



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TU AIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Wednesday, 21 April 2010.

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SEANAD ÉIREANN

Dé Céadaoin, 21 Aibreán 2010.
Wednesday, 21 April 2010.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.

Prayer.

Business of Seanad.

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

The need for the Minister for the Minister for Community, Rural and Gaeltacht Affairs to make a statement on the future of the national drugs strategy and comment on the number of vacancies in his Department.

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

The need for the Minister for Communications, Energy and Natural Resources to expand on the work taking place to ensure that, when television services go digital, the availability of stations in Ulster will be maximised through cross-Border co-operation in infrastructure delivery.

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

Order of Business.

Senator Donie Cassidy: Before announcing the Order of Business, I would like to say a few words on the sad passing of our dear friend and former colleague, Willie Farrell, who was someone for whom I had great admiration. He was a wonderful person, a highly intelligent Member of Seanad Éireann and a truly excellent public servant. He was an astute and capable individual who was interested in getting things done. His political career which spanned over 35 years began when in 1967 he joined Sligo County Council, on which he served for 30 years. Coincidentally, he became a Member of Seanad Éireann 28 years ago today. He served in the Seanad from 1982 to 1983 and from 1987 to 2002. He left politics with a well-deserved reputation for integrity and total professionalism, and with the respect of all his colleagues. We will have an opportunity to pay our tributes to him at a future date but, on behalf of all Members of the House, I extend our deepest sympathy to his sons, Seamus and Liam, his daughter, Helen, and all his extended family. Go ndéana Dia trócaire ar a anam.

The Order of Business is No. 1, the Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009 — Report and Final Stages, to be taken at the conclusion of the Order of Business; No. 2, the Property Services (Regulation) Bill 2009 — Committee Stage, to be taken

[Senator Donie Cassidy.]

at the conclusion of No. 1 but not before 2.30 p.m. and to adjourn not later than 5 p.m. if not previously concluded; and No. 3, the Female Genital Mutilation Bill 2010, to be taken at 5 p.m. and to conclude not later than 7 p.m. The business of the House will be interrupted between 1.30 p.m. and 2.30 p.m.

Senator Frances Fitzgerald: I join the Leader in paying tribute to the former Senator, Mr. Willie Farrell. Members will pay tribute to him at a future date, to be decided by the Leader, when his family can be present. We join the expression of sympathy by the Leader of the House on his passing.

We spent a great deal of time yesterday discussing the banking situation and I wish to return to that subject. Today, we discovered that the Irish Nationwide Building Society paid its chief executive officer €221,000 for the final four months of his term of office. The pay for that period exceeded the Government's pay cap for top bankers as calculated on an annualised basis. It could be argued that the pay of the chief executive of the Bank of Ireland also breached the Government's guidelines. What is it about bankers and the banking system that makes the Government so inept in implementing its policy? The Government can implement its policy on medical cards every day. I met a man this week who suffers from bowel cancer. He was told that if his cancer was terminal, he would get his medical card. It had been taken from him. I regularly meet parents of children with special needs. There is no difficulty calculating their needs and income, and withdrawing special needs assistance. What is it about bankers that makes the Government so inept at implementing its policy?

Senator Nicky McFadden: Hear, hear.

Senator Joe O'Toole: Hear, hear.

Senator Frances Fitzgerald: Why is this happening? New information is emerging almost daily that shows the Government's policy is not being implemented. I propose an amendment to the Order of Business that we ask the Minister for Finance to come to the House and deal with the specific issue of top-up payments, pension payments and excessive awards being made to bankers on a recurring basis. The Minister should also explain the role of the public interest directors when it comes to implementing the Government's policy on these issues.

Senator Joe O'Toole: Hear, hear.

Senator Frances Fitzgerald: There is disgust among the public about this. It is not enough to have general statements in the Dáil. I seek a discussion in this House about why this is happening, whether it can be prevented, the role of the public interest directors, and when action will be taken. As I said yesterday, the inequality in this regard is unacceptable in a democracy. We cannot continue to let the bankers call the shots, given the damage they have done to the economy and the billions of taxpayers' money that have been put into, and continue to be put into, the banking system. We all need a workable banking system and nobody is saying they wish to undermine it. However, we want Government policy to be implemented and we seek an explanation as to why it is not being implemented. That must happen in the House today.

Senator Joe O'Toole: The point that there is a real need to discuss this has been well made by Senator Fitzgerald. Apart from the Government's role in this, which I will leave to the Opposition parties to discuss, there is the question of ethics in banking. Today's editorial in *The Irish Times* deals with the Goldman Sachs affair. It is important to see where we stand in this situation. Goldman Sachs deliberately routed that appalling monetary instrument through the UK, even though it was a European issue, because of the UK law of *caveat emptor* or buyer

beware. There is far greater consumer protection in Europe than in the UK and Ireland so Goldman Sachs very deliberately did this. It breaches all ethics. Many companies refused to have anything to do with the instrument it sold. There is an issue in this regard and the Irish Government should take a stand on it.

The practice of international financial institutions using the different regulations in different countries to get into the space between them to make unfair profits is called “cabbage”. Why is this important? A little noted item in the business section of *The Irish Times* last Friday referred to the fact that the European Union has taken the Irish Government to the European Court because it failed to implement the eighth audit directive on quality assurance in auditing. This directive is aimed at getting the same quality level of audit in all European countries, including the UK and Ireland, and in the US. The directive was passed two years ago and should have been transposed into Irish regulation by either June 2008 or June 2009. That still has not been done. Only one country of the 27 in the EU has not transposed the audit directive. These are the questions I wish to have discussed in the House.

Time and again I have raised the issue of credit union regulation and the fact that the legislation on credit unions has not been amended. I wish to have made public what I have seen, the documentation, requests and correspondence between the regulator of credit unions and the Department of Finance over the past ten years. Why has the legislation not been amended? Senator Ross and I have raised this issue several times, including in a motion before the House some years ago. I guarantee that the same thing is happening with the audit directive. We are a disgrace. People in both the private and public sectors are extremely angry about this. At the same time, the Government is trying to get a deal with the public sector. Public sector workers, like those in the private sector, are disillusioned, desperate and disgusted by everything that is happening. It is pushing them against taking sane decisions.

It is crucial to have the debate called for by Senator Fitzgerald so the Government can reassure us on some of these issues. My approach is not from the point of view that the Government is wrong on all counts. However, I am anxious to hear its response and to hear about clarifications, reasons, policies and how it is dealing with the ethics issue. It could start with the audit directive. We brought it to the attention of the joint committee on regulation six months ago and the committee shared our view on it, but it still has not been implemented. Why?

Senator Ivana Bacik: There was talk yesterday about the need to debate good news so I will begin by welcoming some good news, the fact that the airlines appear to be returning to normal service today with the announcement that the air space over Ireland is open again. That is very welcome. The only unwelcome aspect is that it means emigration will begin again. It has been said that the Icelandic volcano did more to stem the flow of emigrants from Ireland, especially young people who must go abroad to seek jobs, than any Government policy. Indeed, Government policies are to blame for rising unemployment. The Labour Party and other Opposition parties have called previously for an urgent debate on jobs and unemployment. That must take place.

I echo the call of Senators Fitzgerald and O’Toole for a debate on banking. This is a very urgent matter and I support the amendment proposed by Senator Fitzgerald. People are volcanic with anger at the revelations that are made daily about excessive payments to bank officials and the cover-ups that occurred. The front page of today’s *Irish Independent* shows an e-mail sent in May 2008 to senior bankers within Anglo Irish Bank telling them not to disclose a back-to-back loan that had been obtained from a German bank to make Anglo Irish Bank appear more creditworthy than it was. We are now seeing extensive information about what was really taking place, particularly in Anglo Irish Bank and Irish Nationwide Building Society.

[Senator Ivana Bacik.]

It requires that we again ask the Government why it passed such a comprehensive bank guarantee scheme in September 2008. The Labour Party was the only party to oppose it and at that time I was the only Independent Senator to oppose it. We were right at the time and we are still right in terms of asking the questions about why that blanket guarantee was given, considering what we know now. We need an urgent debate today on banking in light of these revelations. As Senator Fitzgerald said, there must be serious concern also about the position of public interest directors. A former Fine Gael leader appointed as a public interest director in Anglo Irish Bank now seems to be acting more in the interests of that zombie bank than in the public interest and there are questions about this.

I also ask for a debate on a separate matter, on the rights of families of homicide victims in light of a statement issued during the Easter recess by the association for the truth about the murder of Sophie Toscan du Plantier. That association welcomed the issuing of an arrest warrant in France against an Irish resident. We could learn usefully from some of the French criminal justice procedures in place to assist the families of victims of homicide and of crime in general.

I welcome some aspects of the Government's amendment to the Private Members' motion, the Female Genital Mutilation Bill 2010, proposed by the Labour Party. However, 12 months is a very long time to be waiting for this urgent legislation, given that the first specific Act to ban female genital mutilation was passed in the United Kingdom in 1985 and the Labour Party first introduced a Private Members' Bill in the Dáil in 2001. This delay of 12 months is simply unacceptable. I welcome the Minister's commitment but we will be pressing ahead with that Bill in the debate.

Senator Dan Boyle: All Members would agree there needs to be effective mechanisms to control the scale and type of payments being received by bankers and that there exists a culture and a questionable sense of ethics within financial service institutions which needs radical change. This is not unique to this country. The British Government had similar experiences with the chairman of the Royal Bank of Scotland which is 70% owned by the British Government. President Obama, having set the limit of \$500,000 for salaries, had to row back quickly on that decision. It is not so much the ability of governments or the introduction of legislation but rather a case of having effective mechanisms to achieve control. Everyone in public life wants this to happen because there is an arrogance, a sense of hubris, among financiers that needs to be challenged if we are to move on from any of these practices. Senator O'Toole referred to Goldman Sachs in which the average salary is \$500,000. The chief executive of one of the rescued banks in this country is being given a pension top-up when the pension fund for that organisation is €1.6 billion in deficit. Those dubious ethics cannot exist in a society trying to come to grips with a new and a fair economy. While I accept that not enough is being done, I also suggest we debate how collectively to find those effective mechanisms. The entire political system and society need to challenge the sense of superiority — being above, so to speak — these people seem to have whereby they can operate within their own moral vacuum. Unless we have such a debate and make those challenges, information such as this will appear regularly.

I agree with Senator Bacik that not only are we receiving information every day about these questionable practices, we will continue to receive it and worse until everything is out in the open. I look forward to a successful tribunal of inquiry and the active involvement of both Houses of the Oireachtas in ensuring that information is made public as quickly as possible. Both the Houses of the Oireachtas and society need to have such a debate.

Senator Paul Bradford: I fully agree with the previous speakers, Senator Fitzgerald in particular, on the urgent need for a debate on banking and all that surrounds it. Realistically, we

have been posing this question for the past number of months. We all share the same point of view and the country and the body politic is shocked by what has happened and what still seems to continue to happen in our banking system. Both this House and society need to ask slightly more philosophical questions as to why and how the country finds itself in this current political and economic state.

I acknowledge many good things happened and there was good economic growth in the era of the Celtic tiger but the negative impact of the Celtic tiger was the type of thinking which produced such greed, arrogance, bad manners and an entirely different view of society which would have been unacceptable in previous decades. We need a philosophical discussion on morality in public life and politics. Morality is a strong and strange word to use in this context and it can sometimes have old-fashioned connotations but morality in politics is now crucial. Morality in politics, public life and public and banking policy is something which has literally gone the tubes. This is the reason our society is where it is. Fifteen, 20 or 25 years ago, people would not have believed they were entitled to take some of the policy decisions such as the significant increase in salaries, bonuses and pension top-ups which became commonplace during the Celtic tiger era. This is a debate we need to have.

On a less philosophical subject, I thank the Leader for allowing me the opportunity on the Adjournment yesterday to raise the issue of carbon taxation. I ask the Leader to arrange a debate in the next week or two on the aspect of carbon taxation which is causing a lot of concern, the impact it will have on the agriculture sector after 1 May. This sector is under extraordinary stress and financial pressure. The introduction of the carbon tax levy will cause significant problems for the agricultural community. The French Government took the decision some weeks ago not so much to abandon as to park the issue of carbon taxation until there is a European-wide response. We need to reflect——

An Cathaoirleach: The Senator has made his point now and should conclude.

Senator Paul Bradford: The introduction on 1 May of the carbon tax levy will cost jobs in rural Ireland.

Senator Cecilia Keaveney: I attended a seminar about music and the brain held in the National Concert Hall last Saturday. The three contributors were all caught by the volcanic ash and yet two of the three were able to contribute by means of the advances in science of the webcam. They were able to take questions from the audience of almost 500 people. I ask for a debate between now and the end of this session about music therapy. Music therapy is a clinical intervention which is recognised throughout the world to be as effective as other therapies such as speech and language therapy, physiotherapy and occupational therapy. While a degree course in music therapy is available in the University of Limerick, music therapy is not professionally recognised under the health professionals Bill and therefore people are not given the same remuneration or respect they deserve. Music therapy can bring speech back to certain stroke victims and can have a positive impact on mental health. It can be used to support people with Alzheimer's and can help people with motor issues. Funding for issues concerning social exclusion will be announced today. Music therapy can play a vital role in mother and child bonding which is a key starting point for social inclusion. I ask the Leader to ask the Minister for Health and Children and the Minister of State with responsibility for mental health, who has done a lot of work in this field, to ponder the question raised on Saturday which is at what level of evidence will it become negligent not to prescribe music therapy. That is the level we are at which is why it is important we discuss this most urgent issue.

Senator Feargal Quinn: The announcement today of 1,000 new jobs in the retail sector this year is very welcome. We talked about good news yesterday. Of particular interest is that the retailers are providing 150 places free of charge for training for these jobs. I mention this because it is an example of a section of the community doing something rather than asking the Government to intervene. I have spoken previously about a young woman who was unable to find employment in the west after qualifying as a solicitor. She offered her services for free and after several weeks or months became so indispensable to her employer that she was taken on as a full-time member of staff. A question that appears to be asked too often — there are times when we have to do so ourselves — is, “Why does the Government not do something?” I would love to encourage industries and individuals to take the initiative themselves on occasion.

I acknowledge I have a vested interest when I say that even in Europe the potential for retailing is not recognised. The retail sector employs 31 million people throughout Europe, but it is always regarded by decision makers as secondary to industry. The same applies in Ireland. We have to encourage retailing by ensuring there are no restrictions.

In regard to Senator Bradford’s comments on the carbon tax, the French Government decided to park such a tax because it would make their industries and businesses uncompetitive. It announced that it would not introduce it until it was applied on a Europe-wide basis because it recognised the country had to be competitive if it was to succeed in creating jobs. There is an onus on us to avoid steps which would cause us to be uncompetitive, whether in retailing or industry.

Senator Jim Walsh: I am struck by the consensus across the House on the profligacy and overpayments in the banking sector. I was particularly impressed by the contribution of Senator Bradford who made clear the need for both ethics and morality in public life and corporate governance. This House could do worse than start a strong campaign in that regard. The abuse of privilege in many sectors of the economy is stark.

It was reported yesterday in *The Irish Times* that payments to three members of the Moriarty tribunal, Mr. Healy, Ms O’Brien and Mr. Coughlan, in the year ending February 2010, totalled €966,804, €993,729 and €842,840, respectively. The tribunal appears to be in a serious state.

11 o’clock The Taoiseach and the Minister for Finance who hold the two most responsible and challenging positions in the country receive less than one quarter of what the people mentioned were paid last year. It is an absolute scandal. Unfortunately, I had cause to raise the issue on previous occasions. In 2004 the Government decided that the fees payable to senior counsel would be reduced to €969 by March 2007. This would have meant that the aforementioned individuals would have been paid approximately €350,000 to €400,000. Even these payments would be at least €100,000 greater than the earnings of the most skilful surgeons working in our hospitals who arguably do a much more challenging job. The chairman of the tribunal wrote to the Government to point out that, in the interests of keeping the tribunals functional, the proposed reduction should not be implemented. That was a disgrace. I seek guidance from the Chair on how we can discuss the Moriarty tribunal without getting into difficulties. The time has come for the Houses to debate that body which continues to deal with issues that should have been finalised a decade ago and costs the State and the taxpayer an alarming amount of money.

An Cathaoirleach: The Senator has made his point.

Senator Jim Walsh: We need to put a stop to this. I ask the Leader either to bring forward the motion which has been on the Order Paper since 2009 or to explain who is obstructing a debate on it. If we are serious about tackling the abuse of privilege, we have to start in this area.

Senator Paul Coghlan: I strongly support the amendment proposed to the Order of Business. This is a recurring theme because there were breaches in all five of the financial institutions participating in NAMA, not only Irish Nationwide Building Society. The State is making considerable efforts to get the banking system back working again in order that credit can be made available to those persons and businesses in need of it.

On the need for recapitalisation, I join Senator Fitzgerald in asking the Leader whether it is intended that additional public interest directors will be appointed. It will not suffice to appoint them if those with conflicts of interests or who were responsible for sanctioning the impaired portfolios that have landed us in this mess continue as board members. We need to do more about this issue. The Government cannot allow matters to freewheel, but it does not appear to have a firm hand on the tiller. We urgently need a debate this morning on the matters raised.

Members will be aware that there was a serious fire last week on over 1,860 acres of heather and gorse between Ard na gCoistí and the foot of Mangerton Mountain in the heart of Killarney National Park. The fire crossed two roads and flames came within 50 feet of houses. It was only controlled with great difficulty by ten fire tenders, but who knows what would have happened if they had been called elsewhere. It is a serious matter for the State. I urge the Minister for the Environment, Heritage and Local Government, Deputy Gormley, to ensure proper firebreaks will be cut in the future. If the fire had crossed the road at the viewing balcony, it would have burned everything between Mangerton Mountain and Dinis, including the oldest yew wood in Europe and several exotic species of plants.

Senator Labhrás Ó Murchú: I commend Senator Bradford for the relevance of his contribution on the challenges we face as a society. He mused that his comments might be seen as somewhat philosophical, but I regard them as exceptionally realistic. If there is shock in the body politic and society generally at what is happening, we have to find a reason for it.

Senator Jerry Buttimer: We know the reason. The Government allowed it to happen.

An Cathaoirleach: No interruptions, please.

Senator Labhrás Ó Murchú: I find it particularly difficult to understand why we are not shocked that some individuals are expected to live on €200 a week when others can earn that amount in one minute. I do not wish to detract from specific issues because they are all important and deserve to be debated.

Senator Fidelma Healy Eames: The Government allows those salaries to be paid.

Senator Labhrás Ó Murchú: There is no doubt in my mind that we have brought selfishness, greed and insensitivity from the Celtic tiger era.

Senator Jerry Buttimer: It is the legacy of Deputy Bertie Ahern.

An Cathaoirleach: Senator, no interruptions, please.

Senator Labhrás Ó Murchú: We are like ostriches with our heads in the sand. We are not prepared to look at these issues. I cannot even hear the heckles because I am concentrating on a point which is heart-felt.

Senator Jerry Buttimer: I will repeat it for the Senator. It is the legacy of Deputy Bertie Ahern.

An Cathaoirleach: The Senator should not interrupt or I will ask him to leave the Chamber.

Senator Fidelma Healy Eames: He is right. Deputy Bertie Ahern created the environment.

An Cathaoirleach: Why is it that the same few Members keep interrupting?

Senator Labhrás Ó Murchú: I do not mind. They can heckle; it is background music.

Senator Jerry Buttimer: I heard him speak on “Morning Ireland”.

Senator Labhrás Ó Murchú: If somebody feels it necessary to shout down others in expressing opinions in this House, he or she must look into his or her own heart and ask why he or she is shouting. I am anxious to make a contribution. I hope I have an ear to the ground. I do not believe anyone has a monopoly of compassion or wisdom, but unless we are prepared to get back to old-fashioned ethics and having compassion, we will not get to the root of the problem.

Senator Dominic Hannigan: I inform the House that at the successful Labour Party conference at the weekend we unanimously passed a motion to show solidarity with the workers in the Quinn Group based in counties Cavan, Monaghan, Louth and Meath. I welcome to the Visitors Gallery Councillor Shane O’ Reilly who has done much work in recent weeks with the group.

On the air transport issue which seems to have been resolved, we need to learn lessons from what happened. It strikes me that the safety guidelines issued last week were not fit for purpose. As a result, businesses have lost many millions of euro, while individuals are out of pocket to the tune of thousands of euro in some instances. The Minister for Transport, Deputy Dempsey, needs to give a lead. As an island nation, we are completely cut off, unlike every other country in Europe — the British have got the Channel tunnel. I want the Minister to call in representatives of the airlines. Reports in the past 24 hours that airlines are querying their roles and responsibilities when it comes to consumer rights are worrying, as the law is clear in this regard. It is up to the Minister to call in representatives of the airlines to state he will not tolerate attempts to deny passengers their rights and entitlements.

Senator Ivor Callely: In the past I asked the Leader on the Order of Business if there was a mechanism that could be agreed by the party leaders and introduced in the House, whereby we could have a structured debate on matters of importance, whether it be the economy, finance issues or any of the other relevant matters raised. I am frustrated at the level of progress made. Week in, week out we hear Senators calling for debates and I have asked for a structure to be put in place to facilitate them. I want to know whether the Leader and the other party leaders have come to an agreement on how such a structure could be put in place. Perhaps for a certain period of the day or at a certain time of the week we could hear good news or whatever it might be, but I want to see a structure being put in place to facilitate this, as week in, week out we hear Senators calling for debates with Ministers who have appointments already scheduled in their diaries, yet we expect them to drop everything to come to the House to respond to questions. That is crazy and unacceptable. I want to know what progress has been made in dealing with this issue.

There is one issue which I ask the Leader to check and to report back to the House, that is, the millions of euro being wasted in the health care budget. There is a need for prudent management of each euro spent, whether on services for older persons or ambulance services, in which in certain areas we saw delays in the past couple of days we saw delays. There has been a significant rise in the threat posed to patients of catching lethal infections in public hospitals, even though it has been clearly acknowledged that such infections are preventable with the right focus on hygiene and cleaning standards. I ask the Leader to investigate the matter and report back to the House.

Senator Jerry Buttimer: Senator Boyle spoke about challengeable ethics.

An Cathaoirleach: A question please to the Leader, not to other Members.

Senator Jerry Buttimer: Senator Boyle spoke about challengeable ethics in the banking system. When will he facilitate not only a debate but real action against the banking fraternity?

Senator Ó Murchú, I will say why I heckled you. It was because you and your colleagues——

An Cathaoirleach: The Senator is not entitled to speak across the floor to another Member.

Senator Jerry Buttimer: ——have acquiesced, sat there and voted.

An Cathaoirleach: The Senator should address his remarks through the Chair to the Leader, not to any other Member across the floor.

Senator Jerry Buttimer: I am asking the Leader why Fianna Fáil Party Members come into the House day after day and agree with what we state but then vote against what we propose, vote with the Government and acquiesce in the policies that have left the legacy about which Senator Ó Murchú spoke. Why does this happen? That question should be answered. Why is it being allowed to happen? The reason is there is a moral vacuum within Fianna Fáil. I challenge every one of them to do the right thing.

As Senator Fitzgerald correctly stated, two bankers, the former CEO of the Irish Nationwide Building Society and Mr. Boucher, are receiving inordinately excessive and immoral amounts of money, yet there are persons who, at the behest of the Department of Social and Family Affairs, can have their medical cards taken away, their home help hours cut and lose a job. Is that right? Is that the legacy the Leader of the House wants to have? The legacy of Deputy Bertie Ahern is one that has divided Ireland and plunged it from the so-called premier division to the conference league. That is the legacy Fianna Fáil has left us having been in government for the past 13 years. It is no wonder people are angry. They ask why the Government has not interceded, but it will tell us it has no role.

I will conclude on this point.

An Cathaoirleach: Point made.

Senator Jerry Buttimer: Will the final act of the Government be to allow the public directors appointed by it to do nothing? What is their duty and role? It is no wonder people are angry.

An Cathaoirleach: Time, please.

Senator Jerry Buttimer: It is no wonder there is near revolution on the streets.

An Cathaoirleach: I call Senator Corrigan.

Senator Jerry Buttimer: What we get from the Government side of the House is silence.

Senator Maria Corrigan: There have been significant changes in the provision of care and its funding, including the introduction of standards, inspections, the fair deal scheme, etc. However, there is also an increased commitment to support people to help them stay in their own homes for as long as is possible. In this regard, it would be timely for us to have a debate on the critical role carers play under the national strategy. I ask the Leader to make provision for such a debate prior to the summer break.

[Senator Maria Corrigan.]

On the issues raised by colleagues, one that particularly comes to mind is the sum of €1.5 million paid into a pension fund. All weekend I met people who were scrimping and scraping to make their mortgage payments, pay utility bills and clear overdrafts that banks had called in without notice and who could not get their heads around the idea that €1.5 million had been placed in someone's pension fund. It is more money than they will ever see in their entire lifetimes. This is wrong. I ask the Leader to pass on the views of colleagues to the Minister.

Senator Keaveney raised the matter of music therapy and asked about the health professionals Bill. There has been incredible lethargy in the regulation of the professionals concerned and I ask the Leader to make provision for a debate on the issue to enable us to receive an update on the matter. Senator Keaveney has correctly stated it has to do with recognition and access, but the regulation of these professionals also has to do with the protection of consumers, in some instances, very vulnerable consumers. In the interests of safety, we should receive an update.

Senator Eoghan Harris: I understand the reason Senator Buttimer must protect and advance his party's cause. We all hold different views of the cause of the recession. Mine is well known — I believe it was driven fundamentally by low interest rates. Be that as it may, we are stuck where we are.

While I have no objection to the pursuit of the alleged guilty parties, in dealing with the issue and trying to roll back we need to cultivate a consensus across parties. A good contribution was made by Senator Bradford, on which Senator Ó Murchú attempted to amplify. We should build on it. In every survey it is shown that the public hates partisan politics. It looks for consensus across the board, as is being shown in the British general election campaign. A certain amount of anger is necessary, but we must balance it with good news, as Senator Quinn stated. While the guillotine is going, we also must remark that it is a fine morning.

I was struck by Senator Keaveney's remarks about music therapy. Not all music is equal — the Tulla Céilí Band playing "The Salamanca Reel" is superior in terms of therapy if one is driving on a bad morning and listening to bad news than any other form of therapy.

Senator Donie Cassidy: It depends on one's taste.

Senator Eoghan Harris: Be that as it may, there is significant consensus in Irish politics about our ideology. It is not generally remarked upon but in Ireland we agree the best system for economic activity is capitalism, mediated strongly by social democracy. In other words, capitalism is like hard players but there are also corrupt and dirty players. The business of the State is to act like a tough referee on the particularly dirty players.

I strongly agree with Senator Fitzgerald on the bankers' actions in recent months. The old Irish proverb comes to mind: ní hí an bhochtaineacht is measa dúinn ach an tarcaisne a leannan í; it is not the poverty we mind but the insult that follows. What annoys the public is the bankers' insulting behaviour to give themselves bonuses and top up their pensions on top of the structural problems they already caused.

One cannot stop people behaving badly. As the Chinese say, one cannot stop the blackbirds of evil flying over one's head but one can stop them making a nest in one's hair. I support the proposed amendment to the Order of Business. Will the Deputy Leader, Senator Boyle, and the Leader, Senator Cassidy, convey to the Minister for Finance in the strongest possible terms the cross-party consensus that the State needs to act as a tough referee, to stop pussyfooting and get stuck in there with the procedures and mechanisms available? Senators of all parties want the State to act in the toughest and hardest fashion on the banking sector's bad behaviour.

Senator John Hanafin: The House is in consensus in its disbelief that the banking sector has not understood the fundamental changes that have taken place not only in this country but across the world. Goldman Sachs is now experiencing strong regulation in the United States. I welcome strong regulation of the Irish banking sector which we have seen recently.

Electricity prices are a fundamental cost in the economy. It is time the gloves were off between the main electricity supply players, for the ESB to reduce its costs and let a price war develop which will be to the consumers' benefit. In the retail sector, especially with the supermarkets, prices have become very competitive as a result of strong competition in the marketplace. I would welcome the energy regulator allowing the ESB to engage in the market and reduce its electricity prices for the benefit of the economy.

