



# SEANAD ÉIREANN

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*Déardaoin, 18 Samhain 2010.*  
*Thursday, 18 November 2010.*

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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Paidir.*

*Prayer.*

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## **Business of Seanad**

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

The need for the Minister for Justice and Law Reform to make a statement on the plans the Government has to amend the Criminal Law (Sexual Offences) Act 1993 in the light of the recent decision that it does not provide for oral rape.

I have also received notice from Senator Mark Dearey of the following matter:

The need for the Tánaiste and Minister for Education and Skills to comment on the practice engaged in by some service providers of discontinuing special needs education provision for Down's syndrome children who are assessed as being in the mild category; and if she considers this to be consistent with the provisions of section 7 of the Education Act 1998 as they apply to children with a baseline disability.

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

## **Order of Business**

**Senator Donie Cassidy:** The Order of Business is No. 1, motion re Value-Added Tax Consolidation Bill 2010, to be taken without debate at the conclusion of the Order of Business; No. 2, Value-Added Tax Consolidation Bill 2010 — Report and Final Stages, to be taken at the conclusion of No. 1; and No. 3, Chemicals (Amendment) Bill 2010 — Order for Committee Stage, Committee and Remaining Stages, to be taken at the conclusion of No. 2.

**Senator Paschal Donohoe:** All over Ireland this morning people are asking one question: why can the Taoiseach not speak with the same clarity and honesty as the Governor of the Central Bank on “Morning Ireland”? While not underplaying the precarious position in which we found ourselves or our plight, he spoke with certainty and clarity about where we stood, the events of this week and those which the country would face. That certainty and clarity was completely lacking in the contributions of the Taoiseach and his Ministers this week. This is not just an issue about the psyche and the soul of the country and the fear and uncertainty in homes and families everywhere, it is also about the confidence the outside world, investors and

[Senator Paschal Donohoe.]

the financial markets have in the country. They are comparing the performances and asking why the person we elected to lead the country and who is leading the Government cannot give that kind of performance at a time when the country is so desperately in need of it. It is clear to Ireland and the world that we are facing a third crisis. There was the banking crisis of September 2008, while this summer there was a crisis of the sovereign associated with Greece. The crisis we are facing is one in which they have been fused together by the actions of the Government.

When I walk through the entrance to Leinster House and look up at pictures of the great figures from our past who fought so hard to secure sovereignty, I recall that they grappled with a national question, that is, the question of our physical security and autonomy. We have a new national question, one of economic sovereignty and preserving the sovereignty the great figures from our past fought so hard to obtain and which is now being eroded by the actions of the Government. It is clear that two issues must be addressed if we are to answer this question. First, one reason the country is in such difficulty is that the outside world does not have confidence in our ability to pay our debts. The solution to this is not to add to our existing debt. A way must be found to restructure and deal with it. The second part of the solution will have to involve firm and clear action taken by the Government in dealing with the current budgetary difficulties and, equally, direction from this side of the House on what we should do in the future, which direction has been given by signing up to the commitments in respect of 2014.

I conclude by quoting from the editorial in *The Irish Times* today:

Let us not seek to assuage our sense of shame in the comforting illusion that powerful nations in Europe are conspiring to become our masters. We are, after all, no great prize for any would-be overlord now.

The prize is the ability of the country to run its affairs in a few years. The Government has shown it is unable to do this. This side of the House needs to take its place.

**Senator Feargal Quinn:** It is clear at this time of crisis that we must concentrate our energies on tackling the problems and challenges facing us. However, let us remember that during the good times there are failures and that during the bad times there are successes. We should be looking for opportunities. One opportunity I believed we would have when the Government came into power three years ago was associated with the fact that we had a Green Party Minister in charge of dealing with climate change and energy issues. I was surprised to discover that the Cabinet sub-committee on climate change had met eight times in 2008 and twice in 2009 but had not met once this year. Is this because of a lack of interest or because we have solved all of the problems? One problem we have not solved is meeting targets in respect of wind energy.

I want to concentrate on wind energy because I saw figures that surprised me. In Denmark 23,000 people are employed in the wind energy sector. There are 1,500 people employed in the sector here and the opportunity seems to have been lost. Only last week Senator Butler drew our attention to the Spirit of Ireland campaign and the efforts being made in that regard. However, we do not see anything happening, only efforts to produce more reports. We are told that in Britain all of the reports have been produced and that the British authorities are happy to give us any they have produced. We do not need more reports; what we need is action, as we have opportunities.

The figures are surprising. In Denmark and Germany 90% of all wind farms are community wind farms. The investors have not gone to the banks to seek the money required as they have

been able to provide it themselves. The wind farms are privately owned and local communities are involved. There are 30,000 dairy farms in Ireland. In Denmark and Germany practically all dairy farms have wind energy units. We could achieve half this number in Ireland. We have an opportunity to do so. We are told Ireland is suited to wind energy production and that we are capable of using it, yet we are not. We should be doing something about this.

Let me ask a question that Senator Labhrás Ó Murchú raised in the past. I refer to the opportunity to put online the 1926 census returns. The success of the online version of the 1911 census returns is such that it is attractive to both tourists and the Irish Diaspora. Let us determine whether we can put the results of the 1926 census online. Senator Ó Murchú has raised this issue with the Leader. What has happened in this regard? This is another opportunity we are missing.

**Senator Dominic Hannigan:** It is time for the leader of the country to tell us what is happening. Some of the recent comments of the Government are bizarre. I listened to a radio show a few nights ago on which a Government spokesperson was debating the difference between discussions and negotiations. When passing through St. Stephen's Green on my way here this morning, I looked down and saw a duck coming towards me. The reason I knew it was a duck was it looked like one, quacked like one and walked like one. Let us be clear: there is to be a bailout and it required someone such as Professor Patrick Honohan to tell us that this morning.

**An Cathaoirleach:** Does the Senator have a question for the Leader?

**Senator Dominic Hannigan:** We need clarity. We are all adults and very well educated and should be told the truth. If this was done, we could move forward.

I join Senator Quinn in calling for a debate on wind energy. Last week I held a seminar in County Meath on the subject. A great number of jobs could be created in the sector. Denmark created 23,000 jobs in it which would translate to approximately 500 jobs in every county in Ireland. We need to consider this. We can become self-sufficient using wind and wave power. I would, therefore, welcome a debate on the issue.

I ask the Leader to arrange a debate at the earliest possible opportunity on the overseas development aid budget, to which we are committed. We are on the world stage in respect of it and do tremendously good work. I was very pleased to hear the Minister of State, Deputy Lenihan, say last week that the overseas development aid budget was but a drop in the ocean by comparison with the overall budget. It appears he is willing to look very favourably on retaining it. We could have a very useful cross-party debate on the issue. I, therefore, ask the Leader to arrange it before the budget, preferably next week.

**Senator Dan Boyle:** I agree with Senator Donohoe that the role to be played by the Governor of the Central Bank is vital. His appointment has been excellent. We could have been in a position where the Secretary General of the Department of Finance would have been appointed as Governor of the Central Bank, as occurred in the past. That the Governor has been appointed and has the necessary independence is one of the good things going for us at present. That the Governor will be centrally involved in the negotiations to try to secure the best possible deal for the taxpayer is desirable.

We are still talking about what type of facility we will be using. Formal negotiations will not start until the Cabinet makes the decision on whether it will get involved in them. However, we will be using some facility. There will be money coming from outside sources and it will be directed towards elements of the sovereign debt created by the banking crisis. That is the reality and I do not see any denial. That said, there should not be a pretence that, if change

[Senator Dan Boyle.]

occurred tomorrow and there were a different Government, any of these problems would be solved.

**Senator Terry Leyden:** Hear, hear.

**Senator Dan Boyle:** That is another reality we must all face. I am confident that individuals such as Professor Honohan can face the difficulties. We will be better as a country and secure agreement from the representatives of the bodies who will be visiting the country in the coming days.

On the call for a debate on climate change and wind energy, the Cabinet has made a decision on the publication of a climate change Bill. The Bill, rather than the heads, will be published before Christmas. I hope we will have the opportunity to debate it in the House at the earliest opportunity. We should be more inclined to admit that development of the wind energy sector has been one of the successes of the Government. Renewable energy resources now account for 15% of the total amount of energy we produce. Output has doubled in the past three and a half years and our proportion is the second highest in Europe. We have put in place the means to achieve the target of generating 40% of our energy from renewable resources by 2020. It is a little churlish to say we are not succeeding in this area. The reality is that we have put in place programmes that will benefit the country economically, environmentally and socially because of my party's participation in government.

**Senator Donie Cassidy:** Hear, hear.

**Senator Dan Boyle:** If those opposite want to have a debate on the matter, they should at admit that we are succeeding in this area — if only this area. There are times when 40% of the electricity available to the grid is generated from renewable sources only. The position in this regard will improve and I hope the debates that will take place in the House in respect of this matter will illustrate that fact in the strongest possible way.

