



# SEANAD ÉIREANN

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*Déardaoin, 20 Eanáir 2011.*  
*Thursday, 20 January 2011.*

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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 Paschal Donohoe that, on the Adjournment of the House today, he proposes to raise the following matter:

The need for the Tánaiste and Minister for Education and Skills to provide an update on plans for a permanent school building for Gaelscoil Bharra, Cabra, Dublin 7; and the funding that will be provided for this project.

I regard the matter raised by the Senator as suitable for discussion on the Adjournment and it will be taken at the conclusion of business.

## **Order of Business**

**Senator Donie Cassidy:** The Order of Business is No. 1, Communications (Retention of Data) Bill 2009 — Committee and Remaining Stages, to be taken at the conclusion of the Order of Business; No. 2, Bretton Woods Agreements (Amendment) Bill 2011 — all Stages, to be taken at 2.30 p.m., on Second Stage of which spokespersons may speak for ten minutes and all other Senators for seven minutes and Senators may share time, by agreement of the House; and No. 2a, on the Supplementary Order Paper, motion for earlier signature, to be taken at the conclusion of No. 2. There shall be a sos at the conclusion of No. 1 until 2.30 p.m.

**An Cathaoirleach:** No. 19 on today's Order Paper, Criminal Justice (Female Genital Mutilation) Bill 2011, was printed on green paper and circulated in error last night. As it is a Seanad Bill, it will be reprinted on yellow paper and circulated later today.

**Senator Frances Fitzgerald:** It is almost surreal and farcical to be here today talking about business as if the Cabinet was not disintegrating before our eyes and there was not a last-ditch electoral power grab taking place in Fianna Fáil. The focus once again is on jobs for Fianna Fáil Members, not on job creation, about which the people want to hear.

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

**Senator Frances Fitzgerald:** It was extraordinary this morning to hear the Minister for Transport, Deputy Dempsey, state he had offered his resignation to the Taoiseach several weeks ago and, at the same time, acknowledge the serious work that needed to be done, yet the Taoiseach did not tell his partners in government about the resignations which it appears came as a

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surprise to the Green Party. It is the Green Party which created the conditions that allowed this to happen, through its extraordinary decision to have the general election called in January, only to change its mind subsequently and be indecisive about when it would be called. It is clear we need an election now, as what is occurring is extraordinary. It is demeaning to ministerial office to see what is happening today. It is demeaning to our democracy and politics. Most of all, it is outrageous——

**An Cathaoirleach:** That is Dáil business.

**Senator Frances Fitzgerald:** Yes, but it affects the Oireachtas which includes the Seanad. It is particularly outrageous for those who see money being taken from their wage packets to effect a bailout on foot of the bad decisions of the Government. It is outrageous for those who must pay more for VHI coverage and are losing their jobs. The Government is dysfunctional. Surely it is time the election was called, as we cannot continue like this. People believe what is happening is bizarre and extraordinary. It is simply unacceptable.

**Senator Joe O'Toole:** There is no question but that the House should discuss this issue, although I accept the Cathaoirleach's point that the Government is answerable to the other House. However, the political situation is causing incredulity and bemusement among ordinary people who cannot understand what is occurring. To have some knowledge, it would be useful to provide time to discuss events which we should consider in simple terms, without engaging in oppositional politics. Five or six members of the Cabinet indicating they will not run for re-election is not a problem.

**Senator Paul Coghlan:** It is grand.

**Senator Joe O'Toole:** It occurs regularly and there is nothing new about it. However, in our history, economic or otherwise, there has never been such uncertainty and instability as there is now. The idea of Ministers leaving the Cabinet a couple of weeks before a general election and being replaced by others who will hardly find their way into their new jobs before an election is not just incredulous, it creates further instability. The Taoiseach should note that the Cabinet members concerned are not running for re-election and tell them that they should continue in office and do what they were appointed to do until the election is called. That is what would normally occur and this situation is no different. It makes a mockery of what we intend to do. That a Minister would expect someone else at this late stage in the life of the Government to take over a Department and deliver in the next six weeks is not acceptable. It creates instability and causes further bemusement, adding to the cynical view of politics. The Taoiseach should be asked to reconsider. There is nothing wrong with members not seeking re-election, but the Cabinet and Government systems should not suffer such a body blow.

**Senator Alex White:** The other night a lady asked me whether I believed Fianna Fáil's vote of confidence in the Taoiseach was part of an elaborate manoeuvre for the public, that something different would be done, people would be positioned in a particular way and look like they were resigning when they were not. I told her I did not believe even Fianna Fáil would engage in such an activity and that, in my experience, members of the party did not resign from public office unless they had to or were forced to do so. However, I am beginning to wonder. This is a shambles of unbelievable proportions and it is relevant to Seanad business, given that we will expect Ministers who attend the Chamber to deal with legislation in the coming weeks to show a certain amount of experience and application to the job.

Let us consider what has occurred within the Government. First, Green Party Ministers stated they were leaving. We must take them at their word that they will be gone by the end of March. The Minister for Foreign Affairs then resigned because he did not have confidence in the Taoiseach. Yesterday four more Ministers retired or deserted, depending on which word one wants to use. Another Minister retired this morning. Apart from the Taoiseach and the Tánaiste, this leaves seven members of the Government. Of these, the Minister for Social Protection, Deputy Ó Cuív, has been throwing shapes in the past week or ten days as to his intentions, where he wants to be and what he believes should occur. It is difficult to believe he gave anything like a full-blooded endorsement to the Taoiseach. The Minister for Finance has been accused by members of his own party, not the Opposition, of engaging in the black arts in respect of what he believed about the Taoiseach and whether he should remain in office. By the time we get to the Minister for Tourism, Culture and Sport we are down to the last two or three Ministers who have given the Taoiseach the impression that they will stick with it. The Government is a complete shambles and falling apart in front of our eyes.

I would like to comment on the Taoiseach.

**An Cathaoirleach:** That is a matter for the Dáil.

**Senator Alex White:** Does the Leader agree with me? We are always asked to put what we have to say in the form of questions to the Leader, but he never answers them, as the Cathaoirleach knows.

**An Cathaoirleach:** That is a matter for the Leader. I cannot influence anyone.

**Senator Alex White:** For the purposes of procedure, I will put my comments in the form of questions. Does the Leader agree that what the Taoiseach has done amounts to a gross abuse of his important and solemn prerogative under the Constitution to appoint members of the Government? He stands accused of abusing this prerogative for naked political and electoral gain. He can chuckle away all he wants, as he did in the Lower House yesterday. Clearly, that is what he intended to do and what he is doing. It is a disgrace that he should be allowed to do so by Fianna Fáil or anyone else.

**Senator Jim Walsh:** The House is not well served by Senators who ask every day for the date of the general election and criticise events in the Lower House. The situation will evolve and there will be a general election in a matter of weeks or a month or two. I have not met anyone outside the Houses who is concerned about the date, but they expect an election to be held. That commitment has been given.

**Senator Jerry Buttimer:** They are Fianna Fáil councillors.

**An Cathaoirleach:** No interruptions, please. We are taking questions to the Leader.

**Senator Jim Walsh:** It is not unprecedented for Ministers who have decided not to run in a general election to step down from the Cabinet and be replaced. It will happen again. It is important that those placed in Cabinet positions have the calibre and ability to do the job to make a difference for the country. That is what we need.

I again raise the issue of legal fees. Although a number of my colleagues have signed my motion on tribunals, no one opposite has. One of the greatest scandals in the past decade has been the exorbitant cost to the taxpayer of tribunals which were asked to investigate matters urgently. Thirteen years later, covering four terms of the Houses of the Oireachtas, they are still extracting money from the taxpayer and offering no results.

**Senator Frances Fitzgerald:** Under the Senator's Government.

**Senator Jim Walsh:** It is a shambles and I have been critical of the Government for not taking action. We should take action. The tribunals were established by the Houses, not the Government. As leaders of their parties, Senators Fitzgerald and Alex White should take the initiative and support my motion or another one to bring the charade to a conclusion in the interests of the taxpayer.

**Senator Frances Fitzgerald:** The Government should do something about it.

**Senator Alex White:** What about the corruption that led to the establishment of the tribunals?

**An Cathaoirleach:** No interruptions, please.

*(Interruptions).*

**Senator Alex White:** We have the tribunals because of corruption on the other side of the House.

**An Cathaoirleach:** Members, please.

**Senator Alex White:** Then we had the challenge to the Taoiseach.

**Senator Diarmuid Wilson:** Defending the indefensible.

**Senator Alex White:** Corruption is defended by Fianna Fáil.

**Senator Jim Walsh:** Will the Leader arrange a debate as a matter of urgency on the Competition Authority report of December 2006? Most of its substantive recommendations have not been implemented by the Government. We need to remove the self-regulation of barristers and their fees which has led us to this crisis of exorbitant tribunal costs.

**Senator Paul Coghlan:** The Leader must accept there is total confusion. He is a good man to appear on the plinth, if not to make announcements, to be prominently associated with—

**An Cathaoirleach:** Questions to the Leader, please. We are not worried about who was on the plinth.

**Senator Paul Coghlan:** Neither am I.

**Senator Jerry Buttimer:** He had councillors with him.

**Senator Paul Coghlan:** If we are not to have a debate on what is occurring within the Government as requested, will the Leader make a categorical statement on who is resigning?

**Senator Maurice Cummins:** Who will be appointed?

**Senator Paul Coghlan:** It has been mentioned that at least two other Ministers are resigning. One news station reported that someone had resigned, but this was denied by the Minister's office. Then there was speculation about another party. Are other Ministers offering to resign from the Government today and, if so, will the Taoiseach accept their offers? The resignations must be formally presented to the President. The Leader should, therefore, make a definitive statement to the House, if he will not arrange a debate on the matter. Perhaps the Taoiseach should take another course and go to the President also, given the number of resignations—

**An Cathaoirleach:** Questions to the Leader, please.

**Senator Paul Coghlan:** —and the fact that the country is anxiously waiting in general election mode.

The Leader did not give a detailed answer to my specific question on the Environment (Miscellaneous Provisions) Bill 2011 which seems to breach an EU directive and run contrary to the advice of Ireland's foremost bodies, including An Bord Pleanála, the IDA, Enterprise Ireland and Forfás. It also appears to be in contravention of the national recovery plan. Second Stage is to be taken in the Lower House today, but when will the Bill be brought before the Seanad? It is not in the list of legislative priorities as listed by the Chief Whip and repeated by the Leader in response to a question from Fine Gael. I ask the Leader to make a definitive statement this morning. Has it been transferred from somewhere and leapfrogged in to being given priority status?

**Senator Terry Leyden:** I ask the Leader to arrange for the Minister for Transport or the new Minister for Transport to come to the House later today to discuss the crisis in Aer Lingus. A total of 2,700 passengers are awaiting flights. Seventeen routes have been cancelled and 34 flights cancelled. The IMPACT trade union and the management of Aer Lingus should be brought together to resolve this issue. I regard this as national sabotage at this stage, with so many people unemployed and further jobs now being put in jeopardy. This cabin crew dispute is going on and on. The Government and the State have a major shareholding in Aer Lingus so we have a responsibility. Perhaps the new Minister for Transport, in his or her first act, would intervene in this dispute and try to bring both parties together to resolve this issue because it is a national scandal. Anyone who has been grounded at an airport waiting for flights knows how difficult it is. Jobs are being lost as a result and it is having an effect on exports, business meetings and other commitments. It is embarrassing, to say the least, for the State that a carrier such as Aer Lingus could land in this situation with 34 flights cancelled. I ask the Leader to use his position to contact the Government, the Minister of State with responsibility for labour affairs and the new Minister for Transport and to ask the Labour Court to intervene as a matter of urgency.

**Senator Shane Ross:** I have been a Member of this House a long time and have never seen government by pantomime but this is government by pure pantomime. I would expect Fianna Fáil in its worst hours to behave as it is doing, by asking, in effect, readying up Ministers to resign and filling those Ministries with others.

**An Cathaoirleach:** A question to the Leader, please.

**Senator Shane Ross:** Some years ago I would have expected a little more of the Green Party and I suppose it is no coincidence that the three Members of that party are not here this morning. I imagine they are in another cabal somewhere—

**Senator Fidelma Healy Eames:** They are in a room.

**Senator Shane Ross:** —in another part of Leinster House ready to come out and whitewash the Government once again. We were told this morning on the radio that the Green Party was unhappy with what the Government was doing. The Green Party has been unhappy about many things for a very long time but it seems to be able to take some sort of special magic mushroom happy-happy pills which keeps it—

**An Cathaoirleach:** We are taking questions to the Leader. We are not dealing now with magic mushrooms or anything like them.

**Senator Shane Ross:** I am going to ask the Leader a question. The Green Party seems to stay on board. It was unhappy, so unhappy in November that it was going to force a general election in January. It was so unhappy last week that it was going to force a general election in March and so unhappy is it this morning that, presumably, it is going to come out and state it has examined its conscience and will allow the Government to go ahead and behave in this extraordinary way. I have never come across this situation before where any Minister who decides he or she will not stand in the next general election immediately hands in his or her resignation and there is a mass exodus when new people are put into office. I cannot understand this and the only explanation I can see is that the Government is disintegrating before our eyes, supported by an utterly lame coalition partner. No other coalition partner has ever behaved in this way——

**An Cathaoirleach:** Is the Senator asking for a debate on the matter? We cannot have speeches. The Senator's time has expired.

**Senator Shane Ross:** The Ministers must give a guarantee if they are coming into power that they will not use this very short period simply to appoint cronies to positions of power in semi-State bodies from their locality and from local Fianna Fáil positions.