Senator Paschal Donohoe: I agree with Senator Quinn's call for a debate on the parts of the economy which are doing well. In recent weeks, I visited companies in my locality which work in digital media and arts. Ireland has companies which are world-leading in these areas and which show the agility, spirit and degree of adventure to which we aspire our wider economy to share. These companies are not recognised on the roadmap of official Ireland. Several weeks ago the Government published the report of the innovation task force but it has not yet been debated in the Houses of the Oireachtas. The report is meant to provide the blueprint on how we can harness the spirit of creativity throughout the country for the well-being and benefit of all. It is important this report is debated soon.

I agree with Senator Bradford's call for a more philosophical analysis of how we got to where we are with the banking sector. I have no issue with someone being paid millions of euro or far more than I ever will because I believe in a free market economy. I believe the wealth such individuals can generate will percolate down for the benefit of all. I have an issue, however, with people earning such money in an unethical manner and to the detriment of all. The House must ensure, when it makes clear its condemnation of the practices of a few and the unethical manner in which they earned their salaries, it is not to the detriment of encouraging people to be entrepreneurial, found successful companies and be correctly and amply rewarded for that.

Senator Michael McCarthy: The mess in which the country finds itself is due to Irish crony capitalism. While the Government has saddled generations with the debts accrued from NAMA——

Senator Donie Cassidy: Does the Senator have a question?

An Cathaoirleach: It is questions to the Leader and not debates on the Order of Business.

Senator Michael McCarthy: ——the bailout and recapitalisation, it has turned to socialism for bankers. We now have the disgusting situation where the chief executive of the Bank of Ireland gets a top-up of €1.5 million on his pension while a former director of Anglo Irish Bank gets a pension of €10,000 per week and free Aer Lingus flights to Puerto Banus, the most expensive part of the Costa del Sol. The banks have been getting away with blue murder and the Government has let them off the hook.

Will the Taoiseach and the Tánaiste ask Mr. Boucher to return the money forthwith? Will they also put in place measures to ensure this is not repeated? During the debates on bank recapitalisation, the Labour Party warned about this. At every point, however, the Government said it would get value for money, not saddle the taxpayers with debt and cap bankers' salaries. That clearly has not been the case.

Senator Nicky McFadden: One of my colleagues on the Government side spoke of Ireland's banking crisis not being unique as crises have also occurred in the UK and US. That does not

[Senator Nicky McFadden.]

mean, however, that it is right. I warmly welcome Senator Bradford's contribution on the banking issue. While there is consensus, I would prefer, however, that it would not just be talk and that there would be action in bringing to task the former banking chief executive officers such as Mr. Fingleton and others who have destroyed our banking system.

A pension top-up of €1.5 million is an extraordinary sum of money. I am losing sleep worrying about people who cannot afford to pay their mortgages because of the sloppy lending of some of these executives. Under the State bank guarantee, the Taoiseach and the Minister for Finance have the authority to bring these people to task and stop the €1.5 million pension top-up to Mr. Boucher. The idea of writing off €2.8 billion in loans that some people took is immoral and disgusting. For the sake of the country, will the Leader ask the Minister for Finance to attend the House to debate these matters so that we can let him know how strongly we feel? This is all about right and wrong and, more importantly, trust.

I pay tribute to the chief of staff of the Defence Forces, Lieutenant General Dermot Earley, who is not well and recently retired from his post. I wish him and his family well. He was an extraordinary chief of staff and I wish him well.

Senator Fidelma Healy Eames: I am encouraged by the calls today for the need for justice and fairness for every citizen and for ethics in corporate governance. Many Members have voiced the stress of the ordinary people who are concerned about their mortgage repayments and that they will lose their homes, who cannot get credit for their businesses and who are saddled with debt. We need, as Senator Harris said, the Government and the State to act as a tough referee and enforce its legislation against the likes of Anglo Irish Bank, Mr. Fingleton and Mr. Boucher. It is fundamentally wrong they are getting these top-ups after the €500,000 cap was put on the banks' chief executives' salaries. Will the Government enforce its legislation against these people? We must extend that code of morality and ethics to all aspects of Irish life, particularly in retailing. I was encouraged to hear the news this morning that Penneys-Primark are removing from their stores padded bras for seven to ten year old children. The sexualisation of our young children is an outrage. I have a nine year old daughter. I want her to have her childhood. I do not want her to be encouraged by consumerism that is negative and damning. Our codes of ethics and morality must extend to all aspects of our lives. The Minister for Enterprise, Trade and Employment might examine that also.

Senator Donie Cassidy: Senators Fitzgerald, O'Toole, Bacik, Boyle, Bradford, Walsh, Coghlan, Ó Murchú, Buttimer, Corrigan, Harris, Hanafin, Donohoe, McCarthy, McFadden and Healy Eames again expressed strong views on affairs of banking. I wish to inform the House that we will have a debate on banking on Tuesday next to address the urgent call made on the Order of Business today and yesterday. I look forward to allocating whatever time is necessary to colleagues to allow them make their strong views known to the Minister who will be present on the day. I agree with many of the sentiments expressed this morning, particularly the one by Senator O'Toole regarding the need for European Union auditing at the same level in all 27 countries. I believe we would all strongly endorse that and look forward to its implementation at the earliest possible time.

The level of debate and questioning on the Order of Business this morning is a shining example and very uplifting for me, as Leader of the House, of the way colleagues now home in more on policy and the serious issues affecting us rather than engaging in political point scoring. I very much welcome a move to that.

Senator Eoghan Harris: Hear, hear.

Senator Donie Cassidy: I refer to Senator Bradford, Senator Ó Murchú and Senator Harris. At times we want to make strong political points but there will not be a general election for two years and therefore there is no need to make those strong political points.

Senator Paul Coughlan: An absolute assurance.

(Interruptions).

Senator Jerry Buttimer: Is that the Leader's own prediction?

Senator Donie Cassidy: In the interest of balance I want to place on the record of the House that under the stewardship of Fianna Fáil we had 7% growth each year in the past ten or 11 years.

Senator Fidelma Healy Eames: That is exactly our problem.

Senator Jerry Buttimer: Some 430,000 unemployed.

Senator Donie Cassidy: Under the stewardship of Fianna Fáil——

Senator Jerry Buttimer: We have had the banks' recapitalisation.

Senator Paudie Coffey: Our children are leaving the country.

Senator Donie Cassidy: It is two Senators who create disruption all the time. What a wonderful House we would have if the example given by Senator Bradford, Senator Harris and Senator Ó Murchú this morning was taken on board by the younger Members of the House.

Senator Jerry Buttimer: It is difficult not to interrupt in some cases.

Senator Paudie Coffey: It is time for the Leader to listen to the youth.

Senator Jerry Buttimer: The Senator's prophesy about housing and so on is well documented.

Senator Donie Cassidy: An extremely popular radio programme, which ran for many years on RTE when it only had one station, was entitled "Listen and Learn".

(Interruptions).

A Senator: The voice of the master.

Senator Jerry Buttimer: Fianna Fáil never listened and it never learned.

An Cathaoirleach: Please Senators.

Senator Frances Fitzgerald: Fianna Fáil could do with a bit of listening now.

Senator Donie Cassidy: For 11 years, under the stewardship of Fianna Fáil, we had budget surpluses which were unheard of by all political parties when they were in power until the past ten or 11 years.

Senator Jerry Buttimer: Correct.

Senator Donie Cassidy: Under Fianna Fail 800,000 jobs were created in the past 11 or 12 years. That is an incredible achievement that is standing to the economy at the present time. As Senator Walsh said on the Order of Business yesterday, an extra 800,000 people are paying

[Senator Donie Cassidy.]

taxes and making a return to the Exchequer, which colleagues on both sides of the House did not have in the 1970s or 1980s when in government.

Senator Jerry Buttimer: How does the Leader account for the last two budgets?

An Cathaoirleach: No interruptions. Allow the Leader reply to the Order of Business.

Senator Jerry Buttimer: What about the last two budgets and taxing the people?

Senator Kieran Phelan: What would the Senator have done?

Senator Donie Cassidy: I look forward with bated breath to the Senator's contribution next Tuesday.

Senator Jerry Buttimer: The Leader is all spin.

Senator Donie Cassidy: I join with Senator Bacik in welcoming the opening of air services. As everyone is aware, I have a vested interest which I want to acknowledge but this was a serious position in which everyone in the country found themselves. Thank God the skies have opened again because serious issues regarding employment were about to emerge in the next 24 to 48 hours. What happened goes to show how much we depend on air travel in terms of our exports and our tourism industry in particular.

Regarding Private Members' business referred to by Senator Bacik, ongoing discussions are taking place. We fully support the Bill but we need the 12 months, as has been correctly pointed out by the Department, in regard to the Private Members' Bill tonight. I hope the Senator will accept our amendment in good faith. We are all moving in the right direction.

Senators Bradford and Quinn outlined the importance of remaining competitive. That is the greatest single challenge, as Members on all sides of the House have said. We must get back to being competitive and if the carbon tax interferes with that, and Senator Quinn pointed out what the French have done to keep their country competitive, it may be time that we examined that to see what we can do. I realise 1 May is very close at hand.

Senators Keaveney, Corrigan and Harris spoke about the importance of music in therapy and uplifting the person in general through music. I have no problem in allocating time for such a debate and will do so at the earliest opportunity to see how we can enhance that proposal.

Senator Quinn welcomed the 1,000 new jobs in the retail sector, particularly the 150 jobs in training. As the Senator said, 31 million people are employed in retail in Europe. The sector is a huge employer and I join with the Senator in welcoming this good news this morning.

Senator Walsh raised non-government motion No. 37(4) on today's Order Paper which states: "That Seanad Éireann, in light of the exorbitant fees being charged by Senior and Junior Counsel, calls on the Government to introduce a Maximum Fees Order, of not more than €969 per diem for Senior Counsel and €646 per diem for Junior Counsel (as decided by the Government in July 2004 in respect of Counsels' fees for Tribunals of Inquiry)". I assure Senator Walsh there is no agenda whatsoever in not taking this motion up to now. I will endeavour to see how this can be facilitated and will come back to the Senator later this afternoon.

Senator Coghlan has serious concerns regarding the massive fires in the beautiful area of Killarney and the surrounding districts. We fully support our fire services and everything we can do to assist them will be done. I support Senator Coghlan on all of these issues. As I have often said, my heart lies in Killarney when we go there on holidays every year.

Senator Callely referred to raising matters of importance and putting a structured basis in place. We have always tried to deal with matters of importance in the House, although perhaps not on that particular day because the Ministers' diaries are committed. That is the difficulty. There is a structure here at 12.50 p.m. where a Member can bring to the attention of the Cathaoirleach matters of urgent importance for two minutes. That Standing Order remains in place and Members should avail of it. At the time the Committee on Procedure and Privileges brought that in to encourage Members who would have a difficulty in their constituencies in particular and might want to be facilitated in raising it on the floor of the House coming up to the 1 o'clock national or local news. That procedure remains in place.

Senator Callely raised the issue of the millions of euro being wasted in the health services budget and asked that the Minister for Health and Children come to the House to discuss that. Senator Callely has enormous experience in this area, being a former chairman of a health board and a Minister of State. He also raised the issue of infections in our public hospitals. Anything that can be done to support the call in that regard will be done. I am sure the Senator will bring it to the attention of the Minister when she comes to the House in the next few weeks and see what can be done.

Senator Corrigan called for a debate on carers. These are special people and all carers should get gold medals for the commitment they show to the senior citizens of our country and those who need care morning, noon and night. I have great pleasure in allocating time for a debate on carers in the next few weeks.

Senator Hanafin called on the regulator to allow the ESB to participate in the marketplace to assist our competitiveness. This is a sensible proposal and I have no difficulty in allowing time for it to be debated soon. Senator Donohoe referred to the report of the task force on innovation and a debate on it, which is a worthwhile proposal. I look forward to having the Minister for Enterprise, Trade and Employment, Deputy Batt O'Keeffe, in the House to see what further proposals can be made in respect of the report.

I join Senator McFadden in congratulating Lieutenant General Dermot Earley on his award. Recognition was made by the Taoiseach of this outstanding person. I know his family and I know Dermot Earley almost all my life. A member of his family lives 300 yards from my home in Castlepollard and I wish to be associated with our congratulations on this deserved recognition by the Taoiseach and the Minister for Defence at his home last week.

An Cathaoirleach: Senator Fitzgerald has proposed an amendment to the Order of Business: "That a debate on top-up payments, pension payments and excessive awards to bankers be taken today." Is the amendment being pressed?

Senator Frances Fitzgerald: Yes.

Amendment put.

The Seanad divided: Tá, 23; Níl, 27.

Tá

Bacik, Ivana.
Bradford, Paul.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Doherty, Pearse.
Donohoe, Paschal.

Fitzgerald, Frances.
Hannigan, Dominic.
Harris, Eoghan.
Healy Eames, Fidelma.
McCarthy, Michael.
McFadden, Nicky.
Mullen, Rónán.
O'Reilly, Joe.
O'Toole, Joe.

Tá—continued

Phelan, John Paul.
Prendergast, Phil.
Quinn, Feargal.

Ross, Shane.
Ryan, Brendan.

Níl

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callely, Ivor.
Carroll, James.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
Dearey, Mark.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Keaveney, Cecilia.

Leyden, Terry.
MacSharry, Marc.
McDonald, Lisa.
Mooney, Paschal.
Ó Brolcháin, Niall.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Phelan, Kieran.
Walsh, Jim.
Wilson, Diarmuid.

Tellers: Tá, Senators Jerry Buttimer and Maurice Cummins; Níl, Senators Niall Ó Brolcháin and Diarmuid Wilson.

Amendment declared lost

An Cathaoirleach: Is the Order of Business agreed to?

Senator Frances Fitzgerald: No.

Question, “That the Order of Business be agreed to”, put and declared carried.

Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009: Report and Final Stages.

Acting Chairman (Senator Cecilia Keaveney): I welcome the Minister for Justice and Law Reform, Deputy Dermot Ahern. Before we commence, I remind Members that except for the proposer of an amendment who may reply to the discussion on the amendment, Senators may speak only once on Report Stage.

Amendment No. 1 is in the names of Senators Bacik, Hannigan, White, McCarthy, Ryan and Prendergast. I call on Senator Bacik to move the amendment.

Senator Ivana Bacik: I move amendment No. 1:

In page 11, between lines 10 and 11, to insert the following:

“(4) The Minister shall within three months after the commencement of this Act publish a five-year anti-money laundering and counter-terrorist financing strategy illustrating how the objects of the Act are to be pursued, such a strategy to be evaluated and revised at the end of the five year period.”

I moved this amendment on Committee Stage. The amendment seeks that the Minister publish a five-year anti-money laundering and counter-terrorist financing strategy within three months of the commence of this Act. I previously explained that this is based on the strategy published in the UK on foot of its legislation. I believe it would be useful to have a statutory basis for such a strategy.

Senator Maurice Cummins: I second the amendment.

Minister for Justice and Law Reform (Deputy Dermot Ahern): As I stated on Committee Stage, in many cases strategy documents are produced without a legislative base. I do not believe it is appropriate to place such a strict requirement in a particular statute. I believe a flexible approach is more appropriate.

The Garda Síochána policing plan sets out, as a priority, the protection of the security of the State and its citizens against domestic and international terrorism and goes into great detail in terms of how domestic and international security can be maintained. It is also the case that my departmental strategy statement, which covers a three year period, contains commitments in regard to maintaining a secure and peaceful society.

Senator Bacik will be aware that an anti-money laundering compliance unit has been established in my Department. This unit will have supervisory and monitoring responsibilities in regard to money laundering in respect of the sectors where there are no other supervisory bodies. I can assure Senators that it is my intention to ensure that the strategy relevant to anti-money laundering controls in the sectors for which the unit of my Department will have responsibility will be reflected in our next strategy statement which will be published in 2011 to cover up to 2013. I also point out that there is a requirement in section 56 of the Bill for every competent authority, namely, every supervisory body, covered by the legislation to include in any annual report published by it an account of the activities that it has carried out in performing its functions under the legislation.

I suggest the Senator's amendment is not necessary.

Senator Ivana Bacik: I accept the Minister is prioritising the issue and will not press the amendment. However, I reiterate my belief that it would be useful to have a statutory basis for this strategy.

Amendment, by leave, withdrawn.

Acting Chairman (Senator Cecilia Keaveney): Recommittal is necessary in respect of amendments Nos. 2 and 3 as they do not arise out of Committee proceedings.

Bill recommitted in respect of amendments Nos. 2 to 6, inclusive.

Acting Chairman (Senator Cecilia Keaveney): Amendments Nos. 2 and 3 are related and may be discussed together.

Government amendment No. 2:

In page 12, line 39, to delete "that constitutes an offence under the law of that place and".

Deputy Dermot Ahern: Section 8 provides for an offence of money laundering outside the State in certain circumstances. Such circumstances include where the conduct takes place on board an Irish ship or an aircraft registered in the State. The opening words of section 8(1) provide that the offence is committed only if the conduct concerned is an offence under the law of the place in which it has occurred, that is, outside the State. The advice of the Attorney General is that it is not correct in terms of section 8(1)(a) or section 8(1)(b), which deal with conduct which takes place on board an Irish ship or aircraft registered in the State and the provision, therefore, requires an amendment. There is no change in intention or policy as a result of these amendments. I ask the House to agree to them.

Amendment agreed to.

Government amendment No. 3:

In page 13, to delete lines 1 to 5 and substitute the following:

“(c) the conduct constitutes an offence under the law of that place and the person is—

(i) an individual who is a citizen of Ireland or ordinarily resident in the State, or

(ii) a body corporate established under the law of the State or a company registered under the Companies Acts,”.

Amendment agreed to.

Acting Chairman (Senator Cecilia Keaveney): Amendments Nos. 4 and 5 are cognate and may be discussed together.

Government amendment No. 4:

In page 21, line 39, after “1995” to insert the following:

“(other than a non-life insurance intermediary within the meaning of that Act)”.

Deputy Dermot Ahern: On Committee Stage in the Dáil an amendment was made to the definition of “financial institutions” in section 24 to include the category of investment business firm within the meaning of the Investment Intermediaries Act 1995 so as to bring within the scope of the Bill certain insurance intermediaries who are not otherwise covered. However, this has had the unintended effect of bringing non-life insurance intermediaries within the scope of the Bill due to the fact that the Insurance Act 2000, as amended, had the effect of bringing non-life insurance intermediaries within the definition of “insurance business firm”. Non-life insurance intermediaries deal with house insurance, motor insurance and other types of non-life insurance. They are not covered by the third European Union money laundering directive as the products they sell do not constitute a material money-laundering risk. Therefore, there is no requirement to cover them in the Bill. The amendment would, therefore, exclude this type of group.

Amendment No. 5 relates to subsection (g) of the definition of a “financial institution” in respect of An Post for the same reasons.

Amendment agreed to.

Government amendment No. 5:

In page 22, line 10, after “1995” to insert the following:

“(other than a non-life insurance intermediary within the meaning of that Act)”.

Amendment agreed to.

Acting Chairman (Senator Cecilia Keaveney): Amendments Nos. 6 and 8 are related and may be discussed together.

Government amendment No. 6:

In page 22, between lines 31 and 32, to insert the following:

“ “member”, in relation to a designated accountancy body, means a member, within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003, of a designated accountancy body;

“member”, in relation to the Irish Taxation Institute, means a person who is subject to the professional and ethical standards of the Institute, including its investigation and dis-

ciplinary procedures, but does not include a person who is admitted to its membership as a student;”.

Deputy Dermot Ahern: Amendments Nos. 6 and 8 will insert definitions of “member” of a designated accountancy body in the definition section of the Bill, and in section 24 for the Irish Taxation Institute. Amendment No. 8 amends the current definition of “relevant professional advisor” which is currently contained in the section. It was considered important that the definition for members of these groups be included as the current references to members could have the effect of including persons who are not the subject of a regulatory routine, such as students. The membership of such bodies is a criterion which is used in a number of important sections in the Bill.

On the definition of “member of a designated accountancy body”, Senators will be aware the Bill already contains a definition of such bodies by reference to the Companies (Auditing and Accounting) Act 2003. It also contains a definition of a “member of a designated accountancy body” which is, therefore, the applicable reference. The definition of a “member of the Irish Taxation Institute” takes a similar approach in intent. The definition of “relevant professional advisor” has been amended as a consequence of these as it is no longer necessary to refer to the conditions stated in this definition as they will now be covered by the individual definitions.

The amendments also have the effect of ensuring that these groups of professions are treated in the same way as other groups, for instance solicitors who, if practising, are subject to a disciplinary regime. It is also important that such definitions are included in the context of the significance of these terms in various sections of the Bill. For example, section 14 deals with reliance on a relevant third party to carry out customer due diligence and also applies quite rigorous tests for professions in other member states.

Other relevant sections include section 46, which in circumstances stated provides for an exemption of the disclosure of certain information in the context of suspicious transaction reports. Sections 51, 52 and 53 provide exemptions from the offence of tipping off for such groups of professionals in stated circumstances. For these exemptions to be provided it is important that a disciplinary and ethical regime is in place for the relevant persons in such professions.

Again, I commend the amendments to the House.

Senator Ivana Bacik: I am not speaking against the amendments but we had some debate on this matter on Committee Stage. It is very much related to amendments I have tabled, namely, amendments Nos. 7 and 9. We are all in agreement about the aim of the Bill and want to ensure the correct people are covered by it. On Committee Stage I raised with the Minister the issue of whether the Bill captures the sufficient numbers. Amendments Nos. 6 and 8 are designed to capture a larger group. Do they capture the issue of external accountants? How do they relate to the definition of “designated person” in section 25?

Chartered Accountants Ireland has raised with the Minister and the Department the fact that accountancy bodies do not have regulatory functions or practising certificate regimes and therefore may not be in a position to monitor their members for anti-money laundering purposes. It is also concerned that there are people who hold themselves out as “accountants” but who are not members of any accountancy bodies. Given that the term “accountant” is not protected by Irish law, Chartered Accountants Ireland is concerned that such people may not, therefore, be caught under this provision although it seems they will be captured within the definition of “designated persons” under sections 24 and 25 of the Bill.

[Senator Ivana Bacik.]

In such circumstances, the competent authority in respect of external accountants or people holding themselves out as accountants but who are not members of an accountancy body would have to be the Minister. I tried to capture some of my concerns and those of Chartered Accountants Ireland in this regard with amendments Nos. 7 and 9, which would include the term “insolvency practitioner”. I have used the term to mean a person acting as liquidator, provisional liquidator, receiver or examiner to a person or as trustee in bankruptcy proceedings whether the person holds accountancy qualifications, is a member of a designated accountancy body or is a relevant independent legal professional.

My amendments would capture more accurately the group of persons who will not be governed by the regulatory regime of a designated accountancy body. I do not oppose amendments Nos. 6 and 8 but I am not sure that they are comprehensive enough. I ask the Minister to clarify that point. When we debate amendments Nos. 7 and 9 I will ask the Minister whether he will be willing to accept them. He indicated on Committee Stage that he would examine the issue of insolvency practitioners in particular.

Deputy Dermot Ahern: In a nutshell, the provisions in the Bill allow us to designate further classes of practitioners if the need arises. We believe we have included the required number and type of practitioner in this area as much as we can in the Bill. The issue of the definition of an accountant is a matter for other legislation. On this Bill, if there are groups of people or individuals who are holding themselves out as auctioneers we can make the necessary designation in that respect.

On amendments Nos. 7 and 9 tabled by the Senator, we have examined the issue and, as much as possible, have endeavoured to include people who are legitimately involved in insolvency, such as solicitors practices and accountancy practices, but there are people who do insolvency transactions to a certain extent, even on an amateur basis. There may be a difficulty in that respect in that the definition proposed by the Senator does not cater for them. This is something we can come back to at a later stage, if necessary.

Amendment agreed to.

Acting Chairman (Senator Cecilia Keaveney): As amendment No. 9 is related to amendment No. 7, they may be discussed together.

Bill reported with amendment.

Senator Ivana Bacik: I move amendment No. 7:

In page 22, line 40, after “adviser,” to insert “insolvency practitioner,”.

I have explained the rationale for tabling these amendments. I also raised the issue on Committee Stage. I am concerned that the existing provisions of the Bill do not cover those persons who hold themselves out as “insolvency practitioners”, that is, persons who act as liquidators, provisional liquidators, receivers, examiners, trustees in bankruptcy proceedings or administrators under the insurance and credit union Acts. Such persons will be captured if they are members of a designated accountancy body or the Irish Taxation Institute in accordance with the Minister’s amendments. However, he has acknowledged that these persons may not hold accountancy qualifications and may not be members of a designated accountancy body, the Irish Taxation Institute or a legal professional body. In the interests of ensuring adequate consumer protection, it is important, therefore, to include a term that would capture a group which may not otherwise be captured. The Minister described them as “amateur practitioners”, but a consumer dealing with someone who holds himself or herself out as an insolvency prac-

titioner may not be aware of the professional or amateur status of the person concerned. Chartered Accountants Ireland has also suggested it would be useful to include the term “insolvency practitioner” in the Bill.

I assume the Minister will respond again that this matter can be revisited at a later stage and that further classes of practitioners may be designated but that is not satisfactory. We are dealing with the final Stages of a Bill that has been passed by the Dáil. Therefore, this issue should have been tidied up, clarified or resolved before now. My amendment would do this.

Senator Maurice Cummins: I second and support the amendment so ably proposed by Senator Bacik. The term “insolvency practitioner” would cover what Chartered Accountants Ireland has intimated it would like to see included.

Deputy Dermot Ahern: The proposed amendment would have the effect of inserting the term “insolvency practitioner” in the definition of “professional service provider” and also in the list of designated persons in section 25. The primary purpose of the Bill is to transpose the requirements of the third EU directive which does not require the designation of insolvency practitioners, although this does not prevent us from going further in designating other groups. However, we should first be satisfied that such a designation is appropriate and required.

It is important to consider whether the obligations the Bill imposes which cover a wide range of issues are relevant and appropriate to the activities of particular groups. For instance, the question arises as to whether the obligations arising in the provisions of Chapter 3 dealing with customer due diligence which require identification and verification of customers and the record keeping obligations in Chapter 6 are applicable to a group such as insolvency practitioners. Generally, the various classes of designated persons specified in the Bill are involved in providing some service for customers. It is possible that professionals involved in dealing with insolvency matters could become aware of instances of illegality, including money laundering, which may be relevant to include in regard to obligations in respect of suspicious transaction reporting. However, insolvency and related issues are complex. It is important, therefore, that the inclusion of such groups is not decided on without detailed consideration and analysis, including of the relevance of certain activities and obligations. In this respect, it is important to bear in mind that the legislation contains provisions that enable the Minister to designate further groups. Section 25 which lists designated persons provides in subsection 1(j) that other persons can be included, for example, any other person of a prescribed class. Subsection (7) provides that the Minister may prescribe a class of persons for the purposes of that subsection, subject to conditions.

During the drafting of the legislation we examined whether we could extend the definition, but it was decided against it on balance because it was not clear to what extent and how appropriate it would be to apply all of the obligations imposed by the Bill to a certain group. The Senator mentioned my reference to amateur insolvency practitioners, a number of whom do not have qualifications. They do this work because they have been involved in a few cases. We decided it would be better to see how matters progressed. I can make regulations to designate further groups under the existing provisions.

Senator Ivana Bacik: I am grateful that the Minister has given a considered response to my proposal and that he is willing to come back to review the issue and examine the possibility of designating other groups in the future, but I am disappointed the matter cannot be resolved and that an amendment cannot be made to capture this group. It is important in the interests of the consumer to ensure as large a group as possible is covered, but I will not press the amendment.

Amendment, by leave withdrawn.

Bill recommitted in respect of amendment No. 8

Government amendment No. 8:

In page 24, to delete lines 5 to 14 and substitute the following:

““relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a designated accountancy body or of the Irish Taxation Institute;”.

Amendment agreed to.

Bill reported with amendment.

Amendment No. 9 not moved.

Bill recommitted in respect of amendment No. 10.

Government amendment No. 10:

In page 30, to delete lines 36 to 40 and substitute the following:

“(d) prior to carrying out any service for the customer if—

(i) the person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) or information that the person has previously obtained for the purpose of verifying the identity of the customer, whether obtained under this section or section 32 of the Criminal Justice Act 1994 (“the 1994 Act”) prior to its repeal by this Act or under any administrative arrangements that the person may have applied before section 32 of the 1994 Act operated in relation to the person, and

(ii) the person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the customer.”.

