



# SEANAD ÉIREANN

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*Déardaoin, 7 Iúil 2011.*

*Thursday, 7 July 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 Thomas Byrne that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for Education and Skills to discuss the lack of planning for a new secondary school in east County Meath despite population increases at national highs.

I have also received notice from Senator David Cullinane of the following matter:

The need for the Minister for Jobs, Enterprise and Innovation to discuss the actions he has taken to implement recommendations contained in a report published by the previous Oireachtas Joint Committee on Enterprise, Trade and Innovation following a field trip by the committee to west Waterford and east Cork to examine economic black spots and the need for job creation.

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

## **Order of Business**

**Senator Maurice Cummins:** It is proposed to take No. 1, motion re the arrangements for tomorrow's sitting, to be taken without debate; No. 2, motion re the Harbours Acts 1996 to 2009 (Transfer of Functions of Dundalk Port Company) Order 2011, back from committee, to be taken without debate; No. 3, motion re the mutual recognition of protection measures in civil matters opt-in, to be referred to the joint committee and to be taken without debate; No. 4, Public Health (Tobacco) (Amendment) Bill 2011 — Order for Second Stage and Second Stage, to be taken on the conclusion of No. 3 and to conclude not later than 1.45 p.m., with the contributions of group spokespersons not to exceed ten minutes and those of all other Senators not to exceed six minutes, and the Minister to be called upon to reply not later than 1.40 p.m.; No. 5, the Defence (Amendment) Bill — Committee Stage, to be taken at 2.45 p.m. and to conclude not later than 4.15 p.m. if not previously concluded; and No. 6, the Civil Law (Miscellaneous Provisions) Bill 2011 — Report Stage, to be taken on the conclusion of No. 5 and to conclude not later than 6.15 p.m. There will be a sos from 1.45 p.m. to 2.45 p.m.

**Senator Darragh O'Brien:** I thank the Leader for his contribution yesterday on the re-ordering of business and allowing additional time to debate a number of the Bills, particularly Report Stage of the Civil Law (Miscellaneous Provisions) Bill to be taken later and the Final Stages of the Defence (Amendment) Bill to be taken tomorrow. I genuinely thank the Leader for that because it shows that when we work together on the ordering of business, Members can be satisfied that they can contribute properly to the debates.

I wish to raise a number of matters. The European Central Bank today intends to announce a further interest rate rise of 0.25%, the second rise since April. It is likely there will be another two increases before the year's end. We are all aware of the pressures mortgage holders are under and these additional increases, based on a €250,000 mortgage, will mean an extra €100 per month in repayments.

There was a raft of promises in the programme for Government on assistance for mortgage holders in distress, including increasing the mortgage interest relief to 30% for first-time buyers and people who bought houses between 2004 and 2008. In the past week my colleague, Deputy Michael McGrath, asked the Minister for Finance what the Government intended to do about that and when it would follow through on the firm and detailed commitments given in the programme for Government. Last month, the Minister, Deputy Michael Noonan, stated that the Government would examine a number of proposals regarding its commitment and that any changes to mortgage interest relief would be considered in the context of the annual budget and Finance Bill process. What we have now is another review. We have detailed commitments in the programme for Government that have not been honoured. I put it to the Leader that mortgage holders cannot wait until the budget in December and the passing of the Finance Bill in January. If the Government has made firm commitments in the programme for Government, this side of the House and my colleagues in the other House will have no difficulty in facilitating it in quickly bringing forward the commitments it made both in the run up to the election and during the formation of the Government.

Will the Leader indicate the proposals the Government will be bringing forward on providing assistance for mortgage holders? When will the Government follow through on its commitment to increase mortgage interest relief to 30% for those who bought houses between 2004 and 2008? When will the Government bring forward legislation to make good on those promises because, unfortunately, in terms of the ECB action, people will have at least two further interest rate increases before the end of the year? I would like to know from the Government when it intends to do that, and I put it to the Leader that it should be done urgently.

My colleague, Senator Thomas Byrne, yesterday raised a serious issue directly with the Minister for Justice and Equality, Deputy Alan Shatter. I believe the Minister withheld very important information from this House when the debate on the Smithwick tribunal was being taken. The Minister and the Government have restricted that tribunal, tied its hands and set a date of November for the tribunal to report. The tribunal chairman has stated that witnesses will not now come to the tribunal. I remind Members that our party tabled an amendment which was defeated in the Seanad to allow for additional time for the tribunal to report.

Prior to him coming into this House the Minister had in his possession a letter from Judge Smithwick outlining his grave concerns about Government restrictions on the tribunal. The Minister did not even allude to that. Our amendment was voted down. In the interests of clarity and transparency, the Minister should have, at the very least, informed this House and the Dáil during the debate that he was in possession of a letter from the chairperson of the tribunal, Mr. Justice Smithwick, stating the timing restrictions would hinder the job being done by the latter. The Minister did not inform the House; rather, he withheld vital information. My party has tabled a motion of censure of the Minister in the Dáil. We intend to follow this through in

the Seanad at every available opportunity. If a Minister is to show scant disregard for the Oireachtas by withholding crucial information relevant to a Bill before either House, it is unacceptable. Our amendment was defeated and the Minister never even alluded to the information in his possession. I ask the Leader to invite the Minister to return to the House specifically tell us, as Members of the Oireachtas, that he did not inform us he had received a letter from Mr. Justice Smithwick.

**Senator Ivana Bacik:** I appreciate Senator O'Brien's comments on the Leader's comments yesterday on the reordering of business. The Leader was very gracious in accepting responsibility for the shortened debate on the Civil Law (Miscellaneous Provisions) Bill. Neither I nor any of the other leaders who saw a draft of the timetable believed two hours would be too little for Committee Stage of the Bill. I certainly did not believe debate on the amendments involved would take more than two hours. We will certainly be more careful in future. There was no intention to cut short the debate. I was involved in it and did not want to cut it short either.

Senator O'Brien referred to mortgage holders. I share his concern over the announcement that the European Central Bank is to raise interest rates. This is of major concern to all of us. I remind the Senator that the Labour group hosted a Private Members' debate some weeks ago on aids and supports for distressed mortgage holders. The Minister present stated he would consider some of the very constructive proposals made by my colleague, Senator Hayden, and others about reliefs offered in other countries to mortgage holders in distress.

I call for a debate on the renewed allegations about *News of the World*. I stated yesterday Irish readers should be boycotting *News of the World*. Given the recent reports and the escalation in their gravity, it is important that Irish readers vote with their feet this Sunday. The *Irish Independent* reports today that there may be two Irish victims of phone hacking by *News of the World*. There may be others. The Data Protection Commissioner was quite robust yesterday in suggesting what occurred would not happen here. Today there is much more concern that it is happening or has happened here. We have all learned in the past 24 hours how easy it is for unscrupulous journalists to engage in telephone hacking. The political scandal has escalated in Britain in the past 24 hours and it seems likely a major inquiry will be launched. This is especially significant because politicians in both Ireland and Britain have long been fearful of the power of News International and Rupert Murdoch. To see advertisers withdrawing advertisements from *News of the World* in disgust shows us that it is time we spoke up about this. Senators Gilroy and Conway, I and others did so yesterday and we should continue to do so. We should urge readers to show their disgust. It would be worth having a debate on this in the House.

I called yesterday for a debate on the contribution of religious orders to the redress Bill. The Minister for Education and Skills, Deputy Ruairí Quinn, pointed out that the religious orders are falling well short of paying a 50% share of the enormous bill of €1.36 billion payable on foot of the redress scheme. The *Irish Examiner* has had a very comprehensive series of reports on the amount of money and properties available to religious orders. It points out today that only seven of 200 schools owned by religious orders worth over €1 million each have been offered thus far to make up the shortfall. The Minister is correct that more properties of this kind could well be offered to make up the clear shortfall.

**Senator Eamonn Coghlan:** Having come to the House from the outside world of sport, having noted the doom and gloom associated with the economic recession and the various cutbacks that have been implemented over recent years and having heard the moaning and groaning, I reflect on the Irish sportsmen and sportswomen who continue to instil in us tremendous pride and passion and lift the spirits of the nation, not just here but among the diaspora throughout

[Senator Eamonn Coghlan.]

the world. Included are our rugby heroes, boxer Katie Taylor who won a gold medal at the European Union Women Championships and the Irish male boxers who also won medals at European level. Last week, we alluded to Rory McIlroy winning the U.S. Open. My own son was part of the Irish team that won the European Cross Country Championships at a time when this was not expected. When I reflect on such successes, I note that sportsmen going through bad times must not focus on the negative but on the positive; otherwise they would keep on losing. If one focuses on the negative, one will have negative energy and if one focuses on the positive, one will have positive energy. This positive energy will overflow into the general public.

Owing to my commitments at a joint committee, I was not in the Chamber some days ago when Special Olympics Ireland was being congratulated on the floor. I understand, however, that Senators were congratulating the organisation and referring to the 107 medals that Team Ireland brought home from the Special Olympics World Summer Games in Athens. I am not present today to offer congratulations on the 107 medals but to highlight what 107 medals represent for Special Olympics Ireland. I refer to the positive energy that exudes from the people who run the organisation. In 2003, the Special Olympics World Summer Games were held in Ireland, and this showcased the country all around the world. Special Olympics Ireland decided to use the legacy of the games in 2003 to build on its activities in Ireland and to provide sports facilities and programmes for people with special needs. Since 2003 Special Olympics Ireland has been regarded as a leader and beacon of light by the global Special Olympics organisation. The global organisation tries to learn from Special Olympics Ireland.

Special Olympics Ireland continues to grow to this very day. Owing to its strategic planning thus far, it has over 25,000 volunteers, and 10,000 athletes and families are involved. The organisation brings together corporate sponsors, Government agencies and the police forces of Northern Ireland and the South. Special Olympics Ireland is an unstoppable force. In 2007, it enjoyed a grant from the Irish Sports Council to the tune of up to €3 million but this grant has been cut by 50%. It now amounts to approximately €1.5 million. When Special Olympics Ireland's grant was cut, we did not hear a word of moaning or groaning from the organisation. It knew it faced a challenge, which was to pull together, work together and become a flame of hope for communities throughout the Thirty-two Counties. The Special Olympics do not just take place every two or four years but every single day, all year round, among the communities. Special Olympics Ireland provides sporting activities for children and adults with intellectual disabilities.

Special Olympics Ireland's funding is on a downward trend. I ask the Leader to contact the Department of Health, the Department of Education and Skills and the Department of Social Protection to ascertain whether they have any means of allowing the funding to continue rather than having it allocated through the Department of Transport, Tourism and Sport and the Irish Sports Council.

**Senator Feargal Quinn:** It is joy to hear Senator Eamonn Coghlan speak with such a positive attitude.

**Senator David Norris:** Hear, hear.

**Senator Feargal Quinn:** I would be glad to hear more of it.

I appreciate the manner in which the Leader responded yesterday to the concerns of so many Members in regard to the ordering of business, particularly the Civil Law (Miscellaneous Provisions) Bill.