**An Cathaoirleach:** The Senator has made that point already.

**Senator Ivor Callely:** Once again, I am amused at comments by certain colleagues. Yesterday, the deputy leader of Fine Gael spoke on radio about the country being rudderless and heading for the rocks.

*(Interruptions).*

**An Cathaoirleach:** No interruptions, please.

**Senator Ivor Callely:** He then spoke about the excellent growth in exports and said that the country had a bright future. This morning, the Labour Party spokesperson in the other House commented on the health service. Her comments led me to believe she does not understand how the system works. She spoke about the Department and the HSE getting money for empty beds. She did not speak about service plans, the basis for working out service plans, nor case-mix. I could continue using these technical terms——

**Senator Fidelma Healy Eames:** None of it is working.

**Senator Ivor Callely:** ——and lose my audience——

**Senator Jerry Buttimer:** Please continue.

**An Cathaoirleach:** Questions to the Leader, please.

**Senator Ivor Callely:** Her comments on national radio today might play to the public but it would certainly indicate to anyone with a bit of knowledge that she has no understanding of how the system works. I agree we are in turbulent times and that we need people in leadership roles at the head of every Department. I urge that no Department is left rudderless and that people are put in control who are knowledgeable and who have expertise. I have said before that we have a person as Head of the Government, a Taoiseach who has tremendous experience. He has been on the circuit for a period of time. He has knowledge and contacts and I believe he is putting the country first. I hope he will continue to do so and ensure we will have people as heads of Departments.

(Interruptions).

**Senator Ivor Callely:** I wish to raise the problem of obesity. There has been an expansion in the number of fitness clubs and an increase in the number of people taking exercise. I refer to television programmes such as “Operation Transformation” and also “Count Me In”. I congratulate the programme-makers involved with “Count Me In”. This is a very important issue. People need to be advised when eating in restaurants about their calorie count and about allergen awareness. I recently visited the Bay restaurant in Clontarf which has one of the best——

**Senator Paul Coghlan:** Did it win an award?

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

(Interruptions).

**Senator Ivor Callely:** I ask the Leader to arrange a debate on health and food promotion and food labelling. This is a very important subject which needs a debate.

**Senator Fidelma Healy Eames:** The Callely intake.

**Senator Ivor Callely:** I certainly know what to take.

**Senator Eugene Regan:** We are back to GUBU days with the decision of the Taoiseach on forming a new Government a few weeks out from an election. The *Financial Times* refers to the Taoiseach as being toast. *The Irish Times* refers to the Government as heading for the knacker’s yard yet every effort is being made to delay the election and to delay the recovery of this economy and the image of this country, both domestically and internationally.

The ultimate GUBU event of this week is the inscrutable distinction made by Deputy Mary Hanafin between confidence in the leader and confidence in the Taoiseach. When does the Taoiseach——

**An Cathaoirleach:** The Senator should not make a political speech. I want questions to the Leader.

**Senator Eugene Regan:** My question for the Leader follows. Last year, in the middle of the negotiations on the EU-IMF bailout, the Green Party pulled the plug on the Government and called for an election, insisted on an election, before the end of January. Now, the Minister for the Environment, Heritage and Local Government, Deputy Gormley, is reported to have led a delegation to meet the Taoiseach yesterday, when they urged him to name a date for the election. The Green Party has the means to resolve all our problems, of ensuring a date is fixed for an election. It is within the Green Party’s control because it has the numbers. I do not think the Green Party can side-step this issue any longer. Eight Cabinet members in total have resigned, for one reason or another. The important question is when will this election be called. People have to stand up and be counted. This is very damaging to the country, the economy and our international position.

**Senator Mark Daly:** Tomorrow is the anniversary of the First Dáil and the beginning of the War of Independence. The First Dáil met in the Round Room of the Mansion House with 27 Members present and 35 Members in jail. Those were challenging times.

These are also challenging times. We would do well to recall the founding principles of the first Dáil to give every child the opportunity to achieve his or her full potential in a free

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nation, regardless of the circumstances of his or her birth. We need to find our way back to these principles.

Today also marks the 50th anniversary of John F. Kennedy's inauguration speech in which he advised us: "ask not what your country can do for you — ask what you can do for your country."

**Senator Jerry Buttimer:** Would the Senator do it now for the country?

**Senator Mark Daly:** When he addressed the Dáil in 1963, he quoted the following from George Bernard Shaw:

Some people see things as they are and say why. I dream things that never were and say why not?

We should remember the principles of the first Dáil today as we try to find a way to give all of the children of the nation the opportunity to pursue the happiness to which they are entitled. It is a reflection on this and the other House that the events I describe will go unmarked.

**Senator Jerry Buttimer:** Does the Leader agree that the events of the past 24 hours highlight the fact that the Government is no longer relevant? The people do not care about it; all they want is a general election. I concur with Senator Leyden that the most important issue this morning is the cancellation of flights and the image of Ireland being closed for business. The Government has disengaged and is no longer interested in the country. The Minister for Transport is half in, half out. I ask somebody to meet the board and chief executive of Aer Lingus to bring to an end the mess that is causing chaos in the country. Does the Government have any interest in the people, the work of the country or allowing people to come and go? We are projecting a bad image.

The Minister for Foreign Affairs has gone away, but President Sarkozy can get away with criticising Ireland. The Taoiseach is now also Minister for Foreign Affairs, Minister for Transport, Minister for Enterprise, Trade and Innovation, Minister for Defence, Minister for Justice and Law Reform and Minister for Health and Children.

**Senator Fidelma Healy Eames:** Who is left in the Government?

**Senator Jerry Buttimer:** Other than the Taoiseach, is anyone left? The Minister for Tourism, Culture and Sport has confidence in the leader of the Government but not in the Taoiseach. Holy God, where is the logic in this?

**An Cathaoirleach:** Is the Senator looking for a debate or making a political speech?

**Senator Jerry Buttimer:** I want the Members opposite to face the people. The people do not care what happens within the bubble of Leinster House and want their say. Does the Leader agree that the events of the past 24 hours reflect an attempt by the Taoiseach and Fianna Fáil to cover the cracks and present a different image? The reality is that the universal service charge, tax increases and cuts in pensions are hurting the people.

**An Cathaoirleach:** The Senator is making a political speech.

**Senator Jerry Buttimer:** Does the Leader agree?

**Senator John Hanafin:** It is never too late to do the right thing.

**Senator Fidelma Healy Eames:** That is a sickening comment.

**An Cathaoirleach:** No interruptions, please.

**Senator Jerry Buttimer:** The Government has been doing the wrong thing for 13 years.

**Senator Fidelma Healy Eames:** No action.

**An Cathaoirleach:** Senators will not have an opportunity to contribute if they continue to interrupt.

**Senator John Hanafin:** There is now an opportunity for the relevant committee to outline the way the next Seanad should be run. We should, therefore, take this last opportunity to ensure the Seanad will be relevant for the future. I am conscious that many positive suggestions have been made but not pursued. I was struck, in particular, by Senator Quinn's suggestion in regard to the Malaysia My Second Home Programme. This is an excellent idea. I ask for a debate on how we can incentivise people to reinvigorate the housing market in Ireland in which there is an overhang of 100,000 houses. People from abroad could avail of certain tax considerations to purchase a property and invest in Ireland and, possibly, seek Irish citizenship. America provides such a facility. It would be a win-win and the suggestion is worthy of debate.

**Senator Joe O'Reilly:** The "Lanigan's Ball" approach to government would be great fun——

**An Cathaoirleach:** The Senator should put a question to the Leader; we can have the theatrics on another occasion.

**Senator Paul Coghlan:** The Green Party may not want to dance anymore.

**Senator Joe O'Reilly:** It would be theatre in normal times, but is it appropriate during a period of mass unemployment, emigration and hardship? While it might be a great stroke on a superficial level, have the people moved beyond this? Is it not stretching credulity and tolerance too far?

**Senator Rónán Mullen:** I was taken by Senator Daly's reference to John Fitzgerald Kennedy's inauguration speech. It is appropriate that we mark the anniversary, but I was waiting for him to tell us that the Taoiseach was also thinking about the matter. Other words from the speech spring to mind in the context of ministerial resignations and the forthcoming injection of new blood.

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

**Senator Rónán Mullen:** Kennedy's words, "let the word go out ... to friend and foe alike, that the torch has been passed to a new generation," remind me that the dead wood of the Cabinet is to be torched and that the torch will be passed to a new generation of Ministers for only a few weeks.

I have been critical of the Green Party, but it is being unfairly blamed for its decision to go into government in order to further its agenda. I disagree with certain aspects of it which are seriously wrong-headed, but it is mad to blame a small party for going into government. However, the Green Party lost sight of the value of trying to get into government when it subjected the country to unnecessary chaotic speculation in its desire to gazump the larger party by calling for the holding of an early general election. It appears it could gazump its partners once again by stating it will negotiate on staying another year in government in the light of the appointment of an almost entirely new Cabinet.

**An Cathaoirleach:** Questions to the Leader, please.

**Senator Rónán Mullen:** Some 150 academics have written an open letter criticising proposals made in the Croke Park agreement which they claim pose a serious threat to academic freedom. They state: “The right to permanency and tenure to retirement age is the bedrock on which academic freedom rests.” We should not undermine academic freedom, given that some of the more important criticisms of what has occurred in this country in recent years have been made by people in academia rather than in the Oireachtas. It is important we protect their work.

**An Cathaoirleach:** The Senator’s time has concluded.

**Senator Rónán Mullen:** In defending the right to tenure as a prerequisite to protect academic freedom, we must not lose sight of the fact that many academics employed on a temporary basis do not enjoy the same rights in our colleges. They have been done an injustice during the years. We must find a way to protect the rights of existing academic staff in a way which will not be at the expense of those who have contracts which are more vulnerable to expiry.

**Senator Geraldine Feeney:** As Government Front Bench spokesperson on health and children, I pay tribute to the outgoing Minister for Health and Children, Deputy Harney. I wish her and the other Ministers who are resigning well. I commend and praise her for the commitment she has shown to this Chamber in terms of her availability. Her calibre will be difficult to replace. She has been the most reforming health Minister ever. Her major successes include the cancer strategy, the fair deal scheme, the establishment of HIQA and the negotiation of the consultants’ contract, all of which have improved the lives of citizens.

No fair-minded person could say they were not achievements brought about by the Minister, Deputy Harney. In her presentations to this Chamber, she brought much humanity to her role as Minister. She made presentations that had a significant humane aspect to them.

I was very sad to hear a certain medical professor on Pat Kenny’s radio show this morning. It is only my opinion but that particular man has a huge personal vendetta against the Minister.

**An Cathaoirleach:** That is not relevant to the Order of Business.

**Senator Geraldine Feeney:** It is the likes of that medical professor——

**An Cathaoirleach:** That person could be identified and I do not want to identify people who say things on radio.

**Senator Geraldine Feeney:** ——and a small group of his medical colleagues who stand in the way of reform. However, I was heartened when I heard former Minister Gemma Hussey say the most wonderful and nice things about a woman who has given 34 years of her life to State service. I wish her well and hope she enjoys her retirement.

**Senator Fidelma Healy Eames:** Will the Leader explain why the Taoiseach is good enough for this country but not good enough to lead his own party? That is a hammer blow.

**An Cathaoirleach:** That is not relevant to the Order of Business.

**Senator Fidelma Healy Eames:** That is essentially what was said.

**Senator Donie Cassidy:** You voted against Deputy Enda Kenny.

**Senator Fidelma Healy Eames:** There is huge public outrage. This morning people woke to hear that the Minister for Health and Children is getting a €310,000 pay-off when the health service is arguably in a worse state than when she took over.

**Senator Geraldine Feeney:** What about the tax element?

**An Cathaoirleach:** The extent of anyone's pension is not relevant.

**Senator Fidelma Healy Eames:** More people were on trolleys on a number of days this year than ever before. When Ministers exit, they should evaluate their records.

**An Cathaoirleach:** Pensions are in place and people will only——

**Senator Fidelma Healy Eames:** Even more——

**An Cathaoirleach:** People will only get what they are entitled to in pensions.

**Senator Fidelma Healy Eames:** Even more sickening is that the former Minister for Foreign Affairs, Deputy Martin, will get €95,000 in severance pay.

**An Cathaoirleach:** That is not relevant to the Order of Business.

**Senator Fidelma Healy Eames:** He should give it up when 1,000 people——

**Senator Geraldine Feeney:** Your fellows got it in their day too.

**Senator Fidelma Healy Eames:** ——per week are leaving Ireland to look for work abroad and when the Government is trying to bring in a climate change Bill which will further decimate the economy. The Leader may not answer my question but I ask him nonetheless how he expects the Government to continue with such behaviour and the public to continue to swallow it?

**An Cathaoirleach:** That is not relevant to the Order of Business.

**Senator Feargal Quinn:** I support Senator Feeney's words about the Minister for Health and Children, Deputy Harney. She showed this House great respect during the years and was willing to come in and take questions. What she has done during the years has been quite brave inasmuch as she accepted a poisoned chalice of a portfolio in which no one has succeeded. I do not know of any Minister with responsibility for the health portfolio since perhaps Noel Browne who has left office without being criticised. When she accepted that poisoned chalice, she knew she was not accepting an easy job. I am delighted Senator Feeney said this.

Senator Hanafin raised the question of tourism. I know we will not find time to debate it at this late stage but there is a need to hold our heads up high. Last week the Condé Nast travel magazine published the best hotels in Europe. These were five star hotels and four of the top ten were Irish. That is a sensational achievement but very little has been heard about it. The first was Ashford Castle and the other three were Mount Juliet, Dromoland Castle and Adare Manor. This is not the judgment of journalists but of people who have stayed in these hotels and voted for them. Four of the top hotels in Europe are in Ireland and we should be proud of that and publicise it.

