

SEANAD ÉIREANN

Déardaoin, 22 Aibreán 2010.
Thursday, 22 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 Paschal Donohoe that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for Justice, Equality and Law Reform to give an update on all discussions to introduce Internet blocking in Ireland and the measures being taken to ensure legitimate Internet service providers and Internet-based companies are not affected by such proposals.

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

The need for the Minister for the Environment, Heritage and Local Government to outline the reason phase 2 of the Loughrea regional water supply scheme was not listed as a scheme to go to construction in the water services investment programme 2010-12, as this omission follows previous commitments made in 2004 and 2007 that the scheme would go to construction.

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: The Order of Business is No. 1, expressions of sympathy on the death of the President of Poland, to be taken at the conclusion of the Order of Business and conclude within 30 minutes; and No. 2, Fines Bill 2009 — Second Stage, to be taken at the conclusion of No. 1 and on which spokespersons may speak for 15 minutes and all other Senators for ten minutes and Senators may share time, by agreement of the House.

Senator Liam Twomey: While we should all welcome the fact that Mr. Boucher has responded to public anger in regard to his pension by saying he will not now exercise the option of retiring at the age of 55 years, we should have in the House a serious debate on the issue, in respect of which the Government has fared very badly. It is clear that the Taoiseach said he could do nothing about the matter legally and that he has shown himself to be incredibly weak in taking on the banks and the current crisis in the public finances. We need to have a serious debate in the House on what is happening in the banks which are running riot. They, rather

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than the Government, are in control of the restructuring of the banking system. There is a need for the Taoiseach and at least the Minister for Finance to come to the House and show moral backbone in the taking on of senior officials in the banking sector.

The Leader of the House knows as well as I do that in the next budget the level of Government expenditure will be reduced by €1 billion. This means there will either be a pay cut for public sector workers or a cut in payments to social welfare recipients. If we allow the carry-on I described to continue in the meantime and if the people believe the banks are getting away with murder, there will be no public appetite for further cuts in Government spending. There is a need for serious debate on this issue and for the Minister for Finance to come to the House.

Another issue I would like to have debated in the House is completely unrelated to the news headlines at the moment. It is about the decoupling of agribusiness plcs from co-ops. Many of the plcs throughout the country involved in agribusiness are divesting themselves of the co-ops from which they first sprung. When one sees a sudden rise in value in those plcs that declare they are going to break away from their co-op roots, one has to ask whether this is a good idea. Co-ops are very important from a socioeconomic viewpoint to rural society as well as from a food security standpoint and they are crucial as economic entities. Both Houses of the Oireachtas need to have a serious debate as to what is happening in agribusiness at present because these enterprises are much bigger than anything we have talked about concerning rural Ireland over recent months. If anything were to go wrong in the future with co-ops because they were undercapitalised, had taken on too much debt or did not have proper business plans, the taxpayer could end up having to bail them out or else they would fail, which would be to the detriment of rural communities. I would like to have a serious debate on the changes that are occurring in agribusiness at this time.

Senator Joe O'Toole: I would like the Leader to update the House on where we stand on the Report Stage of the Dog Breeding Establishments Bill 2009. There was an understanding to the effect that it would come through the House some weeks back and an ugly rumour is circulating that some people on the Government side are somewhat reticent and hesitant to support Government policy on this issue.

(Interruptions).

Senator Joe O'Toole: I am sure it is not true, but I would like if the Leader would confirm that the Bill is going through the normal process.

Senator Jerry Buttimer: Where is Dan?

Senator Paudie Coffey: Confirmation.

Senator Joe O'Toole: There did not appear to be any great reason for it to be delayed after Committee Stage, and some Members would like to express their views further on this matter on Report Stage. I am sure Members in the Leader's party take the same view and I should like him to scotch that ugly rumour, if he would be so kind.

Senator Paul Coghlan: So that they will not be muzzled.

Senator Joe O'Toole: In recent times it is interesting to see how the different standards apply. We noted recently that Bishop Jim Moriarty's resignation was accepted by the Vatican on the basis that he felt he should have challenged the culture, and people accept that, rightly or wrongly. If we take a parallel situation within the banking industry, we are aware that there

were at least 15 senior bankers who accepted an e-mail directing them to prevent information getting to the market and to consumers and investors and, effectively, they co-operated and colluded with this culture. Everybody seems to believe we should deal with the person who sent out the e-mail, and this is where the problem starts and continues. It is akin to Germany in the Second World War where people said they just did what they were told. There can be no excuses for people who voluntarily colluded in this wrong involving people losing money and which led to many of the current problems in the State. This is going on all over the place and I would like if we could get a clear indication that action will be taken in this regard. It is just not acceptable.

Some committees are dealing with the question whether the Houses of the Oireachtas should begin their business with a prayer and Atheist Ireland are getting very agitated on the issue. How do atheists feel about being subject to an act of God over the last week or so? Theists and atheists are all the one to me, so it is not an issue for me, but I just wonder about this. I put the question because I tend to agree with Michael O'Leary that it is grossly unfair that airline companies should be deemed to be responsible for six days' board and accommodation for people for something over which they had no control. We should talk to God or whomsoever we believe is responsible for this, but we should leave the airlines out of it.

Senator Dominic Hannigan: The news that the Quinn Group is to be allowed to write new insurance in the UK is welcome for its employees. Senator O'Reilly and I attended a meeting in Navan last week with 200 Quinn Group employees. Navan, as the House will know, is suffering severe unemployment at the moment, so the last thing it needs is further job losses. The number one priority expressed to us by staff was a re-opening of the insurance company's ability to sell in the UK. I welcome this announcement and believe everyone present wishes the Quinn Group employees well in their endeavours to hold on to their jobs.

I listened this morning to Dublin Bus announcing plans to completely change its services in the Dublin area. This follows on from a comprehensive review of services and we all recognise the vast improvements in the network as a result of the quality bus corridors being finished. We see faster journey times and, as a result, more journeys may be made with fewer buses. That bodes well for the commuter area in general.

People in counties Meath and Kildare tell me quite often that they need to see better cross-Dublin services and improved orbital routes. Therefore Dublin Bus's announcement this morning to the effect that this is exactly what it is doing is good news. We need to see in-depth consultation with staff, however. They see what is happening at the coalface and their views need to be taken into account.

Like others, I welcome the decision by the chief executive of the Bank of Ireland to forgo his pension top-up. There has been some debate about the deal that was done. Mr. Boucher was doing precisely what anyone else would do, namely, seeking the best deal he could get for himself. The error in the deal rests with those on the opposite side of the table who should have been more aware of the potential consequences of such an agreement in the current economic climate, because this single deal had the potential to sway people away from the public sector pay deal. Mr. Boucher is correct in what he has done and is leading the way. He is an example to other industry leaders who have failed to do this and effectively given two fingers to the people. I urge such people to take a leaf out of Mr. Boucher's book.

On the recent aviation ban, like Senator O'Toole I am very concerned about the losses to passengers as a result of having to put themselves up in hotels and buy food, and the potential loss as a result of losing wages. I called yesterday for the Minister to make the airlines aware of their roles and responsibilities in this matter, but it is clear that this is a unique event. I am not sure whether it is fair to expect one particular group, either passengers or airlines, to cough

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up for the costs involved. I suggest the Minister asks the airlines to put together an estimate of the compensation claims involved. If the figure is excessive, I suggest the Minister seeks some sort of contribution from the European Union to help allay the costs.

Senator Mark Dearey: I welcome Mr. Boucher's forgoing of his pension top-up and his decision to work beyond the age of 55. Senator Hannigan is right to recognise that it is an example of some leadership, albeit belated. At the same time, however, the door is still open in terms of how these types of bonuses may be given in the future. For that reason I reiterate Senator Boyle's call the other day to the effect that these pension pots be taxed. This is necessary and we need to build in some type of fiscal certitude in the future which will dissuade people from creating what is essentially a public scandal. This has been a scandal and people have been deeply angered. I described myself the other day as having been hit by an almost life-sapping experience when I heard the news last week. I believed this could not be happening at a worse time in terms of the public service pay deal and so on. I hope this change of heart will breathe some life into the prospect of that initiative getting over the line. I sincerely hope so for the sake of the country and for the restoration of good order in the public finances. I repeat that it is essential that pension pots should be taxed.

I assure Senator O'Toole that the Dog Breeding Establishments Bill, that seeks to restore the good name of the sector which has suffered in the UK and international press because of the misdeeds of a few, is well on course to go through.

Senator Joe O'Toole: We understand the position of the Senator's party.

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

Senator Mark Dearey: The improved standards and regulations that will follow the passing of the Bill will benefit the entire sector.

Senator Jerry Buttimer: Is Senator Boyle muzzled?

Senator Mark Dearey: Will the Leader allocate time to discuss the issue of planning reform? There has been an extraordinary situation in Dundalk in the last few days. Hundreds of people have discovered they have made formal objections without their knowledge, with the accompanying €20 payment to the planning authority, to a very large leisure resort being built beside the dog racing stadium which many Members will probably be familiar with and will have visited. Hundreds of citizens who signed petitions expressing worry about various aspects of the procedure now find themselves in the position where they are formal observers of the planning application, without their knowledge but with the €20 having been paid by an as yet unknown individual. It is highly irregular.

An Cathaoirleach: The Senator is way over time.

Senator Paudie Coffey: That is a matter for the local authority.

Senator Mark Dearey: We are talking about a sum of between €4,000 and €6,000 having been paid. It is important that we examine this issue in the context of a discussion on planning reform.

Senator Paudie Coffey: I welcome the decision by Mr. Richie Boucher not to take the hike in pension entitlements. As I said in the House recently, the messages we give and the language we use are very important, especially at this very sensitive time. To accept that massive hike would have been wrong and at least Mr. Boucher has seen the light. However, the Government

must put mechanisms in place to ensure no further hikes in pension entitlements on such a massive scale are permissible. The Government must be strong on this matter.

With regard to the theme yesterday of emphasising the positive things happening in the country, will the Leader allocate time for a debate on manufacturing and the export potential the country is developing? Thousands of small businesses were in existence prior to the arrival of the multinationals and successfully creating employment and developing skills and trades in their communities. Unfortunately, owing to a lack of focus or lack of competitiveness many of these businesses have struggled, but they have survived and are still strong. I hope they will have a strong future. We should consider their potential, what small business and manufacturing mean to the country and how they can stimulate employment.

In response to Senator Dearey, perhaps the Fianna Fáil Senators are beginning to see the light on the Dog Breeding Establishments Bill and the threat it poses to the greyhound industry and rural sports such as hunting. I urge the Leader to bring the Bill before the House and accept the amendments Fine Gael has proposed to protect the industry and rural areas. We would certainly welcome this. I also welcome the fact that the Leader is beginning to see the light.

Senator Mary M. White: Next Tuesday representatives of the survivors of thalidomide will meet the Minister for Health and Children, Deputy Harney. I am optimistic that after 50 years of suffering by the survivors of thalidomide, the Government will provide adequate compensation in due time and a sincere apology on behalf of the State on foot of the negligence of the then Department of Health on the issue. Dr. John O'Connell, a former Minister for Health, published a book in 1989 entitled, *Crusading Doctor and Politician*. He devoted a chapter to the tragedy of thalidomide in which he outlined the negligence of the manufacturers. They gave a cursory notice of withdrawal of the drug in a circular and did not ensure it was withdrawn from pharmacies throughout the country. Dr. O'Connell stated that three years after the withdrawal of the thalidomide drug, he had been able to buy it across the counter in a pharmacy in Ireland without a prescription.

Yesterday Fianna Fáil Deputies and Senators met four representatives of the survivors' organisation. It was clear at the meeting that my colleagues were emotionally engaged on a serious level and determined to resolve the issue. The State has been grudging in its compensation in the last 50 years and I am hoping it will now step up to the mark. One of the survivors we met is only 3' 8" tall. Her mother had only taken two thalidomide tablets. Mr. John Stack's deformity affects his hands. His mother obtained the drug after the drug had been withdrawn. This is a very serious issue for the State, but I am hopeful the suffering will come to an end.

Ten thousand children were victims of thalidomide. Many of them died young and no one thought they would live to more than 50 years of age. As they are spirited and steel willed, they have survived and been able to work and have children. However, they have exerted such pressure on them that their limbs have aged beyond their years and they are in constant pain. I was speaking to one of them this morning and she told me she was dosing herself with solpadeine owing to the pain she was suffering after yesterday's traumatic and emotional experience.

Senator Eoghan Harris: The philosopher Plato imagined the perfect republic. To ensure there was no back-sliding, he imagined a class of guardians. The Romans who were wiser people asked, *quis ipsos custodiet custodes* — who will guard the guardians? That question is apposite this morning in the context of two examples of failure on the part of our guardians. There has been much talk about the responsibility of politicians, Mr. Richie Boucher and other bankers. As Senator Hannigan said, Mr. Boucher did what anyone would do — try to improve his

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situation. The onus lay on the public interest directors to shout “No” when he tried to do this. Plato said a man’s character was determined by his ability to say “No”. The public interest directors who were sent there by us slept on duty. Senator Bradford spoke cogently yesterday about the absence of a standard or code of public morality in this country. Did anyone call in the two directors before they were sent to the bank, stare them in the eye and say, “You are being sent there by the Irish Republic to look after its interests, so do not sleep on duty”? Will the Minister now recall them, given that they have slept on duty? They have not done their duty by the State.

There is a second example. The Chief Justice, Mr. Justice Hardiman, has cast a doubt in the strongest terms on the judgment of another public servant, Mr. Justice Flood, in the tribunal. This is no surprise to me. Any judge who could sit down with Mr. Frank Connolly and set up a centre of public inquiry to carry on the habit of abuse by aged loons such as Mr. James Gogarty and bring that carry-on into the public domain has been suspect in judgment for a long time. It is time the State told its public servants that they must do their duty by the Irish Republic.

An Cathaoirleach: With regard to the courts and the rates paid to legal representatives, they are not to be commented on in the House this morning. Those courts are still sitting and I do not want people to say we were trying to influence what was said in the courts. I appreciate the Senator’s motivation.

Senator Cecilia Keaveney: I wish to raise a very serious issue. Yesterday in the United Kingdom there was a finding by a court in a case brought by a person currently on the sex offenders register. He claimed his civil and human rights were being violated by the fact that his name could never be removed from the register. The court found this to be the case and said the legislation would have to be examined to loosen the rules regarding the sex offenders register. This ruling will have implications for Ireland and will definitely have implications for Northern Ireland and, as a consequence, the north west. Will the Leader draw the attention of the Minister for Justice, Equality and Law Reform to this issue and seek an urgent response on whether we will follow what appears to be the direction in the United Kingdom in considering a relaxation of the rules pertaining to the sex offenders register? I am not sure there is a cure for sex offenders. I am on the Council of Europe and I understand the concept of human rights. However, this week a report on sexual assault treatment units was launched by the Minister for Health and Children, Deputy Mary Harney, which outlined serious facts about people who have been sexually abused and how difficult it is to get people to come forward. Their human and civil rights are also very important.

Last month, I raised this matter on the Adjournment and the issue of working in co-operation in the north west to maximise resources and to minimise the legislative changes on both sides of the Border so that people on the sex offenders’ register cannot hide on the other side of the Border. There is no all-island sex offenders’ register. The situation has changed and it is very important the Minister works in co-operation with any legislative changes that may be deemed necessary in the UK. I ask that those changes be minimal and that they would be done with the benefit of absolute scientific and other research to underline any changes.

Senator Jerry Buttimer: Yesterday on the Order of Business the Leader advised me to stop and to listen and I did.

(Interruptions).

An Cathaoirleach: No interruptions, please.

Senator Jerry Buttimer: What I discovered was the Taoiseach saw nothing, heard nothing and did nothing. What happened in the Fianna Fáil tent at the Galway races where we have discovered that among some of the recognisable revellers in the tent was Mr. Michael Fingleton of the Irish Nationwide Building Society?