**Senator Eugene Regan:** I wish to ask a preliminary question. Senator Callely is in the Chamber——

**An Cathaoirleach:** That is not a matter for the Order of Business. We are taking questions to the Leader.

**Senator Eugene Regan:** My question is for the Leader. I literally mentioned the presence of Senator Callely because there is an important issue here. An investigation into this matter took place and we passed a report——

**Senator Jim Walsh:** On a point of order, this matter is before the courts and it is highly inappropriate for Senator Regan to be allowed to refer to it.

**An Cathaoirleach:** That matter is before the courts and a decision has not been made. The House made a decision in respect of a period of time, which has expired. That time has elapsed and Senator Callely is entitled to be in the House.

**Senator Jim Walsh:** Senator Regan is a lawyer and he knows exactly what he is doing.

**Senator Eugene Regan:** I have a question for the Leader which is relevant. It is not relevant to the principle before the courts. My question relates to Senator Callely's entitlement to be in the House at this particular time. The reality is that a ruling was made that he was misrepresenting his normal place of residence. Has he ceased to do that?

**An Cathaoirleach:** That is before the court, which has to make a decision. I have just outlined to the Senator that a decision was taken by the House for a fixed period during which Senator Callely could not be present. That term has elapsed and the Senator is entitled to be in the House today.

**Senator Eugene Regan:** That is not——

**An Cathaoirleach:** I am not taking any more on that matter while it is in the courts.

**Senator Eugene Regan:** I have to respectfully disagree with the Cathaoirleach.

**An Cathaoirleach:** The Senator can do so but I am ruling on it.

**Senator Eugene Regan:** No. I wrote to the Cathaoirleach on this matter and I pointed out the legislation on the matter and why it is not confined to a specified period. The suspension continues——

**An Cathaoirleach:** No.

**Senator Eugene Regan:** ——until such time as the matter is rectified. The Cathaoirleach has answered the question but the Leader can deal with the matter.

**An Cathaoirleach:** Does the Senator have a question for the Leader?

**Senator Eugene Regan:** The question is of entitlement to be in the House until the normal place of residence is rectified.

**An Cathaoirleach:** That is not a matter for the Leader.

**Senator Eugene Regan:** It is a matter for the committee. The House should be informed with regard to what has happened on this issue.

**An Cathaoirleach:** I have explained what has happened. The matter is still in the court. The House took a decision and the period concerned has expired. Anyone who is suspended from the House is entitled to come back when that period has expired.

**Senator Eugene Regan:** No. As long as the irregularity continues, the term of suspension continues. That is the law.

**An Cathaoirleach:** No.

**Senator Eugene Regan:** In the context of the current economic crisis, I wish to refer to the statements made by the Taoiseach and other Ministers in recent days and the appearance of newspaper headlines such as “Taoiseach insists Ireland not applying to Europe for bailout” and “Cowen and Ministers tried to dampen rumours”. This morning, the Governor of the Central Bank, Professor Patrick Honohan, admitted that the State is to——

**Senator Donie Cassidy:** This is a Second Stage speech.

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

**Senator Donie Cassidy:** The Cathaoirleach agrees with me.

**Senator Jerry Buttimer:** The Leader should——

**Senator Eugene Regan:** —receive aid from the European Union and the IMF. The reason the Taoiseach — in interviews in which he addressed Ms Mary Wilson and Mr. Brian Dobson in a bullying tone — denied that this is a bailout or that there will be a loss of sovereignty is as a result of the shame of it all and because of the Government's political failure in allowing matters to reach this stage, which has led to the country being dragged down.

**Senator Ann Ormonde:** I welcome this morning's contribution from the Governor of the Central Bank. Let us hope that once the relevant representatives become involved, politics will be removed from the equation. Let us now engage in real discussion and positive thinking. This is a great country and the Irish are a race of fighters. We are not going to go down. People should not engage in the type of destructive criticism which appears to be in vogue at present. Let us remove politics from the mix and get the country back to a point where it is running properly.

I support Senator Hannigan's point in respect of overseas development assistance, ODA. At the United Nations summit in September, the Minister for Foreign Affairs, Deputy Martin, made a commitment in respect of reaching the target of devoting 0.7% of GDP to ODA by 2015. Certain commentators will state that charity begins at home. Nevertheless, we made a commitment in respect of our contribution to ODA. I hope that this commitment will be honoured and that the various aid agencies involved will examine the position and rationalise their operations. I will be pressing the Minister to adhere to the commitment to reach the 0.7% target by 2015.

**Senator David Norris:** I have a question which I wish to address to the House, the Leader, the Cathaoirleach and the Government. Are we going to be a Europe of the people or a Europe of the banks? We have heard a great deal about reassurance. It has been stated that we must reassure the banks, the bondholders and our European neighbours, several of which have taken the opportunity to stab us in the back now that we are in difficulty. It has also been suggested — most laughably of all — that we must reassure the discredited ratings agencies. When will this country, the Parliament, the Government and the European Union reassure the Irish people? The latter are the only ones who have not been given reassurance.

The psychological atmosphere in this country has been poisoned by fear, distrust and uncertainty. Meanwhile we are negotiating — very painfully apparently — for a loan which will be used to repay the bondholders and the banks. The latter are lending us money in order that we can repay them and they are of the opinion that we should be grateful for this. It has been stated that Austria and a number of other countries have raised questions with regard to our 12.5% rate of corporation tax. I stated some time ago that it was dangerous to base an economy on fragile things of this nature. However, this is not the time to discuss that matter.

I have just come from a very interesting meeting relating to rural Ireland at which Senator Leyden was also present. Those who addressed the meeting indicated that they had engaged in consultations throughout the country. The final item on the agenda related to an attitude survey, which indicated that 90% of people believe that good neighbours are the most important thing in life. Where are Ireland's neighbours? It is as if we had been burgled and the neighbours are coming in to provide assistance and make cups of tea. When inside, they say things such as "I loaned you those curtains five years ago. Can I have them back?", "That is my lawn-mower" and "That is the chair my granny gave me". That is what is happening at present and a stop should be put to it.

Reference has been made to confidence. I do not retain any confidence in the system. What is being perpetrated is a confidence trick on the people who are paying for what has happened.

Those to whom I refer are entitled to an explanation, to reassurance and to be informed, in clear and direct terms, with regard to what is happening.

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

**Senator David Norris:** We want a European Community not a European economy.

**Senator Terry Leyden:** That was a very presidential speech.

**Senator Donie Cassidy:** Anyone can run for President.

**Senator Terry Leyden:** In the words of President Roosevelt, "The only thing we have to fear is fear itself". We should be very positive with regard to what is happening at present. Certainty is being brought to the situation——

**Senator Maurice Cummins:** It is being brought to it this morning.

**Senator Fidelma Healy Eames:** Honesty has also entered the equation.

**Senator Terry Leyden:** ——as a result of the fact that some important and significant visitors have arrived in our country today. We are going to examine how the crisis can be solved within the eurozone. The British, who have their own problems at present, also availed of IMF funding in the 1960s in order to extricate themselves from the difficulties they were then experiencing.

Ireland is one of the governors of the International Monetary Fund. Our director on the board of that entity is none other than the Minister for Finance, Deputy Brian Lenihan. We joined the IMF in 1957 and have been a contributor to it ever since. We have nothing to be ashamed of in discussing issues with the IMF in a positive manner.

**Senator Fidelma Healy Eames:** The Senator might as well justify it now.

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

**Senator Jerry Buttimer:** There will be comely maidens at the crossroads.

**Senator Terry Leyden:** What is required is greater positivity and more time. We need another two years to solve the problems we face and we require support from the Opposition in this regard. What is also required is another Tallaght strategy.

**Senator Jerry Buttimer:** It is like Killinaskully over there.

**Senator Dominic Hannigan:** Well it is pantomime season.

**Senator Terry Leyden:** I advise Senators to obtain copies of the speech made by Mr. Denis O'Brien on 12 November last at the National Convention Centre on the occasion of the 10th anniversary of Hibernian College, which was founded by Dr. Sean Rowland. Mr. O'Brien used the occasion to outline Ireland's future. Dr. Noel Kelly of Kentz International, which has a turnover of €1 billion per year, also made a speech on the date in question.

**An Cathaoirleach:** Senators are not entitled to make speeches. We are taking questions to the Leader in respect of the Order of Business. I must put a stop to the making of speeches.

**Senator Terry Leyden:** I would welcome a debate on what is going to happen — particularly when the relevant decisions have been made — to this country in the future. I would much

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prefer to rely on our neighbours in Europe than to rely on the bondholders. Ireland has adequate funding until July next, so let us take a positive stance.

**Senator Fidelma Healy Eames:** Why did the Government not admit what was happening last weekend?

**An Cathaoirleach:** Senator Leyden's time is up. He must conclude.

**Senator Terry Leyden:** I welcome the support from Opposition parties in respect of this matter. I also take this opportunity to welcome Senator Callely back to the House.

**Senator Ciaran Cannon:** I support every aspect of the very convincing points made by Senator Donohoe.

The web of deliberate obfuscation that has been so expertly woven by the Government and its spin masters over recent months was literally torn apart by the Governor of the Central Bank, Professor Patrick Honohan, on the radio this morning. It was refreshing and encouraging to hear such clarity and such honesty in acknowledging that negotiations have effectively begun on the future of the country and how we negotiate through the difficult times ahead.

