION.

**An Leas-Chathaoirleach:** Amendments Nos. 20 to 23, inclusive, are related and may be taken together. Is that agreed? Agreed.

Government amendment No. 20:

In page 35, before section 43, but in Part 6, to insert the following new section:

“43.—Section 6 of the Juries Act 1976 is amended by deleting “and under the age of seventy years”.”.

**Deputy Conor Lenihan:** The purpose of the two Government amendments Nos. 20 and 23 is to remove the upper age limit for eligibility to be called and serve on a jury and, as a consequence, to remove the upper age limit for excusability as of right. Currently, section 6 of the 1976 Act provides that “every citizen aged 18 years or upwards and under the age of 70 years who is entered in a register of Dáil electors” is eligible for jury service; and Part II of Schedule 1 (Persons Excusable as of Right) provides that “persons aged 65 years or upwards and under the age of 70 years” may be excused from jury service.

This amendment, when proposed on Committee Stage in the Dáil, attracted cross-party support. That cross-party support is evidenced again in the Seanad today by the presence of amendment No. 21 in the name of the Labour Party Senators, as an alternative formulation to the Government amendment No. 20. There are technical reasons I prefer the approach in the Government amendment to that in amendment No. 21. We do not need to include the saver for “reasons of infirmity” because that is already amply covered elsewhere in the Juries Act. The Senators might consider withdrawing amendment No. 21 on that basis.

We are all agreed that this change is worthwhile to reflect the increasing role and contribution of older people in society and the fact that the mandatory retirement age has now been raised. The changing demography of our population shows an increasing age profile as more people continue to live longer and healthier lives. Keeping the right of excusal on age grounds will ensure any person over the age of 65 does not lose an existing right and can be excused from service as of right if they so wish. The approach is to make the possibility of jury service available to older people while at the same time ensuring the availability does not impose a burden in any individual case.

On amendment No. 22 in the name of the Labour Party Senators, I thank them for tabling it and am glad to tell them it has the support of the Government. The principle is accepted and I have the assurance of Parliamentary Counsel that it is acceptable from a technical point of view.

Part 1 of the First Schedule to the Juries Act 1976 refers to “a person who because of insufficient capacity to read, deafness or other permanent infirmity is unfit to serve on a jury”. As this exclusion is currently the subject of court proceedings it is not appropriate for me to comment except to remind Senators that the law on juries has been included in the Law Reform Commission’s recently published Third Programme of Law Reform 2008-2014. I will consider any proposed amendments the Law Reform Commission makes in regarding persons ineligible for jury service and any other matters arising from its detailed consideration of this area of law.

**Senator Alex White:** I thank the Minister of State for his response, particularly to amendment No. 22 which deals with what would otherwise have been an anomaly where there would have been differential treatment of coroners juries. In the circumstances of the Minister of State being prepared to accept the amendment we have put forward in that regard, that difficulty has been dealt with. This relates to removing the upper age bar for service on juries, and is a very welcome development. I am happy that the Government has proposed its own amendment. We are pretty much *ad idem* in terms of how we should proceed in relation to this. I am pleased to note that my party, at a very early stage in this debate, raised the issue of the upper age bar on jury service. While I am not claiming strict ownership of any proposal in this regard, it is fair to say the Labour Party was, if not first, at least very early into the breach in advocating such a change. The age bar offends against the principle of age equality in our society. Very many citizens, 70 and over, are perfectly capable of serving on juries. We have had many practitioners and judges, who were well in excess of 70 and I see no reason members of the public cannot also offer their practical expertise and judgment on juries, which are such a fundamental aspect of the justice system. It is vitally important this change be made. I welcome the fact that we are in agreement across the House on this. I have not heard from Senator Regan, but I believe I know his view and it is that this ought to be effected.

I am open to persuasion on withdrawing amendment No. 21, in circumstances where the Minister of State has assured me that elsewhere in the Juries Act 1976 the question of potential infirmity in respect of jurors is dealt with. I have not had an opportunity to check this, but I am sure that what he tells me is true. In those circumstances, I am prepared to withdraw amendment No. 21, since the fundamental objective of removing the upper age bar for jury service is being effected by these changes.

**Deputy Conor Lenihan:** I thank the Senator for withdrawing his amendment because, in substance, we are addressing all of his concerns, in particular the issue around infirmity. I apologise to the House that I cannot particularly comment on the issue as regards the deaf person who is taking an action in respect of ineligibility to serve as a juror. That matter is before the courts and, as such, it would be invidious of me to comment, given that the State is a defendant in the case.

Amendment agreed to.

Amendment No. 21 not moved.

Sections 43 to 46, inclusive, agreed to.

