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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Tuesday, 1 *June* 2010.

SEANAD ÉIREANN

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Dé Máirt, 1 *Meitheamh* 2010.
Tuesday, 1 *June* 2010.

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Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

———

Paidir.

Prayer.

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Business of Seanad

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

The need for the Minister for Enterprise, Trade and Innovation to ensure the IDA has a comprehensive strategy to promote south Donegal as an area for investment and that, in particular, Bundoran, Ballyshannon and Donegal are earmarked as towns in which the IDA will make site visits.

I have also received notice from Senator Brian Ó Domhnaill of the following matter:

The need for the Minister for the Environment, Heritage and Local Government to amend the development central advice and guidelines and the policy and planning framework for roads in order to differentiate between national primary and national secondary routes for planning purposes.

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

The need for the Minister for Communications, Energy and Natural Resources to give an update on the rural broadband scheme proposed for 2010-11 and how it will impact on rural parts of County Donegal where there is still no cover.

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

The need for the Minister for Finance to extend the allocation of relief under the mineral oil tax relief scheme for Green Biofuels Ireland Limited to allow the only company in Ireland manufacturing biodiesel to continue its operation that is financially viable to the end of the year.

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

The need for the Minister for Community, Rural and Gaeltacht Affairs to make a statement on the future plans for community development programmes.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment. I have selected the matters raised by Senators Doherty, Ó Domhnaill and Keaveney and they

[An Cathaoirleach.]

will be taken at the conclusion of business. Senators Twomey and Buttimer may given notice on another day of the matters they wish to raise.

Order of Business

Senator Donie Cassidy: Before I announce the Order of Business, I wish to inform the House that statements on the situation in Gaza will be taken tomorrow with the Minister for Foreign Affairs, Deputy Micheál Martin, who will update the House on the current serious position.

The Order of Business is No. 1, motion on a proposed European directive on preventing and combating trafficking in human beings and protecting victims, to be taken without debate at the conclusion of the Order of Business; and No. 2, Multi-Unit Developments Bill 2009 — Report Stage, to be taken at the conclusion of No. 1.

Senator Frances Fitzgerald: Several national and international events have taken place over recent days which need to be debated in this House and should be reflected in our work and on the Order of Business. We have seen the shocking and worrying pictures of the Israeli military boarding a flotilla of ships delivering aid to the people of Gaza and Irish citizens in international waters effectively being kidnapped, as described by the Minister for Foreign Affairs. I welcome the Leader's statement that the Minister will be in the House tomorrow to debate this important topic.

We were also told an additional €2 billion has been offered to Anglo Irish Bank. I hear on the doorsteps every day about special needs provision being cut back and food budgets in residential care institutions being cut by €50 a week in many instances, and we had statements from the Minister for Social Protection about welfare reform. We need a proper and comprehensive debate about welfare to work and building the appropriate supports around education and training and child care opportunities. Will the Leader arrange debates on these topical and important issues this week if we are to ensure the House is relevant?

In that context, one issue is distracting from the important attention these issues deserve and causing significant public concern and that is the expenses of one Member of the House, Senator Callely. That has led to reasonable questions being raised and I would like that Member to be afforded the opportunity to explain the circumstances surrounding these reports. Will the Leader make time available for a statement by Senator Callely on these matters? It is related to our work and such a statement should be addressed to the House. Will the Leader respond to that request and make time available in order that we can send a clear message from this House on these matters?

Senator Jerry Buttimer: Hear, hear.

Senator Joe O'Toole: I thank the Leader for responding to the request for a debate on the situation in Gaza and it is appropriate that it take place tomorrow in order that the Minister can contribute on this two days in a row.

I concur with everything Senator Fitzgerald said. It is regrettable that Senators were in the public eye all over the weekend for all the wrong reasons again. The Cathaoirleach and I are well aware of our code of conduct. Under Article 15 of the Constitution, of which every Member has a copy, we are required, among other things, to ensure we maintain the integrity of the office and of the Seanad and to foster and sustain public confidence in the Seanad. I want to be absolutely fair, to respect all of the House's procedures and the law and to acknowledge the fundamental importance of the assumption of innocence in our democracy.

I am not rushing to any conclusions about anything but it is, nevertheless, crucial to the image of our Parliament and, in particular, to this House, that we deal with and dispose of any breaches or apparent breaches of our code of conduct. I do not want to rush to judgment. I cannot answer a question as to the personal circumstances of any Senator and I cannot answer the question as to where a Senator lives. All I know about where a person lives is I have recourse to the Electoral Act which provides that where a person is registered to vote is where a person is normally resident. That is required by law. I cannot go and have no intention of going beyond that.

Apart from that, I seek guidance from the Cathaoirleach in this regard. I believe there is a responsibility on us as a House to respond in an appropriate fashion either by requesting the Senator to make a personal statement, as Senator Fitzgerald has requested, or by conducting an investigation through the Committee on Procedures and Privileges or the Committee on Members' Interests of Seanad Éireann or by triggering a complaint under the Ethics in Public Office Act 1995. I do not know the appropriate way and I would respect the Cathaoirleach's advice on this but I am certain the House, the Member himself and the ever dwindling reputation of politics would benefit from a clearing of the air rather than allowing this to drag on interminably in the media. It may well be that if we walk away from dealing with this, we will go down the road of the Westminster Parliament where if we are not seen to deal with issues that concern and worry the public, an external, independent, ethical body will be established to tell us how to run our business, which was never the intention of our Constitution. We are required to do this and we have a responsibility and a duty to do so.

I am not rushing to judgment as I do not know the facts of the case. It is all over the media, however, and it is creating a certain view in the eyes of the public. It is reflecting on all politicians and, in fairness to the Member, rather than let it drag on, it should be brought to his attention that we are concerned about this and that we want it dealt with. I am not prepared to let it sit without some action being taken. I have refused any request I have received to participate in media discussions and interviews in this regard in the last two days. This is the place in which to deal with such issues. This is an important matter, on which I ask for the Cathaoirleach's advice and support.

An Cathaoirleach: I remind Members that the Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, provides a legislative framework for dealing with any contraventions of the legislation by a Senator or any complaint made about a specific act of a Senator. Therefore, the Seanad has no function in the matter at this time.

Senator Alex White: Would the Cathaoirleach please clarify for the record whether the Committee on Members' Interests has any role in relation to this matter? As my colleagues have said, it is a matter of serious urgent concern.

An Cathaoirleach: If a complaint is made, the Committee on Members' Interests certainly will have a role and the matter will be referred to it if deemed necessary.

Senator Alex White: My understanding is that the committee can raise matters of its own volition. Therefore, this is a matter it could consider.

An Cathaoirleach: That is correct, if the committee so wishes.

Senator Alex White: As a member of the committee, I believe it should, in fact, address this issue urgently.

An Cathaoirleach: That will be a matter for it, when it meets.

Senator Alex White: I agree. It is an urgent matter. A meeting of the committee should be arranged at the earliest possible date in order that it may be addressed in that forum.

On the debate which the Leader has arranged for tomorrow evening, I welcome the fact that we are to have a debate on the situation in Gaza. All reasonable persons would agree that what occurred yesterday morning was most shocking and a despicable act, an attack on a humanitarian mission in international waters. I believe it was an illegal act, carried out with excessive and grossly disproportionate force. I cannot understand how Israel which seeks the support and respect of the international community can stand over the statement made yesterday by an Israeli army spokesperson to the effect that, "There is no humanitarian crisis in Gaza." Anybody who believes that has virtually placed himself or herself beyond the potential for having a reasonable discussion on what should pass for acceptable action at international level. It is vitally important that there be an independent inquiry into what occurred. I do not accept what I heard an American spokesperson say today, that it was within the bounds of the Israeli Government to conduct such an inquiry. That clearly cannot be the case in order for the international community to have any confidence that an independent inquiry which is urgently required will take place, not least given the presence of Irish citizens, the safety of some of whom we are still not certain about. I urge the Minister for Foreign Affairs to continue his vigorous response to what occurred yesterday. He should press for an independent inquiry to be held immediately at international level.

Senator Niall Ó Brolcháin: I very much welcome and endorse Senator Alex White's comments. What happened yesterday in international waters near Gaza was absolutely despicable. I knew people on some of the boats, including Senator Daly who is in the House today. He was on one of the boats going to Cyprus.

I call for debates on two other issues, one of which was raised with me in the last few days, that is, rents, both commercial and domestic. A number of people have contacted me — I am sure they have also been in touch with other Members of the Oireachtas — about the very high rents still being demanded for many high street premises and housing units across the country, as a result of the enormous amounts spent and, in some cases, gambled by landlords towards the end of the housing boom. There is an overhang, as a result of which perfectly viable businesses are going to the wall because they cannot afford to pay the rents sought or the rates charged on their premises. We need to look at methods to alleviate the situation for small businesses in terms of the rents being levied by landlords.

I refer to comments made by previous speakers about expenses. A full debate at the appropriate committee is important, but the position of the Green Party has always been that we should move towards having a system of fully vouched expenses which would obviate the need for any such discussion.

Senator Fidelma Healy Eames: I share Senators' outrage about the storming of an aid boat on its way to Gaza yesterday. I ask the Leader where is the United Nations in all of this. What sanctions are being used to penalise such action? I would like to hear the Minister for Foreign Affairs speak about the issue.

I have two other requests to make of the Leader, both to do with the Minister for Education and Skills. I ask the Leader to arrange a full debate on the need for a new, reformed second level education system, a system that would serve all our children. A report on early school leaving, for which I was a rapporteur, was published last week and I thank the Leader for placing it on the Order Paper. It has found that one in six of our children are leaving school early, before the leaving certificate. A report published yesterday by the National Educational Welfare Board compiled by Mr. David Millar of the Educational Research Centre shows that

in disadvantaged schools one quarter of the children are absent for more than 20 days a year. There are 16,000 expulsions every year, with one tenth taking place in disadvantaged schools. Children cannot learn when they are not in school and when they are, they are not learning either. The system which is exam-driven and aimed at obtaining the maximum number of points does not suit them. I would like a full debate to be arranged on the issue.

I have a second question which I would like the Leader to put to the Minister for Education and Skills. Will the new Minister, the Tánaiste, protect education at the Cabinet table? Today I have heard an account of a school in Galway city — this is being replicated across the country — in which foreign national children have lost their English language teachers because of new rules. These kids will not get the test scores required to enable them to move to mainstream education. They will fail again at second level. We are just replicating the problem. Is the Minister aware of this? It was she who brought forward the new rules. Yesterday a young man came to my office crying because his only hope was the back to education allowance. His maintenance grant has been cut and he is unemployed. What will the Minister do? Will she protect education?

Senator Ann Ormonde: I welcome the fact there will be a debate tomorrow night on the assault by the Israeli military on an aid convoy on its way to Gaza. There is no doubt about it — it was an act of war. It will be interesting, therefore, to have that debate tomorrow.

Will the Leader ask the Minister of State at the Department of Foreign Affairs, Deputy Peter Power, to come to the House before we break up for the summer to outline the up-to-date position on the moneys allocated to developing countries and how such moneys are spent or misspent? I refer to countries in which human rights are not respected, there is no freedom of speech and torture is widely used. Should we pump money into countries in which human rights are not respected? A debate on the issue is necessary. I refer, in particular, to reports I have read on the position in Uganda in which torture is widely used and there seems to be no relationship between governance and the agencies working with Irish Aid. It is very important that we debate the issue.

Senator David Norris: I join my colleagues in welcoming the fact there will be a debate tomorrow on the situation in Gaza. The flotilla of peace attacked by the Israeli defence forces was approaching the coastline of Gaza but was in international waters, which makes this an unprovoked act of piracy on the part of the Israeli authorities. This is now Israel's equivalent of Bloody Sunday and will turn world opinion massively against it. It remains to be seen, however, whether it will turn governments against it. The Israelis have already started a smear campaign by calling the convoy of ships a "flotilla of hate" and attempting to associate it with Hamas, al-Qaeda and terrorism. We need to be careful about the language used. It also is important to point out that a significant demonstration took place yesterday at the Cenotaph in London at which a group of Hasidic Jews dressed in traditional costumes held up banners that said things like "Judaism rejects the Zionist state and condemns its criminal siege and occupation". There are voices within international Jewry and within Israel that protest against such violations of human rights and this must be put on the record to stem any attempt to use this event for anti-Semitic purposes.

There are things Members must do. The Joint Committee on Foreign Affairs discussed the Goldstone report and recommended that it be referred to the International Criminal Court and Members should see this through. As for the EuroMed agreement, there have been items on the Order Paper for a couple of years in which a number of Members, myself included, called for the monitoring of the human rights protocols that are attached to it. They do not even bother. They have turned their faces away and will not see what is happening, which makes a farce of human rights.

[Senator David Norris.]

Members of the Joint Committee on Foreign Affairs asked in recent weeks that Ireland should consider its position on welcoming Israel into the OECD. While Ireland alone could have vetoed that, we did nothing. Perhaps now there will be some action. As someone who admires Barack Obama, I believe it is time for him to step up to the plate and make America's position perfectly clear, if they believe in human rights.

Senators: Hear, hear.

Senator David Norris: Human rights exist not only in troubled parts of the world but here in Ireland as well. I listened on the radio to a distressed young woman who had taken rented accommodation and who has a tiny infant child. Her husband took three days' work and for that they have lost their house because they lost their rent supplement. They were out on the road and their parents took them in. The place is surrounded by ghost houses that could be taken over.

An Cathaoirleach: Time, now. I thank the Senator.

Senator David Norris: At the outset of this crisis, I called for the establishment of a department of home security to protect such people.

An Cathaoirleach: Time, Senator.

Senator David Norris: My final point, on which I will end——

An Cathaoirleach: No, the time has expired. Senator, please.

Senator David Norris: ——is that they have been told that, were they to separate, the council would house them. So much for the support of marriage in this wonderful country.

An Cathaoirleach: I thank the Senator and call Senator Glynn.

Senator Camillus Glynn: I compliment RTE on the "Prime Time Investigates" programme broadcast last night which brought into clear focus the serious dangers with which our children are confronted, especially children who use the Internet. Regrettably, many towns nationwide were cited as places in which people preyed on young innocent children. It is clear that urgent action must be taken to eliminate this practice. I compliment RTE, the Irish Foster Care Association and all the child agencies that are doing such a good job.

Recently, a move was made to ban head shops. While on my way to Dublin today, I was informed that at least three people had been admitted to Mullingar hospital in a serious condition, having ingested substances purchased in such shops. It is important that the components of those substances should be established and, if they are legal, action should be taken to ban them. Finally, such shops should be closed once and for all and those involved put out of business because people are in jail for doing far less.

Senator Eugene Regan: Members raise many issues to good effect in this House in respect of the standards that are applied in FÁS, the Dublin Docklands Development Authority, Anglo Irish Bank and so on, and in respect of the practices of Deputies Bertie Ahern, O'Dea and Fahey, especially the latter's sham lost at sea scheme. Members have highlighted issues, emphasised standards and made a contribution in that regard. Therefore, when an issue arises about a Member of this House such as the expenses issue that was highlighted in the *Sunday Independent* concerning Senator Callely, it brings the entire House into disrepute. It is a question of allowing Senator Callely to explain himself. It is important, therefore, that the Leader would

deal with this matter expeditiously. If there has been malpractice by a Member of the House in this regard, it must be dealt with and have consequences.

It is a question of leadership because there is a tendency on the part of Brian Cowen and the entire party the Senator represents to give unqualified support to their friends in the party, without any critical analysis of what is right and wrong.

An Cathaoirleach: When the Senator is referring to the Taoiseach, he should give him his proper title.

Senator Eugene Regan: I hope in this case we will have a proper analysis and exposé of what happened. There should be an inquiry to ascertain whether any other Member of the House has acted in that way since this Seanad commenced in 2007.

I add my voice to those who have raised the issue of piracy by the Israeli forces in international waters in respect of the flotilla of aid headed for Gaza. We had the atrocities of the invasion of Gaza last year. We have an illegal blockade of Gaza, contrary to United Nations resolutions, and now we have this act of piracy. The United Nations has condemned the actions.

An Cathaoirleach: Time, please.

Senator Eugene Regan: The Minister for Foreign Affairs has also done so——

An Cathaoirleach: I call Senator Ó Murchú. A large number of Members wish to speak.

Senator Eugene Regan: ——but if we are to have statements tomorrow, I ask that the Minister come to the House to explain, when he cries foul——

An Cathaoirleach: The Senator's time is up.

Senator Eugene Regan: ——the action he will take against Israel.

Senator Labhrás Ó Murchú: I have had reason to criticise Israel for its brutality. On several occasions we have been able to point to specific incidents when it targeted civilians and massacred women and children, about which we were told there would be an inquiry and that action would be taken, but that was the end of the matter. The state of Israel used Irish passports in its murderous deeds, against which many Members of this House stood up and spoke out. Again, we expected action to be taken but we got none. The massacre this week of the humanitarian aid workers is a terrorist act. If any other country committed the same act, it would be immediately dubbed a terrorist rogue state. It is vital at this stage, in addition to calling for justice in this case, that we also call for humanitarian concern and justice for the thousands suffering in the Gaza Strip. Those who seek to help them are murdered. As an independent state we must take a stand on the issue. It is also important that America turn its rhetoric into action because no other country can influence Israel. The arrogance shown by Israeli spokespersons is unbelievable. To compare in some way an iron bar to a weapon of mass destruction defies all credibility. At this stage, independent inquiries would lead nowhere because they would be forgotten until such time as Israel recognises the international conventions it has breached time and again. If the international powers and community do not do this, they may never again talk about human rights and the rights of independent countries because it will be shown clearly that there is a club operating in that regard.