An Cathaoirleach: Please, Senator Buttimer.

Senator Jerry Buttimer: Was Mr. Fingleton like a guest at a banquet? Was he asked any questions about the role of Irish Nationwide? Senator Harris rightly speaks about people being asleep on duty.

An Cathaoirleach: The Leader will reply later.

Senator Jerry Buttimer: How can the Government justify a man being paid €55,000 by four times in his last sequence of employment and yet he will not give back the money to the State? Were the public interest directors called in by the Minister for Finance, and if not, why not? They are there on our behalf. We and the ordinary people are bailing out the banks, yet we get spin from Fianna Fáil and the Green Party. What is happening? Which argument does the Leader follow? Does he follow the Seán Fleming argument or the Ned O’Keeffe argument regarding the Financial Regulator and Anglo Irish Bank? What is the real Fianna Fáil position?

My final question is about Report Stage of the Dog Breeding Establishments Bill. Has there been a muzzle put on Government? Has it been spancellor? When will we take Report Stage? Why has the Government group not accepted legitimate amendments from Fine Gael and others in this House?

Senator Terry Leyden: Will the Leader arrange an early discussion about the current banking situation? My point does not arise out of the comments made by Senators Harris and Buttimer because I had decided to make this point anyway. It is inappropriate for a public interest director to become chairman of Anglo Irish Bank. Alan Dukes should decide to consider his position now. I will write to the Minister today to ask him to ask Mr. Dukes not to accept this position. He cannot be the poacher turned gamekeeper nor can he be neutral in a situation where——

An Cathaoirleach: The Senator should ask a question of the Leader.

Senator Terry Leyden: Does the Leader consider it appropriate that Alan Dukes, former leader of Fine Gael, a public interest director, can be acting in the public interest when he goes native and justifies the existence of Anglo Irish Bank?

An Cathaoirleach: Please, Senator, the man is not present.

Senator Terry Leyden: That bank has a very limited future.

Senator Maurice Cummins: Ask the Minister for Finance.

Senator Terry Leyden: I am also saying——

An Cathaoirleach: If a person is not present in the Chamber, there is not much use in referring to anyone’s character.

Senator Terry Leyden: He was in the House long enough. He is a public service——

An Cathaoirleach: He is not present in this House now.

Senator Terry Leyden: I do not wish to dispute the point.

An Cathaoirleach: The Leader will reply to the question raised by the Senator.

Senator Terry Leyden: By the way, this House has to do the job of the public interest directors of the Bank of Ireland and Deputy Mary O'Rourke had to do their job and the Minister of State, Deputy Mansergh.

Senator Maurice Cummins: The Senator was praising the Tallaght strategy last week.

Senator Terry Leyden: The same goes for the public interest directors in Permanent TSB. Gillian Bowler should stand down as chairperson of the board. She stood over €7.4 billion going. At the annual general meeting on 14 May, I will ask her to stand down as the chairperson of Permanent TSB. She is doing no work. I have made my point.

An Cathaoirleach: No, Senator. It is wrong to introduce that into the House. It is wrong for the Senator or any other Member. We are not going down that road and I will not allow it. The Senator should withdraw such a remark and not make such statements.

Senator Terry Leyden: I will not withdraw it.

Senator Jerry Buttimer: He will not withdraw it because he has privilege. He is a mouse.

Senator Paudie Coffey: He is asking everyone to resign bar the Taoiseach.

Senator Paul Coghlan: Given the results achieved following the expression of outrage at what was attempted in the Bank of Ireland by way of the pension top-up, both Houses rightly expressed their outrage at what was proposed and the right result was achieved. This should never have happened as the top-up was ridiculous at this time and completely insensitive, given all the other matters in the State. I know about the fiduciary duties and corporate governance and company law and other banking requirements with regard to the public interest directors. We will not know what they have said within but one hopes these public interest directors are not simply noddors and yes men captured by some of the old boys already on the boards. Now that they are in there, they should be ensuring a proper clean-up of whatever remains that is wrong and of the people who may still be lingering on boards who do not deserve to be on them. I welcome the provision in the new Central Bank Reform Bill which will require tests in regard to interests, probity and competence. Other issues arise. As we said yesterday, not alone were the guidelines breached in one instance but perhaps there are instances of breaches in all five participating institutions in NAMA. In the case of the Irish Nationwide Building Society, not only were guidelines clearly breached, important matters that should have been reported in accordance with the law were not reported. These matters have to be cleaned up.

In regard to conflict of interest situations which exist in some of these institutions — I refer specifically to people at senior management — I hope the public interest directors will take an interest in that too. People who had an easy if not a cosy relationship with the people for whom they sanctioned these impaired loans are now, I understand, managing these impaired loan portfolios for NAMA on an agency basis. What kind of a ridiculous situation is that?

Senator Diarmuid Wilson: I join Senator Hannigan in welcoming the decision of the Financial Regulator to allow Quinn Insurance to recommence underwriting business in the United Kingdom. It is my understanding that this business equates to just over 10% of its existing business in the United Kingdom. It is worth bearing in mind that 55% of Quinn Insurance

business was UK-based while 95% of the workforce is in this country. The workers are rightly worried about their future. I understand the joint administrators submitted proposals to the regulator to allow Quinn Insurance to start underwriting up to 90% of the existing business in the United Kingdom and this will ensure the safety of the jobs of more than 1,500 people depending on the UK business for their livelihoods. I urge the regulator to act with haste in allowing the joint administrators to recommence underwriting the UK insurance which is so vital to the livelihoods of so many people in this island.

Senator Shane Ross: I endorse what was said by Senators Harris, Buttimer and, to a certain extent, Leyden about public interest directors of banks. The evidence is fairly conclusive that they have gone native. They go into the banks and receive massive salaries. Now that they are all on the gravy train, let us see what happens.

Mr. Dukes, very surprisingly, supported wage increases for top people in Anglo Irish Bank. I do not think any public interest director should have supported such an initiative unless he or she had gone native. A similar situation obtains on the board of Bank of Ireland, to which a former Minister for Agriculture and Food, Joe Walsh, has been appointed. What in the name of God has Mr. Walsh been doing in allowing these things to happen?

I am beginning to think, and I thank Senator Harris for raising the subject, that the Government regards the banks as quangos. It is appointing people who appear very similar to political nominees to other semi-State bodies. An interesting pattern is developing. Appointees include formidable and former senior officials of the Department of Finance. That Department has not covered itself with glory because it is also in the loop. We have to ask whether these public interest directors are doing their job or if they are getting too much money.

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

Senator Shane Ross: I presume we will have such a debate. We were promised a debate and I endorse the requests made in this regard. I do not concur with the praise that has been heaped upon Mr. Boucher or even the welcome given to his decision. This is not what Senator Deary described as a man showing leadership. The concession was dragged and kicked out of him by the Government, public opinion and the trade unions. There is no way he had a sudden crisis of conscience and decided to save the nation.

An Cathaoirleach: The Senator's time has concluded.

Senator Shane Ross: It is welcome that public opinion has forced him to act but one feels relief not gratitude when a foot is removed from one's throat. It does not change the person in any way. We should not be too quick to applaud this banker, who remains *in situ* even though he should never have been appointed.

An Cathaoirleach: The Senator is way over time.

Senator Shane Ross: The people in charge of the banks at board and executive levels remain almost exactly the same.

An Cathaoirleach: My hands are tied in allocating time. I call Senator Mooney.

Senator Paschal Mooney: Senator Ross articulated the feelings of most rational people in regard to the banks. I agree with him that Mr. Boucher does not deserve any praise whatsoever. His concession was dragged out of him and it would never have happened if not for the formidable alliance of public opinion that formed against him. I hope this will go some way towards allowing a calm and rational debate among trade union members on the Croke Park deal. It

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would be wrong of me to interfere in the electoral process but those of us who have commented on this issue, from all sides of this House, would applaud Jack O'Connor, David Begg——

Senator Feargal Quinn: And Kieran Mulvey.

Senator Paschal Mooney: ——and Kieran Mulvey for their leadership and the rational manner in which they pursued the negotiations. In the interest of the country, I hope there will be a positive outcome.

I ask the Leader to consider inviting the Minister for Social and Family Affairs, Deputy Ó Cuív, to address the House in light of the report in today's newspapers on the dramatic increase in the mortgage subsidies administered by his Department from €6 million in 2005 to more than €70 million. The irony is the subsidy is being paid to the banks because it is intended to aid those who are suffering mortgage distress. It is inevitable that the increases to mortgage rates over the next six to 12 months will mean that more families will be affected by negative equity or unable to meet their mortgage obligations. In a restrictive budgetary context, this is a very serious matter and it would be helpful if the Minister could outline to the House how his Department intends to address this ticking timebomb for families and mortgage holders.

Senator Eugene Regan: Prior to the Easter break we held a debate on the lost at sea scheme and the report and recommendation of the Ombudsman, Emily O'Reilly. As a result of that debate, the matter was examined by the Joint Committee on Agriculture, Fisheries and Food, where I understand a useful discussion took place yesterday. However, I wish to refer to the debate we held in this Chamber and the intimidation by Deputy Fahey on that occasion. He sat in the Gallery while we held that debate——

An Cathaoirleach: Hold on, Senator. Any Oireachtas Member is entitled to sit in the Gallery and I cannot prevent him or her from doing so. That is the freedom of this House. I ask the Senator to withdraw his allegation of intimidation.

Senator Ivor Callely: He is easily intimidated.

Senator Terry Leyden: Character assassination.

Senator Eugene Regan: The Cathaoirleach did not allow me to finish. I am not remonstrating with Deputy Fahey for being in the Gallery.

Senator Jim Walsh: Is the Senator withdrawing his allegation? The Chair asked you to withdraw it.

Senator Eugene Regan: That was not my point. I made a statement on the lost at sea scheme and the report of the Ombudsman. As I left this Chamber, I was tackled by Deputy Fahey in regard to this statement. This seems to be par for the course for Members of this and the Lower House. It is entirely inappropriate——

Senator Jim Walsh: Deputy Fahey is not here to reply to that claim.

Senator Eugene Regan: ——that the intimidating behaviour of Deputy Fahey in relation to this matter——

An Cathaoirleach: I have no control over what happens outside this Chamber but if the Senator has a complaint he should take it to the Committee on Procedure and Privileges.

Senator Eugene Regan: A more fundamental issue arises. Why is Deputy Fahey going to such lengths to undo the report and recommendation of the Ombudsman? Why is he going to such lengths to deny the justice——

An Cathaoirleach: Deputy Fahey is not a Member of this House.

Senator Eugene Regan: ——that was recommended by the Ombudsman for the Byrne family? What has he to hide to make him so desperate in carrying out a lobbying exercise——

An Cathaoirleach: It is out of order to discuss a Member of the other House when he is not present.

Senator Eugene Regan: I have one question for the Leader.

An Cathaoirleach: The Senator has gone over time.

Senator Eugene Regan: Will this House uphold the standards of the Ombudsman——

An Cathaoirleach: I am not accepting it.

Senator Eugene Regan: ——or the standards of Deputy Fahey?

Senator Terry Leyden: What about Goldman Sachs?

Senator Jim Walsh: I concur with those who have raised the issue of conduct by public interest directors of our banks. This issue needs to be addressed. The Joint Committee on Communications, Energy and Natural Resources has encountered an example wherein the board of the Broadcasting Authority of Ireland adopted a budget which was 50% higher than the previous year's. It was only when the joint committee took the chief executive of the authority to task that the budget was reduced from €7.6 million to €5.6 million. This is an example of people who are put into positions of trust and given a fiduciary duty to the State which they are not pursuing in an appropriate manner. This is an issue which applies generally across public service bodies. We have an opportunity to drive change, however, and we will not have ethics and morality in corporate governance unless we do so.

I support everything that Senator Mary White has said in regard to the Irish Thalidomide Association. It is a shame that the concerns of these people have not been addressed. The issue has a 50 year history and many of the victims have died in the intervening period. I hope the Government will respond positively and fairly to the issue.

The Supreme Court yesterday decided unanimously in the issue before them that the tribunal had no power to find that two directors of JMSE were not entitled to their legal costs because they had hindered or obstructed the tribunals.

An Cathaoirleach: I would prefer not to get involved in what is happen in the tribunals.

Senator Jim Walsh: I refer specifically to the Supreme Court, which has decided on a serious issue. We established the tribunals. What the Supreme Court has said is that the tribunals have acted *ultra vires*. That is a very serious matter for us.

An Cathaoirleach: The Senator has made the point.

Senator Jim Walsh: I want to finish on this——

An Cathaoirleach: The Senator's time is the same as everyone else's and my hands are tied on it.

Senator Jim Walsh: Mr. Justice Adrian Hardiman stated that it is chilling to reflect that a poorer person, treated in the same fashion, could not have afforded to seek this vindication.

An Cathaoirleach: I call Senator Mullen.

Senator Jim Walsh: I ask that we have a debate in this House on the tribunals within the next week.

An Cathaoirleach: Senator Walsh, please stop, you have sought that debate.

Senator Jim Walsh: I am looking for it to happen and I will not allow it to be swept under the carpet.

An Cathaoirleach: It is a matter for the Leader to decide whether he will give the Senator that debate.

Senator Jim Walsh: I just want to make that point particularly clear.

An Cathaoirleach: I ask Senator Walsh to resume his seat.

Senator Jim Walsh: This House and the Dáil established those tribunals. We must now assess the serious fallout from them.

Senator Maurice Cummins: Respect the Chair.

Senator Paudie Coffey: Put him out.

Senator Rónán Mullen: I dtosach báire, tacaím leis an méid atá ráite ag an Seanadóir Walsh chomh fada is a mbaineann sé leis na binsí fiosrúcháin. In the light of both what Senator Walsh has said and the decision of the Supreme Court, it would be timely for us to have a general reflection in this Chamber on how the tribunals of inquiry and commissions of inquiry have operated. We all have felt a great need in our country in recent years to have the truth told, especially about controversial matters. I note Senator Walsh has been critical of fees paid to barristers, and he may well make a valid point in that regard. I stress another issue, the time-long guarantees that the justice system has afforded to people — the presumption of innocence and the right to be able to test evidence fully. To some extent, we can state that the tribunals of inquiry, while being well intentioned, have certainly cut across what were always regarded as essential rights, namely a person's right to his or her good name until the contrary was fully and properly proved. In the light of the controversies now arising about the tribunals for various reasons, we should have a reflection in this Chamber on how our tribunals have worked and what has gone well and what has gone badly in terms of cost, the impact on persons' good names, the way that they functioned etc.

I take the opportunity to make a point congratulating the Labour Party on its initiative yesterday.

An Cathaoirleach: A question to the Leader.

Senator Rónán Mullen: It is simply this. Yesterday the Labour Party brought forward an excellent Bill in this Chamber to criminalise female genital mutilation. It deserves great credit for bringing forward this issue because it is about a terrible violation of human dignity that all should condemn.

An Cathaoirleach: Time.

Senator Rónán Mullen: I welcome very much the fact the Government undertook to bring forward its own legislation. Would it not be nice if our political system could mature to the point where if one had excellent legislation coming forward from Private Members'—

Senator Joe O'Toole: Hear, hear.

Senator Rónán Mullen: —instead of stating the Government will come back with something of its own in due course that there were other possibilities, for example, adjourning the Second Stage debate to give the Government a chance to address it properly? Then the Government could undertake, if it liked the Bill, that it would make further time available for the continuation of Second Stage and that the Bill would proceed as a Private Members' Bill.

An Cathaoirleach: Time. I call Senator Hanafin.

Senator Rónán Mullen: In other countries private members' legislation has been brought forward. It is very successful.

An Cathaoirleach: I called Senator Hanafin.

Senator Rónán Mullen: It reinforces public confidence in the democratic system—

An Cathaoirleach: Senator Mullen's time is up.