Like Senators Leyden and Buttimer, I am concerned about the difficulties in Aer Lingus but let us not take the step which got us into trouble in the past. Whenever there was a difficulty, someone called on the Government to sort it out. That really means take over and say to the strong arm of management that it must give in to the unions. There are a number of unions in

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Aer Lingus and all have agreed to the terms. One union agreed approximately 15 months ago but has refused to do what it agreed to do for 15 months. The worst thing would be for the Government to say it is going to sort this out. That is what happened in the past and when it happened, it set an example to those who accepted the terms that the Government would come in and force management to give way to a union which did not accept the terms. Let us ensure this State does not start to interfere in the commercial practices of an organisation despite the fact we would like to see Aer Lingus operate well and bring tourists to this country.

**Senator Terry Leyden:** I asked for Labour Court intervention as opposed to Government intervention.

**Senator Nicky McFadden:** It seems the survival of Fianna Fáil is more important than the good of the country. I had a very disturbing telephone call this morning from a constituent of mine who is down €350 per month. She is a widow with two children and she is trying to put them through college. She is a young working widow and it is absolutely galling for her to see retiring Ministers who are still in office get a pension of €95,000 and a lump sum payment of €310,000. For the good of our country, the Government should call a general election and let the Green Party do thing honourable thing even at this eleventh hour.

I join Senator Feeney in complimenting one good thing the Minister for Health and Children, Deputy Harney, did, namely, establish centres of excellence. However, I agree with Senator Healy Eames that more people have been on trolleys in the past year than ever before. That is a terrible indictment of the Minister's tenure.

**Senator James Carroll:** I reiterate the call for an urgent debate on Aer Lingus. Senator Quinn said he does not want us to interfere directly but a number of constituents of mine — some passengers and one or two staff — who reside in the east Meath and Drogheda area have contacted me because they are seriously concerned. Senator Leyden said the Labour Court needs to get involved as a matter of urgency. There is obviously a serious breakdown in communications between management and unions and we need to find a resolution to this issue. The unions have accused Aer Lingus of taking a confrontational approach while Aer Lingus has accused the unions of taking an unreasonable one. The reality is that everyone wants to find a resolution to this as swiftly as possible. I call on the Leader to arrange a debate or that the House pass a motion on this issue. It is critical at this time that flights operate to schedule. We do not want people to lose their jobs. It is critical we have a debate as soon as possible.

**Senator Ivana Bacik:** There has been great deal of talk this morning about the resignations and the Cabinet reshuffle. I join Senator McFadden in hoping the Green Party does the honourable thing——

**An Cathaoirleach:** Questions to the Leader, please.

**Senator Ivana Bacik:** ——and finally pulls the plug and calls time on the Government, which is long overdue. I hope we will see that today.

In terms of one of the Ministers who has called time, the Minister for Health and Children, Deputy Harney, perhaps in her final act as Minister, today published the Prohibition of Female Genital Mutilation Bill, about which I am delighted. It is a Seanad Bill which has wrongly been published on green paper. At my initiative, she decided to publish it some time last year when I initiated a debate in Private Members' time on the need for legislation to prohibit female genital mutilation. I am very glad we are seeing this Bill. Will the Leader arrange a debate on

this Bill if there is time and we have some weeks remaining? I would very much like to see the Bill introduced and debated in this House. It would be a very worthwhile use of our time. If not, I hope it will be a priority for the next Government. Again, I welcome its publication today.

**Senator Donie Cassidy:** Senators Fitzgerald, O'Toole, Alex White, Coghlan, Regan, Buttimer, Hanafin, O'Reilly, Feeney, Healy Eames, McFadden and Bacik all expressed their views on the retirement of our Ministers. I wish well all the Ministers who made a magnificent contribution. Anyone who serves in Cabinet for 13 or 14 years has made an enormous contribution and particularly when we had such buoyancy in the economy for most of that time.

I remember when the Minister, Deputy Harney, came to the attention of the former Taoiseach, Jack Lynch, at an Ard-Fheis and he appointed her to the Seanad in 1977. In 1981 and the two elections in 1982 the late Senator, Kieran Phelan, was her director of elections and we all participated and worked very hard to get her elected in those three general elections. She went on to make an incredible contribution over 34 years as has been said by colleagues here. When she became a Minister of State she gave us the clean air that we have over our cities and towns, which was an incredible achievement in very difficult times. I worked very closely with her when she was an excellent Minister for Enterprise, Trade and Employment and I was Chairman of the Joint Committee on Enterprise and Small Business. I travelled with her to America, Canada and other countries where she was held in the greatest respect. I remember one evening at the Smurfit awards in New York she received outstanding praise from the world leaders and captains of industry who were in attendance. As an Oireachtas Member I was proud to be present at the No. 2 table——

**Senator Paul Coghlan:** As a Senator we always thought the Leader was No. 1.

**Senator Donie Cassidy:** —— and to hear at first hand the respect people had for a wonderful Minister for Enterprise, Trade and Employment.

**Senator Rónán Mullen:** The Leader might mention that she came from Ahascragh in County Galway.

**Senator Donie Cassidy:** She is very proud to come from Ahascragh in County Galway. It is nice to see someone coming from that little village and starting in the Seanad. Who knows, Senator Mullen might follow Senator Ross into the other Chamber. Is an announcement imminent?

**Senator Rónán Mullen:** The Leader has my phone number, if he wants to pluck me from the relative obscurity of the Seanad.

**An Cathaoirleach:** I ask the Leader to reply on the Order of Business. We are not promoting anyone for Dáil Éireann.

**Senator Donie Cassidy:** She was leader of a political party, which was a first, and she was the first woman Tánaiste, another achievement I want to recognise. She did an outstanding job as Minister for Health and Children in the very difficult portfolio. As has been said by Senators Feeney, Quinn, McFadden and others, she showed total commitment to Seanad Éireann. When she came in here she answered all the questions put to her. She was of great assistance in establishing the question and answer format at the end of statements or any other time; she was fully supportive of this House.

I also wish every success and happiness to the Ministers, Deputies Batt O'Keeffe, Killeen, Dermot Ahern — who was also totally committed to this House — and Dempsey, who was

[Senator Donie Cassidy.]

here yesterday. His last function as a Minister was in this House yesterday putting through the legislation giving the Garda the authority for compulsory breath testing at road accidents.

**Senator Paul Coghlan:** Has the Minister, Deputy Batt O’Keeffe, left?

**Senator Donie Cassidy:** I have been a colleague and live in his constituency of Meath West. He has made an incredible contribution having been in Cabinet since 1992, with the exception of the two and a half years we were out of office.

I have no doubt that the Taoiseach will deal with the vacancies in Cabinet today. They are not just for one or two weeks; my guess is that they will be for three months.

**Senator Maurice Cummins:** The Deputy Leader clearly does not agree with the Leader.

**Senator Donie Cassidy:** It must be remembered that a Cabinet Minister holds office until the day the new government takes over. I remind colleagues that the Green Party and Fianna Fáil are totally committed that the general election will be called — it is the prerogative of the Taoiseach — as soon as the finance Bill has passed through this House. The finance Bill will be published today and——

**Senator Maurice Cummins:** Will the Climate Change Response Bill be finished by then?

**Senator Donie Cassidy:** —— from then we will be able to proceed with that final piece of legislation which must pass through both Houses because it is part of the budget. All responsible Oireachtas Members — they are on all sides of this House — want to see that take place and then the people will have an opportunity to elect a new government.

**Senator Maurice Cummins:** Bring it on.

**Senator Donie Cassidy:** Since I became a Member we have very seldom been in opposition and I have often said we were very good Members to be in government. However, I must compliment the Opposition Members. They are incredible as people who have been in opposition, but then they have been there for quite some time and I suppose they got used to it. That was a difficulty we had when we took over ourselves.

**An Cathaoirleach:** I ask the Leader to concentrate on replying on the Order of Business.

**Senator Donie Cassidy:** Senator Walsh asked for a debate on the high cost of the tribunals, some 14 years on. I will try to see if I can facilitate the request that has been on the Order Paper for some time. Senator Coghlan asked about the Environment (Miscellaneous Provisions) Bill that has been published, which will be passed by this House before we go to the country.

Senators Leyden, Buttimer, Quinn and Carroll spoke about the difficulties being experienced by Aer Lingus, its workers and passengers. I agree with everything that was said this morning and Senator Quinn has great experience in this area as has Senator Leyden. It would be common sense for everyone to sit down and negotiate whatever needs to be finalised and let the company trade in these very difficult times. The company should oblige the people who want to support Aer Lingus by giving the service for which it has been renowned for many decades.

Senator Callely spoke about the major export growth and I welcome the 150 jobs coming to Cork from the leading software company, Quest Software, which has 100,000 customers worldwide. It is more good job creation news. The Senator also spoke about obesity and suggested that a calorie count of food being sold should be displayed in restaurants, which is a very

good idea, and I would have no difficulty in passing on those strong recommendations to the Minister.

Senator Daly reminded us that today is the anniversary of the First Dáil and acknowledged those who were in attendance as well as those elected Members who were in jail at the time. I fully agree with the sentiments that we should cherish all the children of the nation. How time has flown if this is the 50th anniversary of the John F. Kennedy inauguration. It was an uplifting experience for everyone in Ireland when President Kennedy took office and he certainly opened up the new Ireland and gave us that massive confidence as an Irish people, something we will never forget.

**Senator Terry Leyden:** It is 85 years since Fianna Fáil was founded in 1926.

**An Cathaoirleach:** No interruptions, please; the Leader is replying to the Order of Business.

**Senator Donie Cassidy:** That is quite some time ago.

**Senator Maurice Cummins:** We are getting some history lesson.

**Senator Donie Cassidy:** Senator Hanafin spoke about what the new Seanad could do. He also spoke about Senator Quinn's suggestion on the Malaysia My Second Home Programme. As the finance Bill will be published today, it will represent an excellent opportunity for anyone who wants to make proposals in that regard. Senator Quinn also congratulated the four Irish hotels that are in the top ten hotels in the world, which is an outstanding achievement. I congratulate everyone who has made this possible and worked on this for so many years.

Order of Business agreed to.

### **Communications (Retention of Data) Bill 2009: Committee and Remaining Stages**

**An Leas-Chathaoirleach:** I welcome the Minister of State, Deputy Peter Power.

Sections 1 and 2 agreed to.

### SECTION 3

**An Leas-Chathaoirleach:** Amendments Nos. 1 and 2 are related and may be discussed together, by agreement. Is that agreed? Agreed.

**Senator Ivana Bacik:** I move amendment No. 1:

In page 5, subsection (1), line 2, to delete "2 years" and substitute "1 year".

I welcome the Minister of State. There was some speculation on the Opposition benches as to who would represent the Government on this Bill, given the current turmoil within the Government.

**Minister of State at the Department of Foreign Affairs (Deputy Peter Power):** It is only me.

**Senator Ivana Bacik:** We are delighted to see the Minister of State.

**Senator Eugene Regan:** We were wondering about the Minister of State's title.

**Deputy Peter Power:** I am sorry to disappoint the Senators.

**Senator Ivana Bacik:** We all wonder how long the Government will last and whether this may be the last piece of legislation to go through all Stages, as appears likely today.

Regarding amendments Nos. 1 and 2 which are to be dealt with together, a number of Senators dealt fully with these issues on Second Stage in April 2010 which seems like a long time ago. At that point I indicated my party colleagues would seek to make the same amendments in the Dáil. The Minister of State will be familiar with the argument which concerns the length of time for which data should be retained. We have argued that Ireland should not take a maximalist approach, namely, seeking to adopt the maximum period of two years for retention of telephone data and one year for Internet data. We believe this will hamper business and on this point we have a great deal of support from a range of different organisations. The Data Protection Commissioner recommended as sufficient a one year retention period for telephone traffic data and a six month period for Internet data. The commissioner pointed out in his report that the Garda Síochána rarely requests data that is more than one year old and that a two year retention period seems unnecessarily and unduly onerous. The Internet Service Providers Association of Ireland was in touch with my party on Second Stage and I heard again from the organisation this week. It pointed out, as it has done to the Minister for Justice and Law Reform, Deputy Ahern, and his Department, that a one year retention period for Internet data is too long and that we should opt instead for a six month retention period as have countries such as Germany, the Netherlands, Slovakia, Luxembourg and Lithuania. The association argued, persuasively in my view, that the extra costs and resources required to meet the one year requirement for Internet data will put many Irish Internet service providers at a distinct disadvantage. At a time when we are trying to ensure we do not put any obstacles in the way of business, and when Internet and IT companies are doing well in Ireland, we must facilitate them and listen to their concerns.

I shall not dwell further on the point because the arguments have been well rehearsed but I ask the Minister of State to reconsider at this final stage the time period for retention. The Minister of State comes to this matter with a fresh eye. A former Minister, Michael McDowell, stated originally he would use the maximum periods allowed under the directive. That was in a very different economic and political climate and it is time to reconsider the retention periods.

**Senator Feargal Quinn:** I support every word spoken by Senator Bacik. I welcome the Minister of State. I realise he is new to this particular topic and challenge. I remember speaking in this House 15 years ago about how Ireland could become the Internet centre of the world. This was when the world wide web was just beginning and people did not know what it meant. We pointed out that just as places such as Singapore and others had determined to be hubs in Asia Ireland, too, might become a hub. To do that, however, we had to identify how we would make the country an attractive place. These are precisely the sort of issues now under discussion.