3 o'clock

Senator Ivana Bacik: I add my voice to those who have welcomed the fact that there will be a debate on the Israeli bombardment of the aid ship. It is timely that we will have a debate tomorrow night because we have all——

An Cathaoirleach: I have asked Members to leave their mobile phones outside the Chamber or turn them off. It is not fair on the persons trying to record the proceedings of the House if a Member comes in with a mobile phone turned on. It must stop. If it continues, I will simply adjourn until the Members concerned remove their mobile phones from the Chamber.

Senator Ivana Bacik: I welcome the fact that we will have that debate tomorrow night. It is important that we debate what happened on the aid ship. It is another appalling outrage on the part of the Israeli forces. Many of us who were highly critical of their actions in the bombardment of Gaza and the invasion of Lebanon are shocked to see that this is happening yet again. As Senator Ó Murchú said, Israel is acting with great arrogance and, apparently, with impunity. It is welcome, however, to hear the Minister for Foreign Affairs employing strong rhetoric in his criticism of the Israeli actions but more than rhetoric is needed. We, not only in Ireland but also in the West, need to be seen to be taking action against Israel to ensure the Israeli forces can no longer act with this sort of arrogance and impunity and in breach of international laws, as they have often done. We need to question Israel's place in the OECD. If Israel is to take this sort of action in breach of international law, invading ships owned by other countries, with other countries' nationals on board, in international waters and killing people on board those ships, we must look again at Israel's status as a member of organisations such as the OECD and as a favoured trading nation with the EU. We must be seen to take action and we also need——

An Cathaoirleach: The Leader has agreed to holding a debate tomorrow on this issue . Members should confine themselves to questions to the Leader.

Senator Ivana Bacik: That debate must also look at the US relationship with Israel——

An Cathaoirleach: The Senator's time is up.

Senator Ivana Bacik: ——which is an important component of Israel's arrogance.

Senator Cecilia Keaveney: In welcoming the fact that National Irish Bank is talking about expanding business into An Post, I raise concerns that we in the Border counties have about security at and safety in post offices. I attended a meeting last night at which more people were standing outside in the rain than were inside, and there were many people inside. The meeting was held to support a local postmistress who has lost her franchise with An Post because of an armed robbery that took place there more than a year ago. In the context of more business being done through the post office network, which I welcome because it is important that post offices are as useful to the community as possible, I ask for a debate on security at post offices and along the Border. Many Border villages used to be manned by the Garda. There has been a policy recently of stationing gardaí in central locations from which they operate to the point that even the Garda station in Carrigans was robbed. It did not have closed circuit television. Although no one lost his job on that account, the postmistress is to lose her job for an armed robbery in the post office across the road.

In the context of these times of armed robberies, it is important that people such as those who turned out to support their local service and the deliverer of that service are supported completely by An Post and the Garda to ensure safe delivery of that service. The point made last night by many who operate other post offices is that while one person may be in trouble today, it could be any of them tomorrow. Maximising security is important in the context of advocating that business people put more cash through the post offices.

What is the current position of the legislation to regulate sun beds that was promised by the Minister for Health and Children? I hope it will be forthcoming at an early date, perhaps even

by the end of this term, because such legislation has been introduced in the North to regulate sun beds, especially for those under 18 for whom their use is exceptionally dangerous.

Senator Paschal Donohoe: I underscore the concerns of my colleagues, especially Senator Fitzgerald, on the expenses issue. It is a pity this should develop in the week that the Houses of the Oireachtas published on-line the expenses of all Oireachtas Members in an effort to resolve this issue and provide transparency and security to members of the public regarding how we spend their money. In this regard, the points made and the tone struck on this side of the House have been very careful and respectful. The fact is that if the Houses of the Oireachtas do not pass judgment on this, the people will pass judgment on us all.

Senator Joe O'Toole: Hear, hear.

Senator Paschal Donohoe: While this is an issue on which there is a need to give the Senator in question time to respond, I emphasise it is one in which Members of the Houses of the Oireachtas from all parties will need to engage for all our sakes.

Banking is an issue that is frequently discussed in this House. The Government is committing an additional €2 billion to Anglo Irish Bank, bringing to €14 billion the amount committed to that organisation. This has occurred across the same number of days in which the Government's efforts to cut social welfare have become clear. We have been continually told that this is being done to get credit flowing again, but the Central Bank reported yesterday that credit contracted again last month by 4% after a contraction of 4% the previous month. This needs to be discussed again in the House.

I concur with my colleagues on the actions of Israel. The idea that there is international law and a community willing to be governed by it has been subject to an awful assault in recent years. This provides an opportunity for Europe and the rest of the world to say the action which took place in international waters is not acceptable and will not be tolerated.

Senator Marc MacSharry: I join others in condemning the situation in Gaza; it is completely intolerable. As Senator Ó Murchú rightly said, if we were discussing any other country, for instance the situation in Iran springs to mind, even though there is much solidarity shown internationally in respect of the tragedy that has taken place there, the reaction would be much greater. I hope, therefore, the appropriate action will be taken in line with many of the suggestions made.

I join Senator Donohoe in asking for a debate on banking, an issue we must visit at least once a month. It is important that we provide for clarification to the public as to why additional moneys were made available to Anglo Irish Bank yesterday and also ensure credit will flow again. It is true that the contractions in the availability of credit are in line with the contractions in the demand for credit, both from SMEs and others, but this is not to say there is not substantial anecdotal evidence that credit is not flowing to the extent we would all like.

I wholeheartedly welcome the fact that from today the expenses of all Members are to be published on the Oireachtas website on a monthly basis. This should always have been the case. Any measures which, as Senator O'Toole said, can affect the dwindling reputation of politics as a profession have to be welcomed wholeheartedly. In that regard, Members on this side of the House are not immune from adhering to the the practice of aspiring to the highest levels of propriety in respect of their expenses and in carrying out of their duties on behalf of their public. In that context, we welcome the opportunity to have a debate on all issues relating to expenses. With reference to the issues mentioned in the media in recent days, if it is the case that Members wish to clarify their situation, this would be welcomed. All Members are entitled to due process, but we all have a responsibility — as demonstrated by the belated

[Senator Marc MacSharry.]

publishing of all expenses on a website — to ensure all aspects of our work here become more transparent and that we build confidence in what, after all, is, as we all know, a noble profession and one which demands and requires respect.

Senator Jerry Buttimer: I ask the Minister for Education and Skills to come to the House as a matter of urgency because there is a significant deficit in the Government's education policy. More children are leaving school unable to read and write properly. There is a question mark against grades at third level and the awarding of degrees. It is important, therefore, that we have a debate on education.

I join Senator Fitzgerald, in particular, in asking for a debate on the future of politics. There is a chasm between those of us who are practising politicians and the public. We are held in such low esteem that it is not worth saying. The people are tired of the gravy train and the way in which we are perceived which is unfair in many ways. However, in many cases, we have brought this perception upon us ourselves. I welcome the new regime being put in place today. It is the case that 99.9% of Members in this House are honourable, decent people. If there are people in politics to make money, they should resign and get out. We are here to serve the people, to advocate on behalf of the political party to which we belong and the common good.

I ask for a debate on the future funding of sport. I have asked for such a debate on numerous occasions. Many sports clubs and community organisations are suffering as a consequence of the freezing of the sports capital programme. I seek a debate on the issue which would also include a consideration of the swimming pools programme which seems to have got lost completely in the new Minister's briefcase. I certainly hope it will be rescued and not drowned.

Senator Geraldine Feeney: I welcome the debate tomorrow on the terrible situation that pertains in Israel, Gaza and the wider area. Like other Senators, I voice my outrage at the storming of the aid ship by Israeli forces. Innocent lives were lost. They were people who were trying to obtain human rights for the suppressed people of Gaza. Will the Leader ensure the Minister for Foreign Affairs, Deputy Martin, maintains the pressure on the Israeli Government, especially concerning those Irish people who are being detained? He should ensure they are being well treated and will be released as soon as possible. One of them is a young friend of mine who went to school with my children. He is a native of Donegal but attended school in Sligo. His family are very concerned for his well-being.

Last week, I asked for a debate on care of the elderly, and I know it is coming. I commend Deputy Michael Noonan on his wonderful interview on "The Frontline" last night. The man was so courageous and dignified in dealing with such a tragic situation. He humanised his story, which I am sure gave great relief and solace to so many people who find themselves trapped where Deputy Noonan and his family are. He did his lovely wife, Flor, a great service by highlighting the terrible plight in which he finds himself. I ask the Leader to ensure we keep focusing on care of the elderly and the treatment of Alzheimer's in particular.

I also ask the Leader to arrange for a debate on the safety of young children, especially after the "Prime Time Investigates" programme last night.

Senator Rónán Mullen: I add my voice to the measured expressions of concern about the expenses issue. In particular, I compliment Senator O'Toole on his informed assessment of the matter. There is a need for voices from this House to be heard. None of us likes doing that and it is always difficult when one knows and likes those involved. As we have seen so many times in society, however, problems can also arise through the failure of people to talk when they know a person's good side. In that respect, I echo Senator Donohoe's remarks that if we

are silent, others will judge us. While we should not rush to commentary, neither should we hesitate to tell it as it is.

Undoubtedly, there has been such a culture in politics. When I was first elected, a person from rural Ireland who is based in Dublin, I was encouraged to claim expenses from my home place in Galway. I was told I would be the better for it financially. I have no doubt those who made the suggestions meant well and thought it was an acceptable thing to do within the system, but it is not. The public are judging that and, sadly, I hear people talking about the dwindling respect for politicians. While we ought to be careful not to fulfil the prophesy by emphasising that, we certainly need to put it in more positive terms. We need to increase people's respect for politics. In that regard unfortunately, I say with a heavy heart that we need to debate the issue that has arisen. It needs to be commented upon comprehensively within these walls.

On the amazing and scary events concerning Gaza, most Members of the House subscribe to the idea that there must be a two-state solution to this problem. Those of us who wish to see Israel survive and thrive as a state surely must agree that Israel is doing itself no favours these days. I look forward to that debate tomorrow.

Senator John Hanafin: I share in all the comments that have been made concerning the horrendous attack on a humanitarian aid flotilla in international waters. Having heard the explanations and the well-packaged public relations from the Israeli side about what happened in Gaza, I am cognisant of what has happened to the flotilla. This time, I am not going to accept it. As a member of the Joint Committee on European Affairs, I would say my view has changed. This is proof positive that our worst fears about what might happen in Gaza and about the humanitarian situation there are coming to pass. It is as bad as the Palestinians are saying. I imagine there will be a fundamental shift among many people who strongly supported Israel heretofore. I expect they are wondering whether to cast doubt on all the statements they previously made.

Given the importance of how we are seen as a country to how we do our business, it is especially heartening that an editorial in today's edition of *The Wall Street Journal*, which is a major American financial newspaper, speaks about the credibility of the measures taken by the Government, refers to Ireland as a model for other countries and suggests that the Government's fiscal rectitude has been accepted by the people in proper measure as necessary. This is how others see us. More importantly, given that we receive 26% of all US foreign direct investment coming into Europe, this is how we are seen by *The Wall Street Journal*, which is read in American financial institutions. It is worth knowing that the newspaper in question sees Ireland as a model.

Senator Paul Coghlan: For the reasons that have been outlined, I agree with Senators who have argued that the Cathaoirleach should give Senator Callely an opportunity to make a personal statement at the earliest possible time. The wrong kind of spotlight is being put on the profession of politics and on this House. He must be given an opportunity to state where he ordinarily resides and to address the various matters that are now in the public domain.

Sceilig Mhichíl is a world renowned heritage site off the Kerry coast. I welcome the 31 recommendations that have been made by an independent review body with regard to the sheerness and steepness of the Sceilig Mhichíl site. It requires a great degree of agility and skill to undertake the dangerous mountaineering activity involved in accessing the site. Although it is a wonderful place and is known throughout the world, it is not for the faint-hearted.

An Cathaoirleach: Does the Senator want us to visit the site?

Senator Paul Coghlan: No.

Senator Jerry Buttimer: We should go there.

Senator Paul Coghlan: I have been there and I would recommend everyone to go there.

An Cathaoirleach: I understand that. People are well paid for promoting the site.

Senator Paul Coghlan: The site's opening and closing times are far too restrictive and its season is too short. At a time when we are trying to boost the tourism industry throughout the country, we need this world heritage site to be opened from April to the end of October. That would have more in common with the proper fullness of the season.

Senator Rónán Mullen: We could have a sitting of the Seanad there.

Senator Paul Coghlan: Perhaps.

Senator Fidelma Healy Eames: We could push people off.

Senator Paul Coghlan: Seriously, the officials need to be less restrictive and more understanding of the difficult times we are in.

I agree with those who have called for a debate on banking. We have received the report of the Governor of the Central Bank, Mr. Honohan. The Minister has probably received, or is about to receive, the report prepared by Mr. Regling and Mr. Watson.

An Cathaoirleach: I ask the Senator to conclude. He spent too long on the Kerry issue.

Senator Paul Coghlan: There are many serious issues to be discussed.

Senator Paschal Mooney: I have a great deal of sympathy with our friend and colleague, Senator Coghlan, who was pilloried in certain sections of the media last weekend for raising the legitimate question of the dung catchers and suggesting that the relevant by-law should be extended to Dublin.

Senator Paul Coghlan: I thank the Senator.

Senator Joe O'Toole: Every Kerry issue is a Dublin issue too.

Senator Paschal Mooney: I assure the House that from a tourist point of view, there is nothing less edifying than seeing the results of the movements of jarveys around the premier tourism centre of St. Stephen's Green.

I compliment the Minister for Foreign Affairs, who has been mentioned by Senators on both sides of the House, on the traditional steel he has shown. One would expect that from a Corkman anyway. He has left the Israeli Government, through its ambassador to this country, under no illusions about Ireland's position on this issue. I applaud the Leader for having made time available for an urgent debate on the matter tomorrow evening. I will reserve my comments until then.

I would like to reflect on Senator O'Toole's comments on the wider issue of the public impression and perception of the Seanad. Members will be aware that some weeks ago, I referred to the lack of co-operation by a semi-State body in attending an Oireachtas committee, which was a major issue at the time. At the time I said it was in the hands of both Houses to ensure compellability of witnesses.

As I am unsure of the exact procedures, will the Leader ask the Committee on Procedure and Privileges to examine the conclusions arrived at over many years of debate on Seanad reform and specifically to examine the role the House could usefully play in scrutinising European directives? I have argued on past occasions that the House could be used as a Second Stage debating chamber on EU directives with the relevant line Minister. After such a debate, with questioning from all sides of the House, the public would be better informed of what is happening in Europe and the directive could move to Committee Stage at the relevant committee.

Coming from rural Ireland, which the Cathaoirleach will understand, I note an increasing amount of criticism of European directives.

An Cathaoirleach: Time, Senator.

Senator Paschal Mooney: People in rural areas are complaining they can no longer cut turf; others claim they may end up not being allowed to fish. There are genuine concerns in rural Ireland about European directives. It is important for this House at least to reflect accurately what is happening in Europe, particularly after the ratification of the Lisbon treaty which has given an enhanced role to national parliaments in EU affairs.

Senator Maurice Cummins: I welcome the proposal for a debate on Gaza tomorrow evening. The actions of the Israeli forces against an international humanitarian flotilla were disproportionate. In this case, the word "disproportionate" is not even strong enough.

Like others, I call for an international inquiry to be held into yesterday's events so the truth will be known. It must be independent and international because I heard some American commentators suggest the inquiry should be conducted by Israel itself. Such a move would be unacceptable to any right-thinking nation. Israeli Governments have never put the actions of their security forces under critical focus in the past. It is now time they did.

Members on all sides of the House have asked for the lifting of the blockade on Gaza. It is important now the EU gets involved in the distribution of aid to the area. The EU needs to be stronger in this area. I call on the Minister for Foreign Affairs to impress upon his EU colleagues the need for the EU to become more actively involved in the situation. I hope the Americans will show good faith and honesty in this regard and bring Israel to heel as well.

An Cathaoirleach: There are six Members indicating and only three minutes remaining before I call the Leader. I ask them to be brief so as to get as many of them in.

Senator Mark Daly: Yesterday morning, Irish citizens were kidnapped in international waters by the Israeli navy. Turkish citizens were also killed by the Israeli navy on a boat carrying aid to Gaza.

Citizens of Palestine have been denied the basics in life to live by the blockade imposed by the Israeli army. John Ging, an Irishman, former captain in the Irish Army and the head of UNRWA, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, in Gaza has described the situation there as subhuman. Up to 1.5 million people live in Gaza, a piece of land the size of County Louth, of whom 80% rely on John Ging and the UN for their very survival.

I, along with my Fianna Fáil colleague, Deputy Chris Andrews, and Deputy Aengus Ó Snodaigh, were due to be on board the Turkish ship that was attacked by the Israeli navy. We were prevented from leaving Cyprus on Friday and Saturday by the Cypriot authorities. They stated it was against Cyprus's strategic interests in the region to assist us, and other parliamen-

[Senator Mark Daly.]

tarians from Sweden, Bulgaria, Russia, Italy, Greece and Cyprus, joining the flotilla that was going to bring much needed food and aid to Gaza.

A number of falsehoods about the convoy have been disseminated by the Israeli Government. It tried to put out the story that its forces were attacked——

An Cathaoirleach: There will be a debate on that issue tomorrow night when Senator Daly can put these points to the Minister.

Senator Mark Daly: I thank the Cathaoirleach. The Israelis put out the story that they had been attacked first. We are well aware in this country that 13 civilians were killed in the civil rights march and that the security services in Northern Ireland immediately put out the story that they had been fired on first and that those on the march had been carrying weapons. We all know the truth behind that falsehood. The Israeli Government also maintains it was within its rights to attack a flotilla in international waters. It has not signed up to the UN Convention on the High Seas; therefore, it is not breaking any laws because it does not recognise any law on the high seas.

