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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Thursday, 11 *February* 2010.

SEANAD ÉIREANN

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Déardaoin, 11 *Feabhra* 2010.
Thursday, 11 *February* 2010.

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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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Paidir.
Prayer.

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Order of Business.

Senator Dan Boyle: The Order of Business is No. 1, Arbitration Bill 2008 — Second Stage, to be taken at the conclusion of the Order of Business, on which spokespersons may speak for 12 minutes and all other Senators for seven minutes and Senators may share time, by agreement of the House.

Senator Frances Fitzgerald: In *The Irish Times* this morning there are 14 letters about George Lee, but I would like to quote from a letter from Ms Jacinta Mangan, a special needs assistant at St. Joseph's school in Tallaght. I ask the Deputy Leader, Senator Boyle, to respond to the letter which reads:

> The Department of Education is threatening to cut the staff in our school by two-thirds. This means that the teacher numbers will be reduced from 16 to six and our special needs assistants are being reduced from 17 to five.

The letter mentions that when the Department undertook a review of the school recently, it found it to be excellent and meeting the needs of its pupils. Ms Mangan states that if these cuts are implemented, she will not be able to continue the teaching and provide the care needed by these children. She asks how this can be allowed to happen. The letter concludes:

> Our school has been abandoned by the State and our elected officials but we will fight Mr. O'Keeffe and the undemocratic quango, the National Council for Special Needs, he cowers behind. There is only one chance at childhood and our children deserve every opportunity.

Where is the fairness in decision-making at Government level, which means these children will not receive the special needs assistance they clearly need and which a Government report found they need? The Deputy Leader is a member of the Green Party which prided itself on preserving education in the renegotiated programme for Government. These children were not saved by the decisions made on foot of the Green Party's recent renegotiation with its Government partners. We need a debate in this House on what is happening as regards special needs education.

During the debate on the budget we spoke about the importance of fairness in decision-making. A Fine Gael motion on the unfair decision to preserve the conditions of very senior civil servants was voted down in the Dáil last night. Public servants who are paid less than

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€30,000 were heavily punished by decisions made in the recent budget. We should have a debate on such matters in the House next week.

Will the Deputy Leader explain how it is fair, after years of the Celtic tiger, to impose a cutback on children with special needs in Tallaght?

Senator Joe O'Toole: I support 99% of Senator Fitzgerald's contribution on special needs education. I also read the letter this morning and the only aspect on which I take issue and on which I am sure the Senator will agree with me is the reference to the National Council for Special Education, NCSE. An examination of the role of the council in this matter would answer the Senator's question. The NSCE was charged by the Government with producing methods and timelines for implementation of the Education for Persons with Special Educational Needs Act. It has produced one of the best reports I have read. In one four or five page section the report addresses every requirement of the Act and sets out actions, timelines and resource allocations for each aspect of the legislation. I ask my colleagues on the Government side to read the report which I will circulate and note how the timelines have been ignored and the Government has failed to make progress.

We do not need to reinvent the wheel. The National Council for Special Education has done a mighty job in committing everything to paper. The point the letter writer was no doubt trying to make was that the council had been ignored by the Government. The House should debate the four or five pages of the NCSE report on the implementation of the Education for the Education for Persons with Special Educational Needs Act. The report clearly identifies when certain steps should be taken, how many psychologists should be recruited, the timeframe within which individual children should be assessed, the means for determining individual educational plans and other issues.

I reiterate a point I made yesterday on the Order of Business. I have made the same point to colleagues in the trade union movement. Watching television images from Greece yesterday one could be forgiven for believing a revolution rather than a 24 hour national strike was under way. People believe the bitty trade union action taking place in various workplaces around the country will not lead to anything. While I hope that is the case because no one wants strike action, these actions develop their own dynamics. Small measures can lead to larger ones and annoyance among individuals can lead to a serious row which could eventually result in people losing control at all levels.

There has never been a more important time for the Government, the trade union movement, business leaders, including IBEC, and others to show a united front and act in concert to distance Ireland from Greece, Italy, Spain and Portugal. We must move forward together. People should not delude themselves that the current industrial action will go away and nothing will happen. As Senator Buttimer stated yesterday, bush fires become forest fires and eventually develop into one raging, out of control inferno. The Government must take control. Trust is lacking between the trade union movement and the Government. All parties must act for the good of the country. I appeal to the Deputy Leader to commence the process by indicating his party's view on how this issue can be advanced.

Senator Dominic Hannigan: One of the issues on the agenda at today's meeting of European Union Heads of Government in Brussels is how the Union can assist in the reconstruction of Haiti. I would like the meeting which will be attended by the Taoiseach to send a clear message to the International Monetary Fund and World Bank that Haiti's debts must be cancelled to assist in the reconstruction of the country.

It is also important that European leaders agree on a set of measures to help stabilise the euro currency. These measures must be fair and balanced and not show favour to particular countries. We are all aware from news reports that Greece is in crisis as the Greek Government seeks to implement budgetary changes to address the country's economic difficulties. Senator O'Toole referred to the issue. Ireland has addressed its crisis by introducing difficult measures. We have made sacrifices, some of which were necessary, and had our wages and services cut. It is important, therefore, that we ensure governments which fail to take action are not given a free ride. EU Heads of Government must show leadership on this issue. In stabilising the currency they must not show favouritism to a particular country as to do so would create a dangerous precedent in dealing with future crises.

As an engineering graduate, I welcome today's call by Engineers Ireland for a programme to be introduced to incentivise unemployed engineers to return to college to study maths. Maths and science have the potential to create a significant number of jobs and require investment if we are to fight our way out of the recession. I ask the Deputy Leader to arrange a debate on the Engineers Ireland proposal and the wider issue of access to education.

Yesterday I met mature students taking access courses at the National University of Ireland Galway whose maintenance grants had been reduced by several thousand euro in the past year as a result of Government cutbacks. Approximately 2,000 students nationwide have been affected by the cuts and many are having difficulty in completing their courses. This could result in access courses failing to attract sufficient numbers of students to be feasible next year. I ask the Deputy Leader to arrange a debate on access to education as soon as possible.

Senator Niall Ó Brolcháin: I support calls for a debate on special needs education. The sooner we have this essential debate the better. I refer specifically to Senator O'Toole's comments on the Education for Persons with Special Educational Needs Act which is addressed in the programme for Government. Progress is required on the recruitment of speech and occupational therapists. I am also in favour of moving towards taking a rights based approach to special education needs. A rights based approach to education in general would fit in well with the Constitution and what was originally——

Senator David Norris: The Senator should move to these benches where he would be made very welcome.

Senator Niall Ó Brolcháin: I commend Senators for calling for a debate on special education needs.

I also call for a debate on the issue of Travellers' health, on which a report was published today. The health of Travellers is linked with poor accommodation. The report recommends a greater national input into the issue of Traveller accommodation because the current local authority system does not appear to be working.

Senator Hannigan referred to a report by Engineers Ireland, an organisation which is strongly focused on the concept of the green economy. I call for a debate on the green economy, on which both the Fine Gael Party and the Government have produced good documents. We need to find a way out of the current economic downturn and the green economy appears to be the best way to achieve this.

Senator Jerry Buttimer: When does the Deputy Leader expect an end to cronyism and the continuing political patronage on the board of FÁS? Earlier this week the Tánaiste and Minister for Enterprise, Trade and Employment announced appointments to the new board of FÁS. Fewer than half of those appointed were required to apply for the position. A short-list of 28

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people was drawn up and, lo and behold, it emerged that three of the new board members were linked to the Fianna Fáil Party, while one was a failed Green Party election candidate.

Senator Niall Ó Brolcháin: That is not the case.

Senator Jerry Buttimer: Nothing has changed in FÁS which remains a symbol of excess, waste and patronage.

An Cathaoirleach: Is the Senator seeking a debate on the matter?

Senator Jerry Buttimer: When can we expect real reform of FÁS? While its staff do great work on the ground, it is time the board worked on behalf of the people.

I ask for a debate on social partnership. I listened to Senator Hannigan's contribution. The euro is in crisis but, more importantly, the country needs everyone involved in social partnership, including the Oireachtas, to take action to remove the threat of industrial unrest. Workers, employers, the Government and all other parties must establish a mechanism to enable us to trade out of the recession. The Government has failed to listen to the Opposition and the social partners. When will it do so? When will the Green Party begin exercising itself in Government as opposed to what it doing at present, which is huffing and puffing?

Senator Labhrás Ó Murchú: Yesterday, a new salary and expenses regime for Deputies and Senators was announced. This is an important piece of the economic recovery jigsaw towards which we are all working. It is particularly important that Members of the Oireachtas are seen to be bearing the hurt the same as the public do in so many areas. Some of the difficult decisions made to date by the Government are now bearing fruit and we can see that we are being viewed internationally as a country making a genuine and focused effort to put in place the elements of an economic recovery.

At the same time, we are all aware of a simmering under the surface where the trade unions are concerned. I agree with Senator O'Toole that we must urgently address this issue. It is not sufficient to know that it is there and that we ignore it to some extent. It is far more important that an effort is made again to engage with the trade unions. Social partnership is the way forward. To some extent perhaps it has been tarnished because having seen its success in the good days, the recession is being blamed on it. I do not accept this. I believe it is possible to sit down around the table once again and look at the views of the trade unions. It is not the decisions made that are the big problem; the fears of the trade unions for the future are what are important, and this is especially true of the public service. We should sit down with all the trade unions and social partners and indicate what the coming years will involve. It is not enough to take an eye off the ball. We have made good progress but we must build on it.

Senator David Norris: I call for an urgent debate on homelessness in Dublin. I raised this issue previously in the context of what I felt was a rather bureaucratic approach by the Homeless Agency on the collection, harvesting and retention of data on the homeless. It was rather insensitive. Now, the situation has become much worse because the Salvation Army in conjunction with Dublin City Council has announced the closure of the Cedar House emergency centre for the homeless on Marlborough Street. Eight of the people in contact with that agency died on the streets of Dublin over Christmas. This situation will get much worse. The response of the city authorities seems to be to clear these untidy elements off the streets. There is no doubt that they are awkward people. These are the most vulnerable and chaotic people. The excuse being used is that the hostel is not up to standard and that the most amenable people will be put into bed and breakfast accommodation, which is often filthy and poorly run. However, the

chaotic people — drug addicts, alcoholics and people with mental problems — will be left out altogether.