Senator Rónán Mullen: —and in the functioning of the Legislature.

An Cathaoirleach: It is not a morning for making speeches.

Senator Rónán Mullen: I ask the Leader to take that point on board.

An Cathaoirleach: There are too many Members making speeches on points they wish to raise with the Leader. I call Senator Hanafin.

Senator John Hanafin: I support the calls for a debate on the role of tribunals. There are times when tribunals are necessary. I am conscious that in the North a tribunal to find out what exactly happened on Bloody Sunday in Derry cost €100 million and a cost of €1 billion or more would have been correct to find out the truth in that case. However, there are tribunals in this country at present the public opinion on which is that the costs involved are a greater injustice than what the tribunals are trying to establish, and that must be changed.

I wish to make two brief points. It is apparent the banks have not yet learnt the lesson of what has happened. Everything has change as regards banking in this country and it is time we in our debate mentioned that fact. The old ways are gone. No longer can a banker look to get the salary of a huge payment, a huge pension, a huge bonus or huge share options. Those days must be gone. They must begin to realise that there should be regulation in that regard. There must come an end to greed. It was greed that got us into these difficulties.

I again call for a debate on the role of the Seanad. I note in the UK general election that the SDLP, as one of its main planks, has asked that the Seanad would be allowed to have Members elected through a full panel for the North of Ireland such as the Labour Panel. It is a laudable suggestion. There are many other reasons, including the needs of the extra work now involved following the Lisbon treaty, for the Seanad. This Seanad has played a wonderful role and that should be debated.

Senator Feargal Quinn: Senator Mary White made a strong case for the victims of thalidomide. Those of us who have met them know how strongly that case needs to be made. That

[Senator Feargal Quinn.]

applied to those thalidomide victims in Europe. An interesting point is that there was no thalidomide allowed into the United States. The reason it was not allowed into the United States was because of a strong woman who was in charge of the Food and Drugs Administration who stated she wanted scientific proof before she would allow this. She stood out against all the vested interests who stated that the United States should make thalidomide available as there was a great need for it. However, it was not made available in the United States. This is exactly the point Senator Harris is making. Here is the heroism of a public servant who stood out against the vested interests, who did not go native and who stated she would hold out against all the strong cases made until she got scientific evidence. It seems there are cases like this, one example of which was touched on by Senator Harris, of those who do not go native. One of the opportunities provided to us is in the Oireachtas committees. The Oireachtas committees are doing marvellous work which enables us to get behind the normal procedures that we have had in the past and to get something done rather than delaying these activities.

On a point raised by Senator Mullen earlier, Private Members' Bills are seldom accepted. I do not know of many cases of such Bills being accepted, other than one Senator Leyden had accepted some time ago. I am thinking in particular of a Bill I introduced, namely the Human Body Organ and Human Tissue Bill 2008, where the Minister accepted the point made and stated the Government would have some consultation before introducing it. The Minister accepted the point that we needed to do something to enable those who are waiting for livers, hearts and kidneys to have the ability to receive them. My Bill was to do with presumed consent. The consultations, which started in October 2008, are ongoing. Yesterday we received the intention of Government on plans for the various Bills. One must go to the end of that document to find No. 65, the Human Tissue Bill, which is not the Bill of which the Minister spoke but a different Bill. It seems we take far too long to do things that will save lives. Let us ensure we move on these matters with much greater alacrity than we have in the past.

Senator Labhrás Ó Murchú: I ask the Leader if he would consider having another early debate on Irish tourism, perhaps during Private Members' time. Tourism is one of the big income earners for this country. In fact, it is vital to the economy. One of tourism's main attractions is that the dividend from it is not overly centralised and is distributed right throughout the country. One of the main planks of the Good Friday Agreement was that we were able to market the island of Ireland through Tourism Ireland. If we look back to the days of Bord Fáilte, no doubt it met significant challenges, particularly because of the Troubles in Northern Ireland which it endeavoured on each occasion to overcome. I would like to see an imaginative approach to helping tourism as the international market has become exceptionally competitive. Members of a certain age should cast their minds back to the An Tóstal festival in the 1950s which had a major impact in regenerating tourism as it brought all the different local and national organisations involved together. I want such a homecoming festival to be initiated again. Some discussions have taken place in this regard but I would like to see this Chamber participating in them too. I accept each day the Chamber must examine the current economic difficulties and irregularities, of which we should be rightly ashamed, but at the same time we must achieve a balance in our debates. Tourism is one area where the old concept of meitheal can be reintroduced. This Chamber must debate this in a positive context, particularly with having a homecoming festival initiated by 2012, if not by next year.

Senator Niall Ó Brolcháin: I call for a debate on the future of sheep farming because the sheep farmers in the west are under great threat. The cost of shearing a sheep is now dearer than the price fetched for a fleece. There is also a demographic issue with many of the younger generation not taking up sheep farming.

The carpet in Dáil Éireann was manufactured in Galway with wool from the west. Carpet manufacturing in the west does not happen anymore which is causing a deficit in the wool industry. We need to examine imaginative measures for wool use. For example, wool is suitable for home insulation. This would help provide a market for sheep farmers as it is already difficult to survive financially in many rural parts.

Various Senators, including Senator Coffey, believe rural Ireland will collapse as a result of the €6 one-off charge for puppy farming. There is little evidence of this, however.

Senator Paudie Coffey: What is the Senator on about? I never said anything about a €6 charge.

Senator Niall Ó Brolcháin: Dogs, including the famous one on “The Late Late Show” recently, can command stud fees of up to €1 million for their owners. Many of the greyhound industry dogs are sold for thousands of euro yet it is believed rural Ireland will collapse if a €6 one-off fee is imposed on breeders.

An Cathaoirleach: We can have that debate again when the Bill comes back into the House.

Senator Niall Ó Brolcháin: It is important to have a debate on this matter.

Senator Paudie Coffey: The Senator is incorrect about this €6 one-off fee.

Senator Niall Ó Brolcháin: This is a trumped-up claim. Fine Gael is missing the point about rural Ireland by focusing on the wrong debate.

An Cathaoirleach: The Senator’s time is up.

Senator Paudie Coffey: The Greens are trying to include provisions that should not be in the Bill at all.

Senator Niall Ó Brolcháin: Fine Gael is protecting big farmers and the wealthy.

Senator Paudie Coffey: Bring the Bill to Report Stage and we can debate it then.

Senator Ivor Callely: I stand to support my colleague Senator Walsh and ask the Leader to look, with a fresh pair of eyes, as to how this House might be able to have a fundamental role with regard to some of the quangos and regulatory bodies we have in place, including the tribunals of inquiry. It must be acknowledged there have been some welcome changes, particularly with the Financial Regulator and the Governor of the Central Bank.

There are, however, other bodies, still in their infancy, whose efficacy and productiveness must be questioned. There are many such bodies but I will not go into naming them now. However, will the Leader obtain information about the Private Residential Tenancies Board, PRTB? Maybe its terms of reference are incorrect or it does not have sufficient powers or staff, but many of the cases brought before the board are still ongoing and awards not paid. This is frustrating for the those involved in the PRTB and those who have utilised its facilities. I support Senator Walsh’s suggestion for the House to debate such issues and look forward to what the Leader will say about it.

Senator Donie Cassidy: The debate on women in politics will take place next Tuesday.

Senators Twomey, O’Toole, Hannigan, Dearey, Cummins, Buttimer, Leyden, Coghlan, Ross, Mooney and Hanafin expressed their strong views again about the banking sector. The debate on banking will follow the debate on women in politics next Tuesday.

[Senator Donie Cassidy.]

Senator Twomey called for a debate on the decoupling of agribusiness plcs from co-ops. This would be worthwhile and I intend to allow a long time for it, perhaps even a full-day debate if possible. Decoupling would be a mammoth change in agriculture if it were to occur.

Senators O'Toole, Coffey and Ó Brocháin raised the Dog Breeding Establishments Bill 2009 which will be due back and concluded in the House during this session.

Senators Hannigan and Wilson welcomed the announcement by the Financial Regulator to allow Quinn Insurance to do some business in the UK. I know Senator Wilson has been a champion of the people of our area regarding the serious challenge facing their jobs in the company. Easter came this year but not many families in the north midlands and the three counties in which the Quinn Group employs a member of nearly every family enjoyed it. We will do anything we can do to support Séan Quinn, his family and his group. While Senator Wilson pointed out that only 10% of the business may be allowed to be underwritten in the UK, it is a start. Please God I hope a further announcement will be imminent from the Financial Regulator.

Senator Hannigan proposed consultation with the staff of Dublin Bus on its proposals to cut employees and change routes. This is a common sense proposal and I hope it will occur with everyone involved. I understand in the past 12 months consideration has been given to ways of improving the availability of bus routes. We wish Dublin Bus well in its endeavours to give a better service.

Senator Hannigan also welcomed the opening of the skies again. Everyone in the aviation business has worked hard to ensure flights could resume. We wish the airlines well and those affected air travellers, many of whom were disappointed in the past few days. Hopefully, in the next few days flights will get back to normal and everyone will be able to get to their destinations.

Senator Dearey called for a debate on planning reform. I have no difficulty in allowing time for this to take place.

Senator Coffey called for a debate on the importance of small manufacturing and family-run businesses. As Members well know, 870,000 people are employed by small and medium-sized enterprises, of which 75% are owned and run by families. I will have a debate on this issue at the earliest opportunity.

Senators Mary White, Quinn and Walsh referred to the meeting between the Minister for Health and Children and the thalidomide victims. I saw them yesterday in the House before they went into the meeting. I congratulate Senator Mary White in all she has done to assist these poor unfortunate people. Their condition was through no fault of their own but an act of birth. I hope there will be recognition by the State which, as we all know, is long overdue and that they can be helped in every way possible, including financially.

Senator Keaveney called for a debate on the sex offenders register and the legislation in place affecting both sides of the Border. I will have no difficulty in having a debate in the House on the matter in the near future.

Senator Buttimer inquired about the marquee at the Galway Races. I was never in it and was totally opposed to it. I am delighted with the decision the Taoiseach took. I know that all of the political parties make use of the marquees at Punchestown or wherever they are located. Be that as it may, the impression was created that a good deal of business was conducted in Galway. I do not believe that but do not know for sure because I was never in it and can only hazard a guess.

Senator Paudie Coffey: Someone knows.

Senator Donie Cassidy: Unlike members of the Opposition, I was never inside it.

Senators Leyden, Walsh and Ross raised the issue of public interest directors. The Government — in particular, the Minister for Finance, Deputy Brian Lenihan — faces a serious and unprecedented challenge. The Minister is doing everything he possibly can do to address it. I listened to him for the entire hour he spoke on “The Marian Finucane Show” last weekend, during which he said his officials had told him that in the two years he had been Minister for Finance the amount of paperwork was the same as that involved in bringing forward ten budgets in a ten year period. He is doing an excellent job and we are very fortunate to have him available in the portfolio. I fully support all the appointments made by him in the interests of having the necessary expertise and experience available. As I said previously in the House, experience and expertise are what the country needs; personalities should not come into it.

Senator Mooney called for a debate on the issues facing the new Minister for Social and Family Affairs, Deputy Ó Cuív, in terms of increases in mortgage subsidies. I will have no difficulty in arranging such a timely debate.

I take Senator Regan’s point on the lost at sea scheme which was discussed in the House. Therefore, we have dispensed with it, as far as the House is concerned.

Senators Walsh, Mullen, Hanafin and Callely called for a debate on matters discussed before the Supreme Court yesterday and everything to do with the expenditure and running of tribunals. I informed the House yesterday that I was examining the issue and that I would come back to it next week. I am trying to see what we can do to meet the genuine requests of the Senators who made the call for a debate in the interests of the country.

Senators Mullen and Quinn raised the issue of Private Members’ Bills. I welcome their introduction in the House for our consideration. Senator Leyden had a Bill accepted by the Government. On the Bill brought forward yesterday evening by Senator Bacik, the request made was for time to be allowed for consultation. In principle, the Minister is in favour of the Bill, which is to be welcomed. The Human Body Organs and Human Tissue Bill proposed by Senator Quinn is currently the subject of consultation. I will see where we stand in regard to the timeframe and come back to the Senator on it.

Senator Hanafin called for a debate on the role of the Seanad, particularly on the SDLP’s proposals. As we are all aware, the proposal made by Fianna Fáil which is being considered, with proposals from all parties and groups, is that ten Members of Seanad Éireann would have right of audience in the Assembly in the North and that some of its members would have the same right here. All of the proposals made are within the remit of the Minister and being considered. In due course we will hear the views of the Government on the matter.

Senator Quinn highlighted the success of the committee system which I believe marks the way forward in the teasing out of issues by Members using the experience gained in their professions before they entered the Houses. We need only look at the success of the Committee of Public Accounts under the stewardship of the late Deputy Jim Mitchell or the committee I chaired on the insurance industry to see the huge value of the system at a very small cost. That is the way we should be going, not down the road of having tribunals which, as Senator Walsh correctly said, are costing the State tens of millions of euro compared to the cost of the work done by a committee which in a year could amount to less than €500,000 or perhaps even €250,000. That is the comparative figure, with the same result.

Senator Ó Murchú made a very good proposal to have an urgent debate on the tourism industry which, as we are all aware, is a huge income earner for the country and a major employer. Currently, over 250,000 people are employed in the industry. The Senator referred

[Senator Donie Cassidy.]

to the success of the An Tóstal festival. I recall a former Member of the House who championed its cause, Joe Mooney, whose family continues to run An Tóstal in Drumshanbo.

Senator Terry Leyden: Yes.

Senator Donie Cassidy: I also refer to Senator Mooney in that regard. An Tóstal was the festival for those coming home to help Ireland and was a huge success. I will consider the proposal and seek to arrange a debate in the next week or two to allow colleagues to express their views and assist the Minister and his Department.

Order of Business agreed to.

Death of President of Poland: Expressions of Sympathy.

Senator Donie Cassidy: As Leader of Seanad Éireann and on behalf of Senators on all sides of the House, I express sincere sympathy and condolences to the Polish Government and the people of Poland following the tragic air accident in Russia on 10 April which claimed the lives of the President of the Republic of Poland, His Excellency Lech Kaczynski; his wife, Maria, and 94 others in Russia. This tragic event was a source of great shock all around the world. Mr. Kaczynski made a major contribution to public life in Poland as President, as Minister for Justice and as a great Solidarity personality in the 1980s and 1990s. He was forthright in his views, a trait that stood him well in the many important political positions he held during the years. That his wife, Maria, perished in the same accident makes the tragedy all the more horrific for their family, especially their daughter, Marta.

Leading figures from the Polish Government, the parliament, the military, the church, the public service and civic society were also killed in the tragedy and our sympathy goes to their families. The tragedy is all the more poignant because of the circumstances in which it happened. The President and his travelling party were due to attend a ceremony to commemorate the terrible massacre of thousands of Polish soldiers in 1940. What was to have been an important symbolic moment of reconciliation became instead a tragic and horrible event. I again offer condolences to the Polish Government and people at this sad time. Our thoughts and prayers are with those who have been bereaved and, more generally, Polish people everywhere, including the many thousands who live among us in Ireland. Go ndéanfaidh Dia trócaire ar a anam.

Senator Liam Twomey: It was a great tragedy for the Polish people to lose their President in such a sad manner. On behalf of Fine Gael, I extend our sympathy to the families and friends of the late President, Mr. Lech Kaczynski; his wife, Maria, and all of the officials, military leaders and dignitaries who were on board the flight on that fateful day. It is made more poignant by the fact that they were due to attend an event commemorating another great tragedy in Poland's history. Poland's history since that initial tragedy, where thousands of their best and brightest young army officers were murdered, has been tinged with tragedy. We should take from this episode the comments and genuine regret expressed by the Russian Federation Prime Minister Vladimir Putin and the President, Mr. Medvedev. This may be the beginning of a new era for the people of Poland. Poland is a committed member of the European Union and a new dawn of *rapprochement* with the Russian Federation would be good for both Europe and the Polish people.