An Cathaoirleach: I call Senator Quinn.

Senator Mark Daly: There was an amazing lady on the ship we were due to get on, Heady Etti, who is 85 years of age. In 1939 at the age of 14 years she was sent from Germany by her parents to survive the Holocaust.

An Cathaoirleach: The Senator is way over time. He can make these points tomorrow night. My hands are tied as regards time. A number of Members will not get in because others have drifted over time. I appreciate the important point the Senator is making, but there will be an opportunity tomorrow night to make it.

Senator Mark Daly: My final comment is that violence begets violence. We know in this country that there is only one solution to the problems being experienced in Israel.

Senator Feargal Quinn: Television is a powerful medium, never more so than last night for those of us who watched Deputy Michael Noonan speak about his dear wife. Everyone must have been in tears. It is a reminder to us of the need to look after the elderly, especially those who are unable to look after themselves.

I thank the Leader for drawing the attention of the Minister for Communications, Energy and Natural Resources to the point I made some ten days ago about biomass and the price of miscanthus. The matter had been delayed since last January and some 300 or 400 farmers were left waiting. Last Tuesday the Minister responded to the Leader's request and moved on it.

As the debate on the actions of Israel will take place tomorrow, I do not intend to speak on the matter now. I hope, however, that we will have a logical debate and also take into account the concerns of Israel, a country which has seen 10,000 bombs land on its territory from Gaza. It has requested that any ships heading towards Gaza be examined to ensure there are no bombs on board. I do not defend in any way the steps taken by Israel, but it is an understandable reaction for that country to state it will not allow ships into Gaza without first being examined by it. It has offered a method by which this can be done. Let us hold a debate tomorrow, but let us have balance.

Senator Terry Leyden: I wish to be associated with the comments made about the murder of nine Turkish citizens on their way to Gaza. When I met the Minister for Foreign Affairs at

lunchtime, I made the point that there should be a European Union response, not only one involving Ireland. We are small in size relative to Israel. There is the question of calling a special meeting of the European Union foreign Ministers with Baroness Ashton to adopt a united approach to the handling of this issue. Let us remember that just over one year ago some 1,200 citizens were murdered in the Gaza region in the invasion by Israel. That has been forgotten and the Americans have stood by the Israelis all this time. The only action that can really work is a trade embargo. We know nine people were murdered and may hold an inquiry into this event, but Israel will never respond, unless the European Union questions, considers and reconsiders the special position on trade between Israel and the rest of Europe. That will take action. I do not agree with the removal of our ambassador or the Israeli ambassador being expelled because they are the links with our citizens now held in Israel.

An Cathaoirleach: Time is almost up and there are still some Members who wish to contribute.

Senator Terry Leyden: It is through the actions of our ambassador that they will be released safely. I do not believe, therefore, that is the action we should take in this regard.

An Cathaoirleach: I call Senator McFadden for a brief comment. I will try to get to the other two Members afterwards.

Senator Nicky McFadden: It was with serious disgust that I heard yesterday on the news of the commitment to give €2 billion to Anglo Irish Bank of the €14.3 billion already committed. Everyone here has commended our wonderful former leader, Deputy Michael Noonan, as I do, but the bottom line and the point he made most ardently in the debate last night was that he was lucky in being the enviable position of being able to afford care for his wife, with thanks to the Alzheimer's Society also. What do we do in this country? We mismanage our finances. We bail out the banks, including Anglo Irish Bank, and give the new professor who will take over from Professor Drumm €350,000 a year to manage the HSE, not to mention the amount of money put into the black hole of the HSE, the Department of Health and Children and such bodies. Where is the Minister for Health and Children, Deputy Mary Harney, this week? She was meant to be in the House to debate health matters. What is the story about this? I refer to the eminent professor who has developed a wonderful vaccine for breast cancer. Some 400 lives could be saved every year, but where is the money to invest in the vaccinne? The money will probably be used to bail out Anglo Irish Bank again.

Senator Jim Walsh: I add my voice to those who have spoken about the attack on the flotilla. Like Senator Quinn, I believe there are two sides to the story. Most reasonable people would have accepted in 1948 that there was a necessity for the Jewish people to establish the state of Israel, given the events of the Second World War, probably one of the darkest chapters in the history of the world. The six day war in 1967 resulted in the Occupied Territories being taken from the Palestinians and planted with Jewish people. This country has seen the results and consequences of such a policy. Therefore, we can empathise with the Palestinian people in this regard. This process must be unwound. The credibility of the United States, with regard to its foreign policy, especially in important areas such as Iran, is being put to the test. The United States should play a positive role at the United Nations to ensure there is an independent international inquiry to fully support the obtaining of the truth.

Senator Mark Dearey: I welcome the fact that we are holding a debate tomorrow night on the piracy on the high seas which occurred yesterday. I refer to some time-sensitive items with regard to the *Rachel Corrie* which continues to make its way toward Gaza with several Irish citizens on board. It is critically important that the Israelis heed the Minister for Foreign

[Senator Mark Dearey.]

Affairs, Deputy Martin, and others in their call for extreme restraint with regard to that vessel and its Irish and Malaysian passengers. The Amnesty International report, launched last Thursday, described acting with impunity as being the norm for Israeli soldiers, police officers and members of other security forces. Now we know what that means. It is critical that this *modus operandi* is brought to an end now to ensure the safety of the Irish citizens who continue to make their way towards Gaza. I raise this matter because it is time-sensitive. The vessel is on the high seas and I hope tomorrow evening's debate will not come too late to ensure their safety, although it may be. I am very concerned about them, as I know most of them personally.

I refer to the debate on health which will take place shortly, in particular, on the issue of the shortage of non-consultant hospital doctors. I am informed by the HSE that, owing to the onerous rosters that doctors must work, Ireland may be considered as an unattractive place in which to hire. It is critical that we deal with this issue because it is threatening the survival of small local hospitals. Doctors are being concentrated in larger regional centres. My hospital in Dundalk is under serious threat because of this. This is an issue with which the Minister for Health and Children must deal urgently.

Senator Donie Cassidy: Senators Fitzgerald, O'Toole, Alex White, Ó Brolcháin, Healy Eames, Ormonde, Norris, Regan, Ó Murchú, Bacik, Donohoe, MacSharry, Feeney, Hanafin, Mooney, Cummins, Daly, Quinn, Leyden, Walsh and Dearey expressed their shock, horror and disappointment regarding the humanitarian mission interrupted by the Israelis. Many calls have been made for the international criminal courts to be asked to investigate the matter. Reference was made to brutality, the misuse of Irish passports and the massacre of humanitarian workers. There were also calls for an international convention on the events that have occurred and, in particular, a call from one Senator for a trade embargo. I join with the Senator who expressed serious concerns about the safety of everybody from Ireland on the *Rachel Corrie*. We wish them well. The Minister will be in the House from 7.15 p.m. until 9 p.m. tomorrow to give us an update on the serious situation there. I assure the House that each day we will have an opportunity to be updated on this and I will consider how to structure a full debate, following the briefing debates until the debacle has ended. I have no difficulty with allocating time daily for this to take place.

Senators Fitzgerald, O'Toole, Regan, Donohoe, MacSharry, Buttimer, Mullen, Coghlan and Mooney raised the codes of the Seanad. As the Cathaoirleach correctly pointed out, at present, the Seanad has no function in that regard. The code of ethics in the Seanad is under the stewardship of the Cathaoirleach and the Committee on Procedure and Privileges. I thank the Houses of the Oireachtas Commission for making available on-line information on the various expenses connected with membership of both Houses.

Senator Ó Brolcháin sought a debate on the rent costs, investments by landlords and everything relating to the challenges facing the retail sector. I have no difficulty with arranging for a debate on the matter.

Senators Healy Eames, Ormonde and Buttimer called for a debate on second level education, absenteeism and other aspects of education, including the €600 million invested by the Government this year in the capital building programme. As I said on a previous occasion, I will arrange for such a debate to take place. Senator Ormonde also asked that the Minister of State at the Department of Foreign Affairs, Deputy Peter Power, be invited to the House to discuss the amounts of aid being given by Ireland and the various countries receiving that aid. This is a worthwhile proposal and I support holding a debate on it.

Senators Glynn, Feeney and Quinn congratulated RTE on its "Prime Time" programme last night and called for a debate on everything relating to the protection of children and the

agencies responsible for children. I have no difficulty with holding such a debate. I have already given the House a commitment to invite the Minister of State, Deputy Barry Andrews, to the House in the next few weeks for a further debate on this issue. Senator Glynn also spoke about the dangers of head shops for society and I support the call he made.

Senator Buttimer asked about the future funding of sport and referred in particular to the swimming pool grants and the capital funding programme. As everybody knows, resources are scarce and not available for that at present. The lottery funding has transformed sporting venues and every parish in the country has benefitted from it. I hope these funds will be made available again at the earliest opportunity, hopefully by the end of next year or early in 2012.

Senator Keaveney called for a debate on the future of post offices, the extra business now being proposed for them and their security, particularly in Border areas. I agree with the Senator in this regard and with regard to the safe delivery of everything that is being transferred to and proposed for post offices. I will arrange for a debate on the matter. I understand the drafting of the sunbed legislation is at a very advanced stage. It will be before the House very soon.

Senators Donohoe, MacSharry, Coghlan and McFadden sought a debate on banking. As I told Members, there will be a debate on this matter once a month to hear updates and discuss the various reports that are now available for our consideration. That debate will definitely take place in June.

Senators Feeney and Quinn congratulated RTE for the "Frontline" programme last night and particularly Deputy Michael Noonan. Everybody's heart went out to Deputy Noonan last night on a personal level, and to his wife Florence and the entire family. It showed the difficulty that many families experience. Unfortunately, the incidence of this disease is increasing. With people living longer, this disease appears to be affecting them in a major way. I wish the Deputy, his wife and his family well, as well as everybody who assists them. I have already put a debate on the elderly into the diary. In the morning the Minister will discuss the entire health portfolio, particularly everything relating to the HSE, and in the afternoon there will be a discussion on the elderly. The following week the Minister of State with responsibility for children will be in the House to discuss his portfolio. There will be no shortage of time to discuss and exchange views about the health portfolio with the Minister, in the presence of the officials.

Senator Hanafin welcomed the editorial opinion in the *Wall Street Journal*, one of the most respected, if not the most respected, newspapers in the world's financial circles. It held our country up as a model in terms of the courage and foresight of the Government in the decisions it is making in the national interest. Many other countries are following our example and citing this country as a shining example in encouraging their people and political parties to do the same thing.

Senator Coghlan again outlined his great concern about the world heritage site in his constituency. We certainly support the calls he has made in that regard.

Senator Mooney spoke about EU scrutiny and Seanad reform. I have already discussed this and the Minister for Foreign Affairs wishes to play a full part in the Seanad conducting EU scrutiny. I am due to have a meeting with the Minister of State with responsibility for European affairs, Deputy Dick Roche, to confirm how to set aside a timeframe for this, and I will discuss it with the leaders of the groups in the House at our meeting next Tuesday.

Senator Dearey sought a debate on health and raised the shortage of junior doctors. I support him in this regard and when the Minister is here in the next few weeks we can discuss it and find out what progress is being made. I understand an advertisement campaign is taking place

[Senator Donie Cassidy.]

at present to ensure there will be enough junior doctors available as we approach the winter months.

Senator Frances Fitzgerald: Did the Leader say the Senator will not have an opportunity to make a statement to the House?

Senator Donie Cassidy: I did not say anything. I took instruction from the Cathaoirleach's statements.

Order of Business agreed to.

Proposed EU Directive on Human Trafficking: Motion

Senator Donie Cassidy: I move:

That the proposal that Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

a proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA,

a copy of which was laid before Seanad Éireann on 28th April, 2010, be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights in accordance with paragraph (1) (Seanad) of the Orders of Reference of that Committee which, not later than 17th June, 2010, shall send a message to the Seanad in the manner prescribed in Standing Order 72, and Standing Order 74(2) shall accordingly apply.

Question put and agreed to.

Multi-Unit Developments Bill 2009: Report and Final Stages

An Cathaoirleach: Before we commence, I remind Senators that a Senator may speak only once on Report Stage, except for the proposer of an amendment, who may reply to the discussion on the amendment. Also, on Report Stage each amendment must be seconded.

Amendments Nos. 1, 26 and 27 are related and may be discussed together with the agreement of the House. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 1:

In page 4, between lines 13 and 14, to insert the following:

""complete" in relation to a development means complete to the agreed satisfaction of the developer and the owners' management company and the planning authority;".

I welcome the Minister to the House. We had a full debate on Committee Stage on many of these amendments. The Labour Party's amendments have been updated to reflect the debate on Committee Stage. Amendment No. 1 was tabled on Committee Stage but amendment No. 26 was not. It arises out of the debate on Committee Stage.

I am grateful to the Royal Institute of the Architects of Ireland, RIAI, and to the Apartment Owners Network, both of which have been helpful in conveying their views as to how the Bill

could be improved. We are all seeking constructively to improve the Bill rather than oppose it. The Department has also been in contact with different parties with an interest in the Bill. There may well be further amendments. The Government has tabled a number of amendments on Report Stage today and others may be introduced in the Dáil.

Amendment No. 1 was tabled on Committee Stage. It arises out of a concern to ensure completion is properly dealt with in the Bill. It would place in section 1 a new definition of the word "complete" which would be "complete to the agreed satisfaction of the developer and the owners' management company and the planning authority".

This amendment is being debated with amendments Nos. 26 and 27. Amendment No. 26 elaborates on the need to ensure more specific detail about completion. It would insert a new section 11, requiring a developer who has completed a development in accordance with the definition in amendment No. 1 to serve a notice of completion on the owners' management company, the planning authority, the building control authority and the other parties scheduled in section 20 stating that the development is complete. It goes on to give some very detailed provisions as to the sequence of events where, for example, a party listed in section 20 objects to completion of the transfer to the owners' management company. The amendment provides a great deal more certainty as to the process of completion. The RIAI has been in contact with the Department of Justice, Equality and Law Reform and has raised concerns about the need to ensure this level of detail about the completion process. I will be interested to hear what the Minister has to say on this and if he is willing to accept in principle the need for an amendment of this nature.

Amendment No. 27 was tabled on Committee Stage. It refers to an aspect of completion which is the snag list. The amendment proposes that the relevant local authority or an independent party may be requested to carry out a snag list where the development is substantially completed. The amendment then provides that where the developer fails to carry out a snag list within three months of the determination, he or she should pay to the owners' management company "a sum equal in value to the cost of completing the development to enable the snag list to be completed". This amendment also seeks to ensure the completion process is watertight and that completion is carried out to the agreed satisfaction of the developer, the owners' management company and the planning authority. It is in keeping with the spirit and stated aims of the Bill which are to ensure greater certainty and security for apartment owners and purchasers in the completion of apartments.

Senator Eugene Regan: I second the amendment.

Minister for Justice and Law Reform (Deputy Dermot Ahern): I have looked at these amendments. I cannot accept them because, in the view of the Department, they would introduce a complex and unwieldy mechanism for determining completion of multi-unit developments. I do not believe amendment No. 1 is practical for a number of reasons. First, it seeks to impose a new statutory duty on local authorities which would be additional to their existing statutory functions as set out in the Planning and Development Acts 2000-2009. If the planning authorities were to be given additional responsibility, those Acts would need to be amended, as appropriate. It certainly would not be appropriate to provide for such additional responsibilities in the manner proposed in these amendments.

The Long Title of the Bill does not refer to planning. The Bill is entitled "an Act to amend the law relating to the ownership and management of the common areas of multi-unit developments and to facilitate the fair, efficient and effective management of bodies responsible for the management of such common areas, and to provide for related matters". Any such expansion of local authorities' statutory functions would only be considered following an assessment

[Deputy Dermot Ahern.]

by the Minister for the Environment, Heritage and Local Government and his Department as to whether taking on an additional role would be appropriate for planning authorities and, if it were, whether they would have the necessary resources to undertake it. Proper advanced consultation with the planning authorities and adequate preparation for any such role would be essential. For that reason, I cannot accept amendment No. 1.

Amendment No. 1 states that " "complete" in relation to a development means "complete to the agreed satisfaction of a developer and the owners' management company and the planning authority"". On many occasions there may not be agreement. From what I understand from the legislation and from proposals to amend it further, there is no opportunity to determine what is meant by "complete" in the event of agreement not being reached.

With regard to amendment No. 26, the provisions of sections 4, 5, 10, 11 and 19 deal with the issues raised in this amendment. Under section 4, which deals with partially completed developments, and section 5, which deals with fully completed developments, the owner of the common areas is required to transfer control of these common areas to the owners' management company within six months of the coming into operation of the Act. In the case of partially completed developments, the transfer of the common areas is subject to the retention of the beneficial interest by the transferor. The retention of the beneficial interest is designed to ensure the developer completes the development. The mechanism for the eventual transfer of the beneficial interest is set out in sections 10 and 11 while section 19 provides that in the event of a dispute about completion, the matter can be brought before the courts or to mediation under the disputes resolution mechanism. The mechanism proposed in the amendment is complex and likely to lead to disputes which would end up before the courts.

4 o'clock

On amendment No. 27, snagging is an extremely complex issue. As far as I am aware, there is no provision under the Planning and Development Acts or the Building Control Acts that would permit planning authorities to require performance bonds to ensure snagging of multi-unit developments. Therefore, the proposed requirement in section 11(3) that future planning permissions for multi-unit developments should be subject to the lodgment of a bond would require amendment to those Acts. This is a matter for the Minister for the Environment, Heritage and Local Government and his Department to consider with the planning authorities in the context of any such legislative reform.