To the best of my knowledge, the Minister for Social Protection has not been invited to the House yet.

**Senators:** She was here yesterday.

**Senator Feargal Quinn:** I welcome the opportunity to have a debate on social protection. At a time when we are closing hospitals and having to restrict very severely the amount of money we have to spend, my attention has been drawn to the fact that during the good times during which we needed many emigrants to help us to build the economy, we established a jobseeker's allowance and other allowances that were multiples of what can be earned elsewhere. When someone who has come from abroad and worked here and contributed to our economy returns home, he or she is still paid the jobseeker's allowance for a certain period of time. This is a multiple of what is paid in that country as it is based on the Irish rate and not on the rate of the person's home country. While we could have afforded this in the past I am not sure we can do so now. It may well be that we do not have an option. I understand there may be EU regulations which do not permit us to pay those who have returned home the rate of their own country.

I would welcome a discussion on this and other areas that need to be discussed. There was a time when we could be generous, and we were generous because we had the benefits of the workers from abroad. However, it could well be that we cannot quite afford to do it at a time when we are closing hospitals. I ask the Leader to arrange for the Minister for Social Protection to come to the House for a wide-ranging debate on the amount of money we spend on social protection in various areas so we can ensure we are getting the best value for money.

**Senator John Whelan:** I commend Senator Feargal Quinn on his choice of necktie this morning. It is very fetching.

**Senator Fiach Mac Conghail:** It is a rainbow coalition. You should see his socks.

**Senator John Whelan:** I could not resist commenting.

I call on the Leader to request at the earliest opportunity the Minister for Communications, Energy and Natural Resources to come before the House. I know he has a heavy work schedule and much legislation pending. There has never been a more appropriate time for him to set out his stall and give preliminary notice to the House of his plans for what I believe will be complex legislation on media ownership and control in the country. It is vital that we do so at this juncture, particularly in view of the story doing the rounds at present with regards to phone hacking and the scurrilous and sinister journalistic practices in the UK.

I raise this matter this morning because in the current edition of the *Irish Journalist*, which is the magazine of the National Union of Journalists, NUJ, the Irish secretary of the NUJ, Séamus Dooley, writes that bosses should not be allowed to control the news. He raises serious matters which would be of concern to Members of the House regarding editorial independence in the national media in particular.

I support his call for the establishment of a media commission to examine all aspects of media ownership and control. To facilitate a consultation process which is as broad as possible, perhaps Members of the House could take part in it and be represented on the commission. Mr. Dooley has also called for members of the NUJ and journalists to live up to the union's proud traditions and high standards of defending editorial independence and genuine journalism free of commercial bias rooted in private agendas.

It is important that the House notes the NUJ, through its Irish secretary, has stated there is now irrefutable evidence that across a broad range of print and broadcast media outlets

[Senator John Whelan.]

attempts have been made to shape the coverage and interfere with the reporting of the recent Moriarty tribunal. This would be of grave concern to the House. We all received copies of the three large volumes of the tribunal's report. It does not take too much to consider that in a small country such as ours how a small group of people who are media moguls could stymie the reporting of important matters of public interest. I raise this in light of the shocking revelations regarding the *News of the World*. It would be naive in the extreme to think it is going on in the UK and not here.

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

**Senator John Whelan:** My question is whether the Minister will come before the House at the earliest opportunity to set out his plans regarding legislation on media ownership because the issue of cross ownership of broadcasting and print media is important. Many Members might not be aware that even small local and regional newspapers such as the *Kilkenny People* and the *Limerick Leader* are no longer locally owned and are not even owned by people in the country. This requires urgent investigation and legislation to ensure we have a free and open press.

**Senator Brian Ó Domhnaill:** Is mian liom tagairt a dhéanamh don méid atá sa Bhille dlí atá os comhair an Tí inniu i dtaca leis an teanga oifigiúil, an Ghaeilge, agus an laghdú stádais atá molta sa Bhille faoi alt 46 i dtaca le foilsíúcháin Achtanna de chuid Tithe an Oireachtais. I refer to section 46 of the Civil Law (Miscellaneous Provisions) Bill which relates to the downgrading of the status of the Irish language and the 2003 Act introduced by the previous Government on the publication on the Oireachtas website of Houses of the Oireachtas Acts. If the Bill as proposed were passed it would mean Bills would be published on the website in English only and not in Irish. This is a disgrace and an indictment of policy on the Irish language. Will the Leader liaise with the Minister for Justice and Equality and Government officials to have the Bill amended before it enters the House today? This side of the House will lodge amendments. The Government should see sense and live up to the commitment in the programme for Government——

**An Cathaoirleach:** That point was made in the debate on the Bill.

**Senator Darragh O'Brien:** This is the second Bill in a week in which the Government has done this.

**Senator Brian Ó Domhnaill:** The Government should live up to the commitment in the programme for Government that the Official Languages Act 2003 would be reviewed prior to any decision to downgrade the provisions of the Act. The Government should show that commitment in the House later today.

I also want to refer to an issue raised by the Leader of the Opposition in the House, Senator O'Brien, namely, the alarming news coming from Europe that the ECB will increase its interest rate by 0.25%. This will affect 400,000 Irish homeowners who are on tracker mortgages and will increase mortgages by approximately €15 per every €100,000. The other  
*11 o'clock* alarming news we are learning today is that the two semi-nationalised banks, namely, Bank of Ireland and AIB, are considering increasing their variable mortgage rates. This would have drastic consequences for the people of the country who have mortgages with these institutions.

I propose an amendment to the Order of Business to include an emergency debate on this issue today, in the presence of the Minister for Finance or the Minister of State at that Depart-

ment, so the public interest directors on the boards of both institutions are made aware by the Government of the serious consequences that any increase in mortgage rates would have for the customers of both these banks which are supported by the taxpayers of the country.

**Senator Paul Coghlan:** Senator O'Brien, perhaps inadvertently, has given a wrong impression of the Smithwick tribunal because the judge has stated he is satisfied that witnesses will attend. He has gone public on this since.

**Senator Darragh O'Brien:** No, not correct.

**Senator Paul Coghlan:** The report deadline in the motion passed by both Houses can be extended if it proves necessary and this has been made clear by the Minister and accepted by the judge. These are two important clarifications.

**Senator Darragh O'Brien:** Why did the Minister not to tell us about the letter?

**An Cathaoirleach:** Senator Coghlan, without interruption.

**Senator Paul Coghlan:** I am sure this will be helpful to the Leader in responding. I know Senator O'Brien would not intend to mislead the House. I stated it was inadvertent.

**Senator David Norris:** I second Senator Ó Domhnaill's amendment to the Order of Business. I do so because it is perfectly clear that the interest rate is dictated by the interests of Germany. It is about time the German people were made aware of the fact that the impression under which they appear to labour, which is that their banks are rescuing our people, is the inverse of the truth.

Our unfortunate people are being squeezed to death to rescue the German banks that imprudently invested in our property bubble.

On the guillotine that was regrettably imposed in this House, I have discovered through contacts with the Government that it was necessitated by the timelines of the IMF-ECB agreement. This suggests that we are being run by an unelected, undemocratic series of financial institutions in Europe, which is wrong.

**Senator Fidelma Healy Eames:** That is the truth.

**Senator Darragh O'Brien:** In that case, the Senator may as well pack her bags and go home to Galway.

**An Cathaoirleach:** Please allow Senator Norris to continue without interruption.

**Senator David Norris:** It is appropriate that we invite Professor Jerzy Buzek, MEP, to the House for the cosmetic exercise of giving him a political platform of about 20 minutes followed by questions from selected Members of the House. Will the Leader ensure that in addition to this cosmetic, face-saving political exercise, Professor Busek is brought into contact with people in Roscommon County Hospital, carers and special needs assistants because these are the people who are paying the debts of the German banks? It is about time we put at the forefront of everything we do, both in Ireland and throughout Europe, the interests of our own people, not merely the propping up of a corrupt system.

**Senator Cáit Keane:** I am pleased to be able to speak immediately after Senator Norris given his use of the phrase "face-saving political exercise". I wish to address again the matter of the Order of Business. Senators are charged with effecting change in the Seanad and while I would like to be part of such change, it is not reflected on the Order of Business. This aspect of our

[Senator Cáit Keane.]

business should be changed for the simple reason that the Seanad's purpose is to scrutinise legislation. I joined this House for that reason, not to repeat what I read in the newspapers or heard on "Morning Ireland". If an urgent matter is referred to on "Morning Ireland", I will raise it in the Seanad but it would be preferable if the Order of Business were reduced to 30 minutes to discuss urgent matters arising. Given that urgent matters will arise, Senators should have a facility to raise them.

Bills should not be guillotined.

**Senator David Norris:** Hear, hear.

**Senator Cáit Keane:** I congratulate the Deputy Leader for facilitating Senators and welcome the statement that we would have been facilitated further and a Bill would not have been guillotined if more information had been available. However, with regard to the Order of Business it is a waste of time to hear regurgitated what one hears on radio or reads in the newspapers.

I would like Seanad business to have productive and measurable outcomes. I ask the Leader and Committee on Procedure and Privileges to indicate what have been the outcomes of all the questions asked on the Order of Business. To cite one example, the matter raised by Senator Ó Domhnaill this morning, he spoke mar gheall ar an teanga Gaeilge. Beidh go leor ama againn tráthnóna inniu, mar beidh Bille os comhair an Tí ar 3.30 um thráthnóna. The debate on a Bill, to be taken in the House at 3.30 p.m., will allow Senators to raise the matter to which Senator Ó Domhnaill referred.

**Senator Paschal Mooney:** That is rubbish.

**Senator Brian Ó Domhnaill:** If the Bill in question proceeds in its current form, it will be a further nail in the coffin of the Irish language.

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

**Senator Cáit Keane:** I will raise the issue at the appropriate time, that is, when the Bill is being discussed.

**Senator Brian Ó Domhnaill:** It will be too late.

**An Cathaoirleach:** Please allow Senator Keane to continue without interruption.

**Senator Cáit Keane:** Why did the Senator raise the issue on the Order of Business when——

**Senator Brian Ó Domhnaill:** We are being reasonable by giving notice at this juncture.

**Senator Cáit Keane:** I seldom speak on the Order of Business because, as I stated, I like outcomes. However, I will speak if I must.

**An Cathaoirleach:** The time for the Senator's contribution has elapsed.

**Senator Cáit Keane:** I will put a question to the Leader. Will he reduce the time available for the Order of Business to 30 minutes?

**An Cathaoirleach:** The Senator may raise the issue with the leader of her party.

**Senator Cáit Keane:** I ask whether Senators will agree in the Committee on Procedure and Privileges to reduce the Order of Business to half an hour and extend the time available for discussion of serious business. We are charged with discussing legislation.