Mr. Kaczynski was instrumental in this new era for Poland. He was one of the leading members of the Solidarity movement with Lech Walesa when the communist era was overthrown. He went on to work as a politician and became President of the new Poland. I hope his death and the death of all those other people has not been in vain and that Poland will

continue to enjoy this new era. On behalf of Fine Gael, I extend my sympathies to the people of Poland living in Ireland and everywhere else in the world and in Poland. May Mr. Kaczynski, his wife Maria and the other officials rest in peace.

Senator Eoghan Harris: Like other Independent Members, I commiserate with the people of Poland and I associate myself with the sentiments of other Senators. As Senator Twomey said, it is important the great state of Poland enjoys harmonious relationships with its neighbours to the east and west. Out of the tragedy of the terrible plane crash has come a new dawn of *glasnost* and openness between the former Soviet Union and Polish people. This also takes in the German people and I am glad to say we can take some satisfaction from the fact that the great Irish civil servant, Sir Owen O'Malley, told the truth about this matter during the war. He was a great Mayoman and the people of Mayo can be a proud of him.

As Senator Twomey said, it is important there is stability in that part of the world. Poland is a member of the European Union and is a good, stabilising influence on what has always been an unstable area. Having a good relationship between Poland, Germany and the wider EU augurs well. We can take great hope from the openness of the new Russian Administration to the question of what happened at Katyn. This openness is not new to us in Ireland; it was critical in Northern Ireland and it is critical we have the truth. There is more goodness in admitting past mistakes than in almost any other act. One of the greatest acts of good authority is to apologise for what happened. That apology and expression of sorrow, according to my many Polish friends, by the Russian Government and its people has done more for Polish-Russian relations than almost anything else. We should all take note that saying sorry is a very moral and good thing to do.

12 o'clock

Senator Dominic Hannigan: On behalf of the Labour Party I extend my sympathy to the Polish people on the death of their President and the other 94 people killed in the Smolensk air crash this month. That so many people of importance to the development of the country died is sad, as is the fact they were going to a joint commemoration with the Russians to mark the anniversary of the Katyn disaster in 1940 when 22,000 Poles and other citizens were killed by the Soviet army. Anyone visiting Poland will be struck by the oppression Polish people have suffered over the past number of centuries from east and west. This is particularly true of the last century, in places such as Auschwitz where 6 million citizens of Poland, including gypsies, gay people and straight people were killed by the Nazi armies of Europe. We are struck by how the Polish people, through their determination, have come through this and built their country. That determination ensures the country continues to grow and deal with the current disaster. I pay particular tribute to those Polish citizens living in Ireland, who are away from home at the moment. It must be particularly sad for them. I express our deepest condolences to them.

Senator Mark Dearey: I join with the Leader and my colleagues in expressing my sorrow and the sorrow of Green Party Members at the death of President Kaczynski, his wife and the 94 others who died at the plane crash in Smolensk on 10 April. Poland has lost its President and all nations grieve when they lose their president. Our thoughts are with the Polish people as they come to terms with this tragedy, one of many that has befallen that wonderful country in the past century and this century. Every county in Ireland knows Polish people in schools, sporting associations and workplaces. I employed a Polish woman for two years and we have got to know their work ethic, their industriousness, their wisdom borne of a suffering almost unparalleled in European history, and their commitment to their families. Ireland has benefited from knowing Polish people and from having people from Poland settle in our neighbourhoods and communities. Our sorrow is also with them.

[Senator Mark Dearey.]

The number of people who died was shocking and many were leaders, including 18 parliamentarians from the Polish political establishment. Of particular note is Ryszard Kaczorowski, the last President in exile of the Polish state. He handed over the insignia of presidential power of the second republic to Lech Walesa in 1990. A group memory has been eradicated by what happened and it is an event that will have reverberations within Polish society and therefore within the European Union for many years to come. One of the marvellous gifts of the expansion of the European Union has been that Poland is now a member. I remember that a visit to Poland broadened my sense of what Europe is, how accommodating it can be and how important it is to understand our history in a European context. That Poland survived a genocide attempt on its people and a cultural genocide in the summer after the Nazi invasion of 1939 struck me as demonstrating a remarkable resilience in the Polish people. I am sure they will move on from this, learn from it and mourn it. Our thoughts are with the people of Poland.

Senator Rónán Mullen: I am glad to add my words to the other speakers. There is no right or left today. There is no separation, no difference. We are together in our condolences to the families of those who have died. Those were the words of the speaker of the Lower House in Poland, Bronislaw Komorowski, in the wake of the terrible tragedy that killed President Lech Kaczynski and 94 others. It is right and fitting that we express our sympathy with the people of Poland because of the terrible loss they suffered. I watched coverage as it unfolded after the plane crash and I was particularly interested in President Kaczynski, what he represented and the evolving story of Polish politics. I had participated in a conference in Gdansk a number of months earlier. I had the good fortune to spend time with Paul McNamara, an Irish historian based in Poland who has written a book on Mr. Seán Lester and his role on behalf of the League of Nations in the free city of Gdansk or Danzig between the wars. I heard a story about the divisions that had emerged between the former Solidarity people, Lech Walesa and the Kaczynski brothers. It is often the case that people who have so much in common can have the bitterest of disputes. This happens often in families. When watching the RTE news, I was stressed by the manner in which Mr. Kaczynski's alleged conservatism was emphasised. It was suggested in the news report, prior to it rightly making the point that all Polish people were united in their grief, that Mr. Kaczynski had been a divisive figure in his country. I could not help wondering whether the same approach would have been taken had Prime Minister Zapatero of Spain been the unfortunate victim. He was a man who it could be said is just as divisive but on the left wing of politics. I was glad therefore that the narrative moved quickly to the unity of Poles in the wake of the disaster. It is worth noting the generous words from Derek Scally in *The Irish Times*, taking into account the spirit of *de mortuis nil nisi bonum*, nothing if not positive should be spoken of the dead. It is perhaps unfortunate that it took the death of Mr. Kaczynski for journalism to reveal its more generous and impartial side. It was said of Mr. Kaczynski that in person he was a warm and friendly man whose regular provocations seemed to be about demanding the same respect for his conservative views as was demanded of his liberal opponents for theirs. He was quoted as saying that it is about opposing a world where a Christmas tree is becoming suspicious and the most obscene gay demonstration is not. My point is neither to endorse nor critique his views but to point out that in a mature democracy served by a mature media, all people should be judged fairly on their views and not caricatured. It is perhaps unfortunate that it took Mr. Kaczynski's death for elements of the western media to move away from the language and politics of caricature.

To put the record straight, Mr. Kaczynski was first and foremost a patriot who, as everybody knows, starred with his brother in a film in 1962 entitled *Two Who Stole the Moon*. He had in some way come to exemplify Polishness and the resistant spirit of Polishness. He was a man who was not afraid to put himself out there and into the firing line to defend what he perceived

as the interests of Poland and European values, in particular European values based on Europe's Christian heritage. If it is true that he took a firm view on those issues, it is also true to say that he had never taken what could be described as an irrational view. We should cherish politicians who are willing to be controversial and, if necessary, to divide because they are the politicians who are telling one what one does not necessarily want to hear and are paying one the honour and courtesy of telling one what they actually think as distinct from what might attract majority support in particular times and places.

It is certainly the case that the response of Mr. Kaczynski and his party, Law and Justice, whether in the right or wrong in Polish politics, on the issue of collusion with Communists led in the past to a divide between those members of Solidarity who believed any past collusion should be named and shamed, which was very much the position of the Law and Justice Party, and those who believed that in some way there had to be continuity and that the past had to be taken on board and moved on with. That was often the position represented by elements within the Catholic Church in Poland.

What can we do but offer a word of sympathy to the many Polish people in Ireland who have improved the quality of our national life by their great contribution, culture and work ethic. I have the great good fortune to know many of them. We sympathise with them, regardless of their political perspective, in relation to the great tragedy which took the lives of their President, his wife and 94 other people, many of whom held prominent positions in Polish society. This is a loss from which Poland will recover but this will take time. Ar dheis Dé go raibh anamnacha na marbh go léir.

An Cathaoirleach: On my own behalf and on behalf of all Members, I wish to be associated with the expressions of sympathy paid to His Excellency, Lech Kaczynski, President of Poland, following the recent tragic air accident in Smolensk, Russia. I offer my condolences at this sad time to the large Polish community in Ireland, the Polish Government and its people.

Members rose.

Fines Bill 2009: Second Stage.

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

Minister for Justice and Law Reform (Deputy Dermot Ahern): I am pleased to present the Fines Bill 2009 to the Seanad. It has taken some time to prepare but I am confident that Senators will, when I outline its many innovative provisions, agree it is at the cutting edge of law reform. The Bill will update all existing fines that can be imposed in the District Court with equal increases to those fines that can be imposed in the higher courts, ensure persons can afford to pay fines imposed on them without causing undue hardship to them or their dependants, provide alternatives to imprisonment where a fine is not paid by the due date and ensure that those alternatives will always take precedence over imprisonment.

I will outline the Bill under three main headings, namely, indexation of fines, an improved system for the assessment of offenders' financial circumstances and for payment of fines by instalments and the question of providing practical and viable alternatives to imprisonment where offenders default on payment of their fines. Any approach to the complex exercise of updating fines must be underpinned by two fundamental realities. First, because the District Court is a court of summary jurisdiction which deals only with minor offences, there must be an upper limit to the level of fine that can be imposed by it which reflects its limited jurisdiction. Second, the updated fines in the District Court cannot be greater than the maximum fines that could be imposed in the higher courts for the same or similar offences.

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The indexation of fines scheme is based on the Law Reform Commission report of 1991 and a review of developments on the indexation of fines published by the commission in 2002. The LRC undertook an in-depth examination of the effect over time of inflation on the integrity of the imposition of fines as a penalty by the courts. It also looked at systems in operation in other jurisdictions. The commission identified two possible avenues of reform, the standard fine system and the variable fine system. The standard fine system provides updated fine maxima for all existing fine maxima. The variable fine system, which is also known as a unit fine or day fine system, provides for the imposition of fines in terms of units of gravity where the monetary value in each case is dictated by the means of the offender.

The commission initially recommended the introduction of the standard fine system. In its review of developments in 2002, it confirmed its earlier recommendation. The commission further examined the experience of jurisdictions in which unit fine systems were adopted and recommended caution in respect of the adoption of such a system in this jurisdiction. It considered that it would be inappropriate to adopt such a system and that many of the positive features of such a system could be achieved by adopting its recommendations. This Bill gives effect to commission's main recommendations by introducing a standard fine system and placing an obligation on the courts to consider an offender's financial circumstances before deciding on the level of fine to impose.

I will explain the features of the Bill in more detail. Sections 4 to 8, inclusive, introduce a standard fine system for the District Court with five classes or categories. The monetary values of existing fines are being brought up to date in order that they will now regain the value they had when first introduced or last updated. Tables of relative money values exist prior to 1922 although, as the Law Reform Commission pointed out, they become less reliable as one goes further back and, in any case, in the century before 1914 prices were very stable. The tables proposed in the Bill are, accordingly, based on a 1914 index of 100.

If one wanted to be exact, it would be necessary to take a particular fine and increase its value in line with increases in the consumer price index since the fine was created. This would require a separate calculation to be done for every fine imposed in the District Court, and I am sure Senators will agree that would not be practicable. However, that level of exactitude is not necessary. Instead, I have accepted the recommendation of the LRC to have a limited number of possible maximum fines. The LRC recommended between three and five classes and the I have opted for five, which are set out in section 3. Fines not exceeding €5,000 will in future be described in legislation as class A fines, class B fines will be fines not exceeding €4,000, class C fines will be fines not exceeding €2,500, class D fines will be fines not exceeding €1,000 and class E fines will be fines not greater than €500.

When new legislation is published after the commencement of the indexation provisions of this Bill, maximum fines will not be described in such legislation in monetary terms but instead by the class to which they belong. Existing fines will be assigned to their appropriate classes when updated in accordance with increases in the consumer price index. In this way, all fines will have regained the value they had when first created or last updated by statute. The clearest way to illustrate how the system will work is by giving examples.

First, an Act passed later this year might create an offence triable summarily with a maximum fine on conviction of, say, €4,000. As can be seen from the definitions, a fine falls into class B where the amount of the fine does not exceed €4,000. Therefore, the Act would state something along the lines of: "A person found guilty of an offence under this section shall be liable on summary conviction to a class B fine". In the example I have given, the maximum fine within the appropriate class is €4,000. The actual fine a court could impose could be that amount or

any amount less than the court, in its discretion, would consider appropriate. This system imposes no restrictions on the discretionary power of the court to impose the fine it considers appropriate in a particular case apart from the fact that a maximum is specified as at the current time.

I will now give some examples of how to find the appropriate level of an existing fine that has been updated to its real value. Not to update existing fines in line with inflation since they were first introduced or last increased would be to defeat the intention of the Houses of the Oireachtas which in days gone by had decided on the appropriate maximum fine for a particular offence. The first example I will give is of an Act of 1935 which created an offence with a maximum fine on summary conviction of, in modern currency value, €200. To find the current value of that fine one has to study the tables by reference to the year and the amount. The first reference is to the year, which is reference number 7, that is, the years 1915 to 1944. The relevant amount is greater than €127 in the class A table. Accordingly, it will be a class A fine which has a maximum value of €5,000. Another example would be a fine of €500 in 1940 which was increased by statute to €1,000 in 1990. The reference number this time is 2, that is, between 1990 and 1996. It cannot be a class A fine as it is not greater than €2,769, the amount opposite reference number 2. Similarly, it cannot be a class B fine as it is not greater than €1,731. In fact, it will be a class C fine as the most recent level of the fine was not greater than €1,731 but greater than €692. Therefore, the maximum fine is now €2,500, that is, a class C fine.

The courts will quickly become accustomed to operating the indexation provisions. However, if any difficulties arise in implementing the indexation provisions, they can be addressed in regulations made under section 11. I do not foresee any difficulty in implementation that would require me to make regulations to remove the difficulty but, as this is ground-breaking legislation with no precedent, it is prudent to be prepared.

Ideally, the tables in sections 4 to 8, inclusive, could be amended periodically in regulations to take account of inflation. However, our advice has been that such amendments might be open to challenge in the courts. Rather than take a risk, amending the figures in the tables will have to be done by way of primary legislation. There is nothing to stop Ministers at any time substantively raising fines for offences in legislation for which they have responsibility. That would also have to be done by way of primary legislation and in practical terms it would mean, for example, changing a class D fine to a class C fine, if that was what was required.

At the outset, I mentioned two issues that are fundamental to the indexation of fines. As a court of summary jurisdiction, there must be a relatively low ceiling on the maximum fines the District Court can impose when dealing with minor offences. The Attorney General has agreed that for the current time the maximum fine that can be imposed by a court of summary jurisdiction is €5,000. Therefore, in the definition in section 3, the maximum fine that can be imposed in the District Court will be a class A fine, that is, a fine not exceeding €5,000. This can be increased by means of legislation in line with inflation when the fines generally are being updated.

It would not be feasible to provide similar tables for fines that the higher courts can impose. Those courts can impose huge fines of many millions of euro or even unlimited fines. Such fines would not lend themselves to such indexing. However, higher court fines could not be ignored in the preparation of this legislation. To have done so would have meant that where an offence was triable either way, the District Court fine might be higher than the maximum fine a higher court could impose.

Other anomalies could also arise. One particular danger which could arise is that the courts might be inclined to declare that a particular offence was no longer a minor one fit to be tried summarily but had become a serious offence that must be tried on indictment. This would be

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undesirable. One of the factors that a court takes into account when deciding whether an offence is a minor one fit to be tried summarily is the level of fine for which a person would be liable if convicted of the offence. The elimination of any appreciable difference between the maximum summary fine and the maximum fine on conviction on indictment, or the fact of the maximum summary fine exceeding the maximum indictable fine in the same statute, would be likely to weigh heavily with a court in determining whether the offence concerned had ceased to be a minor offence fit to be tried summarily.