Cedar House provides 50 rough sleepers with a bed. Those working there hand out bedding and provide 1,000 items of clothing per week. They feed people day and night and have an outreach service. What will happen to these people? Incidentally, 40 jobs are unceremoniously gone without discussion with the employees. The Salvation Army is seen as a Protestant charity, although I do not think it is. On the other side of the city, at Charlemont, Crosscare, the Catholic agency which does such excellent work, is also being closed at the behest of the city council. I warned that this type of thing might happen when I saw the Government dismantling the Combat Poverty Agency and the Equality Authority. The vulnerable have been left voiceless. It is for the Seanad to take up this cause and colleagues on all sides of the House have called for a debate on homelessness. I call for it urgently and would like it next week. These people are vulnerable and will die. If we do not give a voice to them, we can only hang our heads in shame.

Senator Ivor Callely: I support the call for a debate on education, in particular special needs. We all recognise the importance of intervention and the benefits accruing. Perhaps we should look at what has been achieved in recent years and how we can continue to roll it forward.

I support Senator Norris's view on the importance of raising the issue of homelessness. There are very vulnerable people with difficulties who are bounced from one authority to another. Those of us who deal with these people regularly are somewhat frustrated with the system that prevails. Having said that, great progress has been made on the number of beds available for those who go to shelters.

Senator David Norris: The chaotic ones are the problem.

Senator Ivor Callely: Fantastic and fabulous work is being carried out by outreach workers trying to bring in people. In case the House would have the view that there are insufficient beds available for homeless people, my understanding is that the beds are not full each night. An ample number of beds are available——

Senator David Norris: It is the chaotic people who are vulnerable.

An Cathaoirleach: No interruptions.

Senator Ivor Callely: ——but it is difficult to bring in people. I wish to raise the failure of the HSE to reach the target on its primary care centres. I read with interest the work of the Joint Committee on Health and Children on this issue and an appropriate incentive for the construction of primary care centres is necessary.

I call for a debate on defined benefit pension schemes. According to the Pensions Board up to 80% of defined benefit pension schemes were estimated to be in deficit at the end of 2009. This is a very important issue and I would like a debate on it.

Senator Eugene Regan: Two headlines from *The Irish Times* today are "Frantic EU efforts to develop conditional rescue for Greece" and "Ireland distances itself from hardest hit", that being a reference to the high debt problems of Greece, Portugal and Spain. We have taken the necessary corrective action on the public finances, but what distinguishes Ireland from these other countries is the role played by the Opposition in supporting the Government on implementing the Stability and Growth Pact cutbacks in public finances. On "Morning Ireland" today, Daniel Gros of the Centre for European Policy Studies underlined that distinguishing feature. He stated that a deep adjustment is inevitable in Greece but it is not certain that the

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opposition and trade unions also understand that. When we reflect on the changes made in this economy and where we have distinguished ourselves, we see that distinguishing feature is the role of the Opposition, in particular Fine Gael and Deputy Richard Bruton who drew up Fine Gael's economic policy and alternative budget.

In the United Kingdom, a former Minister, Jonathan Aitken, and Lord Jeffrey Archer were found guilty of perjury in separate libel actions. Here, a sitting Minister, Deputy Willie O'Dea——

An Cathaoirleach: I am not going down that road of perjury in the Chamber.

Senator Eugene Regan: ——who by his own admission has lied on oath——

An Cathaoirleach: Please.

Senator Eugene Regan: ——and apologised to the court.

An Cathaoirleach: I do not want to get involved in any cases that are in the courts.

Senator Eugene Regan: This is a valid issue and I am entitled to raise the question and I am asking the Deputy Leader a question.

An Cathaoirleach: I am not saying that you are not entitled to raise it but I do not want to get involved in perjury.

Senator Eugene Regan: It is not personal, it is business. I asked for an explanation of the Taoiseach's position on this and what has the Minister for Defence to say on it. Since no explanation is forthcoming, if we are to have any standards which are comparable to that applicable in other jurisdictions, the least the Minister of Defence should do is resign from office.

Senator Terry Leyden: I am delighted to hear the Opposition has been so helpful to the Government on economic policies. It is a refreshing new disclosure by Senator Regan.

Senator Paul Coghlan: We always act in the national interest.

Senator Terry Leyden: I recall that the Labour Party voted against NAMA and other such issues.

An Cathaoirleach: Questions to the Deputy Leader. We are not interested in the Opposition.

Senator Terry Leyden: I am sure the Deputy Leader will clarify the situation because he is well aware of the programme for Government.

An Cathaoirleach: The Deputy Leader will deal with questions raised.

Senator Frances Fitzgerald: Credit where credit is due.

Senator Terry Leyden: Nobody here should know more about the courts than Senator Regan. The matter discussed has been discharged by the courts and no further action is involved.

An Cathaoirleach: Do not get involved in that. It is questions to the Deputy Leader now.

Senator Terry Leyden: If somebody makes a point like that, it is only fair that somebody should be able to stand up for a person being accused or wronged.

An Cathaoirleach: The Deputy Leader can only reply to questions raised.

Senator Terry Leyden: I am simply assisting the Deputy Leader in that regard.

Senator Nicky McFadden: Always helpful.

Senator Terry Leyden: The Fine Gael Party should stop demonising George because he is a decent young man with a great future. The marriage did not work out. I am not sure whether it was consummated.

An Cathaoirleach: I will call the next speaker if the Senator does not ask a question.

Senator Terry Leyden: Court proceedings are underway and they should be held in camera because it is the most acrimonious divorce I have come across.

An Cathaoirleach: This not the pantomime; it is a serious Chamber. The Senator can put questions to the Deputy Leader if he wishes but otherwise I will call the next speaker.

Senator Terry Leyden: No. 36 on the Order Paper, motion No. 5, was submitted by Senators Norris and O'Toole and concerns taxi plates. I urge the Senators to move this motion so we can debate it with the Minister for Transport. I raised the issue of taxi plates on yesterday's Order of Business. Dublin has 14,000 taxis and up to 60 vehicles are waiting in line at Heuston station on any given morning. This is a difficult time for the taxi industry. The motion has been on the Order Paper since March 2009. I ask those who put down motions why they cannot move them within the year. It is much easier for Opposition Senators to table this kind of motion than it is for those of us in Government.

An Cathaoirleach: That is a matter for the Senators who submit the motion.

Senator Terry Leyden: I cannot move the motion. I ask Senators Mullen and Ross to withdraw motion No. 6, which refers to a national strike planned for 30 March 2009.

An Cathaoirleach: That is a matter for the Senators concerned.

Senator Terry Leyden: I am merely making a suggestion as a Member of this House. I am trying to be helpful by reminding the Senators that they put forward the motions. They should either be removed or moved.

An Cathaoirleach: Questions should be put to the Deputy Leader on the Order of Business.

Senator Paul Coghlan: Perhaps it is fortunate that the Deputy Leader is taking the Order of Business because he may be qualified to tell us about the proposed mayor for Dublin. We understand the heads of a Bill were agreed but we will not know the details until the legislation is published. I ask the Deputy Leader to outline for the House what he thinks the Bill will contain regarding the powers of the proposed mayor. Public representatives are being caught on local radio even though we are not in a position to comment on the matter. We do not know how the proposal will work in practice. We already have four mayors who are answerable to councillors but the new mayor will have some sort of overarching role without being answerable to any council.

No. 6, the Multi-Unit Developments Bill 2009, and No. 8, the Property Services (Regulation) Bill 2009, have been languishing on the Order Paper for quite some time and there is confusion as to whether it is intended to proceed with them. Perhaps the Deputy Leader can enlighten us regarding these Bills.

[Senator Paul Coghlan.]

I was taken by the comments of Senators O'Toole, Ó Murchú and Buttimer on social partnership. Nobody wants this country to end up in the situation of Italy, Spain, Portugal and, especially, Greece. I do not pretend to understand all the reasons behind the breakdown of trust but we certainly do not want unrest. It is welcome that Senator O'Toole, who is closely involved in the trade union movement, stated that unions have no such intention but we must return to talks. It is very bad when people do not speak to one another because, as Senator Leyden would argue, it can lead to divorce. In order to arrive at a proper accommodation, the Government should lead the return to the negotiating table.

11 o'clock

Senator Marc MacSharry: I join other speakers in calling for a debate on special needs. We all have experience from our constituencies of cuts in hours, the insensitivity of special educational needs organisers, SENOs, in certain areas and frustration at the parrot like responses that come from the National Council for Special Education when one appeals to the Minister for Education and Science. Every case is different and some require the personal attention of SENOs, who cannot simply refuse people based on a strict set of criteria.

Approximately one year ago I called for the establishment of a commission for a fairer Ireland. Now that social partnership as we knew it has effectively fallen apart after serving us so well over the past 20 years, it would be timely to establish a commission which allows all the pillars to meet over a short period of time to tease out the issues and perhaps outline a path for the next 20 years of social partnership.

This House could play a valuable role in ratifying public appointments to State boards. In regard to so-called political appointments to the board of FÁS, the fact that people have been able to apply to be appointed to various boards is a welcome development. I have the height of confidence in the appointees and their political affiliations do not impact on their expertise or ability to do a good job. In case the Senators opposite doubt me, let me remind them that one of the best appointees to the board of NAMA is a former Fine Gael activist and insolvency accountant from Limerick. The fact that he has in the past been a Fine Gael activist does not remotely affect my opinion of his ability to do an excellent job.

Senator Eoghan Harris: I dissent from the sentiments expressed by Senators O'Toole, Ó Murchú, Coghlan and Buttimer regarding the public sector. If politicians are to earn their money, they must mediate among the differing needs of society. The public sector went out of control during the boom years. Any correction is bound to be bloody and difficult. It is easy to implement social partnership in boom times but it failed the first test in the recession and it fell apart. Before we can talk, the reality check has to go in hard. There is still a huge gap between the public and private sectors. Ask the Halifax workers whether they can walk back into a permanent and pensionable job like a certain *prima donna* who allegedly left to try the free market of politics. They have no such safety nets. Everybody knows that is the dialectic or rhythm of life.