I ask the Leader to take from me one message only to those negotiations, that the corporation tax rate in this country must be absolutely removed from that negotiation process. I got a call this morning from a good friend of mine who is the global vice-president of a multinational operating here in Ireland. He employs 400 people in this country. As well as managing the daily operations of that company, he has spent the past five years trying to convince that parent company not to take those 400 jobs to other low-cost locations. He called me to plead with the Leader to ensure that the 12.5% rate remains untouched because the locations with which he is competing daily to retain those jobs are the Czech Republic on a 19% corporation tax rate, Poland on 19%, Lithuania on 15% rate and Latvia on 15%. If we even move anywhere close to those rates we are effectively closing the door on foreign direct investment in this country for many years to come. That is the one message I ask the Leader to take to whoever is involved in these negotiations over the days and weeks ahead.

**Senator Niall Ó Brolcháin:** I share the concerns that many Senators have raised today, but the most important for question for debate was raised by Senator Quinn. He was very responsible. Many in this country are fearful and he is talking about having a proper debate on the way forward for this country, and that is the correct approach to take right now. He pointed out that in Denmark there are 23,000 employed in the wind energy sector and he correctly pointed out the potential of this country to bring in significant amounts of revenue and provide a considerable number of jobs.

I am aware of various ongoing initiatives in the wind energy sector that could provide up to 20,000 new jobs for this country. The Minister, Deputy Ryan, is well aware of significant ongoing efforts. Roughly 15 MW of wind energy either has been constructed or is the subject of a planning application and, as I have stated previously, the key point is that Ireland's peak electricity requirement is 6 MW. That clearly points the way, that there is considerable room for revenue from the export of wind energy. There is magnificent potential.

As Senator Boyle correctly stated, it is important to recognise that the Government has made considerable inroads on wind energy in particular in that we have more than doubled the average amount of renewable energy used every day of the week. There were three occasions where more than half of the electricity used in this country has come from renewable

energy. That is a massive achievement. There has also been a considerable programme of helping people cut down on their energy bills, for example, through the warmer homes scheme and the significant improvement through the home energy savings scheme.

The Government has done great work in terms of energy. Let us give credit where it is due, but let us also reach the potential that Senator Quinn is talking about because we can do it and it is the green light at the end of the tunnel.

**Senator Jerry Buttimer:** I join Senator Donohoe in asking the fundamental question of when the Government will tell the people the facts. Does the Leader agree it is wrong that it is the Governor of the Central Bank who is the one to admit to the people that the IMF, the ECB and the European Commission are coming in, not for a fireside chat but to direct operations regarding our economic sovereignty? That is the reality and the people should be told that. The uncertainty must be replaced by hope, a plan of action and a commitment to the people to create jobs. They are looking for the Government to be honest.

In response to Senator Boyle, the difference my party will make when we are on the Government side is we will take responsibility, assume leadership, give accountability and we have a plan and coherence which the Government parties are lacking. That is the reality.

**Senator Niall Ó Brolcháin:** What is Senator Buttimer's plan?

**Senator Donie Cassidy:** A contract, is it?

**An Cathaoirleach:** Questions to the Leader on the Order of Business.

**Senator Jerry Buttimer:** The incompetence of the Fianna Fáil-led Government has got us where we are today. I would like to see the former Taoiseach, Deputy Bertie Ahern, and the Taoiseach come to this House to explain their stewardship of the economy. I will go a step further. Perhaps a tribunal should be set up, only it would cost too much——

**Senator Donie Cassidy:** Senator Buttimer's friends would not mind.

**Senator Jerry Buttimer:** ——so that they would be held to account. These Deputies were in charge of the country. They have let their people down.

**Senator Donie Cassidy:** A Second Stage speech.

**Senator Jerry Buttimer:** I will give the Leader the Second Stage speech he wants.

**An Cathaoirleach:** Senator Buttimer has not asked a question of the Leader yet.

**Senator Jerry Buttimer:** I have asked him four questions.

**Senator Donie Cassidy:** It is a Second Stage speech.

**An Cathaoirleach:** What is the question?

**Senator Jerry Buttimer:** I have asked him four questions. Members of the House are embarrassed by the record of Fianna Fáil in Government and if I were them, I would be too.

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

**Senator Donie Cassidy:** Senator Buttimer jumped over there.

**Senator Jerry Buttimer:** I would be embarrassed too if I were them. The Leader is the very person——

**Senator Donie Cassidy:** One step out and one step in.

**An Cathaoirleach:** No interruption now.

**Senator Jerry Buttimer:** I will conclude on this.

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

**Senator Jerry Buttimer:** The Leader is the very person who for two years came in here——

**An Cathaoirleach:** I call Senator Callely.

**Senator Jerry Buttimer:** I am asking the question. I will conclude on this. The Leader is the very person who came in here every day for two years waving a book stating how good Fianna Fáil is. Does he now think Fianna Fáil is good?

**Senator Ivor Callely:** We live in interesting times. The public is deeply concerned by what is happening in the country and the role and impact of the EU in our sovereign State. The Single European Act is under review as we approach the 20th anniversary in 2012 of the formal launch of the Single Market in 1992 and the current economic downturn is putting pressure on the Single Market and the issue of protectionism. Towards a Single Market Act has been published and it contains 50 new proposals. This warrants public and national debate and I would appreciate it if the Leader can assist by arranging a debate in this House on the Single European Act.

On a separate note, but one of significant interest to me and to this House, I read in *The Irish Times* today: "The Oireachtas should be very cautious in carrying out inquiries that could have an impact on citizens' reputations, a former attorney general has warned."

**Senator Maurice Cummins:** Wait for the court case.

**An Cathaoirleach:** The Senator should ask a question of the Leader if he wants a debate.

**Senator Ivor Callely:** When the Oireachtas Joint Committee on the Constitution has deliberated, the Leader might arrange a suitable time for that matter to be discussed.

**Senator Nicky McFadden:** Yesterday the expert group on mortgage arrears published its report. Sadly, it has given little succour to the 20,000 young families who are in mortgage arrears. Some of them are at the end of the 12-month moratorium and their houses will be repossessed. It was a missed opportunity. I was waiting and expecting that it would be a positive report, and God knows we need some positivity. What worries me is that the only recourse that some of these people have now is to hand in the keys of their homes, and surely that is not the correct way of going about it. There are 56,000 people on the housing waiting lists in this country and there is no opportunity for them to be socially housed. We need to do everything possible. I ask the Leader for a debate on this because the report really has fallen short of providing a way to help those who are about to have their houses repossessed. The Government promised in 2009 that it would look after people who were indebted. I ask the Leader to have an urgent debate on the report to see how we can help people and examine ways in which we could extend it. I appreciate that some will have their interest deferred, but those are not the ones who are really suffering. I refer to the 20,000 who are desperately in arrears. That is a significant number of people. We need to keep these people in their homes somehow.

**Senator Jim Walsh:** I have been here for many years, as have other Members on both sides of the House. Members would do well to remind themselves of what was stated here during the years. I heard no one forewarning of the property bubble and the huge property crash.

**Senator Jerry Buttimer:** That is not correct.

**Senator Maurice Cummins:** Read Deputy Richard Bruton's comments in the past five or six years.

**An Cathaoirleach:** Members have had an opportunity to speak. There should be no interruptions. Questions to the Leader, please.

**Senator Jim Walsh:** I have spoken to some international economists who also admit they did not foresee the huge global recession we are experiencing. I call for a debate as soon as possible on the discussions taking place. I am one who does not resent the fact that the IMF and the European Union are here discussing with the Department of Finance and the Government how we can extricate ourselves from our difficulties. It does not matter what is being said publicly; what is most important is that the people concerned who have tremendous expertise in this field will receive a full evaluation of precisely where we are. In particular, their views on where we go from here are important. It is essential that the banks be fully capitalised. As we cannot keep returning to the matter, there has to be a final solution. Will the Leader arrange a debate in order that we can deal with it, as well as the issue of public service pay and the Croke Park deal, all of which must be on the table and addressed fully at this stage in order that the country can move forward? The only item which must be ring-fenced is the corporation tax rate of 12.5% which was spoken about by Senator Cannon. It is the reason many multinational companies are here providing employment and leading to growth in the economy. It must be protected above all other things.