Senator Bacik mentioned other countries which have established very different standards from those in this country and in which there does not appear to be a need to do what we are doing in this regard. Irish Internet service providers will find a very heavy cost in this measure. Recently IBEC stated this is not the direction we should take if we are to become a leading place for Internet communications. There is a very heavy cost in maintaining data for so long a period which makes it much less attractive for a person to invest in Ireland. We are sending out a message out that the length of retention time in Ireland is longer than in other countries. The resulting cost is such that it makes Ireland an unattractive place to be. Let us ensure we regard this matter seriously and realise the future lies in Internet communications. If we are not determined to lead in this direction the message we send out will deter people from investing in the country.

**Deputy Peter Power:** I thank Senators for their submissions. I propose to discuss these two amendments together because they refer to the periods for which data are retained. Section 3 of the Bill provides for the retention of telephony data for a period of two years and of Internet data for 12 months. In essence, the purpose of the amendments is to reduce the existing retention periods to half of the times provided for in this Bill.

The essential issue is one of balance between the effective administration of justice and the placing of an overly onerous obligation on business in this country. Our judgment must be as to where that balance lies. I would be very concerned by any measure, as mentioned, that would place Ireland at any competitive disadvantage in regard to e-commerce. All the evidence in regard to the ongoing and disproportionate amount of investment in this area by global companies in Ireland suggests that even the current periods for retaining data, to be halved by this Bill, appear not to be a detraction towards such inward investment. However, I am advised that the acceptance of this amendment would hamper seriously the law enforcement authorities in their continuing efforts to bring serious criminals, including terrorists, to justice. I know this is not the intention of the Senators but it would be the inevitable outcome.

With regard to the different time periods in the negotiations which gave rise to the data retention directive, the time period for data retention was probably one of the most contentious issues discussed and the most difficult on which to reach agreement. The time period for data retention was probably one of the most contentious issues discussed and the most difficult on which to reach agreement. As is the case with many EU legal instruments, it was acknowledged that many member states had differing traditions and practices, sometimes built up over many years, relating to retention of data and its use as a weapon in the fight against serious crime and terrorism. As such, it would be difficult to agree on a standard or homogeneous retention of data right across the European Union.

A number of member states already had legislative measures in place governing data retention but other member states had no legislation. It was for this reason that a range of retention periods of not less than six months or more than two years was eventually agreed. This represented a parameter within which each member state could operate. Therefore, any retention period within those ranges is perfectly valid and fully in compliance with the terms and aims of the directive. The debate here and in the Dáil and committee concerned where the balance lies within those parameters.

On Second Stage the Minister for Justice and Law Reform explained in some considerable detail our traditions and practices as they relate to data retention, built largely on voluntary disclosure and good will between the various agencies. There is no need for me to repeat here what he said as it is on the record of the House. I emphasise the importance of data retention in the investigation of crime. It would be very difficult to exaggerate the importance of this method in criminal detection and investigation, especially in the modern world where digital communications technology is ubiquitous. One can think of any number of ongoing investigations which are lengthy, detailed, complex and are taking well over a year. Most Senators know what I am referring to.

It is accepted that the majority of disclosure requests are for data less than three months old. The ability to access older data can make a big difference in the investigation and prosecution of crime, especially crime resulting from lengthy planning or of an ongoing nature. Other countries with different methodologies in fighting crime may lay less emphasis on data retention and more emphasis on surveillance, covert operations or other evidence gathering techniques and measures, for example. Shorter retention periods might be more appropriate in these countries. Having said this, our 12-month retention period for Internet data is very much in the mainstream and comparable with other European countries and neighbours.

[Deputy Peter Power.]

Senators are aware that during the preparation of the Bill there was an extensive consultation period between the Department of Justice and Law Reform, various service providers, their representative associations and the Garda Síochána. This was one of the reasons for the delay in bringing the Bill before the Houses. We wanted a complete and full consultation between all relevant parties. During this consultation process the issues relating to the nature of the information to be retained, the State's position and costs and the retention periods were discussed in detail. In addition, the 12-month retention period for Internet data was agreeable to all, particularly in the light of the cost implications.

I also refer to the issue of costs, which was raised on Second Stage and also by Senator Quinn today. For reasons of commercial sensitivity, the various service providers were not prepared to disclose individual costs, which is fully understandable. However, they agreed through one representative association to offer a composite figure compiled by the nine largest communications companies in the State. They estimate there will be an initial once-off capital cost of €2.9 million, with the annual running cost of data retention coming to a total of €1.577 million. It should be noted that the Internet companies wish to retain the data for some period themselves; therefore, the cost is not as a direct result of this legislation.

This is a composite figure for the nine largest communications companies as supplied by the industry and, in proportionate terms, this is a relatively small amount when one considers the annual turnover of the telecommunications sector in this country. It should be noted that when addressing the issue of costs and the periods of retention, some of the data the service providers are obligated to retain are already held by service providers for commercial purposes such as marketing and billing. The figures I mentioned should not be taken to be resulting directly from the enactment of this legislation.

We should not actively pursue a course that would allow commercial companies to be compensated by the State for activities from which they may already benefit. I reiterate the comments of the Minister from Second Stage in expressing the appreciation of the Government and the Department to the various service providers for their willingness to operate the data retention scheme in such a manner of good will and co-operation with law enforcement authorities to date. In particular, as in line with a number of other member states in the European Union, costs are not reimbursed and this is a good example of how industry can give practical effect to its own social responsibilities in helping our State, law enforcement and taxation agencies to fight crime by disclosing to them the information potentially at their disposal. For the reasons stated I am not in a position to accept the amendment.

**Senator Ivana Bacik:** I am disappointed to hear the Minister of State's response. It is perhaps misleading to suggest everyone has agreed these retention periods as this week the Internet Service Providers Association of Ireland has been in touch with us to indicate that it sees the Bill, as currently drafted, as placing Ireland at a competitive disadvantage. It refers specifically to the overly long period for which providers will be obliged to retain data and points to other countries having shorter retention periods. There is significant disagreement. Perhaps I do not have a highly skilled financial brain but the costs mentioned sounded rather large as a burden on the service providers. It is a reasonable point and I am disappointed it has not been considered.

I am told there was a judgment in the High Court last May in a case taken by Digital Rights Ireland challenging aspects of the data retention directive. I am not sure whether the Bill was challenged specifically but the ruling cast doubt about the future of the Bill. I understand Mr. Justice McKechnie indicated the European Court of Justice was the suitable forum in which to deal with any challenges to European data retention law.

I am not clear what, if anything, has happened since, but I wonder whether, given the long delay between Second Stage and now, the court case or the pending challenge was a factor? If so, how is the issue being addressed in the Bill?

**Senator Eugene Regan:** I dissent from the position adopted on this side of the House. In the interests of law enforcement there must be a reasonable period for the retention of this type of data and the period specified in the Bill is reasonable. It is not just an issue of combating organised crime, which is the most serious type, but also cyber-crime. The EU emissions trading system could be brought down by criminal activity, hacking, etc.

By and large, the argument is correct that what is involved is a once-off cost for the data service providers. Whether the period is six months, one year or two years, it is *de minimis* in regard to what the extra period of retention would involve in terms of cost. The period specified in the Bill is appropriate, balanced and reasonable.

**Senator Feargal Quinn:** I understand exactly the point made by Senator Regan but we do not want to place any hindrance in creating good law in the fight against crime. Like Senator Bacik, I thought the sum of money to be quite substantial. If we are looking at the goal of being the hub of e-commerce — it may not happen now — each time we take a step that is out of line with other countries and that brings about extra burden will make the process more difficult. On the other hand, I understand exactly the point being made, especially that the State should not subsidise companies for elements that would be of benefit to them.

I am disappointed the amendment will not be taken but we all want to support the fight against crime. It is not just this point and there are a number of other amendments covering the same area.

**Deputy Peter Power:** I thank Members for their contributions. This is a matter of judgment and balance. I could easily foresee relevant investigations, particularly of white collar crime, which is perpetrated through the Internet and use of e-mails or other digital technologies. I envisage that prosecutions in this area would be compromised if the period for data retention was as short as proposed in the amendment. While it is not wrong to have a view on this matter, it would be wrong if our reputation as a good place in which to do business was to be damaged because short retention periods made it impossible to prosecute white collar criminals.

Every country takes a different approach to white collar crime. Ireland is frequently criticised because it is much more difficult to prosecute those who commit crimes such as fraud. Other cases under investigation have also been criticised. The reasons for having prolonged investigation periods are the nature of our jurisprudence and investigative procedures and the rights afforded under the Constitution. While the nature of our system results in lengthy investigations, it does not mean outcomes are unsatisfactory. The constitutional rights of citizens are also protected. To retain data, especially Internet data, for a period of only six months from transmission would prevent gardaí from accessing details regarding the transmission of data after that period and clearly prejudice investigations.

I am also conscious of Ireland's status as an e-commerce hub, an issue on which Senator Quinn's views are well known. No one wishes to introduce legislation that would place us at a disadvantage, especially in the current economic climate. I refer the Senator to figures for average retention periods for Internet data in European Union member states. Across the Union, the average period is 12.3 months, which is greater than the period proposed in the Bill. The proposal does not put Ireland at a competitive disadvantage. The decision of a global or international company investing here would be based on many factors other than the pro-

[Deputy Peter Power.]

visions of data retention legislation. Notwithstanding this, I accept the Senator's point in that regard.

As the case under the 2006 directive to which Senator Bacik referred is still before the courts, it would not be appropriate for me to comment on the matter at this stage. I understand, however, that it does not relate specifically to the provisions of the Bill.

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

Amendment declared lost.

Amendment No. 2 not moved.

Section 3 agreed to.

#### SECTION 4

**Senator Ivana Bacik:** I move amendment No. 3:

In page 5, subsection (1)(d), line 43, after "preserved" to insert the following:

"or that are the subject of a request under *section 6*".

This is a technical amendment to make it clear that data should not be destroyed where a request for disclosure has been made. The Minister stated in the Dáil that this point was catered for by the reference to "one month" in section 4(1)(d). The insertion of the amendment would provide additional clarity regarding the intention in section 4.

**Deputy Peter Power:** I understand the purpose of the proposed amendment, namely, to ensure data are not deleted immediately at the end of the retention period. The objective of the amendment is catered for in the Bill in a slightly different but equally valid manner. Under section 4(1)(d), data retained for the purposes of the Bill must be destroyed by the service providers at the end of the specified retention periods. There is an exception where data have been accessed and preserved as a result of a disclosure request, as provided for under section 6. The amendment seeks to add data which are the subject of a request by law enforcement authorities.

The amendment is unnecessary for two reasons. First, section 4(1)(d) imposes an obligation to destroy data that have been retained under section 3, namely, data that would have been the subject of a request under section 6, in other words, data that have been accessed and preserved. Therefore, the objective the amendment seeks to achieve is catered for. Second, retained data must be destroyed by the service providers after two years in respect of telephony data and 12 months in respect of Internet data.

As I indicated, extensive discussions and a series of consultations took place between the Department of Justice and Law Reform, the Garda Síochána and service providers. During the discussions the question arose as to what would happen in the case of last minute requests for data, for example, a request made one hour before data were due to be destroyed and they could not be disclosed in the short time available. I was assured that this occurred rarely, if ever, under the existing arrangements. Nonetheless, it was considered prudent to cater for such an eventuality.

With these concerns in mind, section 4(1)(d) provides for a grace period of one month after the retention period has expired for data to be destroyed. This allows sufficient time to arrange for the destruction of data and any late requests within a specified time for the data to be

disclosed. Both the service providers and law enforcement authorities have expressed satisfaction with this arrangement. If it deals adequately with the intent of the amendment, it is not necessary to include the amendment in the Bill.

Amendment, by leave, withdrawn.

Section 4 agreed to.

Section 5 agreed to.

## SECTION 6

**Senator Feargal Quinn:** I move amendment No. 4:

In page 6, subsection (4), line 39, after “request.” to insert the following:

“Where an oral request is made, a unique request numbering system should be used whereby a unique identifier number is allocated to each oral request. This unique identifier number must then be placed on the subsequent written request, as per *subsection (5)*.”.

The amendment speaks for itself. Section 6(4) states: “A disclosure request shall be made in writing, but in case of exceptional urgency the request may be made orally”. While I accept it will not be commonplace to make an oral request, such requests will be made. The sole purpose of the amendment is to enable the request to be traced much more easily. I accept the proposal will add some red tape, which I always oppose, but this is an exceptional case. The amendment would speed up the process, deliver benefits and not impose a cost. For this reason, it would be worthwhile.

**Deputy Peter Power:** While I understand the motivation behind the amendment, section 6 provides that where a member of the Garda Síochána not below the rank of chief superintendent — this is a significant point — makes a disclosure request to a service provider, the request must be made in writing. However, in cases of exceptional urgency a request may be dealt with orally and where such a request is made, it must be confirmed to the service provider in writing within two working days.

The amendment proposes that where an oral request is made, a numbering system should be used, whereby a unique identifier number would be assigned to each oral request and included in the subsequent written confirmation. I appreciate the intention behind the proposal and the attempt to ensure oral requests are followed by written confirmation, a highly desirable outcome. However, this provision reflects standard Garda procedure in cases of exceptional urgency. It is based on a similar provision in the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993, the Criminal Justice (Terrorist Offences) Act 2005 and, more recently, the Criminal Justice Surveillance Act 2009, whereby an oral request is made in circumstances of extreme urgency and followed by written confirmation.

In the vast majority of cases a written request will be the norm, whereas an oral request would only be made in an extreme case. In a case of exceptional urgency such as a terrorist threat to the security of the State not only would there not be time to prepare a written request, there would also not be time to go looking for the next incremental identifying number in an infrequently used system. Therefore, the procedure proposed would not be practical.

It should be noted that the reason a request may be made orally is a possible incident that requires the utmost urgency. The focus of the Garda and investigating authorities will inevitably be on matters other than numerical administration.