Edmund Burke noted that anybody who gets an emolument from the public purse will not give it up voluntarily. Public sector workers received emoluments from the public purse and the gap still stands at between 26% and 30%. Before we speak to them, we have to know they understand there will be no return to the gravy train. They must do a hard day's work for their pay like everybody else. Members of the Oireachtas have now accepted the need to give value for money but the public sector is not giving value for money in many areas. Many public servants would welcome a reformed system which rewarded those who do a hard day's work on the basis of merit and fired time servers if necessary. The Government should not sit down

with the public sector until the unions assure it that reform will be on the agenda. Furthermore, I deplore the decision of the Minister for Finance to allow 600 of them off the hook. That sort of sweetheart deal ties the hands of those of us who have rightly criticised the gravy train over the years. It was a mistake by the Government and it should be rectified.

Senator Mary M. White: Along with 600 other people, I attended a lecture in the Mansion House last Monday given by Dr. Craig Barrett, former chairman of Intel. Dr. Barrett spelled out the reasons why Intel invested in Ireland 20 years ago. We had a large and highly educated cohort of young university graduates and were competitive and bursting with fire to be the best in Europe and to escape our Third World situation.Λ He gave a frightening assessment of our current position. Ireland is no longer competing on the world stage. The reasons Intel came no longer exist, other than the corporation tax. Dr. Barrett said that, sadly, our standard of education is only average, our broadband development is poor and our average investment in research and development is weak. A total of 600 policymakers were in the room. I do not know whether other politicians were in attendance besides me.

I call on the Minister for Education and Science, Deputy Batt O'Keeffe to come to the House to discuss what Dr. Barrett said. What is his vision for the future of education? Dr. Barrett said that the nanotechnologies of the future on which industries will be based are dependent on science and mathematics. Naturally, we will always need the humanities, but we must increase our standard of education in science. He said that 35% of mathematics teachers in secondary school are not even graduates in mathematics and science. They are not qualified to teach it. He also succinctly said that when the Fianna Fáil-driven Government——

An Cathaoirleach: Time, Senator.

Senator Mary M. White: I am a republican socialist by nature. I watched closely the Fine Gael Government of the 1980s. I feel very sorry for my colleagues on the Opposition benches because their leader cannot afford to blow it any more. I said to my colleagues today that if Fianna Fáil is given a chance in the next 12 months, we will be back as the leaders in government. This country's success to date has been due to the pragmatic vision of Fianna Fáil. Let us take for example, Donogh O'Malley, the visionary in education in the 1960s who gave free secondary education. We must raise the standards of mathematics and science. The universities are half asleep. Dr. Barrett said we need UCD and Trinity College to be like Stanford and MIT——

An Cathaoirleach: I thank the Senator.

Senator Mary M. White: ——and to produce entrepreneurs who will produce the nanotechnologies and companies of the future.

An Cathaoirleach: Time, Senator. My hands are tied.

Senator Joe O'Reilly: The singular failure of the Government and the failure of politics at the moment is the failure to create jobs in this country. The fact is that in the region of 437,000 people are out of work and 60,000 young people emigrated last year. Those statistics are frightening. They are a shocking indictment of what we are doing. For that reason I support the proposition by Senator Ó Brolcháin that we have a full debate on green technologies, green energy and green solutions to the jobs crisis.

There is great potential for jobs in wind energy. We could become a net exporter of energy. There is also great potential for jobs in wave energy. There is further potential for jobs on the

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100,000 acres of fallow land that could be used for the production of bio-fuels by farmers. That potential exists at national level.

At a more local level communities can come together in the same way as the co-operatives of old to put in place microgenerators. More grant aid could be provided for insulation and solar panels. A huge amount could be done to create jobs. If one does not create jobs, one does not generate economic activity or revenue and one will never restart the economy. I urge the acting Leader to set aside a minimum of one day — a number of days if possible — to discuss in a focused way how we can create jobs from the green energy sector. That area could become a net creator of jobs and we could become net exporters of energy. The rising cost of oil and the finite supply thereof makes this an imperative.

Senator John Hanafin: I support those who spoke previously about innovation and job creation that are necessary for the economy. I am conscious in particular that the existence of this Chamber potentially has a question mark over it. What we do in this Chamber and how we do our work for the next term will be important. I suggest to the Deputy Leader that we continue to have debates on the economy, in particular on innovation and jobs.

I am conscious that the Taoiseach has made it clear that we need to get back to 2004 levels for us all to be competitive. On that understanding, there is room for social partnership. We must all realise that we need to go back somewhat to become competitive because the only safe job is a competitive job. We all need to be competitive. With that in mind I will continue to ask for a direction on social partnership that we could discuss in the House under the guideline of becoming competitive. We should also discuss jobs, in particular innovation. In the past Europe has lost out on significant opportunities. Now the European Commissioner for Research, Innovation and Science is an Irish Commissioner. With that in mind, there is great potential. We would serve the country well if we continue to have regular debates on jobs and in particular on innovation.

Senator Feargal Quinn: We, in particular Senator Bacik, have called on a number of occasions for a debate on the Prison Service. One of the areas we should debate urgently is the early release of dangerous prisoners due to limited space in prisons. I was impressed by the case of an American who was given to a 27-month sentence, plus 1,500 hours of community service and a $400,000 fine. That is all very well. What was interesting was that he was instructed that his 27-month sentence was to be served at home. I am not sure of the details but he was not a dangerous criminal.

It is interesting to realise that there are options other than prison. One of them is electronic tagging. We have talked about the issue previously. I do not believe the system is in use in this country. I am not sure whether the example I have outlined involved electronic tagging. However, it suggests there are options open to the Department and to judges in terms of the sentences they give. Community service has been used by some judges as part of a sentence. What really impressed me is that in this particular case the man in question was sentenced to 27 months at home. If we are to have a debate on the Prison Service we should include a measure such as that as an option. I do not know how it works and I am not sure how easy it is to enforce but it is an option we should include. It would be worthwhile to have a debate on the Prison Service in this House soon.

Senator Ann Ormonde: In the light of this being Engineers' Week and in view of yesterday's discussions on education and what Senator White said about the state of higher level mathematics and science at leaving certificate, I draw attention to an interesting proposal made by the engineers that perhaps some consideration should be given to those engineers who are unem-

ployed. It was suggested that they could be given an in-service course on how mathematics should be taught, especially to those students preparing for senior cycle and to study science and engineering at third level. We could bring forward that suggestion. Perhaps the Minister for Education and Science would consider the proposal as it is a concept which should be examined. It might not work but it is worth considering.

Senator Paul Bradford: On the debate on social partnership, we have to accept that there may well be a role for social partnership but the parameters have changed dramatically and it will now have to be very much secondary to the political decision-making process. My analysis is that social partnership is fine once the political leadership exists and once the dialogue and decision making begins and ends with the politicians. The big difficulty we had in the past decade or so is that cosy deals were being done behind closed doors and the Oireachtas was totally excluded from the important decision making. Many of those decisions have left the country in the perilous state it is now in. The job of politicians is to lead. I have stated previously that in recent months the Government has shown a degree of leadership. Much more leadership is required to save the country. It will not save Fianna Fáil but it is necessary to save our country.

Will the Deputy Leader arrange a full debate on the future funding of agriculture? I seek this in the context of Europe being the best friend of Irish agriculture. However, funding post-2013 will be determined over the next few years and, regardless of potential restraints at EU level, significant funding will be available to the industry. We have an enormously interesting debate ahead of us on this matter because the decisions we will take politically on the spending of those moneys will decide the future fabric of rural Ireland. They will have to be tough because we cannot please everybody but we will have a significant opportunity to shape the future of rural Ireland by the decisions we make on how that money is allocated. Billions of euro will be provided per annum. One system is in place currently which is up for review. I hope it will be reviewed and changed but we need an inclusive public debate on the issue because an entirely new structure will be put in place in 2013 and the Houses of the Oireachtas have a significant opportunity to decide what the future lay of the land will be throughout rural Ireland.

Senator Nicky McFadden: Finally following years of campaigning and advocacy, BreastCheck has been rolled out throughout the country but, unfortunately, it is only available to women aged over 50. Surveys were compiled recently by Dr. Juliet McAleese and it is extraordinary that out of 600 unfortunate women who received the devastating news that they had been diagnosed with breast cancer, 400 were aged under 50. These women are usually in the midst of rearing their children or in the prime of their careers. Socially and financially, this is devastating for the State. I will embark on a campaign to ensure women under 50 will be covered by BreastCheck and will be able to avail of mammograms. A number of my friends have been diagnosed and some have died in their 40s because this service was not available. Will the Deputy Leader intervene on behalf of this significant group in our society to ensure BreastCheck is available to them? This will be cost-effective in the long run. I call on the Minister for Health and Children to come to the Chamber to discuss this issue. I accept great inroads have been made through centres of excellence but prevention is always better than cure.

Senator Paschal Donohoe: I agree with Senator Mary White's comments about the role education can play in competitiveness and, in particular, about what Dr. Barrett, formerly of Intel, said in this regard earlier this week because this man knows what our county needs to be competitive. However, I reject what she said about our party. We do not need her pity. We

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are not asking for it nor do we need it. For her to stand up and talk about the performance of our leader when her leader presided over the waste, incompetence and the policy failures to which Dr. Barrett referred last Monday night is more than can be tolerated.

Senator Nicky McFadden: Hear, hear.

Senator Paschal Donohoe: Her leader presided over the drift and lack of direction which Mr. Barrett decried and deplored and that must be recognised.

We need to have a debate on education. A cohort of young people in our society about whom we had a debate last night, need action more than pity. Two thirds of young men living in Limerick county and city are signing on and it is the same in other counties while 22,000 men aged under 25 in Dublin are sharing the same experience. Colleagues referred to what is happening in Greece but I would sound a note of caution because repeatedly we see pride before the fall. It must be recognised that our country is still on the edge of a precipice. Thank God we are on the right side of it but we must be vigilant and decisive in ensuring we do not end up in the same place. In a week in which we have heard many discussions about the role, purpose and value of politics, we should pause and recognise what is happening Europe-wide. Politics should fuse the idea of self-interest with the idea of solidarity and that is the direction the EU could take with Greece. It should be recognised and praised if it goes in that direction.