**Senator Rónán Mullen:** I agree very much with what Senator Donohoe stated and admire the way he stated it. I do not say this from a partisan point of view. Yesterday I spoke about the confidence game that has been played during the years. We have had a corruption of language and a culture of spin and they have to be brought to an end. It should not be the case that the Governor of the Central Bank is the one to let the cat out of the bag, so to speak, when politicians will not speak straight about the problem we face and the situation in which we find ourselves. Our way of talking in politics has not worked. We need to engage in straight talking and not patronise the people anymore. If it is a bailout, that is what it is. A bailout covers any situation where money is received from outside, whether one has to pay it back with interest. That is what the people expect from us. We do not have to see this as a moment of national humiliation if we understand the difference between humiliation and humility. We certainly have to have the humility to see how——

**An Cathaoirleach:** Does the Senator want a debate on the issue?

**Senator Rónán Mullen:** I am asking the Leader——

**An Cathaoirleach:** That is what I want to know.

**Senator Rónán Mullen:** ——to accept and agree with my proposition that we have to have humility to learn from our mistakes. We will also have to consider what it was in our political system that allowed us to be led into this situation. We have had too much cronyism in government. There has been a certain collusion between the Government and the media——

**Senator Donie Cassidy:** I think the opposite.

**Senator Rónán Mullen:** —and no one was in a position to scrutinise seriously what was going on in recent years. If we had had a stronger Legislature, where instead of sucking up to Government or Opposition leadership, politicians saw themselves as having a responsibility to scrutinise and assess what the Government was doing, we might not have let ourselves fall into this hole. If we have the grace to learn from our mistakes, we will do so. However, if we play the blame game or seek to be politically opportunistic, we will most likely make these mistakes again in the future.

What will be done about investment in education? There is a startling statistic——

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

**Senator Rónán Mullen:** I will conclude on this point. There is a startling statistic that not a single student who commenced a university course in pharmacy or medicine in 2008 or 2009 came from an unskilled background. This statistic shows that the issue is not whether we reintroduce university fees but how we invest in primary and second level education——

**An Cathaoirleach:** Point made, Senator.

**Senator Rónán Mullen:** —in order that children from lower socio-economic backgrounds can gain the points necessary to attend university and from the benefits of life.

**Senator John Hanafin:** The debate this morning should concentrate on whether the banks need funding.

**Senator Jerry Buttimer:** We know they do.

**Senator John Hanafin:** If we require this extra funding under the shared sovereignty agreement with the European Union, the debate should centre on how much we need. We have heard calls for honesty, for which we have been asked this morning. If the State receives funding for the banks, it cannot come directly through the banks but to the State. Will the Opposition stand up and state that in reality it is not a bailout for the State but for the banks? It will not. It will misrepresent the facts as sure as I am standing here.

**Senator Maurice Cummins:** Who owns the banks?

**Senator John Hanafin:** In looking for a debate on the banks it has become clear that some of the bankers have received non-recourse loans which means that if they are not paid back, one has nothing to come back for. This is an unsustainable position and we must do whatever we need to do to ensure any non-recourse loans taken out by a bank official are found not to be legal because it was an abuse of the system.

Those who suggested we bailed out the banks for any reason other than to help the State should remember that two years ago we spent all night here ensuring we would have a banking system solely for the benefit of the State. We hold no brief for bankers. Let us be clear what would have happened: banks would have closed; ATMs would have stopped paying out cash; standing orders, direct debits and accounts would have been frozen; and the bond markets would have turned their backs on us. We saved the State on that occasion and must continue to do so.

**Senator Mark Dearey:** I also welcome the clarity of thought and expression from the Governor of the Central Bank this morning. It was a model of communication which will help all of us to move forward.

I call for a debate on the future of semi-State companies. I do this in the context of the conditions that might attach to any loan or bailout. Not only is the corporation tax rate issue central to our well-being, so also is the future of semi-State companies. It would be a serious mistake to see them in private hands. It would probably result in a lack of investment and, therefore, a lack of realisation of the potential about which we have heard in terms of meeting Ireland's future energy needs. It is a fact that nine of every ten units that would be available to the country if we exploited our offshore wind energy sector potential could be exported. We would need only one of every ten units if we were to exploit all of the potential sites, many of which are along the eastern seaboard. I understand from the Irish Wind Energy Association that in generating 1 MW we would create eight jobs. There is phenomenal potential and I am concerned that we may, in the context of the conditions that might be applied to us, rush into a sale. It is something Fine Gael proposes in its NewERA document, but I genuinely believe it to be an error.

I am often asked about the smart economy. It is what the ESB, Bord na Mona and Bord Gais are engaged in. This is a magnificent opportunity for Irish SMEs to engage in innovation and sell product, as the grid becomes smarter, more responsive and efficient. This is not a product one can see or something that is placed on a ship or an aeroplane. It is energy that is supplied to the grid and exported. As bedrock income for the country, it would guarantee stability and security, which would be much more preferable to the basis on which economic growth was secured in the past.

**Senator Paul Bradford:** I support those colleagues of mine who called for a debate as soon as possible on the entire banking and economic crisis, something about which we speak every week. However, we do not seem to have had the substantive debate required. I echo the sentiments of my colleagues who have welcomed the initial intervention by Senator Donohoe who has presented a fair and balanced overview of where we are as a country and society and how we must proceed. To paraphrase US President John F. Kennedy, we must declare that the only thing we should fear is fear itself. We are on the edge of a new beginning. Some people would regard it as being on the edge of the precipice but I think we should see it as a new beginning where new structures and new economic foundations, new political thinking and new political ways of doing business will be put in place. I think this country can benefit but it will require very fresh, radical, new and generous thinking on the part of everyone involved in party politics. This is what the people are now crying out for. The old system has failed, the old order is over and a new beginning is just around the corner. I hope that as a result of what we deem to be either a bailout or assistance, a loan or a fund from structures beyond the norm will provide us with the time, space and ability to put in place the new structures and a new system of managing this country, which is required. As has been said so often by many, including myself, there is an unprecedented depth of fear, anger and hopelessness and we must try to change that in the near future because this country is broken. Every broken country can be fixed and broken countries have been fixed on previous occasions in Europe. I refer to the Europe of the 1940s when countries which had shed each other's blood came together and rebuilt and renewed their respective countries and continent. This country can be renewed, provided there is the political will and the courage to do so. This House has a role to play in debating the alternatives. We need to offer some hope and to do that, we need to talk about it. I ask the Leader to give us the space to speak because people have positive contributions to make. We all want to move beyond doom and gloom and I ask the Leader to give us the opportunity to chart the way forward.

**Senator Larry Butler:** I refer to the Hugh Cooney report which was published yesterday. While I am pleased with some of the comments in the report and its recommendations for

[Senator Larry Butler.]

dealing with future mortgage issues, this is an opportunity to look at the mortgage situation. I call for a debate on mortgage debt. One of the biggest problems with regard to mortgage debt are the bankruptcy laws which need to be reviewed and brought into line with both Britain and America. It is ridiculous that someone who goes into bankruptcy stays a bankrupt for about 12 years. This is an old system which does not suit our situation now. A total of 45,000 people cannot pay their mortgages or at least have problems with repayment as a result of losing their jobs. If our banking system is going to be supported by the European Union, we must review the mortgage situation. Otherwise we will encounter grave problems further down the road.

**Senator Jerry Buttimer:** Will it be any worse than now?

**Senator Larry Butler:** There is no question——

**An Cathaoirleach:** The Senator's time has expired.

**Senator Larry Butler:** We need to be honest with each other now and look at the problems.

**Senator Jerry Buttimer:** It is a pity the Senator's Government is not honest.

**An Cathaoirleach:** Please, Senator Buttimer, no interruption now. You had your opportunity to speak.

**Senator Larry Butler:** The banking situation is not fit for purpose. There is no question about it.

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

**Senator Larry Butler:** We have to deal with that situation. Small and medium-sized enterprises cannot start new businesses. I ask the Leader for an all-day debate on this matter as it is an important issue. In view of what we are now doing with the European Community, such a debate would be timely.

**Senator Maria Corrigan:** I wish to ask the Leader about the long-promised new legislation, the mental capacity and guardianship Bill. I do not expect the Leader will have an answer this morning but I appreciate if he could perhaps come back to the House on Tuesday's Order of Business with a date when this much-needed legislation will come to the House. I have raised this matter on a number of occasions and we have been expecting it for the past 12 months. I appreciate that it needs to tie in with other legislation and, therefore, there is considerable work to be completed.

I have also asked on previous occasions if arrangements could be made for the Minister for Justice and Law Reform to come to the House to deal specifically with the legal protections that can be put in place to assist people with intellectual disability or a mental health challenge who need to go before the courts on any matter. We have nothing in place to support them. Their basic human rights are disregarded.

I raise both of these issues in the context of a case completed last Monday where a judge directed a jury to return a not guilty verdict in the case of a young woman with an intellectual disability because the criminal Act does not provide that sexual offences other than sexual intercourse committed against people with an intellectual disability would be regarded as criminal. I ask if the Leader could make those arrangements for the Minister to come to the House.

**Senator Camillus Glynn:** In the past this House has debated the question of suicide and the high incidence of suicide in society. I regret that in my part of the world, Mullingar and north Westmeath in general, the incidence has raised its ugly head once again in recent months. There are not many families in this country that the cold fingers of suicide have not touched in one way or another. I ask the Leader to arrange a debate as soon as possible. There might be some suggestions coming forward that could possibly assist in this very serious situation. It is possibly with more hope than conviction that I make that request because the best efforts of the best people in this country, professional and otherwise, have been employed to deliberate on the causation factors associated with this phenomenon. It would be appropriate for this House to debate the important subject.