Section 19(4), under a later amendment, will contain a provision for the Circuit Court to make an order directing the developer to complete a development in compliance with the planning permission, the terms of building control standards and the terms of any contract. Under amendment No. 10, which we will come to shortly, a developer will be required to have a contract with the owners' management company. I envisage that this will contain commitments by the developer in relation to the completion of the development, including common areas. If the terms of this contract are not honoured, the unit owners will have recourse to the courts which may order mediation with a view to resolving the issue.

Senator Ivana Bacik: I should have referenced the Minister's amendment No. 10 which seems a good first step in meeting some of the concerns about completion the RIAI and the Labour Party have. The amendment requires a written contract between the developer and the owner's management company. While that would allay some of the concerns about the need to tighten up the completion provisions, the concern still remains that the other amendments proposed by the Minister do not build on this provision for a contract in writing. In particular, there is a lack of detail regarding how the contract will provide sufficiently for consumer protection.

Amendment No. 50 provides for alternative dispute resolution procedures and it is unfortunate that the Minister did not see fit to at least accept the principle involved. This might also allay concerns about disputes that arise following inadequate completion or a completion that was not carried out ultimately in a satisfactory manner. If there were an alternative dispute resolution procedure, this might provide for greater consumer protection.

It is correct that the Minister of State, Deputy Mansergh, speaking on behalf of the Government in the House on 19 May, expressed support for a system of adjudication similar to that operating in Britain, and we will come to that later when we debate amendment No. 50. The need for some form of a dispute resolution procedure is also linked to the issue of satisfactory completion

Deputy Dermot Ahern: I am inclined to agree with the principle of amendment No. 50 and we will come to that later. The completion not only of individual apartments but also of entire estates, including the communal areas, is a vexed issue. We also have the 5% retention issue. While, with the best will in the world, we would like to have a system to hold developers, that issue is fraught with difficulty. Primarily, completion must be dealt with by the local authorities, the planning authorities and the Department. There was a time local authorities issued certificates of compliance, but that is not the practice anymore and, therefore, the amendments would put a substantial administrative and resource requirement on local authorities. If that were not the case, the various architect representative groups would be in like a flash seeking that their members would provide the necessary certificates which, ultimately, wouldresult in additional expense being passed on to the consumer. We are looking to solve this some other way in the Lower House. We will be in more detailed discussion with the Department of the Environment, Heritage and Local Government in this regard.

Senator Ivana Bacik: I thank the Minister for his reply and I am grateful to him for indicating he is willing to accept amendment No. 50 in principle.

An Leas-Chathaoirleach: We will get to that amendment later.

Senator Ivana Bacik: I am also grateful that he wants to resolve the vexed question of completion in some way. I regret it cannot be addressed through amendment in this House but I echo what he said. We are trying to help him to resolve the vexed issue of completion through amendments Nos. 1 and 26, in particular, and also through amendments Nos. 15, 27 and 50, which deal with the retention principle. Members of both Houses are well aware of the serious difficulties people face because of inadequate competition not only of individual apartments but of entire complexes and communal areas. This is an ongoing problem for many people and we must be cognisant of that. We are trying to come up with a workable and practical solution to this. I am grateful for the Minister's comments but I regret we cannot make the amendments in this House.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendments Nos. 3 and 53 are related to amendment No. 2 and all may be discussed together.

Government amendment No. 2:

In page 4, line 20, to delete "and after certificates of compliance" and substitute "in accordance".

Deputy Dermot Ahern: The purpose of amendments Nos. 2 and 3 is to amend the definition of "development stage". The current wording provides that development stage ends when certificates of compliance with the planning and building control codes have been issued. It has emerged from consultation with the Department of the Environment, Heritage and Local Government and other stakeholders that definitive certificates of compliance are not issued currently in respect of planning permission or building control standards. My concern is if the definition is not amended, the reference to certificates of compliance might provide a loophole which could be used to delay the transfer of control of the common areas of multi-unit developments to the owner or management company. The revised definition provides that the development stage ends when the development is completed in accordance with the planning permission and building control regulations and there is no longer a reference to the issuing of certificates of completion. Amendment No. 53 brings the wording of paragraph 1 of Schedule 3 into line with the amended definition of "development stage" in section 1.

My officials have met officials of the Department of the Environment, Heritage and Local Government since our Committee Stage deliberations to discuss completion issues under the Planning and Development Acts and the Building Control Acts. I understand a review of enforcement proceedings under both codes is being undertaken by the Department with the aim of ensuring improved enforcement of statutory requirements. I also understand the building review advisory group, which advises the Minister for the Environment, Heritage and Local Government, has established a working group specifically to examine the building control enforcement system and it will report to him shortly on the issue.

Amendment agreed to.

Government amendment No. 3:

In page 4, line 23, to delete "have been issued".

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 4:

In page 4, to delete lines 41 to 45 and in page 5, to delete lines 1 and 2.

We debated this on Committee Stage. The amendment was suggested by the Apartment Owners Network to delete the definition of "relevant parts" in section 1 because their view, as consumers, is that the developer should have to indicate what are intended to be the common areas in the planning application and in all the literature and brochures in order that there can be no room for subsequent changes by him or her. Their concern is this definition qualifies the notion of "relevant parts" and allows developers to change areas. The example the organisation has given is where a park is viewed by the owners as part of the common area but the developer subsequently seeks to build on it. This comes back again to issues relating to completion which are constantly being raised with us by people living in apartments who thought some area was common ground, such as a communal garden or recreation space, but which was subsequently changed by the developer. The amendment is suggested in an attempt to ensure against such change.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: The deletion of this definition would case grave difficulty regarding multi-unit developments that are completed in phases. If we were to delete this, it would leave the legislation deficient and I cannot accept the amendment.

Amendment, by leave, withdrawn.

Government amendment No. 5:

In page 6, to delete lines 5 to 10 and substitute the following:

"(4) In the case of a mixed use multi-unit development the obligations imposed on an owners' management company by this Act shall as respects such a company in which membership is held otherwise than by reason of ownership of a residential unit, be considered as being complied with where—".

Deputy Dermot Ahern: This amendment replaces the text of section 2(4) and involves two changes in the existing text. The current text is restricted to mixed-use multi-unit developments in which there is more than one owners' management company. It has been drawn to our attention by the Law Society that some large mixed use developments have only one such company and it is therefore necessary to broaden the scope of the subsection to include such cases.

The second change is a technical matter which substitutes a reference to membership of the owners' management company instead of holding shares in it. The revised text will mean that the scope of this provision of the Bill will extend to all mixed-use multi-unit developments.

Amendment agreed to.

Government amendment No. 6:

In page 6, between lines 18 and 19, to insert the following:

"(5) Except where otherwise provided, this Act applies to every multi-unit development".

Deputy Dermot Ahern: My Department received a number of queries following Committee Stage. It became apparent that there is still some confusion about whether the Bill's provisions apply to all existing multi-unit developments. This amendment makes it clear that except where otherwise stated, for example, in sections 3 and 13 which apply to future multi-unit developments, the provisions of the Act will apply to all existing multi-unit developments. In practice this means that the new requirements, such as the holding of annual meetings, the arrangements in relation to the annual service charge and the sinking fund as well as dispute resolution mechanisms, will apply to existing as well as future multi-unit developments.

Amendment agreed to.

Senator Eugene Regan: I move amendment No. 7:

In page, 6, line 29, before "person" to insert "developer or any other".

This is an amendment which I believe has been discussed previously. It simply suggests that instead of "A person to whom this section applies", the Bill should specifically refer to the developer. I am still at a loss as to what other person this section may apply to. The Minister, on Committee Stage, indicated that subsection (2) covers the issue. That section applies to "(*a*) a unit which has not previously been sold" and "(*b*) a person". I am not sure that the definition and the person to whom the section applies is clear. It seems to me it is a developer, which term is defined in section 2. Subsection (5) states: "The developer shall ensure", which highlights the fact that it is, in fact, the developer we are talking about in this section. I wonder whether the language is quite coherent and if it would not be more appropriate in section 3(1) simply to refer to a developer.

Senator Ivana Bacik: I second the amendment.

Deputy Dermot Ahern: This was debated on Committee Stage. I believe section 3(2)(*b*) makes it clear that the section applies to any person who is the owner of common areas of a multi-unit development, which in most cases, although not all, would be the developer. It might very well be a builder or subcontractor. It is trying to encompass all the persons that would be involved in the laying out, ultimately, of the multi-unit development.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 10 is consequential on amendment No. 8. Amendment No. 11 is an alternative to amendment No. 10 and must be discussed with it or else there would not be an opportunity to discuss amendment No. 11. Amendments Nos. 18 and 24 are related to amendment No. 11. Therefore amendments Nos. 8, 10, 11, 18 and 24 will be discussed together. Is that agreed? Agreed.

Government amendment No. 8:

In page 6, line 35, to delete "concerned, and" and substitute "concerned,"

Deputy Dermot Ahern: This Bill seeks to address shortcomings in current arrangements concerning the transfer of control of owners' management companies to unit owners. One of the shortcomings that has come to light in recent discussions with stakeholders is the lack of any detailed contract between the developer and the owners' management company which would set out the developer's obligations to the company in a manner which would enable it to enforce discharge of these obligations. The purpose of amendment No. 10 is to ensure that prior to the sale of the first unit of a development, the developer and the owners' management company must enter into a contract setting out the rights and responsibilities each has to the other. I envisage that this contract will include a commitment by the developer to complete the development in accordance with the planning and building control codes and a commitment to attend to any other snagging matters. The existence of such a contract would also provide protection for any purchaser of residential units within a multi-unit development because any person considering purchasing such a unit or his or her solicitor would have the opportunity and the possibility of examining commitments regarding completion which the developer has committed to in the contract. Amendment No. 8 is a drafting amendment arising from the insertion of the new paragraph (*c*).

On Committee Stage I indicated I would table an amendment on Report Stage to provide that a purchaser or unit owner must provide contact details to the owners' management company. Amendment No. 24 inserts a new subsection in section 7 which provides that a unit owner must supply contact details to the owners' management company and must notify the company of any changes in those details.

Amendment No. 11, tabled by the Labour Party Senators, deals with the same issue, but we believe section 3 is not the correct section in which to make a change. I cannot accept amendment No. 18, tabled by the Labour Party Senators. It seeks to restrict unreasonably the right of an apartment owner to sell his or her property unless the purchaser gives an undertaking to supply contact details. Such a restriction would be likely to infringe the property rights of an apartment owner.

Senator Ivana Bacik: I support the Minister's amendment No. 10, which is an important safeguard for consumers. I note that he envisages the contract in writing would include a commitment by the developer to complete the development satisfactorily. That is important

and goes some way towards meeting the concerns we have about ensuring this provision for adequate and effective completion to the satisfaction of ultimate purchasers. I have a technical issue with amendment No. 8 in that I do not see why the Minister is deleting "and". As a drafting point, it seems clearer in its current formulation. Perhaps I have missed something, but removing "and" seems to make the meaning somewhat less clear. That is amendment No. 8 and relates to section 3(1).

Deputy Dermot Ahern: It is in the introduction to amendment No. 10.

Senator Ivana Bacik: I believe amendment No. 8 is about a different issue, which is section 3(1)(*a*).

Deputy Dermot Ahern: It is simply to allow for the addition of "(*c*)".

Senator Ivana Bacik: I see the point and thank the Minister for that clarification. Amendment No. 11 refers to an amendment we tabled on Committee Stage. It was suggested by the Apartment Owners Network to facilitate the enforcement of charges, but I take the Minister's point about the difficulty in requiring a residential address to be supplied, and so I am not going to press that amendment.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 9 and 25 are related and may be discussed together. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 9:

In page 6, line 36, before "ownership" to insert "the unencumbered beneficial and legal".

Amendment No. 9 arises out of Committee Stage proceedings. It was not tabled on Committee Stage but arose from the debate on an amendment to section 4(2). It provides for the insertion of, in line 36 in page 6, before "ownership", the words, "the unencumbered beneficial and legal", to qualify what is meant by ownership. The reason for this is that we believed the Minister might have created an ambiguity in terms of what is to be transferred to the management company. We had assumed that both legal and beneficial interest in the common areas and the reversions would have to be transferred to the management company, but the Minister, if I am right, is now providing in section 4(2) that the developer can retain the beneficial interest in any development established before the Act. This makes it more important to ensure the beneficial interest in developments after the Act is transferred, not just the legal interest.

We can deal with pre-Act developments when we get to section 4. This amendment would also ensure the developer is not entitled to transfer the reversion or common areas subject to a mortgage or charge — hence the word "unencumbered" — because we felt that would frustrate the purpose of the Bill.

Amendment No. 9 is to be discussed in conjunction with amendment No. 25, which attempts, again, to insert the word "unencumbered" into section 10(1). The Bill would thus state "the unencumbered beneficial interest" rather than "the beneficial interest". This would clarify that the management company is to get clear title under section 10 as well as under section 3 as amended by amendment No. 9. Both of these amendments arose from debate on Committee Stage.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: On the transferral of beneficial ownership, as is being opposed in this amendment, the idea is that the beneficial and legal ownership is split. The legal ownership transfers on the sale of the first apartment but the beneficial ownership ultimately merges on completion of the development. Transferring the beneficial ownership of the common areas in the manner suggested would therefore run counter to sections 10 and 11, which provide for the transfer of beneficial ownership only when the development stage has ended. I believe the current wording is clearer.

With regard to amendment No. 25, subsections (2) and (3) of section 10 deal with the issue of consent by any mortgagee or owner of a charge with regard to the interest of the owner of the common areas in a development. The insertion of the word "unencumbered" appears to be superfluous in that context.

Senator Ivana Bacik: The Minister stated in his response that he feels the amendment would be superfluous. We felt it was important to clarify what is meant by "interest", and that it should be unencumbered. I wished to raise this point with the Minister because it arose on Committee Stage debate. I ask him to consider it again, perhaps before it goes to the Dáil. I will not press the amendment.

Amendment, by leave, withdrawn.

Government amendment No. 10:

In page 6, line 40, to delete "relating to that unit." and substitute the following:

"relating to that unit, and

(*c*) a contract in writing is entered into between the developer and the owners' management company concerned prior to such transfer setting out the rights and obligations each of those persons has in relation to the other.".

Amendment agreed to.

An Leas-Chathaoirleach: Amendment No. 11 cannot be moved.

Senator Ivana Bacik: It was already discussed.

An Leas-Chathaoirleach: It was already discussed but it cannot be moved because amendment No. 10 has been agreed to.

Senator Ivana Bacik: All right. I was going to withdraw it in any case.

Amendment No. 11 not moved.

An Leas-Chathaoirleach: Amendments Nos. 12 and 42 are related and may be discussed together. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 12:

In page 6, between lines 40 and 41, to insert the following:

"(2) An interest in a unit shall not be transferred subject to any conditions or covenant unless in the formulation of such condition or covenant, due regard has been had to environmental considerations.".

The Minister may recall that this section was the subject of the most light-hearted discussion on the last occasion, with quite a lively debate, although the point is a serious one, that is, the right to dry laundry. Many apartment owners are concerned about clauses in their leases which prohibit them from air-drying laundry. Amendment No. 42 was moved on Committee Stage and the Minister had a good deal of sympathy with people who are faced with this real and practical issue when living in flats and apartments. They do not want to see house rules prohibiting the air-drying of laundry. Equally, there are those who feel it is unsightly to have laundry drying outside. As I said on Committee Stage, in countries in which a much higher proportion of people, particularly families, live in apartments, provisions are made in the building and construction of apartment complexes to ensure there are aesthetically pleasing ways of air-drying laundry so people do not have to resort to the most environmentally unfriendly method of the tumble dryer. For environmental reasons as well as practicality, we should be encouraging apartment complexes to be constructed, where possible, in such a way that people can air-dry their laundry.

We suggest in amendment No. 42 that house rules should not prohibit air-drying of laundry, but the Minister felt that was too specific although, as I said, he had some sympathy with the principle behind it, so we have tabled a separate amendment, No. 12, in answer to the points raised by the Minister. It is not exactly an alternative to No. 42 but it would certainly go some way towards meeting the concerns raised in the tabling of amendment No. 42, although in a more general sense. We have suggested in amendment No. 12 that "An interest in a unit shall not be transferred subject to any conditions or covenant unless in the formulation of such condition or covenant, due regard has been had to environmental considerations". This is a general formulation which is designed to encourage the deletion of any clauses that prohibit air-drying of laundry in conditions or covenants.

I am interested to hear what the Minister has to say, particularly about amendment No. 12. We have already debated amendment No. 42 in some detail and his concern was that it was too specific. However, having regard to environmental considerations, such clauses really should be discouraged. That is what we are trying to do in amendment No. 12.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: We did take up the matter of amendment No. 42 with the Department of the Environment, Heritage and Local Government, which said it had already issued guidelines on the design of new apartments, including minimum standards for floor areas, storage spaces, balconies and room dimensions. In addition, communal facilities for drying clothes may be provided in well ventilated areas and, where this is not done, consideration should be given to the provision of drying facilities within each unit, such as screened balconies. There is a balance to be struck with regard to air-drying laundry while not causing an unsightly aspect to apartment blocks. There may be something of an outcry in this regard.

I would hazard a guess that amendment No. 12, if inserted as a clause in the Bill, would cause much dispute and create more problems than it solved. The amendment states: "An interest in a unit shall not be transferred subject to any conditions or covenants unless in the formulation of such condition or covenant, due regard has been had to environmental considerations". Who would determine whether due regard had been given to environmental considerations? It is a pretty nebulous provision and would lead to legal difficulties in that an interest in a unit could not be transferred without due regard to whatever are considered "environmental considerations".