Senator Dan Boyle: I thank Members for their contributions. Senator Fitzgerald referred to an issue raised in a letter to *The Irish Times* about a school in Tallaght. I am afraid I cannot respond directly but if the issue is reducing teacher numbers, which is affecting special needs assistants, SNAs, I suspect it is linked to the pupil-teacher ratio, which has been restored to its 2008 level. Demographic factors might be at play but I will seek information in this regard.

We await the review of SNA system. As I have said previously on the Order of Business, some issues relate to the transfer of assistants to individual students and carryovers in individual schools. It is to be hoped the review will answer many of those questions. On the wider issue of a debate on special needs, Senator Fitzgerald was supported by Senators O'Toole, Ó Brolcháin, Callely and MacSharry. The issue is raised regularly on the Order of Business and we should see how such a debate can be facilitated. Senator O' Toole, in particular, mentioned the National Council for Special Education, NCSE, and the implementation of the Education for Persons with Special Educational Needs Act 2004, which the programme for Government partially addresses. All Members would like the legislation to be fully implemented as soon as possible and a debate would help that process.

Senators O'Toole, Hannigan, Buttimer, O Murchú, Regan, Coghlan, Donohoe and Harris called for a debate on social partnership and it is important that we have such a debate. Senators Bradford and Harris expressed different views about the role of social partnership. It is accepted that if it is restored in some form, it cannot be an alternative to decision making by the Government and the Houses of the Oireachtas.

Senator Eoghan Harris: Hear, hear.

Senator Dan Boyle: It has to be a consultative process and it has to take a form in which the social partners feel they are involved but decisions are made as they have to be made. The present difficulty with social partnership is based on the fact that decisions have been made by the Government that were unpopular and, for many elements of society, unacceptable but they were the right decisions that needed to be made.

Senator Eoghan Harris: Hear, hear.

Senator Dan Boyle: On that basis, I hope a restoration of social partnership will take account of how decisions need to be made in the future. That said, economic development will be predicated on stability in our economy and that requires the involvement of the social partners. The decisions we have made have put a distance between our economy and those of Greece, Spain, Portugal and Italy. Senator Donohoe is correct that the road we are taking for economic advancement could be tricky. We might be on a W curve instead of a U curve in our economic development. Events in Greece could take us down the wrong road.

Senator Hannigan also raised this issue and, as he said, the stabilisation of the euro is important in this regard. In the context of the EU Summit this morning, the Greeks should not be given gifts at this stage. If Greece is to recover, it must take the type of action we have taken as a society and an economy and the eurozone will benefit subsequently because of that.

Senators Hannigan, Mary White, Donohoe and Hanafin mentioned the topic of innovation and the need to support engineering, in particular, as well as focusing on the educational basis of maths and science subjects. Senator Ormonde also mentioned this subject, which should be the focus of an important debate in the House. The Government's own smart economy document is concerned with how we can achieve this, and the subject will benefit from the contributions of all Members of the House.

Senator Ó Brolcháin raised the question of Travellers' health and the issue of the green economy. He was supported in his call for a debate on the green economy by Senator O'Reilly. I would like to see such a debate take place. It is important that we have a proactive, positive debate on the economy in the House.

Senator Buttimer mentioned the new FÁS board. We have passed a Bill that will, it is to be hoped, bring about better governance in FÁS. The new board is formed in a very different way from the old board, which ironically was formed indirectly based on nominations by social partnership bodies, and it is going into a new set of circumstances in which its members will certainly not be given concert tickets but must restore the organisation's damaged reputation. Anyone appointed to the board will go in with that knowledge and, I believe, with the level of duty to public service that will achieve what needs to be done. However, I ask the Senator to refrain from using a phrase he used today and which I have also heard used by his colleague Deputy Varadkar and see constantly in the media. There is no such thing as a failed election candidate. There are unsuccessful election candidates.

Senators: Hear, hear.

Senator Dan Boyle: Everyone who participates in public life, who puts himself or herself forward on a ballot paper, seeks support from voters and is willing to serve in public life, deserves encouragement and support. Phrases of that nature do not help.

Senator Jerry Buttimer: On a point of order, a Chathaoirligh.

Senator Jim Walsh: That is not a point of order.

An Cathaoirleach: What is the point of order?

Senator Jerry Buttimer: A defeated candidate is a failed candidate. I was one myself.

A Senator: What about George Lee?

Senator Jerry Buttimer: He was not a failed candidate.

An Cathaoirleach: No.

Senator Jerry Buttimer: The old pals' act still reigns. That is the bottom line.

An Cathaoirleach: There is to be no interference.

Senator Jerry Buttimer: I am not interfering with him at all. The old pals' act still pertains.

Senator Terry Leyden: Senator Buttimer is not a failed candidate, for God's sake.

An Cathaoirleach: Please. There are to be no interruptions.

Senator Jerry Buttimer: I was a failed candidate at the last general election.

An Cathaoirleach: The Deputy Leader without interruption.

Senator Dan Boyle: Senator Ó Murchú mentioned the new expenses regime in the Houses of the Oireachtas, a reform that is intended to reflect the new realities in public expenditure. The Senator stated that he hoped it would inform the changes that need to occur in social partnership.

Senator Norris asked for a debate on homelessness and cited a number of homeless agencies in the capital region. Such a debate will be useful. It is one of the undoubted truths of the decline in economic circumstances that those with the least in our society suffer most. This House needs to reflect the nature of that problem and discuss how we can solve it collectively.

Senator Callely also mentioned homelessness, as well as the failure of the HSE to meet its targets for primary care centres and the question of how we can better meet such targets. We can talk to the Minister for Health and Children with regard to addressing this issue. In addition, the question of defined pension schemes was mentioned. The Government intends in the coming months to release a national pensions framework which will form the basis of a debate in the House.

Senator Regan, as well as discussing the public finances of Greece, lauded the role of the Opposition in dealing with the economic crisis. Undoubtedly, the Opposition can and does play a role, and these are difficult times. I would like to think the Government is also stepping up to the plate and making the decisions that need to be made. As we face further difficult decisions in this regard, I look forward to stronger and more open co-operation from the Opposition.

Senator Leyden asked for a debate on taxi plates and mentioned a motion on this topic on the Order Paper. In the first instance, motions are the responsibility of Members who place them on the Order Paper, but I will consider the need for a debate on taxi licences and services and arrange one as soon as possible.

Senator Coghlan asked about the Bill establishing the office of a directly elected Lord Mayor for Dublin. The heads of the Bill have been approved. I am not sure whether the initial deadline of June can be met; it depends on the passage of the Bill through both Houses of the Oireachtas. However, the intention is to hold an election this year at the earliest possible opportunity.

Senator Paul Coghlan: When will we have the Bill?

Senator Dan Boyle: The intention is to mirror the office of Lord Mayor of London in the UK, in which a mayor assumes executive responsibility over a wide area, while incorporating the existing system.

Senator Dominic Hannigan: Will he or she have real power?

Senator Dan Boyle: It will start on the same basis as the London mayor and develop as time goes on. The nature of the Bill will form a useful discussion in the House. It will be a development in local democracy in this country.

Senator Coghlan also asked about the status of the Multi-Unit Developments Bill and the property registration legislation. We are waiting for the appropriate Department to contact us with regard to starting Committee Stage. The Multi-Unit Development Bill has already passed Second Stage in the House. It will be useful for both of these Bills to pass as quickly as possible.

Senator Dominic Hannigan: Has it left the Attorney General's office?

An Cathaoirleach: No interruptions, please.

Senator Dan Boyle: No. Both Bills are the responsibility of the Department of Justice, Equality and Law Reform. We will provide the relevant information to Members. The Department must be prepared to take amendments and deal with the debate. That is what we are led to believe. As soon as they are ready, both Bills will be back before the House.

Senator McFadden asked about the full roll-out of the BreastCheck service and the age limitation for users of the service. Her points will be forwarded on. I cannot say whether the decision to limit the age of users is resource-linked. I do not believe it is politically inspired; it is informed by medical advice. However, the Senator's points are well made and I will find out whether they can be responded to by the Minister, either directly or from the floor of the House.

Senator Nicky McFadden: I thank the Deputy Leader.

Senator Joe O'Reilly: Could the Deputy Leader respond to my question on green jobs?

Senator Dan Boyle: I did.

Order of Business agreed to.

Arbitration Bill 2008: Second Stage.

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

An Leas-Chathaoirleach: I welcome the Minister of State at the Department of Justice, Equality and Law Reform, Deputy John Moloney.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Moloney): I am pleased to be here for the Second Stage debate on the Arbitration Bill 2008.

The key objective of the Bill is to create the legislative framework which will enable Ireland to capitalise upon the growing demand for non-judicial solutions for disputes arising within various areas of activity, including commercial. This objective is being achieved by applying the Model Law on International Commercial Arbitration, which was adopted by the United Nations Commission on International Trade Law, UNCITRAL, in 1985 and amended in 2006, to all arbitrations which take place within this State. This will bring our arbitration law into line with best international standards. The Model Law has been adopted in more than 50 countries and has been in force in Ireland for international commercial arbitrations since 1998. It is approximately 12 years since the last Arbitration Bill was enacted. Considerable developments have occurred in this field since and the opportunity is now being taken to move to position Ireland as a centre for arbitration excellence.

[Deputy John Moloney.]

By way of background, it should be noted that international arbitration is a multi-million euro business and the competition among countries to attract this business to their capital cities is intense. Within Europe the key players are Geneva, London and Paris. Research has demonstrated that important concerns for parties when it comes to deciding on where to arbitrate their disputes are legal considerations, convenience of location, the availability of expertise and neutrality. Ireland is well placed to build on its advantages in all of these areas. It also has the benefit of being an English speaking location, a considerable plus factor in the international commercial sphere.

The current statutory regime governing arbitration in this jurisdiction is somewhat fragmentary. We have three Arbitration Acts and two arbitration regimes. One regime applies to arbitrations that are purely domestic in character and is governed for the most part by the Arbitration Act 1954 with small elements drawn in from the Arbitration Act 1980 and the Arbitration (International Commercial) Act 1998. The regime for arbitration that is both international and commercial in character is dealt with exclusively under the 1998 Act. In addition, certain international obligations with regard to the recognition and enforcement of arbitration awards are governed by the 1980 Act. The fragmentary nature of our arbitration law is not helpful in presenting Ireland as a modern venue suited to the business of arbitration in the 21st century.