The position of the higher court fines was a conundrum for which there was no easy, obvious or ideal answer. The system of indexing higher court fines that has been agreed with the Attorney General is based on a multiplier system. Section 9 has a table of seven time periods and any fines of determinate amount that were provided for or updated during each time period is multiplied by an amount based on the increase in District Court fines for the same periods. The reason there are not eight time periods, unlike the other tables, is because the most recent would be multiplied by one so there would be little point in providing for it in the table.

I mentioned that the Law Reform Commission also recommended in its 2002 report that the court, in determining the level of a fine in a particular case, should have the ability to take into account the financial circumstances of the offender and the burden the payment of the fine would have on the offender and his or her dependants. The commission further recommended that a court should have regard to such matters, irrespective of whether the effect of so doing would be to increase or reduce the amount of the fine so as to convey the principle of equality of impact upon offenders of different means. The commission reiterated those recommendations in a further report in 2003.

Section 13 gives effect to those recommendations. The purpose of section 13 is to ensure that, as far as practicable, the effect of a fine on a person or his or her dependants is not significantly abated or made more severe by reason of his or her financial circumstances. For that reason the offender will be obliged to provide information on his or her financial circumstances and the court may then impose a fine that is higher or lower than, or equal to, the otherwise appropriate fine. The otherwise appropriate fine is the fine the court would have imposed but for section 13, having regard to all the circumstances of the case. In the District Court no fine can exceed the €5,000 maximum that can be imposed in that court and, in the case of individual fines, the fine cannot exceed the maximum for the offence for which it was imposed. In the rare cases where there is a minimum fine the fine cannot be less than that minimum.

Section 14 introduces another ground-breaking initiative that will greatly facilitate a smoother and more efficient collection of fines by providing for payment of fines by instalments. This initiative was recommended in the Comptroller and Auditor General's report on the collection of fines in 2000 as a way of increasing the level of payment of fines, in particular, where the offender had limited means. The high level group report on the collection of fines to the Committee of Public Accounts in 2001 also recommended that the facility of payment of fines by instalments be introduced as a necessary prerequisite to the introduction of harder hitting enforcement methods such as attachment of earnings. The section gives effect to these recommendations. It gives the courts power to direct that a fine be paid by instalments if it is satisfied that requiring a person to pay the full amount up-front by the due date would place that person or his or her dependants under undue financial hardship.

A scheme for paying fines by instalments will pose an administrative challenge for the Courts Service. It has been decided that the payment by instalments system will only apply to fines in excess of €100 to lessen the burden. As soon as the system is up and running smoothly, that

amount can, if necessary, be reviewed. However, for the present it is a prudent but relatively minor limitation on the operation of the scheme. It is also prudent to place a time limit for the full payment of the fine. The norm will be for the instalments to be spread over one year. However, the person on whom the fine has been imposed may apply to the court for an extension of time and the court may grant the extension for a period of not more than a further year. In other words, there are no circumstances where the payment of the fine by instalments can be spread beyond two years.

The third major policy initiative in the legislation provides the courts with new options as alternatives to imprisonment when a person defaults on the payment of a fine. There is a perception that the prisons are cluttered up by persons who are there for no other reason than they did not pay a fine, but that is not true. A total of 3,366 persons were imprisoned in the first ten months of 2009 for that reason, which was well up on the number imprisoned the previous year. That the number is increasing at such a rate highlights the need for this legislation and, in particular, the additional initiatives I will shortly outline. However, on any given night, only a small number of prison places are occupied by fine defaulters, some of whom, for their own reasons, can afford to pay but choose not to do so. While these provisions, with the equality of impact and payment by instalments initiatives, should reduce the figures further, that is not the only reason I propose to provide alternatives to imprisonment. It is socially desirable that prison be an option for fine defaulters only in the most exceptional circumstances such as where someone has a malign reason for refusing to pay the fine.

Section 15 will allow the courts to appoint a receiver to recover the fine or seize property belonging to a fine defaulter and recover from the sale of the property a sum equivalent to the value of the fine or any unpaid part of it. The order will be made by the court at the time the fine is imposed but will only be activated when the offender has not paid by the due date for payment and the receiver has been informed of the default by the Courts Service. This will be the only option open to the court on default. If the receiver cannot recover the fine or its value in property, the court will be able to make a community service order if the offender consents and is suitable for community service. Imprisonment will become an option if the offender does not consent to community service, cannot comply with the conditions for community service, no place is available or fails to carry out the community service.

The Probation Service supervised 1,667 community service orders in 2009. It has the capacity to substantially increase the number of community service orders it can supervise by increasing the number of offenders on each work programme. For example, owing to the number of orders being made by the courts, a particular programme of, say, graffiti removal might have only one or two offenders on it. This could be increased to four or five without significantly altering the level of supervision.

Receivers will be appointed by the Government following nomination by the Minister for Justice, Equality and Law Reform with the agreement of the Minister for Finance. Persons will be invited by the Courts Service to tender for the job of receiver and the service will manage the contract arrangements and administer the scheme. Receiver fees will be in accordance with scales provided for in a fees order. The procedures for the appointment of receivers, their fees and terms and conditions will be similar to those for Revenue sheriffs and sheriffs.

I will summarise the sequence of events when a fine is imposed in the courts. When a fine is imposed, instead of the district justice saying he or she is fining someone €1,000 or handing down a term of imprisonment for seven days if the person defaults, a recovery order will be made appointing a receiver to recover the fine or its equivalent in property. The order will enter into force only if the fine is not paid by the due date for payment and will have effect from the date the Courts Service informs the receiver of the non-payment of the fine. If the

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receiver cannot recover the fine or its value in property, the court will make a community service order if the offender consents and the other conditions are complied with. Only then will the question of imprisonment arise. What I have outlined represents a logical sequence of events when a fine is imposed and not paid by the due date for payment. It will reduce the pressure on prison spaces and greatly reduce the time gardaí spend executing court warrants. Additional duties for the Probation Service will be performed largely from within existing resources. Discussions have been taking place with the Courts Service on the additional burden that will be placed on the service.

My final initiative is the name and shame provision under section 19. This will give the Courts Service the power to publish the names of people who default on fines. It represents a further incentive to persons to pay their fines. While some persons are incorrigible, most will not like receivers turning up at their door, in front of neighbours, to recover property and they will not want their names and addresses to be published for all to see for non-payment of a fine imposed by a court on conviction for committing an offence.

While this is a relatively short Bill, it will quickly be seen to be important reforming legislation. It may appear complex, in particular, in regard to the indexing provisions, but that is a worthwhile and necessary price to pay for what will be achieved because failure to index fines could lead to ridiculous fines being imposed and failure to maintain the values of fines imposed years ago would only serve to frustrate the efforts of our predecessors in the Oireachtas who would have given much thought to what they considered to be the appropriate financial penalties for breaches of the offences they were creating.

I will table amendments on Committee Stage. These will mainly be of a drafting or technical nature or intended to elaborate on the provisions of Part 3. I commend the Bill to the House. It is ground-breaking legislation. I have spent a great deal of time with my officials teasing out the basis on which the Bill should be framed to ensure people will not be sent to prison, as they have been in recent times, for failing to pay their dog or television licence fee. However, they should not get off scot-free. That is why I have inserted a series of steps to be taken before someone who fails to pay for a dog licence and is clearly thumbing his or her nose at the court that has imposed the fine is sent to prison, particularly where he or she has the means to pay the fine through instalments or otherwise but will not do so. Similar provisions were introduced in civil law following a recent High Court decision to ensure a prison sentence would only be used as a last resort for non-payment of civil debts. When we pass the Bill, coupled with the legislation we have passed and to which we will probably add in the near future in the civil area, we will reach a stage where we will not have the ludicrous position whereby ordinary citizens who have only come into contact with the law perhaps once in their lives but who may have forgotten to pay a fine are dragged off to Mountjoy. That involves the creation of a significant amount of paperwork and bureaucracy in terms of bringing persons to prison and finding the necessary space for them only to find that they are let go the next day when they have paid the fine. The enactment of the Bill will change the situation experienced by many in the past. It will also free up a relatively small number of places in prison. Given that the prison population is rising dramatically and that while in comparison with other OECD countries we have a relatively small prisoner population, it is increasing and it is necessary to use prison only in cases where it is warranted. In many cases that have occurred in the past it has not been warranted to send people to prison. When the excellent legislation is passed it will stand the test of time.

Senator Eugene Regan: I welcome the Bill and the Minister's detailed exposition of it. The Bill contains a number of important considerations which justify it. The Minister has outlined

the cases where due to oversight or otherwise people are imprisoned if only for short terms for non-payment of a fine. We have a problem with prisoner numbers and overcrowding in prisons. We have the extraordinary figure revealed in the National Crime Council report that a total of 22% of all prison committals were for the non-payment of fines. In light of that the Bill is of fundamental importance.

The Bill has been a long time in coming. That is not entirely the fault of the Minister because the delay has existed for a considerable period. In October 1991 the Law Reform Commission published its first report on the indexation of fines. Various promises were made on a Bill to address indexation. In 1998 the Taoiseach of the day promised such a Bill. The excellent report of the Comptroller and Auditor General appeared in 2000. Much work was done also by the Joint Committee on Justice, Equality, Defence and Women's Rights. The Law Reform Commission published another report in 2002. The groundwork was laid for the Bill in terms of the reports outlined. In addition, Fine Gael published a number of Bills on the area that were shot down by the Government of the day.

The Bill is to be welcomed. In certain cases fines appear ludicrously small compared to the offence and they bring the law into disrepute. The updating of the maximum fines is important and the increase in fines imposed by the higher courts. It is particularly important in the areas of environmental crime, company law and competition matters that fines are commensurate with the offence and have a real deterrent effect.

The provision giving powers to the court to inquire into the capacity of persons to pay fines is of fundamental importance. It will increase the burden on the courts but it is a fundamental part of ascertaining the ability to pay and the reasonableness and justice in sending a person to prison for non-payment of a fine if he or she has an inability to pay. Figures are not available in this country but in the United Kingdom one study showed that 90% of fine defaulters were men, 76% were unemployed and approximately 66% had been in prison previously either for non-payment of a fine or for something else. If those figures reflect the situation in this country then we recognise the problem we are dealing with in that in many cases there is an inability to pay fines. Therefore, I welcome the provision on payment by instalment which is of fundamental importance.

I have come across a situation where, for example, a person was fined more than €1,000 for dumping material at a bottle bank or some such collection centre. Many such persons are unemployed and would never be in a position to get €1,000 together to pay the fine in one lump sum. I investigated the possibility of the individual in that case paying by instalment. The provision for payment by instalment is most important.

The Minister outlined an alternative to prison for persons in default of payment such as community service and other means. I welcome the Bill. It has gone through considerable vetting in committee. I note that a number of amendments have been made to it. I reserve my position in terms of tabling amendments on Committee Stage. I recognise the work that has been put into the Bill by the Minister and the Department in addition to the ground-breaking work of the Law Reform Commission and the other bodies involved with it.

In referring to indexation the Minister indicated it would not be appropriate that the matter would be dealt with by way of regulation but that it should be done by way of primary legislation according to the advice of the Attorney General. Section 11 provides that the Minister for Justice, Equality and Law Reform may, by regulation, do anything which appears to him or her to be necessary or expedient for removing a difficulty that may arise. In a sense this is the Oireachtas delegating to the Minister power to amend the primary legislation. If there is a problem of drafting or otherwise, it should be corrected in primary legislation. It is not a healthy precedent, although I understand that type of arrangement whereby one can amend

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primary legislation by regulation is more applicable in the case of the transposition of European Union law. I do not see the justification for it in this case. It does not help to ensure clarity and transparency in the law where even a practitioner has to look not only through the primary legislation and amendments thereto but has to vet regulations for changes in primary legislation. That is not desirable. I am not sure I understand the consistency in argument where indexation, which would seem to be a rather technical matter, should be done by primary legislation but in this case the Minister can do anything which he considers expedient to deal with a difficulty that arises in the implementation of the Act. I urge the Minister to clarify that matter.

The broad thrust of the Bill is appropriate. The updating of the system of indexation, whereby the multipliers are applied is such that the system is very coherent and rational. I very much welcome the provision for payment by instalment and the alternatives to imprisonment for default of payment. In many ways, we are dealing with people who have difficulties associated with income and employment. This is an important Bill to deal with what is essentially a sector of society that is disadvantaged. The heavy hand of the law is currently provided for in existing legislation and this Bill can ameliorate it to some extent and provide a more just system for dealing with the kinds of infringements of the law in question.

Senator Lisa McDonald: I welcome the Minister. The legislation is reforming and has many welcome aspects. It provides for an overhaul that has been needed for years. It is an effort by the State to set up an equitable system of fine recovery.

The updating and indexing of fines imposed by the District Court and, to a limited extent, some of the higher courts, is welcome. Many of the fines have not been updated for years and therefore do not serve as an adequate deterrent or penalty. The law can fall into disrepute or become an ass if a ridiculous fine is imposed that is not a deterrent at all. An example cited in this regard, namely that of a mother who was found drunk in charge of a three year old in 2001, points to a fine that has long needed to be increased.

The Bill, in Part 3, deals with the payment and recovery of fines. Section 13 empowers the court to consider the capacity of the debtor to pay. This has been allowed in civil arrangements but this Bill allows for far smoother steps to be taken. One step moves to the next very smoothly and they are outlined clearly in the legislation. In this way, the legislation is very good. The court can either be given a statement of means or consider the capacity of the debtor to pay. It can order a statement of means. If it feels it needs to consider the financial hardship of a debtor, it can do so. If an instalment order is needed, it can be given. If a fine remains unpaid, the order for recovery can be applied the day after it is due.

The procedure we are providing for is far smoother than the one in civil arrangements whereby one must keep going back to court for various orders. In this regard, the legislation is far-reaching and could ameliorate circumstances in other areas, if copied. It means the time taken up in the courts will be decreased.

The Bill provides for community service as a step in addressing default on payment of a fine. For those people who refuse to pay, whom I know exist from having spoken to people who say they would rather go to jail than pay for a fine, a prison sentence can be imposed. Sometimes people feel they cannot pay for political reasons. That various punitive steps are provided for is very important.

The concept of naming and shaming, as in *Stubbs Gazette* in the business sector, is very welcome because people do not like their neighbours to know they have not paid their debts. In this way, the legislation will be of assistance. The Bill gives teeth in an area where, until

now, people were simply put in jail for not paying their State-imposed fines and it is definitely welcome.

Let me refer to gardaí and fines for drink driving and speeding offences. If, on the last day before which a fine is due, the 56th day, a fine is not paid, the relevant file is immediately removed from the garda's desk and entered into the court system. If the debtor has forgotten to pay the fine, he or she must face court. I accept the penalty must be higher for those who have simply forgotten to pay fines or who cannot do so to the Garda but their cases should not go to court. I refer to good, generally law-abiding people who may have been caught using a mobile telephone while driving or caught speeding. I accept completely that these are serious offences but believe the Garda should have the capacity not to enter the cases into the court system. The system needs to be put in place in respect of Garda fines.

Somebody told me some days ago that he went to the Garda station to pay a fine but could not do so by instalment. There is no way of taking financial hardship into account in respect of Garda-imposed fines. We need to put the system provided for into place in respect of the Garda law-enforcement system. It is ludicrous that people who are seeking to pay money to the State cannot do so. Instead, they must wait for six to eight months until their case goes to court, which causes embarrassment. This is absolutely ludicrous in this day and age and I believe the Minister will accept that. This is fine legislation but it needs to be applied right across the system for the recovery of State fines. It should apply not only to court-imposed fines but also to on-the-spot fines imposed by gardaí.