[Deputy Peter Power.]

I refer to a kidnapping, the prevention of a suicide where time is of the essence and there is no time to submit a request in writing, let alone generate and assign a unique identifier number to the request.

In addition to the points made, if we were to accept the amendment, it would run contrary to the provisions of section 7 of the Criminal Justice (Surveillance) Act 2009 which allows a member of the Garda Síochána, the Permanent Defence Force or the Revenue Commissioners to carry out surveillance in urgent cases. In these circumstances, a written record of the surveillance must be made within the periods specified under the Act. Introducing a requirement in this Bill for a unique identifier number would create a discrepancy between the two. None of us wants to create such a situation.

Similarly, it would not be appropriate to introduce a provision in legislation dealing with an administrative procedure of this nature. The important point is that the request will be confirmed in writing within two working days. This is a system used by the law enforcement authorities and it has worked without difficulty to date. I see no reason to depart from it. I must, therefore, decline the amendment.

**Senator Feargal Quinn:** I understand what the Minister of State is saying. The request must be submitted in writing within two working days. This removes my concerns to a certain extent. We attempted to ensure matters will be easily traceable in order that they can be followed up. In the fight against crime we do not want to have a discrepancy between the Act and the Bill. I am happy, therefore, to withdraw the amendment.

Amendment, by leave, withdrawn.

**Senator Feargal Quinn:** I move amendment No. 5:

In page 6, between lines 42 and 43, to insert the following subsection:

“(6) A service provider who in good faith discloses data under a request which purports to be in accordance with the provisions of the Bill and/or who provides the wrong data, also in good faith, should be immune from civil action and/or criminal prosecution.”.

This refers to someone who provides the wrong data but in good faith. Such a person should be immune from civil action. It is highly unlikely that someone who provides the wrong data in good faith will be prosecuted, but the amendment seeks to ensure that would be the case. I do not know how easy it is to prove something was done by mistake. However, I doubt anyone would intend to prosecute someone who provided incorrect data. Perhaps the Minister of State might explain the State’s viewpoint.

**Deputy Peter Power:** As I am not aware that this would be a criminal offence, the issue does not arise. Section 6 enables the Garda Síochána to request service providers to disclose retained data. The amendment seeks to include a new subsection to provide that a service provider which inadvertently disclosed data that purported to be in accordance with the new regulation but which was not, or which provided the wrong data, would be immune from civil action or criminal prosecution.

I remind the Senator that the provisions in respect of the retention of Internet data are not new. Service providers have been retaining and responding to requests for the disclosure of telephony data since Telecom Éireann fell within the remit of the then Department of Posts and Telegraphs. It was the main provider of telephony services in the State. The current data retention arrangements operate within the statutory provisions established by the Criminal

Justice (Terrorist Offences) Act 2005 on the basis of goodwill and co-operation between the Garda Síochána and service providers. This means that both sides use common sense when requesting and supplying data. The disclosure request will be sufficiently clear and leave the service provider in no doubt it is in compliance with the Bill. In turn, the service provider must have procedures in place to ensure the correct data are accessed. That is why the memorandum of understanding, referred to during the debate on Second Stage, is so important. The memorandum of understanding is being drawn up between service providers and will ensure both sides are clear on how the system will operate.

The current disclosure regime under the Criminal Justice (Terrorist Offences) Act operates well on the basis of goodwill. There is no penalty for failing to comply with a disclosure request. The reason for this is we do not want to draw criminal law into a system that operates very well without it. However, section 12 of the Bill provides that a judge designated to oversee the operation of the provisions of the legislation may communicate with the Minister at any time on disclosure requests if he or she considers it desirable to do so.

The Minister intends to keep the operation of the Bill under review. There is provision for a European-wide review of the directive. The intention of the amendment is laudable, but in practice the system has worked well to date without the proposed amendment. Therefore, it is not being accepted.

Amendment, by leave, withdrawn.

**Senator Ivana Bacik:** I move amendment No. 6:

In page 6, between lines 42 and 43, to insert the following subsection:

“(6) Where data that relate to a person are in the possession of a service provider, and a disclosure request in respect of that data has been made under this section, that person shall be notified of the existence of the request within three months from the date of the request.”.

This is proposed to ensure an extra safeguard in terms of the civil liberties aspect of the legislation. I first raised this issue in February 2009 in an article in *The Irish Times*. That shows just how long the legislation has been in gestation. At the time we were debating the retention periods and the mechanisms for operating the Bill. I suggested an amendment was necessary to ensure section 10(2) dealing with the complaints procedure would be effective and workable. It provides that people who believe data relating to them and in the possession of a service provider have been accessed following a disclosure request may apply to the referee for an investigation into the matter. That is an important safeguard, but how will a person know a disclosure request has been made? I suggest an amendment is required to ensure a person will be notified when a disclosure request is made under the section.

The response of the Minister of State will be that this would not be practical for security reasons and in the interests of law enforcement. There is a duty of notification in other jurisdictions, including Germany, the United States and Canada. It cannot be an immediate duty because that would endanger the system of law enforcement and hinder the investigation of a crime. However, there is no reason we could not have a duty of notification following a delay; I suggest a period of three months in this regard, but it could be longer.

In principle, this provision is important to give teeth to the complaints procedure mechanism provided for in section 10(2). The Oireachtas Library and Research Service has produced a Bills digest on the issue I have raised. The ICS has also voiced concerns about the fact that the Bill does not require a person to be notified of any leaks of data relating to them. Having a

[Senator Ivana Bacik.]

right of appeal and a complaints process is pointless, unless there is an obligation to inform a person that a disclosure request has been made.

**Deputy Peter Power:** I cannot accept the amendment. The request for the disclosure of data retained can be made only in limited circumstances relating to serious crime by a chief superintendent. They include the prevention, detection, investigation and prosecution of serious offences, the safeguarding of the security of the State and the saving of human life, as well as the prevention, detection and investigation of Revenue offences. The requirement to let the subject know of a disclosure request would severely compromise the actions of the Garda Síochána, the Permanent Defence Force and the Revenue Commissioners in dealing with serious crime and issues of State security. It would put someone, whose data was being sought in the prevention of a serious crime, on notice of that request. That is hardly the intention of the amendment.

The Senator mentioned that the defence might be that it would be impractical. It is not a matter of whether it would be impractical, it would be undesirable to introduce an amendment of this nature. The Senator is well versed in matters of criminal jurisprudence. I know of no obligation on state authorities in this or any other state to disclose evidence to an accused during a criminal investigation, irrespective of whether a prosecution flows from it.

I will cite a possible scenario for the Senator. An investigating garda might be investigating a serious crime and make a case to the chief superintendent, referred to in section 6 for a disclosure request. The chief superintendent may be satisfied with the case made to him by the investigating garda and make a disclosure request to the service provider. That information might assist in building up a case and might also implicate other people in an organisation, especially in regard to white collar crime, fraud to which I referred, and the planning of other serious offences. I presume that in such circumstances the Senator does not want the person to be tipped off that the Garda is aware of his or her activities and potentially to be able to destroy evidence.

In addition, it is unclear from the text of the amendment who would notify the person concerned. Even though this is a smaller point, it is worth making. Presumably what the Senator envisages is that the service provider would do this and not the Garda Síochána, the Permanent Defence Force or the Revenue Commissioners. An obligation on the service provider to notify the person concerned would, apart from tipping off a criminal about an existing offence or a conspiracy to commit other offences, put an unjustified burden on the service provider. Therefore, we cannot accept this amendment in substance.

**Senator Ivana Bacik:** I had anticipated that response. It is a pity that the issue was not examined more during the long period between Second Stage and now. The practical difficulties could easily be overcome. For example, the State authorities could have the obligation to inform the subject. It is worth taking note of other jurisdictions where there is a duty to notify. Without that duty to notify, the section 10(2) procedure seems rather ineffective. In any case I will press the amendment, but I realise that I cannot push this any further with the Minister of State.

Amendment put and declared lost.

Section 6 agreed to.

#### NEW SECTION

**Senator Ivana Bacik:** I move amendment No. 7:

In page 6, before section 7, to insert the following new section:

“7.—A provider shall comply with a disclosure request made to the service provider only where it is technically possible and reasonable in scope in that the request is not so wide as to place an undue cost on the service provider.”.

This amendment is in the same spirit as the earlier amendment we tabled to try to ensure there are not undue burdens on service providers in complying with the legislation. I believe a similar amendment was tabled in the Dáil.

**Deputy Peter Power:** The purpose of this amendment is to delete section 7 and replace it with a new section which, in essence, seeks to limit the responsibility of service providers to co-operate with the disclosure request. Before the introduction of a statutory scheme, the then service providers made data available to the Garda on request when required for criminal investigations and safeguarding the security of the State. In those circumstances relations between the operators and the Garda developed in order that the voluntary scheme was based on good will and common sense on both sides. Any garda could request data in respect of a crime he or she was investigating and this system was not regulated by statute but, as stated, operated on a common-sense basis without any issue.

The proposed amendment would seriously hamper the ability of law enforcement agencies to seek data for the purposes specified under the Bill and would almost certainly introduce a degree of uncertainty into the operation of the legislation because, at present, data retention operates under Part 7 of the Criminal Justice (Terrorist Offences) Act 2005 and all parties to this legislation apply common sense when requesting and supplying data. To date there have been no trawling exercises or abuses of the system.

If a disclosure request is not possible, is unreasonable or is so wide as to place an undue burden on the service provider, there can be no expectation by the requesting party that the service providers will be able to comply with the request. That is a given in the operation of the scheme.

This issue also arose during the discussions between the officials in the Department of Justice and Law Reform and the service providers in the various State agencies. It was acknowledged by all parties that the existing legislation had not been abused by unreasonable requests and that the service providers could only comply with what was technically possible and feasible.

In essence, there can be no expectation by the Garda Síochána, the Revenue Commissioners or the Permanent Defence Force for the service providers to comply if the request submitted is technically impossible or not feasible. Furthermore, if a number of requests or single request is made to a service provider which are or is unreasonable in scope, naturally this would come to the attention of the oversight judge whose duty it is to review the operation of the legislation. If the judge notes an unreasonable number of requests or what would amount to a trawling exercise, then it is within his or her remit to report the matter to either the Taoiseach or the Minister for Justice and Law Reform and the Data Protection Commissioner.

It is important to note that an amendment such as the one being proposed by the Senators may also have an undesirable effect on the relationship between the service providers and the State. The existing system has worked well without any abuses and, correspondingly, there has been no need for sanctions or penalties against the service providers for failure to comply with the request. With reference to this Bill, I do not think it is appropriate to introduce criminal sanctions and penalties into a system that already functions efficiently without them and, as such, the Minister cannot accept the Senator's amendment.

Amendment, by leave, withdrawn.

## SECTION 7

Question proposed: “That section 7 stand part of the Bill.”

**Senator Ivana Bacik:** In anticipation that the Minister would not accept our amendment to the section, we have opposed the section. We have done so for self-evident reasons. The section, as currently constituted, is too broadly framed. We believe that simply to provide that a service provider shall comply with the disclosure request without any proviso would place an undue burden on the service providers. I have made that point in respect of the amendment.

Question put and declared carried.

Section 8 agreed to.

## SECTION 9

**Senator Ivana Bacik:** I move amendment No. 8:

In page 7, between lines 20 and 21, to insert the following subsection:

“(5) A report under this section shall contain details of the numbers of prosecutions actually commenced as a result of investigations to which requests related, and a detailed justification for any significant excess of numbers of requests over numbers of prosecutions actually commenced.”.

This amendment is designed to highlight the gross disparity between the huge number of requests made in the very small number of prosecutions launched. What we suggested in this amendment is that a report under section 9 would contain details of the prosecutions commenced as a result of investigations to which requests related and that there should be a detailed justification given where there is a significant excess of numbers of requests over numbers of prosecutions.

This is not something we have simply come up with out of the blue. It is referred to in the Data Protection Commissioner’s submission on the Bill in November 2009 in which he said that the designated judge should report, *inter alia*, on the number of times the powers under the Act are used in the offences to which the interceptions and disclosures relate. Therefore, the statistics should be published. He also said it is difficult to see how publication of statistics would compromise any law enforcement activities, rather they would make clear the actual use made of the powers provided. It is really by way of ensuring the Act is not being abused. It does not in any way jeopardise any prosecutions that are launched. It simply giving the Minister information as to the extent to which the powers in the Act are helpful to launching prosecutions. The Minister has said the Act will be kept under review. An important part of any review progress would be to have access to this sort of information.

**Deputy Peter Power:** I understand the intention behind this proposed amendment but I refer the Senator to Article 10 of the EU directive whereby member states are required to submit statistics to the European Commission concerning the operation of the directive and this is provided for in section 9. In essence, this section requires the compilation of certain statistics for submission to the European Commission and these statistics include the number of times when data were disclosed in response to a disclosure request, the average period of time between the date the data were first processed and the disclosure request and the number of times a disclosure request could not be met. Under section 9(5) of the Bill, the Garda Commissioner, the Chief of Staff of the Permanent Defence Force and the Revenue Commissioners

must prepare reports containing the required statistics and the contents of these reports, and the provision in the Bill precisely reflects what is in the directive.

As with other EU legal instruments, the Commission has requested that, in the interests of consistency, each member state should compile and submit the same information and statistics for the purposes of uniformity and consistency. Any additional information compiled would have no added value for the directive or the Commission's requirements.