It is fair to say that, increasingly, considerable attention is being focused on the merits of alternative dispute resolution, ADR, which includes arbitration. There is a growing recognition that the objective of ensuring effective access to justice can be achieved in ways that parallel and complement the traditional system of court-based litigation. There is also an appreciation of the fact that not every dispute necessarily requires a judicial solution and that recourse to a process such as arbitration carries with it certain inherent advantages such as confidentiality, speed of resolution and finality that may well commend itself to parties, depending on the nature of their relationship.

Against this background, the introduction of the Bill can be seen as timely and is certainly in tune with a well established and clear trend. Within our court system there are many examples of a willingness to explore how ADR techniques can best be used to advantage in securing optimal outcomes across a wide range of disputes. The most obvious example is to be found in the rules introduced in 2004 to facilitate the operation of the commercial list in the High Court. By virtue of these rules, proceedings can be adjourned to allow the parties to consider whether recourse to a process of mediation, conciliation or arbitration might be appropriate to the issue in dispute. The indications are that an increasing number of cases are being settled in this way which has obvious benefits for the parties and also the State. Similar rules were introduced in 2005 to deal with competition proceedings. More recently, the potential for using ADR techniques has been recognised within the context of the case progression system which now operates at Circuit Court level in respect of certain categories of proceedings.

I now propose to go through the various sections of the Bill. I will dwell mainly on those aspects that introduce an element of change into our existing arbitration regime and on those sections that have been amended since the Bill was first published in June 2008.

Part 1 of the Bill deals with a range of preliminary matters, including the important matter of definitions. There are two definitions to which I draw the particular attention of Senators. The first concerns the meaning of the word "arbitration" as used in the Bill. This definition is significant because, taken in tandem with section 6, it makes it clear that a single arbitration regime will now apply, regardless of the character of the arbitration. Senators may be aware that when the Bill was first published, provision was made for a distinction to be drawn between

arbitrations that were commercial and international in character and all other arbitrations. The latter were referred to as "standard" arbitrations. The main rationale for this distinction was a sense that, in the case of this kind of arbitration, an additional measure of court oversight might be deemed appropriate. It quickly became apparent, however, that the distinction contained in the Bill was widely viewed as being unwieldy and unnecessary and having the potential to impact negatively on our ability to market Ireland as a centre for international arbitration. Furthermore, the additional proposed measures of court oversight were seen as having the potential to prolong the arbitration process unduly and add considerably to the cost of that process. The conclusion was that the ability to offer a streamlined arbitration regime that did not distinguish between arbitrations on the basis of the geographic residence of the parties would be an appropriate modernising development consistent with the aim of promoting the wider use of arbitration within this jurisdiction.

The second definition is that of "arbitration agreement". This definition reflects changes introduced in the Model Law in 2006, including clear provisions concerning the recognition of agreements in electronic form. This is consistent with the modernising impetus that informs this legislation.

Part 1 also contains transitional provisions, whereby the new legislation will not apply to arbitrations that have commenced prior to it coming into operation. However, it will apply to all arbitrations commenced on or after that date, irrespective of when the arbitration agreement was entered into. This Part also provides for the repeal of the existing Arbitration Acts.

Part 2 of the Bill is essential to its effective operation. As mentioned, section 6 applies the Model Law to all arbitrations within the State.

Section 7 provides for a rule on the commencement of arbitration proceedings and replaces the existing rule in terms of domestic arbitration proceedings which is contained in section 74 of the Statute of Limitations. As Senators will be aware, for the purposes of the various limitation periods, the commencing of arbitral proceedings is equivalent to bringing a court action. Provision is made for the parties to an arbitration agreement to agree on a commencement date for the proceedings. Where there is no such agreement, the arbitral proceedings are deemed to be commenced on the date on which a written communication containing a request for the dispute to be referred to arbitration is received by the respondent. This reflects the language of Article 21 of the Model Law with the additional stipulation that the request be in writing.

Section 8 will allow the courts to make use of the preparatory work of the UNCITRAL when interpreting any provision of the Model Law that appears before them. This work is a valuable tool in ensuring consistency of approach when applying the law across a range of cases.

Section 9 deals with the functions of the High Court. As was the case in the 1998 Act, the High Court is designated as the court of competent jurisdiction for certain matters arising under the Model Law which is predicated upon the idea that minimal court intervention is facilitative of the arbitration process. It also recognises that there are certain aspects of arbitration where a court role is both appropriate and necessary, for example, where the parties are unable to agree on the arbitrator to be appointed or where there is a need to make an application to set aside an award.

Among the amendments made to the Model Law in 2006 was the inclusion of a number of new provisions dealing with interim measures and preliminary orders. The High Court will also have a role in respect of the recognition and enforcement of such orders. The High Court, by virtue of section 10, is also given the power to carry out any necessary obligations that may arise under Articles 9 and 27 of the Model Law. Article 9 allows a court to grant interim measures of protection before or during the arbitral proceedings. Such measures would include the granting of interim injunctions and orders directed at the preservation of any goods that

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may be the subject of the dispute. Article 27 allows the court to assist in the taking of evidence. Under section 15 of the Bill, it is specified that such assistance may extend to arbitral proceedings outside the State.

An important new provision in section 10 is that the court will no longer have the power to order security for costs in the context of an arbitration. This will be a matter solely within the remit of the arbitral tribunal. Section 19 specifies the role the arbitral tribunal will now have in this area. In similar vein, by virtue of section 10, the court will no longer have the power to order discovery of documents in the context of arbitration. The vesting of these powers solely in the arbitral tribunal is generally seen to be beneficial in terms of developing Ireland as a centre of arbitration excellence although it will be open to the parties, should they so agree, to specify that the court can intervene in these matters.

Section 11 introduces a new element into our arbitration law by providing that, in regard to a number of applications, the courts' determination will no longer be subject to appeal in a higher court. These include an application to stay a court action in a matter which is the subject of an arbitration agreement, an application to set aside an arbitral award or an application to recognise and enforce an arbitral award. The rationale for this provision is to minimise the delays which may ensue if the appeal possibilities for arbitration related court applications are not limited in some fashion.

Section 12 provides that a party has 56 days within which to seek to have an arbitration award set aside on the grounds that it is in conflict with the public policy of the State. In the normal course, a party has three months to apply to have an award set aside. This was considered to be inappropriate in public policy cases where the grounds for making the application might not become apparent until sometime after the award had been made.

Section 13 specifies that the default number of arbitrators, in the event that the parties do not agree otherwise, shall be one. This is consistent with our existing arbitration practice and should assist in terms of keeping the costs of arbitration to an acceptable level.

Section 14 allows for the examination of witnesses on oath or on affirmation and section 16 deals with consolidation and the running of concurrent arbitrations. The latter section is relevant because, given the inherent complexity of some arbitration disputes, it may sometimes happen that parallel proceedings involving a variety of parties may come into being. In such crises it can be advantageous if the various proceedings can be consolidated or run concurrently. However, because the authority of the arbitrator essentially derives from the agreement of the parties, it is the case that consolidation or the holding of concurrent hearings cannot take place unless there is a willingness on behalf of all the parties to embark upon such a course of action.

The next group of sections, sections 18 to 23, inclusive, supplements the Model Law on a range of matters. These touch upon the power of the arbitral tribunal to award interest and costs and to order specific performance of a contract. They also deal with the liability of the arbitrator. On the last point, it is important, especially in the context of international arbitrations, that arbitrators are protected against unmeritorious litigation by aggrieved parties who might be unhappy with the fact that an award is made against them. A provision which restricts liability demonstrates commitment to the arbitral process and is a common feature of arbitration regimes in other jurisdictions.

The attention of Senators is drawn to a particular provision in section 21 which provides for the ease of the consumer. This is the provision whereby any term in an arbitration agreement to which a consumer is a party and which purports to provide that each party shall bear their own costs is deemed to be an unfair term for the purposes of the unfair terms in consumer

contracts regulations. In consequence, such a term will not be binding on a consumer. Another element in the section which merits attention is the provision whereby, in the case of arbitrations which are not international or commercial in character, the arbitral tribunal is given the power to make an order for the taxation of costs by a taxing master or a county registrar, depending on what is appropriate. Any such order will only be made if requested by one of the parties to the proceedings. Such request must be made not later than 21 working days after the tribunal's determination of the matter in dispute.

A final element in this group of sections relates to the enforceability of the arbitration award and to its binding effect. These are critical elements within the overall arbitral process and are addressed in section 23. That section also provides that Articles 35 and 36 of the Model Law will not apply in respect of an award in arbitral proceedings which take place in the State. Those two articles deal with the recognition and enforcement of arbitral awards. At present, domestic arbitration awards are not subject to a separate recognition and enforcement regime. Instead, by leave of the High Court, they can be enforced in the same manner as a judgment or order of that court. This procedure will continue to apply in respect of all awards made in this jurisdiction.

Sections 24 and 25 deal with various international agreements to which Ireland is already party. In essence, they replicate provisions already provided for in previous legislation dating back to 1954 and 1980, respectively. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is the most important of these agreements. It is generally regarded as the foundation of international arbitration and facilitates international trade throughout the world. It has been ratified by more than 140 countries and this broad range of support ensures arbitral awards will be readily enforceable in almost every jurisdiction of note. The 50th anniversary of the convention was in 2008, the year in which this Bill was published, and Dublin, which hosted the prestigious conference of the International Council for Commercial Arbitration in June of that year, was centre stage in terms of demonstrating support for the convention's aims and principles.

The other agreements covered by these sections include the Convention on the Settlement of Investment Disputes, commonly referred to as the Washington Convention. This convention facilitates the conciliation and arbitration of international investment disputes. The remaining agreements, the Geneva Convention and Protocol, have largely been overtaken by the New York Convention but retain their relevance for a very limited number of countries.

Sections 28 to 30, inclusive, replicate provisions which are largely contained in the Arbitration Act 1954. For example, section 28 makes it clear that State authorities are on the same footing as other entities in terms of having the legislation apply to an arbitration agreement to which they are a party.