Senator Ivana Bacik: To sum up the Minister's response to the two amendments, we have been too specific in amendment No. 42 and too general in amendment No. 12. However, I

[Senator Ivana Bacik.]

hope he accepts the policy interest I am expressing, which is to ensure the quality of life in apartments is improved and that environmental considerations are taken into account in their construction. I am glad to hear what he has to say about the Department of the Environment, Heritage and Local Government; these are among the issues that developers must take into account in constructing new complexes.

It occurred to me after the debate on Committee Stage that whenever I have stayed in an apartment in the US or Canada, there has generally been a basement area in the apartment block containing a communal laundry facility and, often, communal drying space. Unfortunately, when basements are built in apartment complexes in Ireland, they tend to house underground car parks and there is no space for communal laundry or drying facilities. This is perhaps a commentary on the priorities we have had in the past, but I hope this will change. I am glad we have had a debate on this issue and I hope the need for environmental considerations to be taken into account will be considered in the construction of apartment complexes.

I will not press the amendment as I take the Minister's point that this might give rise to difficulties in interpretation. However, perhaps the Labour Party contributors in the Dáil will be able to tweak the amendment in some way to ensure it meets the Minister's concerns.

Amendment, by leave, withdrawn.

Government amendment No. 13:

In page 6, to delete line 42 and substitute the following:

"(*a*) a multi-unit development in which a residential unit has not previously been sold; and".

Deputy Dermot Ahern: This is a drafting amendment. Section 3 deals with new multi-unit developments in which no units have been sold at the date on which the Act comes into effect.

Amendment agreed to.

Government amendment No. 14:

In page 6, line 44, to delete "the owner of common areas" and substitute "the owner of relevant parts of the common areas".

Deputy Dermot Ahern: This is a technical amendment to cater for the fact that certain multi-unit developments are completed in phases. It makes clear that the obligations on developers set out in section 3 also apply in respect of such phased developments.

Amendment agreed to.

Senator Ivana Bacik: I move amendment No.15:

In page 6, between lines 45 and 46, to insert the following:

"(3) On closing of a unit sale prior to completion of the development, the developer shall pay 5 per cent of the purchase prices to the owners' management company which shall hold such sum in trust for the developer until the development is completed.".

This amendment was tabled during Committee Stage proceedings when Members had a full debate. This amendment has been discussed and debated at length. It is supported strongly by both the Royal Institute of the Architects of Ireland, RIAI, and by the Apartment Owners

Network. It considers the problem of unsatisfactory completion of complexes or individual units and calls for the developer to pay a retention of 5% of the purchase price to the owners' management company to hold such sum in trust for the developer until the development is completed. The idea is to include an additional protection for the consumer. I acknowledge there has been discussion following the Committee Stage debate and note the Minister stated during that debate that he had some sympathy for the point raised and would reconsider it before Report Stage. However, I cannot discern an amendment tabled by the Minister on this subject although I note amendment No. 21 tabled by Senator Regan is similar.

The idea of such a retention of 5% originally was proposed by the Law Reform Commission but the interdepartmental group did not accept its recommendation as it was feared the builder simply would raise the price of apartments by 5%. As a result, this ultimately would not give any security or safeguard to the consumer and would actually contribute to rising prices. As the Minister has acknowledged, given the change in the property market and falling property prices, this fear has been diminished. The RIAI took some expert advice on the issue of the effect a 5% retention would have. The advice the institute received was that it would not necessarily raise prices and that were the price to increase, it would only be because what was being acquired was a qualitatively better property than one sold without the 5% retention. Therefore, a rather complex issue arises in that by including a clause such as this, a dwelling then comes with a greater assurance because many of the problems pertaining to completion that now are being experienced by purchasers would have been resolved by the vendor before the sale of the apartment was finally completed. I also have been informed that the straightforward view that additional costs incurred by the producers of new residential property are passed directly onto purchasers is not supported by the literature. Consequently, there is some contradiction of the generally held and intuitive view that the 5% retention would contribute to an increase of 5% in the purchase price. In any event, the Minister himself accepts the market now is very different from the property market that was in place when the interdepartmental group ruled out such a clause.

On balance, the Labour Party certainly considered the safeguards this clause would offer to the purchaser would outweigh any other negative effect and given the current market, I doubt whether there would be such a negative effect. I will be interested to hear what the Minister has to say, given that on Committee Stage he indicated he would revert to Members on Report Stage in this regard. I believe he then stated it would be helpful to go back to the interdepartmental group and the National Consumer Agency for their opinions on the matter at this changed time. I believe I am correct in stating the interdepartmental group reported two years ago and of course in the intervening two-year period, there has been an enormous economic downturn and the property market has changed out of all recognition. Therefore, the concerns raised by the interdepartmental group are no longer in any way as strong. While I will be interested to hear the Minister's views, I am disappointed he has not accepted this amendment at this point.

Senator Eugene Regan: I second the amendment, which is similar to amendment No. 21 that I tabled but which has been ruled out of order because of its references to value added tax and the manner in which it should be calculated. As Senator Bacik has indicated, there was a debate on this issue on Committee Stage. The purpose is to ensure complexes are properly completed and the nub of the issue is how to determine the date of completion and what constitutes completion. However, that is a general problem to which the Minister referred earlier in today's debate and which must be clarified in the Bill. In itself however, that is not a justification for failing to adopt this approach of holding on trust 5% of the purchase price by an owners' management company. There must be some leverage by which people cannot simply walk away from a development without a price being paid for so doing. I do not believe there is a dispute

[Senator Eugene Regan.]

in respect of the principle in this regard. The issue is about how it would be implemented and that has to do with the issue of completion, determining what constitutes completion and who certifies that. I commend the amendment to the Minister.

Deputy Dermot Ahern: I indicated on Committee Stage I would reconsider this matter in the meantime. It may well be that I will be obliged to reconsider this matter further between now and the Bill's appearance before the Dáil because the Department received a complex submission from the architects' body late last Friday. It was too late to be considered in the context of Report Stage in this House and consequently I may well revert to it.

However, my Department has consulted the principal stakeholders since Committee Stage and it is fair to state there was no consensus on the 5% retention proposal. While I stated previously there was some merit in the idea as a means of seeking to ensure completion, there also are practical difficulties. During my time as a solicitor in previous years, when a one-off house was built, the person who owned the site would get it built in stages. However, when it came to the end of the completion of the particular dwelling, a dispute always arose about whether the owner of the site was entitled to retain the balance, that is, the last amount. I accept we have moved on and that facilities such as mediation etc. now are available. However, I believe there would be a considerable risk that the 5% that was to be taken from every unit owner would end up residing in a management company and that no one would be able to get his or her hands on it.

I also alluded previously to the practical issue regarding how the cumulative amount of 5% from all the units should be released and who would determine when it should be released, which leads one back to issues regarding architects' certificates. As I stated previously, there is a risk that developers might seek to build into the sales price an additional 5% at the outset, which obviously would not be in the consumers' interests. While I can accept the point that this is less likely to happen in the present economic circumstances, this legislation is being enacted not simply for today or tomorrow but for years to come and the property market will not be down at the bottom, as it is, forever. I anticipate that as always when such issues arise, as was the case in respect of housing grants, they really only act as an opportunity for the builder to jack up prices by the commensurate amount.

I have alluded to the making of a fairly complex submission by the architects' body. It is described as an interim working draft, represents a work in progress and obviously must be considered in the meantime. The working draft appears to require that planning authorities should provide certification that development has been completed in accordance with the planning permission and any planning conditions attached to it. My understanding is that planning authorities no longer follow the practice of providing certificates of compliance. It appears it is dependent on the local authority completing a taking in charge process where it arises under section 180 of the Planning and Development Act 2000. I understand that in certain cases this may be a lengthy process under existing statutory provisions.

As regards building control standards which also must be complied with, section 6 of the Building Control Act 1990 provides for the making of regulations requiring the submission of certificates of compliance prescribing the form and content of such certificates and designating those who may issue them. To date, however, regulations have not been made under section 6 of the Act mainly because, I understand, of professional indemnity insurance issues on the part of the architects' profession. It is not clear from the architects' submission that a solution has been found to this issue since it states they did not have sufficient time to consult their professional indemnity insurance advisers before submitting this working draft.

In view of the fact that policy responsibility for at least some, if not all, of these areas rests with the Minister and the Department of the Environment, Heritage and Local Government, I will be forwarding the architects' submission to the Minister, Deputy Gormley, for an assessment of the proposals set out in it. The architects are prepared to issue and stand over certificates of compliance which may facilitate further progress on completion issues. Obviously, the question of cost is one that will have to be examined. I also want to seek the views of the Law Society on the matters raised in the architects' submission.

Senator Ivana Bacik: I am glad to hear the Minister say he will still look at this issue. I understood him to say there was an ongoing process of consultation with stakeholders, including the architects' body and the Law Society. On that basis, I will not press the amendment at this point. It is a pity we could not have had the consultation before the Bill was returned to this House for Report Stage. Perhaps it was brought back a little too quickly. I accept, however, that the Minister will look at the matter again between now and when the Bill is debated in the Dáil. On that basis, I will not press the amendment, although this is an important principle for us.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 16:

In page 7, line 24, to delete "The" and substitute the following:

"Except where the multi-unit development has been completed, the".

This amendment has been designed to make section 3(6) compatible with section 10(1). It is to try to ensure we have the words from section 4(2) transposed into section 3(6) to make it compatible with section 10(1) which deals with the determination of certain beneficial interests on completion of a development. The amendment is aimed solely at trying to ensure compatibility between the two sections.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: The amendment seems to be based on a misunderstanding of section 3, the requirements of which apply to future multi-unit developments. If some of the units in a development have been sold, section 4 applies, while if the development has been substantially completed, section 5 applies. I am told the amendment is not necessary.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 17 is in the name of Senator Bacik.

Senator Ivana Bacik: I will not be pressing this amendment.

An Leas-Chathaoirleach: Amendments Nos. 17, 31, 32, 34 and 35 are of the same nature and can be discussed together.

Senator Ivana Bacik: I move amendment No. 17:

In page 7, between lines 29 and 30, to insert the following:

4.—Where a developer retains any unit or units on completion of the development, each unit so retained shall be subject, on such completion, to a common liability for charges as if it had been disposed of by the developer.".

[Senator Ivana Bacik.]

As I said, I am not pressing this amendment.

An Leas-Chathaoirleach: Does the Senator want to speak to the other amendments?

Senator Ivana Bacik: I am sorry, I did not not realise they were being discussed together. No, I do not want to speak to them.

An Leas-Chathaoirleach: Amendment No. 31 is in the name of the Senator.

Senator Ivana Bacik: Amendment No. 31 is to section 14 and would insert a new subsection (2) providing that the "developer shall be liable to pay any charge under this section or *section 15*, within 30 days of invoice, for any unsold unit as if there were a unit owner for that unit.". It is an amendment that was suggested initially to us by the Apartment Owners Network to ensure the obligation to pay service charges would begin on the date the first unit was sold in order that the developer would pay service charges on all unsold units from that date. It is to ensure service charges would not be left unpaid on unsold units.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: I indicated on Committee Stage that I would be proposing amendments to deal with the liability of a developer to pay service charges and the sinking fund contributions in respect of unsold units. Amendment No. 32 will make the developer liable for the annual service charge on unsold units from the date on which the first unit in the multi-unit development is sold. Amendments Nos. 34 and 35 have been tabled to bring the sinking fund provisions into line with those relating to service charges. This means that for the purposes of section 16, a developer will be liable to pay the sinking fund contribution in respect of unsold units from the date on which the sinking fund is established.

Amendment, by leave, withdrawn.

Amendment No. 18 not moved.

Government amendment No. 19:

In page 7, lines 38 and 39, to delete "to an owners' management company" and substitute "to the relevant owners' management company".

Deputy Dermot Ahern: This is a drafting amendment.

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 20:

In page 7, to delete lines 41 to 46 and substitute the following:

"(2) Subject to *section 10(1)*, the transfer, in compliance with *subsection (1)*, of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units concerned may reserve the beneficial interest to the transferor if the reservation of such interest is necessary to enable the transferor to complete the development, and upon completion the developer shall transfer the unencumbered legal and beneficial interest free of any right in favour of a mortgagee or owner of a charge affecting such interest in accordance with *section 10(1)*.".

This amendment would provide for a new subsection (2) in section 4. It is to replace the existing wording because we considered it seemed to mean that while the developer would have to transfer the legal title to common areas in reversion, he or she would retain the beneficial interest. As I said on an earlier amendment, it is to try to clarify what is to be transferred because, presumably, the intention is that the developer will only retain the beneficial interest until completion, but it seems somewhat less clear following an amendment made to the Bill on Committee Stage. It is simply to clarify the meaning of section 4(2) by altering somewhat the wording and providing that it would be subject to section 10(1).

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: This amendment fails to recognise that section 4 has been designed to cater for multi-unit developments which are partly completed, that is, some units have been sold but the development is not substantially completed to the standard which would bring it under section 5. It is, therefore, incumbent on the developer to complete the development. We do not see a basis for the proposed additional subsection.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 21 in the names of Senators Regan and Cummins has been ruled out of order by the Cathaoirleach as it would involve a charge upon the people. It seeks that developers would be liable for VAT on 100% of the purchase price while only initially receiving 95% of the price.

Amendment No. 21 not moved.

Senator Eugene Regan: I move amendment No. 22:

In page 8, line 2, after "completed" to insert "as certified by a professional person".

I note the Minister has referred to the difficulty of certifying completion and issues of professional indemnity insurance, but I would have thought that in this section we would have some mechanism by which we can determine the point at which a development is completed. If "certified by a professional person" or some such wording was inserted, at least we would have an objective basis on which the words "whether or not a development has been completed" could be contested or judged. I put the amendment to the Minister to have inserted the words "as certified by a professional person" in section 5.

Senator Ivana Bacik: I second the amendment.

Deputy Dermot Ahern: Section 4 imposes an obligation on a developer to transfer the common areas in substantially completed developments to the owner-management company within six months of the enactment of the legislation. On the issue of certifying by a professional person, we will look at this issue between now and the Dáil examination of this Bill because there are issues relating to surveyors and other similar persons. We will have a look at it.

Senator Eugene Regan: On that basis, I will not press the amendment.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 23 is a Government amendment. This amendment needs a recommital proposal and I ask the Acting Leader to propose a recommital.

Senator Denis O'Donovan: I move:

[Senator Denis O'Donovan.]

That in accordance with Standing Order 130(1), the Multi-Unit Developments Bill 2009 be recommitted in respect of amendment No. 23.

Question put and agreed to.

Government amendment No. 23:

In page 8, between lines 8 and 9, to insert the following:

"6.—Each owners' management company concerned shall, where requested by the developer to do so, join in a deed of conveyance or transfer relating to a unit in the development and take such other steps as are reasonably requested of it to enable a good marketable title of a unit in a multi-unit development to vest in the purchaser of the unit concerned from the developer.".

Deputy Dermot Ahern: This inserts a new section into the Bill and arises from recent discussions between my Department and the Law Society. The new section will place an obligation on the owners' management company to join in any transfer or conveyances of units and to take any reasonable steps to enable a purchaser to obtain good marketable title to the property.

The Law Society suggested that a provision along these lines is needed so as to ensure the intending purchasers of units in a multi-unit development do not become caught up in any disagreement or dispute between the developer and the owner or management company. For example, an owner's management company might decide to try to bring pressure to bear on a developer by refusing to join in a transfer due to an ongoing dispute over the common areas. In such cases the people who would suffer most would be those intending purchasers and this provision is intended to prevent such situations from arising.

Amendment agreed to.

Bill reported with amendment.

Government amendment No. 24:

In page 8, between lines 42 and 43, to insert the following:

"(3) A unit owner shall be under an obligation to furnish to the relevant owners' management company particulars of his or her name together with details of his or her address and such other contact particulars as the owners' management company may reasonably request, and shall notify the owners' management company of any change in such particulars.".

Amendment agreed to.

Amendments Nos. 25 to 27, inclusive, not moved.

An Leas-Chathaoirleach: Amendments Nos. 29 and 30 are alternate to amendment No. 28. Amendments Nos. 28 to 30, inclusive, can be discussed together by agreement. Is that agreed? Agreed.

Senator Eugene Regan: I move amendment No. 28:

In page 11, to delete lines 42 to 51 and in page 12, to delete lines 1 to 5 and substitute the following:

"13.—(1) From the commencement of this section, an owners' management company shall be incorporated under the Companies Acts for a multi-unit development which comprises 5 units or more and shall carry out the functions referred to in this Act.

(2) The title "owners' management company" and the letters "OMC" shall appear in legible characters on all documents signed and issued by or on behalf of an owners' management company, and the owners' management company shall ensure that it is represented as being such a company.

(3) The objects and functions of an owners' management company shall be—

(*a*) during the development stage, to convey the legal title of a unit in the multi-unit development to each unit purchaser and that it shall not prevent or frustrate any such conveyance, and to ensure (in a manner that is consistent with the object and function to convey that legal title and not to prevent or frustrate it) the management and maintenance of the common areas of the multi-unit development and otherwise to comply with the obligations imposed on the company by this Act,

(*b*) after the development stage, to ensure the management and maintenance of common areas of the multi-unit development and otherwise to comply with the obligations imposed on the company by this Act.

(4) Notwithstanding anything in the Companies Acts, the memorandum of association of an owners' management company shall make provision for the following—

(*a*) the name of the company in accordance with *subsection (2)*,

(*b*) an objects clause in accordance with *subsection (3)*,

(*c*) that each unit owner shall be a member of the company,

(*d*) that each member of the company holds one vote of equal weight as each other member, and

(*e*) that, in the event of a sale of a unit after its first sale, each subsequent unit owner shall be a member of the company on completion of the conveyance.