Deputy Dermot Ahern: Section 33 is an essential part of the customer due diligence provisions in the Bill. Customer due diligence is a key feature of the money laundering system, central parts of which are the requirements to identify customers and ongoing monitoring of such customers and transactions. The amendment relates to section 33(1)(d) which provides that the identification and verification measures set out in section 33(2) must be applied before a service is carried out for a customer if the designated person has reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained relating to verification of the customer.

The reason for the amendment is to ensure there is no question as to whether the section applies to documents or information obtained before the commencement of the section. The amendment replaces section 33(1)(d) and states the relevant documents or information may be obtained under section 33, section 32 of the Criminal Justice Act 1994 or any other administrative arrangements that a person may have applied before section 32 of the 1994 Act operated in regard to the person. The purpose of the amendment in inserting a new section 33(1)(d)(ii) is to reflect the fact that a designated person may in the meantime have obtained other relevant documents or information, that is, not those which caused the doubt in the first instance, which adequately verify the identity of the customer.

Amendment agreed to.

Bill reported with amendment.

Government amendment No. 11:

In page 34, line 41, to delete “a treaties” and substitute “the treaties”.

Deputy Dermot Ahern: The purpose of the amendment is to correct an error in the text of section 34 which should read, “the treaties”.

Amendment agreed to.

Acting Chairman (Senator Cecilia Keaveney): As amendment No. 12 is related to amendment No. 19, they may be discussed together.

Government amendment No. 12:

In page 36, to delete lines 42 to 44 and substitute the following:

“(b) carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction.”.

Deputy Dermot Ahern: The amendments apply the same principles arising from amendments made on Committee Stage, which is important for reasons of clarity and consistency. I brought forward amendments on Committee Stage to include a definition of “occasional transaction” in section 24 and an amendment to section 33(1)(b) as a result. The proposed amendment to section 37(2)(b) also reflects these changes. The amendment to section 33(8)(b) is in line with the amendment made on Committee Stage to section 33(8)(a), as it inserts the term “transaction” into the provision to clarify that it applies to either a transaction or a service .

Amendment agreed to.

Bill recommitted in respect of amendments Nos. 13 to 18, inclusive.

Government amendment No. 13:

In page 37, to delete lines 4 to 16 and substitute the following:

“(4) If a designated person knows or has reasonable grounds to believe that a customer residing in a place outside the State is a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall—

(a) ensure that approval is obtained from any senior management of the designated person before a business relationship is established with the customer, and

(b) determine the source of wealth and of funds for the following transactions—

(i) transactions the subject of any business relationship with the customer that are carried out with the customer or in respect of which a service is sought, or

(ii) any occasional transaction that the designated person carries out with, for or on behalf of the customer or that the designated person assists the customer to carry out.”.

Deputy Dermot Ahern: These amendments arise in section 37 which provides for enhanced customer due diligence to be carried out in regard to persons who are politically exposed persons. The provisions being amended are those dealing with the requirements that designated persons obtain approval from senior management before a business relationship is established with a politically exposed person and determining the source of wealth and funds involved in such business transactions. The amendments have the effect of setting out the provisions more clearly, thereby achieving greater clarity. For this reason, there has been a reordering of subsec-

[Deputy Dermot Ahern.]

tion (4) which now also specifically states the requirements apply if a person knows or has reasonable grounds to know that a person is a politically exposed person.

The amendment to subsection (6) in regard to a beneficial owner reflects the same approach as adopted in subsection (4). The amendments to subsection (7) specify clearly the circumstances in which a designated person is deemed to know that a person is a politically exposed person for the purposes of subsections (4) and (6), on which there are reasonable grounds for concluding that the designated person so knows.

The amendment to subsection (8)(a) arises essentially from the previous amendments and reflects the fact that the determination of the source of wealth and funds is an ongoing responsibility. It is, therefore, more appropriate to provide that the designated persons should discontinue the business relationship, if any, in the circumstances stated. It is also consistent with the other provisions in the Bill, for example, section 33(8).

Amendment agreed to.

Government amendment No. 14:

In page 37, line 17, to delete “(4)(b)” and substitute “(4)(a)”.

Amendment agreed to.

Government amendment No. 15:

In page 37, line 20, to delete “(4)(b)” and substitute “(4)(a)”.

Amendment agreed to.

Government amendment No. 16:

In page 37, to delete lines 25 to 32 and substitute the following:

“(6) If a designated person knows or has reasonable grounds to believe that a beneficial owner residing in a place outside the State, and connected with a customer or with a service sought by a customer, is a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall apply the measures specified in *subsection (4)(a) and (b)* in relation to the customer concerned.”.

Amendment agreed to.

Government amendment No. 17:

In page 37, to delete lines 33 to 40 and substitute the following:

“(7) For the purposes of *subsections (4) and (6)*, a designated person is deemed to know that another person is a politically exposed person or an immediate family member or close associate of a politically exposed person if, on the basis of—

(a) information in the possession of the designated person (whether obtained under *subsections (1) to (3)* or otherwise),

(b) in a case where the designated person has contravened *subsection (1) or (2)*, information that would have been in the possession of the person if the person had complied with that provision, or

(c) public knowledge, there are reasonable grounds for concluding that the designated person so knows.”.

Amendment agreed to.

Government amendment No. 18:

In page 37, line 45, to delete “not establish any business relationship” and substitute “discontinue the business relationship (if any)”.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 19:

In page 37, line 47, after “service” to insert “or carry out the transaction”.

Amendment agreed to.

Amendments Nos. 20 and 21 not moved.

Senator Ivana Bacik: I move amendment No. 22:

In page 42, lines 34 and 35, to delete “and the Revenue Commissioners”.

On Committee Stage the Minister had sympathy for the point that the section involved a bureaucratic overload in that two separate reports were required. The amendment would remove the obligation to report also to the Revenue Commissioners. I will not press the amendment, but it should be enough to report to the Garda Síochána, given that there should be very strong liaison between these bodies. We all want the legislation to be as effective as possible, but there should be sufficient liaison between the Garda and Revenue such that one reporting obligation would suffice.

Senator Maurice Cummins: I second the amendment.

Deputy Dermot Ahern: As I said previously, I do not regard it as bureaucratic overload that people are obliged to report to both bodies. It is important that, while there is a good connection and communication on an ongoing basis between the Garda Síochána and the Revenue Commissioners, the requirement is that a report be made to both, just in case. It is a double-lock, as it were, from the State’s point of view to ensure we take care of the matter. If, for instance, we were to accept the amendment, it could possibly lead to a situation where at some future date an issue of wrongdoing would not be picked up properly. I would be reluctant to accept the amendment for that reason, although I do not say that is the Senator’s intention.

Senator Ivana Bacik: No, clearly it is not our intention. We wish the Bill to be as effective as possible.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 23:

In page 58, line 45, after “oath” to insert “or affirmation”.

[Senator Ivana Bacik.]

The amendment seeks to insert the words “or affirmation” after “oath” since the law allows affirmations to be made as well as oaths. Strictly speaking, it may not be necessary to do this, as the matter is covered by the reference to oaths in the interpretation legislation, but it would be an improvement in terms of clarity of the Bill. It is a matter of principle and would be a good idea to include the words “or affirmation” wherever the word “oath” appears in modern legislation.

Senator Maurice Cummins: I second the amendment.

Deputy Dermot Ahern: It is a matter of principle every time a Bill passes through the Dáil that a member of the Labour Party proposes such an amendment because some of the back-room people feel this is absolutely necessary.

Senator Ivana Bacik: It is not just the backroom people who feel that way.

Deputy Dermot Ahern: I was joking. Perhaps someday the Government will amend the Interpretation Act 2005 in order that we can get rid of this amendment that is proposed to every Bill. The stock answer is that it is not required. That is the advice from the Office of the Attorney General on the interpretation of the Interpretation Act 2005 in respect of the definition of the word “oath”.

Senator Ivana Bacik: I will not press the amendment to a vote, but it is an important principle, to which the Labour Party and I personally adhere. We should seek to ensure in a modern, pluralist republic that, where possible, we separate church and State in every aspect. To include the word “oath” without also including “or affirmation” is bad practice in a modern state. I will not press the amendment, but the Minister will see the amendment crop up time and again in legislation from the Labour Party.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 24:

In page 78, line 44, after “purpose,” to insert “as giving rise to civil or criminal liability or”.

The amendment seeks to strengthen the whistleblower’s section, section 112, as we wish to ensure there is no omission in the protection of whistleblowers. The section only covers protection against an action for breach of confidence and does not provide for immunity from liability for such disclosures. The amendment would clarify the protection provided for whistleblowers and improve the provision.

Senator Maurice Cummins: I second the amendment.

Deputy Dermot Ahern: As I stated on Committee Stage, the issue of civil or criminal liability could not arise unless there was a breach of an enactment or rule of law. The section specifically states that in the circumstances set out, it would not constitute such a breach. The inclusion of an express reference to liability is not required. While I appreciate the intention of the amendment, I cannot accept it.

Amendment, by leave, withdrawn.

Bill, as amended, received for final consideration.

Question proposed: “That the Bill do now pass”.

Minister for Justice and Law Reform (Deputy Dermot Ahern): I thank Senators on all sides of the House for their work on the Bill. I do not say this because I am present in the House or in a political way, but I disagree with the suggestion that we get rid of the Seanad, as I very much welcome the exchanges on legislation in this House. From the point of view of the examination of legislation, it is important that we have two Houses. It is a great exercise that keeps Departments on their toes. It is a double-lock mechanism, as it were, in the examination of legislation. I tend to suggest to my officials that we start legislation in the Seanad and finish it in the Dáil because there tends to be a more detailed argument on certain Bills — not every Bill — in this House that we do not have in the other House.

I thank Senators for their work on the Bill. I also thank the office of the Cathaoirleach and my officials for their work on this extensive legislation. There is an onus on us to pass the Bill as quickly as possible because of an EU imperative. I also hope we will be able to comply with its requirements.

Senator Maurice Cummins: I compliment the Minister and his officials on introducing this important Bill to tackle money laundering and terrorist financing. Such legislation is long overdue and I compliment everyone involved with it.

Senator Ivana Bacik: I thank the Minister for his kind words. I welcome the passing of the Bill which the Labour Party supports and on which we engaged with the Minister. Apart from the Government, the Labour Party was the only group to table amendments. We did so in a spirit of constructive engagement. As the Minister indicated, the debate on Committee Stage of the Bill in the Seanad was very good. We have teased out very well some of the issues relating to it. Although I am disappointed the insolvency practitioner point was not ultimately accepted, I thank the Minister. I thank him also for his comments on the usefulness of the Seanad and the importance of an Upper House in terms of providing extra scrutiny. It is important. In my short time here I have certainly seen some very good debates on Bills, especially on Committee Stage. Really interesting and complex points have been teased out. I thank the Minister and his officials very much for their work on the legislation.

Senator Lisa McDonald: I, too, compliment the Minister and his officials on this very important legislation. The Minister's record in the Department on clamping down on organised crime and terrorism is exemplary and will stand to us as we continue to tighten the net on terrorism in this country. Money laundering, which is a part of terrorism, comprises a huge area. If we can make it more difficult for people to launder money, organised crime will become less attractive.

The Minister's comments on the Seanad are very helpful in the overall debate on whether there should be an Upper House. It is interesting that Senator Cummins did not pick up on that point considering his party's position thereon. As a younger legislator in the Houses, I believe it is very important that legislation be read in both Houses. We need reform of the Seanad and this could be raised at Cabinet level. This would be very helpful. We need to have legislation read in two Houses. It is cheap political points scoring to say one should just get rid of the Seanad. If we asked the public whether the entire Oireachtas should be got rid of, it would probably vote in favour of the proposal. Saying we should get rid of the Seanad is political points scoring and populist.

Senator Maurice Cummins: We still have not heard the proposals for Seanad reform that were promised last year.

Senator Lisa McDonald: We need reform and the Minister's comments are very helpful.

Acting Chairman (Senator Cecilia Keaveney): I thank the Minister and all the Senators for their co-operation. If this Bill had a time limit, we managed to consider Report Stage in a timely fashion.

Question put and agreed to.

Sitting suspended at 12.35 p.m. and resumed at 2.30 p.m.

Property Services (Regulation) Bill 2009: Committee Stage.

SECTION 1.

Government amendment No. 1:

In page 10, subsection (3), lines 8 to 14, to delete paragraphs (c) and (d) and substitute the following:

“(c) appoint, whether by reference to *paragraph (a), (b), (c) or (d)* of the definition of “property service” in *section 2(1)* or otherwise, different days for the coming into operation of this Act (or of different provisions of this Act) in respect of different services which fall within that definition, or

(d) in respect of *section 28(1)* appoint, whether by reference to *paragraph (a), (b), (c) or (d)* of the definition of “property service” in *section 2(1)* or otherwise, different days for the coming into operation of *section 28(1)* in respect of different property services.”.

Minister for Justice and Law Reform (Deputy Dermot Ahern): This is a technical amendment which spells out more clearly that the Act can be brought into force on different days in respect of different property services, or different provisions of the Act.

Amendment agreed to.

Section 1, as amended, agreed to.

SECTION 2.

An Cathaoirleach: Amendments Nos. 2 and 3 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 2:

In page 10, subsection (1), to delete lines 20 to 27 and substitute the following:

“ “advised letting value”, in relation to land valued for letting by a licensee, means the licensee’s reasonable estimate, at the time of such valuation—

(a) of the amount that would be paid by a willing tenant on appropriate letting terms in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion, or

(b) of the relevant price range within which would fall the amount that would be paid by a willing tenant on appropriate letting terms in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion;”.

Deputy Dermot Ahern: These amendments, which replace the current definitions of advised letting value and advised market value, are being introduced in response to suggestions made

during the Second Stage debate when submissions were received from representatives of the property services industry. Revised definitions are based on the definition in the Red Book which contains internationally recognised surveyor definitions.

Senator Paschal Donohoe: I have one question for the Minister. The original Bill referred to the price which a willing and not-anxious tenant would be seeking to pay. The amendment the Minister has before the House removes that description from the Bill. Will he say why that is the case? It appears to me that to say somebody was willing but not anxious would put a framework in place within which a proper price could be evaluated.

Deputy Dermot Ahern: It is purely and simply to align ourselves with the internationally recognised definitions contained in the Red Book, which is the book that contains the definitions that surveyors normally follow.

Amendment agreed to.

Government amendment No. 3:

In page 10, subsection (1), to delete lines 28 to 35 and substitute the following:

““advised market value”, in relation to land valued for sale by a licensee, means the licensee’s reasonable estimate, at the time of such valuation—

(a) of the amount that would be paid by a willing buyer in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion, or

(b) of the relevant price range within which would fall the amount that would be paid by a willing buyer in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion;”.

Amendment agreed to.

Government amendment No. 4:

In page 10, subsection (1), line 42, after “contribution” to insert “(if any)”.

Deputy Dermot Ahern: This amendment is intended to introduce some flexibility in the requirement to make contributions to the compensation fund. The Bill provides for the establishment of a compensation fund to provide compensation to clients who lose money as a result of dishonesty on the part of licensees. The Bill also provides that licensees must have professional indemnity insurance. It is a matter for the property service regulatory authority to determine the nature and level of the professional indemnity insurance which licensees must have available to them. The authority may require employers’ professional indemnity insurance to cover dishonesty on the part of their employees, including employees who are licensees, in which case it would not be necessary for employees to contribute to the fund.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 5 and 51 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 5:

In page 13, subsection (1), line 28, after “44,” to insert “45(1) or (2),”.

Deputy Dermot Ahern: Amendment No. 51 inserts a new section 45. In accordance with sections 30, 31 and 35, a licence will not be issued or renewed unless the applicant provides evidence that he or she has the required level of professional indemnity insurance. The new section 45 is intended to ensure the required insurance is maintained throughout the period of validity of the licence. Subsection (1) of the new section prohibits the provision of a property service by an employer who is an individual or independent contractor unless he or she has adequate professional indemnity insurance. Subsection (2) imposes the same obligation on property service employers in respect of their principal officers and employees. Subsection (3) empowers the authority to issue guidelines in relation to the operation of subsections (1) and (2).

Amendment No. 5 amends the definition of improper conduct, to provide that a contravention of section 45 amounts to improper conduct by the relevant licensee.

Amendment agreed to.

Government amendment No. 6:

In page 13, subsection (1), between lines 35 and 36, to insert the following:

““independent contractor” means an individual who provides a property service where—

- (a) no employee of the individual provides such service on behalf of the individual, and
- (b) in the case of an individual who is a partner in a partnership, no other principal officer provides such service on behalf of the individual,

and whether or not the individual engages in any other business;”.

Deputy Dermot Ahern: This amendment introduces definition of “independent contractor” to ensure it is clearly understood. An independent contractor is defined as an individual who provides property services, but does not employ anyone to provide such services on his or her behalf. Such an individual can operate on his or her own or can be an individual partner in a partnership. In the case of a partner in a partnership, none of the other principal officers of the partnership can provide a property service on behalf of the individual partner.

Amendment agreed to.

An Cathaoirleach: Amendment No. 7 is related to and an alternative to amendment No. 8. These amendments may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 7:

In page 16, subsection (1), to delete lines 29 to 39 and substitute the following:

“ “property service” means the provision in the State, in respect of property located within or outside the State, of any of the following—

- (a) the auction of property other than land,
- (b) the purchase or sale, by whatever means, of land,
- (c) the letting of land (including a letting in conacre or for the purposes of agistment), or
- (d) property management services,

by—

- (i) a property services employer,
- (ii) an employee of a property services employer,
- (iii) a principal officer of a property services employer, or
- (iv) an independent contractor;”.

Deputy Dermot Ahern: Amendment No. 7 amends the current definition of property service to ensure the licensing requirements under the Bill are clear. I cannot accept amendment No. 8. Its effect would be to bring local authorities within the scope of the Bill. The functions of local authorities include the letting of residential property and the procurement of the maintenance and repair of residential properties. These are part of their duties in regard to managing and maintaining their housing stock. In the absence of this exclusion, it could be argued that local authorities fall within the scope of the Bill, which is not the purpose of this legislation.

Senator Ivana Bacik: Our amendment No. 8 would have removed the exemption conferred on local authorities by the definition currently in the Bill. We believe the exclusion of local authorities is not in the best interests of the consumer, which is the purpose this Bill purports to champion. I assure the Minister that I welcome this legislation since it increases the rights and protections enjoyed by consumers in dealing with auctioneers and estate agents. That is good news for all of us.

The amendments we propose are small in number and are only being tabled in the spirit of strengthening protections for consumers. We did not believe that the exclusion of local authorities was in the best interests of the consumer. The Society of Chartered Surveyors has suggested something similar. I support amendment No. 7 which provides for a more specific definition of the meaning of “property service” than the definition currently in the Bill. Will the Minister consider taking on board the spirit of amendment No. 8? I am not sure why the two amendments are grouped together, although I accept that amendment No. 8 relates to part of section 2 which will be changed by amendment No. 7. However, the amendments are quite different and aim to do different things.

Deputy Dermot Ahern: The reason they have been grouped together is that the Senator’s amendment seeks to amend the old section. With regard to the proposal made in the amendment, we have consulted the Department of the Environment, Heritage and Local Government and its view is that the amendment should not be included in the Bill. The question would arise as to who one would license. It is something that would be dealt with in other legislation, if required. We do not believe they should be included. Everybody wishes to look after the consumer in this respect, but the amendment is not relevant in this legislation.

Senator Maurice Cummins: Why are the local authorities excluded in this section?

Deputy Dermot Ahern: Local authorities are their own arbiters in the letting of their housing stock. They are not relevant to this legislation which relates to private housing stock.

Senator Ivana Bacik: I reserve the right to bring forward a similar amendment to the amended section on Report Stage.

Amendment agreed to.

Amendment No. 8 not moved.

Government amendment No. 9:

In page 17, subsection (1), to delete lines 1 to 4 and substitute the following:

““property services employer” means a person (referred to in this definition as “the employer”) who employs, or may employ, persons to provide property services, or whose principal officers (if any) provide, or may provide, such services, or any combination thereof, and whether or not the employer engages in any other business;”.

Deputy Dermot Ahern: This amendment is intended to clarify the meaning of “property services employer”. It is intended to ensure a company or partnership which employs principal officers to provide property services will nonetheless be classified as property service employers.

Amendment agreed to.

Government amendment No. 10:

In page 18, subsection (5), line 13, to delete “any” and substitute “all”.

Deputy Dermot Ahern: This is a drafting amendment.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 11, 41, 52, 60 and 64 are related. Is it agreed that they be discussed together? Agreed.

Government amendment No. 11:

In page 18, between lines 18 and 19, to insert the following subsection:

“(7) Where a provision of this Act confers a discretion on the Authority, the Appeal Board or a court to revoke or suspend the licence of a licensee and the licensee holds 2 or more licences, that discretion may be exercised so as to revoke or suspend, as the case may be, one, some or all of those licences as the Authority, the Appeal Board or the court, as the case may be, thinks fit in the circumstances of the case, and the other provisions of this Act shall, with all necessary modifications, be construed accordingly.”.

Deputy Dermot Ahern: The Bill provides that the regulatory authority, appeal board and the courts may in certain circumstances suspend or revoke a licence. The licensee may, however, have more than one licence. Amendment No. 11 clarifies that the authority, the appeal board and the courts have discretion to revoke or suspend one, some or all of the licensee’s licences, as appropriate. Amendments Nos. 41, 52, 60 and 64 are consequential.

Amendment agreed to.

Section 2, as amended, agreed to.

SECTION 3.

Government amendment No. 12:

In page 18, paragraph (j), line 42, to delete “Minister of State” and substitute “Minister of the Government”.

Deputy Dermot Ahern: This is a drafting amendment.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 13 and 14 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 13:

In page 19, paragraph (m), line 11, to delete “and” and substitute the following:

“(n) a property service provided by a local authority in the course of the performance of its functions under any statutory provision,

(o) a property service provided by an employee of a licensee where—

(i) the licensee is a property services employer or an independent contractor licensed to provide that service in that capacity,

(ii) the principal function of the employee is the provision of secretarial, reception, human resource management, information technology or financial services, or any combination thereof, for the licensee, and

(iii) the employee does not, in relation to the provision of that property service to a client of the licensee, directly engage with the client except to the extent necessary for the purposes of the performance of such principal function,

and”.

Deputy Dermot Ahern: Amendment No. 13 makes two important changes to section 3. First, it moves the exclusion from the scope of the Bill of the property services provided by local authorities in the performance of their statutory functions to section 3 which already contains other exclusions. That is the purpose of amendment No. 7. Second, it inserts a new provision in section 3 to clarify that an employee whose principal function is to provide secretarial, reception, information technology, human resource or financial services on behalf of the licensee and does not directly engage with a client in the provision of property services, except in the context of the performance of his or her principal function, will not require a licence. The amendment is being introduced to address concerns raised by the property services industry that the current definition could lead to uncertainty with regard to whether support staff would need licences.

Amendment No. 14 gives the authority the power to issue guidelines relating to the type of work that will not require a licence.

Amendment agreed to.

Government amendment No. 14:

In page 19, between lines 14 and 15, to insert the following subsection:

(2) The Authority may from time to time issue guidelines with respect to the practical operation of *subsection (1)(o)*.”.

Amendment agreed to.

Section 3, as amended, agreed to.

NEW SECTION.

Government amendment No. 15:

In page 19, before section 4, to insert the following new section:

“4.—(1) A licensee who is licensed to provide a property service as a principal officer of a property services employer in his or her capacity as such principal officer is only entitled to provide such service on behalf of any licensee—

(a) who is licensed as a property services employer to provide the same property service, and

(b) in respect of whom the first-mentioned licensee is a principal officer at the time of providing the property service in his or her capacity as such principal officer,

and the references in this Act to licensee and property service (howsoever expressed) shall, in their application to the first-mentioned licensee and the property service which he or she is licensed to provide in his or her capacity as such principal officer, be construed accordingly.

(2) A licensee who is licensed to provide a property service as an employee of a property services employer in his or her capacity as such employee is only entitled to provide such service on behalf of any licensee—

(a) who is licensed as a property services employer to provide the same property service, and

(b) in respect of whom the first-mentioned licensee is an employee at the time of providing the property service in his or her capacity as such employee,

and the references in this Act to licensee and property service (howsoever expressed) shall, in their application to the first-mentioned licensee and the property service which he or she is licensed to provide in his or her capacity as such employee, be construed accordingly.

(3) Without prejudice to the generality of *subsections (1) and (2)*—

(a) a licensee who is a principal officer of a property services employer but who is not licensed to provide a property service in his or her capacity as such principal officer is not entitled to provide a property service in such capacity until becoming so licensed,

(b) a licensee who is an employee of a property services employer but who is not licensed to provide a property service in his or her capacity as such employee is not entitled to provide a property service in such capacity until becoming so licensed,

and the references in this Act to licensee and property service (howsoever expressed) shall be construed accordingly.”.

Deputy Dermot Ahern: This amendment inserts a new section in the Bill to clarify an aspect of how a licensing system will operate in practice. Subsections (1) and (2) provide that a principal officer or employee who has a licence to provide a particular property service can only provide that service for a property service employer who has a licence to provide the same type of service. Subsection (3) provides that a person can only provide a property service in the capacity in which he or she is licensed, for example, if a person has a licence as an employee, he or she can only provide a property service as an employee.

Amendment agreed to.

Sections 4 to 8, inclusive, agreed to.

SECTION 9.

An Cathaoirleach: Amendments Nos. 16 to 18, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 16:

In page 20, lines 27 to 29, to delete subsection (3) and substitute the following:

“(3) In appointing persons to be members of the Authority, the Minister shall, subject to *subsection (4)*, have regard to the desirability of their having knowledge or experience in consumer affairs, business, finance, management or administration or any other subject which would, in his or her opinion, be of assistance to the Authority in performing its functions under this Act.

(4) Of the members of the Authority—

(a) 3 shall be persons who, in the opinion of the Minister, are representatives of persons who provide property services, and

(b) one shall be an officer of the Minister.”.

Deputy Dermot Ahern: These changes to section 9 are, to a large extent, in response to suggestions made in the Second Stage debate. The revised subsection (3) sets out in greater detail the matters to be taken into account when the members are being appointed to the board of the authority. The new subsection (4) specifies that three members of the authority must be representatives of the property services industry. It also provides for the appointment of an officer of the Minister to the board. The appointment of an officer of the Minister to a body such as the authority is a common provision in legislation of this nature.

Subsection (6) of the new provision provides that in the case of the first board of the authority, five members will hold office for a period of three rather than four years. The five members will be selected by drawing lots at the first meeting of the board. This provision is intended to ensure continuity of the board. There is an overlap between the disclosure of interests requirements set out in sections 14 and 15 and in the Ethics in Public Office Acts. I might propose amendments to this section on Report Stage to eliminate any overlap.

Senator Paschal Donohoe: The Minister has provided that the membership of the authority will include persons who represent the providers of property services. One of the welcome dimensions of the Bill is that it seeks to rebalance matters and give priority to people who receive property services or are clients of property service providers. Will the Minister consider including in the authority not only people who represent the property service industry but also persons who represent the clients or customers of the industry?

Deputy Dermot Ahern: Subsection (3) states the Minister shall have regard to the desirability of their having knowledge or experience of consumer affairs, business, finance, management or administration or any other subject which would be of assistance. It is accepted that we will include people in the board who represent consumer interests, have financial expertise and so forth. The reason we propose three members to represent the property services industry is because this issue was raised. The original section was relatively silent as to the type of qualifications required. It was regarded as important in view of the fact that a number of the bodies representing service providers would have in-depth knowledge. I am conscious of the need to ensure those people on the authority representing persons providing property services are not solely representing the interests of such persons or organisations. In my view the amendment

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will take care of the concerns expressed by Senator Donohoe that the authority should include people representing consumer interests.