**Senator Darragh O'Brien:** Physician heal thyself.

**Senator Ned O'Sullivan:** The Fine Gael Party is fragmenting in both Houses.

**Senator Mark Daly:** I ask the Leader to invite the Minister for Justice and Equality to the House. Prior to the dissolution of the previous Dáil, legislation was proposed to reform the National Asset Management Agency. I understand a delegation of NAMA met members of the Fine Gael Party yesterday to discuss how the agency does its business. Perhaps the Leader will indicate whether the delegation proposed that the website announced two weeks ago will be open and transparent, as NAMA indicated it would be. As I stated yesterday, it appears that not all properties under the control of the National Asset Management Agency which are to be sold will feature on the website.

**Senator Paul Coghlan:** NAMA operates within the law.

**Senator Mark Daly:** I thank Senator Coghlan for his contribution. While the agency may be operating within the law, the problem is that it is not open and transparent. People need to have confidence in NAMA because taxpayers' money is involved.

I ask the Leader to arrange to have the Minister for Justice and Equality come before the House to discuss the issue of data protection. The religious orders and bishops are hiding behind this issue by insisting the Oireachtas introduce more legislation to allow them to share information with a body they established, the National Board for Safeguarding Children. They were informed three times last year and once again this year that data protection issues do not arise. The Data Protection Commissioner met the religious orders and indicated to them that further legislation is not required. Will the Leader seek clarification on this matter? It appears the agreement unfortunately reached with the religious orders cannot be undone. The orders should pay half of the costs of restitution to those who were in the institutions. The Catholic Church appears to be more concerned with protecting itself and its institutions than being open and transparent. I ask that the Minister for Justice and Equality provide the House with clarification on data protection issues and whether the Catholic Church should share information with its own audit.

**Senator Fidelma Healy Eames:** A delegation from the National Asset Management Agency attended a meeting of the Fine Gael Parliamentary Party last evening. Like other Members, I had many questions for NAMA whose officials gave us two hours of their time. It was notable that they stood up to rigorous scrutiny.

**An Cathaoirleach:** The House is not discussing parliamentary party meetings.

**Senator Darragh O'Brien:** Was it a private meeting? Will the Senator inform the House what took place?

**Senator Fidelma Healy Eames:** I am providing this information for the benefit of the House. The National Asset Management Agency is open to receiving questions and attending meetings and has even provided a special e-mail contact for Oireachtas Members.

I propose to follow up on Senator Eamonn Coghlan's comments on the positive energy and inspiration provided by the 107 Special Olympics medalists. It often intrigues me that Ireland's special Olympians achieve much more success than able bodied sportspersons. It is an inspi-

[Senator Fidelma Healy Eames.]

ration to see how the Irish team performed. The previous Government did not commence the Education for Persons with Special Educational Needs, which was enacted in 2004. The programme for Government includes a commitment to implement the Act. I ask the Leader to arrange for the Minister for Education and Skills, Deputy Ruairí Quinn, to come before the House to make a statement on how this commitment will be met in this term given the resource implications involved. I have requested on several occasions that the Minister come before the House for a broad debate on our vision for education. Such a debate should be held before the summer recess in order that Senators are ready for the new session in September.

I concur with Senator Quinn on the need for a broader debate on social protection. The Minister for Social Protection has been to the House on a number of occasions, including for the debate on the Social Welfare and Pensions Bill. I tabled a number of amendments on that occasion but they were not discussed. The Minister told Members she is setting up a reform commission on welfare. We should invite her to the House to discuss the terms of reference of that commission. We could, for example, explore the feasibility of a household or family welfare cap and how it could be applied fairly, and the rate of support Ireland pays to non-resident families where one parent is working in this country. It is ludicrous that we are paying Irish levels of welfare payments to people in other countries and not the rate of the home country. I raised those questions with the Minister but did not get answers. We need——

**An Cathaoirleach:** Do you have a question for the Leader, Senator?

**Senator Fidelma Healy Eames:** I have asked my question. I want the Leader to invite both the Minister for Education and Skills, Deputy Ruairí Quinn, and the Minister for Social Protection, Deputy Joan Burton, to the House as soon as possible for a broader debate on both issues.

**An Cathaoirleach:** I call Senator Ó Murchú or should I say Senator Mullen.

**Senator Rónán Mullen:** Seanadóir Mullen anseo anois, mar is eol duit, a Chathaoirligh.

If I were bringing an *ex parte* application before the High Court seeking an injunction without the other side being present, I would be expected to act according to the principle of *uberrima fides*, namely, the principle of utmost good faith. That means I would put all material facts before the court in the absence of the other party so the court could make an honest decision pending further resolution of the matter. One of the big issues before us at present in the context of the relationship between the Government and the Parliament is the principle of utmost good faith.

I am not sure about the facts behind the Minister for Defence, Deputy Alan Shatter's, dealings with the Smithwick tribunal but I am very concerned about what happened in the House yesterday. The Minister brought forward the Defence (Amendment) Bill which gives a committee of selection selecting, for example, a military judge the right to widen the scope of potential applicants. He did not tell us, however, that there was a very significant back story——

**An Cathaoirleach:** Senator Mullen, that was discussed on the Bill yesterday.

**Senator Maurice Cummins:** That was raised on Second Stage.

**An Cathaoirleach:** Committee Stage has still to be held. Have you a question for the Leader?

**Senator Rónán Mullen:** Yes, I have a very serious question about this. If one were dealing with some type of international measure of transparency and corruption in politics, one issue that would be relevant would be any situation where the executive or government withholds

material information from the legislature. That is essentially what happened yesterday. We were not given information——

**Senator Cáit Keane:** On a point of order——

**Senator Rónán Mullen:** ——that would cast a particular light——

**An Cathaoirleach:** Senator Keane on a point of order.

**Senator Rónán Mullen:** No, excuse me, Senator Keane.

**Senator Cáit Keane:** I was in the House for the debate——

**An Cathaoirleach:** Senator Mullen, I am chairing this debate. Senator Keane on a point of order.

**Senator Cáit Keane:** I was in the House for the debate and that same accusation——

**Senator Darragh O'Brien:** How is that a point of order?

**Senator Cáit Keane:** That same accusation was made. It is incorrect.

**An Cathaoirleach:** That is not a point of order. I call Senator Mullen.

**Senator Rónán Mullen:** I will ask my question but it is interesting that Senator Keane rose to her feet. I was going to compliment her on making the point that we are here to scrutinise legislation.

**Senator Cáit Keane:** Exactly.

**Senator Rónán Mullen:** How can we scrutinise legislation when we are not presented with relevant material facts in the background to that legislation? We are not——

**An Cathaoirleach:** Have you a question for the Leader?

**Senator Rónán Mullen:** ——supposed to be private investigators but scrutineers of legislation. I told the Minister yesterday that either he has good reason to be annoyed with the Defence Forces and his officials for not apprising him of the full story behind that legislation——

**An Cathaoirleach:** You said that yesterday, Senator. Have you a question for the Leader?

**Senator Rónán Mullen:** ——or we have good reason to be annoyed with him for not apprising us. I am asking the Leader what I asked the Minister yesterday——

**An Cathaoirleach:** There is no point asking it again today if you asked it yesterday.

**Senator Rónán Mullen:** ——which is to consider postponing the further passage of this legislation until Members of this House, and the wider public, have had the opportunity——

**An Cathaoirleach:** Are you proposing an amendment to the Order of Business?

**Senator Rónán Mullen:** ——to consider the full context for that defence Bill.

**Senator Darragh O'Brien:** Hear, hear.

**Senator John Gilroy:** I will be brief. I fully support Senator Keane's contribution earlier. Indeed, in the two months I have been a Member of the House, it is the most common sense contribution I have heard. The Order of Business is unquestionably flawed and is often used as a platform for political posturing, unrealistic proposals and headline grabbing, all of which we have seen this morning. This is not what the Seanad is for, at least not in my understanding of the Seanad. The Order of Business is the procedure in this House that receives the most publicity and is consequently the most often seen by the general public, and we do ourselves no favours in our attempt to retain the credibility of the House when the three activities I have just mentioned take place. Some Senators clearly do not understand what the Order of Business is about, or maybe it is I who does not understand. This morning we have heard legislation being discussed and questions being put to a Minister who is not present. This is just terrible.

**An Cathaoirleach:** Do you have a question for the Leader?

**Senator John Gilroy:** I have lots of questions for the Leader, a Chathaoirligh, if you will give me a minute to ask them.

Clearly, Senator Keane has touched a nerve with Members of the Opposition, as we have seen and heard in the response——

**Senator Ned O'Sullivan:** She touched a nerve with a few of your own as well.

**An Cathaoirleach:** Senator Gilroy, have you a proposal for the Leader?

**Senator John Gilroy:** I certainly have.

**Senator Darragh O'Brien:** Excellent. Let us hear it.

**Senator John Gilroy:** I support Senator Keane. I ask the Leader to meet with the leaders of the groups in the House and the Committee on Procedure and Privileges to see if there is some way of measuring the outcome of the Order of Business, certainly to reduce the time of the Order of Business and to prevent the windbaggery and posturing that has become synonymous with it.

**Senator Labhrás Ó Murchú:** I commend Senator Eamonn Coghlan on the positive note he struck this morning. Indeed, a few more positive notes would not go astray here from time to time.

There has always been cross-party consensus in this House on the Irish language. That was evident both when dealing with the Official Languages Act and the 20 year strategy. Unanimity was achieved in both cases. It was not very easy but it was a great achievement for the language at the time. I do not wish to see any downgrading of the vision set out in the Official Languages Act and the 20 year strategy. The Supreme Court has already put down a marker in regard to certain legal instruments being made available in the Irish language. The person who brought that to our notice was the former Leader of Fine Gael in the Seanad, former Senator Maurice Manning, an eminent gentleman. While what is being discussed at present might not be a legal instrument in the same way, I have a feeling that if it goes back to the courts, there will be another view on that as well. The Leader always listens carefully so I ask him to maintain the consensus that exists here and, second, to ensure the right of people to have this documentation made available to them in Irish. I hope that can still be achieved.

I support Senators Ivana Bacik and John Whelan in seeking a debate on the media, particularly arising from the hacking scandal involving the *News of the World* in Britain. The British Prime Minister might have been understated when he described it as disgusting given that it

was the most vulnerable people who were the victims of this hacking. Senator Whelan is quite correct about the ownership of the media in this country. I raised the issue several times in the House over a number of years when I saw the monopolies that were being built up and the *Tipperary Star*, the *Clonmel Nationalist*, the *Kilkenny People* and other newspapers going out of Irish ownership.

There is an issue here of editorial rights or editorial responsibility. If it is being handed down from owners, to editors and then to journalists, we are in a very sorry situation, particularly those of us who seriously support the freedom of the media and freedom of expression, which this House always has. I urge all Members to read the editorial in the *Irish Independent* today which makes a decent effort to put into context what has happened with this hacking scandal.

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

**Senator Labhrás Ó Murchú:** I have no doubt that the same thing might be happening here under our noses. Why is that the case? It is because those who own the media are driving to that point to increase sales so the balance sheet will look healthier. It should not be deferred by a couple of months.