I welcome the equality-of-impact aspect of the legislation. It provides a holistic way of dealing with fine payment. It is a truism that 2,000 people are sent to prison each year for failing to pay debts. Prison does not rehabilitate them in any way. Many are imprisoned not because they refused to pay but because they could not pay. There is no point in our jumping up and down saying everyone in prison cannot pay because some are imprisoned for refusing to pay. A fellow said to me some days ago that he would do jail rather than pay a fine. Let us be realistic about this. In this legislation, imprisonment is the very last step that can be taken. The Minister has dealt with it in a very measured way and ought to be complimented on it.

The busy nature of the District Court needs to be referred to. As a legal practitioner, I have an interest in this matter. There are cases in respect of which money could be collected, for example, cases in respect of enforcement of planning permission. These cases are taking nearly three or four years to be taken in certain parts of the country. In the civil debt collection area, contested cases are taking two to three years. The District Court is seriously busy and the problems that arise present an added burden of work.

The holistic approach we are to take, which involves the equality-of-impact arrangement, will ensure the law is fair and will have the same impact on all citizens. A well-off person can simply pay an imposed fine whereas a poorer person will not be able to do so. In the latter case, the instalment order will kick in and the assessment of the person's capacity to pay will be taken into account by the court. That is to be welcomed. In taking capacity to pay into account, the District Court judge must be assured he is doing so in an equitable and reasonable way. That will take time. District Courts, which are bursting at the seams throughout the country, face an increased burden and this needs to be addressed. I have said on numerous occasions in the House that there is a very simple answer, namely, the provision of separate family law courts which would deal with family law and domestic violence.

Senator Ivana Bacik: Hear, hear.

Senator Lisa McDonald: That has to be done if we are to ensure our District Courts run properly. Generally, the county council lists are the last to be done and this is an area in which

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a good deal of revenue might be collected. I appreciate the spirit of the legislation, which is excellent, but fundamentally we are going to have to consider setting up separate family law courts because they are taking up far too much of the court's time.

I cannot omit saying that this has given the State a smooth and effective manner for dealing with people who fail to or cannot pay their fines. Our civil law system is not as good and for the Joe Soap who is owed money by an individual, it has not improved. I note that the Minister said in his speech that he was going to look at the whole area of civil debt collection again. This is long overdue and I hope he will do this. Recently, it was stated that NAMA would be empowered to investigate the circumstances of builders living in palatial homes, with ten SUVs, staff, swimming pools, etc., whereas those builders not in NAMA can owe people too. Ordinary subcontractors get the same old excuse from such people every day to the effect that they, the creditors, are owed the money by the company, not the individual builder. This situation must be looked at because these people have no NAMA and no way of recovering their debts since our system does not have teeth.

Even if we were to impose a system such as this, it would be much better. It is interesting that the Bill indicates there will be recovery orders authorising a receiver — an approved person — to collect the money. Will this be a sheriff or a different person? I note from the Minister's speech that this will be a similar role to that of sheriff's collection. However, I rang the sheriff's office recently and asked exactly what it did. I did not get a satisfactory answer and I believe this is something that needs to be looked at immediately. As far as I am aware there is an issue about expenses for sheriffs, with them saying, in effect, that they are not going to seize goods any more. This is something that needs to be examined very carefully. I appreciate that people should not go to jail for being unable to pay a fine. That is correct but there needs to be a proper debt collection system in the civil area and the sheriffs, for some reason, are not performing adequately at the moment. I am not sure whether they are in a position to or will not collect goods, but if the State is to have a system whereby it collects its fines, then the civil side needs to be at least equal. That is to get off the point, however, and to take from excellent legislation. The Bill is very welcome and I welcome it into the House.

Senator Ivana Bacik: I welcome the Minister of State to the House. I welcome the Bill on behalf of the Labour Party. We believe it to be an important reform in the system of criminal justice and it is something we have sought for a long time. Essentially, its most important purpose as I would see it is that it will reduce the numbers of people being sent to prison because they have not paid fines. That is something on which we are all agreed.

Before I talk about the Bill, I want to refer to something Senator McDonald said about the role of the District Court. Like Senator McDonald I have practised in the District Court, particularly on the criminal side, and I agree with her that we need to have a separate system of family law courts. In Dublin there is a separate District Court for family matters. Anyone who has practised in a rural area, however, will know that the District Court lists are impossible to manage. Criminal and family cases are often heard on separate days, but it is undesirable, generally, from the viewpoint of those appearing on criminal charges and those appearing on family matters and the systems need to be separated.

There is another matter of relevance to this Bill in terms of the District Court. It was very clear from my work as a practitioner that the District Court on the criminal side was dealing by and large with accused persons drawn from the most disadvantaged areas. Some years ago I, along with Trinity College colleagues in the community and health department, did a mapping study into the backgrounds of accused persons before the Dublin Metropolitan District Court in the Bridewell. We published those findings in a book called *Crime and Poverty*, not

to give it a plug, in 1998. The disturbing finding was that not only were the majority of those appearing before the District Court being drawn from the most disadvantaged areas in Dublin, and this would be replicated throughout the country, the sentencing statistics showed they were more likely to be sent to prison than those from less disadvantaged areas for the same offences. That research gained considerable publicity at the time.

It is important to state, however, that there is a bias in the criminal justice system, particularly at District Court level where, granted, the offences are minor although statistically they comprise an enormous bulk, such that the persons being charged appear to be drawn from the more disadvantaged backgrounds. Our study also showed they were more likely to be sent to prison for the same offences. When that is coupled with the data the Minister for Justice, Equality and Law Reform gave in his speech today to the effect that more than 3,000 persons were imprisoned in the first ten months of 2009 for failure to pay a fine, one sees that the scale of the problem is enormous. Opposition Members are justified in saying that this is far too many and we have been seeking legislation for years to address this point and ensure people are not being locked up on grounds of poverty or their inability to pay. The fear is that this is what is happening currently.

The Minister, in fairness, said the number was increasing and that the rate of increase highlights the need for this legislation. While I agree with that, I would disagree with the Minister when he says the figures show our prisons are not cluttered up by persons who are there for no reason other than they did not pay their fines. I believe nearly 3,500 is a considerable number of people. Only a small number of prison places are occupied by fine defaulters on any given night, but one is still talking about 3,336 persons who have been locked up for a period of time for failure to pay their fines.

The Minister said some can afford to pay but choose not to. We do not know what proportion that amounts to. We know from our research, as I have said, that many people in serious poverty appear before the District Court. I suggest the majority of those in prison are there because they cannot pay their fines. The Minister recognises this is a problem and that is why this Bill is being brought forward.

We must also remember that behind each of those numbers is an individual who has lost out in terms of child care, housing, job opportunities and being able to keep a job. He or she may well have lost significantly. It is not just a question of losing one's liberty but also that the consequence of this may have been very significant in many instances for those in employment or who have small children or for people in rented accommodation who have to keep up rent payments and so on. We have to bear that in mind as well.

We welcome initiatives such as this Bill that will reduce the numbers of people in prison for failure to pay fines. I know that is not the only aspect of the Bill and that it also provides, as the Minister has said, for the indexation of fines. Again, we welcome that. It also provides for an approved system for assessing offenders' financial circumstances and for the payment of fines by instalments. I would see the payment of fines by instalments as being very much in line with the policy objective of trying to reduce the number of people imprisoned for failure to pay, and this is an important change. Perhaps most important, however, is the relevant part of the Bill dealing with alternatives to imprisonment where offenders default in the payment of fines.

While I want to look at that some more, I wish to raise a couple of other points first. There has been great delay in bringing forward this legislation, and I regret it has taken so long. Last year, the House debated issues surrounding default of payment and imprisonment and we were promised this reforming legislation. In fact, however, the Bill was first published in 2007 and the Law Reform Commission made recommendations as long ago as 1991. It has taken a long

[Senator Ivana Bacik.]

time to prepare and develop legislation dealing with the policy objective of reducing the number of fine defaulters in prison and ensuring a more effective fines payment system, which is dealt with in a large part of this Bill. It is a shame it has taken so long to bring it before the Houses.

A point was raised by Deputy Sherlock during the Second Stage debate on the Bill in the Dáil about the facility to pay fines by instalments, but I see that section 14(8) remains the same. The facility to pay fines by instalments only applies where the fine is greater than €100.

I o'clock That provision could be remedied. I do not understand why that minimum level has been set and perhaps the Minister would explain it. As Deputy Sherlock said, many people are surviving solely on income from the Department of Social and Family Affairs and every penny of their weekly income is accounted for. A fine of as little as €50 could be a considerable burden. It would be of great assistance to those people if it could be paid in €5 or smaller instalments per week.

Indeed, if one is fined €100, section 14 will not apply. It only applies to fines that are greater than €100. Countless numbers of fines of €100 are imposed in the District Court. It is a significant amount if one must account for every penny of one's income and has outstanding obligations, for example, to pay back a moneylender, pay for children's food, rent and so forth. Will the Minister consider changing that minimum figure? He was asked to do so in the Dáil but I ask him again to consider it. A €100 fine is a standard fine figure that is imposed with routine regularity in the District Court, yet a €100 fine will not be capable of being paid in instalments. Only fines greater than €100 will qualify under section 14 for the facility for instalment payment. That is a pity given the overall purpose of the Bill, with which we all agree, and the very progressive changes the Bill generally makes to the fine payment system.

Another point raised by Deputy Sherlock, which is a hobby-horse of mine, deserves mention. We must monitor the effect of the Bill to ensure we are not still sending thousands of fine defaulters to prison every year. We must monitor sentencing practices. It would have been nice to see a provision in the Bill providing for statistical analysis of sentences. It is a real concern for anybody who is examining the criminal justice system or trying to map out the impact of criminal legislation that we still do not have a coherent system for gathering data on sentences. The Central Criminal Court provides very clear data, but it deals with only a tiny fraction of criminal cases. They are generally the most high profile cases, involving murder and rape. The vast bulk of criminal business is carried out in the District Court, in particular, and the Circuit Court for trials on indictment. In the case of these trials, their outcomes and particularly the outcome of the guilty pleas — 80% of criminal proceedings, and 90% in some cases, are dealt with by way of guilty plea — we do not have a coherent system for gathering the data on sentences that is necessary if we are to monitor the impact of this Bill and ensure it meets its policy objective of reducing the number of impecunious offenders being subjected to imprisonment because they cannot pay fines. The sentence is the fine but the alternative currently is imprisonment.

There is a need for careful monitoring of sentencing practice. To do it, however, there must be a system in place for gathering sentencing data. I have plenty of colleagues in the academic criminal and criminological area who have tried to do this for specific offences but they have done so through all sorts of means, including looking at newspaper reports of sentencing for sexual assault and rape. Clearly, that is not an ideal way to gather scientific data on sentencing. The Central Statistics Office, CSO, has taken over the role of the Garda in assembling crime statistics, while the annual prison reports also provide data. There are different sources from which data can be gathered. As I said earlier, the Central Criminal Court is a very good source of data from that court. However, we must put some type of system in place to provide a

central repository of sentencing information so we can monitor whether persons are being routinely sent to prison for non-payment of fines after this legislation comes into effect.

I will turn to provisions in the Bill for alternatives to imprisonment for default of fine payments, which I very much welcome. They will permit, for the first time, a real alternative to deal with default. Section 15 allows the court to appoint a receiver to recover a fine or seize property belonging to a fine defaulter in order to recover from the sale of the property a sum equivalent to the value of the fine or any unpaid part of it. That is important because it will cover a situation where somebody has begun paying in instalments but has been unable to complete the payments. It will not just apply where there is an outright default. That is welcome. The order is made at the time the fine is imposed but is only activated when the offender has not paid by the due date and the receiver has been informed of the default by the Courts Service.

It is important to note that the receiver provision is not the final step. There is also the facility for the court to make a community service order if the offender consents and is suitable for community service, which is the usual provision where community service is being ordered. I fully support this. For a long time I and many others on this side of the House have argued for the need to give courts the facility to impose community service orders instead of imprisonment as the default where somebody does not pay a fine. It is welcome that the community service order will be the alternative to a fine, rather than imprisonment. It would be preferable if community service was the default rather than imprisonment, although I am not sure that will be the impact of this Bill.

For too long prison has been seen as the standard option in sentencing practice in this country. Community service and probation orders are the poor relations. We talk about alternatives to custody rather than seeing the alternative as the main sanction and custody simply a sanction of last resort, as it should be. I am struck by the figures that have been produced by the Minister. The probation service supervised only 1,667 community service orders in 2009. Considering that 3,366 persons were imprisoned for fine default in the first ten months of 2009 alone, it is troubling that in the full 12 months community service orders were imposed on considerably less than 2,000 people. We should be using the community service order more extensively.

Two final points should be made about community service orders. The research available shows there is remarkable divergence in practice in the imposition of community service orders across Ireland. It depends on the individual District Court judge. That should not continue. There should be far greater consistency in the application of community service orders and judges should be encouraged to use them rather than imprisonment. There is over-use of imprisonment, particularly at District Court level. To do that and to ensure this Bill has a full effect in terms of keeping people out of prison for fine default there must be adequate resourcing of the probation service. Probation officers supervise community service orders, including the community service orders where persons cannot pay fines and have no property that may be recovered to pay their fines.

There is a problem with the resourcing of the probation service. It is under-resourced and that is partly the reason that many District Court judges are reluctant to impose community service orders. That is the practical reality. However, the cost of keeping somebody in prison, even for one or two nights, is far greater than the cost of having them on probation and having a working and efficient probation service. There is clearly a financial imperative to increasing the use of community service and the resources for the probation service. However, I welcome the Bill.

Senator Mark Dearey: It has been interesting to listen to the contributions of Senators in the legal profession speak about their experience of how the system works downstream of the law. I wish to make a brief contribution on my experience as a councillor in recent times.

The Bill will be welcomed the length and breadth of Ireland by councillors who continually have to deal with very distressed individuals who for relatively minor offences finding themselves, with their families and individual reputations, embroiled in what is a terrible ordeal, even if it only involves a trip to Mountjoy Prison for half a day and back home again. Many have undeservedly had to go through this ordeal and the matter falls into the laps of working councillors who must make representations about such cases. Not only is the courts system being clogged up but the local government system can also find itself snowed under. In that context and in the context of general equity and the degree to which understanding and compassion have been expressed, I welcome the Bill in broad and specific terms. However, I take Senator Bacik's point about the €100 minimum figure, below which instalment payments are not possible. There are cases in which such a form of payment should be considered.

For my own purposes, I have listed the main points of the Bill under the three headings, each beginning with the letter "i", the first of which is "indexation". I listened to Senator Regan and take him at his word that it is subtle and responsive, as I have not yet managed to unpick it. The second heading is "instalment payments" is the second, while the third is "imprisonment alternatives". That is my mnemonic for working through the Bill.

The Irish Penal Reform Trust, the stated goal of which is to campaign for the rights of everyone involved in the penal system, with prison being a last resort, has also welcomed the Bill. The notion that prison should be seen as the point of last resort lies at the heart of how the Bill will be applied. I welcome the fact that community service orders and the seizure of goods are interim measures before the final step will be taken. I presume this will only happen if a person refuses rather than is unable to pay a fine.

From the point of view of the Green Party, the Bill is progressive and in line with our policy of pursuing alternatives to custody. It is also an agreed item between the two parties in government in the revised programme for Government and, in that context, is to be welcomed.

We can learn from the experience of successful penal reform systems in countries such as Finland, Germany and Canada, in which a conscious decision was made to reduce the prison population through the implementation of programmes of community alternatives to custody. The Bill provides a perfect example of how this can work, whereby people can be diverted from a custodial sentence or a visit to prison for a day which can be highly disruptive. The Green Party is committed to bringing about this kind of change and, as such, is happy to support the Bill.