Senator Paschal Donohoe: The original section of the Bill was not that silent about the membership of the authority. It made clear those people would have knowledge or experience in matters relevant to functions of the authority and referred to the need for balance. I am concerned the amendment specifies in greater detail who these people should be. The only specific reference in the amendment is to representatives of the industry. This Bill aims to regulate the industry and to provide for balance. I accept the industry should have three representatives. However, the Minister should also propose having representatives of persons dealing with the industry to ensure balance in how this body carries out its purpose as a regulatory body. The only specific example in this amendment is to introduce people representing those who work in the industry as opposed to people who are clients of the industry.

Deputy Dermot Ahern: The number of three representatives is specifically referred to in the amendment. This is to ensure the representatives of property services providers would not be in the majority. We were responding to the views expressed in this House on Second Stage that under the existing drafting of the Bill, it would be possible for people to be put on the authority to bring about a situation where the majority of the representation would be on the side of the property services providers. For that reason, there is specific reference to the representatives of persons who provide property services in order to limit their number to three.

Senator Ivana Bacik: I support Senator Donohoe's concerns about this amendment. If the Minister's desire is to limit the numbers of persons who are representatives of property services then the wording of the amendment should be, "not more than three" rather than to say, "Of the members of the Authority ... 3 shall be persons who, in the opinion of the Minister, are representatives of persons who provide property services". My suggestion would make it an appropriate amendment. Otherwise, in the terms as currently drafted, the amendment would not limit the numbers of persons who would be representatives of the property service providers. Indeed, of the 11, once three are such representatives, one could have any number more than the three, other than the one who would be an officer of the Minister. One could, in fact, have ten representing property services providers. I agree with Senator Donohoe that it sends out entirely the wrong signal to have no reference to the need to have at least a certain number of persons who represent the consumer. The Minister has said that in appointing persons he should have regard to the desirability of their having knowledge or experience in consumer affairs but that is not requiring him to appoint somebody or some number of persons who have experience in representing or protecting the consumer, and at the very least the number should be at least three. I ask the Minister to insert the words "not more than three" which would at least make clear his desire to limit the numbers of persons out of the 11 who would be representatives of property service providers.

Senator Paschal Donohoe: I thank Senator Bacik for her support on that point. The Minister in his response referred to the point about the number of three. This was not the substantive point I was looking to make and Senator Bacik has pointed out a flaw. I suggest any amendment of this section should be more specific about the people who should be members of the authority. Why is the amendment only dealing with those representing the industry? Why should the client not also be represented?

Deputy Dermot Ahern: We were responding to the views expressed that in the original drafting it could be the case that a majority could consist of representatives of property service providers or of those with their interests at heart. This is the reason this amendment contains the reference to representatives of persons who provide property services and to the number of three. I am prepared to come back on Report Stage to amend the section to say “not more than three”.

With regard to including a specific reference to a property service user, it is a case of defining who is a property service user. Most of the population have been property service users at some stage. How could I say that, for instance, Senator Donohoe is a property service user?

3 o'clock He may have been previously but he may not currently be a property service user. This could create a problem with regard to the definition of whether, over the lifetime of a board, a person is a property service user. This can be considered for Report Stage. If the amendment provides for a representative of consumer interests in the compilation of the board, this might be tying the hands of the Minister. He may then have to adhere to the letter of the law. In my experience, if a regulation becomes too specific with regard to the composition of a board, this causes difficulties, in particular when gender balance and other balances in other legislation, such as trade union and employer interests, must be considered. There could then be very few opportunities for a private citizen. This is the reason it was left relatively vague. There is no point in putting a private citizen or a man or woman off the street on a board such as this because such persons would need to have some financial management and administrative skills as well as consumer skills.

Senator Ivana Bacik: I am grateful to the Minister for indicating he might accept my suggested amendment to insert the words “not more than three” on Report Stage. Otherwise, this amendment will not change the problem identified by the Minister which is that the authority could have a majority of representatives of service providers. I am glad to see in section 9(4) an obligation that the Minister shall ensure an appropriate balance between men and women in the composition of the authority. I agree with the Minister that the gender balance issue is important. It is equally important to have a balance to allow for consumer representation. Members of the public in general are the consumers of the services provided by property service providers but there are well-established, general consumer protection and representation and advocacy groups. I would have thought those general consumer groups might well be represented. I have not been briefed by any of them and I hold no brief for any of them. It seems to me that would be an obvious group from which one could draw individual members of the board with appropriate expertise who would provide some form of balance against the representatives of the estate agents and auctioneers. We are all seeking to ensure there is adequate protection for the consumer. This area has been under-regulated for far too long and many of us in the Opposition over long periods have called for proper statutory regulatory authorities. We welcome the legislation but we want to ensure this authority is robust and is not in any way beholden to the industry.

Senator Paschal Donohoe: I was not suggesting the Minister choose a man or woman off the street. I am sure he knows that is not the point I was making. I was merely making the observation, which is a valid and pertinent one given the industry in question, that there is a need to ensure consumer interests are advocated on the board of the authority. The amendment before us could be regressive in stipulating representatives of the industry. Any work the Minister could do in terms of the appointment of individuals and organisations which represent the interests of those who use property services would result in a more effective authority.

Deputy Dermot Ahern: I do not want the legislation to be prescriptive in appointing someone from a specified representative association for consumers. In all legislation it is preferable to keep references to the composition of boards as vague as possible. In various Ministries I had the experience of asking representative bodies to nominate individuals for appointment to boards only to find my hands were tied when it came to meeting criteria such as gender equality. There were occasions when representative bodies, some of which were close enough to Senator Bacik's interests, turned out to be the least willing to propose females for nomination to boards. It is not that a Minister would mind, but it would tie his or her hands. I can give several examples from my career when I had to go back to representative bodies to request them to nominate females. History shows that while many of these bodies espouse a desire for a gender balance on boards, they do not propose females for appointment. It is preferable, therefore, to define references to the designation of boards in relatively vague terms. We think we have catered for this objective, given that we are legislating for a specialist board, in respect of which one cannot pick someone from the street. I am prepared to reconsider before Report Stage the words "not more than three" and whether we can beef up the proposed new subsection (3) to put greater emphasis on ordinary members of the public who might have reasonable experience in consumer affairs without requiring them to be members of the Consumers Association of Ireland.

Senator Ivana Bacik: I am grateful that the Minister accepts my point that the words used should be "not more than three". I will certainly table an amendment to that effect on Report Stage. I do not know what groups he meant when he referred to bodies close to my issues or interests and would like to be enlightened. I would like to think the groups to which I am close nominate women for appointment.

Deputy Dermot Ahern: I refer to the philosophy of the party the Senator represents. Although she has denied responsibility for several days, we still do not know where she stands on the Croke Park agreement.

Senator Ivana Bacik: I know where I stand on the agreement as a public service union member.

Deputy Dermot Ahern: The Senator's leader does not.

Senator Ivana Bacik: I am not denying my allegiance to the Labour Party, but groups close to me or my party would, I hope, be better at appointing a more gender balanced team.

Deputy Dermot Ahern: Perhaps the Senator should conduct a little exercise and check. She might be surprised.

Senator Ivana Bacik: I will. However, the Minister's party has been guilty of cronyism in whom it appoints to State boards.

Deputy Dermot Ahern: Absolutely not.

Senator Ivana Bacik: It is important that we scrutinise whom we appoint to boards such as the Property Services Regulation Authority. Real problems have arisen within Fianna Fáil because apparently it saw nothing wrong with appointing cronies and buddies to boards. We need to move away from that practice.

As the Minister will be aware, the Joint Committee on Justice, Equality, Defence and Women's Rights established a sub-committee on the participation of women in politics, for which Senator McDonald and I produced a report. One of our recommendations was the

establishment of a national talent bank of women willing to be appointed to State boards. This would allow Ministers to draw from a longer list of names and mean we would no longer hear the mantra that not enough women's names were being put forward, although I accept that such a failure can be the fault of nominating groups and that is not always the responsibility of the Minister. A talent bank which has been introduced in Norway and elsewhere would expand the list of women and increase awareness of the large number of talented and able women who could make excellent appointees.

The Minister erroneously suggested I had advocated the inclusion of a specific consumer group in the legislation. I merely provided examples of the groups from which the Minister might make appointments. An appropriate amendment which I may table on Report Stage would provide that at least "three nominees shall be persons who in the opinion of the Minister are representatives of groups advocating the rights of the consumer". By leaving the provision vague, we would get around the problem of being overly prescriptive, while ensuring that at least three members of the board represented the consumer in some way.

Deputy Dermot Ahern: The Senator finished well but started badly because she was being political.

Senator Ivana Bacik: A little like Fianna Fáil in government.

Deputy Dermot Ahern: I do not wish to labour the point, but I recall having to beg the trade unions and employers to change their nominees to one high profile board from males to females because there was little scope to change other nominations. My experience has been that the trade union movement has not covered itself in glory in making nominations to boards. I accept that the Senator is not suggesting we appoint nominees from the consumer associations. If a direction is given in the legislation, the Minister has to comply by promoting people with expertise in consumer affairs, administration, finance, management and business. I am prepared to reconsider the issue before Report Stage.

Amendment agreed to.

Government amendment No. 17:

In page 20, between lines 36 and 37, to insert the following subsection:

"(6) (a) Of the members appointed to the Authority on the establishment day, 5 members (but excluding the Chairperson) shall, subject to this Act, hold office for a period of 3 years from the date of their respective appointments as such members.

(b) The 5 members of the Authority referred to in *paragraph (a)* shall be selected by the drawing of lots, conducted in such manner as the Chairperson of the Authority thinks proper, at the first meeting of the Authority referred to in *section 11(3)*.

(c) A member of the Authority may be selected as one of the 5 members of the Authority referred to in *paragraph (a)* notwithstanding the fact that he or she is not present at the first meeting of the Authority referred to in *section 11(3)*.

(d) Notwithstanding *section 11(2)*, the quorum for the first meeting of the Authority referred to in *section 11(3)* shall be 7 in so far as that meeting relates to selecting the 5 members of the Authority referred to in *paragraph (a)*."

Amendment agreed to.

Government amendment No. 18:

In page 22, lines 6 to 9, to delete subsection (15) and substitute the following:

“(15) (a) A member of the Authority who, pursuant to *subsection (6)*, holds office for a period of 3 years from the date of his or her appointment shall, for the purposes of *subsection (6)*, be considered to have served a term as a member of the Authority even though he or she did not hold office for the period of 4 years referred to in *subsection (5)*.

(b) A person who occasions or fills a vacancy shall, for the purposes of *subsection (6)*, be considered to have served a term as a member of the Authority even though he or she held office for part only of the term.”.

Amendment agreed to.

Section 9, as amended, agreed to.

Sections 10 to 17, inclusive, agreed to.

SECTION 18.

An Cathaoirleach: Amendments Nos. 19 to 26, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 19:

In page 29, subsection (3), line 15, to delete “the *Iris Oifigiúil* specifying” and substitute “*Iris Oifigiúil*”.

Deputy Dermot Ahern: These are merely technical amendments.

Amendment agreed to.

Government amendment No. 20:

In page 29, subsection (3)(a), line 16, before “the” to insert “identifying or specifying”.

Amendment agreed to.

Government amendment No. 21:

In page 29, subsection (3)(b), line 17, before “the” where it firstly occurs to insert “specifying”.

Amendment agreed to.

Government amendment No. 22:

In page 29, subsection (3)(c), line 19, before “the” where it firstly occurs to insert “specifying”.

Amendment agreed to.

Government amendment No. 23:

In page 29, subsection (6), line 34, to delete “the *Iris Oifigiúil* specifying” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Government amendment No. 24:

In page 29, subsection (6)(a), line 35, before “the” where it firstly occurs to insert “identifying or specifying”.

Amendment agreed to.

Government amendment No. 25:

In page 29, subsection (6)(b), line 38, before “the” where it firstly occurs to insert “specifying”.

Amendment agreed to.

Government amendment No. 26:

In page 29, subsection (6)(c), line 40, before “the” where it firstly occurs to insert “specifying”.

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 27:

In page 30, lines 8 to 17, to delete subsection (10) and substitute the following:

“(10) A licensee who fails to comply with a code of practice is guilty of an offence.”.

This amendment is to ensure there are more teeth to the code of practice. As the Minister will be well aware, section 28 of the Bill will make it an offence to offer a property management service without first having a licence. Indeed, the penalty for that is set quite high — a term of five years’ imprisonment on conviction on indictment and a fine not exceeding €5,000, or 12 months’ imprisonment on summary conviction. The severity of the punishment clearly would deter anyone from setting up an illegal practice, which is good news for the consumer. In light of that, however, should there not be stronger enforcement placed within section 18? Clearly, it is not enough to be licensed. Section 18 provides that the licensee should comply with codes of practice. Section 18(7) states the authority shall encourage licensees to comply with codes of practice. Subsection (10) states that a failure on the part of a licensee to observe any provision of a code of practice will not of itself render the licensee liable to any civil or criminal proceedings. That is the subsection we seek to amend with this amendment, to substitute instead the simple phrase, “A licensee who fails to comply with a code of practice is guilty of an offence.” It is, as I stated, to give teeth to the code of practice and ensure some balance is maintained. It seems somewhat unbalanced if there are such relatively heavy penalties and the possibility of being prosecuted on indictment under section 28 for offering a service in an unlicensed way. Once one is licensed, it seems, even if one does not comply with the code, one will not be subject to any penalty.

Has the Minister given any thought to giving more serious powers of enforcement to the code? It seems the code of practice will be critical in ensuring consumer protection. The licensing provision is welcome, but a licence alone is not enough to guard against abuse, as we have seen in the legal profession as much as anywhere else.

Deputy Dermot Ahern: The idea behind codes of practice is to provide guidance to people generally. That is the way it is specifically in this case. I would not like to be the prosecutors going before a judge in a court suggesting they would make a criminal of somebody who has

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not observed a code of practice the purpose of which is merely to provide guidelines to the people involved in this legislation to ensure they do not infringe the statutory standards laid down, the breaking of which is already an offence. It would be fairly draconian if we were to bring a criminal sanction against somebody who has failed to comply with a code of practice. That is why the Bill, in subsection (10), states: “A failure on the part of a licensee to observe any provision of a code of practice published or approved ... shall not of itself render the licensee liable to any civil or criminal proceedings”.

Failure to observe the code of practice would be an issue taken into account in the severity of the sanction imposed ultimately by the court, but not of itself. Otherwise, it would be draconian. It would possibly be a waste of the time of the court in that if somebody has failed to comply with a code of practice, more than likely he or she would have infringed some of the statutory requirements already and probably would be charged with other offences. I strongly suggest this amendment is unnecessary.

Senator Ivana Bacik: I accept there needs to be more detail in the amendment. The amendment is simply to set down a marker. Clearly, we have not prescribed any penalty and, as drafted, it is a rather vague offence. I certainly can come back with a more precise drafting.

I take the Minister’s point that the code is supposed to be by way of guidance. There is a bigger issue about how standards are to be maintained within the group of licensees. If it is simply to be by way of a code of practice with which, according to subsection (7), licensees are to be encouraged to comply, that is not imposing onerous obligations on those licensees and it might well be that somebody would make an effort to get a licence and then lapse back into the sort of poor practices we have already seen in this area. More consideration might be given to the strengthening of the provisions on maintenance of standards within the group of licensees that will be created by this, whether it be through a set of statutory duties, for example, that would prevail beyond the code of practice. That might be a better way of approaching it.

I take the Minister’s point. The breach of a code of practice of itself might not be a great way of creating criminal offences, but what we are trying to do is set down a marker about the need to ensure standards are maintained among licensees so that once they have a licence, they are not permitted to lapse again. The current wording, especially in subsection (7), is weak. It does not really impose any sort of robust obligation on a licensee to comply with codes of practice. Simply being encouraged to do so does not really do very much. Equally, I am not sure subsections (10) and (11), which state the courts can have regard to breaches, etc., are enough to maintain standards.

Amendment, by leave, withdrawn.

Section 18, as amended, agreed to.

Sections 19 to 28, inclusive, agreed to.

SECTION 29.

Government amendment No. 28:

In page 37, subsection (9)(b), line 25, to delete “of” and substitute “in”.

Deputy Dermot Ahern: This is merely a drafting amendment.

Amendment agreed to.

Section 29, as amended, agreed to.

SECTION 30.

An Cathaoirleach: Amendments Nos. 29 and 38 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 29:

In page 37, subsection (2), lines 44 to 48, to delete paragraph (b) and substitute the following:

“(b) in the case of an application for a licence to provide a property service as a property services employer or an independent contractor, a certificate in the specified form by a duly qualified accountant that proper financial systems and controls are or will be in place for the protection of client moneys if the applicant were to be so licensed,”.

Deputy Dermot Ahern: These amendments clarify that the requirement to submit an accountant’s certificate with an application for a licence or for renewal of a licence applies to property service employers and independent contractors only. The requirement will not apply to applications from individual employees.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 30 and 31 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 30:

In page 38, subsection (4), line 19, to delete “In this section” and substitute “Subject to *subsection (5)*, in this section”.

Dermot Ahern: Amendment No. 31 inserts a new subsection in section 30 to provide that where a partner in a partnership applies for a licence as an independent contractor, the application will be refused if any of the other partners is under 18 years of age or is an undischarged bankrupt or if the partnership does not comply with any of the requirements of the Bill. Amendment No. 30 is a consequential drafting amendment. The reason for these amendments is that where a partner in a partnership applies for a licence as an independent contractor, he or she will be the only person in the partnership who will be entitled to provide a property management service. It would not be reasonable, therefore, to make a decision about an application on the basis of, for example, the fitness of other persons who will have no role in the provision of the property service.

Amendment agreed to.

Government amendment No. 31:

In page 38, between lines 24 and 25, to insert the following subsection:

“(5) Where an applicant is seeking to be licensed as an independent contractor and is a partner in a partnership, *subsection (4)* shall only apply to the other principal officers of the partnership to the extent necessary for the purposes of ascertaining whether or not *section 31(3)(f)* or *(i)(iii)* is applicable in the case of that partnership.”.

Amendment agreed to.

Section 30, as amended, agreed to.

SECTION 31.

An Cathaoirleach: Amendments Nos. 32 to 37, inclusive, are related and may be discussed together.

Government amendment No. 32:

In page 39, subsection (3)(i)(ii), line 32, before “any” to insert “subject to *subsection (4)*,”.

Deputy Dermot Ahern: These are technical amendments. Amendment No. 33 inserts a new subsection which provides the requirement to refuse to issue a licence to a partner in a partnership, if any other principal officer of the partnership is not a fit or proper person, only applies where a partner applies for a licence as a property service employer and not as an independent contractor.

The other amendments are consequential drafting amendments.

Amendment agreed to.

Government amendment No. 33:

In page 39, between lines 39 and 40, to insert the following subsection:

“(4) *Subsection (3)(i)(ii)* shall only apply in the case of a partner in a partnership who is seeking to be licensed as a property services employer.”.

Amendment agreed to.

Government amendment No. 34:

In page 39, subsection (4), line 40, to delete “licence is issued” and substitute the following:
“person is licensed as a property services employer”.

Amendment agreed to.

Government amendment No. 35:

In page 39, subsection (4)(a), line 46, after “corporate” to insert the following:
“(whether or not any of the principal officers also holds a licence)”.

Amendment agreed to.

Government amendment No. 36:

In page 40, subsection (4)(b)(i), line 10, after “partnership” to insert the following:
“(whether or not any of the principal officers also holds a licence)”.

Amendment agreed to.

Government amendment No. 37:

In page 40, subsection (4)(b)(ii), line 18, after “partnership” to insert the following:
“(whether or not any of the principal officers also holds a licence)”.

Amendment agreed to.

Section 31, as amended, agreed to.

Sections 32 to 34, inclusive, agreed to.

SECTION 35.

Government amendment No. 38:

In page 42, subsection (4), lines 39 to 43, to delete paragraph (b) and substitute the following:

“(b) in the case of an application for the renewal of a licence to provide a property service as a property services employer or an independent contractor, the application is not accompanied by a certificate in the specified form by a duly qualified accountant that proper financial systems and controls are still in place for the protection of client moneys received by the applicant.”.

Amendment agreed to.

Government amendment No. 39:

In page 43, between lines 28 and 29, to insert the following subsection:

“(7) Where a licence is renewed under this Act, the period of validity of the licence as so renewed shall be deemed to start to run on the day that the licence would have expired if no application under *subsection (2)* for its renewal had been made, and irrespective of whether the licence is renewed before, on or after that day.”.

Deputy Dermot Ahern: Section 35(3) provides that where a decision on the application for a renewal of a licence has not been made by the authority before the expiry of the licensee's licence, the existing licence will continue in force until such a decision is made. The amendment clarifies that when a new licence is issued, its duration will run from the date on which the previous licence was due to expire and not from the date on which the new licence is issued.

This amendment is intended to ensure all licensees are treated equally so that where the determination of an application for renewal of a licence is delayed, for instance because of an appeal, the applicant will not avoid having to make the appropriate contribution to the compensation fund etc, for the period of the expiry of the one licence and the issuing of the new licence.

Amendment agreed to.

Question proposed: “That section 35, as amended, stand part of the Bill.”

Senator Ivana Bacik: A better approach to section 35 might be to insert a provision which would allow the authority to refuse a licence to a person where it felt the person had not complied adequately with any code of practice issued by the authority under section 18. I take the Minister's point about avoiding the creation of unworkable criminal penalties. It would seem to me, however, that such a provision could give some sort of teeth to any code of practice the authority may issue. I may table an amendment on this on Report Stage. This may be a way of ensuring licensees are robustly encouraged to comply with codes of practice.

Deputy Dermot Ahern: I understand the idea of encouraging compliance with codes of practice but, again, Senator Bacik has missed the point. A code of practice is in place for guidance, not as a list of statutory requirements. It is in place to give guidance so as to ensure the

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statutory requirements are not infringed. It comes back to the Senator's amendment No. 27 concerning failure to comply with a code of practice as a criminal offence. If it were to be an offence, then the authority would automatically refuse the renewal of a licence to anyone guilty of such an offence which I am not altogether sure one could make mandatory.

Senator Ivana Bacik: I was proposing an alternative to the criminal penalty proposed in amendment No. 27. It may give more teeth to the compliance with the code of practice provision.

Section 35(4) states various extreme conditions, such as declaration of bankruptcy and an insufficient level of professional indemnity insurance which would allow the authority to refuse a licence renewal while section 35(6) deals with improper conduct. Could more discretion be given to the authority to allow it to refuse licence renewals in the area of compliance with a code of conduct? It would also be left to the authority to determine adequate compliance.

Deputy Dermot Ahern: We can examine it on Report Stage.

Question put and agreed to.

Section 36 agreed to.

SECTION 37.

Government amendment No. 40:

In page 45, lines 11 to 15, to delete subsection (7) and substitute the following:

“(7) Without prejudice to the generality of *subsection (6)*, where a licensee (in this subsection referred to as “the relevant licensee”) is conducting an auction in his or her capacity as a principal officer or employee of a licensee who is a property services employer, the relevant licensee shall also conspicuously display the licence, or a duplicate of the licence, held by him or her which entitles him or her to conduct the auction in that capacity.”.

Amendment agreed to.

Section 37, as amended, agreed to.

SECTION 38.

Government amendment No. 41:

In page 45, subsection (3), line 28, to delete “, or all the licences,”.

Amendment agreed to.

Section 38, as amended, agreed to.

Section 39 agreed to.

SECTION 40.

Acting Chairman (Senator Paul Coghlan): Amendments Nos. 42 and 43 are related and will be discussed together.

Government amendment No. 42:

In page 46, subsection (1), line 2, to delete “the licensee’s licence” and substitute the following:

“the licence of the licensee or, if the licensee holds 2 or more licences, all those licences”.

Deputy Dermot Ahern: These are drafting amendments which clarify that if a licensee is an adjudicated bankrupt, then all licences will be suspended until they expire or the adjudication is annulled.

Amendment agreed to.

Government amendment No. 43:

In page 46, subsection (1)(a), line 4, after “expires” to insert “or all those licences expire, as the case may be”.

Amendment agreed to.

Section 40, as amended, agreed to.

SECTION 41.

Acting Chairman (Senator Paul Coughlan: Amendment No. 44 is a Government amendment. Amendments Nos. 44 and 67 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 44:

In page 47, subsection 4(b), line 13, after “State)” to insert the following:

“other than an offence prescribed for the purposes of this paragraph by regulations made under *section 90*”.

Deputy Dermot Ahern: Section 41 requires licensees to notify the authority of any conviction for an offence or any proceedings pending. Amendment No. 44 will exclude offences prescribed by the authority from this requirement. Amendment No. 67 will limit the power of the authority to prescribe offences for the purposes of section 41. It can only exclude offences which are not relevant to the provisions of a property service. The purpose of the amendments is to permit exclusions of less serious offences which do not affect a person’s fitness to provide a property service from the notification requirements.

Amendment agreed to.

Section 41, as amended, agreed to.

Section 42 agreed to.

SECTION 43.

Acting Chairman (Senator Paul Coughlan): Amendment No. 45 is a Government amendment. Amendments Nos. 45, 47 and 48 are cognate and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 45:

In page 47, subsection (1), line 29, to delete “3 working days” and substitute “7 working days”.

Deputy Dermot Ahern: These amendments extend the period within which a licensee must furnish a letter of engagement or an amended letter of engagement to a client from three to seven working days. They respond to concerns raised by representatives of the property services industry that a requirement to issue a letter of engagement within three working days was too short.

Amendment agreed to.

Acting Chairman (Senator Paul Coghlan): Amendment No. 46 is a Government amendment. Amendments Nos. 46 and 49 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 46:

In page 47, subsection (1), line 30, to delete “first”.

Deputy Dermot Ahern: These amendments clarify that the requirement to issue a letter of engagement also applies to an amendment or a renewal of an existing property services agreement or to a re-engagement of a licensee following expiry of the property services agreement.

Amendment agreed to.

Government amendment No. 47:

In page 47, subsection (2)(b), line 44, to delete “3 working days” and substitute “7 working days”.

Amendment agreed to.

Government amendment No. 48:

In page 48, subsection (3), line 9, to delete “3 working days” and substitute “7 working days”.

Amendment agreed to.

Government amendment No. 49:

In page 48, lines 17 to 20, to delete subsection (4) and substitute the following:

“(4) *Subsection (2)* and the definition of “property services agreement” in *section 2(1)* shall, with all necessary modifications, apply to—

- (a) an amendment to a property services agreement,
- (b) the renewal of a property services agreement, or
- (c) the re-engagement of the licensee concerned following the expiration or other termination of a property services agreement, as they apply to a letter of engagement.”.

Amendment agreed to.

Section 43, as amended, agreed to.

SECTION 44.

Acting Chairman (Senator Paul Coghlan: Amendment No. 50 is a Government amendment. Amendments Nos. 50 and 56 are related and may be discussed together.

Government amendment No. 50:

In page 48, line 21, to delete “Where a licensee provides a property service” and substitute the following:

“Where a licensee who is a property services employer or an independent contractor provides a property service (including, in the case of a property services employer, the provision of such service by a principal officer or employee of the property services employer)”.

Deputy Dermot Ahern: The purpose of these amendments is to clarify that the requirements to keep records set out in sections 44 and 59 apply to property service employers and independent contractors, not to individual employees or principal officers. The amendments also make it clear that the employer will be required to keep the records in respect of property services provided by employees or principal officers.

Amendment agreed to.

Section 44, as amended, agreed to.

NEW SECTION.

Government amendment No. 51:

In page 48, before section 45, but in Part 4, to insert the following new section:

“45.—(1) A licensee who is—

- (a) an independent contractor, or
- (b) both a property services employer and an individual,

shall not provide a property service unless there is in force, at the time of the provision of such service, a policy of professional indemnity insurance which adequately covers the licensee in the provision of such service.

(2) Without prejudice to the generality of *section 4*, a licensee who is a property services employer shall not authorise or permit a licensee who is a principal officer or employee of the employer to provide a property service in his or her capacity as such principal officer or employee, as the case may be, unless there is in force, at the time of the provision of such service, a policy of professional indemnity insurance which adequately covers the principal officer or employee, as the case may be, in the provision of such service.

(3) The Authority may from time to time issue guidelines with respect to the practical operation of *subsection (1) or (2)*.”.

Amendment agreed to.

Section 45 agreed to.

SECTION 46.

Government amendment No. 52:

In page 50, subsection (4), line 15, to delete “, or all the licences,”.