**Senator Martin Conway:** Can the Leader tell us the progress the Minister for Enterprise, Jobs and Innovation has made on reform of the joint labour committees, JLCs, and in his negotiations with the various stakeholders, particularly the unions? This morning, the High Court ruled that the JLC system for the fast food industry is unconstitutional. This is a serious and significant development. What is the Minister's response to this ruling? Has he ended his period of consultation? Has the Cabinet discussed the issue of JLCs and when can we expect a Government decision on JLC procedures?

We all appreciate that the system is outdated but everyone has a different view. Some are right and some are wrong. There is a myriad of opinions. It is most important that the Government make a decision and move on. There was an increase in the JLC rate for the retail sector on 1 June. I was surprised to see that, given that the Government has announced it is looking at the process.

What is the Government's position on JLCs and can we expect a decision in the very near future? Has a timeline and date been set?

**Senator Ned O'Sullivan:** I could not agree with Senator Keane's proposal that we shorten the Order of Business. It is a valuable and unique opportunity for every Member to bring to national prominence matters that are of importance on a national or constituency level. There would not be much support for shortening the time.

I agree, however, that speaking time should be measured and that we should receive feedback on our queries. I grew tired of speaking on the Order of Business because matters that were raised went into the ether and were never heard of again. In that respect, I compliment the Leader on the way he is handling business. He has the respect of the House for the professional manner in which he does his job. We will not always agree with him or help him. That is not our job. However, we respect what he is doing. The House is running more efficiently than the last Seanad. That is my opinion.

**Senator Ivana Bacik:** Hear, hear.

**Senator Ned O'Sullivan:** Can the Leader have something done at Cabinet level for commercial ratepayers? I am thinking particularly of small family businesses and single retailers, like myself, who have struggled during this recession to keep our businesses going and our staff

[Senator Ned O'Sullivan.]

employed. The one unchangeable and fearsome bill received every year is the rates bill. The rateable valuation system needs a total overhaul. I ask the Leader to facilitate a debate on that matter.

We inherited a Victorian British system of rating, whereby each property has a notional value which has no bearing on the real value of a business. There are all sorts of anomalies. In a single street one might have five premises of different sizes paying different commercial rates and very often the smallest building has the highest rate imposed on it. We must do something about that inherited system. Even our most patriotic and law abiding retailers who always paid their way in the hardest of times are finding it very difficult now to pay their rates. Something must be done to help them. Every other sector has a lobby group. I do not believe the independent retail group are loud or forceful enough. I ask the Leader to have this matter raised at Cabinet and give these people some relief at this difficult time.

I second the amendment to the Order of Business.

**An Cathaoirleach:** Senator Norris has already seconded the amendment.

**Senator Michael D'Arcy:** The Order of Business is a shambles and a joke, and it is getting worse. I have been a Member only a few weeks but if this continues there will be no need to worry about retaining the Seanad. It will be gone. Unless it improves it will be a good riddance, as far as I am concerned. I take no pleasure in saying this.

It looks as though the ECB will raise interest rates by 0.25% and that the Bank of England will not raise its rates. The ECB rate is 1.25% while the British rate is 0.5%. Such an increase would cost approximately €250 million to the people who have loans from Irish banks. If interest rates increase by 1% the added cost would be €1 billion. We can have a positive input in regard to Irish financial institutions. I am referring to all financial institutions and not just those guaranteed by the State. On too many occasions when there have been ECB interest rate rises banks have tagged on an extra 0.5% or 1%. We have control over the institutions within the State.

**An Cathaoirleach:** An amendment is proposed to the Order of Business calling for a debate on the increase in mortgage interest rates. Are you supporting that amendment or have you a question for the Leader?

**Senator Michael D'Arcy:** I have a question for the Leader. Would he consider inviting the Governor of the Central Bank and the Financial Regulator to attend the House for a debate on the procedures taken by Irish institutions, which are funded by the taxpayer, when the ECB raises interest rates? We must ensure that people who have loans from Irish banks are not ripped off. The debate should be narrow, so that people do not discuss everything to do with banking. We need a narrowly focused debate with those two gentlemen. I ask the Leader to arrange that. This is something the Seanad could do to ensure that we keep money in the pockets of Irish citizens. This is how the Seanad could work on behalf of the public.

**Senator Maurice Cummins:** Senator Darragh O'Brien spoke about assistance for mortgage holders. An amendment has been proposed to the Order of Business in that regard, which I do not propose to accept. Senator O'Brien also referred to the Smithwick tribunal. The Minister for Justice and Equality was in the House yesterday and gave a comprehensive explanation of what happened. He was asked if information was withheld from the House. The Minister said he had received a letter from Mr. Justice Smithwick, marked private and confidential to the addressee only, that he had asked Mr. Justice Smithwick if he could put the letter in the public domain and that he did so. The Minister gave the relevant dates and gave comprehensive

information to the House on the matter. It is a matter of surprise and regret that we are seeking, on the basis of selective quotations from lengthy correspondence between the Minister and the judge, to involve the operations of the tribunal in a party political controversy.

Senators Bacik, Ó Murchú and Whelan raised the despicable telephone hacking scandal in the United Kingdom, which could be happening here also. Senator Whelan suggested the setting up of a media commission. We already have a Press Council. There is major concern in the public and among Members of the Oireachtas about media ownership and data protection. I will examine the possibility of mirroring that concern in a debate and decide who would be the appropriate Minister to take the debate. I will try to arrange such a debate in the autumn.

Senator Coghlan referred to the sporting achievements of our participants in the Special Olympics and the positive energy they generate. Senator Coghlan generated positive energy in the House today. The question of funding is one on which we can make representations. However, it will be difficult to secure funding in any area, given the current financial constraints. If any sporting body is to be assisted, it should be Special Olympics Ireland.

Senator Quinn asked for a debate on social protection and referred to social welfare rates and payments to people abroad. Those issues were dealt with comprehensively during the debate on the social welfare Bill with the Minister recently. The Minister agreed to return at a later date to discuss other social welfare issues. She is open to coming to the House in the autumn. She was present last night for the debate on the Registration of Wills Bill 2011, which was her third appearance here. She has paid good attention to the House.

Senator Ó Domhnaill proposed an amendment to the Order of Business. I note his and Senator Ó Murchú's comments on the Irish language.

In reply to Senator Norris, the fact remains that we have lost our economic sovereignty.

**Senator Darragh O'Brien:** That is not true.

**Senator Maurice Cummins:** That is a fact following the EU-IMF bailout signed up to by the previous Government.

With regard to next week's debate with the EU President, we have 30 minutes of his time and it will be impossible to facilitate every Member asking a question. The CPP came to the agreement that the group leaders would ask questions for two minutes, the President will make a 15-minute presentation and the Leas-Chathaoirleach will sum up. The said gentleman will appear before the Oireachtas Joint Committee on European Union Affairs after that.

Senators Keane, Gilroy and D'Arcy raised the issue of the duration of the Order of Business. This time allocation was increased during the previous Seanad. It used to last 45 minutes and this was increased to 55 minutes at the request of the vast majority of Members. If that view has changed, I would like to know. Three Members feel the duration should be reduced to 30 minutes. If a majority of Members favour that, let us hear it. I am willing to act on behalf of the membership but the previous Seanad complained there was insufficient time for the Order of Business. I cannot be all things to all men. I will do what the majority of Members want in that regard and I welcome comments from Members.

**Senator Martin Conway:** Leave it as it is.

**Senator Maurice Cummins:** Senator Daly referred to the church hiding behind the Data Protection Act. He also asked a question about NAMA. The publication of the agency's annual report is imminent. We could have a debate on that when it is published.

[Senator Maurice Cummins.]

Senator Healy Eames sought debates before the summer recess on education and social welfare. This will not be possible as it would not be realistic but I will consider such debates for the autumn session.

Senator Mullen raised a matter we dealt with on Second Stage of the Bill yesterday. He made some strong allegations against the Minister, who rebuffed them.

**Senator Rónán Mullen:** I did not make them lightly.

**Senator Maurice Cummins:** The Senator will have an opportunity later again to deal with that matter.

**Senator Rónán Mullen:** It is a serious matter of probity.

**Senator Maurice Cummins:** It is a serious matter, which the Minister addressed well to the best of my knowledge yesterday.

Senator Conway raised the issue of JLCs. I will ascertain what the Government's timetable is in this regard and I will get back to him on the matter.

Senator O'Sullivan referred to ratepayers. It is a major burden on many small businesses throughout the country. The rateable valuation system is archaic but it is the one that is with us. I will endeavour to invite the Minister for the Environment, Community and Local Government to the House for a debate on local government at a later stage.

Senator D'Arcy asked that the Governor of the Central Bank and the Financial Regulator would appear before the House. The CPP will have a special meeting next meeting to discuss the Oireachtas Joint Committee on Investigations, Oversight and Petitions and special invitations to people to appear before the House. That is another matter we can address.

I sought a reply at the request of several Members from RTE regarding the non-coverage of our business when the Dáil was not sitting. The letter from the director general, Noel Curran states:

Thank you for your letter of 23rd June 2011 concerning the absence of Oireachtas Report on 14th June. There is a long standing practice of not having an Oireachtas Report on days in which Dáil Éireann is not sitting. As you are aware Oireachtas Report comprises reports on the day's activities in Dáil Éireann with a shorter segment on Seanad Éireann. If RTE had gone ahead with Oireachtas Report on 14th June, all the reports would have to have been on the activities of the Seanad.

**Senator David Norris:** A good thing too.

**Senator Rónán Mullen:** Perish the thought.

**Senator Maurice Cummins:** The letter continues, "As I understand it the only business in the Seanad on that day was the Order of Business, the renewal of a part of the Offences against the State Act and statements on Special Needs Assistants".

**Senator David Norris:** Three very important matters.

**Senator Maurice Cummins:** I agree. He further states: "In the view of RTE's Oireachtas Unit there was insufficient material to fill a full programme".

**Senator Rónán Mullen:** We could have improvised.

**Senator Maurice Cummins:** That is the gist of the reply.

I will seek the advice of Members on this but I have promised a wide ranging debate on agriculture, food, horticulture, fisheries and aquaculture. The Minister has agreed to come to the House on 20 July for two and a half hours. Having discussed the matter with him yesterday, he is prepared to devote half the time to agriculture, food and horticulture and he will make a ten-minute statement and, for the other half, he will deal with fisheries and aquaculture and he will also make a ten-minute statement. However, rather than giving spokespersons five or ten minutes each to make statements, he is willing to take questions from the floor on each area. This would be a good way of expanding the relevance of the House.

**Senator David Norris:** That would be excellent.

**Senator Maurice Cummins:** I hope Members will support me in having such a debate on 20 July. We should encourage such debate.

**Senator David Norris:** Well done. Congratulations.

**An Cathaoirleach:** Senator Brian Ó Domhnaill has moved an amendment to the Order of Business, “That a debate on the increase in mortgage interest rates, with particular reference to the holders of mortgages from AIB and Bank of Ireland, be taken today”. Is the amendment being pressed?

**Senator Brian Ó Domhnaill:** Yes.

Amendment put:

The Seanad divided: Tá, 15; Níl, 29.