**Senator Frances Fitzgerald:** Today we had leadership from the Governor of the Central Bank when he clarified the situation and spoke honestly. He was acting in the absence of what I would call a functioning Government. The people want to hear from the Government and want to get clarity. Is it not extraordinary that, once again, the House is not discussing what the whole country is talking about? What arrangements is the Leader making for a Minister to be in the House today in order that Members can give their opinions and be part of the national debate taking place today about the negotiations? It is on the radio, in the press and everywhere else except in the very Houses where there should be discussion and debate today to afford us an opportunity to put our point of view on the record of the House.

**Senator Donie Cassidy:** Senators Donohoe, Quinn, Hannigan, Regan, Ormonde, Norris, Leyden, Cannon, Ó Brolcháin, Buttimer, Callely, Walsh, Mullen, Hanafin, Bradford and Fitzgerald raised the serious challenges in the banking sector. I remind colleagues that the House yesterday debated the Credit Institutions (Eligible Liabilities Guarantee) (Amendment) (No. 2) Scheme 2010. I noted all who contributed yesterday. I have no difficulty——

**Senator Jerry Buttimer:** That is irrelevant.

**An Cathaoirleach:** Please, no interruptions. The Leader is replying.

**Senator Jerry Buttimer:** On a point of information, on a point of order, the Leader set the time for the debate yesterday. We had a delayed debate yesterday on the issue. The Leader changed the time and he should clarify to the House what happened yesterday.

**An Cathaoirleach:** I ask the Senator to resume his seat.

**Senator Jerry Buttimer:** The Leader is misleading the House. He is being unfair to the Members of the House who could not contribute to the debate yesterday. He is being unfair. He should withdraw the remark he has made. He is misleading the House.

**An Cathaoirleach:** I am asking the Senator to resume his seat. The Leader to reply to the Order of Business.

**Senator Donie Cassidy:** Regarding that matter——

**Senator Jerry Buttimer:** I ask the Leader to withdraw the remark he made. He is always doing it.

**Senator Donie Cassidy:** For the information of Senator Buttimer, he should liaise with his Whip on the matter.

**Senator Jerry Buttimer:** The matter was changed by the Leader.

**Senator Donie Cassidy:** A request was made to me and I have never been found wanting in regard to arranging debates on matters of relevance. Following our deliberations on the Croke Park agreement, I hope we will have an all-day debate on that agreement with the relevant Minister on Tuesday, 30 November. This issue has been discussed at the weekly leaders meetings. If time is required to debate banking issues on a daily basis during this difficult period, it will be made available. I thank the leaders and the Whips for their support in this regard.

I fully agree with all who expressed concern about our 12.5% corporation tax rate, which is the bedrock of foreign direct investment. Senator Callely called for a debate on the anniversary of the Single Market and the 50 new proposals that have been made. I have no difficulty in making time for a debate on this useful suggestion.

Senators Quinn, Hannigan, Boyle and Ó Brolcháin highlighted the potential for renewable energy, including wind power and the other areas which Senator Butler regularly brings to the attention of the House. I intend to propose that we take statements on Ireland's renewable energy potential throughout Tuesday afternoon. This House should assist and encourage efforts to export up to 90% of all the energy generated in Ireland, whether from wave or wind power. We could save €60 billion over the next ten years by replacing oil imports with renewable energy. In regard to the dairy and wind farms to which Senator Quinn referred, a company based in Athenry, County Galway, manufactures wind turbines. It set itself a target of developing 60 wind farms this year but it had manufactured and installed 80 by the end of September. At a price of €40,000 or €50,000 each, the turbines it produces are relatively inexpensive. Communities in rural areas can benefit significantly from the new technologies now being made available.

Senators Quinn and Ó Murchú spoke about the 1926 census. I understand that census details are not published until 100 years after they are recorded. If that has to be changed, we will discuss it in the House. I have previously attempted to facilitate Senator Ó Murchú on this issue.

**Senator Alex White:** The 1911 census was published.

**Senator Donie Cassidy:** The 2011 one has just been published.

**Senator Alex White:** No, the 1911 census was published within 100 years.

**Senator Donie Cassidy:** I understand all that but it is as near as possible to 100 years. When the general public give information at census time, there is a clear understanding that a certain period of time will expire before the census is published. I stand corrected but I think the figure is close to 100 years.

Senators Hannigan and Ormonde called for a debate on overseas aid. We have been a shining example to the world as a small nation in what we have done with a heart and a half. I have no difficulty in arranging time for such a debate before Christmas.

**Senator Dominic Hannigan:** Not before the budget.

**Senator Donie Cassidy:** The Cathaoirleach has made a ruling on Senator Regan's intervention. Senators McFadden and Butler spoke about the expert group's report on the 20,000 mortgages that are in arrears. I have no difficulty in having this report debated at the earliest opportunity. Legislation on bankruptcies is before the Dáil at present but I hope we will be able to debate and pass it before Christmas. The 12 year bankruptcy period will be reduced to six years, which is a move in the right direction for those who are unfortunate enough to be in this situation.

Senator Mullen called for a debate on investment in education. I have no difficulty in arranging time for such a debate at the earliest opportunity.

Senator Glynn called for a debate on suicide. Senator Corrigan also raised the issue. I have no difficulty in arranging such a debate. There have been four incidents over the past two to three weeks in the area Senator Glynn and I represent. We should do what we can to support the families affected by suicide.

Senator Dearey called for a debate on semi-State bodies. I have no difficulty in arranging a debate on that issue. Senator Corrigan asked about the timeframe for pending legislation. I will revert to the Senator on that matter. The Senator also spoke about legal protection and support for those with mental health issues or intellectual disabilities. I have no difficulty in supporting her on that issue.

**Senator Jerry Buttimer:** On a point of order, can the Leader indicate whether it is proposed to sit next week, given that a by-election is being held?

**Senator Donie Cassidy:** That is a matter for the Government Whip to decide with the Whips in the Dáil. We will assist them, as well as the Members of this House who may wish to participate in the Donegal South-West by-election. I will discuss the matter with the leaders and the Whips after the Order of Business, if that facilitates the House.

Order of Business agreed to.

#### **Value-Added Tax Consolidation Bill 2010: Motion**

**Senator Donie Cassidy:** I move:

That, notwithstanding anything in Standing Orders, in the case of the Value-Added Tax Consolidation Bill 2010, Fifth Stage shall be taken immediately after the conclusion of the proceedings on Report Stage.

Question put and agreed to.

#### **Value-Added Tax Consolidation Bill 2010: Report Stage**

Question proposed: "That the Bill be received for final consideration."

**Senator Alex White:** For the purpose of clarity, did the Seanad take Second Stage of the Value-Added Tax Consolidation Bill 2010 and, if so, when did the debate take place?

**An Cathaoirleach:** The motion was taken without debate for Second Stage.

**Senator Alex White:** I note the motion.

**An Cathaoirleach:** It was a decision of the House.

**Senator Alex White:** Was the Bill ever received for Second Stage debate?

**An Cathaoirleach:** No.

**Senator Alex White:** Is it not necessary to hold Second Stage debates on legislation?

**An Cathaoirleach:** It was decided by the House that Second Stage would not be taken and it was referred to the Joint Committee on Consolidation Bills.

**Senator Alex White:** When was that decided?

**An Cathaoirleach:** I will revert to the Senator with the date.

Question put and agreed to.

### **Value-Added Tax Consolidation Bill 2010: Fifth Stage.**

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

**Minister of State at the Department of Finance (Deputy Martin Mansergh):** For the information of Senator Alex White, the Seanad was represented when the Value-Added Tax Consolidation Bill 2010 was considered by the Joint Committee on Consolidation Bills. As a consolidation Bill, special procedures applied and it was dealt with by an *ad hoc* committee.

I appreciate the opportunity to say a few words about the Value-Added Tax Consolidation Bill 2010, which has now been passed. The Bill consolidates the law relating to VAT, as contained in the Value-Added Tax Act 1972. This continues the successful ongoing process of consolidating and modernising the tax code. It follows the Taxes Consolidation Act 1997, which consolidated direct taxes legislation dealing with income tax, corporation tax and capital gains tax; the Stamp Duties Consolidation Act 1999; and the Capital Acquisitions Tax Consolidation Act 2003. The Government intends to modernise and consolidate the law relating to customs over the coming year.

VAT is governed by EU law. It was introduced in Ireland in preparation for joining the EEC. It took effect from 1 November 1972. The number and level of VAT rates applying in Ireland varied substantially throughout the 1970s and 1980s. Changes were also made to the range of goods and services to which those rates applied. Arising from agreement at EU level, the current system of two main VAT rates, along with the zero rate, came into effect in 1993. Since then, major VAT changes have generally related to administration, countering fraud and implementing EU provisions. In Ireland, as in other EU member states, VAT is a major source of Exchequer revenue. In Ireland, VAT accounts for approximately one third of the overall yield to the Exchequer, or some €10 billion.