A final and important element of this central part of the Bill concerns a further measure aimed at the protection of consumers. Section 31 provides that, as a general principle, a consumer will not be bound by an arbitration agreement where the disputed claim does not exceed €5,000. There is an equivalent provision in force at present which allows a consumer in such circumstances to bring a claim before the Small Claims Court. The jurisdiction for that court is currently set at €2,000.

Part 3, as published, has been replaced by a new section 32. This is a general provision which will enable both the High Court and the Circuit Court to adjourn proceedings where it appears that the matter in dispute might appropriately be determined by arbitration. It will apply solely to civil proceedings and any adjournment by the court will require the consent of the parties to the action. This is in keeping with the consensual nature of the arbitration process and should help to encourage the perception that Ireland offers an environment which is generally

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supportive of arbitration. It reminds parties that arbitration is an option to be considered as an alternative to court proceedings. However, the provision is not in any way coercive and the wishes of the parties as to how best to deal with their dispute will always be paramount.

I would also like to touch briefly on some key elements of the Model Law to which the Bill gives effect. The underlying philosophy of that law is that minimal court intervention works to the advantage of the arbitration process and ensures finality and certainty in any award eventually made. Another key element which is enshrined in the Model Law is the idea of party autonomy. This is evident in the freedom which parties have in selecting the number of arbitrators and in the procedure for appointing the arbitrator or arbitrators. It is also to be found in the fact that the parties are free to agree on the procedure to be followed by the tribunal. This can result in the application of a given set of rules emanating from a recognised arbitration body such as the International Court of Arbitration, but it also allows parties to agree on particular points of concern to them which will take account of the specific nature of the proceedings in which they are engaged.

By virtue of the Model Law, there will also be a general application of the provision whereby the arbitral tribunal is given the competence to rule on its own jurisdiction. This is a matter which has particular attraction for practitioners. With regard to the arbitration award, it should be noted that unless otherwise agreed by the parties, that award is to state the reasons upon which it is based. This is a new departure within this jurisdiction for arbitrations which are neither commercial nor international in character. However, the new rule is not likely to pose any significant problems in practice. From the point of view of the parties, it should introduce a measure of transparency into the arbitration process and act as a reassurance that proper standards are being adhered to.

12 o'clock

The Bill is a significant modernising measure but it also involves a substantial amount of consolidation, with many of its provisions replicating those which are already contained in the Arbitration Acts 1954 to 1998. The key point to remember is that once this Bill is enacted, Ireland will have a single legislative reference point for all arbitrations. This should be helpful in attracting arbitration business to this jurisdiction, and it indicates that we are putting ourselves to the forefront in terms of having in place a modern and rigorous arbitration code which is fully in tune with best international practice.

As already mentioned, it is clear that alternative dispute resolution has become an increasingly popular way of dealing with a wide range of disputes. This Bill will answer a demand which exists, particularly within the international commercial community, for increased options in this area. Ireland, by virtue of our legal system which is based on common law, our accessibility and our language regime, would seem to be well placed to capitalise upon that demand.

The Bill will provide the necessary legal underpinning for the future development of Ireland as a leading arbitration centre. Particularly in the commercial arena, arbitration allows for solutions which maximise privacy, provide the requisite flexibility and enable arbitrators to be chosen whose skills and experience match the dispute. There is also of course the all-important guarantee of enforceability.

This is a somewhat technical Bill but it is nonetheless an important measure which should help in the delivery of arbitration business to this country. I commend this Bill to the House.

Senator Eugene Regan: I thank the Minister for outlining this new Arbitration Bill, which is an effort to consolidate existing legislation in this important area of alternative dispute resolution procedures. At the arbitration seminar in October 2008, which the Minister of State referred to, the Attorney General stated the system of appeals from arbitration undermines its *raison d'être*. That is correct but the Irish courts have, with the enforcement of arbitration

awards — the New York convention — been reluctant to intervene. This law is very important but the courts have applied the arbitration legislation which is very much in keeping with international law. What we now have is a codification of existing law and practice by the Irish courts in the arbitration area.

At that conference, the Attorney General stated that legislation in respect of domestic arbitration had served us well and generally functions effectively and relatively efficiently, which is true. He spoke about refinement and that this Bill is essentially a refinement of the process. It repeals the Arbitration Acts 1954 and 1980, as well as the Arbitration (International Commercial) Act 1998, but it preserves all the international obligations under the Geneva Protocol on Arbitration Clauses opened on 24 September 1923; the Geneva Convention on the Execution of Foreign Arbitral Awards of 26 September 1927; and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

I know from being involved in international trade that when an agreement is signed, an arbitration clause is standard. It is only when a dispute arises that there is a focus on the exact wording of a clause and in particular the jurisdiction in which the arbitration is to take place. There is familiarity with the Geneva, London and Paris venues for arbitration and the Minister of State has pointed out that these are the key players as centres of arbitration. There is no reason Dublin cannot be a major centre. By implementing and integrating into our arbitration law the UNCITRAL Model Law on international commercial arbitration, this brings Irish legislation into line with international law and the understanding of operators in the international market with best practice.

The integration of domestic commercial arbitration with international arbitration is very important. The end result is that the arbitration dispute system will become familiar and seamless, whether there is somebody operating in the Irish Financial Services Centre or in a multinational company. There can be a foreign or domestic element in the dispute but having the UNCITRAL model incorporated into our legislation would facilitate the procedures.

There are a few implications of adopting the Bill and Model Law. The courts have essentially created an environment where there is very little interference by them in the arbitration process and where the parties to an agreement or contract decide that it should go to arbitration. The model code provides that the environment for arbitration is more of a sealed nature and it is less amenable to interference by the courts. There are also many new procedural powers given to arbitrators with regard to interim reliefs and the want of prosecution to appoint experts to assist the tribunals and to issue consent awards. All of that is very welcome.

The other new element is the giving of reasons, as with many arbitrations in Ireland it has been the practice not to issue reasoned awards in domestic cases. That is to avoid providing reasons that could render the award more amenable to challenge in the courts. The Bill provides for the giving of reasons in line with the UNCITRAL model, which is to be welcomed.

There is another element concerning the erring of law on the face of the award. That was not included in existing statutory procedure but the courts here, including the Supreme Court, have recognised this as valid ground for challenging an award, particularly at common law. Providing a statutory basis for that brings clarity to the procedure.

Enactment of this Bill should be welcomed. We have many well-qualified arbitrators in Dublin and the country who are familiar with the UNCITRAL Model Law. By laying it out in statute, the entire system will be streamlined and the legislation will be modernised and codified. This assists in making Ireland a venue for international dispute resolutions in the area.

What procedures are in place and what efforts will be made by the Government to promote Dublin actively as an arbitration centre in competition with Paris, Geneva and London? The Commercial Court under Mr. Justice Kelly has been a success owing to the speed at which

[Senator Eugene Regan.]

decisions can be taken. Very technical, complicated and serious commercial disputes can be resolved using a fast-track procedure. The standards applied in the court are recognised, as is the fact that we we can deal with commercial disputes efficiently. In offering an alternative mechanism for resolving commercial disputes Dublin can be a serious contender in attracting much of the arbitration business. The key point in the Bill concerns the distinction between domestic and international arbitration which will help greatly in promoting arbitration in resolving commercial disputes, especially in the international arena.

I welcome the Bill. I do not have any difficulties with it. There may be one or two minor issues which may arise on Committee Stage, but the Bill is very welcome. Its importance should be promoted in order that Dublin can become a contender in attracting a much greater volume of arbitration dispute resolution business. I hope the Minister of State can respond to this point.

Senator Lisa McDonald: I welcome the Minister of State and thank him for his lengthy speech on this important matter. We are singing from the same hymn sheet. As Senator Regan pointed out, this is a very important Bill which is timely in making changes to the law on arbitration in Ireland. In particular, it makes improvements to the Arbitration Acts of 1954, 1980 and 1988, the last of which introduced the internationally recognised Model Law to be applied in all cases of international commercial arbitration in Ireland. The new Bill also ensures recourse to the courts will be speedy and avoid unnecessary costs. It also removes the possibility of court orders which can impede an arbitral process through orders for security, costs and discovery. It promotes an alternative dispute resolution mechanism and promotes Ireland as a location for same.

One of the most significant features of the new Bill is the extension of the Model Law to domestic arbitrations. This modernises the system and unifies the two arbitration regimes in place. Modernisation is the key element of the Bill, as it incorporates international best practice into Irish law and could help to establish Ireland as an attractive option as a neutral third party country venue for international arbitration.

Arbitration forms part of the services industry which we hope will develop and make a major contribution to GDP. When one considers the downturn in the economy and the current lack of finance, it is clear that arbitration could give rise to huge benefits in the future. Many international arbitration disputes involve multi-million euro amounts. Choosing Ireland as the arbitration venue in resolving these disputes will be a vote of confidence in the quality of our government, business and legal structures. Ireland is a neutral, English-speaking venue with a common law system and an evolving, strong legal framework which is attractive in dispute resolution. If we get the legislation right and Ireland is marketed to companies and other countries, we could make the new system an economic success.

Hosting the arbitration of disputes has many significant economic, legal and business tourism benefits. Nearly 1,000 overseas companies have made Ireland their European base in many sectors such as finance, information technology, pharmaceuticals and other services. We are promoting Ireland as an IP centre of excellence. We have a wide range of translation and stenography services, another advantage.

The courts also support and encourage arbitration. For example, the Commercial Court provides a fast-track system for dealing with commercial litigation cases which potentially can be used in arbitration. As a young apprentice solicitor back in 1997, I did my training with a commercial law firm. There were rooms dedicated to large commercial litigation disputes that were ongoing for five or six years. That no longer happens owing to the development of the Commercial Court which has been a success under Mr. Justice Kelly. The development of a purpose-built centre for arbitration and dispute resolution would further enhance our ability

to attract this business. International best practice is to have such centres. To compete with London, Paris and New York, Ireland must invest in similar facilities.

Many Irish people have figured on the international economic and political stage which helps to attract people from overseas to Ireland. It helps to sell a positive and professional image of Irish people. This business would greatly enhance our economic and legal standing. It would also encourage domestic alternative dispute methods which could only be of benefit in repairing fractured business relationships.