#### NEW SECTION.

**An Leas-Chathaoirleach:** Amendment No. 22 is in the names of Senators Alex White, Michael McCarthy, Brendan Ryan and Phil Prendergast, and has been already discussed with amendment No. 20.

**Senator Alex White:** I move amendment No. 22:

In page 36, before section 47, to insert the following new section:

“47.—Section 31 of the Juries Act 1976 is amended by deleting “and under the age of sixty-five years”.”.

Amendment agreed to.

Section 47 to 50, inclusive, agreed to.

NEW SECTION.

**An Leas-Chathaoirleach:** Amendment No. 23 is a Government amendment and has been already discussed with amendment No. 20.

Government amendment No. 23:

In page 36, before section 51, to insert the following new section:

“51.—The First Schedule to the Juries Act 1976 is amended—

(a) in Part 1, by substituting—

*“Other persons*

Persons who have—

(a) an incapacity to read, or

(b) an enduring impairment

such that it is not practicable for them to perform the duties of a juror.”

for—

*“Incapable persons*

“A person who because of insufficient capacity to read, deafness or other permanent infirmity is unfit to serve on a jury.”, and

(b) in Part II, by deleting ”and under the age of seventy years”.”.

Amendment agreed to.

Section 51 deleted.

Sections 52 to 57, inclusive, agreed to.

SECTION 58.

**An Leas-Chathaoirleach:** Amendments Nos. 24 and 25 are Government amendments, which may be discussed together, by agreement.

Government amendment No. 24:

In page 41, subsection (1), line 25, after “Irish,” to insert “as”.

**Deputy Conor Lenihan:** These are technical drafting amendments. The first remedies an omission and the second ensures there is a proper new title in both Irish and English for the officeholder in question, at present known as “the Film Censor”.

Amendment agreed to.

Government amendment No. 25:

In page 41, subsection (1), line 30, to delete “as the Director of Film Classification” and substitute the following:

“, in English, as the Director of Film Classification and, in Irish, as *an Stiúrtóir Aicmithe Scannán*”.

Amendment agreed to.

Section 58, as amended, agreed to.

Sections 59 to 62, inclusive, agreed to.

#### SECTION 63.

Government amendment No. 26:

In page 45, lines 25 to 28, to delete all words from and including “health” in line 25 down to and including “2001)” in line 28 and substitute “ ‘health insurance contract’ ”.

**Deputy Conor Lenihan:** This is a drafting amendment.

Amendment agreed to.

Section 63, as amended, agreed to.

Sections 64 to 66, inclusive, agreed to.

#### SECTION 67.

Government amendment No. 27:

In page 49, line 39, to delete “severe” and substitute “undue”.

**Deputy Conor Lenihan:** The proposed amendment to section 29 has been the subject of discussion in this House and in the Dáil, as well as correspondence between FLAC and the Department. The Department has clarified for FLAC that the motivation behind this amendment is simply to put beyond doubt concerns which the board had regarding its power to waive or reduce the contribution payable by one of its clients in circumstances where it has been assessed at a level above the minimum. At present the board’s conclusion is that it does not have this authority. Once this amendment is passed, it will unambiguously have this authority.

Concern was raised in this House regarding the application of a “severe hardship standard” as the criterion governing whether a contribution could be reduced or waived. The choice of language in the original amendment was informed by the existing language in the legal aid regulations, but this amendment proposes to replace that term with the word “undue” — in other words, the word “undue” replacing the word “severe”. This latter expression, “undue”, is more widely found in legislation generally and does not have the extreme connotations which might have been read by some into the term, “severe”. It also better reflects the reality of how the board would operate such a standard. The intention is not to set the standard unreasonably high, while still providing that it would not simply apply in all cases, since it might be said that any request for a contribution would involve some hardship to a person on a modest income in so far as it would reduce his or her immediate disposable income.

**Senator Alex White:** I do not have a difficulty with the amendment. However, there was a debate on Second Stage in this House on the views put forward by FLAC, as referred to by the Minister of State. That organisation took a different view as to the likely effect of the proposed change. There appears to have been a difference of viewpoint as to what the real effect would be. I raised the question — as did Senator Regan and others — as to whether the Minister had taken the opportunity to listen to the views put forward by FLAC, and he said he had. However, the Minister of State should know that FLAC appeared not to accept that its views had been taken on board. It might be a matter of opinion or judgment as to whether

they have, but the Minister of State states fairly, just as his colleague the Minister said on the last occasion, that the intent of the change was essentially in ease of persons likely to seek legal aid in these circumstances, rather than representing any restriction on that. I have not had the opportunity to hear further soundings on the issue from FLAC because Committee Stage came upon me fairly quickly. That happens to us all but there will be a further opportunity to do so. I am not opposing the Minister of State's change from "severe" to "undue" because it makes sense but I will revisit the issue on Report Stage, as I would do in any event, if on the basis of further soundings I find there are some issues raised by FLAC.