During previous debates on this measure in the Dáil, I mentioned that under Article 14 of the directive, the Commission is obliged to conduct a review of the directive. The purpose of this review is to evaluate the operation of the directive and its impact on economic operators and consumers. The findings of this review are due to be presented to the European Parliament and the Council of Ministers. The Commission's review is under way and, depending on the outcome of the evaluation, the provisions of the directive may be changed in the future. If so, amending legislation will be needed but it is too early to tell what changes, if any, may be required and if any would relate to the information and statistics required by the directive.

The link between communications data and subsequent convictions may not always be clear-cut. The information gathered by means of a disclosure request will form part of a wider body of evidence and may not, of itself, be sufficient to secure a successful prosecution. As the Senator will be aware, evidence is collected from a wide range of sources and it would be almost impossible to identify a clear correlation between a request made to service providers and the number of convictions secured on foot of those requests.

When all the evidence is analysed by the Garda and presented by the Director of Public Prosecutions in court, the process may result in a successful prosecution. If we consider the other purpose of the legislation, the saving of human life, what would the additional statistics prove? If ten requests were made and a single life saved, would the legislation be judged to be effective? In considering this aspect, what statistical value would be placed on saving a human life?

Furthermore, the Senator's amendment would have the unintentional effect of reducing the number of gardaí available to investigate and prosecute serious criminal offences. The amendment seeks to place a heavy and disproportionate burden on gardaí. One should consider the number of Garda hours that would be wasted in collating every request and checking every record of a request to see if that request for retained data led to a successful prosecution or if it formed a significant part of a prosecution. That is not what the Senator intends but it would be the result of the amendment and, as such, the Minister cannot accept it.

Amendment, by leave, withdrawn.

Section 9 agreed to.

## SECTION 10

**An Leas-Chathaoirleach:** Amendments Nos. 9 and 10 are related and will be discussed together.

**Senator Feargal Quinn:** I move amendment No. 9:

In page 8, lines 2 to 8, to delete subsection (1) and substitute the following:

“10.—(1) A contravention of section 6 in relation to a disclosure request shall make that disclosure request invalid. Any such contravention shall be subject to investigation in accordance with the subsequent provisions of this section and nothing in this subsection shall affect a cause of action for the infringement of a constitutional right.”.

[Senator Feargal Quinn.]

If we go to the trouble of including certain rules in section 6 for disclosure of a request, a contravention of one of those rules should make the request invalid. We have left all the other protections on that basis. The Bill states that a contravention shall not of itself render that disclosure invalid but we think it should. It would be better law to do so instead of following the Bill as it is currently worded.

**Senator Ivana Bacik:** My amendment would do the same thing in a different way by deleting the phrase “render that disclosure request invalid or”. For the same reasons, we believe section 6 should have meaning and a breach of it should have consequences and that it should not be open to abuse as suggested in section 10(1) as currently worded. We are concerned that a breach of section 6 must have consequences.

**Deputy Peter Power:** This goes to the heart of the legislation, the successful and efficient prosecution of serious offences, including terrorist offences, which increasingly in recent examples, including the Omagh bomb, point to the fact that the ability to use data and information on telephone communications and, increasingly in terms of white collar crime, Internet data efficiently can go to the heart of a successful prosecution of serious offences. We must be mindful of that when considering any proposed amendment, although I absolutely understand the intention behind the amendment to ensure full compliance with the provisions of the Bill. That is understandable but we must keep our eye on the ball.

The intention of the Bill is to prosecute serious offences and terrorist offences with possible multiple fatalities. We cannot undermine those prosecutions with mere technicalities. There was a time in the 1970s and 1980s following the most heinous crimes in this country, the killing of men, women and children, when the overwhelming body of evidence pointed to the culpability of terrorist organisations but investigations and prosecutions failed because there were technical issues with evidence.

While it is important to protect the rights of people at all times, there must be a balance. This issue was decided many years ago. Mere frivolous or minor transgressions in the technical processing of these requests should not undermine a serious criminal prosecution.

**Senator Feargal Quinn:** I understand the Minister of State’s point. I would hate to think some minor technical oversight would lead to the failure to prosecute a serious crime.

**Senator Ivana Bacik:** I take the Minister of State’s remarks on board. It was not our intention to jeopardise prosecutions. We are trying to ensure the Bill is sufficiently tested at this stage and that its provisions are sufficiently rigorous.

Amendment, by leave, withdrawn.

Amendment No. 10 not moved.

Section 10 agreed to.

Section 11 agreed to.

## SECTION 12

**Senator Ivana Bacik:** I move amendment No. 11:

In page 9, between lines 23 and 24, to insert the following subsection:

“(2) Where the designated judge finds that an officer or member of the Garda Síochána, Permanent Defence Forces or the Revenue Commissioners has engaged in a breach of this Act, he or she shall refer the individual concerned to the Commissioner, the Minister for Defence or the Chairperson of the Revenue Commissioners as the case may be for the purpose of having disciplinary proceedings instituted.”.

We tabled this amendment to ensure there are sufficient safeguards against abuse of powers in recognition of the extensive powers provided for in the Bill in terms of accessing data relating to other persons. We have suggested there might be a sanction for a garda or member of the Defence Forces or Revenue Commissioners if he sought disclosure through an abuse of process. That is all the amendment seeks to do, to provide a potential sanction for breach of the Act, like the earlier amendment that sought to ensure the legislation is complied with and its provisions are meaningful and effective.

**Deputy Peter Power:** In this matter the designated judge has a broad role with wide-ranging powers and, with this in mind, the Minister feels it would be an imposition or potential interference with the judge’s role to specify at this level what issue he should consider or what actions he might take. The designated judge must keep the operation of this Act under review, ascertain if the State bodies are complying with its provisions, investigate any case in which a disclosure request is made and may access and inspect any official documentation relating to that request. The designated judge must also compile a report concerning the operation of the Act and can report to the Taoiseach on any matters he considers necessary.

Under section 8(7) of the Interception Act 1993, the Taoiseach is obliged to lay a copy of the report before both Houses of the Oireachtas. If a breach of the operation of the Act is identified, the Taoiseach or the Minister for Justice and Law Reform can draw the attention of the Garda Commissioner, the Revenue Commissioners or the Chief of Staff of the Permanent Defence Forces to the breach. The breach will then be investigated and dealt with through the normal disciplinary procedures within those organisations which are already in place. Disciplinary procedure policy and a code of conduct for members of each of these organisations already exist and the Minister does not see the need to require the designated judge to refer individuals for the purposes of having disciplinary proceedings instituted. As such, the Minister is not minded to accept the amendment.

**Senator Ivana Bacik:** I anticipated that response. This amendment was tabled in the interest of trying to ensure sufficient mechanisms for oversight and scrutiny in the legislation. The Data Protection Commissioner, in his briefing in November 2009, made the point that safeguards in the Act were not adequate. One must also consider the numbers of requests for access to data already made under the Criminal Justice (Terrorist Offences) Act. In 2006, Deputy Howlin noted in the Dáil that 10,000 requests had been made by the Garda Síochána for access to personal telephone records in 2006, which amounts to approximately 30 per day. With that volume of requests, it begs the question as to whether all were necessary to investigate serious crime. The volume is such that we contend that oversight and scrutiny mechanisms in the Act should be robust. There should be sanctions for any breach of the procedures in the Act or any abuse of powers by individual members of any of the State law enforcement agencies in operating the data access provisions in the Act. We are trying to ensure rigorous and robust oversight and scrutiny mechanisms. I did anticipate the Minister of State’s response.

**Deputy Peter Power:** It is very important the Senator made that point. The provision confers significant powers on State organisations. We know from our history that unless those powers are monitored and regulated correctly, they can only lead to abuse. Cases involving previous Members of this House spring to mind in that respect.

[Deputy Peter Power.]

With regard to discipline, the Minister would prefer if the individual organisations used their existing disciplinary procedures once a matter is brought to light. The key point concerns how a matter is brought to light. The High Court judge will certainly have the power to bring a matter to light by publication to the Taoiseach or Minister for Justice and Law Reform. If any abuse of powers amounted to a criminal offence or a breach of one's constitutional rights, it would give rise to potential avenues to discipline the guilty party through civil or criminal law. The feeling is that discipline is best left to the disciplinary mechanisms within the individual organisations, provided there is a mechanism to convey the relevant information to the most senior persons in those organisations. I understand where the Senator is coming from.

**Senator Ivana Bacik:** I am grateful for that reply.

Amendment, by leave, withdrawn.

Section 12 agreed to.

Sections 13 and 14 agreed to.

#### SCHEDULE 1

**Senator Ivana Bacik:** I move amendment No. 12:

In page 10, lines 10 and 11, to delete "Prevention of Corruption Acts 1889 to 1995" and substitute "Public Bodies Corrupt Practices Act 1889".

This is a technical amendment concerning the Title of the legislation. The Minister of State responded on this amendment in great detail in the Dáil in respect of the wording used to refer to an individual Act rather than a group of Acts. I will not press the amendment, as the point was very well argued in the Dáil.

**Deputy Peter Power:** In that spirit, I am delighted to accept what the Senator is saying. I have no wish to read out what is in front of me at present. If the amendment is withdrawn, I will be most grateful.

**Senator Ivana Bacik:** I have no wish for the Minister of State to read it.

Amendment, by leave, withdrawn.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

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

**Senator Eugene Regan:** I thank the Minister of State. I am not sure what he is Minister of State for, but I thank him for being present.

**Deputy Peter Power:** I may be Minister of State for nothing by the end of the day.

**Senator Eugene Regan:** I thank him for his very complete responses on all the amendments tabled. I welcome the Bill and agree with its provisions. We are implementing EU law which provides a framework for many of the measures for combating crime. This Bill is one of the key instruments in the interception and retention of data. It is a means of detecting some of the most serious forms of crime.

I agree fundamentally with the provision in the Bill to prevent technicalities from undermining prosecutions such that they would not be allowed as a means of frustrating prosecution for the most serious forms of crime. The Bill is complete and I agree with the various measures therein. Much work has been done thereon in this House and in the Lower House. It is in a form that is fit for purpose.

**Senator Feargal Quinn:** I add my words to those of Senator Regan. The objective of the amendments was to improve the Bill in the fight against crime. I fully support the objective of the legislation and the fight against crime, and I know all Members present do so. I congratulate the Minister of State on handling this Bill with limited experience of it, although I understand he handled it in the other House. Therefore, he clearly has some experience of it. It is good legislation and is needed. It surprised me that it has taken so long to pass it. It pertains to EU regulations from 2006 and it was introduced in November 2009, but it is better late than never. I congratulate the Minister of State on passing it so efficiently.

**Senator Ivana Bacik:** It is unfortunate the delay has been so extensive. I re-read the Second Stage speeches of April 2010, at which time I pointed out we had been found to be in breach of our obligations by the European Court of Justice owing to the delay in transposing the 2006 directive. The Minister of State said there was extensive consultation between Second Stage in April 2010 and now. That there has been no change made to the Bill as a result of that consultation begs the question as to why it could not have been passed more quickly. Having said that, we broadly welcome the purpose of the Bill. As Senator Quinn said, we all support the fight against crime. The Labour Party's amendments, both in the Dáil and Seanad, were in the interest of ensuring the Bill was more robust and that its safeguards against breaches of privacy rights were adequate and rigorous. We were seeking to improve the Bill and we welcome its passage.

I thank the Minister of State and his staff. I thank those who make useful submissions to us, including the Data Protection Commissioner, the Internet Service Providers Association of Ireland and Digital Rights Ireland. All were very constructive in their suggestions and comments on the Bill.

**Senator Diarmuid Wilson:** On behalf of my colleague, Senator O'Donovan, who is unavoidably absent, I thank the Minister of State, his staff and all colleagues who contributed during all Stages of this very important Bill. I look forward to seeing the Minister of State back in the House on many occasions between now and the end of March.

**Minister of State at the Department of Foreign Affairs (Deputy Peter Power):** I thank all the Senators for their contributions. We have had a very positive and interesting discussion. I have said on the few occasions on which I have had the privilege of addressing this House that if the media spent more time listening to and reporting on debates such as this, the true value of an upper Chamber would become more apparent.

Data retention is a tried, tested and valuable tool in the investigation of crime and safeguarding the security of the State in the digital age. This legislation will make the requirements on service providers less onerous than they are by reducing the retention periods, while giving State agencies extra tools to fight crime in the form of seeking retained data. The importance

[Deputy Peter Power.]

of any legislation that intersects with people's rights, in particular the right to privacy, a question that always arises, deserves robust examination, as has been the case in the Seanad today. The intrusion into someone's personal privacy is minimal and none of the content of transmitted data will be retained, rather information on the act of communication is what will be retained. This can be a valuable tool in the fight against crime.

I thank the House for its reception and look forward to the passing of the Bill into law.

Question put and agreed to.

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

### **Bretton Woods Agreements (Amendment) Bill 2011: Second and Subsequent Stages**

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

**Minister of State at the Department of Finance (Deputy Martin Mansergh):** I thank Members of the Seanad for agreeing to discuss this Bill today at short notice. I will begin by recalling the background to the Bretton Woods Agreements to which this Bill refers. The International Monetary Fund, IMF, was conceived in 1944 when representatives of 45 countries, meeting in the town of Bretton Woods, New Hampshire, in the United States, agreed on a framework for international economic co-operation to be established after the Second World War. They believed that such a framework was necessary to avoid a repetition of the disastrous economic policies that had contributed to the Great Depression.