Many sectors in the economy are internationally focused and have made inroads into markets abroad. The legal services community has been more domestically focused until now, but perhaps this Bill will mark a new departure. The conference that took place in Dublin in 2008 has been mentioned. It was the biggest international arbitration conference ever and generated significant goodwill towards Ireland. Coupled with the Arbitration Bill 2009 and the various initiatives prompted by the conference, this should allow us to achieve the goal of establishing Ireland as a premier centre for international dispute resolution.

I would like to address some issues relating to small claims. Far too often, small claims clog up the system. The international dispute resolution procedure will deal not with small claims but also with international claims of significance. Section 14 of the Bill deals with consolidating proceedings where parties are willing to so consolidate. That is interesting because our own law does not promote a class action, a phrase we are barely allowed to mention. However, if we can change the law for dispute resolution, surely we can change it to allow class actions in our court system.

Section 30 provides that the Bill shall not apply to an arbitration agreement that relates to a claim which does not exceed the monetary limit for small claims in the District Court, currently €2,000. We should not clog up the system with such small claims.

Section 34 deals with special oversight powers and preserves the power of the arbitrator to state a case for the appropriate court for an award. It allows a party to an arbitration to make an application to that court seeking that an award be remitted to the arbitrator on the grounds that new evidence has emerged which is likely to alter materially the decision on that award, or seeking a direction that the arbitrator state a case for the decision of the court. This is sensible practice.

Arbitration is hard, given the requirement for privacy and confidentiality on the part of the parties involved and the arbitrator. However, it is always a better solution than going to court. The Minister of State referred to section 11 which provides an alternative path to litigation. As he stated, there is evidence to suggest the parties are anxious to avoid excessive court intervention which can only be welcomed. The philosophy of the Model Law is that minimal court intervention will work to the advantage of the process and ensure finality. However, this also supports agreement on certain points and the narrowing of the issues in order that it can promote conciliation which is welcome.

Section 11 also states there is to be finality to the court's determination in respect of a number of applications. These include an application to stay a court action in a matter which is the subject of an arbitration agreement, an application to set aside an arbitral award or an application to recognise and enforce an arbitral award. The Minister of State has stated it is a new departure for our law that all these applications will no longer be subject to appeal to a higher court, thus giving to the arbitrator a court of final appeal. This promotes Ireland at an international level as a location for dispute resolution. This is a good Bill that reflects the need for modernisation and consolidation in our law. It injects practicality to the system. It answers the need of the international commercial community present in Ireland and it is eminently sensible that we introduce it now. I strongly support the passage of the Bill through the House

[Senator Lisa McDonald.]

and I note it has been on the books for a number of years. I hope we can enact this Bill as soon as possible so the arbitrators can send out the signal that we are open for business and other areas of Government can promote Dublin, as Senator Regan said — there is no reason why it cannot apply to other cities — where our main legal apparatus is, as a place of international dispute resolution.

Senator Ivana Bacik: I welcome the Minister of State to the House to discuss this developing area. International arbitration is a multi-million euro business and there is intense competition among countries to attract its business. There is an increasing interest in arbitration and alternative methods of dispute resolution among legal practitioners, commercial practitioners and businesspeople generally. It is recognised that arbitration offers a more cost effective, efficient and timely process as a means of resolving disputes. At least that is the perception and it is not an area I practice in, being more familiar with the criminal courts, which have a different method of resolving matters. Clearly the very strict rules of evidence that apply in the criminal courts and the different balance between prosecution and defence is different to the process used in arbitration, whether this is domestic arbitration involving a smaller value consumer dispute or an international arbitration dispute involving multiple millions of euro. Different arbitration mechanisms exist. Those who work in arbitration tell me the reality of it is somewhat different. Arbitration, just like court cases, can become bogged down and unnecessarily prolonged. In some cases it can be more costly than anticipated. However, generally the perception that it offers a more cost-effective and efficient manner of resolving disputes is fair.

This Bill is to be welcomed, as Deputy Rabbitte did in the Dáil. It was welcomed on both sides of the House. Senator McDonald commented that the Bill has had a long period of gestation, having originated in 2008. I wish to raise a number of concerns about the Bill. There are contradictory messages from practitioners and I am grateful to those who have written in the recent *Arbitration and ADR Review* of 2010. This offers a useful insight into the views of practitioners on the Arbitration Bill. Ercus Stewart, Peter Shanley and Mark Murphy have written articles and I am grateful for their insights. However, practitioners communicate contradictory messages. Some say the present system is working well and we should not fix it if it is not broken. I do not know if that view is widely shared but it is widely acknowledged that it is more useful to adopt a Model Law applied by the UN Commission on International Trade Law, UNCITRAL. I am not sure the view that we should not fix it if it is not broken has widespread purchase. The only concern is whether the international model is appropriate and whether to offer a one size fits all approach to domestic arbitration as envisaged in this Bill. I note the point made by the Minister of State that the current statutory regime in Ireland is somewhat fragmentary, with three Arbitration Acts and two arbitration regimes. Clearly there is great merit in streamlining the current fragmented system. The concern I raised, which was also raised by Deputy Rabbitte in the Dáil, is whether one Model Law taken from international code is appropriate for all forms of domestic arbitration and whether it should apply to the insurance arbitration and package holiday contracts just as it applies to large commercial disputes. When going through the Bill on Committee Stage, this central theme may emerge. I refer to the necessity to ensure the consumers are given adequate protection where we are applying a Model Law that is supposed to be designed for international arbitration involving large entities and multiple millions of euro. Applying that to much lower value consumer disputes, involving package holidays contracts and insurance contracts, may not provide sufficient safeguards for consumers. Safeguards are provided in the Bill, which I welcome, but we must focus on this on Committee Stage.

The Chartered Institute of Arbitrators has raised concerns about the continued exclusion of labour disputes from the legislation. The Bill proposes to continue the current exclusion of

labour disputes. This is a matter raised by Deputy Rabbitte in the Dáil. The current position is that section 5 of the 1954 Act excludes industrial relations matters. One presumes this was done because when the 1954 Act was being passed many of the State agencies governing the resolution of industrial disputes were being established. We have developed an entrenched system of labour dispute resolution in the Labour Relations Commission and the Labour Court. Those mechanisms have developed specialist expertise in industrial dispute resolution and no one would argue for their replacement or supplementation with arbitration. However, there is a concern among those working in employment law that the Employment Appeals Tribunal has become increasingly legalistic. While the Labour Relations Commission retains its original character, the Employment Appeals Tribunal has become a more formalised structure and an institution in which we see lawyers regularly instructed by both sides, where doctrine of precedent has developed. It is worth examining whether arbitration could offer some alternative method to the Employment Appeals Tribunal. Deputy Rabbitte raised this in the Dáil but it does not seem to have been given much consideration in the drafting of this Bill. It appears the 1954 exclusion simply continues. I am not sure it would be a good idea to extend arbitration into the industrial relations dispute arena; I can see arguments for and against. However, it should be considered.

I examined the Law Reform Commission consultation paper on alternative dispute resolution from July 2008. It does not deal with this but what is interesting is that it points out the nature of arbitration in Ireland as the preferred method of dispute resolution in a number of sectors, including construction and insurance. The Law Reform Commission paper outlines how it works in practice in Ireland and refers to a hybrid model. It would be useful to conduct a review on whether a hybrid model can be adopted in Ireland, a hybrid process of mediation and arbitration, known in the US by the very American term Med-arb or Arb-med. This hybrid process is where parties attempt to settle the dispute through mediation and if a settlement is not reached the mediator, usually the same individual, becomes an arbitrator and imposes a binding decision on the disputing parties. It is an interesting process because, as the Law Reform Commission points out, it is commonly used in labour disputes in the United States and in patent disputes. Within the Arb-med process the parties first present the case to arbitration. It is interesting that they first present their case to arbitration and the arbitrator writes up a decision and seals it but does not disclose its content to the parties. The parties then engage in mediation for a fixed period, usually with the same person who has arbitrated. If they reach agreement before the deadline for the end of mediation, they never learn the content of the arbitrator's decision, so this is a novel approach. If they do not reach agreement by the specified deadline, then the arbitrator's decision becomes final and binding on the parties. This model has been used to a limited extent in the US but also in South African union-management relations in the car and steel industry. There has been criticism of the model but I think it is worth exploring whether it could have some effect in Ireland.

The Law Reform Commission did not recommend any action be taken in this regard. It noted the criticisms that parties might be inhibited in their discussions with the mediator if they knew the mediator would also be called upon to act as arbitrator and that a third party who mediated and then became an arbitrator may themselves have been biased by what had been conveyed to them through the mediation process in a more informal and often confidential way.

The exclusion of labour disputes could certainly be re-examined although that is not in any way to suggest we should be looking at any form of alternative to the current, very well-developed mechanisms of the Labour Relations Commission. Has the Minister of State or his Department has looked at the rationale for the continued exclusion?

[Senator Ivana Bacik.]

I refer briefly to the consumer protection provisions in the Bill which I look forward to teasing out further on Committee Stage when we will have an opportunity to deal with the sections in detail. There will be particular concern about the application of what I have described as the one-size-fits-all model developed from the international Model Law. We are conscious that the consumer arbitration schemes currently give many people a means of resolving disputes without going to court, and this is very welcome. I refer to package holiday contracts and insurance contracts in particular and any disputes relating to them are often resolved through consumer arbitration. Given that the new model is tailored specifically to international arbitration, it will require some tweaking to ensure it does not diminish consumer protection in particular in cases where people seek to resolve a dispute over what can often be relatively small sums of money involved in a package holiday contract or in an insurance contract.

I look forward to discussing these issues further on Committee Stage. It has been clear from the contributions on Second Stage that a broad welcome for the Bill is forthcoming on both sides of the House.

Senator Dan Boyle: The economy is very dependent on international trade and exports have increased during a period of economic difficulty. It is important that exporters can benefit from changes in international law by availing of the most beneficial terms of trade and avoiding the judicial process both in Ireland and in another country where a dispute with a trading partner might arise. This Bill is a consolidation law replacing the Arbitration Acts 1954 and 1980 and the Arbitration (International Commercial) Act 1998. I presume dealing with consolidated legislation will be of assistance to both solicitors and barristers in the future. I note the presence in the Chamber of practitioners of those arts.

Senator Ivana Bacik: Arts or crafts or trades, I do not know.