**Senator Eugene Regan:** I welcome the Minister of State's proposal to replace the words "severe hardship" with "undue hardship". It was one of the main concerns raised on Second Stage in the discussions in this and the Lower House. There is still concern that the board does not have the discretion that the Minister of State suggests it has. This may be resolved through the relevant statutory instrument. The amendment is welcome but we can review the matter on Report Stage and reserve the right to decide whether further amendment is required.

**Deputy Conor Lenihan:** I reassure Senators Alex White and Eugene Regan that the view taken initially by FLAC on the thinking behind the section has changed following explanatory discussions with the body and officials who were present in the Chamber. FLAC is now much happier with the provision and has changed its view substantially. The issue of discretion is no longer of concern and both Senators can be reassured by this.

Amendment agreed to.

Section 67, as amended, agreed to.

#### SECTION 68.

Government amendment No. 28:

In page 50, line 6, after "shall" to insert the following:

“, in so far as they relate to the solicitor for any party to the proceedings pursuant to the certificate,”.

**Deputy Conor Lenihan:** This amendment is to clarify that the proposed change to the Civil Legal Aid Act being brought about by section 68 is intended to apply only in respect of the Legal Aid Board solicitors and not in respect of solicitors for any other party.

Amendment agreed to.

Section 68, as amended, agreed to.

Sections 69 and 70 agreed to.

Schedule agreed to.

#### TITLE.

Government amendment No. 29:

In page 9, line 18, after "1994," to insert "THE SOLICITORS (AMENDMENT) ACT 2002,".

Amendment agreed to.

Title agreed to.

Bill reported with amendments.

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

**Senator Lisa McDonald:** Next Wednesday.

Report Stage ordered for Wednesday, 4 June 2008.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Lisa McDonald:** At 10.30 a.m. tomorrow morning.

### **Adjournment Matters.**

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### **Architectural Heritage.**

**An Cathaoirleach:** I welcome the Minister of State at the Department of Finance, Deputy Mansergh, and wish him well.

**Senator Paul Coghlan:** I am delighted to welcome the Minister of State to hear his response on this issue because it may be as close to his heart as it is to mine. As he is aware, I have been vocal regarding Killarney House for many years, both inside this House and in County Kerry. I look forward to hearing his response that I hope will represent progress and that something will happen.

The Minister of State undoubtedly is aware that costs are increasing and accruing continually. The cost of storing the antique furniture alone is considerable. There also are not inconsiderable heating and security costs. Essentially, Killarney House is an important historic property of national interest and absolutely nothing is accruing to the State. This matter sadly has been allowed to languish for years. As a recent editorial in *The Irish Times* stated:

Successive Ministers promised to preserve the integrity and character of Killarney House. They failed. Basic damp-proofing measures were taken, but the fabric has been allowed to decay. As a proud people, we should at least respect our heritage and the generosity of benefactors.

Speaking of the benefactors, I refer to both the late great John McShain and the Earls of Kenmare before him. For years it was the home of Lord Castlerosse and his father, the sixth or seventh earl. They lived there from 1913 until approximately 1953. Thereafter, John McShain and his family lived in the house for 40 years. They brought to it much of its character and many individual fine pieces which, as noted previously, are in storage. This is tragic because a fine plan was proposed by all the Killarney interests represented on the national park liaison committee. I understand it was intended to house an interpretative centre for Killarney National Park. It was also intended to dedicate a room to John McShain, the man who built Washington DC. He carried out a rejig of the White House and built the Pentagon and many other famous buildings in the city. In Ireland he was of great assistance to the horse racing industry and won many famous races with horses he had in training with the former trainer, Vincent O'Brien.

Both John McShain and the Browne family, as represented by the Earls of Kenmare and Lord Castlerosse, were very good to Killarney. I understand the intention was to dedicate one room in the house to the McShain family and another to the Browne family, that is, Lord

Castlerosse and the Earls of Kenmare. The house has the advantage of being in the heart of Killarney town while remaining within the national park and it was intended to be a tremendous tourism project which people could visit in the evening, having toured the Ring of Kerry or visited other sights during the day. Alternatively, they could visit in the morning before going on tour. It would have been highly central. Moreover, it was intended to refer to our early Christian heritage in the chapel with a display and other works.

Everyone is highly enthusiastic about this proposal. Moreover, the national tourism development authority, namely, Fáilte Ireland, has allocated approximately €137 million to fund cultural projects. This would be an ideal project. I know it has the goodwill of the Minister for the Environment, Heritage and Local Government, Deputy Gormley, because I have discussed it with him previously. More recently, our colleague in the other House, Deputy Healy-Rae, as part of his support for the Government, obtained funding that, presumably, has yet to be spent. I look forward to the Minister of State telling me when the work will commence, what it will involve and whether he thinks it will restore the house to a condition in which it can be reopened to the public, accommodate various displays and house the antique furniture that is being stored at great cost. I look forward to that day, which I hope is not far away.