The preparatory process for consolidating VAT was as rigorous as that adopted for earlier tax consolidations. At all times, we aimed to ensure the most accurate consolidation of the existing law, with nothing left out and nothing added. That has been achieved in this Bill, which has been duly certified as a consolidation of existing VAT law by the Attorney General. Changes to VAT law at domestic level may only be made within the confines of EU VAT law, as set out in the 2006 EU VAT directive. In this context, the provisions of the VAT consolidation Bill have been remodelled as far as possible on the VAT directive to facilitate better alignment and thereby easier reference.

The use of archaic language has been eliminated in the Bill. The most notable effect of this remodelling exercise is that the number of sections in the Bill is now much greater. During the passage of a consolidation Bill, the only amendments which can be made are those intended to remove ambiguities and inconsistencies, substitute obsolete or inconvenient language or achieve uniformity of expression. Substantive changes to existing law are not permitted under the consolidation process. A small number of such amendments were made on Committee Stage.

The Bill before the House is the culmination of considerable work. The greatest benefit of this consolidation will be the restructuring of the VAT code in a clearer, more coherent and logical manner. The code will become more accessible and user-friendly for all users, including Members of the Oireachtas, businesses, tax practitioners and students of taxation, who have to cope with annual changes to VAT legislation. The Revenue Commissioners will publish guidance notes on the Bill when it is enacted. I appreciate the assistance of the House in the speedy

passage of the Bill and the contribution of some Senators to the consideration of the Bill by the standing joint committee.

It is important that the Bill is enacted before the start of December, because any VAT changes made by regulation, in the budget or in the next finance Bill would invalidate the status of the Bill as a consolidation Bill. That would necessitate a recommencement of the process and delay its implementation unnecessarily. I express my appreciation and that of the Minister for Finance and the Government of the amount of work that went into the preparation of the Bill. The staff of the Revenue Commissioners and the Office of the Parliamentary Counsel are to be congratulated on a job well done. I thank the officials in the Department of Finance. I also thank Senators for their consideration of the Bill.

**Senator Paul Bradford:** I thank the Minister of State and his officials for their work on this important legislation. The volume of the end product is substantial. I understand the Minister of State's remarks about the need for certain changes, such as the addition of sections and the removal of archaic language, which have added more pages to the Bill.

I was interested to hear what the Minister of State said about the concept of VAT from a taxation perspective. He mentioned that it accounts for almost a third of our annual tax income. All of us, including the members of the Cabinet, will be contemplating that over the next few weeks, which will be vital for this country. If one judges VAT in the context of the principles of taxation, it will become evident that VAT does not tick the "ability to pay" box. I accept that it is one of the more successful taxes from the perspectives of understanding and ease of collection. Great flexibility is associated with VAT rates.

The Minister of State mentioned EU directives and legislation on a few occasions during his contribution. He referred to our obligations to Europe from the perspective of the VAT directive and the VAT rates. Perhaps it is a sign of things to come, but that is a debate for another day.

The consolidation Bills that are rather infrequently considered by this House and the other House are always necessary and interesting. The end product is always a reflection of the volume of legislative work done by our colleagues over the generations. Various changes and amendments have been made by officials in various Departments during that time. All of that work comes to fruition when a consolidation Bill is produced. It is likely to be some time before the next VAT consolidation Bill is produced. Therefore, this legislation will be with us for some time.

I echo the Minister of State's words of thanks to the officials and our colleagues in both Houses who have played a part in the passing of this legislation. The debate on VAT and taxation in general will not end now that this Bill has been passed. It is here to stay. I hope the important debates in this House and the other House in the next few weeks and months will be interesting and vibrant. It is obvious that the question of taxation is central to the economic survival of this country. It is great that we can hear different perspectives and views — I am resisting use of the word "ideology" — on how we should tax the people and fund the country. This will be a valid and important matter for debate over the next few weeks. I thank the Minister of State for bringing this Bill to the House. I also thank my colleagues and, more importantly, the officials who did the ground work to ensure this legislation was prepared properly.

**Senator Mark Dearey:** I welcome the Minister of State and thank him for bringing this Bill to the House. I understand the amount of work that must be involved in the consolidation of any range of Acts. This legislation is based on the model that was used in the cases of the Stamp Duties Consolidation Act 1999 and the Capital Acquisitions Tax Consolidation Act

[Senator Mark Dearey.]

2003. This road has been travelled before. I can imagine the scale of work that must have been required to consolidate VAT law, which is constantly being reformed and reviewed at EU level.

I would like to reflect on the nature of VAT and on the proportion of our tax income that is generated from VAT, which is not necessarily the most progressive of taxes. As Senator Bradford said, it does not tick that particular box. It disproportionately affects people on lower incomes, as a higher proportion of their incomes are spent on VAT. Their incomes are taken into account in the case of income tax. We could have a wider debate about the place of VAT and the place of transaction taxes in general. Perhaps the tax system could be remodelled so it no longer relied on transaction. When transaction is the main mode of collection, politicians are tempted to pursue policies that drive transactions. That can lead to the cycle of boom, bubble and burst that we have experienced in the house building sector in particular. It is important we put our tax system on a more sustainable footing. Nonetheless, I welcome the consolidation of the legislation in this area.

I recall my father talking at the table about turnover tax many years ago when I was a child. He was speaking in the context of the introduction of a VAT rate of 35%, which was extraordinarily corrosive for business along the Border. In his speech in the Dáil, the Minister of State attributed, in part, Newry's city status not only to the currency differential which comes and goes but to the different VAT regimes on either side of the Border. There are causes and consequences. If Newry can, in part, thank VAT for its city status, one can imagine what it has done to my town. I do not want to come up with a moniker for it but it has been a very touchy and difficult issue. Even the 0.5% which the Minister for Finance removed last year, although it was not much in monetary terms, was an important signal and a motivational tool for people to stay on this side of the Border to do their shopping. The UK makes its own decisions and it has increased the VAT rate from 15% to 17.5%. That, too, is a help.

VAT is an extremely sensitive issue when it comes to the Border area. We need constantly to calibrate our own decisions against what is happening in the UK and not allow differentials to develop which become dissuasive to our potential markets, including retail markets.

In regard to exemptions and reductions, I have heard arguments for VAT reductions on everything from condoms to windmills. Usually the case made is around the social benefit that might accrue. In the case of environmental goods, it is the off-set against Kyoto penalties, for instance. There is always a case for different sectors to call for reductions. The restaurant sector has been quite strong in this regard in the context of job creation. All those cases need to be listened to carefully. We need to explore, to the fullest extent, the potential we have to use these reduction mechanisms, if they are available to us.

Obviously, we need to be consistent with European VAT directives in application. They exist in certain areas. I would be very keen that we explore such mechanisms in regard to products relating to energy efficiency and energy reductions. There are enormous gains to be made. It is not about sectoral gain or about any one group benefiting. I see a national gain in terms of efficiency, competitiveness, job creation and, ultimately, carbon emissions.

I have probably strayed a long way from the original intent but I wanted to make those points. I thank the Minister of State for bringing this Value-Added Tax Consolidation Bill 2010 before the House.

**Senator Alex White:** There is consensus on the importance and value of the work done in the preparation of this consolidation Bill. The extent to which legislation is codified, consolidated and made easier to understand and access is welcome. The officials involved in this very arduous work are to be congratulated on the legislation they have produced and which we will be happy to pass.

I asked earlier about the trajectory of the legislation and whether a Second Stage debate was necessary in this House. I am grateful to the Clerk and the Chair for pointing out that given that the legislation did not begin in this House and went through a particular committee process, it was not required. I do not believe there always needs to be a Second Stage debate on legislation. I was not making a plea for that at all. Very often there is no need for Second Stage speeches on legislation and it would be better if we got down to the detailed work of scrutinising it. That is what was done in the particular committee process which was brought to bear in respect of this legislation. That is the right way for it to be done. I have no objection to that. I wanted to ensure there would not be any infirmity in it by reason of there not having been a Second Stage debate but it has been clarified that is not the case.

Senator Bradford signalled the fact there will inevitably be a broader debate on taxation measures, the balance of taxation, the broadening of the tax base and so on. We hear so much about that but we have not really got around to having a very detailed discussion on that. It is a subject we cannot avoid. We do not debate many of the things we need to debate until perhaps we are reminded to do so. Unfortunately, we are being reminded of many things by people in the EU Commission and elsewhere.

Commissioner Rehn reminded us last week that this is a low tax economy and that he thought we needed to move from being a low tax economy to a normal tax economy. We must have a mature debate on this matter because if we want the level of public services we have built up and want to maintain and enhance them, they must be paid for through taxation. All the political parties must be a bit more honest in terms of the public debate. Nobody wants to be the first party out of the traps to propose new taxation. Regrettably, the competition in the last election was competition between all parties as to which would reduce taxation. That is in the past and simply cannot happen. It is a question of courage right across the board.

I do not believe Senator Bradford should be too afraid of ideology. "Ideology" is not necessarily a bad word. What I mean by ideology is something much simpler than the Soviet system versus the doctrinaire right wing position. There are political questions as to the balance of taxation and whether people who are wealthier should have to pay a lot more tax than they have been paying. The question of the balance between indirect and direct taxes and whether there should be a property tax and a water tax are issues we will have to debate. Given many of things that have happened to us recently, can we start that debate ourselves rather than have it imposed on us, because it will be imposed on us?