Tá

Daly, Mark.  
Leyden, Terry.  
MacSharry, Marc.  
Mooney, Paschal.  
Mullen, Rónán.  
Norris, David.  
Ó Domhnaill, Brian.  
Ó Murchú, Labhrás.

O’Brien, Darragh.  
O’Donovan, Denis.  
O’Sullivan, Ned.  
Quinn, Feargal.  
Reilly, Kathryn.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Bacik, Ivana.  
Bradford, Paul.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Eamonn.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D’Arcy, Jim.  
D’Arcy, Michael.  
Gilroy, John.  
Healy Eames, Fidelma.  
Heffernan, James.  
Henry, Imelda.

Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Mac Conghail, Fiach.  
Moloney, Marie.  
Moran, Mary.  
Mullins, Michael.  
Noone, Catherine.  
O’Keeffe, Susan.  
O’Neill, Pat.  
Sheahan, Tom.  
van Turnhout, Jillian.  
Whelan, John.  
Zappone, Katherine.

Tellers: Tá, Senators David Norris and Ned O’Sullivan; Níl, Senators Paul Coghlan and Susan O’Keeffe.

Amendment declared lost.

Order of Business agreed to.

### **Business of Seanad: Motion**

**Senator Maurice Cummins:** I move:

That, notwithstanding anything in the Standing Orders relative to Public Business, on Friday, 8 July 2011, the Seanad shall meet at 10.30 a.m. and, unless it shall be otherwise ordered, on motion made by the Leader of the House or such other Senator as he may authorise in that behalf:

(a) the business to be taken shall be confined to the Medical Practitioners (Amendment) Bill 2011, the motion of concurrence with the earlier signature of that Bill by the President and, subject to the completion of Committee Stage of the Defence (Amendment) Bill 2011 today, Report and Final Stages of that Bill;

(b) (i) the proceedings of the Medical Practitioners (Amendment) Bill, 2011, the motion of concurrence with the earlier signature of that Bill by the President and the Defence (Amendment) Bill 2011, if not previously concluded, shall be brought to a conclusion at the times indicated in the schedule to this paragraph, by one question in each case, which shall be put from the Chair, and which shall, in relation to amendments, include only amendments set down by the Government; provided that if a division or claim therefor is in progress at the time indicated, the question shall be put as soon as possible thereafter.

(ii) the contributions of group spokespersons on the Second Stage debate of the Medical Practitioners (Amendment) Bill 2011 shall not exceed ten minutes and the contributions of all other Senators shall not exceed six minutes.

Schedule

Proceedings:

To conclude by:

Medical Practitioners (Amendment) Bill 2011 (Second Stage): 1.00 p.m.

Medical Practitioners (Amendment) Bill 2011(Remaining Stages) and Earlier Signature Motion: 3.30 p.m.

Defence (Amendment) Bill, 2011 (Report and Final Stages): 5.00 p.m.

(c) the sitting shall be suspended from 1.00 p.m. to 1.30 p.m.; and

(d) Standing Orders 29 and 30 shall stand suspended.

Question put and agreed to.

### **Harbours Acts 1996 to 2009 (Transfer of Functions of Dundalk Port Company): Draft Order**

**Senator Maurice Cummins:** I move:

That Seanad Éireann approves the following Order in draft:

Harbours Acts 1996 to 2009 (Transfer of Functions of Dundalk Port Company) Order 2011

copies of which have been laid in draft form before Seanad Éireann on 1 June 2011.

**Senator Paschal Mooney:** A Chathaoirleach, could we have some order, please? The new Members should understand that business is going on.

**An Cathaoirleach:** Senator Mooney on a point of order.

**Senator Paschal Mooney:** I wish to point out, with respect, to the relatively new Members — those of us who have been Members of the House a little longer will understand — that when the Chair is speaking, we should have silence in the House.

**An Cathaoirleach:** Silence in the House.

**Senators:** Hear, hear.

Question put and agreed to.

### **EU Regulation on Mutual Recognition of Protection Measures in Civil Matters: Referral to Joint Committee**

**Senator Maurice Cummins:** I move:

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

a proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters,

a copy of which was laid before Seanad Éireann on 13 June 2011, be referred to the Joint Committee on Justice, Defence and Equality, in accordance with Standing Order 70A(3), which, not later than 21 July 2011, shall send a message to the Seanad in the manner prescribed in Standing Order 73, and Standing Order 75(2) shall accordingly apply.

Question put and agreed to.

### **Public Health (Tobacco) (Amendment) Bill 2011: Order for Second Stage**

Bill entitled an Act to amend the Public Health (Tobacco) Act 2002.

**Senator Colm Burke:** I move: “That Second Stage be taken now.”

Question put and agreed to.

### **Public Health (Tobacco) (Amendment) Bill 2011: Second Stage**

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

**Minister of State at the Department of Health (Deputy Róisín Shortall):** Tobacco packaging serves as a critical link to consumers. The brand imagery of the tobacco package is the foundation upon which all other marketing is built, and it plays an even greater role in jurisdictions such as Ireland where traditional forms of advertising, promotion and sponsorship are restricted. It is therefore critical that health warnings on tobacco packages counteract the promotion of these products.

[Deputy Róisín Shortall.]

Due to their reach and frequency of exposure, tobacco packages are an excellent medium for communicating health information. Tobacco health warnings are also unique among tobacco control initiatives in that they are delivered at the time of smoking and at the point of purchase. As a result, the vast majority of smokers report a general awareness of package health warnings and pack-a-day smokers are potentially exposed to the warnings over 7,000 times per year. Health warnings on tobacco packages are among the most prominent sources of health information. Findings from Canada, Thailand and elsewhere indicate that considerable proportions of non-smokers also report awareness and knowledge of package health warnings. As a result, health warnings are a very cost-effective public health intervention and have a tremendous reach.

Health warnings on the packaging of all tobacco products are guaranteed to reach all users, and can increase smokers' awareness of their risk. The use of pictures with graphic depictions of disease and other health-related and cessation images has a greater impact than words alone and is critical in reinforcing the warnings. The first guiding principle of the World Health Organisation's Framework Convention on Tobacco Control is that every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke.

Combined text and photograph warnings, also known as pictorial or graphic warnings, were developed by the European Commission for member states that wished to adopt them. The Commission proposed a library of these warnings but, as their introduction is not mandatory, further legislation is required prior to their introduction on the Irish market. While an enabling provision allowing the Minister to make regulations was included in the Public Health (Tobacco) (Amendment) Act 2009, which was enacted in July 2009, the Department was advised by the Office of the Attorney General that this provision in the 2009 Act did not adequately empower the Minister to make the necessary regulations. The AGO advises that an amendment of the 2009 provision is therefore required to give the Minister the necessary authority to make the required regulations.

The 2010 global progress report on the implementation of the WHO Framework Convention on Tobacco Control reported that 44 parties require health warnings to take the form of or include pictures. A total of six EU member states have introduced combined text and photo

warnings and a further four EU member states are in the process of doing so.

*12 o'clock*

Full-colour picture-based health warnings on tobacco products are far more effective than text-only warnings. Pictorial health warnings on tobacco products make the product less attractive and target smokers by providing them with information on tobacco-related health risks. They are an essential component of a comprehensive tobacco control programme.

In discussing this Bill in the Seanad today, it is appropriate to reflect on the comprehensive range of tobacco control legislation that has been introduced in Ireland since 2002, particularly the successful implementation of the smoke-free initiative in 2004, the ban on the sale of packs of fewer than 20 cigarettes in 2007, and the ban on in-store display and advertising and the introduction of the retail register in 2009. This comprehensive range of tobacco control legislation places Ireland in the top rank of countries internationally.

Despite the significant tobacco control measures that have been established to date and the widespread knowledge of the harm caused by tobacco consumption, smoking prevalence in Ireland remains high, which is a matter of concern. The most recent SLÁN survey estimates that 29% of our population smoke. Clearly, we cannot become complacent, and we must continue to build on the work that has already been done.

We must not lose sight either of the health consequences of smoking. Smoking is the greatest single cause of preventable illness and premature death in Ireland, killing over 5,700 people a year. Half of those who continue to smoke for most of their lives will die of their habit, half of them before the age of 69. Every year, premature deaths caused by tobacco use in Ireland are far greater than the combined death toll from car accidents, fires, heroin, cocaine, murder and suicide, a startling fact not often appreciated.

Tobacco use is also a major cause of increased morbidity. Smoking is the main cause of chronic obstructive pulmonary disease, COPD, and causes nearly 90% of all cases of emphysema. There is also a causal relationship between smoking and acute respiratory infection including pneumonia and tuberculosis. Smoking increases the risk of cardiovascular disease with the risk of mortality from cardiovascular disease in cigarette smokers 1.6 times that of never-smokers.

The impact of smoking on health care costs in terms of treatment services for cancer, cardiovascular disease and respiratory diseases is significant. In the next ten years, if progress is not made on reducing the impact of tobacco, it is estimated it will cost the health service in excess of €23 billion. This would pay the entire cost of running our health services for two years. Smoking costs the economy at least €1 million per day in lost productivity.

A concern could be that the use of shocking images is not the best way to inform smokers. However, qualitative research in the UK has shown images tend to be most effective when they convey shock, immediacy and empathy. Smokers tend to respond to shock images that are disturbing or unpleasant to look at. Research in Belgium has demonstrated similar results. Warnings shown to have the most impact were those that were felt to be the most graphic and most disturbing.

In Ireland, pre-testing of the 42 images in the EU library was carried out by TNS-MRBI on behalf of the then Office of Tobacco Control. Subsequently, 14 warnings to be used on the Irish market were identified. The research found images impacted differently depending on age group and sex. For example, the apple image particularly impacted on the important target group of younger female smokers in the 18 to 35 age group. They could readily see that smoking causes damage to the skin, predominantly around the eyes and the lips. Impotency was found to particularly impact on younger male smokers.

International research into the use of combined text and photo warnings indicates that pictures improve memory from the text that accompanies it. Smokers are more likely to remember a health consequence of smoking, when smoking, if they have seen a picture. More than 50% of Canadian smokers say the warnings compel them to smoke less around other people. Smokers who read, thought about and discussed the combined text and photo warnings were significantly more likely to quit, attempt to quit or reduce their smoking. Up to 31% of Canadian ex-smokers participating in a study reported that combined text and photo warnings had motivated them to quit in the first place and 27% reported that warning labels help them to remain abstinent.

This Bill will allow for the introduction of regulations which will provide that all tobacco products sold in Ireland will carry a combined text and photo warning. This will, in turn, help to reduce the numbers of people smoking and more particularly encourage children and young adults not to start smoking.

The Government is committed to health promotion and tobacco-control measures that will support the aim of de-normalising tobacco. We will work constructively with all stakeholders in the broad health family to achieve this goal.

I recommend the Bill to the House.