The IMF came into formal existence in December 1945 when its first 29 member countries signed its Articles of Agreement. The planners of the agreements were far-sighted. They realised that there will always be imbalances and crises in international monetary affairs and a sound adjustment mechanism was required. The IMF began operations on 1 March 1947 and, later that year, France became the first country to borrow from the IMF. The IMF's membership began to expand in the late 1950s and during the 1960s, as many African countries became independent and applied for membership. Ireland joined in 1957. Since then, the world has changed and is continuing to change dramatically. The IMF's method of operating has changed to reflect this as it has sought to adapt to the changing needs of its expanding membership in a globalised world economy. I caution Senators against extrapolating to today the strong criticism in the 1980s of the IMF policies in Africa and South America as that critique is no longer valid. In the past four years in particular, the IMF's managing director, Dominique Strauss-Kahn, has launched an ambitious reform agenda aimed at ensuring the IMF continues to deliver the economic analysis and multilateral consultation that is at the core of its mission, ensuring the stability of the global monetary system in a very changed world. This includes reform of governance, greater accountability, financial reforms, and a trebling of the fund's lending capacity as part of the response to the global financial crisis.

This is the context in which the Bill is being discussed today. The Bill is required to allow Ireland convey acceptance of amendments to the IMF Articles of Agreement which were approved by the IMF board of governors, including the governor for Ireland, in 2008. Acceptance of these amendments by Ireland will contribute to the process of bringing the amendments into force.

The two amendments to the Articles of Agreement which are scheduled to this Bill are part of a package of reforms agreed by the IMF in 2008, first, to realign voting power in the IMF to reflect changes in the global economy and, second, to increase the voting power and participation of low income countries, LICs. The 2008 reforms will adjust the IMF quota shares of members to reflect better their relative weight and role in the global economy. A member's

quota also determines the amount of financial resources a member contributes to the IMF and the level of access and cost of IMF financing. While the quota adjustments will benefit emerging market economies in the main, a number of advanced countries, including Ireland, who have been significantly under-represented for some time, will also receive a quota increase. The increase in Ireland's quota share will also have the effect of reducing the interest rate payable on the funds borrowed by Ireland from the fund by about 18 basis points or, specifically, by €1.8 million per billion borrowed per annum.

Since the 2008 agreement, I have attended two annual meetings of the IMF-World Bank, where further reforms and quota changes were discussed, which culminated in a further set of agreements, the 2010 reforms, which, when implemented, will have the effect of further increasing Ireland's quota. The impact of this quota adjustment, when implemented, will have a far more significant increase on Ireland's interest rate, with a potential reduction estimated at 80 basis points, or approximately €6.5 million per billion per annum, when implemented. However, it is first necessary to implement the current 2008 quota reform with which the present Bill is linked.

The Bill is essentially technical in nature and provides for the acceptance of the fifth and sixth amendments to the IMF Articles of Agreement, both of which are scheduled to the Bill. The Third Schedule contains the Articles of Agreement as they currently stand and which are to be amended.

The fifth amendment, at Schedule 1, is known as the voice and participation amendment and must enter into force before the quota increases can become effective. This requires acceptance by the required voting threshold of three fifths of members having 85% of total voting power. Our current information from the IMF is that the voting requirement is very close to being attained.

The fifth amendment contains three sections, the first of which authorises the IMF board of governors to adopt rules in order that IMF executive directors of constituencies with more than a specified number of countries may appoint a second alternate executive director. Currently, every constituency has only one alternate executive director. The purpose of the section is to enhance the capacity of the two African constituency offices to represent the countries in their constituencies at a higher level in recognition of their special challenges, including the heavy workload associated with the important advisory and financial role that the fund is playing in many of the member countries.

The second section of the amendment amends the formula for the calculation of the IMF votes of member countries. The purpose of the amendment is to increase the voting power of low-income countries which has been eroded over time partly because of the relative increase in the economic power of other countries and also because of the impact of successive rounds of IMF quota increases. This is a central element of the 2008 IMF reform package.

The third section of the amendment is a consequential amendment which provides that the new rules for calculating votes shall not be affected by the suspension of any member's voting rights.

The Government is also taking the opportunity presented by the Bill to accept the sixth amendment to the IMF articles of agreement. This is called the investment authority amendment. While it is independent of the voice and participation amendment and the 2008 governance reforms, including the quota increase, the fund has suggested to members that they may decide to communicate their acceptance to the fund at the same time as the two amendments.

The first three sections of the investment authority amendment which was agreed in 2008 provide for a broadening of the range of instruments in which the IMF may invest by removing a number of limitations in the current articles of agreement. Notwithstanding the removal of a

[Deputy Martin Mansergh.]

number of limitations, the amendment provides that all investments should be made in accordance with rules and regulations to be adopted by a 70% majority of the total voting power of the fund. The final section of the amendment is related to the creation of an endowment from the profits of the sale of a limited portion of the IMF's gold holdings.

It is in the interests of Ireland and the rest of the IMF membership that the Bill be enacted. For that reason I commend it to the House.

**Senator Paul Bradford:** I welcome the Minister of State on what is an interesting day in politics. This is the more civilised Chamber of the Oireachtas in which technical legislation such as this can be debated. The work of processing legislation must continue and the Bill is exactly the type of technical legislation the Minister of State likes to bring before us. He has set out the reasoning behind it. The collision of politics, economics and banking has resulted in a date being fixed for the general election.

There has been much ill-informed comment about the IMF which has been portrayed as a bogeyman, but when one reflects on the reasons behind its establishment, the work it has done throughout its history and the aid and support it provides for countries such as Ireland, one must recognise that it has worked. However, like every other agency, it is in need of ongoing reform. The Government and its successor will be keeping in close contact with it in the coming years and it is in our interests that the Bill is passed in order that the proposed reforms will be introduced.

I wish to set out some facts about the IMF to demonstrate the significance of its role on the global financial stage. Its membership comprises 187 countries with total quotas of \$328 billion. As of last year, it had committed loans worth \$200 billion and it is now engaged in the financial bailout of this country. Although political slogans will be commonplace during the general election campaign, we should see the IMF as part of the solution for us rather than a problem. It did not cause the country to be in distress and is playing its part in turning our economic fortunes around. In that regard, we must engage with it.

I note what the Minister of State said about interest rate changes. In the wider scale of things, these changes are not huge, but they are to be welcomed nonetheless.

The IMF is more than 60 years old. It began to expand in the late 1950s and, from an international perspective, its role in trying to support and redevelop Africa is laudable. However, that work is still in its early stages. While we have seen tremendous growth in the emerging economies of China, India and South-East Asia, this has yet to happen on the huge continent of Africa. I hope the updated and improved IMF will play a positive role in its development and redevelopment. It is in the interests of every citizen of the globe that there is strong economic growth worldwide. In so far as the IMF is beginning to make a difference through its policies on Africa, that must be welcomed.

I am far from being an expert on the IMF. Its current managing director, Mr. Dominique Strauss-Kahn, is being spoken about as a future candidate for the French Presidency and will probably make a decision in that regard in the near future. His reputation has been enhanced since he took up his position in the IMF. Most neutral commentators suggest he is carrying out his duties in a professional, dynamic and visionary manner. Notwithstanding the fact that the Opposition suggests the Government could have negotiated a better bailout package, Mr. Strauss-Kahn is playing his role in this country's recovery.

This has been a dramatic day for the body politic, but politics is all about change and renewal. The fixing of a date for the general election is unusual in this country but the norm elsewhere in Europe. It allows for a relatively long election campaign and the voters will have more than

two or three stressful weeks to decide between party A or B. Clearly, I have my own opinions, but I hope we will have time to reflect on and debate the choices to be made. Rather than play a game of Punch and Judy or replay history, the next five or six weeks will give us time and space to conduct a civilised campaign that will allow us to prepare for the future. That is good for the electorate and the country, as well as for politicians. We need to have an election campaign which will move us beyond anger, despair and the blame game to engaging in mature political reflection and debate. Whether we will be winners or losers individually, we should use the coming six weeks to regenerate politics. I look forward to playing whatever small role I can in that regard.

On this day when the clock for the 11 March general election has commenced ticking and when finance and the regeneration of this country and its economy will be to the fore, we are debating this Bretton Woods Agreement (Amendment) Bill 2011. It shows that the jigsaw of the country's recovery is complex. Domestic, European and world economic decisions will all be part of our solution. Whether we like it or not, the IMF has a role to play and we must continue our engagement with it.

I hope this technical change will strengthen the IMF's capacity to intervene where necessary and to assist where required. I wish the Minister of State well in passing this legislation and all my colleagues well in the few difficult months ahead.

**Senator John Hanafin:** I take the opportunity to endorse what Senator Bradford said. I look forward to a campaign which will be constructive, positive and forward-looking based on policy and with a view to what is best for Ireland. In terms of the vision the different parties have for Ireland and how they will explain to the electorate the rationale for decisions, I hope they will try to avoid any knee-jerk reactions which do not reflect the reality of the situation surrounding decisions made and that we put them in the context of the circumstances that prevailed at the time. I look forward to a brighter future which I am certain is the aim of every party in this House.

The Bretton Woods Agreement is an historic agreement reached in 1944. It was preceded by the Atlantic Charter which, interestingly, was agreed in 1941 between Winston Churchill and President Roosevelt of the United States. I mention the confidence of the United States at that time in terms of how it viewed the future. Even before it entered the Second World War, it indicated the type of world it wanted to see after it. It was a remarkable show of self-confidence and self-belief on the part of the United States at that time that it indicated the type of world it envisaged. It outlined the type of trade, access to goods, access to the seas and the rights of individual trading nations. That all came to pass with the Bretton Woods Agreement in 1944 and the establishment of the International Monetary Fund and the International Bank for Reconstruction and Development.

The reason for looking forward was as a result of the difficulties of the 1930s. The 1930s were overshadowed by the boom 1920s which was followed by the crash in 1929 when it became obvious that people could not repay the massive amount of credit pushed into the economies of the world. That was followed by the Depression.

We were very fortunate that we had that historic analysis. I firmly believe we would have had a second Depression as a result of the financial crisis in the United State in 2007 and 2008 except for the fact that people knew the mistakes made in the 1930s, subsequent to the 1929 crash. The mistakes made in the 1930s not only led to the extension of the Depression but were a major contributor to the Second World War and to other wars. Wars have an economic basis.

Measures taken included the introduction by the United States of the Smoot-Hawley Tariff Act which placed tariffs on 20,000 goods imported into the United States. It then used

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depreciation of its currency to ensure it had access to other markets. Nazi Germany introduced a favourable exchange rate mechanism and favourable trade arrangements with countries trading with it. The British Empire had a preference for its own colonies and the French followed suit. There was a strong need for a world system of economics that included access to markets.

The head of the US Federal Reserve, Ben Bernanke's, doctoral thesis was on the Great Depression and he knew how to handle the difficulties which arose in 2007 and 2008. We faced a very serious situation. I gave a great quote from the film "Wall Street: Money Never Sleeps" previously in the House. One of the elderly advisers on Wall Street played by Eli Wallach was asked what to do when Lehman Brothers collapsed. He said it was 1929 all over again except this time it would be worse because it would happen quickly, banks would close, ATMs would stop spitting out money, there would be panic on the streets, jobs would be lost, standing orders would not be paid and that it would be the end of the world.

Thankfully, there was a man who knew how to deal with the situation and he immediately pumped money into the market. The Americans increased the amount of money in circulation to ensure there was not a liquidity problem. Rather than do the obvious thing, cut their markets, ensure production for their own country only and introduce tariffs to protect their own jobs, they ensured the world economies stayed open. This is part of the work the IMF does and what the Bretton Woods Agreement catered for.

I am sorry one part of the Bretton Woods Agreement was changed in 1971 by Richard Nixon, namely, going off the gold standard. I still believe that having the gold standard as a back up fund is the best way forward. Again, as each difficulty arises and as the situation changes, we see what is necessary. We are now emerging from what could have been one of the most serious Depressions since 1929.

The fact we are increasing our quota from .385 to .528, which has historically been under-represented in the IMF, that we will achieve cheaper funding and that we are full participants in the IMF is welcome. Other major economies have benefited, including France in 1947. The UK has twice gone to the IMF for assistance. As the Minister mentioned, the new IMF is not the same as the IMF which got involved in Africa and Latin America in the 1980s and which unfortunately got a bad reputation. Now it is seen as having more of a consultative and assistive role. I am very proud we are able to participate fully in this.

**Senator Joe O'Toole:** I welcome the Minister of State to the House to deal with important legislation to reflect changing times and attitudes. It is one of a number of areas in which we are involved globally. No fair-minded person could argue against the objectives and what is proposed in this legislation. A fair-minded person might propose it should go further but the reality is that one must take steps slowly.

I am sure the Minister of State will agree it is important to recognise that were we sitting here 15 years ago having a debate on global economic affairs, the so-called BRIC countries of Brazil, Russia, India and China would not have rated as major markets and having an impact in monetary and currency terms. Looking at world stock markets over the past year and at the countries which made the greatest gains in terms of investment in their markets, I believe Brazil was the only one of the emerging markets which did not outperform the traditional western developed economies.

We should recognise that the IMF sets out to deal with global economic systems and create stability, which we completely support. It begs certain questions which we in this country are not courageous enough to answer, including the question of the euro. In the past six months we have seen the debate on the euro move from left to right across Europe and out to the

peripheries. It began with problems in Greece, then a problem in Ireland and on to a possible problem in Portugal. It then appeared as if it might move on to Spain and possibly the huge economy of Italy. People are talking about problems in Belgium.

While I know the Minister will not be comfortable with this, we need to ask ourselves what is the logical economic argument in favour of having 29 different central banks looking after one currency which is effectively what we have in Europe; it is unsustainable. In the same way that Chancellor Merkel is wrong to argue against the concept of euro bonds, we are wrong to argue that we should all have our little central banks. We need to remember they are central banks and not just out-offices of the European Central Bank. They each have significant levels of authority, influence and decision making power within individual countries, as in our case. We need to review that. We need to have the structure of the Central Bank as it is at the moment based in its head office. However, we do not need the amount of power each of the central banks has. We can distinguish between that matter and taxation issues. The bridge between those is the budgetary matter.