Senators will note I have not made a partisan statement in this contribution. All parties are responsible because all politicians are fearful of this subject. It is a mark of our lack of maturity that we are not more up-front about putting a price on the public services for which we are fighting and which we want. They must be paid for and the only way to do so is to pay for them ourselves through taxation.

**Deputy Martin Mansergh:** I would like to say a few words in response to the short debate. I admit to Senator Alex White that this is the first time I have come across this procedure but I am sure we all come across new things from time to time.

The revenue raised by VAT was referred to by Senator Bradford. It is now one third of our revenue. In the halcyon days of three or four years ago, it might have been closer to one fifth than one third but that is the situation that exists now given the contraction of the tax base, which obviously must be addressed.

The progressiveness or otherwise of VAT was also referred to by Senator Bradford. There is the perception that VAT affects most adversely those who are less well off because they pay the same amount of tax while having a lower income. However, many goods and services

[Deputy Martin Mansergh.]

availed of by low income households are VAT-free or have a zero rate of VAT — a great proportion of their expenditure is on food — and that counterbalances somewhat the argument about the incidence of the tax on the less well off. That also includes children's clothes and shoes and oral medicine. A reduced VAT rate applies to home heating and labour intensive purposes.

Reference was made to the Border situation and there is no doubt there has been fluctuation back and forth. As I am sure Senator Dearey is aware, the VAT rate across the Border is due to rise by 2.5% on 4 January which will narrow the gap, although it does not get rid of exchange rate differences.

It needs to be observed also that petrol and diesel prices are roughly on a par in nominal terms, which means that, in practice, prices are 12% to 15% higher on the northern side of the Border. That, in principle, causes people to travel across the Border in a southern direction.

Another Senator referred to proposed VAT exemptions on condoms and windmills and we have all been lobbied about VAT exemptions on hurley sticks and medical equipment. If one increases the exemptions, apart from any EU dimension on the subject, one is in danger of making the administration of it more complicated. That is especially the case with medical equipment purchased by charities as opposed to other groups.

We get lobbied by groups to raise taxes as well as to lower them. For example, in the run-up to every budget there is an active health lobby and an environmental lobby. As Members will note from this morning's newspapers, the horseracing industry is seeking a doubling of the betting tax to 2%. One of the most successful environmental taxes was the tax levied on plastic bags which was introduced very shortly before the last general election but one.

I thank everyone for their support and reiterate our gratitude to those who have drawn up the legislation.

Question put and agreed to.

#### **Chemicals (Amendment) Bill 2010: Order for Committee Stage.**

**Senator Diarmuid Wilson:** I move: "That Committee Stage be taken now".

Question put and agreed to.

#### **Chemicals (Amendment) Bill 2010: Committee and Remaining Stages.**

**An Leas-Chathaoirleach:** I welcome the Minister of State, Deputy Calleary, back to the House.

Sections 1 to 13, inclusive, agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

Question proposed: That the Bill do now pass."

**Minister of State at the Department of Enterprise, Trade and Innovation (Deputy Dara Calleary):** I thank the House for its co-operation in passing the Bill so quickly. I thank the officials from my Department and from Health and Safety Authority for their assistance. There was a good deal of debate the other day on regulation and its impact. This very large document

is the legislation we are trying to transpose. The officials have done their best in the context of what is contained in it to make it as user-friendly and as administratively light as possible for businesses. We will now proceed with the implementation of the directive against the background of the ongoing success the Health and Safety Authority has had in the implementation of various directives in recent years. I thank the House, the staff and my officials for their co-operation.

**Senator Paul Bradford:** My colleague, Senator John Paul Phelan, is unable to be with us this morning. I understand he dealt with the Bill on Second Stage. I trust I speak on his behalf in thanking the Minister of State and his officials for presenting us with the legislation and bringing it to a conclusion. With the Bill being devoid of Committee Stage amendments, Committee Stage was dealt with rather quickly but that stems from the fact that there was a substantive debate on the Bill on Second Stage and there was general all-party agreement on the matter. The absence of rancour and debate is something we should welcome on this occasion.

This House, like the other House, often does a great deal of good, useful and important work, such as the passage of this Bill, without such work attracting any huge focus or there being any argument or division on it. At a time when politics is under such a negative spotlight, it is important to reflect that, week in, week out, month in, month out, both Houses do important and valuable processing of legislation which might appear uncontentious, even tedious and sometimes boring, but it is important for the overall good of the country and welfare of our citizens. A debate on the Rotterdam regulations, the detergents regulations, the REACH regulations and other such matters will not make the front page of any newspapers, especially our tabloids at this time when there is a different view of politics, but this is important legislative work and we have concluded consideration of another Bill.

I thank the officials, the Minister of State and those who presented the legislation. On behalf of my colleague, Senator John Paul Phelan, I wish the Minister of State well with the implementation of this Bill.

**Senator John Carty:** I join Senator Bradford in complimenting the Minister of State and his officials on bringing this legislation through the Houses. We had a good debate on it yesterday. I congratulate the Minister of State on getting it through the House without any problem and I thank the Opposition for their support in this regard.

Question put and agreed to.

**An Leas-Chathaoirleach:** When it is proposed to sit again?

**Senator John Carty:** At 2.30 p.m. next Tuesday.

### **Adjournment Matters**

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#### **Sexual Offences**

**Senator Jerry Buttimer:** I thank the Cathaoirleach for allowing me to raise this important issue, namely, the consequences of a decision taken this week in the courts. I ask the Minister for Justice and Law Reform make a statement on the plans of the Government to amend the Criminal Law (Sexual Offences) Act 1993 in the light of the decision by a judge to direct a jury to return a not guilty verdict because the Act does not provide for oral rape as an offence.

[Senator Jerry Buttimer.]

This is a most disturbing and distressing case, as the Minister of State, Deputy Calleary, will no doubt agree.

Inclusion Ireland has taken a forceful position in raising a number of issues related to this week's case. It has correctly noted, for example, that the current law does not adequately protect people from a range of sexual offences. It also points out, however, that the law potentially criminalises consenting sexual relationships. This issue requires urgent action by the Government rather than words in an Adjournment debate. The 1993 Act criminalises only sexual intercourse or buggery with a mentally impaired person. People with identifiable mental illnesses and older people with dementia or people with a brain injury can fall under the definition of "mentally impaired". The test applied under the Act is that the person is incapable of living independently or guarding against exploitation. It is unclear how narrowly or broadly this definition will be interpreted. The Act does not apply to married individuals but criminalises consenting adults with a mental impairment. The issue of consent is not addressed. If other sexual acts short of intercourse take place, a case may proceed and consent and other matters can be examined. The Law Reform Commission is drawing up a consultation paper on the matter. The bottom line is that the law must be changed because, as constituted, it does not protect against sexual offences which fall outside sexual intercourse or buggery.

Ms Deirdre Carroll, chief executive officer of Inclusion Ireland, has issued a strongly worded press statement on the recent court case in which she states that without new legislation in this area, Ireland cannot ratify the UN Convention on the Rights of People with Disabilities. All citizens must enjoy rights and for this reason the Government must clarify the position on the Criminal Law (Sexual Offences) Act. The decision taken by a judge earlier this week has serious consequences and widespread implications and constitutes an impingement on the rights of citizens.

As Ms Carroll noted, the current law relating to people with an intellectual disability is antiquated and dates back to the Lunacy Act 1871. While commitments have been given to introduce new legislation in this area, as far as I am aware, a Bill has not been forthcoming. While I am not sufficiently qualified to disagree with the judge's decision in this week's case, it clearly demonstrates that the current law fails to protect people with an intellectual disability from sexual acts other than sexual intercourse and buggery. This must be rectified as a matter of urgency.

**Minister of State at the Department of Enterprise, Trade and Innovation (Deputy Dara Calleary):** I welcome the opportunity to discuss the important matter raised by the Senator which I will take on behalf of my colleague, the Minister for Justice and Law Reform, Deputy Dermot Ahern.

As the Senator will be aware, I am not in a position to discuss individual cases. However, it is important to outline the criminal law measures in place to protect the intellectually disabled from sexual abuse. These include general criminal law measures and measures directed specifically at the intellectually disabled.

Rape, under section 4 of the Criminal Law (Rape) (Amendment) Act 1990, includes oral rape and a person found guilty of section 4 rape is liable, on conviction on indictment, to life imprisonment. The offence is committed in the absence of consent and can be committed against any person, including a person who is intellectually disabled.

Section 5 of the Criminal Law (Sexual Offences) Act 1993 deals specifically with offences against persons who are "mentally impaired". Under this provision, it is an offence for any

person to commit or attempt to commit specific sexual acts — sexual intercourse or buggery — with a person who is mentally impaired, whether consent is given. Section 5 was the main legislative vehicle for implementation of the recommendations in the Law Reform Commission's 1990 report on sexual offences against the mentally handicapped.