**Senator Marc MacSharry:** I certainly do not plan to delay a Bill which has all-party agreement.

While the Office of Tobacco Control did not figure too much in the Minister of State's speech, it is worth noting the good work it did from when it was first established. We must commend the many health professionals and various others who served the office, advising Ministers and the Department of Health on tobacco-control measures. In 2002, I recall the Seanad ante-room used to be filled with plumes of smoke as Members used to take their leave to have a cigarette or pipe. In nine years, it is great to see the transformation the smoking ban has made. It is still a concern that 29% of the population smokes and that younger females, in particular, are still being attracted to the vice of smoking. Much progress, however, has been made by some of the tobacco-control measures introduced.

In 2004, section 47 of the Public Health (Tobacco) Acts 2002 and 2004 came into force to protect third parties, such as workers, from the ill-effects of exposure to second-hand smoke. Legislation was introduced to remove point-of-sale advertising, display of tobacco products at retail outlets and licensed premises in July 2009. The national register of tobacco retailers for persons selling tobacco products came into effect on that date too. Test purchase inspections conducted by environmental health officers resulted in almost 20 prosecutions for sales to minors, which seems quite low but shows the progress made on the issue. From May 2007, it became illegal to sell cigarettes in packs of less than 20. Up to 95% of workplaces inspected as part of the national tobacco control inspection programme were found to be compliant with section 47 of the Public Health (Tobacco) Acts. In November 2005, Ireland became the 101st country to ratify the WHO framework convention on tobacco control.

These are some of the more notable progresses made in the past several years in the bid to rid society of tobacco use. As a former smoker myself, I know graphic images are found to be the most powerful in deterring people from smoking. I gave them up five and half years ago through a combination of Allen Carr and the impact of family members being diagnosed with lung cancer. For each person it is a different approach, so we need to support the various approaches. If graphic images are to be part of the arsenal of the attack, then bring them on. The Minister is to be commended for this approach.

There could be strange allies in the war on tobacco. Outside football matches and markets one sees smuggled cigarettes being sold below cost. The State is losing out from a tax perspective in this regard. Our ultimate goal is to put these people out of business. I refer here to legitimate tobacco manufacturers.

Perhaps there is a need for us to work with the latter, in the first instance, in order that we might close off the routes which facilitate the illegal importation of cheaper tobacco. The companies to which I refer have collected large volumes of data which could prove useful. Given that they have a vested interest in this matter, however, there may be a need to obtain an independent assessment in respect of the advice they are offering. These companies are active in the context of lobbying and there may be something to what they have to say. I ask that the Department engage with them regarding our ultimate goal, namely, ridding society of tobacco. I do not know how easy it will be to achieve that goal in the short term. However, we must use all the resources at our disposal and, in that context, there is a need to engage to a greater degree with tobacco manufacturing companies such as Philip Morris and others.

I accept it does not relate to the Bill before the House but smoking remains glamorised to a great extent. Magazines such as *Hello*, *OK!* and others which people, both young and old, read and contain information and photographs relating to film stars, footballers and the wives and partners of celebrities. Quite often such individuals are photographed while smoking. Cigarettes are also featured in fashion shots taken for these and other publications.

Movies and television programmes also contain scenes in which people smoke. While such scenes may well depict manifestations of real life, their use must be discouraged. Surely it must be possible to depict such scenes in an equally entertaining way in the absence of cigarettes or whatever. If a scene is a factual reconstruction of something that happened in the past, I am sure it would be possible to remove the use of tobacco products from it. Movies, television programmes, magazine articles, etc., tend to glamorise smoking. When one is a particular age, one has a tendency to feel somewhat bullet proof. If there are small actions we can take to deter people from using tobacco products in the way I have outlined, then we should by all means take them.

The fact that young girls are particularly susceptible to taking up smoking — to an even greater degree than was the case in the past — is a matter of concern. Perhaps cigarettes are seen as some form of fashion accessory. If the latter is the case, then what I said in respect of the glamorisation of tobacco products in movies, television programmes, magazine articles, etc., is being borne out. If a particular film star, model or whomever is seen to be a user of tobacco, then that makes it acceptable for some young people.

There is very little else one can say in respect of this Bill, which is good and which should not be opposed. On behalf of the Fianna Fáil group, I commend it to the House. There are a number of health-related issues I wished to raise but I did not have the opportunity to refer to them in the context of the Bill. I understand, however, that the Minister for Health, Deputy Reilly, will be attending the House tomorrow to debate the Medical Practitioners (Amendment) Bill. The latter is a little more general in nature and might allow me to get stuck in to the Minister in a legitimate way. I did not want to get stuck in to the Minister of State, Deputy Shortall, in respect of such matters in the context of the Bill before the House.

**Senator Colm Burke:** I welcome the Minister of State and thank her for bringing forward the Bill at such an early opportunity. One often believes that the position with regard to regulation is adequate and that there is already legislation in place to allow Ministers to regulate in respect of particular matters. There was a case a number of years ago where regulation was in place but where there was a lack of adequate legislation. As a result, the relevant Department incurred a liability of €400 million. It is important, therefore, that Departments should react immediately when it is discovered that particular legislation is not adequate. That is what the Minister of State's Department has done on this occasion prior to proceeding to insist on the use of photographic warnings on tobacco packaging. In such circumstances, I welcome the legislation. It deals with a technical issue but it is important that we get matters right.

Some 25% of people who smoke will die before they reach the age of 69. The Minister of State provided some comprehensive figures in respect of health care matters in that regard. It is sad that a substantial number of individuals will die before the age to which I refer as a result of smoking. When one considers that 29% of people engage in smoking, one realises that some 1 million people are actively using tobacco products. These individuals are contributing to their own health problems, perhaps not immediately but certainly in the long term. We must continue to send out the message that every time a person smokes, he or she is damaging his or her health. It is important, therefore, to do everything possible to discourage people from smoking.

I accept that it is very difficult for people to stop smoking. However, we should all do our part in the context of encouraging people to kick the habit. Those to whom I refer should be given every possible assistance. Many people who smoke do not wish to do so. These individuals have made repeated attempts to give up but they find it difficult to do so. Using photographic warnings on packaging will get the message across. The Minister of State indicated that if someone smokes 20 cigarettes per day over the course of 12 months, he or she will see such

[Senator Colm Burke.]

warnings some 7,300 times during that period. That is one way to ensure that the message to which I refer is communicated.

The Minister of State outlined the fact that the cost of health care in respect of smoking-related diseases will be €2.3 billion in real terms. That is a massive amount of money and there are many things for which it could be used elsewhere in the health system. The cost factor is another reason for encouraging people to stop smoking.

Another issue that arises relates to the number of cigarettes that are imported and sold illegally. I am not sure whether those involved in producing or selling such cigarettes will be able to adapt in the context of including photographic health warnings on packets. Many people are able to purchase cigarettes illegally. Not only are these individuals damaging their own health, they are also affecting the way in which business operates in this country.

One of the areas in which major successes have been achieved in recent years is that of road safety. The campaign which has been run in that regard has proven very effective. It includes some shocking filmed images and is important in the context of getting across the message regarding the need to reduce speed and to discourage those who drink from driving.

We should target young people in the context of discouraging citizens from smoking. If individuals have not yet become involved in smoking, we have a better chance of getting the message across to them. We should do everything possible to discourage young people from smoking. In Australia, Brazil, New Zealand and Singapore, the telephone number of what is called a “quitline” is included on tobacco packaging. I understand that such information is included on cigarette packets in 14 countries of the EU. Perhaps we might consider the inclusion of a helpline number on packaging in this country. This is a matter in respect of which we must work.

The important aspect of this legislation is that it will not give rise to a cost for the Government. I accept that it will still be obliged to foot the bill for various advertising campaigns designed to discourage people from smoking or to stop smoking. However, it will not be obliged to pay in respect of the photographic warnings which must be included on packaging from now on. That is crucial.

The legislation is important from the point of view of long-term planning with regard to health care. It is also important to ensure that we are upfront with regard to ensuring that people who smoke are made aware of all of the risks on a daily basis, or even an hourly basis. I welcome the legislation and have no difficulty in recommending it for immediate enforcement.

**Senator John Crown:** This is an issue in which I have a great interest. On a daily basis, practising doctors in Ireland, particularly practising cancer specialists, see the results of the carnage caused by cigarette smoking. A quick, off the top of the head, list of the cancers for which cigarettes are the principle cause makes for frightening reading, beginning with lip, mouth, tongue, throat, oesophagus, pancreas, bladder and some other rare forms. Lung cancer in particular has been a critical problem in Ireland.

It is very interesting to look at what has happened in the case of the two leading causes of death from cancer in women in Ireland and other western countries. The incidence and mortality of breast cancer have both gone down quite dramatically. On the other hand, lung cancer among women has increased strikingly, and the death rate for lung cancer among women has risen dramatically throughout the 1950s, 60s, 70s, 80s and 90s to the present day. The reason for this is that it became socially acceptable for women to smoke in the aftermath of the Second World War, to the extent that Virginia Slims, one of the leading cigarette brands, targeted a specific product at women. It used a feminist advertisement showing a woman not allowed to

play tennis without a long skirt 50 years ago but telling her “You’ve come a long way, baby” and now she can smoke Virginia Slims. It is a sad mark that so many lung cancer doctors, when they give a talk on lung cancer in women, show the “You’ve come a long way, baby” slide, because that is exactly what happened.

Lung cancer is becoming a particular problem for women and there are some other quirks in that story. The disease appears to appear in women with a more trivial smoking history than in men. Also, some kinds of lung cancer are becoming more common, even in people smoking lower tar cigarettes. This is not only a general health issue, but also a critical feminist issue. Lung cancer has now taken over from breast cancer and become the number one cause of cancer death in the western world for women. There are two reasons for this — lung cancer became more common because women smoke and we have got much better at treating breast cancer. Advances in lung cancer treatment have been much slower and early diagnosis of lung cancer is much slower.

The point needs to be made that people sometimes blithely assume that giving up cigarettes quickly restores them to their pre-smoking risk. That is untrue. It is always a good idea to give up smoking because that has a powerful impact on circulatory risk, heart attack risk and on the risk of ending up horribly disabled by stroke. All of these risks drop dramatically and quickly when one stops smoking. The lung cancer risk also reduces, but not as completely nor as quickly. The later one leaves it to give up smoking, the less the impact. The time for a smoker to give up cigarette smoking is now, not next Monday or new year’s eve. People must understand that the longer they delay the decision to give up smoking, the more cumulative carcinogenic damage they have done to their lung. The greater proportion of that damage will be irreversible.

The biggest impact is where people under the age of 30 are persuaded to stop smoking. While we are justifiably happy that the prevalence of cigarette smoking has reduced dramatically over the past several decades, for which I credit enlightened public policy and the former Minister’s, Deputy Martin’s, courageous decision to lead the world with a smoking ban, I note with alarm the numbers of people in the younger age group, under 30, who are still smoking, where the incidence is approximately 30%. This is the target audience we must reach. We must do everything in our power to get at these people because once they cross the threshold of 30 years, the lung cancer reduction impact starts to dwindle. It takes on average 20 years after smoking exposure for lung cancer to occur. It usually occurs in people’s 40s, 50s or 60s. Therefore, it is people under 30 we must reach and that is the reason I strongly support any measures the Government can take.