One of the most positive steps in the four year plan is the step most people criticise, which is that people need to put their cards on the table and outline proposals for the budget. We can give people autonomy in doing that, but if people step out of line they need to be regulated. It is no different from the concept of a bank being regulated by the State. However, within all the benefits of a European currency we need to recognise that it does not give us complete freedom. It is like the freedoms we are given under our constitutional rights. We have perfect freedom as long as those freedoms do not interfere with the rights of other people and if they do a judgment call needs to be made. If, for instance, the right to free speech is in danger of libelling somebody or causing hatred or racism, there are ways to deal with it. All those rights need to be looked at.

What we are trying to achieve here is some form of democratic economy. Let us move away from the IMF for the moment and look at it in European terms. The Treaty of Rome was introduced to establish the free movement of labour, capital, goods and services in what we called then the Common Market. We have moved on from that and now have the European Community. The Common Market is supposed to have developed into a much more sophisticated animal in the meantime, but it has not. It is still not possible to bring a car from Belgium to Ireland without going through tonnes of red tape. I could give many other examples.

We started with the IMF in order to democratise the decision making process within it to reflect the influence of the emerging nations, which is a good thing. However, let us consider Chad in Central Africa which is usually considered the poorest country in the world. In all we have done with world trade agreements, the IMF, the European Union and all the trade barriers having been brought down, Chad is now worse off than it was 30 years ago. However, if Chad was allowed to sell into the US or Europe and its citizens were allowed to work here — I am not proposing we would do these things — it could increase the wealth of that country very quickly and see it come up to a more general standard. It is not to say that would be easy to do and I do not propose that we consider doing that, but I am proposing that we soften the protectionism that surrounds many of the markets on the globe. Ireland is more innocent than most in this regard. We have a more open economy than many of the so-called leaders even in European terms. The Minister of State has a great *grá* for the French nation, but one does not need to spend much time in France to see that despite them being great Europeans, they flout more European regulations than any other country. Whether in agriculture, market gardening or supporting its energy industry, they find ways to protect their industries.

We need more openness and the Bill moves in the correct direction in recognising the need to open up and give more influence to the emerging nations. While I may be going off the

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point somewhat the United Nations Security Council could do with more democratisation for the same reason. If that council were elected by a vote of all the UN member states and got its power in that way like a country's government, we would have a far more equitable and democratic decision-making process within the United Nations which would find more acceptance in many places where it does not today. Instead the United Nations, which is very positive, is where we now democratically fight what would have previously been wars, so we cannot complain about that, but it is not democratic. Nor was or is the IMF, but at least what we are proposing today brings the IMF forward into a more democratic place. In that regard it is to be welcomed and the Government is to be thanked for introducing the Bill. I have no problem in supporting it passing through the House efficiently and quickly today even though it has come to us at short notice.

**Senator Mark Dearey:** I welcome the Minister of State. I wish to take up the theme of democratisation in welcoming the Bill which represents some progress on that front. When one considers how slow any democratisation of the United Nations Security Council is, one must be thankful for signs of it within the IMF. I have been following the United Nations Security Council's debate on reform for many years. It is not unlike the debate on Seanad reform; there are many words but not much activity on the ground. One of the better ideas which attracts me, even though it probably breaches the notion of the United Nations, is that of regional representation within the Security Council, which would provide a voice that, in particular, Africa ought to have.

I welcome the small progress the Bill represents in providing a more meaningful voice, particularly to southern countries. However, some of the commentary suggests the changes are minuscule in terms of many of the less developed nations and much more needs to be done. This small step forward ought to be afforded the support of the Chamber.

I note the view of the Debt and Development Coalition that a double majority voting system which would require the achievement of two separate majorities, one based on one country, one vote, the other on economically weighted quotas, would give much more equity to the decision making processes within the IMF. It would increase the influence of southern countries in decision making and allow them to build coalitions with nations that have similar challenges and problems in their path towards sustainable development. I echo another point made by the Debt and Development Coalition, namely, this increased dialogue would generate among members a better prospect of building consensus and would lead to a more equitable set of parameters within which global trade happens, as alluded to by Senator O'Toole. There are gross asymmetries between nations in trading arrangements to the point of naked protectionism on the part of the more powerful partner in the asymmetric trading relationship.

I refer to gold sales where windfall profits will be used primarily for internal IMF purposes. The point has been made by those watching the passage of this Bill that this amount, which may be up to \$2.5 billion, could be used as a matter of urgency by southern countries in need of appropriate supports.

In general, the IMF has demonstrated an improved competence but, as the Minister of State mentioned, the 1980s version may be fixed in the minds of many of us. I certainly studied these matters back in the day and saw the IMF as an agency that made at least as many inappropriate and economically and culturally insensitive decisions as it did good ones. However, I accept that as an organisation it has moved on a long way from those times. It is still the case that a stronger voice for less developed nations would lead to a better decision making process for the vast swathe of the global population which is currently under-represented in the way the IMF reaches its conclusions.

The Minister of State highlighted the merits and small advances made. I recognise these and therefore welcome the Bill and shall support it.

**Minister of State at the Department of Finance (Deputy Martin Mansergh):** I thank the Senators who contributed to this debate. As we have seen with the United Nations, the reform of international institutions tends to proceed rather slowly but we must be grateful for what has happened. Obviously, we are discussing decisions taken in 2008 but the situation has accelerated vastly since then and there will be a follow-up to the meeting in 2010. Undoubtedly the global crisis put the IMF centre-stage although a few years previously, if anything, it had tended to have become something of a backwater.

Senator Bradford was right to remark that we should not see the IMF as a bogey man. I was reminded last night in the other House that the Bretton Woods Agreement was about setting up an enlightened, international, new world order after the Second World War and incorporated this into my speech today. Keynes was centrally involved in establishing the agreement. In the 1980s a different economic wind was blowing with the advent of Reagan and Thatcher and monetarism. The IMF was perceived as being harsh and insensitive in dealing with developing countries. That may be somewhat of a caricature and added to in international political debate, but none the less there was a certain foundation to that critique.

Senator Bradford was right to say that growth and development have yet to happen on the continent of Africa. There were calls from one party in the other House last night for the IMF to be abolished, to which I responded that in my experience, having attended two annual IMF meetings in 2008 and 2009, the least developed countries would not appreciate such a development. The IMF is an international body which is of assistance in development and it operates its meetings back to back with the World Bank.

Senator Hanafin is right that since the 1930s people have been very anxious to avoid the mistakes of that decade with its prolonged and deep depression and all the political consequences that ensued. It was undoubtedly a contributory factor to the Second World War during which tens of millions lost their lives. Notwithstanding the depth of the crisis we are experiencing, we should not underestimate the difficulties of many other countries at the present time. We are looking at nothing remotely comparable to the early 1930s and are at an entirely different level of development.

Senator O'Toole alluded to some of the problems concerning the governance of the eurozone, although I did not interpret his remarks as advocating we should try to leave that group. He was talking more of reforming its governance, which is an ongoing debate, especially among the eurozone countries. It has not learned how to deal with crises in the making, but that may have an impact on how we might restore confidence to the eurozone and the associated countries, many of which have had their defences severely tested in recent times. We are talking not only about the situation of individual countries but about the eurozone as a whole. I take the view that membership of the eurozone is of long-term strategic benefit to this country. Any attempt to take another course would be significantly disruptive. The reality is that we have always been, even as a country which is politically independent, part of a currency arrangement. We were either united with sterling, as we were until 1 January 1979, or alternatively linked with the European Exchange Rate Mechanism which crystallised in Economic and Monetary Union. I am confident that there is a role to be played by national central banks, as well as the European Central Bank, in this arrangement, but that is a debate for another day.

In principle, the democratisation of international institutions is progressive, but most international institutions, particularly those with power and economic strength, have weightings attached. The United Nations which is often seen as a model has five permanent members of the Security Council. Within the organisation these member states have vastly more power

[Deputy Martin Mansergh.]

than all other member states; they have a right of veto, for example. With regard to the IMF, we must bear in mind the big contributors, the biggest by far being the United States. If they are to continue to make that contribution, they must have confidence in the organisation. For a period some ten or 20 years ago the United States, under a Republican Administration, effectively lost confidence in the United Nations and was very slow to make financial contributions.

There is a trade-off to be made if we want to secure the full financial backing and participation of the United States in the IMF. I get the impression, having attended two annual meetings, that most, if not all, countries want to secure the commitment of the United States to the IMF, but if this is to be so, the extension of quotas, votes and the principle of democratisation should not threaten what can be seen as vital American interests. All wealthy countries have a certain fear that they will be converted into cash cows; in the eurozone Germany has the potential to become a cash cow for poorer countries in a process it cannot control.

That is the background to the debate. The 2008 changes which we are discussing represent a cautious move towards democratisation, but the 2010 changes which have also been agreed are perhaps slightly more far-reaching. One should not exaggerate this point.

I thank the House for its support for this progressive measure which is relevance to our domestic position to the extent that there will be a limited reduction in the interest rate we must pay on the IMF element of the loans we will receive. The later agreement, when this round is completed, will have a somewhat larger beneficial effect.

I will respond briefly to comments made by Senators Bradford and Hanafin. Reflecting on what has happened in one of the strange and extraordinary days that we all experience in the Houses occasionally, I very much endorse the view expressed and hope we can have a constructive debate on the issues involved. I hope this will not happen only during the run-up to the general election and that it will be possible for various parties and Independent Members to approach problems in a realistic fashion rather than saying things which would be regrettable later if those parties were in government afterwards. If parties have no likelihood of being in government, they should not mislead the people about what it is possible to achieve. I am firmly of the view that when the election is over, no matter what the strength is of different parties, groups and Independents in representing the people, all elements in the Oireachtas will have to co-operate closely and perhaps be a little more constructive which was not always the case in the past. The Oireachtas can work with the Government of the day to lift the country out of its difficulties and reach a more benign path as soon as possible.

Question put and agreed to.

Bill reported without amendment, received for final consideration and passed.

### **Bretton Woods Agreements (Amendment) Bill 2011: Motion for Earlier Signature**

**Senator John Hanafin:** I move:

That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Bretton Woods Agreements (Amendment) Bill 2011 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to her.

I thank the Minister of State who has at all times been available to the Seanad and contributed to debates in such an excellent way.

**Senator Paul Bradford:** I thank the Minister of State for presenting the Bill and wish him well. Like all of us, he faces choppy waters.

**Senator Mary M. White:** I thank the Minister of State and his officials and wish him and the Senators present good luck in the forthcoming election.

**Minister of State at the Department of Finance (Deputy Martin Mansergh):** I thank Senators for their co-operation in expeditiously passing the Bill, which is a significant component of the work that is left for this Oireachtas to do. I also thank speakers for their good wishes, which I reciprocate, whatever political path they propose to follow in the immediate future.

Question put and agreed to.

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

**Senator John Hanafin:** At 2.30 p.m. on Tuesday, 25 January 2011.

### Adjournment Matter

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#### Schools Building Projects

**An Leas-Chathaoirleach:** I welcome the Minister of State at the Department of Education and Skills, Deputy Seán Haughey.

**Senator Paschal Donohoe:** I thank the Minister of State for his attendance. The issue I raise is the status of Gaelscoil Bharra in my constituency. I have raised this matter on several occasions in the House. A building project for the school has progressed in recent years and I understand the Department of Education and Skills is involved in discussions with staff and parents regarding the potential design of the school. I raise this issue to emphasise the need for the building project to be progressed given the long-standing poor condition of the school building. I ask the Minister of State to provide an update on what will be the position regarding funding for the building project once the design has been agreed.

**Minister of State at the Department of Education and Skills (Deputy Seán Haughey):** I am taking this Adjournment matter on behalf of my colleague, the Tánaiste and Minister for Education and Skills, Deputy Mary Coughlan, who has today been appointed Minister for Health and Children.

I thank the Senator for raising the matter as it affords me the opportunity to outline to the Seanad the process being utilised to ensure there will be adequate accommodation in schools at primary and post-primary level in all parts of the country. The forward planning section of the Department has carried out a study of the country to identify the areas where, due to demographic changes, there may be a requirement for significant additional school provision at both primary and post-primary levels over the coming years. The study was conducted using data from the Central Statistics Office, General Register Office and Department of Social Protection, with reference to recent schools' enrolment data. School accommodation requirements in the Dublin 7 area have been considered as part of this detailed study. Indicators are that approximately 12 additional primary classrooms may be required across the area to cater for increased enrolments up to the school year 2014-15. The Department is considering options to meet the deficit identified.

[Deputy Seán Haughey.]

To address the position of the specific primary school referred to by Senator Donohoe, Gaelscoil Bharra, Cabra, Dublin 7, the Department has agreed, in principle, a design solution for the school subject to securing the necessary planning consent from the planning authority. St. Finbarr's GAA club is agreeable, in principle, to surrendering its interest in the relevant land holding to facilitate the proposed design solution. The Department has also received permission from the GAA club to apply for planning permission for the school. The Department is in the process of working up a design solution for submission to the planning authority based on previous discussions with the local authority. I assure Senator Donohoe that the school authority will be apprised of the design solution in advance of the application being submitted to Dublin City Council. To this end, the Department has advised the Office of the Chief State Solicitor that the necessary legal arrangements should be prioritised and the Department will continue to work with the office in this regard.

The progression of the accompanying building project will be considered in the context of the capital budget available to the Department for school buildings generally. I thank the Senator again for affording me the opportunity to outline to the House the current position regarding this matter which he has raised on several previous occasions.

The Seanad adjourned at 3.35 p.m. until 2.30 p.m. on Tuesday, 25 January 2011.