Amendment agreed to.

Section 46, as amended, agreed to.

SECTION 47.

Acting Chairman (Senator Paul Coghlan): Amendment No. 53 is a Government amendment. Amendment No. 54 is consequential on amendment No. 53. They may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 53:

In page 52, subsection (7), line 27, to delete “or under *paragraph (d)* of that subsection,”.

Deputy Dermot Ahern: These are drafting amendments. I am consulting the Courts Service and the Office of the Attorney General on whether the Bill should provide that certain applications to the Circuit Court and the High Court in the first instance should be made in a summary manner. Depending on the outcome of these consultations, I will bring forward further amendments to this and other sections of the Bill, in particular, sections 51, 53, 61, 63, 64 and 69 and Schedule 3.

Amendment agreed to.

Government amendment No. 54:

In page 52, subsection (7), line 28, after “paragraph” to insert “, or under *paragraph (d)* of that subsection,”.

Amendment agreed to.

Section 47, as amended, agreed to.

Sections 48 to 52, inclusive, agreed to.

SECTION 53.

Government amendment No. 55:

In page 54, lines 35 to 48, to delete subsection (1) and substitute the following:

“53.—(1) Where—

(a) either—

(i) the Authority refuses to renew a licence, or

(ii) a licence is revoked or suspended under this Act,

and

(b) the Authority is of the opinion that adequate arrangements have not been made for the return to clients of the licensee or former licensee to whom such refusal, suspension or revocation, as the case may be, relates of any documents within the possession or in the control, or within the procurement, of the licensee or former licensee, as the case may be,

the Authority may, by notice in writing given to the licensee or former licensee, as the case may be, require the licensee or former licensee, as the case may be, or any other person in possession or control of such documents, to produce the documents, to a person appointed by the Authority for the purpose, at a time and place specified by the Authority in the notice.”.

Deputy Dermot Ahern: This is a drafting amendment.

Amendment agreed to.

Section 53, as amended, agreed to.

Sections 54 to 58, inclusive, agreed to.

SECTION 59.

Government amendment No. 56:

In page 57, line 31, to delete “other than by auction,” and substitute the following:

“, other than by auction, by a licensee who is a property services employer or an independent contractor (including, in the case of a property services employer, the provision of such offer by a principal officer or employee of the property services employer)”.

Amendment agreed to.

Question proposed: “That section 59, as amended, stand part of the Bill.”

Senator Ivana Bacik: I wish to comment on section 59 to highlight an issue for consideration before Report Stage. I welcome the provisions in Part 6 of the Bill which will vastly improve the level of people’s trust and confidence as both vendors and purchasers of houses. It is important to see the new rules being put in place. Section 59 which I also welcome requires licensees to retain records of the sale of land other than by auction for a period of six years. In that context, I wonder if the Minister has given thought to providing in the Bill for the publication of house prices through an openly available register. I am aware the matter has been discussed a great deal, although I cannot recall where I heard it being discussed recently. This has been done in other countries. I am aware that there were data protection concerns, but they can be overcome through anonymising the data. We already have auction prices that are published, but it is an issue that has been bubbling under the surface for some time. It would be an important way of making the housing market more transparent and something that would very much be in the interests of the consumer and might be appropriate to include in the Bill.

Deputy Dermot Ahern: The renewed programme for Government contains a commitment to the publication of property prices, but it is a complex issue. The Senator is correct regarding some of the issues to do with data protection and also the compilation of data, but we are in discussions with the Department of the Environment, Heritage and Local Government on the matter. It is a question of finding the proper vehicle. It may well be that the Property Services

[Deputy Dermot Ahern.]

Regulatory Authority would be the organisation to have these and that this section would in some way facilitate the compilation of such data.

Senator Ivana Bacik: I am grateful to the Minister for that response and apologise for my vagueness in raising it. I knew I had seen it somewhere. I believed it was in the programme for Government and I am glad to hear discussions are ongoing with the Department of the Environment, Heritage and Local Government. I am aware that among consumer groups and the general public there is an enormous demand for this information to be made available and it might play a major role in freeing the housing market in some way. It would have many public benefits. As the Minister said, section 59 would facilitate its publication. That is the reason it came to my mind when I looked again at the section. I would like to be able to table an amendment on the matter on Report Stage and would be grateful if the Minister took advice on it between now and then. Up until now there has not been a clear way of organising such publication because there has not been a property services regulation authority. Once the authority is in place and this obligation to retain records is placed on licensees, it seems there will not be a practical obstacle to ensuring house price data are published.

Deputy Dermot Ahern: There is a suggestion that it would offend data protection provisions, but knowing the Labour Party, it will be more than willing to allow us to amend the relevant data protection legislation to facilitate the provision of full information for the general public than it allows.

Senator Ivana Bacik: The Labour Party has always stood for transparency——

Deputy Dermot Ahern: When it suits.

Senator Ivana Bacik: ——and indeed the Labour Party introduced the freedom of information legislation, which was then rolled back upon by Fianna Fáil in government. That has been to the cost of greater transparency.

Deputy Dermot Ahern: No, it has not. It is more practical.

Senator Ivana Bacik: The Minister means it is more convenient for the Government.

Deputy Dermot Ahern: Senator Bacik should take it from a practitioner. I have good experience in it.

Senator Terry Leyden: Senator Bacik should put that in her pipe and smoke it.

Senator Ivana Bacik: I am a practitioner and I represent people who use the freedom of information legislation. There are more obstacles placed in their way by virtue of the restrictions imposed.

Deputy Dermot Ahern: I will go down in history as being the only Minister on whom the Data Protection Commissioner served a 20-day notice because I was giving too much information under freedom of information legislation in my Department. The media and the Labour Party never highlight that. When I was Minister for Communications, Marine and Natural Resources I provided too much information on freedom of information requests on the departmental website. Certain journalists and others, including the freedom of information commissioner, found fault with the fact that I was presenting too much information. Subsequently, I was served with a 20-day notice by the Data Protection Commissioner and ultimately a settlement was agreed. The notice would have taken me as Minister to the Circuit Court on

the basis that I was infringing data protection legislation because I was providing too much information under freedom of information legislation. I disagree with any suggestion that I or this Government are interested in curtailing freedom of information but people conveniently forget some of the facts even though they know them well.

Senator Ivana Bacik: The facts are very clear. This Government, led by Fianna Fáil, placed restrictions on freedom of information legislation. I have provided the Minister with the opportunity to put on the record the fact that he was too zealous in complying with freedom of information legislation, a fact of which I was not aware. On a more serious note, when it is convenient for the Government, data protection concerns are often used as an excuse for not doing things that could be done easily without infringing data protection legislation, such as publishing house prices. This has been done in other countries where data protection legislation exists and I do not see why we cannot do it here. There are great public benefits to the publication of such information and it would greatly facilitate the housing market reopening and it would increase public confidence in the administration of property sales and purchases. The idea has been tossed around for a long time and I am glad to hear of discussion with the Department of the Environment, Heritage and Local Government. Perhaps a little pressure could be placed on the Department if an amendment were tabled on Report Stage. I ask the Minister to consider this because I will table an amendment on Report Stage.

Deputy Dermot Ahern: We are more than willing and it is an element of the programme for Government. Returning to my digression into this area, I subsequently found that the Data Protection Commissioner's office was not subject to freedom of information requests. When it came to the extension of freedom of information to other agencies, I and the then Minister for Finance, Charlie McCreevy, who is sometimes accused of being the man who curtailed the freedom of information legislation, ensured by order that the office of the Data Protection Commissioner was subject to freedom of information requests.

Senator Ivana Bacik: Following that digression and digressing a little further, it reminds me of the old joke of why there is only one Competition Authority. I ask the Minister to consider this on Report Stage.

Question put and agreed to.

SECTION 60.

Acting Chairman (Senator Paul Coghlan): Amendments Nos. 57 and 58 are related and will be discussed together.

Senator Ivana Bacik: I move amendment No. 57:

In page 58, subsection (4), lines 15 and 16, to delete all words from and including "which" in line 15 down to and including "persons" in line 16.

These amendments are suggested to ensure a more meaningful level of penalty is provided for against a person who contravenes the regulations under section 60. Other offences created in this Bill carry the possibility of prosecution on indictment whereas this offence may be prosecuted only through the District Court as a summary offence. Therefore, the penalty is a maximum of €5,000. We suggest a greatly increased fine of up to €100,000, given the potential level of profit that may be made where an offence under this section is committed. In the debate on Second Stage, Senator Hannigan referred to this, noting that the proposed fine of €5,000 is relatively small in the context of the potential gain a rogue estate agent may make, which may amount to several hundred thousand euro. He was talking about people who engage

[Senator Ivana Bacik.]

in gazumping. They should be subject to more meaningful penalties given the scale of profit they may anticipate making.

Deputy Dermot Ahern: Section 60 requires the authority to make regulations on the contents of advertisements, booking deposits and the terms of building contracts. Under this section, the regulations also apply to persons other than licensees. For example, the regulations can apply to builders or surveyors and contravention of a regulation under this section by a licensee will amount to improper conduct. For a person other than a licensee, sanctions for contravention of regulations made under this section are appropriate. The Senator's proposal is not justified given that extends it to people other than licensees.

Amendment, by leave, withdrawn.

Amendment No. 58 not moved.

Section 60 agreed to.

Sections 61 and 62 agreed to.

SECTION 63.

Government amendment No. 59:

In page 61, between lines 39 and 40, to insert the following subsections:

“(6) Where the Authority receives a complaint in respect of a licensee in his or her capacity as a principal officer or an employee of a licensee who is a property services employer, then nothing in this Act shall be construed to preclude the Authority, where it thinks it proper to do so, from treating the complaint as also being made in respect of the property services employer and, in any such case, the investigation concerned may relate to more than one licensee and the provisions of this Act (including this section) shall, with all necessary modifications, be construed accordingly.

(7) Where the Authority receives a complaint in respect of a licensee who is a property services employer and is satisfied that the matter, the subject of the complaint, may relate to the provision of a property service by another licensee in his or her capacity as a principal officer or an employee of that property services employer, then nothing in this Act shall be construed to preclude the Authority, where it thinks it proper to do so, from treating the complaint as also being made in respect of that principal officer or employee, as the case may be, and, in any such case, the investigation concerned may relate to more than one licensee and the provisions of this Act (including this section) shall, with all necessary modifications, be construed accordingly.

(8) *Subsections (6) and (7) shall not be construed to limit the generality of the Authority's power under subsection (1) to cause an investigation to be carried out of its own volition and, accordingly, any such investigation may relate to more than one licensee and the provisions of this Act (including this section) shall, with all necessary modifications, be construed accordingly.*”.

Deputy Dermot Ahern: This amendment inserts three new subsections into section 63 to provide that where the authority receives a complaint about an employee or a principal officer it can also investigate the property services employer and *vice versa*. This amendment also provides that the same powers will be available to the authority where it carries out an investigation on its own initiative.

Amendment agreed to.

Section 63, as amended, agreed to.

SECTION 64.

Government amendment No. 60:

In page 65, subsection (18), line 19, to delete “, or all the licences,”.

Amendment agreed to.

Section 64, as amended, agreed to.

Sections 65 to 74, inclusive, agreed to.

SECTION 75.

Government amendment No. 61:

In page 74, subsection (4)(a), line 39, to delete “€5,000,000” and substitute “€2,000,000”.

Deputy Dermot Ahern: This amendment reduces the amount, from €5 million to €2 million, that should be to the credit of the property services compensation fund after four years. This amendment responds to concerns raised on Second Stage and in submissions by representatives of the property services industry to the effect that the figure of €5 million is too high.

Amendment agreed to.

Section 75, as amended, agreed to.

SECTION 76.

Government amendment No. 62:

In page 75, subsection (3), lines 25 and 26, to delete paragraph (a) and substitute the following:

“(a) the licensee concerned did not, at the time when the loss was sustained, have a licence in force in respect of the property service to which the loss relates,”.

Deputy Dermot Ahern: The purpose of this amendment is to give the authority discretion as to whether to make a grant out of the compensation fund to clients of the property service provider where the provider did not have a licence to provide the particular service at the time the loss occurred.

Amendment agreed to.

Section 76, as amended, agreed to.

Sections 77 to 83, inclusive, agreed to.

SECTION 84.

Government amendment No. 63:

In page 81, subsection (7), line 14, to delete “has” and substitute “have”.

Deputy Dermot Ahern: This is a drafting amendment.

Amendment agreed to.

Section 84, as amended, agreed to.

Sections 85 to 88, inclusive, agreed to.

SECTION 89.

Acting Chairman (Senator Paul Coghlan): Government amendment No. 64 has been already discussed with amendment No. 11.

Government amendment No. 64:

In page 83, subsection (2), line 44, to delete “, or all the licences,”.

Amendment agreed to.

Section 89, as amended, agreed to.

SECTION 90.

Acting Chairman (Senator Paul Coghlan): Amendment Nos. 65 and 66 are related and may be discussed together by agreement.

Government amendment No. 65:

In page 85, subsection (1)(a), line 13, after “Authority” to insert the following:

“and the conditions (if any) attaching to such classes of licences”.

Deputy Dermot Ahern: The purpose of these amendments is to ensure the authority has sufficient power to make regulations where necessary under the Bill. The first amendment extends the authority’s regulation making powers to enable it to attach conditions to particular classes of licences. The second amendment empowers the authority to make regulations which set out the extent to which the employer’s professional indemnity insurance must cover licensees who are employees and principal officers.

Amendment agreed to.

Government amendment No. 66:

In page 85, subsection (1)(e), line 32, after “insurance” to insert the following:

“(including, in the case of licensees who are property services employers, the extent to which such indemnity covers principal officers and employees of property service employers who provide property services in their capacity as such principal officers or employees, as the case may be)”.

Amendment agreed to.

Acting Chairman (Senator Paul Coghlan): Government amendment No. 67 has been already discussed with amendment No. 44.

Government amendment No. 67:

In page 86, between lines 10 and 11, to insert the following subsection:

“(3) The Authority shall not prescribe an offence for the purposes of *paragraph (b)* of the definition of “material matter” in *section 41(4)* unless it is satisfied that the offence is of a kind that is so remote or insignificant in relation to the matters that would normally be taken into account to determine whether a person is a fit and proper person to provide a property service that the offence could not reasonably be regarded as being a matter of which the Authority ought to be aware.”.

Amendment agreed to.

Section 90, as amended, agreed to.

Sections 91 and 92 agreed to.

NEW SECTIONS.

Acting Chairman (Senator Paul Coghlan): Government amendments Nos. 68, 69 and 70 are related and may be discussed together by agreement.

Government amendment No. 68:

In page 87, before section 93, to insert the following new section:

93.—In the transitional provisions—

“Act of 1947” means the Auctioneers and House Agents Act 1947;

“final determination”, in relation to an application under *section 30* referred to in *section 94(1)(b)* made by a person concerned for a licence to provide a property service concerned, means—

(a) the issue under *section 31(1)* by the Authority of a licence to the person concerned to provide the property service concerned,

(b) the refusal under *section 31(3)(a), (b), (c), (d), (e) or (f)* by the Authority to issue a licence to the person concerned to provide the property service concerned,

(c) subject to *paragraph (d)*, the refusal under *section 31(3)(g), (h) or (i)* by the Authority to issue a licence to the person concerned to provide the property service concerned and the taking effect of that decision in accordance with *section 74*, or

(d) if there is an appeal to the Appeal Board against a refusal referred to in *paragraph (c)*—

(i) the withdrawal of the appeal as specified in *paragraph 20 of Schedule 5*,

(ii) the confirmation of the decision of the Authority by the Appeal Board as specified in *paragraph 25 (1)(a) of Schedule 5*,

(iii) the taking effect in accordance with *section 74* of a new decision by the Authority as specified in *paragraph 25(1)(b) of Schedule 5*,

(iv) the taking effect of the Appeal Board’s determination in substitution for the decision of the Authority as specified in *paragraph 25(1)(c) of Schedule 5*,

(v) the dismissal of the appeal as specified in *paragraph 26 of Schedule 5*, or

(vi) the withdrawal of the appeal as specified in *paragraph 32(2)(a) and (3) of Schedule 5*, as applicable;

“person concerned” has the meaning given to it by *section 94(1)*;

“property service concerned” has the meaning given to it by *section 94(1)*;

“transitional provisions” means this section and *sections 94 and 95*.

Deputy Dermot Ahern: The purpose of these amendments is to set out in greater detail the transitional arrangements in respect of persons who are already providing property services when the new legislation comes into force. New section 93 sets out definitions for the purpose of the transitional arrangements, most of which are already contained in the Bill. Subsections (1) to (4) of the new section 94 reflect what is currently section 93. They provided that a person who is providing a property service when the legislation comes into force and who applied for a licence to provide that service will be permitted to continue to provide the property service concerned until such time as a final decision has been made on his or her application. Subsection (5) is new and provides that where a licence is issued to a person who is providing a property service when the legislation comes into force the licence will run from the date of commencement of the legislation in respect of that property service.

The purpose is to ensure that all existing property service providers are treated the same by ensuring that all licences will be valid for a period of one year from the date of commencement of the Act, irrespective of the date the licences issued. Under the Bill property service employers and their principal officers and employees who provide property services will require licences but an employee or principal officer cannot provide property services for an employer who does not have a licence. New section 95 makes provisions for situations which may arise under the new system. Subsection (1) provides that where a property service employer, who is a provider of a property service before the commencement of the Act, is refused a licence under the new licensing arrangements, his or her employees or principal officers will no longer be able to provide a property service and the licence applications will be deemed to be withdrawn.

Subsection (2) provides that the authority will not make a decision in relation to the granting of a licence to principal officers or employees until a final decision has been made in relation to the employer's licence application. Subsection (3) provides that following commencement of the Act the transitional provisions will not apply to the employee or principal officer if his or her employer has not applied for the relevant licence. In other words, an employee or principal officer cannot provide the property service concerned unless his or her employer has applied for a licence. In such circumstances, the principal officers of the employer's licence application will be deemed to be withdrawn.

Senator Paschal Donohoe: For how long does the Minister anticipate these transitional provisions will need to be in place?

Deputy Dermot Ahern: Not very long. This is to cater for those people who are currently applying for a licence and who, following the passage of the legislation, will come in under the new arrangements.

Amendment agreed to.

Government amendment No. 69:

In page 87, before section 93, to insert the following new section:

94.—(1) Subject to *subsection (3)* and *section 95*, *sections 28(1)* and *84* and the provisions of this Act applicable to a licensee and a property service shall not apply to a person (in the transitional provisions referred to as a “person concerned”) and a property service (in the

transitional provisions referred to as a “property service concerned”) provided by the person concerned if, and only if—

(a) the person concerned was lawfully providing the property service concerned before the commencement of *section 28(1)* in respect of that property service, and

(b) the person concerned has, before that commencement, made an application under *section 30* for a licence to provide the property service concerned and there has not been a final determination of the application before that commencement.

(2) Where *subsection (1)* has not ceased to apply to a person concerned and a property service concerned, the statutory provisions repealed, revoked or amended by this Act (including Part IV of the Act of 1947) shall, in so far as they applied to the person concerned and the property service concerned before the commencement of *section 28(1)* in respect of that property service, continue to apply to the person concerned and the property service concerned as if those statutory provisions have not been so repealed, revoked or amended, as the case may be.

(3) Subject to *section 95, subsection (1)* shall cease to apply to a person concerned and a property service concerned immediately upon the final determination of the application under *section 30* referred to in *subsection (1)(b)* made by the person concerned for a licence to provide the property service concerned.

(4) Notwithstanding the repeal of the Act of 1947 effected by the commencement of *section 6(1)*, Part IV of that Act shall continue to apply to a deposit (within the meaning of section 2 of that Act) which has not been released before that commencement and, for the purposes of such application, a licence (if any) under this Act held by the depositor shall not be treated as a licence referred to in that Part.

(5) Where a licence is issued to a person concerned in respect of a property service concerned pursuant to the final determination of the application under *section 30* referred to in *subsection (1)(b)* made by the person for that licence, the period of validity of the licence as so issued shall be deemed to start to run on the day of commencement of *section 28(1)* in respect of the property service concerned, and irrespective of whether the licence is issued before, on or after that commencement.

Amendment agreed to.

Government amendment No. 70:

In page 87, before section 93, to insert the following new section:

“95.—(1) Where—

(a) a person concerned (in this subsection referred to as “the first-mentioned person concerned”)—

(i) would, but for *section 94(1)*, be required to be licensed as a property services employer in order to continue to provide a property service concerned on and after the commencement of *section 28(1)* in respect of that property service, and

(ii) has, before that commencement, made an application under *section 30* for a licence to provide that service as a property service employer,

and

(b) another person concerned (in this subsection referred to as “the second mentioned person concerned”)—

(i) is a principal officer or an employee of the first-mentioned person concerned, and, in that capacity, provides the property service concerned referred to in *paragraph (a)(i)* on behalf of the first mentioned person concerned,

(ii) would, but for *section 94(1)*, be required to be licensed as a principal officer or an employee, as the case may be, in order to continue to so provide that service on and after the commencement of *section 28(1)* in respect of that property service, and

(iii) has, before that commencement, made an application under *section 30* to be licensed as referred to in *subparagraph (ii)*,

then, if the final determination of the application referred to in *paragraph (a)(ii)* is that the first-mentioned person concerned is not issued a licence to provide the property service concerned referred to in *paragraph (a)(i)* as a property services employer—

(i) *section 94(1)* shall cease to apply to the second-mentioned person concerned in so far as the second-mentioned person concerned provides that property service on behalf of the first-mentioned person concerned, in his or her capacity as a principal officer or employee, as the case may be, of the first-mentioned person concerned, and

(ii) the application referred to in *paragraph (b)(iii)* shall be deemed to have been withdrawn by the second-mentioned person concerned.

(2) Without prejudice to the generality of *subsection (1)*, the Authority shall not determine the application referred to in *subsection (1)(b)(iii)* until there has been a final determination of the application referred to in *subsection (1)(a)(ii)*.

(3) Where—

(a) a person concerned (in this subsection referred to as “the first-mentioned person concerned”)—

(i) would, but for *section 94(1)*, be required to be licensed as a property services employer in order to continue to provide a property service concerned on and after the commencement of *section 28(1)* in respect of that property service, and

(ii) has not, before that commencement, made an application under *section 30* for a licence to provide that service as a property services employer,

and

(b) another person concerned (in this subsection referred to as “the second mentioned person concerned”)—

(i) is a principal officer or an employee of the first-mentioned person concerned and, in that capacity, provides the property service concerned referred to in *paragraph (a)(i)* on behalf of the first mentioned person concerned,

(ii) would, but for *section 94(1)*, be required to be licensed as a principal officer or an employee, as the case may be, in order to continue to so provide that property service on and after the commencement of *section 28(1)* in respect of that property service, and

(iii) has, before that commencement, made an application under *section 30* to be licensed as referred to in *subparagraph (ii)*,

then—

(i) *section 94(1)* shall not apply to the second-mentioned person concerned or the property service concerned referred to in *paragraph (a)(i)* in so far as that second-mentioned person concerned was providing that property service, on behalf of the first-mentioned

person concerned, in his or her capacity as a principal officer or employee, as the case may be, of the first-mentioned person concerned, and

(ii) the application referred to in *paragraph (b)(iii)* shall be deemed to have been withdrawn by the second-mentioned person concerned.

Amendment agreed to.

Section 93 deleted.

Section 94 agreed.

Schedules 1 and 2 agreed to.

SCHEDULE 3.

Acting Chairman (Senator Paul Coghlan): Government amendments Nos. 71 and 72 are related and may be discussed together by agreement.

Government amendment No. 71:

In page 94, to delete line 21, and substitute the following:

“7. The oral hearing shall be held otherwise than in public unless—

(a) the licensee to whom the investigation concerned relates or, if the investigation arose in consequence of the receipt of a complaint, the complainant makes a request in writing to the Authority that the hearing (or a part thereof) be held in public and states in the request the reasons for the request, and

(b) the Authority, after considering the request (in particular, the reasons for the request), is satisfied that it would be appropriate to comply with the request.”.

Deputy Dermot Ahern: Amendment No. 71 gives the authority discretion to hold a hearing or part of hearing in public if it receives a request from a licensee or complainant. A request for a public hearing must be in writing and must state the reasons for the request. This amendment responds to a suggestion made on Second Stage by Senator O’Toole. Amendment No. 72 is a consequential amendment to ensure consistency between the provisions concerning oral hearings conducted by the authority and the appeal board.

Amendment agreed to.

Schedule 3, as amended, agreed to.

Schedule 4 agreed to.

SCHEDULE 5.

Acting Chairman (Senator Paul Coghlan): Government amendment No. 72 has been already discussed with amendment No. 71.

Government amendment No. 72:

In page 106, to delete lines 28 and 29, and substitute the following:

“28. Sittings of the Appeal Board shall be held otherwise than in public unless—

(a) the Authority, the appellant or, if *paragraph 18* is applicable, the other party to the complaint makes a request in writing to the Appeal Board that the sittings (or a part thereof) in respect of the appeal concerned be held in public and states in the request the reasons for the request, and

(b) the Appeal Board, after considering the request (in particular, the reasons for the request), is satisfied that it would be appropriate to comply with the request.”.

Amendment agreed to.

Schedule 5, as amended, agreed to.

Schedule 6 agreed to.

SCHEDULE 7.

Acting Chairman (Senator Paul Coghlan): Government amendments Nos. 73 to 82, inclusive, are related and may be discussed together by agreement.

Government amendment No. 73:

In page 110, line 5, to delete “*sections 51, 52, 75 to 79, 84 and 93*” and substitute the following:

“*sections 45, 51, 52, 75 to 79, 84 and 93 to 95*”.

Deputy Dermot Ahern: With the exception of amendment No. 82, these are drafting amendments which do not seek to change the policy as set out in the existing provisions but seek to improve the wording of the Bill or make consequential amendments in response to earlier amendments. In accordance with section 43, as amended by paragraph 12 of Schedule 7, in so far as it applies to relevant persons, such relevant persons must send a letter of engagement to all clients.

Schedule 2 specifies the information which must be included in such a letter. The Bill as published imposes an obligation on relevant persons to provide additional information to clients. This amendment specifies further information which a relevant person must include in the letter of engagement, namely, details of the competent authority which issued the licence or authorisation and details of where the conditions applicable to the authorisation scheme can be inspected. A relevant person is a person holding a property service licence from an issuing authority in another EU member state. Clients of such relevant persons will not be entitled to compensation from the compensation fund. In addition, they may have different arrangements in relation to professional indemnity insurance. The requirement on relevant persons to provide information to clients in relation to these issues is to ensure the clients know the protections available to them before entering into a contract with such a relevant person for the provision of a property service.

Amendment agreed to.

Government amendment No. 74:

In page 110, line 34, to delete “a person” and substitute “a relevant person”.

Amendment agreed to.

Government amendment No. 75:

In page 111, to delete lines 16 to 33, and substitute the following:

“7. *Section 28(1)* is amended by deleting “unless the person is the holder of a licence which is in force in respect of that property service” and substituting “unless the person is a relevant person and that property service is the corresponding property service within the meaning of *section 80*.”.”.

Amendment agreed to.

Government amendment No. 76:

In page 112, to delete lines 8 to 10, and substitute the following:

“9. *Section 38* is amended—

(a) by substituting the following for *subsection (3)*:

“(3) Subject to *subsection (4)*, where a relevant person is convicted of an offence under *subsection (2)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing any property service or a particular class of property service.”,

and

(b) in *subsection (5)*, by inserting “, a relevant authorisation within the meaning of *section 80* and a duplicate of such a relevant authorisation” after “a licence”.”.

Amendment agreed to.

Government amendment No. 77:

In page 112, line 18, to delete “*Part 4*” and substitute “*sections 43 and 44*”.

Amendment agreed to.

Government amendment No. 78:

In page 112, to delete lines 20 and 21, and substitute the following:

“13. In *section 45*, any reference to a licensee is a reference to a relevant person.

14. (1) In *section 46(1)* and (2), any reference to a licensee is a reference to a relevant person.