We are all aware of a general tendency to regard people who get pnickety about smoking as being unctuous or politically correct. This is not true. Every time somebody tries to defend his or her decision to be allowed to smoke in a given place or at a given time we must remember it is an addict talking and it is “addiction thinking”. It is the same level of addiction as one would ascribe to someone craving the next fix of a more serious registered drug. All of the arguments advanced in favour of continuing smoking are spurious. People say it reduces their tension, they get on better with their spouse or it stops them from beating their children. None of these arguments is worth a toss. All of these arguments are addiction thinking. In addiction circles the kinds of rationalisations people use are called “stinking thinking”.

We have largely succeeded in curbing smoking because of enlightened public policy, but also because there is now a general sense that it is no longer socially acceptable. People who smoke are now often seen by non-smokers as having some kind of personal failing, because they cannot control something which is so obviously bad for them. While I hate being judgmental about anybody with any degree of substance abuse addiction, this perception is not a bad

[Senator John Crown.]

societal standard for us to try to encourage. We must constantly hammer home the message that smoking is a bizarre, unnatural and unhealthy habit which has its roots in addiction.

It is entirely justifiable to be as explicit as we can with the warnings given to people who smoke. If we were starting off now and if Sir Walter Raleigh returned with tobacco tomorrow and we tried to start manufacturing cigarettes, they would be banned and the smoking habit would never be legalised. No part of smoking would be made legal if smoking was only starting now. However, we have kind of grandfathered it into legal acceptability because it has been done for 600-odd years in Europe, since tobacco was introduced by returning explorers from North America. We should feel zero compunction for doing whatever we can to penalise the manufacturers of this addictive drug and should constantly ratchet up the pressure on them so as to make the manufacture of these drugs as unappealing and as commercially unacceptable as possible. It is not being health fascist to make it our goal to eradicate smoking. This should be something we regard as a bizarre, historical quirk, in the same way that it was socially acceptable for people to smoke opium, chew betel or do any one of number of other bizarre addiction based behaviours. We must set out our stall and be the country that aims for zero tolerance for anybody smoking anywhere.

I speak with some authority on this issue because among my credentials, I am an ex-smoker. I can recall all of the rationalisations I would have offered back in my addiction-addled day's thinking of how unfair it was of people to try and stop me getting access to the cigarette I needed so badly. However, we have the moral imperative to work on the consumers and the suppliers. I know we in this Chamber are not permitted to suggest anything which involves the evil spending or collecting of money, but before being ruled out of order I will quickly say we should slam a fiver on each pack of cigarettes as a health tax. In addition to all the other excise duties, another fiver should be imposed on every pack. This money should be ring-fenced for health and health research.

Am I out of order for making that suggestion? If I see the security guards, I will go quietly.

**An Leas-Chathaoirleach:** Not at all.

**Senator John Crown:** I believe we should do that. We should also consider extending the legal limits on where people can smoke. It was a subject of some amusement to me — working as I do in environs where it is illegal to smoke either indoors or outdoors — to discover that within the hallowed campus of Leinster House there are several locations officially or unofficially designated as smoking areas. It would not be unreasonable for whichever of our committees deals with internal privileges to consider the possibility of setting a good example for the country by making the entire Leinster House campus, within the gates, a smoke-free zone. If it can be done in hospital complexes, there is no reason we cannot do it here. Hospital patients are generally not well enough to go out to the street for a cigarette, although one will occasionally see some poor addicts who do. Most Deputies and Senators are well enough to leave the confines of barracks for a cigarette.

I warmly support this measure, as I do any extension of measures which limit smoking. The single greatest action we can take as a society to improve health is to reduce the rate of smoking. I often put it to patients who continue to smoke after cancer treatment that if they had two choices, either never to see a doctor again or to give up smoking, the choice that will have the greatest positive impact on their health is the latter.

**An Leas-Chathaoirleach:** I am loth to stop the Senator as he is eminently qualified to speak on this matter all day. Unfortunately, however, his time is up.

**Senator Mary Moran:** I welcome the Minister of State at the Department of Health, Deputy Róisín Shortall, and thank her for engaging with this debate. I congratulate Senator John Crown on his excellent contribution, which I am somewhat reluctant to follow. I only wish the Chamber and Gallery were full because he has made the case clearly.

I recall, as a child growing up in Dundalk, the significant cultural and sociological influences on the community of multinationals such as PJ Carroll, then the largest tobacco distributor in Ireland, and the former Harp brewery. Every Friday the employees of these companies were the beneficiaries of free cigarettes and alcohol for their personal consumption. Some might say it was a great town in which to live. These perks were given out willy-nilly, notwithstanding the long-term consequences for the beneficiaries' health or for the health service. That culture has changed in the intervening years. The PJ Carroll facility is closed down and is now the home of the music department of Dundalk Institute of Technology.

The Minister of State and other speakers pointed out the frightening statistics on the health effects of smoking. It is the greatest single cause of preventable illness and premature death in Ireland, responsible for more than 7,000 deaths per year. Some 90% of lung cancers are caused by smoking and 50% of all smokers will die from smoking-related diseases. Smokers have an increased risk of cancers, heart disease, strokes, bronchitis and emphysema. Pregnant women who smoke are at greater risk of delivering babies with low birth weights. Smokers lose an average of ten to 15 years from their life expectancy.

The costs of smoking in terms of damage to health and well-being far outweigh the economic costs of tobacco use. Smoking costs the economy at least €1 million per day in lost productivity, while it costs €1 billion per year to provide health services for smokers. If we do not make progress at reducing the impact of tobacco in the next ten years, it will cost our already overburdened health service in excess of €23 billion. To put it in perspective, that sum would cover the running of the entire health service for almost two years or go a long way towards building a new national children's hospital.

The introduction of a combined image and text health warning on cigarette packaging will lead to a long-term reduction in the number who smoke, with tangible benefits for society in both social and economic terms. We are all familiar with the Government text health warnings that have been included on cigarette packages for several years. These are effective because of the frequency of exposure. For instance, a person who smokes 20 cigarettes a day is potentially exposed to the health warning 7,300 times per year. The location of the warning means it is visible to the smoker every time he or she opens the packet. Including a picture of a diseased lung or any of the other proposed images can only enhance smokers' exposure to the health risks every time they light up and thereby act as a deterrent.

The most recent large-scale report on smoking in Ireland, *Slán: Smoking Patterns in Ireland*, found, somewhat surprisingly, a slight increase in the smoking rate from 27% in 2002 to 29% in 2007. This increase came despite the introduction of text health warnings on cigarette packets and the commencement of the ban on smoking in public places in 2004. Another worrying trend identified in the report is the increase in recent years in the number of adolescent girls who smoke. It is vital that we catch young people at the time when they are most likely to become addicted to nicotine. The Irish Cancer Society has indicated its concern that it is losing the battle to prevent young girls from taking up the habit.

As a parent of teenage children, I am heartened by the reference, albeit a minor one, to the dangers of smoking which is included in the junior certificate social, personal and health education, SPHE, curriculum text book. We must explore ways such as this of targeting young people. Most schools have an anti-smoking policy, but we must do more. The SPHE textbook includes four pages of text on the dangers of smoking and one picture of a smoker's lung. My

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four children were unanimous in their view that the image had a much greater impact and was a far greater deterrent than the four pages of text.

There are many reasons that we should inform smokers of the health risks of smoking through the use of pictorial warnings on tobacco products. First, an image is eye-catching; as the saying goes, a picture paints a thousand words. This is shown time after time in the case of children who have no speech or adults who have lost their speech through strokes or illness but who learn to communicate effectively through picture signing. A picture also crosses the barrier of language. For example, when abroad, a health warning in a foreign language may communicate something of its message to us, but a picture requires no translation.

Images are also informative. Research has shown that in Canada, where pictorial warnings include information about the risks of impotence, smokers were almost three times more likely to agree that smoking causes impotence compared with smokers from the United States, United Kingdom and Australia. In the same study 44% of smokers in Canada agreed that pictorial warnings increased their motivation to quit smoking. Pictorial health warnings on cigarette packages make the product less attractive and target smokers by communicating the health risks in a clear and striking way. Another vital consideration is that the introduction of pictorial warnings will impose no additional financial cost on the Exchequer. We are all aware that the adolescent years can be the most vulnerable. Therefore, it is imperative to target this age group when addressing the dangers of smoking. The effectiveness of coloured graphic warnings over other illustrations was highlighted in a directive of the European Parliament in Greece in 2003 where 96.1% of current smoking adolescents opted for the graphic warning labels as being more effective in preventing them from smoking and in informing them about the health effects of smoking in comparison to the EU text-only warnings. It was also noted that younger adolescents up to the age of 14 not only opted for the graphic warnings more often, but were also more likely to rate them much higher in comparison to their elder peers aged 15-plus.

The proposed EU graphic warning label, supported by other tobacco control policy interventions such as smoke-free environments, advertising bans and increasing the price of cigarettes, must play a vital role in de-normalising smoking and preventing smoking initiation especially during the crucial years of adolescence when smoking experimentation and addiction is more likely. I recommend the Bill to the House.

**Senator Deirdre Clune:** I am pleased to have an opportunity to contribute to the debate. I welcome the Minister of State, Deputy Róisín Shortall. The Bill is broadly welcomed. It is another step on the way to help discourage people from smoking, particularly young people. The proposed text and images will be very effective in targeting the young age group to which so many speakers have referred. Senator Moran indicated that a picture paints a thousand words. I have been reading research from the Library and Research Service. Reference is made to it in the Minister's speech also. There is much research internationally from the World Health Organisation and across the EU of the benefit of images on cigarette packaging. Senator Moran mentioned speaking to her teenagers at home and how graphic images make a bigger impact. We all instinctively know it is the right way to go, particularly when targeting young people.

The legislation is another step towards reducing the consumption of tobacco. Initially text warnings were placed on cigarette packets. The national smoking ban has been very effective. I class myself as a non-smoker although in my student days I was a social smoker. The ban on smoking in the workplace has been a lifesaver. It has improved the environment and is a most welcome move. In July 2009, new rules were put in place to control tobacco products at the point of sale. In effect, tobacco products are to be hidden and individual purchasers must ask

specifically for such products which are no longer allowed to be prominently displayed. In the case of vending machines in pubs, one must ask for a token rather than use cash. That has been another effective step in reducing the incidence of smoking as it introduces another barrier which people have to cross. In spite of that, we still have 1 million people, 29% of the population, who smoke.

The Office of Tobacco Control, to which Senator MacSharry referred, has been effective in advising the Department of Health in the area. Its research into the effectiveness of legislation and regulation has been helpful. It was able to track the effectiveness of the introduction of the control of tobacco products at the point of sale. A total of 50% of retailers asked young people for ID and they refused to sell them tobacco products if they could not provide it. More care was taken by retailers because they had to think about accessing tobacco products. The measure has been effective. The worth of the Office of Tobacco Control has been noted. I wish to associate myself with those comments. The office has been extremely beneficial and effective in developing policy and in informing the development of legislation to the current position.