I refer to Senator McDonald's contribution. The Law Reform Commission proposed the establishment of a central debt enforcement office to divert many of these cases away from the courts. Having listened to Senator Bacik's descriptions of the clogged-up system, I suggest this proposal might be worthy of consideration and one which the Green Party would support. Such an approach would offer a quicker and cheaper non-judicial debt settlement process which would distinguish between those who will not pay and those who cannot pay. Those who will not pay should always remain exposed to the ultimate threat of imprisonment.

We have one worry in the area of fines imposed for breaches of environmental regulations. Sometimes those who breach such regulations are willing to pay a fine on successive occasions. There is a need for a mechanism, whereby this can be recognised. Some people work in the shadier parts of the economy — the black economy. Particularly for those involved in the smuggling of diesel and fuel the imposition of a fine is not a deterrent. I do not want to think the Bill might make life easier for these larriers and cowboys.

I welcome the Bill which I am happy to support.

Senator Mary M. White: I congratulate the Minister and his officials for their tremendous work on the Bill which, as Senator Regan stated, is most welcome. I believe Senator Bacik is also supportive of it.

I commend the Minister of State, Deputy Moloney, for his visionary national initiative and proposal to break the stigma attached to mental illness over a period of two years. We are all behind him 100% in this work.

Senator Ivana Bacik: Hear, hear.

Senator Mary M. White: The Bill is both necessary and timely, given the predicament in which so many find themselves. It will bring the monetary value of fines up to date by indexing all existing District Court maximum fines and increasing certain fines imposed by the higher courts. It will also give the courts the power to inquire into the capacity of persons to pay fines in order to implement a policy of equality of impact. It will provide for the payment of fines by instalments and the courts with alternatives to imprisonment for default in the payment of fines.

The assessment of ability to pay and the concept of equality of impact are very important. It is a new concept in Irish law. In line with this policy, the courts must ensure, in so far as practicable, the effect of a fine on a person or his or her dependants is not significantly abated or made more severe by reason of his or her financial circumstances. They are obliged, therefore, to inquire into a person's financial circumstances and may then impose a fine that is higher or lower than, or equal to, the otherwise appropriate fine. They will also have the power to direct that a fine may be paid by instalments, if they are satisfied that requiring a person to pay up front by the due date would place that person or his or her dependants under undue financial hardship. This will greatly facilitate a smoother and more efficient collection of fines.

There can be no doubt a scheme for paying fines by instalments will pose an administrative challenge for the Courts Service. To reduce the burden, it has been decided that the payment by instalments system will apply only to fines in excess of €100. As soon as the system is up and running smoothly, that amount can, if necessary, be reviewed. However, for the present it is a prudent but relatively minor limitation on the operation of the scheme. It is also prudent to place a time limit for full payment of the fine and the norm will be for instalments to be spread over one year. However, the person on whom a fine has been imposed may apply to the court for an extension of time and the court may grant the extension for a period of not more than a further year. In other words, there are no circumstances where the payment of the fine by instalments can be spread beyond two years. The extension of up to one year is by no means automatic.

This Bill will introduce greater fairness and equity in the administration of fines. This is particularly important in the current economic climate, when so many families are facing catastrophic personal debt.

Senator Feargal Quinn: I welcome the Fines Bill 2009. The cost to the State of keeping an offender in prison for one week has been estimated at more than €2,000, a sum in excess of the great majority of court fines.

An Cathaoirleach: I apologise for interrupting Senator Quinn, but I remind Members that they cannot hold discussions with officials in the Chamber. Room is available outside if they wish to discuss matters.

Senator Feargal Quinn: I was unsure whether I had done something wrong.

The 12 year term for bankruptcy is longer than many jail terms handed down for manslaughter. According to the Free Legal Advice Centre, 276 people were imprisoned last year, some of them twice, on foot of non-payment of civil debt court orders.

The jump in the number of people being imprisoned is worrying and I assume it is due to the recession. Between January 2009 and the end of October 2009, 3,366 people were imprisoned, an increase of over 50% on the total figure for 2008.

We have a great need for this Bill but concerns arise that it does not go far enough. The recommendations of the Law Reform Commission need to be taken on board in a number of areas. The commission made 122 provisional recommendations for reform. It proposed the establishment of a central debt enforcement office that would divert most cases away from the courts to provide cheaper and quicker non-judicial debt settlements through the attachment of earnings. In Finland, where fines are linked to income, one businessman was fined €250,000 for speeding on his motorbike. The commission distinguished between individuals who will not pay and those who cannot pay, with the former remaining exposed to imprisonment. It is estimated that approximately 2,000 prison places could be freed in our prisons if such proposals were implemented.

I am disappointed there are no proposals to end the practice whereby people can be imprisoned for the non-payment of civil debt despite calls from the UN Human Rights Committee to end it. Perhaps we should also consider giving people the opportunity to repay some of their debts with moneys that are otherwise tied up in pension funds. Pension savers must be at least 50 years old before they can touch their funds, thus denying them a valuable asset that could help to dig them out of debt. Brendan Burgess, founder of the consumer finance website, *www.askaboutmoney.com*, and a member of the Government's expert group on indebtedness, believes pensions should form part of a deal with creditors. He has stated that participants in debt settlement schemes:

should not be able to benefit from a substantial write-off of their debts while they have a valuable pension fund asset...they should stop contributing so that the borrower has more funds available to pay their debts...If a debtor has a defined contribution pension scheme, then the fund should be available to pay off any creditors as part of the scheme.

It is worthwhile to examine the accessibility of pension funds when it comes to tackling debt restructuring.

We should also consider how the Irish Credit Bureau reports borrowers' payment histories in terms of only indicating payments made on time or missed. It could be described as a very inflexible system because there is little scope for grey areas, such as partial payments or those who were late by a few days. This has serious consequences for rescheduling debts, even with the agreement of creditors, because credit files will treat the debtor as being in default. This black mark stays on their files for five years. We desperately need a system whereby restructured payments are classed as such by the Irish Credit Bureau rather than treated as defaults and arrears.

At the same time, we have to reconsider at our approach to bankruptcy. If one is declared bankrupt, the restrictions applied become a millstone around one's neck for the next 12 years. In England and Wales, one can be in bankruptcy for as little as 12 months. If Alan Sugar and Donald Trump had gone bankrupt in Ireland, they would not have been in a position to create new businesses, take new risks or succeed on a larger scale. F.W. Woolworth went bankrupt three times before he succeeded in building up his empire. We have to give people at least some chance of getting out of bankruptcy and, perhaps, paying their debts at a later stage.

The Irish Penal Reform Trust has made several observations on the Bill which need to be considered in the context of its later Stages. For example, section 12(b), refers to the aggregate value of all property, whether real or personal. I agree that the estimated value of property should be assessed together with the potential for sale in the prevailing real estate market.

What is certain is that most people are willing to pay personal fines and debts, provided due account is taken of their financial circumstances. Society will benefit and the State will save money if we take the first steps in overhauling our debt enforcement procedures with this Bill. I commend the Bill to the House and I am sure it will be accepted by all Senators. However, it will be worthwhile to scrutinise it further on Committee Stage with a view to improving it and ensuring it addresses the concerns raised today.

Senator Jim Walsh: I welcome this progressive Bill which deals with an area that has come into sharper focus as a result of the economic downturn and the difficulties people face in paying fines and debts. The Bill distinguishes for the first time between those who have the capacity to pay and those who willfully refuse to pay them. I think this will be viewed as an equitable measure.

The indexation provision, which is one of the cornerstones of the Bill, is interesting. We have in the recent past discussed the erosion of the deterrent power of fines due to inflation. Indexation is to be welcomed for taking account of that lacuna in the law. I note that the schedule to be produced will give minimum fines in some instances and maximum fines in all instances. In that regard, perhaps it would have been useful had the Bill had a Schedule which indicated what those fines were. I would like to think there would be Oireachtas scrutiny of the application of the indexation from time to time so that they can be looked at and that there would be a mechanism for the Oireachtas, in conjunction with the Minister, at least to review the relevance of fines for offences. The concept is good in that the fines will be categorised. I suppose that will give rise to some anomalies initially and I note there is provision in the Bill to deal with that. It is interesting that the Prohibition of Incitement to Racial Religious or National Hatred Act 1989 was taken as one of the examples in the briefing documentation.

It seems good that ability to pay, an issue to do with the Scandinavian experience, of which I heard Senator Quinn be an exponent, not only today but previously, should become a factor in the determination of the fine. The example he gave shows to some extent an injustice in it whereby somebody could be fined up to €250,000. In our system it is good that while a judge will have discretion to apply a fine, he or she will not be able to exceed the maximum specified in the schedule.

However, I would hope in the exercise of judicial discretion that ability to pay would be only one component of a judge's determination of the fine. I apologise for talking to the officials earlier. I was merely trying to clarify a particular query. Where a person is caught committing a speeding offence, for example, a fairly common offence which might illustrate the point quite clearly, and going at 120 mph or 130 mph, which is obviously a particularly dangerous speed, the judge might veer towards the minimum of the fine specified for that offence because the person does not have financial resources, whereas a person of good financial resources who is caught exceeding the speed limit, perhaps by only a couple of kilometres per hour and marginally over the speed limit, ends up with the maximum fine. It would appear there could be potential for an injustice in that regard. The nature and extent of the offence should really be the primary determining factor in the penalty imposed. One would hope that judicial discretion would iron that out, but I wonder whether within the framework of the Bill there should be recognition of and regard for that point. If ability to pay becomes the overriding criteria, there

[Senator Jim Walsh.]

is a risk we could end up bringing the law into disrepute. It is something I would ask to be looked at. In general, I am not opposed to the concept of ability to pay but the manner in which it is applied must be monitored to ensure it operates without creating further anomalies or weaknesses within the legal system.

I agree, as I often do, with a point made by Senator Quinn about the attachment to earnings. He is one of the sounder Members of this House. On the alternatives to imprisonment, I note a judge will have powers to appoint a receiver where somebody has not responded over a period to his or her various obligations received from the courts to pay fines. I would make two points in that regard. The first is that the operation of the sheriff scheme has been effective and there have been good examples of it working in practice. However, there have been other examples which would be the corollary of that. I would have concerns about the heavy-handedness of the powers we give to persons in these positions and the risk of them taking impromptu action which may fail to take all aspects into account and may cause an injustice to the person involved. I do not see it in the Bill, but I would like to think that where the State assumes to itself what are draconian powers, there should be protection for the citizen. Where those powers are exercised wrongly and excessively by the authorised officers, the citizen offended in this regard should have a right to fairly significant compensation so that there is an onus for a measured and reasonable exercise of such draconian powers. Perhaps the Minister of State, Deputy Moloney, will be able to point out where this is dealt with in the legislation.

The second point is that I would have thought it better to have that power trigger later. Community service and attachment to earnings are issues which perhaps should come prior to the exercise of that provision in the Bill to appoint a receiver, that the involvement of a receiver would be a last resort. It strikes me there is a cost involved. The fines may not be that high but it could be quite expensive to get somebody involved directly to deal with this. It is something I would like us to look at.

I will finish on this point about community service. I note there is significant spare capacity in that area. It goes back to many of the discussions in this House about the costs of public service. This will help to shore up that excess capacity within the probation and welfare service which does good work to supervise community service. I note that if it can be increased four-fold, there is obviously significant excess staffing. However, it is an area which we could use to recover the costs of the fines, not only through the work but perhaps by placing persons in jobs where the remuneration would come back to whoever in the State was collecting the fines.

Minister of State at the Departments of Health and Children, Education and Skills, Enterprise, Trade and Innovation and Justice and Law Reform (Deputy John Moloney): I thank all the Senators who contributed and ensured the debate was a positive and interesting discussion on the fines system in the country. The Minister, Deputy Dermot Ahern, already explained in his opening speech that the system of indexing proposed in the Bill might appear quite complex. However, I would suggest that while several tables of figures might seem at first glance intimidating, the scheme of indexation proposed in the Bill is not too difficult to understand. It is the system recommended by the Law Reform Commission in two reports and there is no realistic alternative scheme. We do not want to end up with a scheme under which a wealthy person could be fined several thousand euro for, say, throwing a cigarette butt on the pavement. Even if one believes someone who has this sort of money can afford to pay such a large amount, there would be two insurmountable obstacles. First, it is unlikely the courts would accept such a fine was proportionate to the offence committed and, second, the District

Court is a court of summary jurisdiction in which there must be an upper limit to the amount of fines it can impose.

A total of 1,335 persons were imprisoned in 2007 solely for the non-payment of fines, most of whom would have had a short stay in prison. The figure rose to 2,154 in 2008 and 3,336 for the first ten months of 2009. This indicates greater enforcement of the laws on default and highlights the pressing need for this legislation.

While the issue of prison spaces taken up by fine defaulters is minor, the more important issue is ensuring persons are given every opportunity to pay their fines and in cases of default realistic alternatives to imprisonment are in place. That issue is more adequately dealt with in the Bill.

Section 17 amends the scale in section 2 of the Courts (No. 2) Act 1986 which sets out the maximum terms of imprisonment for defaulting on the payment of a fine imposed in the District Court. A maximum term of imprisonment is provided for, the length of which depends on the scale of fine default. Section 17 reduces the periods of imprisonment substantially and increases the levels of fine default in the scale. It also allows the Courts Service to publish the names and addresses of fine defaulters. Even though justice is administered in public and a fine imposed on a particular individual was published in a local or national newspaper, it might not be public knowledge that it was not paid. The section will also ensure the maximum level of compliance with the payment of fines. While a small minority may not care, most people who default on the payment of fines will no more wish to have their names on the list of defaulters than they would wish to see their neighbours and relatives see their property being seized for non-payment. The measures aimed at the recovery of fines should result in a substantially reduced level of fine default with a consequential reduced impact on the availability of prison spaces and a significant reduction in the number of warrants for imprisonment being executed by the Garda.

Senator McDonald asked if the Courts Service had the resources to implement the Bill's measures. It will involve additional work and is a matter for the Courts Service to introduce efficient procedures, including the use of modern technology, to ensure the provisions operate smoothly. Departmental officials are in consultation with the service on the implementation of the legislation. Some amendments were made to it in the Dáil to reduce the immediate impact of the system on the Courts Service.

Senator McDonald also inquired about how the receiver provisions would work. Receivers will perform similar duties to sheriffs and Revenue sheriffs, that is, seize and sell property. The main difference is that Revenue sheriffs are responsible for the enforcement of Revenue certificates under section 485 of the Income Tax Act 1967. The Dublin and Cork sheriffs are responsible to the courts for the enforcement of court orders in civil proceedings, while receivers will act on the instructions of the court to recover property to the value of an unpaid fine.

All sheriffs are appointed by the Government at the request of the Minister for Justice, Equality and Law Reform or the Minister for Finance. Their remuneration is set by the former with the consent of the latter in a fees order, last updated in 2005. They are independent agents, not civil servants. An expression of interest request to act as receivers will be drawn up and tender papers will be issued to suitably qualified candidates. An appointment to the position will be subject to contracts between the Courts Service and the receivers.

Experience in this field has been gained in the past few years. A pilot scheme ran from January 2006 to June 2006 involving the engagement of an external credit management agency

[Deputy John Moloney.]

to manage and attempt to collect a sample of overdue court imposed fines. The pilot scheme was considered successful and in late 2008 an expression of interest request for the collection of fines was placed to allow for the outsourcing of the collection of court imposed fines. There was a good response which resulted in the drawing up of a final tender. While the collection of overdue fines is different from the role envisaged for receivers, the experience suggests there will be no shortage of suitably qualified firms interested in the position.

Section 15(2) states a recovery order will not have effect until the receiver is informed of a default by the Courts Service. This will allow the credit management agency to make a final effort to be paid.

Senator Regan said the primary legislation should not be amended by regulation, as provided for in section 11 which is not a unique provision. For example, such a provision is contained in the British-Irish Agreement Act 1999. The regulations would not make substantive changes to the legislation but simply facilitate its implementation, should it prove necessary. On the other hand, increasing the level of fines might be regarded as a substantive change, even though they would not represent real increases.