Senator Dan Boyle: The Bill is based on the United Nations Commission on International Trade Law. International commercial arbitration should provide confidence that there is an accepted international standard and a place for such disputes to be settled. It is hoped this area of national law will be further improved. I welcome the Bill as it will help Ireland's position as an international trading nation.

This Second Stage debate offers an opportunity to refer to wider issues such as the moral dimension of international trade. Ireland benefits from international trade. We should be aware that how we trade and with whom we trade and to what extent we benefit from such trade needs to be subject to other standards as well, such as working conditions, pay levels and environmental standards in other countries. As Senator Bacik has pointed out, we must be aware of consumer rights and protections in the various jurisdictions. This is not the subject of this Bill but it is an important point which may be an area for arbitration, such as the failure of contracts in commercial transactions resulting from the application of this new law and from the application and the existence of such standards.

Ireland, in its foreign policy, tries to promote better standards in many of these areas and we could help inform the United Nations Commission on International Trade Law so that it would adopt many of these principles and make them issues on which arbitration will be applied in the future. Other international bodies such as the World Trade Organisation seem to be almost amoral in how they approach many of these ethical issues relating to trade.

I note the general welcome given to the Bill, not only by Members but by trading bodies, various commercial ventures and the accounting profession. This indicates that this subject does not cause dissent. I suspect there will be a wider debate on Committee and Report Stages

as to how the Bill might be nuanced, but in its general principles there seems to be near unanimity that this is valuable and necessary legislation which will be of benefit to the country. I offer my party's support for the Bill and I look forward to its speedy progress through the House and its eventual enactment.

Senator Jim Walsh: I welcome the Minister of State. I concur with many of the points made in his contribution on this Bill. Arbitration is a concept which is not as widely used in Ireland as would be desirable. It could be usefully used to resolve many commercial disputes and disputes between individuals. It is unfortunate we have allowed access to the courts to become the prerogative of the wealthy due to the captive nature of the fees charged by the legal profession, by members of the Bar in particular. Practitioners, some of whom are Members of this House, will acknowledge that one goes to court to get law but it is not the place to go if one is looking for justice. The costs associated with taking a case to court make it prohibitive for people to follow that course and in many instances the outcome can be unsatisfactory for both plaintiff and defendant. The arbitration method provides an opportunity for an individual to explain exactly what he or she is seeking and in many cases, through the medium of the arbitrator, it enables the parties to interact and, as a result, the outcome is more suitable and commensurate with the needs of both sides.

The Minister of State also spoke about cost issues. On that point, I wish to outline my past experience in that respect with people who tend to look at arbitration. I suggest the exorbitant fees associated with the legal process can influence arbitration fees and thereby contaminate the arbitration system. That might be one of the reasons for the lack of use of the arbitration facility. Our arbitration laws have been on the Statute Book for some time. I think 12 years have passed since we had the last arbitration legislation. Many legal agreements include dispute resolution clauses. One is often advised by one's solicitor that the inclusion of arbitration as a means of resolving a dispute under the agreement exposes one to almost the same cost as going to court. I have often seen agreements drawn up after parties were dissuaded from including arbitration in the process. The whole scandal of legal fees has never been dealt with by any Government, but it needs to be tackled with some urgency. I have urged the Joint Committee on Justice, Equality, Defence and Women's Rights to take a look at it. I hope it does. It takes courage to take on such a strong and influential vested interest group. If we value our republican ethos, equality of access to the court system must be regarded as an essential component that underpins our system. Government authorities should take some degree of control of these exorbitant costs.

I agree with the Minister of State and others that the adoption of the Model Law on international commercial arbitration could pave the way for us to establish a greater remit for this country as a centre for international arbitration. In addition to becoming very wealthy, our lawyers gained tremendous experience at the tribunals. They may be able to apply that experience in the arbitration sector. I remind the House of the manner in which this country positioned itself in the international financial services sector. Despite the many naysayers who criticised the construction of the International Financial Services Centre, it has been a significant success. The disasters that have occurred in banking in the meantime have nothing to do with the centre. We can take great pride in the fact that it was established during the severe economic downturn of the late 1980s. We can take confidence from its success as we can concentrate on other areas such as arbitration in a similar way. In certain trades such as the grain trade one can use internationally recognised methods of arbitration in cases of dispute. We should seek to establish and promote such a centre here. We should try to ensure the costs involved are managed to ensure they do not get out of hand. If we display such competitiveness, we can position ourselves well in this area.

[Senator Jim Walsh.]

I am pleased the arbitration system will be given greater autonomy. I am not sure how one can promote it — probably through the legal profession. We should try to get economic benefits from this legislation. If we can bring about a shift from the courts system to the arbitration system, for example, we will release time in the courts which will probably enable us to rationalise costs in the civil courts, in particular. I would see this as an admirable objective. I welcome the fact that further appeals will not be allowed beyond the High Court. I am pleased that the parties to arbitration will be allowed, to some degree, to frame aspects of the arbitration process.

This is a good Bill. However, it will not work unless we attract people to use it which we can do by ensuring the costs associated with it are far more competitive than those associated with the courts system.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Moloney): I thank Senators for their contributions. I look forward to dealing with the various proposals made on Committee Stage. I will respond to the issues raised during the debate. I thank those who contributed to the discussion for their generally favourable comments on the overall purpose of the Bill. While the legislation is somewhat technical, as the debate has shown, it is not especially controversial. I welcome this.

As I said earlier, alternative dispute resolution is a major growth area. Arbitration is particularly popular in the commercial sphere. Parties who wish to continue their business relations with each other may find it appropriate to avail of the advantages arbitration has to offer. I will deal with some of the points raised by individual Senators. The advantages offered by arbitration are different from those offered by the traditional litigation route. If it is properly managed, arbitration can be cheaper and quicker than normal litigation. It offers a flexible approach that can be tailored to the specialised disputes which sometimes arise in the commercial arena. It can facilitate the protection of sensitive commercial information. More importantly, perhaps, it is backed by a guarantee of enforceability in a substantial number of countries.

It is intended that by providing a single regime that applies to all arbitrations, the Bill will create an environment in which Ireland can be marketed as an arbitration-friendly venue. This should help us to increase our international arbitration business and facilitate the further expansion of the domestic arbitration business. The development of arbitration business in this jurisdiction will depend, at least in part, on the ability of practitioners in the field to capitalise on the provisions of the Bill. We are fortunate that considerable legal and professional expertise is available to us. The Irish branch of the Chartered Institute of Arbitrators, for example, is an active organisation with over 800 members from a range of backgrounds and with a wide variety of professional qualifications. The Bar Council, the Law Society and Chambers Ireland have been proactive in this area.

There have been excellent educational opportunities in recent years which enable many more people to build on their skills in this growth area of the legal economy. The Government is willing to play its part in this regard, to the maximum extent feasible.

Senator Regan raised the issue of the marketing drive, to which I will return in more specific detail on Committee Stage. In 2001 the American Arbitration Association opened an international dispute resolution centre in Dublin. This significant development gave added credibility to Ireland as a venue for international arbitration. The importance of arbitration in the international trading community should not be underestimated. It is appropriate that Ireland, as an trade-dependent country, should seek to tap into this area of activity. International arbitration services are offered in most major capital cities. This reflects a desire on the part of the

international trading community to resolve disputes which inevitably arise when large amounts of money are at stake quickly, cheaply and in accordance with commonly agreed rules.

Many commercial arbitrations in Europe are conducted under the auspices of the International Court of Arbitration of the International Chamber of Commerce, ICC. In recent years, the ICC has received approximately 600 requests on average per annum for arbitration. ICC arbitration takes place in a wide range of countries and in many of the cases which come to it, the amount in dispute exceeds $1 million. The importance of these statistics is that where the parties in a dispute agree to abide with International Chamber of Commerce rules, the ICC court is often involved in choosing a venue of arbitration which it regards as being compatible with its rules. The new Bill will enhance compatibility in this area, as acknowledged by Senator McDonald.

Senator Regan correctly noted that the courts have been reluctant to intervene in arbitration in the past. The problem from an international perspective was that it was presumed that undue interference was possible. This presumption could be used to our detriment by international competitors and hence the introduction of the Bill. The consolidation effect of the Bill should act to overcome any doubts which may have existed as to the role the courts play in the arbitration process. I welcome the acknowledgement by Senator Regan on this point.

The Bill consolidates existing arbitration law and brings it into line with modern international practice. However, given that the adoption of the model Bill for all arbitration is central to this objective, it may be useful if I take a little time to briefly outline the philosophy which lies behind the Bill. When the Model Law was adopted in 1985, the perception was that international trade would benefit greatly from some harmonisation of national legislation relating to the resolution of international disputes. The idea was that this could be achieved either by countries adopting the Model Law in its totality or adjusting existing legislation to bring it into line with the key provisions of the Model Law.

Given its audience, the text of the law is couched in pragmatic terms and written in relatively plain language. It is a mark of success that when the revision of the law was discussed earlier this decade, the changes eventually adopted were limited in number. The Bill is primarily a framework which enables the parties to operate with considerable autonomy and tailor the arbitration proceedings to suit their particular needs.

The Model Law deals in a comprehensive manner with the key issues which are likely to arise during the course of any arbitral proceedings. Where necessary, the law has been supplemented by specific provisions of the Bill which are aimed at ensuring our arbitration law is comprehensive and user friendly.

In response to Senator Bacik's comment that contradictory messages are being sent to the legal community, there is a general swell of support for the Bill in the arbitration community. Inevitably, there will be some who are comfortable operating in the old framework or using old ways. The Government is satisfied, however, that the enthusiasm and motivation to make the Bill work well in practice exists among all the relevant professions.

With regard to the exclusion of disputes, there is a well-established code of practice in this area which we are reluctant to set aside. There are also inherent flexibilities in the code which enable ADR techniques to be employed in practice.

I thank Senators for their contributions. I will address a number of the issues raised when we debate Committee Stage.

Question put and agreed to.

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

Senator Lisa McDonald: On Tuesday, 16 February 2010.

An Cathaoirleach: Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 16 February 2010.

An Cathaoirleach: When is it proposed to sit again?

Senator Lisa McDonald: Ag 2.30 p.m. Dé Máirt seo chugainn.

The Seanad adjourned at 12.55 p.m. until 2.30 p.m. on Tuesday, 16 February 2010.