The law governing sexual offences needs to strike a careful balance between the need to protect persons with intellectual disabilities from sexual abuse and sexual exploitation, while not intruding on their right, in appropriate circumstances, to engage in consensual sexual activity. The basic right of people with disabilities to enjoy the same degree of fulfilment through relationships as anyone else must always be taken into account. This area of the law is again being examined by the Law Reform Commission and, if necessary, the Minister will bring forward legislative proposals to implement the commission's recommendations. A key concern in this context is that the criminal law should only be used to punish clear sexual exploitation of persons who are intellectually disabled but not to deprive them of intimate relations where that is possible in a non-exploitative manner.

The law on sexual offences is kept under continuous review and amended, as required, to keep the law up to date. Work is well advanced on various legislative proposals in this area. The Minister of State with responsibility for children will bring a draft general scheme to the Government in the near future to address recommendations made in the second interim report of the Joint Committee on the Constitutional Amendment on Children. The scheme of a second sexual offences Bill to protect vulnerable persons generally from sexual abuse and sexual exploitation is also being prepared.

I am sure the Senator will appreciate the sensitivities involved in framing legislation to protect the intellectually disabled. Protection from predatory and exploitative actions is paramount. However, we must be extremely careful not to criminalise sexual activity which could not be deemed exploitative and might deprive the intellectually disabled of intimate relationships. This is a major concern of campaigners, service providers and others who promote the rights of the intellectually disabled. I look forward to the Law Reform Commission's report and the Government will not be found wanting in addressing its recommendations.

**Senator Jerry Buttimer:** It is vital that the Minister for Justice and Law Reform take steps to protect people with an intellectual disability. I hope he will introduce modern capacity legislation which, as Inclusion Ireland notes, concerns all decisions taken by people deemed not to have the capacity to make a decision. While I accept the Minister of State's point that this is a sensitive issue, we have a duty not to criminalise people with an intellectual disability by failing to legislate in this area.

### **Special Educational Needs**

**Senator Mark Dearey:** The other night I attended a meeting organised by the Down's Syndrome Centre which highlighted an issue of which I had been aware, although I had not fully appreciated the hurt it was causing. An educational assessment for a child suffering from Down's syndrome is provided at around the age of six years and assessments fall into four categories, "mild", "moderate", "severe" and "profound". Educational provision for the child is then designed and delivered on the basis of the outcome of the assessment. A development going back a number of years but which only is coming to light now is that children who are designated with mild Down's syndrome, that is, those who are least affected by the genetic disability, are being deemed as fit to enter into mainstream education. Although they are provided with special needs assistance in that system, they are not being given the kind of

[Senator Mark Dearey.]

resourcing or educational expertise required to meet their needs. This need and the right to it being addressed is underpinned by section 7 of the Education Act 1998 which commits the State to providing education as appropriate to the needs of the young person being educated. In this case, I refer to children with a baseline disability from which it is obvious they will never recover but with which they will live throughout their lives. The fact that their IQ might be deemed to be greater than 70 does not take away from Down's syndrome being a baseline disability in the same way as is autism.

Autistic children are not deemed to be either eligible or ineligible for special education based on their IQ. If a child is deemed to be autistic, that baseline condition is recognised and educational delivery happens according to need as is consistent with the Act. This is not the case with many Down's syndrome children. In a sense, the making of real progress has underlined my point. The work of early intervention teams and of parents with children from a very young age means that increasing numbers of Down's syndrome children who come for assessment now cross that threshold and are deemed to have mild Down's syndrome rather than being categorised as being moderate, severe or profound. Consequently, an increasing cohort is being categorised as being mild and because the educational needs of that cohort are perceived as being deliverable through the mainstream system, albeit with additionalities, these children are not being recognised as having a baseline condition and are not really receiving the educational delivery appropriate to their needs.

At a recent meeting on the subject, I heard some extraordinary stories in which parents spoke of keeping their children awake all night in order that they would underperform at the assessment. Another parent spoke of his unwillingness to allow his child to be assessed, of withdrawing from the process and making it unmanageable or unworkable. Contributions such as these were being made to the debate I attended the other evening and I found it to be quite disturbing that people would be so agitated that they would take such actions in the knowledge that it would have consequences for their children, who effectively would be kept at home, and for themselves. There exists an undercurrent of deep dissatisfaction and a sense in which the State is not facing up to its obligations under the Act. There also was a recognition that resources are scarce and this may be a decision based on resourcing. That should not be a reason for the State to resile from its commitments under the aforementioned section of the Act.

I welcome the opportunity to make these points on the Adjournment and look forward to hearing the Minister of State's response. It is critical that whatever else the response may contain, the baseline nature of this condition and its unchanging nature should be paramount, not whether someone crosses an IQ threshold.

**Deputy Dara Calleary:** I thank Senator Dearey for raising this issue and I am taking this Adjournment matter on behalf of the Tánaiste and Minister for Education and Skills who is attending a meeting. I wish to make clear that the education of children with special educational needs remains a key priority for the Government. More than €1 billion has been allocated within the education system for this purpose this year. The Seanad will be aware that the Education for Persons with Special Educational Needs Act 2004 requires that all children with special educational needs be educated in an inclusive environment with children who do not have such needs unless the nature or degree of the need is such that to so do would be inconsistent with the best interests of the child or the effective provision of education for children with whom the child is to be educated. The Department of Education and Skills therefore provides for a range of placement options and supports for schools that enrol pupils with special

educational needs, including children with Down's syndrome, to ensure that whenever a child is enrolled, he or she will have access to an appropriate education.

All primary schools have been allocated additional teaching resources to enable them to support pupils with high incidence special educational needs, including Down's syndrome. Each school has been given such additional teaching resources under the general allocation model of learning support and resource teaching introduced in 2005. The new system was put in place in order that children with high incidence special needs, including Down's syndrome, could get resource teaching support at school without the need for an individual assessment in each case. It appears that a significant percentage of children with Down's syndrome have been assessed as having a mild general learning disability which comes under the high incidence disability category. Therefore, they are given additional teaching support from within a school's general allocation of resource teaching support. In circumstances in which a child with Down's syndrome has other associated needs and will fall into the low incidence disability categories, this may attract an individual resource teaching allocation through the National Council for Special Education, NCSE. Therefore, pupils with Down's syndrome are entitled to additional teaching support in school either under the terms of the general allocation model of teaching supports, if the child's educational and psychological assessment places him or her in the high incidence disability category, or through an allocation of additional teaching or care support or both if the child is assessed as being within the low incidence category of special need, as defined by the Department's circular SP ED 02/05.

It also should be noted that a range of educational placement options are available for children who present with a diagnosis of mild general learning disability, including children with Down's syndrome. The range of options includes mainstream school placement with support under the general allocation model, special class placement within a mainstream school, or a special school placement in a school that caters specifically for children with mild general learning disabilities. Senator Dearey will be aware that far from withdrawing support from children with special needs, the Government has provided for a dramatic expansion in special education supports. Indeed there are now more than 20,000 people in schools working solely with children with special needs compared with just a fraction of this figure a few years ago. This includes more than 10,000 special needs assistants, whereas there were only 300 in 1998. The system for accessing supports also has been improved with the establishment of the National Council for Special Education and its network of more than 80 local special education needs organisers.

I assure Senator Dearey that the provision of appropriate educational intervention and support for children with special educational needs will continue to be a key Government priority, taking into account the overall level of resources available to the Government. Once again, I thank the Senator for raising the issue.

**An Leas-Chathaoirleach:** Senator Dearey may ask a supplementary question.

**Senator Mark Dearey:** My question focused on section 7 of the 1998 Act to which the Minister of State's response did not refer. Consequently, I consider that my question remains outstanding although a number of issues were touched upon by the Minister of State, for which I thank him. I recognise that the Government has provided for an expansion in special education support needs. A particular emphasis has been laid on this issue by the Green Party throughout our term in government in tandem with our Government partners and this is to be applauded, if I may so do. However, I do not believe the question has been taken full on as it was intended.

[Senator Mark Dearey.]

My key point is that Down's syndrome is a baseline condition, as is autism. Children with autism are not asked to cross such hurdles for access to specialised education in educational organisations that are tailored to deliver it, although children with Down's syndrome are asked to do so. There is a lack of equal treatment between the two baseline conditions. It is critical that the State recognises this is a condition that will not change. To refer to children with mild Down's syndrome as also having mild general learning disability is very wide of the mark because such children have specialist needs. I believe parents desire that their children be educated within an integrated national or secondary school system, which would be fantastic. This response fails to recognise the nature of the disability and its impact on learning for the child with Down's syndrome. I find the phrase "mild general learning disability" to be disrespectful, almost offensive, in terms of the real effect of Down's syndrome on a young person's ability to learn. I am not sure how to do this but I would like to ask the Minister about this again.

**Deputy Dara Calleary:** I will revert to the Tánaiste and ask her to respond directly to the Senator.

The Seanad adjourned at 12.30 p.m. until 2.30 p.m. on Tuesday, 23 November 2010.