**Minister of State at the Department of Finance (Deputy Martin Mansergh):** Nothing gives me greater pleasure than coming back into this House to respond on a Kerry matter dear to the heart of my good friend and former colleague, Senator Paul Coghlan. I am sure the Senator will be familiar with the following lines.

Beauty wanders everywhere, footprints leaves on many strands but her home is surely there. Angels fold their wings and rest in that Eden of the west. Beauty's home, Killarney. Heaven's reflex, Killarney.

The Department of Arts, Sports and Tourism, one of the Departments to which I am assigned, is making its home there.

I thank Senator Coghlan for giving me the opportunity to discuss this important issue in the House. The original Killarney House was located at Knockreer but was destroyed by fire in 1913. The current Killarney House, which dates from 1915 approximately, was previously part of the stable wing of a much larger mansion, built around 1720. In 1881 the Kenmare family moved from this 1720 mansion to a newly built Victorian mansion on a site at Knockreer and the 1720 mansion was demolished, although the stable wing was left intact. The Victorian mansion at Knockreer was accidentally destroyed by fire in 1913 and it was decided to convert the stable wing of the 1720 mansion for residential use, possibly under the direction of Sir Edwin Lutyens and this is the property now known today as Killarney House, which measures approximately 1,254 sq. m. in floor area.

The current Killarney House was the seat of the Kenmare family until 1956, when Mrs. Beatrice Grosvenor, the niece of the seventh and last Earl of Kenmare, who died in 1952, sold the house and much of Kenmare estate, to an American syndicate, which in turn sold the property to an Irish-American philanthropist, Mr. John McShain. In 1978 Mr. McShain sold Killarney house and the greater part of the estate to the State for a sum well below market value at the time having been assured that the house and estate would be incorporated into Killarney National Park. Mr. and Mrs. McShain reserved the house and surrounding 52 acres to their use for their lifetime. Mr. McShain died in 1989 and Mrs. McShain lived in the house until her death in 1998, when the house and surrounding 52 acres reverted to the State.

In recent years the Department of the Environment, Heritage and Local Government has funded essential works to avoid any deterioration to the fabric of the building, including works to prevent dampness, the provision of dehumidifiers in all the main rooms on the ground floor

[Deputy Martin Mansergh.]

and other important trench and draining works. In addition, the gates and railings of the house have been restored, a security system has been installed and heating pipes and radiators have been upgraded. Furthermore, in 2007 the gate lodge at Killarney House was renovated for use as an assembly and information point for walking tours, at a cost of €250,000. The lawns and flowerbeds at the house are regularly maintained. Staff are employed to cut the lawns, trim hedges, plant and maintain flowerbeds, collect litter and carry out small maintenance jobs.

There have been a number of proposals made over the years regarding the future restoration, use and management of Killarney House. Indeed, the stated intention for Killarney House in the current management plan for Killarney National Park is to preserve and present its integrity and character both internally and externally and to provide for visitor access to certain parts as appropriate. The Office of Public Works has commissioned detailed specialist surveys of Killarney House which have made it clear that major infrastructural works are needed before the house can be opened up to the public.

Taking everything into account, the way forward is the setting up of a steering group under the auspices of the Office of Public Works together with the Department of the Environment, Heritage and Local Government to determine a programme of remedial works to maintain the fabric of Killarney House. This process has commenced. The group will also address the definitive future use and development of Killarney House and source capital funding for the major investment that will be required to give effect to such proposals. As part of the process there will be full consultation with and involvement of both local and national stakeholders in the development of plans for the use of Killarney House.

I will no doubt visit Killarney in the not too distant future and I will make it my business to visit Killarney House. I will inform Senator Coghlan of when I am coming and he may, perhaps, tour it with me.

**Senator Paul Coghlan:** I appreciate the Minister of State's invitation and will take him up on it. I also welcome the steering group but I am disappointed that nothing in his reply said anything of the moneys which were not to be huge and which I understood had been allocated through the Office of Public Works to Deputy Healy-Rae by arrangement with the former Taoiseach. The Minister of State's reply mentioned talks about further talks and we have had this for too long. Killarney House has deteriorated and is in a shocking state.

Notwithstanding this, I look forward to visiting Killarney House with the Minister of State. Perhaps that visit might kick-start something more serious than what was implied in his reply.

**Deputy Martin Mansergh:** I will clarify the Senator's point on resources that were allegedly promised. I will communicate with him whether there is or is not substance to this.

The Seanad adjourned at 5.20 p.m. until 10.30 a.m. on Wednesday, 28 May 2008.