Senator McDonald referred to the consequences for persons who did not pay on-the-spot fines. The Minister will examine this point later, as the Bill does not deal with on-the-spot or fixed fines but court-imposed fines on conviction for offences.

Senator Bacik referred to the €100 threshold for the payment by instalment provisions to apply. This is a prudent provision which will facilitate the introduction of the instalment facility and can be examined when the legislation is running smoothly.

Senator Bacik also stated persons from deprived backgrounds were most likely to be imprisoned. One reason for this is that judges may consider that for various reasons such persons are less likely to pay fines. Again, the Bill will remedy this issue. As of Monday last, there were four persons in prison for the non-payment of fines. The only alternate action in the case of default and a community service order is imprisonment.

Senator Quinn raised the recommendation made by the Law Reform Commission for a central debt enforcement office. The Bill deals with fines, not civil debts which the Minister is examining in another context. Few people are in prison for the non-payment of civil debts. The number committed to prison for the non-payment of fines is slightly misleading, as it pertains to the number in prison on any single night and is not significant. I have already mentioned that there were four.

Senator Walsh thought there was potential for unfairness in the ability to pay provisions. I emphasise that the Judiciary will retain full discretion regarding the amount of fine imposed as long as it is within the statutory limits. However, there is no point in imposing a level of fine that the person is clearly unable to pay as it could result in an injustice being done to deprived persons and would most likely lead to imprisonment. In that context, there could be a level of injustice but it would take into account the person's ability to pay.

Question put and agreed to.

Acting Chairman (Senator Feargal Quinn): When is it proposed to take Committee Stage?

Senator Jim Walsh: Dé Máirt seo chugainn.

Committee Stage ordered for Tuesday, 27 April 2010.

Acting Chairman (Senator Feargal Quinn): When is it proposed to sit again?

Senator Jim Walsh: Ag 2.30 p.m. dé Máirt seo chugainn.

Adjournment Matters.

Internet Filtering Systems.

Senator Paschal Donohoe: I thank the Minister for taking this Adjournment matter. It relates to Government thinking on dealing with the issue of illegal file sharing across the Internet. There was some publicity about that in recent weeks in regard to a freedom of information request to the Government through an organisation called Digital Rights Ireland. It was looking to establish Government policy on how it would work with Internet service providers in Ireland to stop files being shared illegally across the Internet.

In raising this issue on the Adjournment I seek to do three things, the first of which is to establish Government policy and thinking on the area because until now I have been unable to get a read on the most recent thinking in terms of the way this area will be dealt with. How we respond to this is becoming increasingly important because there have been a number of High Court rulings in this area to which the Government will have to respond and deliver a policy that will deal with this area.

Second, I have an interest in Irish companies that work on the Internet. These are legitimate large Irish companies that would work in digital media, digital gaming, digital art, animation and so on which depend on the Internet to deliver a legitimate business that is a symbol of the smart economy we are all committed to delivering. Some of those companies have flagged a number of issues in terms of where they see Government policy going that could seriously affect their ability to operate successfully out of Ireland.

Two points have been made to me, the first of which is the need to recognise and emphasise that not all file sharing across the Internet is illegal. Much of the file sharing is important for digital games, on-line enterprises and marketing activity to work. It is completely legal and the kind of enterprise and activity our country is trying to promote as being a hub for Europe and the world.

The second point is a more technical one that I am trying to understand further but it is worth putting on the record. It appears that many of the protocols and technologies that would be involved in illegal file sharing are also the ones used to run legal file sharing and the approach the Government might decide to take may be unable to recognise the difference.

That leads me to the third point I want to make. As this issue was raised with me and I talked to some experts in the area, the message I got back from large employers here, who are strategic to what we are looking to do with our smart economy is that a policy that did not consult them could threaten the jobs and expertise we are building up in areas like cloud computing, digital media and attracting companies like Facebook, which has its European headquarters in Dublin, Google, Bling and so on which depend on many of these technologies for their business and operations in Ireland.

This issue is now being dealt with across Europe and the world and it is being treated much more seriously than was the case in the past. While I am presenting this as a threat to our country because inevitably we respond to bad news we hear and raise them in these Houses,

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the important flip side is that as other countries make a decision about the way they will respond to this issue, there is the possibility they will use a blunt instrument to deal with it.

I urge the Minister, the Department of Justice, Equality and Law Reform and the Department of Communications, Energy and the Marine to consult broadly with the businesses and stakeholders in Ireland to ensure we come up with a policy that deals comprehensively and seriously with the issue of illegal file sharing, which includes everything from the sharing of songs illegally to child pornography, which is a very serious issue, but in a way that recognises that a great deal of commercial activity we are trying to attract uses the same technology. We have already had much success in that regard.

If we were to do engage in a consultation process, we could formulate a policy that might be more nuanced and effective than those of many other competitive countries which are looking to get the same technologies. That would add to our ability to grow these industries domestically through indigenous talent and would also be another string in our bow in terms of attracting such companies to our country, which we all want. Our country has had a great deal of success in this area up to now.

I realise the Minister of State will reply on behalf of another Department. I understand the reason for that but this is a serious issue and if we all engage in it, it might ward off danger and present an opportunity to us as well. I look forward to the Minister of State's response and hope to have an opportunity to pursue this issue in the Seanad.

Minister of State at the Departments of Health and Children, Education and Skills, Enterprise, Trade and Innovation and Justice and Law Reform (Deputy John Moloney): I thank Senator Paschal Donohoe for raising this important matter on the Adjournment. I want to advise Senator Donohoe that the Office for Internet Safety, OIS, is an executive office within the Department of Justice, Equality and Law Reform, which the Senator has acknowledged, and has responsibility for promoting Internet safety, with a particular focus on combating child abuse imagery, more commonly known as child pornography. The office is advised by an Internet Safety Advisory Council comprised of key stakeholders in the statutory, industry and community sectors.

The Internet is a worldwide phenomenon with no borders and no single organisation controlling it. Efforts to combat illegal and harmful materials and activities on it can be hampered by the multiplicity of jurisdictions, differing legal systems and societal norms. Tackling Internet downside issues is a complex business and continues to set new challenges and commitments for all those charged with protecting against the downside of the Internet.

In a number of EU member states — the United Kingdom, Denmark, Finland, Norway, Sweden and the Netherlands — a system of Internet blocking-filtering has been introduced on a voluntary basis whereby a so-called blocklist of sites containing illegal child pornography is made available by the police or other competent authorities and is utilised by individual Internet service providers to prevent access to such content. Germany and France have introduced or are considering the introduction of legislation requiring ISPs to block access to websites containing child pornography.

It is generally acknowledged that all such Internet blocking or filtering systems are not fool-proof and can be circumvented in certain circumstances. However, such filtering systems are understood to be useful in preventing Internet users from inadvertently encountering such illegal content. All mobile phone operators in Ireland, under a voluntary agreement brokered by the European Commission with GSM Alliance Europe, an association which represents

European mobile phone operators, implement a form of filtering on their mobile Internet services which prevents access to websites identified as containing illegal child pornography. There is an existing self-regulatory framework for Internet service providers in operation in Ireland that actively encourages the adoption of best practice procedures aimed at limiting the proliferation of illegal child pornography content on-line. Members of the public may report such material to the Internet Service Providers Association of Ireland *www.hotline.ie* service. If the material is hosted here and deemed to be illegal and in contravention of Irish law, ISPAI members are obliged to remove such material. If the material is hosted in another jurisdiction, it is notified to the Internet hotline in that jurisdiction and the relevant law enforcement agencies for follow-up, with the aim of having illegal content taken down.

So far as the Department of Justice, Equality and Law Reform is aware, standard Internet service providers in Ireland do not implement any blocking or filtering system in respect of child pornography. The Office of Internet Safety, because of its stated role in the promotion of Internet safety and, in particular, combating child pornography, has a role in examining such issues with advice from the Internet Safety Advisory Council. In 2 o'clock undertaking research to develop policy advice in this area the Office of Internet Safety has had discussions with a variety of relevant interests on issues pertinent to the consideration of the possibility or feasibility of introducing Internet filtering in Ireland, specifically in respect of illegal child pornography content. These ongoing discussions were referred to in recent press reports. However, no decisions have been arrived at on the issue of Internet filtering or blocking at national level. Any proposals for the introduction of such a system would, at the very least, need to be submitted to the Government for consideration. The introduction of any such system, particularly if it is mandatory, might require primary legislation. Notwithstanding this, a draft proposal for a directive on combating the sexual abuse and sexual exploitation of children and child pornography has been published recently by the European Commission which could potentially require member states to implement some form of blocking system for websites containing child pornography. This proposal will be discussed in the European Parliament and at the Council of Ministers. Ireland's participation in the adoption and implementation of this measure will be subject to Government and Oireachtas approval.

Senator Paschal Donohoe: Everyone is supportive of any measure that can be taken to deal with the evil of child pornography and its distribution on the Internet. The consequences of a course of action that could be taken may be more far-reaching and profound than is understood. The response of the Minister of State concerns the discussions taking place — referred to in the first part of my submission — but does not take account of the second part — the effect such a measure could have on interests in Ireland. There are options to deal with the dissemination of child pornography and violent material on the Internet that would have a more benign effect on elements we are legitimately trying to attract to the country. That the Department of Communications, Energy and Natural Resources is not mentioned in the response is telling. That Department is at the forefront in attracting legitimate businesses to the country.

I again thank the Cathaoirleach for giving me the opportunity to raise this matter.

Water and Sewerage Schemes.

Senator Ciaran Cannon: I welcome the Minister of State. Despite the current economic downturn, Loughrea is a burgeoning and vibrant town which needs to have its water supply upgraded in terms of extraction and treatment works and the network that supplies water to the surrounding hinterland. Many communities in the hinterland of the town are in dire need

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of a satisfactory, clean and reliable public water supply. One such community is Kilreekil situated on the N6. Interests in Kilreekil and Loughrea, as well as Galway County Council, have been campaigning since 2003 to have the treatment plant and network in Loughrea upgraded in order that the town can develop in the way it should and the community of Kilreekil and other communities in the hinterland of Loughrea can have a reliable water supply.

In 2004 Deputy Michael Kitt, a former Member of this House, asked when phase 2 of the Loughrea regional water supply scheme would be developed. He was told in reply that it was intended to commence construction in 2006 at a cost of over €35 million. That did not happen. The Government then produced a water services investment programme in 2007, in which it was indicated that the scheme would go to construction in 2009. That also did not happen.

On 3 March I asked a similar question in this Chamber and the Minister of State, Deputy Áine Brady, responded to my query. I had hoped the scheme would be included in the new water services investment programme published this week. The Department of the Environment, Heritage and Local Government requires every local authority to prepare an assessment of needs outlining the strategic and sustainable development needs of the county from the point of view of identifying where upgrades and improvements to water supply and sewage treatment plants are needed. The Minister of State stated the new programme would set out the water services contracts likely to proceed to construction in the next three years. In compiling the water services investment programme the Department relies on the expertise and local knowledge of local authorities. Galway County Council prepared such an assessment of needs. In the 11 schemes to receive priority in County Galway it listed the scheme in Loughrea at No. 5. It also indicated it would be in a position to begin delivering on the scheme in 2010 and that all of the information sought by the Department had been supplied by it. Within a matter of weeks the council would be ready to go to tender.

Last Tuesday morning when I read the details of the new water services investment programme, I was taken aback; the scheme in Loughrea had been omitted from the list of schemes to go to construction in the next three years. I am mystified by this, as are officials at Galway County Council, given that the scheme was first promised in 2006 and again in 2009. Its omission undermines the expertise and local knowledge of the local authority. I cannot understand why one would seek the opinion of a local authority and indicate that one relied on such an opinion in preparing an investment programme and then choose to ignore it.

In identifying the scheme in Loughrea as a priority Galway County Council pointed out how for the population of Kilreekil water for domestic and commercial use had to be transferred by tanker, the council having been unsuccessful in finding a suitable source of drinking water in the area. The provision of additional treatment facilities would safeguard the supply from cryptosporidium.

I cannot understand the decision made; neither can the people of Loughrea and Kilreekil or the officials of Galway County Council. I hope the Minister of State can enlighten us on the reasons it was taken.

Deputy John Moloney: I thank the Senator for providing me with an opportunity to set out the position on behalf of the Minister for the Environment, Heritage and Local Government. As stated by Senator Cannon, the Minister earlier this week published a comprehensive range of new water services infrastructure to be undertaken under his Department's Water Services Investment Programme 2010-2012. The total value of contracts underway and those in County Galway proposed for commencement during the period of the programme is some €130 million.

The Loughrea regional water supply scheme is included in the list of schemes to advance through planning in this period.

Given the changed economic climate and the finalisation of the first cycle of river basin management plans, the new programme aims to prioritise projects that target environmental compliance issues. It also fully supports economic and employment growth as envisaged in the Government's policy document *Building Ireland's Smart Economy — A Framework for Sustainable Economic Revival*. The scope and format of the programme for 2010-2012 is designed to reflect ongoing environmental and economic priorities better, to maximise the return on public funds being invested in the sector and to ensure the programme is realistic in its level of ambition.

In developing the programme, a review was undertaken of all contracts and schemes listed in the previous programme in regard to which there had been little progress during the past two years to ensure those proceeding were aligned with current priorities. In this context, while the proposals for upgrading Loughrea water treatment plant were considered to reflect programme priorities, the planning of this infrastructure under previous programme cycles had not advanced sufficiently to allow for its inclusion as a contract to start construction in the programme period.

The length of time taken for schemes included in the water services investment programme to advance to completion of construction largely depends on the nature and complexity of the scheme and the statutory processes involved. The Department is involved at key stages in the development of schemes to ensure compliance with obligations relating to management and oversight of Exchequer expenditure. Ultimately, responsibility in relation to the detailed progression of schemes is a matter for the relevant local authority, in this instance Galway County Council.

In the case of Loughrea regional water supply, while this scheme was designated to commence construction last year under the 2007-09 programme, the planning phase of the scheme was not finalised during that programme period. The Department received from Galway County Council in early February this year a revised preliminary report setting out the latest design proposals for this scheme. The Department is examining this report and will convey a decision on it to the council as soon as possible. The Minister for the Environment, Heritage and Local Government has included an annual review process as one of a number of new measures in the Water Services Investment Programme 2010-2012 under which the programme will be reviewed and updated annually to allow for any reprioritisation required for the balance of the programme. This is intended to deal with investment requirements arising, for example, from the clarification of appropriate treatment for certain agglomerations from the licensing and certification process for waste water discharges rolled out by the EPA or from the ongoing monitoring of drinking water standards which may highlight risks which need to be addressed.

In regard to the Loughrea scheme, I can assure the Senator that the Department will continue to work closely with Galway County Council to ensure the scheme and other water services contracts and schemes included in the council's water services investment programme are advanced as far as practicable during the course of the next three years.

Senator Ciaran Cannon: I thank the Minister of State, Deputy Moloney, for his reply. It is my understanding that Galway County Council is at an advanced stage of planning for this scheme, as indicated in its assessment of needs where it sets out that the timeframe for delivery is 2010. The council has submitted all documentation and information required by the Department. The officials in Galway County Council have informed me that it will be ready to go to

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tender on this scheme by end of this year, yet Loughrea water scheme is not included on the Department's list of schemes to go to construction during the next three years. Not alone was this scheme included on the 2009 list but former Minister of State, Michael Kitt, was told in this Chamber in 2004 that it was intended to commence construction at an estimated cost of €35 million. I do not understand how, six year's later, we are still at planning stage.

When Galway County Council indicates to me that it is ready to go to tender, I will be seeking to have this scheme returned to the Department's list of schemes to go to construction.

The Seanad adjourned at 2.20 p.m. until 2.30 p.m. on Tuesday, 27 April 2010.