(2) *Section 46* is amended—

(a) by substituting the following for *subsection (4)*:

“(4) Subject to *subsection (5)*, where a relevant person is convicted summarily of an offence under *subsection (1)* or (2), the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing any property service or a particular class of property service.”,

and

(b) by substituting the following for *subsection (6)*:

“(6) Subject to *subsection (7)*, where a relevant person is convicted on indictment of an offence under *subsection (1)* or *(2)*, the court shall order that the relevant person be permanently prohibited from providing any property service.”.

Amendment agreed to.

Government amendment No. 79:

In page 112, to delete lines 39 and 40, and substitute the following:

“17. In *Part 6*, any reference to a licensee is a reference to a relevant person.

18. In *Part 7*—

(a) any reference to a licensee is a reference to a relevant person, and

(b) any reference in *section 62* to the suspension of a licence is a reference to a prohibition of the relevant person from providing a property service in the State, whether for a period, or until the occurrence of an event, referred to in that section.”.

Amendment agreed to.

Government amendment No. 80:

In page 112, between lines 40 and 41, to insert the following:

“18. *Section 64* is amended—

(a) by substituting the following for *subsection (18)*:

“(18) Subject to *subsection (19)*, where a relevant person is convicted summarily of an offence under *subsection (17)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing any property service or a particular class of property service.”,

and

(b) by substituting the following for *subsection (20)*:

“(20) Subject to *subsection (21)*, where a relevant person is convicted on indictment of an offence under *subsection (17)*, the court shall order that the relevant person be permanently prohibited from providing any property service.”.

Amendment agreed to.

Government amendment No. 81:

In page 112, between lines 42 and 43, to insert the following:

“19. *Section 89* is amended by substituting the following for *subsection (2)*:

“(2) Subject to *subsection (3)*, where a relevant person is convicted of an offence under *subsection (1)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing any property service or a particular class of property service.”.

Amendment agreed to.

Government amendment No. 82:

In page 113, to delete lines 16 to 23 and substitute the following:

“(p) whether or not the relevant person is, in the provision of the property service, subject to a scheme of protection for clients similar to that afforded by the Fund to clients of a licensee in the provision of a property service,

(q) details of the professional indemnity insurance cover available to the relevant person in the provision of the property service,

(r) particulars of the competent authority which issued the relevant authorisation held by the relevant person, and

(s) particulars of where the conditions (if any) subject to which the relevant person may provide the corresponding property service are available for inspection by a client or potential client of the relevant person.”.”.

Amendment agreed to.

Schedule 7, as amended, agreed to.

SCHEDULE 8.

Acting Chairman (Senator Paul Coghlan): Government amendments Nos. 83 to 87, inclusive, are cognate and may be discussed together by agreement.

Government amendment No. 83:

In page 114, line 12, after “that” to insert “first-mentioned”.

Deputy Dermot Ahern: These are drafting amendments. I propose to bring forward on Report Stage a number of mainly technical amendments to this Schedule in so far as it relates to the Building Society Act 1998.

Amendment agreed to.

Government amendment No. 84:

In page 114, line 23, after “that” to insert “first-mentioned”.

Amendment agreed to.

Government amendment No. 85:

In page 114, line 31, after “that” to insert “first-mentioned”.

Amendment agreed to.

Government amendment No. 86:

In page 114, line 38, after “that” to insert “first-mentioned”.

Amendment agreed to.

Government amendment No. 87:

In page 116, line 50, after “that” to insert “first-mentioned”.

Amendment agreed to.

Schedule 8, as amended, agreed to.

Title agreed to.

Bill reported with amendments.

Acting Chairman (Senator Paul Coghlan): When is it proposed to take Report Stage?

Senator Lisa McDonald: On Tuesday, 27 April 2010.

Report Stage ordered for Tuesday, 27 April 2010.

Sitting suspended at 4.05 p.m. and resumed at 5 p.m.

Female Genital Mutilation Bill 2010: Order for Second Stage

Bill entitled an Act to provide for the offence of female genital mutilation, and to provide for related matters.

Senator Ivana Bacik: I move: “That Second Stage be taken today”.

Question put and agreed to.

Female Genital Mutilation Bill 2010: Second Stage

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

Senator Ivana Bacik: I welcome the Minister of State at the Department of Health and Children, Deputy Áine Brady, and I thank her for her interest in this issue. I am delighted to introduce this important Bill on behalf of the Labour Party. My colleague, Senator Prendergast, will refer to the health implications and definition of female genital mutilation or FGM.

FGM is a practice carried out in certain countries which violates the human rights of girls and women. It involves the cutting of the genitalia and causes long-term physiological, sexual and psychological effects. It has serious and permanent health implications and can cause death. Senator Prendergast will deal more fully with the implications.

I wish to focus on the reasons we should seek to legislate on the issue of FGM, but before I deal with that question and the provisions of the Bill, I record my appreciation for the goodwill shown by the Minister of State, Deputy Áine Brady and the Minister for Health and Children, Deputy Harney, towards legislating on the issue. Senator Feeney will speak on the amendment to which, I believe, a change may be made. I very much appreciate that the Minister and her officials have been heavily involved in working on a legal framework for FGM, about which I will speak more.

On the question of why we need specific legislation, the first point is that there is no specific legislation dealing with the issue of female genital mutilation in this country, although FGM is recognised as a violation of the human rights of women and girls. The United Nations and the European Union have both called on member states to take all measures necessary, including the introduction of specific legislation, to prevent female genital mutilation. Several European Union and African countries have enacted such legislation which is seen as part of their child protection policies. This is not just an issue about women’s rights; it is also very much an issue

about children's rights and child protection. Ireland has not yet enacted such legislation. Not only is there an obligation on us to respect the rights of women and children by criminalising this specific violation of their rights, but we were also urged by the United Nations Committee on the Rights of the Child in 2006 to consider prohibiting FGM in domestic legislation.

A third imperative on us to legislate specifically for FGM stems from recent changes in our demographic make-up and population. It is estimated that approximately 2,500 women living in this country underwent female genital mutilation before they came here. AkiDwA and other organisations estimate that approximately 10,000 women and girls living in Ireland have come from countries in which FGM is practised. It is clear that many of them are at risk of being returned to these countries to have FGM carried out. Female genital mutilation is a serious child protection and women's health issue that has real implications for girls and women living in Ireland. It is not just an issue for girls and women in other countries.

A good deal of work has been done at national level on the need to legislate on the issue of FGM. I pay tribute to the many groups, some of which are represented in the Visitors Gallery, which have been working on the issue. AkiDwA is the organisation which represents women

from other countries living in Ireland, especially African women. Other groups
5 o'clock include the Irish section of Amnesty International, Barnardos, Cairde, the Children's Rights Alliance, Christian Aid, Comhlámh, Integrating Ireland, Integration of African Children in Ireland, the Irish Family Planning Association which has led the national FGM steering committee, the National Women's Council of Ireland, the Refugee Information Service, the Somali Community in Ireland, the Somali Community Youth Group, UNICEF and the Women's Health Council. In addition, the Health Service Executive and Irish Aid have been very much involved in the steering committee which in 2008 launched a national plan of action to address the issue. That plan, on page 12, included among its principal actions the need to enact legislation to specifically prohibit FGM in Ireland. Material has been circulated to colleagues in this House by some of the NGOs involved in the steering committee. They have also been provided with a copy of the national plan of action which states legislation by itself will not be sufficient to prevent FGM but it can strengthen the ability of agencies to protect children at risk and provide appropriate care. It refers to obligations under international law and human rights treaties such as the Convention on the Elimination of All Forms of Discrimination against Women which calls on signatory governments to take all measures necessary, including legislation, to prevent FMG.

This is not the first time the need to enact legislation on the issue of FGM has been recognised by the Labour Party. In 2001 the then health spokesperson, Deputy McManus, introduced a Bill in the Dáil. I refer to the reply on 22 May 2001 of the then Minister for Health and Children, Deputy Martin, to a question from Deputy McManus. He agreed that female genital mutilation:

. . . is a harmful traditional practice which constitutes an assault which causes serious harm to girls and women on whom it is carried out. Such an act is an offence under the Non-Fatal Offences Against the Person Act 1997. It would, therefore, be a matter for the Garda Síochána to prosecute any person who performed FGM in Ireland. However I am considering whether it may be appropriate to enact legislation specifically prohibiting this practice.

My Department has recently written to the chief executive officers of the health boards, drawing their attention to this issue and requesting that personnel working with immigrant populations take opportunities to educate them about the dangers and unacceptability of female genital mutilation. My Department has also written to the Department of Justice, Equality and Law Reform asking it to arrange through the Directorate for Asylum Support Services that asylum seekers are made aware of the situation.

[Senator Ivana Bacik.]

As far back as nine years ago the then Minister for Health and Children was considering whether specific legislation might be appropriate to prohibit FGM. In 2009 another Labour Party colleague, Deputy Jan O'Sullivan, introduced an updated version of Deputy McManus's Bill in the Dáil, but, again, it was not accepted by the Minister. The Bill before the Seanad is an updated version of previous Bills. There has been a great deal of consultation at the level of the national steering committee and much input from various NGOs and State agencies with expertise in the area. There is a growing imperative from international and European Union sources on us to legislate.

I wish to deal specifically with the obstacle that was placed in the way of introducing specific legislation in 2001. The point made by the then Minister, Deputy Martin, was that the Non-Fatal Offences Against the Person Act 1997 already covered the issue. A good deal of work has been done in that regard. Our assault law should cover FGM, as it is an assault that causes serious harm. However, there are problems with the 1997 Act in trying to apply it to something as specific as FGM. The problems in applying general assault law were recognised in Britain as far back as 1985 when its first prohibition of FGM Act was passed. The legislation has since been updated in an Act dating from 2003 that applies to the rest of the United Kingdom but not Scotland. The Department of Health and Children is considering the specific Scottish legislation. It has been recognised in our neighbouring common law jurisdiction that the general assault law is simply not specific enough to cover FGM.

The same applies to the 1997 Act. Last year the national steering committee spelled out the four reasons that was the case. First, the Act does not have an extra-territorial element. Specific legislation is needed to prevent children resident in Ireland from being taken out of the country to undergo FGM. This relates to the specific nature of FGM and the specific danger to some of the 10,000 women and children living in Ireland who are from countries in which FGM is practised and, therefore, at risk of being brought back to the countries from which their families originally came and forced to undergo FGM. British legislation now recognises the extra-territorial aspect. That is the first gap in the current law. It is clearly one in child protection legislation, in particular, as FGM is an issue that affects female children. Within the 15 original European Union member states Ireland is one of only three countries in which its legislation covering FGM does not have an extra-territorial element. That is a real problem. There is a discrepancy between the North and South in that respect.

The second problem is presented by the defence of culture. The Non-Fatal Offences Against the Person Act contains a definition of assault that includes a defence where a crime has been committed in circumstances deemed generally acceptable in the ordinary conduct of daily life. The problem is that this defence could be used as a cultural defence to prevent a successful prosecution for practising FGM. The steering committee has highlighted this difficulty.

The third reason is that international best practice requires that we have specific legislation criminalising FGM. We should not rely on the general law of assault.

The fourth reason is that there is a difficulty with the defence of consent. I have written a good deal on this issue because it is a serious problem within the Non-Fatal Offences Against the Person Act 1997. We have dealt with this in the explanatory memorandum. Clearly, FGM should be considered as a serious assault causing harm or serious harm. However, for the section 4 offence in the Act of causing serious harm, consent may not be a defence in Irish law. Following English precedent in the case of *R v. Brown*, in which the House of Lords stated consent was no defence in serious assault charges, consent may, of course, be a defence in certain recognised exceptions. The status of consent has never been made absolutely clear in Irish law. However, we know the 1997 Act preserves common law rules around defence. There-

fore, there is uncertainty as to whether a person could be prosecuted for practising FGM where the parents had consented to a child undergoing FGM. There was a prosecution that failed relating to a boy child who had died after non-medical circumcision was practised. There is a parallel in this regard. An issue arose from the fact that the parents had consented. This illustrates some of the difficulties we face.

The Bill is very short and clear; it simply defines the terms “medical practitioner” and “woman or girl”. It provides in section 2 for the offence of performing FGM and states consent is no defence. It defines FGM and provides in section 3 for extra-territorial effect and in section 4 for the consent of the Director of Public Prosecutions.

Senator Phil Prendergast: When talking about female genital mutilation, FGM, it is important that we recognise there is a clash between culture and medicine. The WHO defines FGM as any procedure involving the partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. However, the process of globalisation shows that, in the places where these practices most commonly take place, there is a trend towards westernisation. Western media are embraced, as are music, clothes and codes of behaviour. Leaving aside subtle arguments relating primarily to the West, one of the positive aspects of the spread of western popculture is that it preaches a message of individuality, human rights and tolerance.

Why does FGM persist? The rationale for its continuance varies across regions and cultures. In every society in which it is practised FGM is an expression of gender inequality. Women consistently have less access to power, resources and education than men and are also more vulnerable to sexual and physical violence because of the socially constructed roles assigned to them. Control over women, their bodies and sexuality is a key mechanism in sustaining gender inequality.

The issue of tolerance creates a tension for those who say FGM is an abuse of human rights because it is an abuse of bodily integrity. Opposing FGM and other cultural and religious practices rings of cultural colonisation. However, within those cultures where FGM is practised there is also great resistance among those who value their cultural and religious heritage. The argument ultimately falls when we focus on the central reason for outlawing FGM. We in the West place greater store in science than religion, but in this case the science is medicine. There are few countries or cultures that fail to recognise that one is entitled to one's good health. This is why right-thinking people oppose FGM.

In my professional career I have cared for people who have had the procedure carried out on them and know at first hand the difficulties it presents. The long-term complications include sexual frigidity, genital malformation, delayed menarche, chronic pelvic complications, recurrent urinary retention and infection and an entire range of obstetric complications. It is in respect of obstetric complications that I witnessed at first hand the difficulties women experienced. Special training is required to deal with women who have had the entire procedure carried out.

“Sunna” circumcision consists of the removal of the prepuce or tip of the clitoris. Clitoridectomy, also referred to as excision, consists of the removal of the entire clitoris and adjacent labia. Infibulation is the most extreme form and consists of the removal of the clitoris, the adjacent labia — majora and minora — and the joining of the scraped sides of the vulva across the vagina, where they are secured with thorns or sewn with catgut or thread. A small opening is kept to allow the passage of urine and menstrual blood. An infibulated woman must be cut open to allow intercourse on the wedding night and is closed again afterwards to secure fidelity to the husband. It is the most barbaric of procedures and has no place in our culture. We must accept it has taken place which is why this Bill is so important for women.

[Senator Phil Prendergast.]

FGM is abhorrent not because it is a cultural or religious practice but because it is highly dangerous. The complications from bladder infections alone must be borne in mind. The mutilation is such that women have continuous bladder infections. Leaving aside the other aspects, it is socially restricting in every sense of the word. Women experience real difficulty in achieving and carrying a pregnancy. Difficulties arise due to anatomical distortion resulting from the mutilation of the genitalia. FGM interferes with obstetric procedures when delivering a baby and affects the outcome. There is fear of complications in regard to the baby.

The long-term psychological well-being of the mother is very much affected by FGM. The physiological effects are well documented. If in our society one has a recurrent urinary tract infection, the reason is usually pregnancy. Where there is FGM, it is because of the procedure. Pregnancy presents an additional complication to the women affected. FGM results in their having a very unsatisfactory life in every sense of the word. In the drive to eliminate FGM as a practice anywhere on the planet our conscience is absolutely clear.

Senator Geraldine Feeney: I move amendment No. 1:

To delete all words after “That” and substitute the following:

“Seanad Éireann is pleased to note that:—

- the Minister for Health and Children is working on the development of a legal framework to explicitly prohibit the practice of female genital mutilation;
- the Minister is consulting relevant stakeholders on the proposed legal framework;
- efforts are being made with partners to raise awareness of this abhorrent practice and that its terrible consequences will continue; and

resolves that the Female Genital Mutilation Bill 2010 shall be deemed to be read a second time this day 12 months.”.

I ask the Cathaoirleach whether he will accept a verbal amendment to the amendment. It reads: “that the Minister for Health and Children resolves to have the heads of a Bill by the summer recess and that the Attorney General shall draft the Bill in order that it can be read a second time within six months from today”.

An Cathaoirleach: Is that agreed? Agreed.

Senator Geraldine Feeney: I welcome the Minister of State, Deputy Áine Brady, who is looking very well after all her trips on the high seas. I am delighted to see her back.

Before I deal with the issue of female genital mutilation, I sincerely thank and congratulate Senator Bacik on her wonderful work.

Senator Ivana Bacik: I thank the Senator.

Senator Geraldine Feeney: Truly the Bill is a great piece of work. I do not believe there is any opposition to it on any side of the House and I am glad our amendment has been amended to accommodate all sides such that there will not be a fall-out or need for a vote.

I commend my colleague, Senator Deary, for wanting to contribute to the debate on behalf of the Green Party. This is an issue that should not be left to women alone to deal with. It is a worldwide, Continent-wide problem and should be dealt with by both men and women. FGM is practised because of men. It is a case of men disempowering women and controlling them.

It is a case of women not having a right to stand up for themselves. It is interesting that the United Nations strongly links FGM with poverty in the countries where it is practised. Everything that has been said by Senator Bacik is so right. It is time that Ireland joined its nearest neighbours in England and Scotland. The UK's 1985 legislation was amended in 2003 to alter the penalty from five to 14 years. The Scottish Government in 2005 implemented the 2005 UK Act. It is not untimely that we should enter modern western society in asking for this.

It is very important that we, as western feminists and western society, are not being seen to push our ideas on African and Middle Eastern women who have a very strong loyalty and tradition in their tribes and customs. It is so important we are not being seen to do that because in the event, we can disempower them by trying to help. It is up to the women in the countries affected by FGM to be able to empower themselves. This can be done through education.

I suggest to the Minister of State that when we are engaging with non-governmental organisations, we should really be looking at particular programmes. Everyone present has visited countries where Irish Aid has programmes. We should be looking at programmes to encourage and educate women in the countries where they are being attacked by FGM. That is what it is — the most barbaric attack on women and young children.

There are 10,000 women living in Ireland from countries that still practise FGM. Senator Bacik is right that we cannot wait any longer. I am glad we are now going to move the heads of a Bill within three months and we shall be back in the House discussing the issue. I hope we will put it to the Leader on the Order of Business tomorrow to give us a date in October, after the summer recess, on which to debate and agree Second Stage of this Bill.

I say that because this is more than a matter of tribal cultural norms. It is not in any religion. It is the practice in neither the Islamic or Christian religion. There is nothing in the Koran to support FGM. That is another reason it has to be eliminated. I was delighted to see the work that Senator Bacik put into this. Obviously, she kept a close eye on legislation that has been carried out elsewhere. I for one, will be keeping a close eye on the Leader. I will be asking him to put this first on the agenda next October.

I remind the House of the reasons FGM is so barbaric. When one reads the explanatory memorandum, one sees the three types of FGM that may be carried out, the third being the most barbaric. That is what makes me say this is a barbaric act instigated by men. It may not be carried out by men, however, because in my research I found that it was being done in many instances by women on other women. None the less, it is instigated by men. How more sickening is it for a woman than to have her entire clitoris removed along with the adjacent labia? Then she is stitched up and sometimes a bed of thorns is placed there as well. She gets married and is cut again for her husband to have his wedding night. Every other time sexual intercourse takes place, the woman has to be surgically opened again. It is sickening to the core that this should be allowed anywhere, but yet I, as a western woman, would not wish to impose any more hardship on women that are living with this, and I therefore say we should look at the bigger picture.

I am sorry I have not time to talk about the national action plan, but Senator Bacik has outlined it already. We should be looking at areas where we can empower African and Middle Eastern women and other women from all over the world where FGM is being practised. Their escape and empowerment has to be through education. I hope to be able to say in the House some day: "Is it not great that we have rid the world of FGM?"

An Cathaoirleach: Could I please clarify, Senator, that the text of the amendment is to the effect that the Bill is to be read a second time before the summer recess?

Senator Geraldine Feeney: I shall explain it to the House again. It says the Minister for Health and Children resolves to have the heads of a Bill by the summer recess and that the Attorney General would be——

An Cathaoirleach: Is the Senator deleting the words “12 months”?

Senator Geraldine Feeney: That is correct.

An Cathaoirleach: The Senator’s amendment resolves that the Bill be deemed to be read a second time——

Senator Geraldine Feeney: Within six months of today.

An Cathaoirleach: That is slightly different from what I heard now. It is within six months of today.

Senator Geraldine Feeney: That is correct, within six months, and that the heads of a Bill would be ready by the summer recess.

An Cathaoirleach: That is clear.

Senator Ivana Bacik: I believe it should say published by the summer recess.

Senator Geraldine Feeney: Yes, that is correct. It should say that the heads of the Bill would be published by the summer recess. It is important we ask the Attorney General to draft the Bill so that it can be read a second time within six months.

An Cathaoirleach: Normally a substantive amendment would be circulated to the House.

Senator Geraldine Feeney: All sides would acknowledge that, and while I apologise for this, I believe there was meaningful contact between Senator Bacik and the Minister this afternoon and we did not have time to draft it.

An Cathaoirleach: None the less, we shall have to observe procedure. As there is unanimity among all parties, I am prepared to accept that.

Senator Geraldine Feeney: I take it the House has accepted the add-on to the amendment.

An Cathaoirleach: Ultimately, the House will make a decision on that.

Senator Frances Fitzgerald: I welcome the information which has just been made available to the House, namely, that the Government will publish the heads of a Bill on this issue before the summer recess. We in this House must ensure this happens. We have had promises before, and we have to ensure the heads of the Bill come to the Seanad before the summer recess and that we see the Bill within six months.

That is to be welcomed. I congratulate, first of all, Senator Ivana Bacik and the Labour Party on producing this Bill and also the Government for making its announcement in this regard. This legislation is long overdue and is needed. The debate on this first began in Ireland a number of years ago. I have worked on this issue at a European level with the European Women’s Lobby and at an Irish level with the National Women’s Council of Ireland. At that time it was thought that this was a problem for other countries far away.

It is interesting the manner in which the debate has developed over the years, how our awareness and understanding has grown, how the international and European organisations have worked on the issue, countries have passed legislation and how more aware we have all

become. It is important we have legislation in this country in this regard and I fully support the Bill before the House.

Both Senators Prendergast and Bacik have talked about cultural attitudes and issues. I want to say there is no cultural view that makes this practice acceptable. There was a major concern in our earlier understanding of this phenomenon and in debates that somehow we were literally cutting across other people's cultures by saying we thought this should not happen. In fact, as women's voices have been heard in Africa and other continents, it has become clear that women in the countries where this practice takes place are speaking out increasingly strongly against it because of the consequences for themselves, their families and young girls.

The importance of specific legislation is spelt out in the briefing note supplied to Members by the Children's Rights Alliance. I congratulate the members of different organisations who are present for this debate and who have worked on this issue in Ireland. The Children's Rights Alliance states in its briefing note that the importance of specific legislation cannot be overstated. Legislation can strengthen the ability of agencies to protect children at risk and provide appropriate care. It can act as a deterrent to the continuation of the practice. It is a legitimate way for parents to refute family pressure to submit their daughters to the practice. Legislative clarity and firm penalties, both imprisonment and a substantial fine, would act as a strong deterrent to communities practising FGM and deliver a clear preventative message to the public. For those reasons the legislation before the House is very important. It achieves the various objectives I have just mentioned. I do not expect any opposition to this Bill in the House.

We are aware of the dangers of FGM for women. It can cause major pain, not just physical but also psychological. There can be long-term medical complications, including severe problems when giving birth. FGM has become an issue in the western world and in countries such as Ireland as the community has become more multicultural. Medical guidelines in this country do not permit FGM. That means, however, there is potential for the practice to take place underground and in a quiet way, which increases the risks to women. The Children's Rights Alliance estimates there are 2,585 women resident in Ireland who have experienced FGM. That is an enormous number and many of them will need ongoing support and agencies to work with them.

We are aware of the circumstances in which FGM often takes place. This carries extreme medical dangers. The practice is brutal, insulting and an affront to the human rights and dignity of women and female children. That must be stated unequivocally. It is incumbent on us to update legislation in this country to outlaw FGM. There should be no ambiguity about it. Simply dealing with it under the assault provisions of our criminal legislation is not enough as it could lead to ambiguity. It is time to progress legislation on this issue and I am delighted with the news on this from the Government.

According to groups working directly with women, there is evidence that many young girls are still being forced to travel from Ireland to have this procedure carried out in their country of origin. That is a serious concern and raises the question of what we can do about it. The Children's Rights Alliance has suggested three urgent requirements which are very worthwhile. One is obviously legislation which would ban FGM in Ireland and include an extra-territorial element. That will be difficult but it is certainly worth examining. If we had such provision in our legislation, it might be a support to the families who are under pressure to go abroad with their children for this procedure.

The second point made by the alliance is interesting. It has not happened here yet but it should be considered by this House for inclusion in the legislation. The alliance recommends including FGM under the Children First national guidelines on child protection and the welfare

[Senator Frances Fitzgerald.]

of children. There is no reason it should not be included. Again, it would be another protection. The third recommendation is that the Government should assign responsibility for the implementation of Ireland's national plan of action to address FGM to a Department or agency. That should be possible. Perhaps the Minister would address it. I presume the Department of Health and Children would be the relevant Department. If a Department had responsibility for it, the implementation of the national plan would be more likely to happen.

It is good to see the progress being made on this issue. I look forward to seeing the heads of the Government's Bill in three months.

Senator Mark Dearey: I welcome the Minister. I thank the Irish Family Planning Association for its briefing. I found it extraordinarily helpful over recent days when I was preparing to make my contribution, which I am happy to make on behalf of the Green Party. I support the Bill, as amended, from the Labour Party. When we dealt with the Prohibition of Depleted Uranium Weapons Bill some weeks ago I experienced a sense of pride that we were able to achieve cross-party support for an initiative I feel passionately about, as I do about this Bill although I cannot claim to have had any hand, act or part in initiating it. None the less I am very happy to support it.

The Bill is progressive and clear sighted. The cultural sensitivities are acknowledged but we are not deflected from ensuring that what happens within our jurisdiction is acceptable and that children are protected within our borders. I note that certain African countries have also introduced legislation to outlaw female genital mutilation. It is not a case of Europe or the West simply preaching to Africa, since African countries have made similar moves.

I worked for a number of years with Integration of African Children in Ireland, one of the organisations involved in drawing up the national action plan. The plan identified five pillars of activity, one of which is being addressed today. Senator Prendergast's absolutely horrific description of the reality of female genital mutilation demonstrates that she has had hands-on experience with this problem. I have spoken to mothers and families who are desperate to prevent it happening to the new generation. In many cases that is why they are in this country. It is very important for those people that, having come to Ireland and achieved citizenship, the fear of this practice visiting their households should be eliminated. I thank Senator Prendergast for conveying the reality of the problem and for participating in bringing this Bill forward.

The five pillars of the national action plan on female genital mutilation are legal, asylum, health, community and development aid. Each of these can contribute not just to outlawing the practice but ultimately to reaffirming women who have suffered this appalling degradation. Without the legal provision, however, the other four pillars are somehow less effective. The legislation not only will be a clear statement of our legal position on female genital mutilation but also will add energy and new momentum to the actions under the other four pillars of activity in terms of asylum, addressing the health implications, addressing the issue in the community and how to configure our overseas development aid, ODA, to countries that continue to practise female genital mutilation. It will give Ireland more legitimacy when dealing with countries in receipt of ODA to state that as the practice is outlawed in this country, it must be addressed in the country in question in terms of the provision of our ODA. It is to be hoped strong legislative measures will be in place within the next year or so. I welcome the Government amendment which will shorten the time period involved. I was disappointed this morning that a 12-month timeframe had been suggested, but I am delighted this evening that we have moved on. The five pillars of activity identified as being core in ridding the country of this practice and dealing with its victims in a sensitive and affirming way will be included in the legislation and of assistance to all who work in the area.

It is generally recognised that asylum law works better for men than women. As the only male speaker in the Chamber, that is not acceptable to me. It is not acceptable that asylum regulations seem to favour male applicants over female applicants. I am not sure why this is so, but we need specific guidance on the issue of gender-related persecution when asylum applications are being considered. This guidance has been introduced in the United Kingdom, Canada, the United States and Australia. I understand no publicly available guidelines are currently in use here when applications are being considered. I intend to raise this matter with the Minister of State with responsibility for integration matters, Deputy Mary Alexandra White. Implementation of best practice gender persecution guidelines will lead to improved outcomes for women claiming asylum on issues such as this. It is an important one to be pursued.