(5) Notwithstanding anything in the Companies Acts, the articles of association of an owners' management company shall make provision for the following—

(*a*) that an annual general meeting shall be held within every calendar year,

(*b*) that every member of the company shall receive at least 21 days notice of the annual general meeting,

(*c*) that the annual general meeting shall take place within reasonable proximity to the multi-unit development and at reasonable times (unless otherwise agreed by a 75 per cent majority vote of the members of the company),

(*d*) that a scheme of annual service charges and a scheme for a building investment fund for the multi-unit development is established and maintained,

(*e*) the form and content of the annual returns of an owners' management company specified in *subsection (6)*, and

[Senator Eugene Regan.]

(*f*) the covenants and agreements for the multi-unit development, which shall comply with the requirements of *section 5*.

(6) Notwithstanding anything in the Companies Acts, the annual returns of an owners' management company shall include the following—

(*a*) the accounts of the company in the form of a statement of income and expenditure,

(*b*) a statement of the annual service charge or charges,

(*c*) a statement of the current level of the building investment fund and the annual contribution to it,

(*d*) a statement of any planned expenditure for the following calendar year,

(*e*) a statement of the assets of the company,

(*f*) a statement of the content of and extent of cover provided by any insurance policy (if any) held by the company,

(*g*) the fire safety certificate issued under the Building Control Acts 1990 and 2007 for the multi-unit development.

(7) Subject to the provisions of this section and the other provisions of this Act, the Companies Acts shall apply with the necessary modifications to an owners' management company.

(8) A multi-unit development which comprises 4 units or less may be developed and maintained on the basis of a co-ownership agreement between the unit owners.".

I do not propose to press this amendment. It has been discussed on Committee Stage. Some of the elements in this amendment have been taken on board or are included already in the Bill as initiated. Given the other amendments that have been made to the Bill by the Government, I do not propose to pursue this amendment.

Senator Ivana Bacik: I second the amendment.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 29:

In page 12, to delete lines 1 and 3 and substitute the following:

"(4) Where development works commenced prior to the enactment of this Act, this section applies subject to the modification that any existing rules contrary to this section shall be modified within the 24 months following the commencement of this section.".

This amendment seeks to ensure that "Where development works commenced prior to the enactment of this Act, this section applies subject to the modification that any existing rules contrary to this section shall be modified within the 24 months following the commencement of this section".

It is trying to deal with this issue that the Minister raised already, where development works on a multi-unit development have commenced prior to the enactment of the Bill. There has

been a great deal of concern — I think the Minister has heard from various concerned parties already — where apartment complexes are in the process of being constructed already prior to the commencement of the Act about how the Bill will affect those. Our concern was that subsection (4) apparently appears to mean the one-unit-one-vote rule would not apply to existing management companies, which seems undesirable.

The Minister on Committee Stage stated he could not retrospectively amend memoranda and articles of association. My party felt that as an alternative approach such memoranda could be changed within two years from the commencement of the Act. This would be an alternative way of dealing with the application of the Bill to the complexes where development work had already commenced.

Senator Eugene Regan: I second amendment No. 29.

Deputy Dermot Ahern: On amendment No. 29, the same principle applies — whether it is 24 months, 12 months or whatever — that there is a difficulty in passing legislation which would purport to change existing rights and obligations laid down in the memoranda and articles of association of companies. Under section 19(4)(*a*), it will be possible to seek a court order to amend legal documentation on a case-by-case basis but I would have thought an all-encompassing amendment would not pass muster.

Senator Ivana Bacik: I see the Minister's issue with it but there is this more general problem of how the Bill applies to developments that are still in the process of being constructed when the Bill comes into force.

Another person raised with me a similar issue in respect of section 5, that it does not appear to apply to a development which has been completed where the common areas have still not been transferred. Section 5 applies to developments which have been substantially completed before the commencement of the Act requiring the developer to transfer the common areas to the owners' management company within six months of the coming into operation of section 4, but there is still this anomaly. Where the development has been completed and the common areas have still not been transferred, the section does not seem to apply.

Similarly, with this amendment we are trying to resolve the issue of apartment owners in a complex where the development has been commenced prior to the passing of the Bill. It seems to us that this is a loophole or an anomaly where the provisions of the Act will not apply to a company that is already in existence. There is a difficulty for individual consumers.

Deputy Dermot Ahern: Where no unit has been sold, the new arrangements would obviously apply. Where some units have been sold, it would cause grave difficulty in that, ultimately, on completion of the entire development, some apartments would be dealt with under the old memorandum and the newer apartments would be dealt with under the amended memorandum, and there would be a complete inconsistency. As I stated, it is not possible for us to implement this retrospectively and to have consistency ultimately in the way in which the development is generally managed thereafter.

Amendment, by leave, withdrawn.

Government amendment No. 30:

In page 12, line 5, to delete "*section 3(4)*" and substitute "*section 2(4)*".

Amendment agreed to.

Amendment No. 31 not moved.

Government amendment No. 32:

In page 14, between lines 37 and 38, to insert the following:

"(10) For the purposes of this section a developer or building contractor, as the case may be, shall be considered to be the owner of a unit in a multi-unit development upon the completion of the sale of the first unit in the development.".

Amendment agreed to.

Senator Rónán Mullen: I move amendment No. 33:

In page 14, line 43, to delete "apportioned between unit owners" and substitute the following:

"and proportionately allotted between unit owners, with due consideration given to type and size of unit owned.".

This amendment seeks to amend section 15(11), which currently provides that "The annual service charge shall be calculated on a transparent basis and shall be equitably apportioned between unit owners". For reasons I shall explain, I am proposing that the subsection, in light of the amendment, should it be accepted, would require that the annual service charge be calculated on a transparent basis and shall be equitably and proportionately allotted between unit owners, with due consideration given to the type and size of the unit covered.

When Senator Quinn spoke to this on Committee Stage, the Minister generously acknowledged that he was sympathetic to the concerns raised, but raised a concern that were we to be prescriptive in this regard, we might see officials going in to measure units to determine their size and type.

However, he also pointed out that he intended to err on the side of over-regulating and undertook to consider whether he could come up with an appropriate wording before Report Stage.

This amendment is grounded in the real life experience of people. I note what the Minister said about our inability to make some provisions retrospective. It would be nice if we could because I have come across situations where people who own properties in multi-unit developments find themselves being hit for the service charge at the same level as those who own superior properties. They may have the same number of bedrooms, there may well be a sub-division of units which have one, two or three bedrooms and there may be scaling in terms of the service charge to be paid. However, that in itself does not deal with the difficulty. It can be the case that somebody has a three-bedroom apartment in a multi-unit development that is effectively a penthouse and is using all of the facilities within the building, while another person has a much smaller property, also with three bedrooms but perhaps facing in the wrong direction or not nearly as advantageously situated. Therefore, while it is welcome that the law will require the calculation to be transparent and equitable, there is a need to go further and be more specific as to what is required. The concept of proportionality should be introduced, as well as the need for consideration to be given to the type and size of unit owned. If I was rewording the amendment, I might add the words, "type, size and location". As it is, my amendment presents a significantly better formulation. Whereas I agree with the Minister that one would not want to see an excess of bureaucracy in this regard, it is important to note that the law operates as a teacher, that what the law requires

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is already very important and will be to the benefit of future property owners in multi-unit developments. Therefore, I am hoping for a favourable response from the Minister.

Senator Ivana Bacik: I second the amendment which deals with an important principle. As Senator Mullen said, it relates to a very real issue of pressing concern to many apartment owners, the level — often the excessive level — of service charge payable. Generally, the provisions of section 15 are to be welcomed, as they will, I hope, guard against excessive service charges being levied on apartment owners. The point is that the equitable apportionment of the service charge should take account of the type and size of unit owned. I suspect the Minister may say in response, if he is not willing to accept the amendment, that it is superfluous because the principle is already encompassed by the phrase "equitably apportioned". I hope this is the case, that it is unnecessary to include this provision and that it is superfluous. However, the wording proposed would give greater protection and security to apartment owners in that it might make them feel a little more secure about what is meant by "equitable apportionment" of the service charge. Therefore, this is an important principle.

Deputy Dermot Ahern: The advice of the Office of the Attorney General was taken on this point. I have some sympathy for the proposal, but it is a case of where do we draw the line. With regard to due consideration being given to the type and size of the unit owned, it would be necessary to take into account the fact that one unit had a bigger balcony; that one unit had a sea view whereas another did not; that one unit had a view of the back, while another had a view to the front. It would be preferable, therefore, to leave it the way it is which, as acknowledged by Senator Bacik, encompasses what we are trying to do, that the service charge will be calculated on a transparent basis and will be equitably apportioned between unit owners. It has to be said this issue has not been raised by any of the representative bodies. It may not be satisfactory to the Senators who have tabled the amendment, but I will look at it between now and Report Stage in the Dáil and perhaps liaise with some of the interested representative groups. However, they have not raised the issue with me. The Bill provides sufficient safeguards to achieve what we are trying to do. It might become overly complex and complicated if we were too prescriptive regarding what considerations should be taken into account.

Senator Rónán Mullen: I thank the Minister for his response, although I confess it disappoints me to some extent. I refer to two issues raised by the Minister. He mentioned that this concern had not been raised by any of the representative bodies. I presume this is further testimony of the quality of the Seanad in that we have a certain ability to think through proposals on their own merits. That in itself is not a reason to consider the amendment, although I certainly welcome the Minister's commitment to consult the representative bodies to see whether would they be *ad idem* on what is being proposed. I would be surprised if there was any opposition to it.

The more serious point is that the objection the Minister raises, that this could become overly complex, with people wondering whether they should be paying more or, presumably, less because they do not have a balcony and so on, applies equally to the proposed wording. If the legislation requires that the service charge be equitably apportioned, that already invites people to consider their situation. I find it difficult to see how, by way of the introduction of an additional degree of specificity as to what should be taken into account, one might increase the likelihood of people raising objections. I do not think the logic of the Minister's response stands. I argue that the more specific one is, having regard to the issues to be taken into account, the less likely one is to have disputes or disagreements as to what should be considered, according to the general term "equitable". Nonetheless, I hear what the Minister is

[Senator Rónán Mullen.]

saying. I wish he would accept the amendment now, but I welcome his further commitment to think about it a little more between now and Report Stage in the Dáil.

Deputy Dermot Ahern: The Senator will not hear me denigrating the Seanad. I have recently acknowledged both here and in the other House the merits of the Seanad and its discussions. I am the Minister who brings forward at least two thirds of all the legislation passed through the Oireachtas. Perhaps Senator Mullen will impress on some of his colleagues on his side of the House the necessity for a second House. This is a genuine request and I do not say it in a political way.

The Senator argues that our amendment will lead to more disputes or bones of contention than his amendment and that it would be better to be specific. One has to have some general yardstick, which is the number of bedrooms in an apartment. This yardstick is used for a specific reason because it determines not just the size of an apartment although not necessarily, but also the number of people who reside in it. The service charge will be paid on the basis of the number of beds in an apartment. This is probably a better yardstick and I do not think it will change with the passing of this Act. I will discuss the amendment with some of the interested bodies.

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

Amendment declared lost.

Government amendment No. 34**:**

In page 15, line 44, after "multi-unit development" to insert the following:

"(including a person who is the developer or building contractor of the development)".

Amendment agreed to.

Government amendment No. 35:

In page 15, after line 46, to insert the following:

"(4) For the purposes of this section a developer or building contractor, as the case may be, shall be considered to be the owner of a unit in a multi-unit development upon the completion of the sale of the first unit in the development.".

Amendment agreed to.

Government amendment No. 36:

In page 16, line 4, to delete "such greater amount" and substitute "such other amount".

Deputy Dermot Ahern: On Committee Stage I indicated that I would examine the possibility of looking at a more flexible approach to the payment of minimum sinking fund contributions. As I am conscious of the need for flexibility in the matter, the amendment substitutes the word "other" for "greater" in section 16(4). This will mean that the annual contribution to the sinking fund will be €200, unless a different amount is agreed at a meeting of the unit owners.

Amendment agreed to.

Government amendment No. 37:

In page 16, line 11, to delete "the passing of a period of 18 months since" and substitute "the expiry of 18 months from".

Deputy Dermot Ahern: This is a drafting amendment.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 38 and 39 are related and may be discussed together.

Government amendment No. 38:

In page 16, lines 39 and 40, to delete all words from and including "the charges" in line 39 down to and including "and *16*," in line 40 and substitute the following:

"the charges arising under *section 15* and the contributions fixed under *section 16*,".

Deputy Dermot Ahern: These are technical amendments which make it clear that section 17 applies both to the annual service charge referred to in section 15 and the sinking fund contributions referred to in section 16. The effect of section 17 remains the same, that is, that an owner-management company will be able to issue a request for payment of an aggregate amount comprising the annual service charge and the sinking fund contribution. When doing so, it must provide the basis for the calculation of both the service charge and the sinking fund contribution.

Amendment agreed to.

Government amendment No. 39:

In page 16, line 42, to delete "calculation of the charge" and substitute "calculation of the charge and contribution".

Amendment agreed to.

Government amendment No. 40**:**

In page 16, after line 46, to insert the following:

18.—Charges arising under *section 15* and contributions fixed under *section 16*, whether requested or sought to be collected separately or together may be recovered by the owners' management company concerned as a simple contract debt in a court of competent jurisdiction.".

Deputy Dermot Ahern: Issues relating to the recovery of outstanding service charges and sinking fund contributions were raised on Committee Stage when I undertook to examine them. On reflection, the best solution is to insert this new section into the Bill. It provides that the owner or management company may seek to recover outstanding service charges and sinking fund contributions as simple contract debts in a court of competent jurisdiction, normally the District Court. This will help to keep recovery costs to a minimum.

Amendment agreed to.

Government amendment No. 41:

In page 17, to delete lines 7 and 8 and substitute the following:

"on—

(*a*) unit owners,

(*b*) tenants of unit owners, and

(*c*) servants, agents and licensees of persons referred to in *paragraphs (a)* and *(b)*.".

Deputy Dermot Ahern: This is a drafting amendment to improve the presentation of section 18(1).

Amendment agreed to.

Amendment No. 42 not moved.

An Cathaoirleach: Amendments Nos. 43, 44 and 46 are related and may be discussed together.

Government amendment No. 43:

In page 18, line 26, to delete "a development" and substitute "a multi-unit development".

Deputy Dermot Ahern: Amendments Nos. 43 and 44 are drafting amendments. Amendment No. 46 broadens the scope of paragraph (*j*) to cover all multi-unit developments, not just mixed-use developments. The purpose of the paragraph is to allow unit owners to obtain a court order if a proposal to alter the physical characteristics of a development would disproportionately or inequitably affect them. The scope of the provision will now extend to all types of multi-unit developments.

Amendment agreed to.

Government amendment No. 44**:**

In page 18, line 31, to delete "company where" and substitute the following:

"company in respect of a multi-unit development where".

Amendment agreed to.

An Cathaoirleach: Amendment No. 45 is a Government amendment. This amendment needs a recommital proposal and I ask the Acting Leader to propose a recommital.

Senator Denis O'Donovan: I move:

That in accordance with Standing Order 130(1), the Multi-Unit Developments Bill 2009 be recommitted in respect of amendment No. 45.

Question put and agreed to.

Government amendment No. 45:

In page 19, to delete line 8 and substitute the following:

"such transfer, or the unit owners have unreasonably refused to accept such transfer;".

Deputy Dermot Ahern: In section 19(4)(*h*) we have provided that a court order may be sought where the developer unreasonably refuses to transfer ownership of the common areas to an owner-management company. In more recent discussions with my Department the Law Society has mentioned possible cases of the opposite arising, that is, where the owner-management company unreasonably refuses, for whatever reason, to accept the transfer of common areas from the developer. For that reason, I am proposing to allow the court to make an appropriate order in cases where the unit owners unreasonably refuse to accept the transfer of common areas.

Amendment agreed to.

Bill reported with amendment.

Government amendment No. 46:

In page 19, lines 16 and 17, to delete all words from and including "a development" in line 16 down to and including "development" in line 17 and substitute "a multi-unit development".

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 47:

In page 19, between lines 29 and 30, to insert the following:

"(*m*) annulling house rules or any provision thereof if such rules interfere unreasonably with the rights of an owner of a unit.".

This amendment is self-explanatory. It would give the court an additional power under section 19 by inserting a new paragraph (*m*) enabling the court to make an order "annulling house rules or any provision thereof if such rules interfere unreasonably with the rights of an owner of a unit". It is to be read in conjunction with the regulations on house rules in section 18. It anticipates that some rules might be adopted in a complex that would be over-zealous, for example, prohibiting the air-drying of laundry in an unreasonable way. This would offer some recourse or mechanism for redress where an apartment owner considered his or her rights were being interfered with unreasonably. It would simply give him or her the power to go to court to seek an order of this kind. It would clearly be up to the court to decide whether it would be appropriate to annul the house rules or any provision thereof.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: On Committee Stage I said I was sceptical of the need for this type of amendment. However, we have re-examined the matter and section 18 makes it clear that house rules must be consistent with the covenants and conditions included in the title deeds. A purchaser would have been advised prior to purchasing about such covenants and conditions in his or her title deeds such that he or she would have been able to decide not to proceed. Even after he or she has purchased, however, he or she may still seek recourse to the dispute resolution provisions in section 19. On the other hand, if the house rules deal with matters not dealt with in the title deeds, it means they have been agreed and adopted at a meeting of the apartment owners, due notice having been given of the holding of such a meeting. Therefore, the purpose of such rules is deal with the effective operation and maintenance of the development in promoting the quiet enjoyment of the property by apartment owners. It would not be

[Deputy Dermot Ahern.]

a good idea for unit owners to have the opportunity to challenge rules properly adopted and designed to improve the quality of living of all residents in the development.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 48 is a Government amendment. This amendment needs a recommital proposal and I ask the Acting Leader to propose a recommital.