I welcome the strong penalties proposed in the Bill. A person found guilty on indictment will face a fine or imprisonment for a term not exceeding 14 years or both. This is appropriate, as it recognises the different types and extremes of this practice, type three being truly horrific. Anyone found guilty of such a crime ought to face a very severe sentence — a sentence not exceeding 14 years will send that message.

I commend the proposers of the Bill which I am happy to support as amended.

Senator Mary M. White: When is the Minister of State going to speak? Her speech will not be available until she speaks. I would like to know the position.

An Cathaoirleach: It is a matter for the Minister of State to decide when she wishes to speak. She has indicated that she is prepared to listen to a number of speakers first.

Senator Mary M. White: The speech is available, but we cannot read it.

An Cathaoirleach: It is available and it would be quite easy to have it copied.

Senator Mary M. White: We cannot get a copy now.

An Cathaoirleach: The Senator will not receive it until the Minister of State speaks. I call Senator Mullen.

Senator Rónán Mullen: Ba bhreá liom fáilte a chur roimh an Aire Stáit. Is deas an rud é mo chomharsa béal dorais, nach mór, a fheiscint sa Teach seo chomh minic agus is féidir.

I wholeheartedly welcome the introduction of the Bill by the Labour Party and congratulate its Senators for bringing it forward. I also welcome the Government's decision to move with dispatch and give a very appropriate and welcome commitment to publishing the heads of a Bill within an early timeframe. This is to be commended and I congratulate the Minister of State for so doing. This debate offers a rare and important opportunity to affirm the vitality and maturity of the legislative branch of our democracy. We see this maturity when the Government accepts proposals for good law, regardless of the source, even when the initiative is taken by an Opposition party.

As of April 2006, 2,585 women resident in Ireland had undergone female genital mutilation. The World Health Organization estimates that between 100 million and 140 million women worldwide have undergone FGM. Other speakers have referred to the detrimental physical, psychological, emotional, spiritual and social effects of this practice. Rights experts are in agreement that it constitutes a violation of fundamental human rights. It seems almost trite to say this, as it is so self-evident.

[Senator Rónán Mullen.]

The primary target as regards FGM is young girls. Therefore, the issues of consent and authentic free will simply do not arise as defences. Even if there were cases where that defence was claimed and if there were cases of women who claimed they wished to undergo this procedure, it simply would not make FGM any more acceptable. The very nature of the practice is anathema to the overall good and wellbeing not just of individual women but also of the human race. It is important to recognise, at a time when many are tempted towards mentalities suggestive of cultural relativism, that there are certain absolutes, that certain things are always wrong, regardless of the time or place. It is important for us to recognise that anything that violates the dignity of a person, whether male or female, a child or an adult, simply has no place in a civilised society.

The purposes and effects of the Bill as proposed are prohibitive, normative and educative. Unless there were good reasons to oppose the Bill, I cannot see why the House would refuse to enact it. I think the Government has accepted the logic behind the Labour Party's proposal. It could be argued that there is not full certainty on whether the Bill will help to reduce the number of instances of FGM, but to my mind this would not be a persuasive argument. We should approach the Bill with a presumption in favour of its applicability and merits. If absolute certainty were to be an issue, the "better safe than sorry" mantra would be appropriate, especially in the light of the grave ethical and welfare issues involved.

Does the fact that this is a Private Members' Bill offer a reason to oppose the Bill? I hope we are mature enough to transcend such a petty attitude towards power. This evening's decision by the Government is the best that can be got. I do not think there is anything wrong with the Bill and do not see why it should not progress. However, the way we do things in this democracy is that sometimes the best we can get is a commitment from the Government to do the same thing within a shorter time. We will accept this and are grateful for that much.

A more legitimate criticism of the Bill might be to the effect that it could perhaps be seen as superfluous since the Non-Fatal Offences Against the Person Act 1997 already criminalises FGM, yet there would be serious problems with such an assertion. First, Article 3 of the Act states a crime has not been committed if "the act is, in the circumstances, such as is generally acceptable in the ordinary conduct of daily life and the defendant does not know or believe that it is in fact unacceptable to the other person". Implicit in such a provision is a form of moral relativism, with cultural relativism being the primary justification given for not criminalising FGM in African societies. Clearly, we should be against cultural relativism if we are to be truly supportive and protective of the dignity of the human person in all circumstances.

Second, the 1997 Act does not have extra-territorial effect, unlike the Labour Party's Bill and in the vast majority of other EU countries with legislation which criminalises FGM. Only Luxembourg, Greece and Ireland have not legislated for the extra-territorial dimension and the possibility that FGM takes place extra-territorially. This is a glaring oversight because including extra-territoriality as part of FGM legislation makes it easier for families and individuals to overcome pressure from relatives abroad who actively seek to repatriate girls to make them undergo this practice.

The third argument against the 1997 Act is that it contains a defence of consent. This relativistic principle, although justifiable in other criminal law circumstances, does not take sufficient account of the nature of FGM or the socio-cultural structures of power involved in the practice. Just as cultural relativism is not appropriate, strict autonomy thinking does not help us to deal with principles such as this. Certain circumstances arise in which we should not be complete masters of our own destiny. For example, it ought not be legal for me to choose

to cut off my arm. In the same way, the arguments that consent could ever provide a defence for this dreadful practice simply cannot hold because of wider considerations of human dignity, the needs of the community and the welfare of the person properly construed.

The fourth argument against the 1997 Act is that while common law jurisdictions are usually slower than their civil law counterparts to enact specific criminal statutes owing to their reliance on precedent, as far back as 1985 the UK Parliament legislated directly to deal with FGM. The rationale for its decision was the uncertainty that existed over whether common law would recognise a defence of consent to surgical treatment. In an Irish context one might also wonder whether the courts would falsely appeal to the constitutional protection for freedom of conscience or give credence to analogies with tattoos or cosmetic surgery. Bearing in mind that FGM is addressed in the UK by the updated Female Genital Mutilation Act 2003, which extends to Northern Ireland, in the absence of Irish legislation we run the risk of acting as a safe house in much the same way we do in respect of sex trafficking and prostitution.

The extra-territorial element of the Bill may be objected to as going too far or being devoid of practical effect but a precedent exists in the form of section 3(2)(b) of the Child Trafficking and Pornography Act 1998 which introduces a partial extra-territorial offence where a citizen meets or travels to meet a person outside of the State for the purpose of sexual exploitation. I believe the violation of human dignity and bodily integrity that FGM entails is not substantially different from sexual exploitation.

Positive law alone is not sufficient to dismantle the culture of FGM. Aid workers in Africa have told me that they can have a greater practical effect by promoting alternative cultural practices and rites of passage than they ever could through law reform. We cannot turn our back on the role of ethical norms and the educational force of the law. By specifically targeting FGM, this Bill helps to accomplish both these strategies in a way that a more general criminal statute could not. I congratulate the Labour Party on this timely initiative and commend the Government on responding in an appropriate fashion.

Minister of State at the Departments of Health and Children, Social Protection and the Environment, Heritage and Local Government (Deputy Áine Brady): I thank Senator Bacik for raising this important issue and I am pleased to have this opportunity to respond on behalf of the Government. The Department of Health and Children is working to develop a legal framework that will explicitly prohibit the practice of female genital mutilation.

FGM is a harmful tradition and practice and a form of violence that directly infringes women's and children's rights to physical, psychological and social health. The World Health Organisation defines FGM as any procedure involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. The WHO estimates that between 100 million and 140 million girls and women worldwide have been subjected to some form of FGM and a further 3 million girls are at risk each year. This equates to 6,000 women and girls undergoing FGM daily around the world. Prevalence, type and the age at which FGM is performed vary between and within countries and regions, with ethnicity being the most decisive factor.

Increased immigration to Europe has meant that a cultural practice previously associated with the developing world has become a problem that needs to be overcome in a culturally sensitive manner in European societies, including Ireland. In many cases families and communities will attempt to practise FGM after moving to Europe as a way of upholding traditional customs. Despite legislative efforts by many countries to stop this practice, several studies have indicated that many girls living in Europe remain at risk from FGM.

[Deputy Áine Brady.]

The rationale for the continuance of FGM varies across regions, countries and cultures, but in every society in which it is practised it is an expression of gender inequality. In many instances, parents want their daughters to undergo FGM to avoid stigmatisation or social exclusion by the rest of the community. In practising communities, it is strongly believed a girl is not marriageable if she has not undergone FGM.

The practice has no health benefits. It involves removing or damaging healthy and normal tissue and interferes with the natural function of girls' and women's bodies. Immediate health consequences of FGM can include severe pain, shock, haemorrhage, difficulty passing urine, infection, psychological trauma and sepsis, and it can lead to death. Long-term complications include chronic urinary and menstrual problems, chronic pain, pelvic inflammatory disease, cysts, infection, increased risk of HIV transmission and infertility. FGM also has serious and adverse consequences for mothers and children during childbirth. A WHO study found significant associations between FGM and various types of obstetric complications. The risk to women's and girls' health is invariably aggravated by the use of septic equipment, unsanitary environments, lack of anaesthetic and the procedure being carried out by unskilled members of the community. In addition to physical health consequences, women who have undergone FGM also report negative psychological and emotional effects. The trauma for some women subjected to FGM can be reactivated in situations that bring back memories of the mutilation, such as childbirth and vaginal examinations.

Extensive work has taken place on FGM over recent years in Ireland. The relevant Departments and statutory agencies have been supporting the national action plan to address FGM in Ireland, which was launched in 2008 by the national steering committee on FGM. This committee comprised both governmental and non-governmental organisations, including the HSE, the former Women's Health Council and Irish Aid. The HSE has been playing a key role in the prevention of FGM and the delivery of care to women who have already undergone the practice. The health needs of women who undergo FGM have been acknowledged in the HSE intercultural health strategy 2007-12 and the principles and recommendations of the strategy align closely with the objective of the national action plan to address FGM. The HSE was represented on the steering committee that developed the plan and continues to support the ongoing work of the group established to progress its implementation. In this regard and in line with the principles of the intercultural health strategy on partnership working and cross-sectoral collaboration, the HSE national social inclusion unit has made funding available to AkiDwA from March 2009 for progressing the health related objectives of the national action plan for FGM. These aim to provide high quality and appropriate health care and support for women and girls who have undergone FGM.

The HSE's initial work has prioritised those aspects of awareness raising and provision of information to health professionals as identified in the action plan. Outcomes thus far include the development of professional supports for those involved with providing care for women and girls who have undergone FGM; the development and dissemination of information for health care professionals working in Ireland; the delivery of training sessions to up to 500 health professionals working in relevant service provision areas, including midwives, general practitioners, public health nurses and social workers; working towards the integration of routine FGM questions and examinations as part of antenatal care; and agreement with CervicalCheck that appropriate training in cervical smear taking and FGM will be integrated into ongoing training modules around cervical screening. The HSE is continuing to fund AkiDwA to progress these objectives. The HSE has stated that while initial work in the area of FGM in Ireland has focused on addressing health and care needs of women who have undergone this procedure, it is now incorporating prevention and awareness raising into its initiatives.

Another statutory member of the national steering committee was the former Women's Health Council. In June 2008, the council published a literature review on the health implications of FGM and made recommendations on its prevention, the care needs of women affected by it and the necessary legal framework. As the Senators might be aware, the Women's Health Council was subsumed into my Department last October and we now have the benefit of its knowledge and expertise in this area to guide us in our policy review.

Irish Aid has long recognised the detrimental effects of FGM and has contributed financially and programmatically to strategies targeted at community abandonment of FGM in developing countries. In 2008, Irish Aid contributed to the joint UNICEF-UNFPA fund to end FGM.

The Department of Health and Children has taken a number of steps to raise the awareness of health professionals on this matter. Officials wrote to the then health boards in 2001, again in 2004, and to the HSE in 2007 drawing their attention to the issue of female genital mutilation and requesting that personnel working with immigrant populations take opportunities to educate them about the dangers and unacceptability of FGM. Moreover, the Department wrote to the HSE again in 2009 following the launch of the national action plan on progressing the health actions included in it.

The Department also wrote to the Department of Justice, Equality and Law Reform in 2004 and 2007 about the issue. It asked that staff under the aegis of that Department whose work brings them into contact with persons from regions where female genital mutilation is practised should be made aware of the issue and should educate and inform such communities about the illegality and unacceptability of FGM. The Minister for Health and Children, Deputy Harney, met representatives of the national steering committee for the national action plan on 21 July 2009 and promised to seek further legal advice on the issue.

It is believed that FGM would constitute an offence under the Non-Fatal Offences against the Person Act 1997. The mutilations which are typically performed during acts of FGM would probably meet the definition of "serious harm" contained in the Act. It is likely, therefore, that for a person to perform an act of FGM would comprise an intentional act which causes serious harm and would thus be an offence under section 4 of the Act. The consent of a parent would not be a defence under section 4. In the event that in particular circumstances an act of FGM was found not to have resulted in serious harm, it would still be open to the Garda to prosecute for the similar, though less serious, offence provided for by section 3 of the Act which criminalises a person who "assaults another causing him or her harm". Notwithstanding this situation, from a legal viewpoint a specific offence prohibiting FGM would bring clarity and certainty to this issue, and it is in this context that my Department has been reviewing the legal situation with a view to progressing the drafting of policy proposals for a specific legal framework on FGM.

I thank Senator Bacik, once again, for raising this important issue. Female genital mutilation is an abhorrent practice which is unacceptable in our society. As one can see, there is cross-party and Department of Health and Children agreement with the main sentiment of Senator Bacik's Bill. In saying that, there are some issues which we believe are not included, such as definitions of the approved person to include midwives and trainee doctors, and the inclusion of an offence of aiding, abetting, procuring or inciting a person to commit FGM. Another is a more explicit prohibition of a cultural defence. We also need some time to explore the criminal justice, child protection and travel and immigration issues. There will be consultation with relevant stakeholders which will be an integral part in the development of any legal framework governing the prohibition of FGM. Expertise in gynaecological and obstetric care, child protection measures and criminal proceedings will be paramount in this work. All of these issues

[Deputy Áine Brady.]

need to be tackled in a culturally sensitive way if we are not to alienate the very people we are trying to reach and protect from this practice.

I confirm that the heads of a Bill are to be published before the summer recess and the Minister, Deputy Harney, is agreeable to having the amendment amended to delete the words “this day 12 months” and substitute “this day six months”, and this is being followed up.

An Cathaoirleach: On an amendment to an amendment on the Order Paper, we must have that circulated to all Members before we agree on it. There was agreement on it, but I want that in print so that it can be given to each person so that he or she can see exactly what we are talking about just in case there is a misrepresentation of the facts. I will have that as quickly as possible in print form for the Members.

Senator Liam Twomey: There is unanimity in this House that we need to bring forward legislation as quickly as possible to prohibit female genital mutilation. The only issue is that the Minister of State, in the course of her speech, did not seem to hit on the problems preventing this legislation from being passed urgently in the way we expected. She spoke of culturally sensitive issues that we must discuss before we approach this, but the dangers of female genital mutilation are nothing to do with our culture and for many of those involved it is a culture of control of the young women involved. There is a need for us, as a country, to stand up for the equality in which we believe.

Whereas we pay great attention and respect to genuine cultural differences where people are different in the way they live their lives and in what they believe, this is not a genuine cultural issue.

Senator Mary M. White: Hear, hear.

Senator Liam Twomey: The message must not go out that we are somehow approaching this as a culturally sensitive issue. This is mutilation of young women and it is nothing more than a barbaric practice that must not be accepted in this country. The message must go out from these Houses that it is unacceptable and if there is any reason for a delay in dealing with it, it is because there are some complications with the legal system in this country but it is certainly not because we accept there may be some cultural issue involved.

I had hoped that the Minister of State, in her speech, would focus more on the difficulties she might have in implementing this legislation immediately. They are the sort of matters of which we should speak. For instance, is the problem that one parent in particular pushes this practice on a family or is there a wider community problem that pushes this on a family? Is the problem that if there are complications with this procedure, the young woman involved may not receive adequate medical care or may be afraid to go for adequate medical treatment? If there is one message we must send out, it is that this is an unacceptable practice in this country which will not be tolerated in any way, that the person we consider to be the one to be pursued is not the young woman involved but the person who consents to and carries out this crime, and that such individuals, whether they do it in this country or another, will remain answerable to the laws of this country for carrying out a serious assault.

In any reading of Irish law, mutilating a young woman is a serious crime which cannot be downgraded. We cannot even speak of downgrading this sort of crime by stating that it would somehow be considered in the same way as a brawl outside a pub on a Friday night to which a lesser charge applies. This is far more serious than that and that is how it must be approached. That is the sort of strong language I would expect from the Minister of State on this issue.

We must not treat this as something that is not that serious; it is incredibly serious. We must push for that sort of legislation and for that type of language when we speak about this to show we are taking this very seriously. We need to show we will not tolerate such practices in this country and that we want them stopped. We need to provide for the maximum charges to be brought against an individual who commits this heinous crime against a person who is under the protection of the State, whether in the country or not. We also need to ensure a person who consents to or forces this treatment will also be liable to prosecution, regardless of whether such consent is given in this country or outside of it. If the young woman is under the protection of the State, we must show we will give that sort of protection to her to the best of our ability. We need to speak in such terms to show our seriousness in this matter.

Senator Maria Corrigan: With the agreement of the House, I want to share my time with Senator McDonald.

Acting Chairman (Senator Labhrás Ó Murchú): Is that agreed? Agreed.

Senator Maria Corrigan: I welcome the Minister of State, Deputy Áine Brady, to the House. Her speech, contrary to Senator Twomey's claim, outlined that female genital mutilation, FGM, is an unacceptable and unjustifiable practice with no benefits. The Minister of State referred to one challenge we face in bringing forward the heads of the Bill on FGM, that is, the provision to take action against anyone who aids or abets the practice. Frequently, we hear how it is not one but several adults involved in this practice. It is essential that legislation would provide for charges to be brought against those complicit in the practice.

I pay tribute to Senators Bacik and Prendergast for introducing this legislation on Private Members' business. I am pleased the Government has proposed an amendment to its amendment to the motion. I pay tribute to those who battle every day against FGM, often voluntarily, and who have worked hard to ensure we as legislators are aware of and take action against it. All research shows this practice is often undertaken against children between the ages of four and ten. FGM is a physical and barbaric assault on a child. It is clearly an act of violence against women, constitutes child abuse and is a criminal act.

The reason behind the introduction of this Private Members' Bill is to put to bed any ambiguity regarding the practice and introduce appropriate actions in response to it. It is important all State agencies treat FGM as a criminal and abusive act even while we are waiting for the Government's legislation. There is an onus on anyone who is aware of the practice taking place in Ireland to come forward to report it. It is unacceptable that any child could be subject to this while the legislation is being prepared.

Shauna Page, a PhD student at the University of Ulster, is researching gender-based violence and its human rights context. She has pointed out that rape is often cited as an act of violence against women but not FGM. We have heard justifications for the practice but none of them stacks up. There is no cultural aspect to it or religious justification for it.

I agree with colleagues that legislation alone is not sufficient. We need to bring about an attitude change in which education will play an important role. It must focus not just on the dangers or the consequences of the practice but the fact that a life sentence is passed on people to live with its consequences. Education programmes and literature would allow people to confirm for themselves the dangers of the practice and not have to take our word on it. There is a role for overseas development aid with the EU as a contributor and consumer being influential in bringing about cultural changes in other countries. I wish the Minister of State well in the drafting of the legislation.

Senator Lisa McDonald: I thank Senator Corrigan for sharing her time with me. I support Senator Bacik's Bill. It is a great example of how useful the Seanad can be in raising important issues and pushing them to the fore. This was seen by Members on this side of the House liaising with the Minister of State to bring about the introduction of the legislation in a shorter timeframe. While I accept the need to get the legislation right, when women's basic human rights and bodily integrity are being violated, even six months is still too long.

Senator Bacik was correct in including a provision on aiding and abetting the practice. Community education and involving the stakeholders is important. There may well be people in this country who will bring their daughters back to their home countries effectively to be mutilated. However, we must be careful not to be seen as being Eurocentric or culturally insensitive to them. None the less, it is a barbaric act which affects the health of the women who undergo the practice. No cultural practice can override health and bodily integrity. That is the message that must be sent from the Seanad.

Before the Easter recess, the Seanad debated domestic violence and child abuse by the Catholic church. Aspects of the closed door approach and failure to prevent these abuses were raised by many Members. It is important we now move as quickly as possible against FGM. If the Government Bill can be introduced in the House before the summer, we would be doing very well. Where there is a will, there is a way.

Senator Bacik has worked hard on many women's issues and she has got support from many of the women on this side of the House. She must be praised for bringing this matter to the fore. I must also praise the other women Members who have spoken on this Bill as well as the gentlemen Senators. These issues are important and affect many women's lives. As I point out when debating other women's issues such as prostitution, how would people feel if it were their sister involved.

Senator Dominic Hannigan: I pay tribute to my colleagues, Senators Bacik and Prendergast, for introducing this Bill. As other Members have said, FGM is an appalling abuse of the human body. Up to 130 million women across the world have already being mutilated by the practice. In a recent research paper on obstetrics and gynaecology, the researchers stated instruments used to perform FGM included unsterilised knives, razors, scalpels and pieces of broken glass. The same study reported that the WHO documented numerous cases in countries such as Ethiopia where it was performed on babies as young as seven or eight days old, while in Somalia, Sudan and Egypt it was performed on girls between five and ten years old. It is performed in approximately 30 countries worldwide but 90% of the procedures are performed in African countries such as Mali, Sudan, Egypt, Somalia and Eritrea. The procedure of female genital mutilation is not affiliated to any one particular religion. It is carried out by atheists, Christians and Muslims.

The World Health Organisation department of reproductive health and research states that the physical consequences of female genital mutilation include pain, ulceration, and death due to excess bleeding and toxic shock. Longer-term complications can include urinary problems, chronic infections and chronic pain. The WHO has also pointed out the profound psychological consequences often experienced by mutilated girls, including fear of sexual intercourse, post-traumatic stress disorder, anxiety and depression.

A 2005 article in *The European Journal of Contraception & Reproductive Health Care* documents an interesting set of findings from the researchers with migrant women of North African origin. They undertook a study of 220 people, almost half of whom had no school education. That is interesting because UNICEF has carried out research that proves a direct correlation between educational attainment and tolerance of female genital mutilation. It is that tolerance and acceptance of the practice that leads to the continuity of the practice through to the next

generation. When the researchers asked the women the reason mutilation is performed, 58% of them said it was a religious requirement, 27% said it was a cultural tradition and 21% felt that it increased the chances of marriage. Other studies, numerous non-governmental organisations and global health bodies have also found that the belief system associated with the practice of female genital mutilation has strong social and cultural roots. Breaking the link between the practice of female genital mutilation and cultural and social survival has proven to be very difficult. In 2006, the European Commission noted that the decline of female genital mutilation had been limited despite nearly 27 years of effort.

I commend the efforts of the Irish Aid programme to reduce the practice. I visited some organisations in Tanzania with Senator Ormonde, Deputy Higgins and Deputy Deasy and we saw at first hand how the Irish Aid programme is helping to train ex-practitioners as teachers who will visit schools and try to convince people not to allow this operation to be performed on their children or in their locality. When we met Prime Minister Pinda in Tanzania after that visit we impressed upon him the need for politicians throughout his country to ensure they made their voices heard on how they felt about the practice, and that change could not just come from the bottom up. It had to come from the top down and it had to be stated by community and political leaders that the practice was no longer to be tolerated and had to stop. We believe it is an unacceptable practice. It is abhorrent and should have no legitimacy in the medical, social or political sphere.

In that context, I welcome the simplicity and the lack of ambiguity in Senator Bacik's Bill. It makes it clear that parental or individual consent to such a procedure will provide no legal protection in the Irish courts. I understand that the Swedish law banning female genital mutilation is currently being challenged by a resident of that country who travelled with his daughter to Somalia to allow her undergo female genital mutilation. It is vital our legislation makes it clear from the outset that such endeavours are subject to Irish laws and will be treated on that basis, whether they happen here or abroad.

I wholeheartedly support the Bill introduced by my colleague, Senator Bacik. I was glad to hear the Minister's proposed amendment to the amendment. We can all leave the House safe in the knowledge that a job has been well done. We will support the amendment.

Senator Mary M. White: I thank the Minister and congratulate her on spelling out to us what the Health Service Executive, on behalf of the Irish Government, has been doing and its awareness of female genital mutilation. It is only right that what has been happening would be put on the record.

I agree 100% with the points made by Senator Twomey. In the environment in which this practice is carried out, women are second class citizens. They do not have equality with men. It is used to keep them in their place.

I compliment Senator Bacik, supported by Senator Phil Prendergast, on bringing forward the legislation to prevent this practice happening in our own country, but I agree with Senator Twomey. This is not just about culture. It is savage, violent and brutal. It is abuse and should not be tolerated. People who carry out this practice should be reported.

This is about women's lack of education. We have seen in our own country that when women are educated they become self-confident and are able to stand up for themselves.

In a much more benign way this reminds me of the churching of women after the birth of children.

Senator Joe O'Toole: Hear, hear.

Senator Mary M. White: It was done because the Catholic Church believed the woman to be impure after the birth of a child. When my daughter was born almost 39 years ago I was lined up in the church by four other mothers. I asked what this was about and the priest said I was to be churched. I asked why and moved out of the line. There was consternation in the church. Again, it was ignorance and I have to say it was related to sex. One only had a baby because one had sex. It was all tied up with the same ignorance but thanks be to God we have come a long way in Ireland in that regard.

I compliment Senator Bacik, ably supported by Senator Prendergast and Senator Hannigan. It is a great tribute to Seanad Éireann that the work being carried out by the HSE on the prevention of female genital mutilation will be supported here and come through in the Seanad. It is what the Seanad is about.

The bottom line as far as I am concerned is that the more women throughout the world get educated, the more they will become free and stand up for themselves. They will not be forced into taking these cruel, brutal, barbaric and savage measures. I agree with Senator Twomey. It is not about culture. This is about power and the suppression of women.

I believe that in some Third World countries and in some developed African countries, there is a different attitude to the number of wives a man can have. I have a problem with President Zuma of South Africa being feted by the Queen in England. I think he has 20 children. What message does that send out that a man is free to have four wives and 20 children? When I saw President Zuma being feted in Buckingham Palace I wondered about the message he was sending out, namely, that it is all right to produce 20 children by different women. The fact a man can have so many wives is another aspect of it. I believe the King of Swaziland has approximately 30 wives and he gets a new one every year. He was educated in Eton but he still went back to Swaziland.

The bottom line is that this is about the education of women to ensure they have the courage to stand up for themselves and for their children. This is a great day for Seanad Éireann. I congratulate the Minister of State on spelling out to us the Government amendment and what has been happening on the ground as well.

Senator Joe O'Toole: I congratulate Senator Bacik and the Labour Party for tabling this legislation. This Bill is simple, effective and comprehensive. It meets all needs and requirements. I am appalled we cannot have the attitude of accepting that this has been produced by someone of significant legal stature in this country who knows what she is talking about. It is as comprehensive as anything a draftsman in the Department of Health and Children will produce. People are afraid to take a decision. We talk about transformation of the public sector and this is the kind of transformation we need, where people have the confidence to take decisions. There will not be a better item of legislation to emerge and we could have dealt with this by accepting the Bill. If changes are needed, we could make the changes on Committee Stage. I regret this has not been done. I welcome the Minister of State and I do not take from her good intentions but it is a different issue. When the Government talks about transformation in the public sector, it is referring to decision-making, effectiveness and proper use of resources. This is all seen in what has happened tonight. This legislation has been put together and packaged in a correct and all-encompassing fashion. The Government should be big enough to say "well done" or accept that it is 90% in agreement and make some small changes. The Bill deals with everything.

In complimenting Senator Bacik, I note that the simplicity of the Bill is awesome. I found the Bill absolutely sickening to read, never mind considering what we are dealing with. Female genital mutilation is no less than a barbaric, savage, feudal and sickening act that is offensive. It breaks the existing law in terms of offences against the person.