Senator Denis O'Donovan: I move:

That in accordance with Standing Order 130(1), the Multi-Unit Developments Bill 2009 be recommitted in respect of amendment No. 48.

Question put and agreed to.

Government amendment No. 48:

In page 20, between lines 23 and 24, to insert the following:

"(*d*) the personal representative of a member of such an owners' management company;".

Deputy Dermot Ahern: The Law Society has suggested the personal representative of the deceased member of an owner-management company should be permitted to make an application under section 19. That is the purpose of the amendment.

Amendment agreed to.

Bill reported with amendment.

Government amendment No. 49:

In page 20, to delete lines 32 to 34 and substitute the following:

"21.—(1) The Circuit Court shall have exclusive jurisdiction to hear and determine applications under *section 19* and such applications shall not be made to the High Court.".

Deputy Dermot Ahern: I am proposing this amendment such that jurisdiction under section 19 will be reserved to the Circuit Court in the first instance. Applications to the High Court will not be permitted. This is to help control the cost of applications, avoid the risk of a developer or any other party resorting to the High Court with a view to discouraging the owner-management company or any party entering a defence in a particular case. Obviously, it will be possible to appeal to the High Court a decision of the Circuit Court.

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 50:

In page 20, to delete lines 38 to 46, to delete page 21 and in page 22, to delete lines 1 to 9 and substitute the following:

"22.—(1) (*a*) Upon the request of any party to an application under *section 19*, the court may at any stage during the course of the proceedings (including immediately after the issue of the proceedings), if it considers that an Alternative Dispute Resolution Procedure

pursuant to a direction under this subsection would assist in reaching a resolution of the matter, direct that the parties to the application meet to discuss and attempt to settle the matter by an Alternative Dispute Procedure.

(*b*) A procedure held pursuant to a direction under this subsection is in this Act referred to as an "Alternative Dispute Procedure".

(2) Where the court gives a direction under *subsection (1)*, each party to the application concerned shall comply with that direction.

(3) An Alternative Dispute Procedure shall take place—

(*a*) at a time and place agreed by the parties to the application concerned, or

(*b*) where the parties do not agree a time and place, at a time and place specified by the court.

(4) There shall be a chairperson of the Alternative Dispute Procedure who shall—

(*a*) be a person appointed by agreement of all the parties to the application concerned, or

(*b*) where no such agreement is reached—

(i) be a person appointed by the court, or

(ii) a person nominated by a body prescribed, for the purpose of this section, by order of the Minister.

(5) The notes of the chairperson of an Alternative Dispute Procedure and all communications during a mediation conference or any records or other evidence thereof shall be confidential and shall not be used in evidence in any proceedings whether civil or criminal.

(6) The costs incurred in the holding and conducting of a mediation conference shall be paid by the party to the application in such proportion as the Chairperson shall decide, or as the court hearing the action shall direct.

23.—(1) The chairperson of the Alternative Dispute Procedure shall prepare and submit to the court hearing the application under *section 19* a report, which shall set out—

(*a*) where the procedure did not take place, a statement of the reasons as to why it did not take place, or

(*b*) where the procedure did take place—

(i) a statement as to whether or not a resolution has been reached in respect of the application, and

(ii) where a settlement or determination has been entered into, a statement of the terms of the settlement signed by the parties thereto or terms of the determination, signed by the Chairperson, as applicable.

(2) A copy of a report prepared under *subsection (1)* shall be given to each party to the application at the same time as it is submitted to the court under that subsection.

[Senator Ivana Bacik.]

(3) At the conclusion of the hearing of an application under *section 19*, the court may—

(*a*) after hearing submissions by or on behalf of the parties to the application, and

(*b*) if satisfied that a party to the application failed to comply with a direction under *section 22(1)*, make an order directing that party to pay the costs of the application, or such part of the costs of the application as the court directs, incurred after the giving of the direction under *section 22(1)*.

24.—(1) The Minister may make regulations providing for any matter of procedures, including Alternative Dispute Procedures in relation to applications under *sections 22* and *23* and making such incidental, consequential or supplementary provision as may appear to him or her to be necessary or proper to give full effect to any of the provisions of *section 22*.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may—

(*a*) specify the time at which applications under *section 22* may be made, the manner in which those applications shall be made and the particulars they shall contain,

(*b*) require applicants to furnish to the court any specified information with respect to their applications (including any information regarding any estate or interest in or right over land),

(*c*) require applicants to submit to a court any further information relevant to their applications (including any information as to any such estate, interest or right),

(*d*) require the production of any evidence to verify any particulars or information given by any applicant, and

(*e*) require the notification (in a prescribed manner) by planning authorities of decisions on applications,

(*f*) set out Alternative Dispute Procedures, and mechanisms for procedure selection in default of agreement between the parties, including a schedule of nominating authorities of Chairperson of the Alternative Dispute Procedure in default of agreement. Such Alternative Dispute Procedures may include; mediation, conciliation, arbitration, expert determination and stepped procedures (limited to two steps).".

This amendment proposes to delete sections 22 and 23 which deal with mediation conferences and replace them with new provisions in respect of dispute resolution. In essence, it is to try to provide for a speedier and more cost-effective method of dispute resolution, rather than having to go to court. It is something the architects' body has been strongly advocating. Earlier in the debate the Minister said he agreed in principle on the need to provide for a specific alternative means of dispute resolution other than going to court. The Bill is over-reliant on the court as a means of resolving disputes, for example, in the application of house rules and so on. The form of dispute resolution procedure proposed in the new sections 22 and 23 would be much more consumer-friendly. It would offer a much easier means of seeking redress to consumers — apartment owners and dwellers — where they considered their rights were being infringed upon. I ask the Minister to take on board the principle of the amendments we are

suggesting. I am sorry he has not accepted them, but he may have something more to say on whether he will be able to table something similar in the Dáil.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: I do not have much more to say. We have provided for definite mediation rules in sections 22 and 23. I support using alternative forms of dispute resolution, including mediation, rather than having recourse to the courts. I assure Senator Bacik and the House that I will examine the matter between now and Committee Stage in the Dáil.

An Cathaoirleach: Is the amendment being pressed?

Senator Ivana Bacik: Not in light of what the Minister has said.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 51:

In page 24, between lines 3 and 4, to insert the following:

"1. *Sections 2* to *4* (obligation to have owners' management company).".

This amendment proposes that developments of two, three or four units should have owners' management companies. If this change is not made, the existing paragraphs of the Schedule will make little sense. I suppose it is a clarifying or drafting amendment to Schedule 1. It seeks to ensure sections 2 to 4, inclusive, which set out the circumstances in which owners' management companies are required, are listed in Schedule 1. I note that Schedule 1 is titled, "Provisions of this Act which apply to multi-unit developments comprising 2 or more units but less than 5 units". It is a very helpful explanatory heading, but no similar headings are given to Schedules 2 and 3. It might be useful to include such headings for ease of reference. They would make the Bill easier to access when one is looking for particular issues. I ask the Minister to include the provision I have proposed in Schedule 1.

Senator Eugene Regan: I second the amendment.

Deputy Dermot Ahern: We will change Schedules 2 and 3 to give them headings like that in Schedule 1. An amendment is not required because such headings are not part of the legal text. This change will make it a little easier to understand what we are referring to.

On amendment No. 51, we are happy that the provisions of section 2(1) and Schedule 1 are sufficient to deal with small developments of two, three or four units. The Law Reform Commission also came to the conclusion that the management company structure is not really relevant to such small developments. I intend to accept its recommendation in this regard.

Senator Ivana Bacik: I am not pressing the amendment.

Amendment, by leave, withdrawn.

Government amendment No. 52:

In page 25, line 11, to delete "*section 14(2)(c)*" and substitute the following:

"*section 14(2)(c)* (unless a sinking fund exists in respect of the development)".

Deputy Dermot Ahern: It appears that some traditional housing developments that avail of the owners' management company structure have sinking funds in place. I believe that in such circumstances, the directors of management companies have a responsibility to provide details of the sinking funds' finances to the residents. Amendment No. 52 will mean that the obligation to provide a statement on a sinking fund will apply to this type of multi-unit development if a sinking fund is in existence.

Amendment agreed to.

Government amendment No. 53:

In page 26, to delete lines 2 and 3 and substitute the following:

"1. Confirmation that the development has been completed—".

Amendment agreed to.

Government amendment No. 54:

In page 26, line 15, to delete "1990 and 2007" and substitute "2000 to 2009".

Deputy Dermot Ahern: This is a drafting amendment.

Amendment agreed to.

Government amendment No. 55:

In page 26, to delete line 17 and substitute the following:

"3. Any safety file required by or under any enactment to be maintained by the developer.".

Deputy Dermot Ahern: This amendment will ensure any safety file required to be held and maintained by a developer during the planning and construction of a development must be given to the owners' management company.

Amendment agreed to.

Bill, as amended, received for final consideration.

Question proposed: "That the Bill do now pass."

Minister for Justice and Law Reform (Deputy Dermot Ahern): I thank Senators for their deliberations on this legislation. I assure them it is awaited with bated breath in the other House. Hardly an Order of Business goes by without it being raised, to the frustration of the Taoiseach who has to reply that he does not have any say in the progress of Bills through the Seanad. I compliment Senators and the various associations who have made representations on this difficult legislation. This has not been an easy Bill to prepare. When I was drafting this Bill with the Minister, Deputy Gormley, and the Tánaiste, when she was Minister for Enterprise, Trade and Employment, it was ultimately decided that I would bring it through the Oireachtas. It has implications for a number of other Departments, especially the Department of the Environment, Heritage and Local Government. We have encountered a number of issues that are pertinent to that Department, such as completion certificates. I thank the officials in my Department and the other Departments who have helped to bring us to this point. When

I go to my parliamentary party meeting, the first thing I will say to the Taoiseach is that this Bill has been passed by the Seanad at long last. I do not suggest that it was delayed by this House because that is not the case. There seemed to be a great insistence in the other House that it be rushed through this House. There has been a bit of a misunderstanding of the complexity of this legislation. I thank Senators for the work they have done on it.

Senator Eugene Regan: I thank the Minister for sitting through the entire debate on this complex legislation right to the end. It is a very different Bill now compared with the Bill that was initiated. In most cases, that is due to the further work that was done by the Government. The Seanad has done good work on this legislation. The uncharacteristically conciliatory and accommodating approach of the Minister on this occasion made its passage all the easier.

Senator Ivana Bacik: I think that is called damning with faint praise.

Senator Eugene Regan: I was trying to be nice.

Senator Ivana Bacik: I thank the Minister and his officials, who have been very helpful. I would like to express my personal gratitude to them for the accommodating way in which they have dealt with Members on this Bill. We had a good debate on Committee and Report Stages. I thank the Apartment Owners Network and the RIAI for their help and submissions. As the Minister said, it is to be hoped this Bill will meet the concerns of many people. We hear all the time about issues such as completion of apartments and service charges. I am glad the Minister accepted some of my amendments on Committee Stage. I regret he did not do so on Report Stage, particularly with regard to the 5% retention clause. I hope that issue will be resolved on Committee Stage in the Dáil. That is an important point because difficulties with adequate completion need to be dealt with.

Senator Denis O'Donovan: I add my voice to the thanks and praise to the Minister and his officials for bringing this complex Bill through the House. I do not doubt that the debate in the Lower House will be as robust as it has been here. I hope the Bill is passed by the Oireachtas sooner rather than later. When it is on the Statute Book, it will prove to be important and groundbreaking. I thank my colleagues on the other side of the House for their contributions on all Stages which will certainly strengthen the Bill. It is good to know the Minister took on board some if not all the issues raised by my colleagues on Second Stage and the amendments tabled. It is a strong indication of the importance of this House in the passing of legislation.

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Denis O'Donovan: At 10.30 tomorrow morning.

Adjournment Matters

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Job Creation

Senator Pearse Doherty: The issues of job creation and unemployment are close to everyone's hearts with the country suffering huge job losses over the past two years. County Donegal has always had a massive unemployment level, often double the national average and in some

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areas even three and four times it. It is an issue that never went away in Donegal, now made worse by the economic downturn and the Government's lack of a job creation strategy.

In Donegal, over 21,000 are out of work of whom 5,000 are under 25 years. It is heartbreaking to see the statistics of young males under 25 who make up a large proportion of that figure. Some have given up hope of finding employment and are emigrating, leaving our fine shores in search of brighter prospects elsewhere.

The Minister for Enterprise, Trade and Innovation must ensure towns in south Donegal, in particular, are targeted by IDA Ireland as sites for overseas development and investment. Donegal town, Bundoran and Ballyshannon need particular investment as they have been badly hit by unemployment.

In the past several years I have put in parliamentary questions through my party's Dáil colleagues seeking information as to what the Government has done for job creation in Donegal. We all believed matters would have got better with Deputy Mary Coughlan being appointed Tánaiste and Minister for Enterprise, Trade and Employment.

The facts, however, I uncovered from the replies to my parliamentary questions are startling. In 2003, 1,740 designed itineraries were hosted by the Tánaiste and IDA Ireland at different sites throughout the Twenty-six Counties but only a handful were held in south-west Donegal. There was one visit to Ballyshannon in 2004 and one to Donegal town in 2005. Why have there not been other visits to these towns since then?

While I accept we are in difficult economic times, from 2005 to 2007 the outlook was not as gloomy with giveaway budgets but no visits to IDA itineraries were held in Ballyshannon, Bundoran or Donegal town. It is very clear from my reading that the Government has given up on inward investment in these towns where we have seen many job losses.

I welcome the fact that, eventually, we will see new jobs being created Donegal town in the form of the 75 jobs confirmed at Abbott. However, we are acutely aware that these jobs were promised in August 2005 when the company shed 560 jobs. We are playing catch-up and have had to wait five years to begin to do so. We need an energetic, ruthless and targeted investment programme from the IDA, supported by the Government, to show the international companies of the world that Donegal town, Bundoran and Ballyshannon have much to offer. They have the parts, sites, skills, people, attractions and the potential to generate income and profits for such companies, if only we could include them in their portfolios.

I hope to receive a positive response from the Minister of State. It is clear, no matter on what side of the argument we come down, that we all need to work together. The towns to which I have referred need support not only from politicians, but also from the Government and job creation agencies. They will also need inward investment if we can attract it to them.

Minister of State at the Department of Enterprise, Trade and Innovation (Deputy Billy Kelleher): I thank the Senator for raising this issue.

I wish to outline in broad terms that there are great challenges globally on the international scene in efforts to encourage inward investment, especially because there is a consolidation of many multinational companies throughout the world. This, of itself, creates uncertainly and can slow the pipeline. In general, IDA Ireland is actively promoting Ireland as a location and we are now targeting areas outside the traditional zones as part of the new strategy. It is important to acknowledge that there are significant international pressures. This transcends into job losses or a lack of creativity at home with regard to job creation. I emphasise to the

Senator that Donegal is a priority area and that we are trying to insist on companies considering Donegal as a location for inward investment.

IDA Ireland is actively encouraging new investment in Donegal in knowledge-based industries. This is part of a focused strategy to replace the traditional clothing and textile industries which have been declining in the north-west region in recent years. During the past five years IDA Ireland supported companies in Donegal have created more than 663 new jobs. There are 12 IDA Ireland supported companies in Donegal, trading internationally and employing 1,684 full-time staff in the software development, systems development and medical technology industries. New companies such as Pramerica and United Health which have located in Donegal are continuously growing and recruiting, as is Abbott, to which the Senator referred.

IDA Ireland's main emphasis is on building an international and financial services cluster and it is making strides in delivering on this, evidenced by the quality of the existing companies and the announcement of an expansion of 123 jobs by Sita Inc. In addition, IDA Ireland is actively promoting Donegal as a successful location for high-end manufacturing, especially to companies in the medical technologies sector. This is proving successful with projects from Medisize and Zeus Industrial Products Limited which has opened a European operations centre for the production and distribution of precision medical tubing products.

Another primary focus for IDA Ireland in Donegal is the designated linked gateway of Letterkenny-Derry. Significant investment has also been undertaken in developing property solutions through the provision of a business and technology park, with three advance buildings in Letterkenny. This focus involves developing stronger economic links with Invest Northern Ireland which includes initiatives such as the north-west business and technology zone which is aimed at promoting the linked gateway of Letterkenny-Derry in line with the objectives of the national spatial strategy and the Northern Ireland regional development strategy.

The delivery of physical, social and economic infrastructure is key to securing inward investment and IDA Ireland continues to be engaged in identifying and prioritising investment in these areas in association with local partners. Positive developments include the delivery of the metropolitan area networks to towns in Donegal, with the direct international telecoms connectivity project funded under the INTERREG programme. Project Kelvin, as it is known, will provide a direct international telecoms link from Northern Ireland to north America by building an onshore link to the coast of Northern Ireland from an existing transatlantic submarine telecoms cable.

IDA Ireland recognises the need to work with its partners in Donegal to continue to address some key constraints, including strategic developments for foreign direct investment within the third level sector, local skills supply with an emphasis on medical technologies in Donegal and Derry and a requirement for improved access to international airports for its clients.

While IDA Ireland has made a significant contribution to regional development during the years, its capability to deliver is increasingly under pressure from enhanced global competition, EU regional aid limits and the changing needs of clients, as well as a lack of critical mass in some regions of the country. This issue must be overcome. The rise globally of metropolitan city regions as magnets of attraction is an added challenge. Ireland has only one such region, the greater Dublin area, which presents challenges for balanced regional development.