It is of great importance that we pass this Bill, including for the reasons given by Senator Mary White. We need to educate people. I disagree with those who have suggested education is more important. I am a teacher and I believe in education. Would that education was more transformative than transmissive, as I said many times as a young teacher and as a teachers' leader. Unfortunately, it is not. Some 95% of education transmits the cultural values of one generation to another, much as we may like to change this. This is what each generation demands and it monitors change, as every teacher who has taught a class knows. This can be seen in First Communion, where those who do not go to mass still insist their children go through First Communion and Confirmation, even though they are non-practising. These are the cultural values transmitted from one stage to another. I share the views of Senator Mary White on churching. I always thought it was the dirtiest, most offensive thing that took place within the walls of a church.

I want to back up my point about the relationship between education and legislation. I defended the first teacher to win a case under the employment equality legislation of 1977. Even though everyone agreed with equality at that point, we could not create change in education until it was the law of the land. The same thing happens here.

Senator Mary M. White: Hear, hear.

Senator Joe O'Toole: Until it is the law of the land, people will be abused and controlled, held under foot and oppressed in this way. People will be told that these are cultural values. We took many bad practices abroad with us, as did those in Chinatown and other groups to countries to which they emigrated. Immigrants in Ireland need the authority from us to say stop and to say they will not agree with a practice that breaks the law. As residents of this country they have a duty to disclose where this practice is happening. This can only be put in place when we pass the appropriate legislation. Attitudinal change will follow legislative change. Would that it were otherwise but it has never been the case.

It is of great importance to articulate our views, as is happening tonight. It is important to hear a convergence of views on the issue. I was in the Seanad when we held the first debates in these Houses on AIDS. It brought a certain focus to the subject and people were not afraid to talk about what was a taboo subject for many people. This issue is the same. I was uncomfortable reading the legislation, never mind visualising what happens to young women and girls in cultures that carry out this practice.

It is also important to tell leaders of cultural groups advocating female genital mutilation that this is wrong and was never right even if it was a practice. It will never be right even if it is within the group's cultural practice. Just because it is something we have done for years does not mean it is correct. The difficulty is that we tend to educate people into thinking that if this is what we always did it must be okay. That is not the case because time moves on. There was a time when hanging was wrong but it was legal. These are the nuances we must examine in giving leadership.

It is a pity the Government could not do the big thing and examine perfectly formed legislation and send out the message that we care about immigrants. Any ordinary Irish person who sits down and listens to what we are talking about will share our views and be equally appalled. It is not that this House is ahead of the population; it is our duty to show direction and leadership on the issues such as this to our immigrant groups. We should say that we welcome them and want them to be part of us but we need them to recognise why we are doing this. We want them to buy into it. This is the law of the land and I fully support the proposal.

Senator Fiona O'Malley: Notwithstanding what Senator O'Toole said about the Government not accepting this Bill, days like this make us proud to be in politics. We have agreed a consen-

[Senator Fiona O'Malley.]

sus and I pay tribute to the Minister of State and Senator Bacik for dealing with this fluid situation. I am not sure we have secured agreement at this stage. The will of the Seanad is such that all Members are agreed we need to send a clear message that this is in an illegal practice. We must do so before we deal with the education element. It is important we work together. I pay considerable tribute Senator Bacik for bringing this Bill to the House. We have travelled a long road. Senator Bacik provided the history of women's health, women's sexual health and violence. I pay tribute to the Irish Family Planning Association, which has done much work in this area. We have made progress along the road by Senator Bacik producing this Bill and the Government accepting the need to legislate and to produce a response to the Bill fairly quickly.

I agree with Senator O'Toole that the beauty of this Bill is its simplicity. Notwithstanding the points raised by the Minister of State about the wishes of the Attorney General to strengthen and clarify the Bill, it should not take too long. The Minister of State made reference to the need to address female genital mutilation, which is also referred to in Ireland's national plan of action. This is a question of power. We should make no mistake about that. That is why it happens and why it happens internationally.

The contribution of Senator Mary White struck me and I thought about it when we were talking about cultural issues. I heard about the practice of churching through a colleague three or four years ago. I thought it was horrific yet a number of people in this room have heard of it and perhaps have had it practised on them, their mothers or sisters. That was horrific yet it was a cultural practice we put up with and it was all about power. It was a case of subjecting women to humiliation and that is what is at issue. Senator Hannigan's statistics in regard to people's beliefs in terms of why this happens are accurate. These beliefs are however misguided, a point also made by Senator Mary White. People did not know any better or did not question the practice because it was their cultural tradition. We have had enough of that. It is not fair to speak of this in the context of western traditions or cultural values as opposed to others because many African and other traditions do not buy into this. I do not believe we should set ourselves aside from it. We need to remember the values we all hold in terms of human rights. If we all pay tribute to and defend the human rights of every human being in the world we will never subject anybody to such barbarous behaviour.

I would like to speak a little about the language used in regard to this issue. I have been interested in this issue for some time. Senator O'Toole spoke of how uncomfortable people were when the issue of AIDS was first discussed. The acronym FGM is now common parlance. This was not the case only two years ago. Much progress has been made in this regard owing to the nature of Irish society. There are living in Ireland now people from a number of different cultural backgrounds and we need to deal with the issues they are confronting. I attended a seminar on the subject of FGM approximately one year ago. It was stated at that seminar that the use of terms such as "barbarous practice" is not helpful because people who practise it — the Minister of State made reference to this in her speech — strongly believe a girl is not marriageable if she has not undergone FGM. The sad part of this is that it is very often a girl's mother or grandmother who will insist on her having this done because her "saleability", for want of a better word, as a commodity in terms of her marriageability is considered damaged and totally comprised if she does not have this practice performed on her. Despite that these mothers and grandmothers know how horrific the experience is, they insist on their children and grandchildren having it done to ensure their marriageability. We need to be mindful that when we use language such as "barbaric" and so on we may be causing these people not to speak openly about the issue. Nonetheless, we need to be unambiguous about the fact that FGM is not tolerable. We must consider how we can get through to those women who insist on having this practice performed on their children.

Senator O'Toole was correct when he so eloquently stated that one will only change practice if the law in this regard is clear. Once it is provided on the Statute Book that this practice is illegal much work in terms of education can be done. It is important we are armed with an unambiguous law in regard to where Ireland stands on FGM bearing in mind our reputation internationally in terms of development aid projects. I am aware that the Minister of State, Deputy Conor Lenihan, when Minister of State with responsibility for overseas development aid was examining in particular the issue of gender proofing and all other issues in this area.

There is a long road ahead. This is but one of many issues in regard to women's health. I am glad we have moved forward on this issue. As Senator Feeney stated we must get a commitment from the Leader of the House in regard to a date to move this forward. The Minister for Health and Children, Deputy Harney, stated she does not want this to be an issue that will divide the House. It is not in anybody's interest to have the House divide on this issue when we are all agreed with the principle. I commend Senator Bacik and the Labour Party for bringing forward this Bill and the Minister of State, Deputy Brady, for bringing forward the amendment.

Senator Ivana Bacik: I thank all speakers who contributed to what has been a strong and impassioned debate. I thank my Labour colleagues, Senator Prendergast who seconded the motion and spoke from her extensive experience as a mid-wife and Senator Hannigan who spoke of the experience in developing countries in the fight against FGM and the importance of that fight within aid programmes.

This legislation has been a long time coming. It is nine years since the first Bill was introduced in the Dáil. I have been for some years working with a number of NGOs on this issue, the names of which I outlined to the House earlier. I take this opportunity to again pay tribute to them, in particular AkiDWA, the Irish Family Planning Association, IFPA, the Dublin Rape Crisis Centre and other agencies, representatives of which are in the Visitors Gallery. I thank them for all their work.

Being able to introduce this Bill in Private Members' Time is hugely important to me. I am proud to have been able to do so. As stated by Senators O'Malley, Feeney, Mary White and others on this side of the House it is an issue on which there is cross-party support. However, it often takes Private Members' Time to put a slight impetus under the Government, even where it is committed to action on an issue. I am glad I have been able to do that. This shows the importance of Private Members' Time and how it can be used by the Opposition. I am grateful to the Fine Gael Party, the Independents and the Government side for their support. I am grateful also to the Minister of State, Deputy Brady, and the Minister, Deputy Harney, who has taken a strong personal interest in this issue, for the undertaking that the heads of a Bill will be published before the summer recess and that my Bill will be read again this day six months. However, as stated by Senators O'Malley and Feeney, we need a commitment from the Leader that the Bill will be read again this day six months, although I accept this is provided for in the proposed amendments to the amendment, and that law on this issue will be at least introduced in this House in six months time. I am glad of those commitments.

The Minister of State made some points in regard to my Bill. I regret she did not see fit to accept the Bill as is as I believe it deals with the key issues in that it defines FGM, tackles the issue of the defence of consent, provides for extraterritorial effect and, most important, provides a strong penalty of 14 years imprisonment. I am aware that in some countries such as Nigeria a low penalty, a €5 or €6 fine, is applicable in this regard and that people often pay the fine in order to carry out the practice. It is important we have a strong penalty for this in

[Senator Ivana Bacik.]

our law and that we make provision for the DPP's consent. The other points made by the Minister of State could be easily dealt with. This is a straightforward piece of legislation.

I heard at the day of action in European Parliament House on 4 February, organised by the National Steering Committee, at which I had the honour of speaking and on other dates heard speeches from women living in Ireland upon whom FGM was practised. Their account of the horrific procedure as practised upon them has galvanised me and I know has impassioned others on this issue. As a feminist and a mother of two small girls, I believe passionately that we need to pass this legislation as a matter of urgency. It is of symbolic and practical significance. It is of practical significance if it prevents even one girl living in Ireland having FGM performed upon her. It is of immense symbolic significance because it is a small step in the huge worldwide campaign to stamp out this brutal practice of the abuse of the rights of women and children. As other speakers stated, this is about abuse of power and the powerlessness of women and children in developing countries worldwide. Our commitment to pass this legislation is an important and symbolic step in trying to end the oppression of women and girls worldwide. I believe that is the light in which we all see this. I am glad with the consensus we have achieved tonight. I thank everyone for their support.

An Cathaoirleach: Before I put the question, I understand there have been negotiations between the groups on the wording of the verbal amendment moved by Senator Feeney to the amendment to the Second Reading of the Bill. I call on Senator Feeney to clarify how she now wishes to proceed as I understand she wishes to withdraw that verbal amendment.

Senator Geraldine Feeney: I wish to withdraw the verbal amendment moved earlier by me to the amendment to the motion for Second Stage of the Bill.

An Cathaoirleach: Is that agreed? Agreed.

Senator Geraldine Feeney: I move amendment No. 1 to amendment No. 1:

In the 7th line, after "continue," to insert "and the Minister resolves to publish the heads of a Bill before the summer recess;".

Amendment to amendment agreed to.

Senator Geraldine Feeney: I move amendment No. 2 to amendment No. 1:

In the last line, to delete "12" and substitute "6".

Amendment to amendment agreed to.

Motion, as amended, agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Geraldine Feeney: Tomorrow at 10.30 a.m.

Adjournment Matters.

National Drugs Strategy.

Senator Jerry Buttimer: I thank the Cathaoirleach for allowing me to raise this matter on the Adjournment. Cuirim fáilte roimh an tAire agus comhghairdeas a dhéanamh leis. I thank

him for being here. I also compliment the Minister of State, Deputy Curran, on the excellent work he did in the Department.

As the Minister knows following his attendance at the Joint Committee on Arts, Sport, Tourism, Community, Rural and Gaeltacht Affairs today, the debate on the drugs problem is ongoing and has been augmented by the growth of head shops which is reaching epidemic proportions in urban and rural communities which have been hit by the impact of the use of many drugs and the increasing influence of a polydrug culture. The growth of head shops has galvanised communities to such an extent that we have seen protest marches and petitions across the country. I welcome this campaigning mode of operation. In a series of reports the *Irish Examiner* has highlighted the growth of the illegal drug trade.

The national drugs strategy is the vehicle used by the Government to drive its response to the problem of illegal drugs. The pillars of the strategy are predicated on a Government commitment and funding. I understand the Minister is very committed to the strategy, as he was in his previous role as Minister of State. The Minister of State, Deputy Curran, was also committed to it. There is a fear, however, given the paralysis in the Exchequer finances, that funding will be cut and that there will be a reduction in the allocation of resources to such an extent that there will be major implications for the service agreements with voluntary agencies and organisations. There is also a fear that grant aid and funding to organisations will be frozen completely and that this will have an impact on the services provided and the staffing levels of local drugs task forces and outreach programmes. I hope to liaise with the Minister on this issue. I refer to Fellowship House in Cork which for many years has been promised money which seems to be held in abeyance. The Minister has visited Fellowship House and Tabor Lodge in Cork, both of which are excellent service providers. The challenge faced by the Government, the Opposition and local communities is to reduce the supply and usage of drugs in communities. This will require leadership and action on the part of the Government and everyone else.

I have a number of questions for the Minister. I do not wish to be political, but the decision of the Cabinet or the Taoiseach — I am not sure who made it and I am open to correction — not to appoint a Minister with specific responsibility for the national drugs strategy, for which the Minister and the Minister of State, Deputy Curran, had responsibility, sends the wrong message. The Minister's brief covers the Department of Community, Equality and Gaeltacht Affairs. His predecessor, Deputy Ó Cuív, had dedicated responsibility for the strategy which he would have driven forward. If there is to be no Minister with dedicated responsibility for tackling the drugs problem, it sends the wrong message. As I said at the meeting of the joint committee today, I accept completely the Minister's *bona fides* and do not want to be political, but we need to eliminate, as much as we can, the scourge of illegal drugs.

In an article in the *The Sunday Tribune* on 4 April its public affairs correspondent, Ken Foxe, noted that a drugs body had been left without a researcher owing to the freeze on recruitment in the public sector. How many posts remain unfilled across the network of programmes? How many such bodies have had their funding curtailed to the point where the services they offer have been diminished or staff have not been replaced? What impact will the freeze on recruitment have on such programmes?

The Minister spoke at the meeting of the joint committee about the launch of the drugs awareness campaign by the HSE. One of the best things done by the HSE and the Minister, in his previous role as Minister of State, was to engage in "The Party's Over" campaign which helped to focus people's minds. I stand with him in promoting programmes in our schools. I participated in the Walk Tall programme and found it had major benefits.

[Senator Jerry Buttimer.]

I look forward to the Minister's reply and highlight, once again, that we do not have a Minister with dedicated responsibility for tackling the drugs problem.

Deputy Pat Carey: I thank the Senator for his kind remarks. I will address the issues he has raised as best I can.

The strategic objective of the national drugs strategy 2009 to 2016 which, as everyone knows, was launched last year is "to continue to tackle the harm caused to individuals and society by the misuse of drugs through a concerted focus on the five pillars of supply reduction, prevention, treatment, rehabilitation and research". The strategy sets out Government policy on problem drug use and 63 actions — approximately half the number of actions which were included in the last strategy — are included for implementation in the period involved.

One of my concerns was that there was a wide and disparate range of objectives, some of which would be very difficult to achieve. The Government is fully committed to addressing the drugs problem and my appointment as Minister with direct responsibility will facilitate the implementation of the drugs strategy in a timely and co-ordinated fashion. Many have been campaigning for some time to have the Minister with responsibility for the drugs strategy a member of the Cabinet, an issue the Senator raised.

Today I met some of the groups which represent the community and voluntary sector. We discussed that issue. There will be greater coherence in the Department because the social inclusion remit of the old Department of Social and Family Affairs is being transferred to us, as is the Family Support Agency. The equality portfolio will also be transferred from the Department of Justice, Equality and Law Reform to my Department. Expertise and experience which we do not have will come in to the Department.

I look forward to an opportunity to explore how the issues of equality, inclusion and exclusion can be embedded as part of policy not just for the current Government but for future governments. The Senator will agree there has been a tendency for some issues to be treated in a silo fashion and while I agree the office of Minister for drugs was important, the unit remains. I would like to expand on what was in place. It is two years since I was in the Department but I have been struck by the depth and quality of work undertaken throughout the country, albeit with limited resources. In that context I want to establish how we can engage the broader expertise of the Department and other Departments. The Minister of State at my Department, Deputy Mary White, will work on this while, for example, the Minister of State at the Department of Health and Children, Deputy John Moloney, will be involved in the work of the Department in the mental health area.

I spoke at a family support network conference in Dublin Castle recently and mental health and bipolar disorder was raised in the context of the drugs issue. Rather than addressing issues in isolation, let us try to marry the available expertise. It is much better to have somebody at the Cabinet table every week fighting for resources for the Department rather than, with the best will in the world, having a Minister of State, a position I once held, coming in once or twice a year to make his or her pitch for resources. I assure the Senator I am as committed as ever to ensuring all elements of the national drugs strategy are implemented and I look forward to working with everybody over the next two years in that respect.

During my previous period as Minister for State with responsibility for this area, significant steps forward were made in the drugs area. From my experience at that time, I am familiar with the ongoing issues in terms of the drugs problem in communities and the initiatives being taken to address them. I acknowledge the excellent work done by my colleague, Deputy Curran, when he served as Minister of State, as he drove the finalisation of the National Drugs

Strategy 2009-2016, the implementation of which is being pursued vigorously across a range of Departments and agencies.

A number of the actions in the strategy focus on co-ordination arrangements for its implementation, and some changes have been made to the institutional structures involved, including the establishment of an office of the Minister for drugs. These changes will streamline administration and facilitate more effective co-ordination and partnership. A drugs advisory group has been set up under the strategy, with membership from across the statutory, community and voluntary sectors. This group, which meets monthly and which I chair, advises me on operational matters relating to the national drugs strategy and oversees and supports the work of the drugs task forces.

An oversight forum on drugs, which I also chair, has also been established and meets every quarter. The primary role of the forum is the ongoing high level examination of progress across the strategy and addressing any operational difficulties and blockages that arise. The current structural arrangements in place to support the implementation of the strategy will provide the basis for more robust monitoring of progress. They will also provide a mechanism to identify blockages at an early stage, thus allowing any problems to be followed up. I am determined that progress will be made throughout the period of the strategy with all sectors working in a co-ordinated and targeted way to achieve the implementation of the agreed actions.

I was one of the main advocates of a combined approach to substance misuse, involving alcohol and illicit drugs. I very much welcomed the Government decision to prepare a national substance misuse strategy and I am committed, along with my colleague, the Minister for Health and Children, to bringing proposals for such a strategy to Government before the end of the year. I assure the Deputy of my commitment to press ahead with the implementation of the national drugs strategy and to support the timely finalisation and subsequent implementation of the national substance misuse strategy.

With regard to the vacancy to which the Senator referred, the national advisory committee on drugs, NACD, plays an important role in supporting the implementation of the national drugs strategy through the provision of advice to Government on problem drug use in regard to consequences, prevalence, prevention and treatment. It has a challenging work plan and research programme in place, including Drug Prevalence Survey: Drug Use in Ireland and Northern Ireland 2010/2011, Substance Misuse Rehabilitation Cohort Study, and research on head shops. In addition, the following projects are being finalised for publication: Risk and Protection Factors for Substance use among Young People, which is a comparative study of early school leavers and school attending students and a drug markets study

Delays arose in the filling of the research officer post in the NACD against the background of prevailing restrictions on recruitment. My officials have been pursuing this matter and it is intended that the post will be advertised in the coming weeks. There are two vacancies for co-ordinators of drugs task forces and it is anticipated they will be filled in due course. There is a slow roll-out of the employment of the rehabilitation co-ordinators, which was recommended in the famous drugs rehabilitation report which was published during my previous stint in the Department.

The Senator raised the issue of Fellowship House. I am aware of the good work done by that organisation and I hope in the next few months to visit the people running it, not just for the sake of visiting them but also to explore how I may be able to help them.

Senator Jerry Buttimer: I thank the Minister for his reply. What is the timeframe for filling the rehabilitation co-ordinator posts? I welcome his commitment to visit Fellowship House and I hope he will expedite the grant payment and meet those involved.

Deputy Pat Carey: With regard to the filling of the rehabilitation co-ordinator posts, I cannot give a precise date off the top of my head. Some of them are being rolled out but there will not be as many of them as recommended in the report. These will be built on over a period.

Television Reception.

Senator Cecilia Keaveney: I thank the Cathaoirleach for allowing me to raise this important issue for my constituency and the Border area. I welcome the Minister of State.

Irish language broadcasting in Northern Ireland received a boost when the Irish and UK Governments agreed a memorandum of understanding which provides a framework for continuing co-operation on broadcasting issues on the island of Ireland. The memorandum is aimed at ensuring a smooth transition during the digital switchover and the switch-off of analogue services on the island of Ireland. It was signed by the Minister for Communications, Energy and Natural Resources and the Secretary of State for Culture, Media and Sport, Ben Bradshaw. The memorandum commits the two Governments to facilitating the widespread availability of RTE services in Northern Ireland and BBC services in Ireland on a free-to-air basis. It will also ensure the continuing widespread availability of the Irish language channel, TG4, in Northern Ireland following the digital switchover.

At the time the Minister for Communications, Energy and Natural Resources said the agreement was the culmination of a successful period of co-operation on broadcasting issues between the Governments of Ireland and the UK and its benefits would be important. A smooth transition to digital television throughout the island of Ireland is important, especially for TG4, and the agreement will facilitate the availability of RTE on an all-island basis. The agreement will also help the delivery of broader economic and social benefits which will be gained by all citizens from the release of digital dividend spectrum following the closure of the analogue service. The Secretary of State for Culture, Media and Sport, Ben Bradshaw, said he was pleased to sign the memorandum of understanding as it was an important step in ensuring everything went smoothly and that BBC services would continue to be available on the island of Ireland.

I raise this issue because many of my constituents who pay the licence fee do not receive RTE's channels. RTE has done a great deal of work at its sites in Holywell and Limavady in Northern Ireland. Will the work being done on both sides of the Border maximise reception quality for those who receive either no signal or a very poor one? Will it overcome existing problems in order that those who do not receive a signal will receive one and that when the switchover takes place those who have found a solution through free-to-air services from, for example, the Limavady transmitter will not find that the good service they currently receive will disappear? In the context of the memorandum of understanding, it is intended to provide a good service for people in the North and that from the North BBC services will be provided for people in the Republic. However, it should be borne in mind that many do not currently receive RTE services.

In May 2008 the *Inishowen Independent* ran a story on how television services on Inishowen were going digital but that reception quality would not improve for householders. It was indicated that, although RTE was upgrading the transmitter at Holywell Hill, Altaghderry, Killea and that the digital service was due to come on stream by 2012, this would not address the problem of bad reception that had plagued areas across Inishowen. Scores of households in the Burt area have been forced to subscribe to satellite providers such as Sky in order to receive clear RTE television pictures. The fact that they have to pay the licence fee of €160 to RTE and €240 to Sky means there is an additional cost to them.

RTE sought planning permission from Donegal County Council to build a prefabricated cabin at Holywell Hill to house the new digital broadcasting equipment. Experts in RTE say that, while the signal will be digital, it will be broadcast terrestrially. They also say it will not provide much comfort for those households that currently cannot receive clear analogue pictures. The spokesperson for RTE said that when the signal went digital, it would be no better or no worse than the signal currently received in households. RTE states it has met its legal obligations by providing coverage for 99% of the population and that local conditions mean 100% coverage cannot be achieved.

Many have been trying to find a solution to the problem. Some who work in the industry say they have been able to install freeview systems using satellite dishes in recent months. The crux of the matter is how we determine whether the digital television transmitters in the North will carry RTE and TG4 on freeview services. We assume they will because if these services are to be provided for people in Belfast and Inishowen receives a signal from the North, it should cover the area. This is a technical subject, but people in my area do not care how the problem is solved. They experience enormous problems because they cannot receive a crystal-clear signal. The television pictures they receive are snowy. We had enough snow during the winter without having to worry about it now. In the Muff area there is a perfect signal received from Limavady, but there is a shadow effect in the signal received in Quigley's Point and Redcastle. The signal received in the Clonmany and Urris areas also requires to be dealt with.

A memorandum of understanding has been agreed and much work is ongoing. We need to find a solution to the problem on a cross-Border basis. Will the Minister of State indicate whether it is accepted that there is a problem with television coverage in the Inishowen area?

Minister of State at the Departments of Health and Children, Social Protection and the Environment, Heritage and Local Government (Deputy Áine Brady): On behalf of the Minister for Communications, Energy and Natural Resources, Deputy Ryan, I thank the Senator for raising in the Seanad the issue of the availability of Irish television services in Northern Ireland in the context of the switchover to digital terrestrial television services.

The development of digital broadcasting is an imperative at an international, European and national level. Throughout the world countries have agreed that traditional analogue broadcast services will no longer be protected from interference after 2015. Within Europe there is widespread agreement that all analogue broadcast services will cease by 2012. This provides an opportunity for Ireland to upgrade its terrestrial free-to-view television services from analogue to digital and, while so doing, seek ways in which to provide greater access to the Irish public broadcast services throughout the island of Ireland.

It is important for Ireland to upgrade to digital terrestrial television services for a number of reasons. Analogue networks are becoming increasingly obsolete and expensive to operate. Digital technology is essential in order that our broadcasters can continue to compete with commercial broadcasters. Digital terrestrial television, DTT, is more spectrum efficient and versatile than the analogue television service. DTT can provide more services for television viewers. These include more television channels, more radio channels, electronic programme guides and even HDTV services. Because DTT is more spectrum efficient — it can provide eight television channels in the same amount of spectrum as one analogue television channel — spectrum in the television frequency band can be reallocated to other services such as broadband or mobile broadband services. This provides a digital dividend which has the potential to provide a significant economic benefit for the country.

The Broadcasting Act 2009 provides for RTE and TG4 to provide their broadcast services, in as far as possible, throughout the island of Ireland. In addition, the Act provides for RTE to build and operate a free-to-view digital television service as a replacement for the current

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analogue service. This service must at least provide space for RTE One, RTE Two, TG4 and TV3. The RTE free-to-view digital television service is due to launch to 90% of the population by 31 October.

In developing plans for digital terrestrial television services in Ireland the Minister was cognisant that the United Kingdom was also upgrading its television services to digital and, in particular, that the Northern Ireland switchover is planned for the last quarter of 2012. In this regard and in order to provide for a co-ordinated approach to the analogue network switch-off on both sides of the Border, the Minister's officials entered into discussions with their United Kingdom counterparts. As a result of these discussions, a memorandum of understanding was signed jointly by the United Kingdom and Irish Governments on 1 February, the purpose of which is to provide a mechanism for co-operation between the Governments of Ireland and the United Kingdom in providing a framework for the transition to digital terrestrial television services and the analogue network switch-off; to provide for TG4 to be carried in Northern Ireland on the digital television network and to provide an opportunity for RTE to be transmitted within Northern Ireland and for the BBC to be transmitted in Ireland. The provision of BBC services throughout Ireland is a commercial decision for the BBC, as, unlike RTE, it does not have a mandate to provide its services throughout the island of Ireland. In regard to TG4, the memorandum of understanding draws on the Belfast — Good Friday — Agreement 1998 and the 2006 St. Andrews Agreement which provided for the availability of TG4 throughout Northern Ireland on the analogue network. The memorandum of understanding provides for TG4 to be carried on the digital network in Northern Ireland. In regard to RTE, the memorandum of understanding commits the two Governments to seeking to find a technical and cost-effective solution to the provision of RTE services throughout Northern Ireland.

Since it was signed, officials from the two Governments have continued to meet and work together to provide for full implementation of the memorandum of understanding. The most recent meeting took place in March and a further meeting is planned for May. The meetings are examining practical ways in which the memorandum of understanding can be used to provide for a smooth transition from analogue to digital television services across the island of Ireland and how best to provide for RTE and TG4 services to be made available throughout Ireland.

Senator Cecilia Keaveney: I asked one specific question. Given that the officials responsible for the memorandum of understanding will meet in May, can the Adjournment Matter I have raised be brought to their attention regarding the difficulties experienced in the Inishowen area? The officials might need to talk to RTE spokespersons to obtain further details on the technical difficulties experienced. Solutions can be found. I ask that the response of the officials be brought to my attention.

Deputy Áine Brady: I will ask if that can be done.

The Seanad adjourned at 7.30 p.m. until 10.30 a.m on Thursday, 22 April 2010.