We are promoting Ireland as a location for key strategic inward investment and gaining competitiveness internationally. The downturn has forced a realignment of salaries and wages. It is recognised internationally that we are now becoming more competitive than in recent years *vis-à-vis* some of our major international competitors for the industries we seek to attract

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to Ireland, especially to areas such as Donegal and in such clusters as financial services and medical devices.

IDA Ireland's contribution to regional development is primarily as a stimulator of economic activity through key investment which brings high value employment, expertise and promotes confidence and overall economic dynamics within a region. Successful enterprise development and the creation of attractive locations are interdependent. Regions and gateways which support strong dynamic enterprise are crucial to Ireland's return to balanced economic growth. IDA Ireland will continue to focus on balanced development in these regional gateways.

Under its new strategy, IDA Ireland will continue to focus on delivering 50% of investment in the priority regional locations outside of Dublin and the south west. Some 50% of investment is dedicated to these key areas. The renewed emphasis of the proposed strategy features such regions as the west, the mid-west, the north west, including Sligo and Donegal, the north east, the midlands and the south east.

We will continue to understand the difficulties faced in Donegal because of the loss of traditional industries there in recent years. We are committed to ensuring this it will be seen as a strategic location for clustering developments. This is critically important. Companies will decide where they wish to locate. We must offer specific supports and infrastructure, third level facilities and a critical mass that is seen to be attractive to companies in the context of foreign direct investment. It is very difficult in the current international climate to attract inward investment to Ireland because of the consolidation of multinationals and the repatriation of some companies to their home countries is something we fight on a continual basis. Many other countries are competitive and offer very attractive packages such that we must be on top of our game in promoting Ireland, first and foremost, as a location for inward investment. Thereafter we must try to find companies which could benefit from locating in the regions. We are especially committed to trying to encourage IDA Ireland to promote Donegal in the attraction of financial services and medical technologies.

Senator Pearse Doherty: My questions referred to towns in south Donegal, including Donegal town, Bundoran and Ballyshannon. It would be more honest if the Minister of State were to inform us that the Government and IDA Ireland had given up on attracting foreign direct investment to these towns, especially Bundoran and Ballyshannon. We are all aware of plans to sell lands which IDA Ireland holds in these areas. Although the Minister of State referred to the Government continually prioritising Donegal, of the 12 companies located there by IDA Ireland, only two are located in Donegal South-West. They are at the lower end in terms of the number of jobs they provide, welcome though they are. There has not been an itinerary hosted by IDA Ireland or the Government since 2004 or 2005.

I welcome the new strategy and the fact that the Minister, Deputy Coughlan, was in charge at the time of its launch. It is a proposal for which I called in the report, Awakening the West. I completely reject the view of Fine Gael that all IDA Ireland jobs should be located in Dublin and Cork. On behalf of the towns mentioned, I make the case that they have a great deal to offer. It is fine to set a 50% target for places outside Dublin and Cork, but let us consider south Donegal, rather than Letterkenny, which always seems to be the case. Let us consider Donegal town, Ballyshannon and Bundoran and what these towns have to offer. If we just scratched the surface, we would be quite surprised at those towns' potential to help rebuild our economy.

Planning Issues

Senator Brian Ó Domhnaill: This issue relates to access onto national secondary routes, one of which, the N56, goes through a large part of south-west Donegal. There are other such routes in Galway, Kerry and other parts of the country. There is a distinct difficulty in Donegal for individuals seeking to obtain planning permission for one-off houses along that road, which stretches from Letterkenny in the centre of County Donegal across west Donegal and back to the Five Points in Killybegs. The National Roads Authority, under legislation and the policy direction of the Development Control Advice and Guidelines 1982 and the Policy and Planning Framework for Roads 1985, is objecting to such planning applications. This is creating major difficulties for families and young people who have land along that route.

While the planning section in Donegal County Council, in so far as possible and taking local planning guidelines into consideration, will look sympathetically at all local indigenous applications, there is a major difficulty to be taken into consideration due to the National Roads Authority, NRA, lodging so many planning objections. Many of the objections are filed at local level but the NRA regularly appeals decisions made by the local authority to An Bord Pleanála, which is quite alarming. The issue has been discussed with the National Roads Authority by Donegal County Council. I also had the opportunity to discuss it with the authority. The authority clearly outlined that its hands are tied due to the 1982 and 1985 guidelines.

When I raised this issue 12 months ago in the Seanad, I was advised that the Department of the Environment, Heritage and Local Government had begun discussions with the Department of Transport and was considering developing planning guidelines and perhaps introducing new guidelines on a statutory basis by amending section 28 of the Planning and Development Act 2000. A working group was due to be established but I am not sure if it has arrived at any conclusive answers. It is a major issue because there is no distinction in the current guidelines between a national primary and a national secondary route. In Donegal, the national primary routes are faster and better roads, while the national secondary routes are almost equivalent to regional roads. A distinction must be made while, of course, taking into consideration the safety implications associated with roads. Indeed, regrettably, there were two road deaths in Donegal in recent weeks which occurred on a regional road.

We hope there will be movement on this issue as it has dragged on for some time. Many young people are waiting to lodge their planning applications. They cannot do so until the guidelines are changed and new guidelines brought forward. Perhaps the Minister will provide an update.

Deputy Billy Kelleher: There have been various Government statements on planning policy and national roads over the past number of years, going back to the Development Control Advice and Guidelines issued in 1982 and the more comprehensive statement in 1985, Policy and Planning Framework for Roads, by the then Department of the Environment. Policy statements made since then have been broadly based on the 1985 document, the most recent being the National Roads Authority's Policy Statement on Development Management and Access to National Roads in May 2006. While specific responsibility for roads policy now rests with the Minister for Transport and his Department, responsibility for planning policy rests with the Department of the Environment, Heritage and Local Government and it is important there is continued and consistent alignment between these closely linked policies.

In this collaborative context, the Department of the Environment, Heritage and Local Government and the Department of Transport have agreed to review the relationship between transport and planning policies and, in particular, the need for both sets of policies to be

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consistent and complementary. Consequently, they are preparing to publish for public consultation guidelines on planning policy and roads which will have statutory effect under section 28 of the Planning and Development Act 2000 when they are finalised, following consideration of any submissions and comments received. Led by the two Departments and the NRA, a working group was established to co-ordinate the process, comprising key stakeholders and including representative senior officials from local authorities with both an urban and rural planning perspective.

The preparation of these guidelines is designed to encourage, in line with international best practice, efficient transport planning which will underpin a shift towards more sustainable forms of travel and transport. The guidelines will seek to guide development to the most appropriate locations by ensuring transport and land use planning considerations are taken into account at the development plan stage. Appropriate and effective alignment of this kind plays an important part in protecting the State's investment in national roads and facilitating reasonable development proposals that meet road design and safety criteria and that otherwise accord with proper planning and sustainable development.

The Roads Act 1993 sets out how public roads are classified into national, regional and local roads. National roads are generally arterial routes that cater for strategic and through traffic and which carry high traffic volumes that operate at high speeds. National roads are classified as either national primary or national secondary and this classification system operates as an aid to the management of roads consistent with the particular functions appropriate to roads of different classes. The guidelines highlight the need for early engagement and dialogue between the NRA and planning authorities in respect of devising appropriate policies and objectives for managing development within the broader context of the national road network and functions, having regard to these aforementioned road classifications. It is about agreeing a sustainable and plan-led approach between the NRA and planning authorities and the implementation of appropriate development management standards, for example, by subjecting new development proposals to road safety audits and other policy considerations.

However, as the guidelines will indicate, it is not simply a matter of differentiating between national primary and secondary roads for the purposes of facilitating planning approvals on national secondary roads. National secondary roads must be considered in the overall context of the national road system in that they may provide now or in the future a strategic function along all or part of their routes, and planning authorities need to ensure that substantial public investment in our national transport infrastructure is not eroded by a lack of overall plan-led development.

The Minister expects to publish the guidelines shortly as a public consultation draft. I urge all stakeholders, including Members of the Seanad, local authorities, chambers of commerce, business groups and others who are interested in this issue to examine these draft guidelines when they issue. The Minister would welcome their comments before the guidelines are finalised later in the year. This is an issue that puts people's lives on hold to a certain extent. It is important to bring clarity to it once and for all when it is put into legislation later this year.

Telecommunications Services

Senator Cecilia Keaveney: I thank the Cathaoirleach for allowing me to raise this issue. The availability of broadband is a burning issue in many locations, but in others it is not because broadband coverage can be acquired without difficulty. Many of those who are having difficulty getting broadband are in my constituency in Donegal. People can live close to where broadband

is provided but, in reality, they live far away from it. I have raised this issue on a number of occasions and the reason I raise it again is that I am aware the Minister, Deputy Eamon Ryan, has outlined a response regarding the variety of platforms that are available on the market. He was speaking about DSL through the telephone network, fixed wireless, mobile, cable, satellite and fibre optic. He accepted that expanding availability across the country was a priority.

He told me last year he was hoping to commence a scheme this year and conclude it in 2011. At that point, he said discussions had begun with the European Council in the first stage of applying for and securing state aid clearance. He said he would progress the project which he believed had the potential to ensure communities across the country got the correct solution for the provision of broadband. I know people who have moved back to Donegal from Dublin or from abroad and they feel pride in coming back home to try to work from there. They are trying to give a boost to their county having been successful in Dublin or abroad and they have decided to raise their families locally because of the better quality of life and so on. However, when they return, they find everything they took for granted in Dublin or abroad is not available and they cannot believe that technology is so far behind in what they would perceive as normal parts of Donegal. The first Adjournment matter addressed foreign direct investment and one of the basic requirements for this is broadband.

I attended a public meeting in Carrigans last night about post office services. The issue of telephone coverage for the Garda came up in the context of security and implementing secure policing. Broadband is needed in Donegal for a number of different reasons. I have concentrated on the case for business but there are social and security elements to this issue in the context of communications coverage. If we are to deliver business opportunities and enable all age groups in the community to utilise fully the potential of the Internet, it is important that solutions are sought that will cover all areas without broadband.

BT is supposed to have covered 99% or 100% of Northern Ireland but it is as important to cover the remaining 1% of the population as the other 99% that has a service. The Minister of State will accept the tenor of my contribution as he has responsibility for enterprise and employment and, therefore, he understands how important is broadband. I am seeking an update on whether the Minister charged with that responsibility has been able to secure State aid clearance. If so, where stands the project he proposed for 2010-11? Will we get a guarantee that the needs of Donegal and elsewhere will be met? If so, how? Will this be done through Leader? What mechanism will be used to deliver this project?

Deputy Billy Kelleher: I thank the Senator, as I am pleased to have the opportunity to address this issue. As evidenced by previous debates, broadband availability has been recognised as a priority for Government in the national development plan, the programme for Government and, most recently, in Building Ireland's Smart Economy — A Framework for Sustainable Economic Renewal, which placed further emphasis on the importance of broadband connectivity as a key element of future sustainable economic growth. The Government believes broadband is a key enabling infrastructure for the knowledge-intensive services activities on which future prosperity increasingly depends.

Bearing in mind these policy imperatives, the national broadband scheme, NBS, was established to encourage and secure the provision of broadband services to certain target areas in Ireland in which broadband services were not available and were unlikely to be provided by the market. The wider policy objectives of the NBS were to address the market's failure to provide broadband in the more remote parts of rural Ireland, to address economic and social exclusion concerns due to a lack of broadband access and to enhance the competitiveness of

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the regions for foreign and indigenous investment. The NBS was designed during 2007 and a public procurement process — competitive dialogue — was run during 2007 and 2008 to appoint an appropriate service provider. Hutchison 3G Ireland, trading as 3, was the preferred bidder and was appointed on 23 December 2008 to run the scheme. 3 is required to provide a service to all NBS premises that seek a service. All premises must be covered by the NBS service by September 2010. 3 continues to progress its network roll-out and NBS broadband services are available in almost half the 1,028 designated electoral divisions to be covered under the scheme. To implement the NBS, a map based on electoral divisions was developed following completion of the assessment of broadband coverage in the State in mid-2008. At that time, the Department had to determine which electoral divisions should be included in the NBS.

EU State aid and competition rules govern how states can intervene in areas where there are existing service providers. Broadband platforms do not respect exact geographic boundaries and are difficult to define due to radio propagation or DSL reach issues. The nature of broadband networks is such that they provide a coverage footprint over a certain area rather than an individual link to isolated premises. It was essential to guard against the NBS coverage footprint spilling over to an extent which would be unacceptable from a State aids perspective into surrounding areas served by existing service providers. Accordingly, unacceptable market distortion would have resulted from including premises located in areas considered to be substantially served by existing service providers. These areas had to be excluded from the scope of the scheme and will not be addressed by the NBS. Uncovered buildings in the electoral divisions excluded from the NBS — approximately 12,500 buildings, represent 0.7% of all buildings in the State.

6 o'clock

In addition to those premises identified as being outside of the coverage of service providers, there are also premises that appear to be in a covered area but due to local obstacles or technical issues are not able to avail of coverage from the existing broadband operators. For example, the premises may be too far from the nearest DSL enabled telephone exchange or may not be in the line of sight of the local fixed wireless access service providers' base station or cell. Similarly, the initial cost of connecting to available satellite service providers may be prohibitively expensive for many people.

There is no substantiated estimate of the number of consumers who find themselves in this position and a key element of putting a scheme in place will be an exercise to identify those remaining premises where no broadband service is available. In a fully liberalised market it is essential to intervene only where the market is unable to provide a service and my Department will consult fully with the existing service providers in this respect.

Funding for rural broadband has become available under the European economic recovery plan through the European Agricultural Fund for Rural Development, EAFRD, administered by the Department of Agriculture, Fisheries and Food. The Department for Communications, Energy and Natural Resources is responsible for developing a new measure under the rural development plan to use this funding to address the issue of basic broadband availability to remaining unserved rural premises outside of the NBS areas. "Rural" in this case is defined under the rural development plan by the Department of Agriculture, Fisheries and Food and excludes the following areas: the city council boundaries of Dublin, Cork, Galway, Waterford and Limerick; the borough council boundaries of Kilkenny, Sligo and Wexford; and the town council boundaries of Athlone, Ballina, Castlebar, Cavan, Dundalk, Ennis, Killarney, Letterkenny, Mallow, Monaghan, Mullingar, Tralee, Tuam and Tullamore. A total of €13.413 million under the EAFRD is available for the broadband initiative. This allocation, being 75% of the

total, will mean a total available funding of €17.884 million for the initiative. This funding will allow for expenditure up until the end of 2012.

State aid approval has been granted by the European Commission as part of the overall process of securing the necessary approvals and funding for the scheme. This approval was obtained early in the process of planning and design of the scheme and was granted on the basis of a high level description of the proposed scheme. The clearance is based on a number of conditions which must be observed in the final form of the scheme. Detailed planning is under way for a scheme which would offer a basic broadband service to rural unserved premises.

The key qualifying criteria for the scheme will be that the premises in question is outside of the areas covered by the NBS, in a rural location as defined under the rural development plan and not capable of being served by existing service providers. The key component of the scheme will be to identify applicants who fulfil these conditions. I stress this scheme will not be available in locations served by existing service providers and the Department of Communications, Energy and Natural Resources will consult existing Internet service providers to ensure the scheme does not encroach on their existing customer base and to verify that applicants are unable to obtain a broadband service.

This scheme should not be regarded as an option in cases where consumers are unhappy with the level of service available to them from existing providers. Service providers already have complaint procedures in place to resolve issues of this kind. In a parallel exercise, there will be a competitive process to engage a service provider who will offer a broadband service to qualified applicants under the scheme. While the exact details have yet to be finalised, I expect the service offered under this scheme would at least match the service offered under the NBS. This process will be technology neutral and it will be a matter for the bidders to decide which technical approach they propose in their bids. The proposed scheme is intended to complement Ireland's previous broadband intervention initiatives and will, subject to the market responding to the scheme, ensure the remaining unserved rural premises will be able to avail of a broadband service. This underlines the Government's commitment to the goal of ubiquitous broadband. It is intended to commence the scheme this year with the identification of premises not capable of receiving broadband. It is expected the roll-out phase of the scheme will be carried out during 2011 and 2012.

Senator Cecilia Keaveney: I really appreciate the level of detail in the Minister of State's answer, and I am glad the scheme is moving on. The problem I find is that people are saying that if a particular company is covering an area and there is a tree or a rock in the wrong place there is no coverage for particular individuals, while to bring some other company in would distort the marketplace. From what the Minister of State said, if someone has proof from a service provider that he or she cannot get a service from that company, he or she would be eligible to find a positive alternative through this new scheme. That is where I am coming from. It is very much a case of the people who have been let down by the existing companies, for one reason or other, who need attention. Just because a company might provide 97% coverage does not mean the people who fall within the 3% failure rate should not be considered.

While I have the opportunity, I congratulate the Minister of State on his initiative as regards the seminars around the country. Last night we had a seminar in Letterkenny from 6.30 p.m. to 8 p.m., where these types of issues as regards taxation etc. to do with supporting small to medium-sized enterprises were addressed. The meeting was well attended and very informative.

Deputy Billy Kelleher: Just to reiterate, detailed planning is now underway for a scheme which would offer a basic broadband service to unserved premises. The key qualifying criteria are that the premises in question is outside the areas cover by the NBS, in a rural location as defined under the rural development plan or not capable of being serviced by an existing service provider.

The Seanad adjourned at 6.10 p.m. until 10.30 a.m. on Wednesday, 2 June 2010.