The Minister referred to the cost of health care as being €2.3 billion. That is a lot of money. I made a calculation of the cost to a smoker for someone who smokes 20 cigarettes a day. A packet of cigarettes costs €8.65. As the money comes out of the purchaser's pocket it does not matter to him or her whether the money goes to the Government or to cigarette companies. The cost amounts to €3,157 per annum.

**Senator Marc MacSharry:** It is the minimum wage.

**Senator Deirdre Clune:** That is before tax, if one is earning money. That amounts to a contribution of approximately €4,000 or €5,000 depending on one's income. It is a substantial amount of money for a person who is addicted to smoking.

Mention has been made of young people, particularly young women. Anecdotal evidence suggests there is an increase in the number of young women smoking. Image and weight are cited as factors, as is the case with older women. They fear the consequences for their weight if they give up smoking.

Senator Crown outlined the long-term consequences of smoking such as lung cancer and other cancers. I attended a launch last year early on a Friday morning in the Dental Hospital in Cork which also took place in Dublin. A lip and throat cancer awareness week was launched. Free screening was offered to members of the public. The launch was relatively low key. I was very surprised to read subsequently that the organisers could not cope with the uptake of the free screening. Queues stretched out the door and around the building, similar to what we have seen at the Passport Office. People are conscious of health care now. Graphic images such as provided for by the legislation will go a long way to reducing the incidence of smoking in the population.

**Senator Imelda Henry:** I welcome the Minister of State, Deputy Shortall. I also welcome the Public Health (Tobacco Amendment) Bill. It is a serious statistic that half of the smoking population who continue to smoke for most of their lives will die of the addiction. We must reduce the number of people in this country who smoke. We spoke about young people but we must start with children. Believe it or not, nine and ten year old children in this country smoke.

Having graphic images on cigarette packages is a positive move which I hope will discourage children in particular from starting to smoke. Senator MacSharry spoke about it being fashionable to smoke. I know that as I have a teenage daughter. We must deal with the fact that as children reach the age of 14 or 15, they like to do what everyone else is doing. Statistics such

[Senator Imelda Henry.]

as that to which I referred bring home the seriousness of the situation. Smoking affects one's quality of life and health and many people die from it.

Senator Moran mentioned how a picture tells a thousand words. Senators have said everything that needs to be said on this Bill. I welcome it and I hope there will be a positive reaction from the graphics on the cigarette packets. Hopefully the number of people in this country who smoke will have drastically reduced.

I thank all of Members who contributed to this debate. I listened very carefully and some important points were made. I also welcome cross-party support for this legislation and I welcome the general support for the approach taken by the Government and the health agencies to work together to reduce the incidence of smoking. Other members have referred to be ex-smokers and how they understand the difficulties involved. I am a next smoke but I am not often as long as Senator MacSharry. I am getting there as it is four years this summer.

**Senator Marc MacSharry:** Well done.

**Deputy Róisín Shortall:** I am not under any illusions about the difficulty of those who have developed an addiction. It is difficult to get off them and a number of factors are in play to finally enable a person to quit. We keep our fingers crossed that one is off them for good. It is important that the tone of any campaign is not a lecturing or judgmental tone. One must set out the facts of the impact of cigarettes on our health and letting people know about the data and the extent of the risk they are taking. The law has a clear role to play in making it difficult for young people, in particular, to access cigarettes. Advertising plays an important role in the education and awareness programme. We must also ensure there is support for people in terms of being able to avail of smoking cessation programmes supported by the State. It is a multifaceted matter and members referred to the other point that must be addressed. This Bill does not pretend to be all encompassing, it is a specific item of legislation to deal with the specific issue. It was hoped that we could introduce the graphic to a limited as under the 2009 legislation but some concern was expressed at the legal situation was not entirely watertight. We are introducing this legislation in order to close a loophole. We are keen to move on that by introducing the regulation and making arrangements to required the images to be incorporated into the packets. We want to make progress as quickly as possible and I welcome the support of all members in passing this legislation speedily before the summer recess.

A number of Members raised the question of price. The point was strongly made by Senator Crown in this regard. It is important to point out that cigarette pricing controls in Ireland are definitely part of a long-running an ambitious effort to decrease smoking prevalence. Evidence shows that pricing is the key tool in assisting and supporting efforts to encourage people to stop. A study undertaken by the EU anti-smoking campaign, entitled help for a life without tobacco, showed that a 10% increase in price in high-income countries result in a 4% reduction in smokers. The efforts to keep prices high have been successful. Cigarette prices in Ireland are the highest in the world. Ireland is price, €8 .65, is over one year of 50 more expensive than the next most expensive country, the UK. Our tax take per packet, €6.71, is higher than the retail price of cigarettes in all but one EU member state. There has been strong campaign and it would continue. We have been successful in spite of much opposition in maintaining cigarette prices at this high level. Notwithstanding that, the Minister has signalled his intention to seek further increases in the price of tobacco products in the forthcoming budget. I hope her cross-party support in this action. In addition to a general increase on tobacco products, the Minister has raised the possibility of introducing an environmental charge of the tobacco industry in light of the litter problem resulting from tobacco use. Hopefully that will also assist.

It is also important to talk about what is happening in respect of illicit trade. There is a major problem in this area. At my advice clinic last Saturday, I dealt with a constituent who had a social worker query. I did not believe he folded his shopping bag and put it under his arm and told me that he was going into town to buy cheap cigarettes. This is a common practice across the country in markets are on Henry St. It is a serious problem and efforts are being made to clamp down on this. The war needs to be strengthened and maintained a high level. The quantity of cigarettes in which Judy was paid well from 4.6 billion cigarettes in 2009 to 4.1 billion cigarettes in 2010 even though there was no reduction in the prevalence of smoking. The total excess duty on tobacco products was €1.1 billion in 2010 to €1.2 billion in 2009. It must acknowledge that tobacco taxes in Ireland are the high highest in the EU. The revenue commissioners have a responsibility in this area and it is important that we keep pressure on them to tackle this problem.

According to a report published earlier this year by Japan Tobacco International, an estimated 22 to 24% of all tobacco consumed in Ireland is aided Irish tax and excise duty. This amounts to a decrease from 27% in 2009. This is the first decline since recording began in 2005. The actions are having some measure of success there is no doubt we need to continue putting pressure on that regard. I am also concerned that the extent to which, outside of illegal activity of cigarettes being smuggled in a commercial sense and sold on street in markets, there is common practice of people travelling to other European countries, particularly Eastern European countries, and coming back with bags of cigarettes are a distribution in various states. That is prevalent and must be addressed.

I wish to respond to the point made by Senator MacSharry in respect of the office of tobacco control. The public health tobacco memo amendments act of 2010 provided for the merger of the office of tobacco control in HSE with effect from one January 2011. The functions of the office transferred to the HSE and those functions include the maintenance of the tobacco retail register, advice to the Minister on control and regulation of tobacco products, consultation with national and international bodies in the field of smoking prevention, making recommendations to the Minister on measures to reduce or eliminate smoking, supporting research to identify measures to reduce the incidence of smoking and preparing and publishing research. That work continues and there is no let-up. A separate national office for tobacco control has been set up in the HSE.

Senator Burke referred to putting the details of they quit lying on the packet. That is included on one of the images. Perhaps it should be more widely available and I take the point in that regard. We will examine the matter.

A number of other points were made in regard to the SPHE programme, including by Senator Moran. I have no doubt that the messages young people receive can be greatly strengthened through that programme and I undertake to look at it in order to see what can be done in that regard.

On health promotion in general, including the issue of smoking, much more could be done within the schools where, clearly, there is a captive audience. I am conscious that teachers will say they have been loaded with many additional responsibilities. However, I would like to move towards the idea of the health promoting school and much could be done in regard to diet, exercise and healthy lifestyle habits in general. Smoking and use of alcohol and illicit drugs would also come under that heading. Perhaps in the same way we have the five green flags promoting environmental consciousness and responsibility we should have a sixth flag concerned with establishing the status of the health promoting school. I would like to do more work in that area.

[Deputy Róisín Shortall.]

Senator Crown made a very important point about making people aware of the need for smokers to quit smoking at the earliest possible stage. Many of us have fooled ourselves into thinking we could get away with it for a certain length of time but very often it is not until people are in middle age that they start to realise they want to live into their 70s, 80s and 90s and concentrate their minds on the matter at that point. Many people think they can get through until they are in their 40s. That is a very important message we must get across, one that is probably not made often enough to people. We must look at ways of incorporating it into the general messages we need to put out in respect of smoking.

It is a matter of serious concern that, in spite of the fact that we were world leaders with the smoking ban and are also leading it in respect of legislation, we are still not reducing our smoking rates which have been stuck at 29% for a long time. We must be more proactive in terms of discouraging people from getting started in the first place and must provide very clear messages about the damage that is done and support people to quit smoking. The images this legislation provides for certainly are very stark — they have been circulated to Members in colour. If one flicks through them they make one wince, which is the point. We want to move as soon as possible to bring about a situation where it will be mandatory for tobacco companies to display these images. We hope they will do the job intended and there is every possibility they will.

I thank everybody for their support and for facilitating the session today. We shall return next week with the remaining Stages and I look forward to dealing with the legislation, getting it out of the way and up and running as soon as possible.

Question put and agreed to.

*Sitting suspended at 1.05 p.m. and resumed at 2.45 p.m.*

### **Defence (Amendment) Bill 2011: Committee Stage**

Sections 1 and 2 agreed to.

#### NEW SECTION

**An Cathaoirleach:** Amendments Nos. 1, 2, 5 and 6 are related and may be discussed together.

**Senator Denis O'Donovan:** I move amendment No. 1:

In page 4, before section 3, to insert the following new section:

3.—Section 184C of the principal act is amended by deleting the figure “10” and inserting the figure “8”.

Maybe instead of going down the road the Minister is suggesting in this Bill, he might consider reducing the required number of years from ten to eight, among other suggestions. As I outlined yesterday, I am deeply concerned that this Bill is aimed mainly at regularising lacunae within the Department of Defence and the Defence Forces. I was not pointing the finger of blame directly at the Minister yesterday, despite the fact that on three or four occasions he referred to comments as having been made by me that were not in fact made by me but by another Senator.

On 28 July 2010, the Defence Forces press office issued a statement that a certain individual, whom I shall not name, had been appointed a military judge for the Defence Forces. On the same day that individual was promoted from commandant to colonel. Subsequently, it emerged

that there may have been doubts about the eligibility of this person and, consequently, it also emerged that the Attorney General had been contacted by the then Minister. Because of the doubts that existed, the appointment was not pursued. I am sure the Minister is aware that the individual concerned, seeking to protect himself because he was concerned that the appointment was not proceeding, sought and obtained an opinion from an eminent senior counsel, namely Mr. John Rogers, a former Attorney General. I am sure the Minister has studied that opinion. The person was informed that he had a legitimate expectation. Consequent to all this, the Bill has emerged.

Let us remove the fluff from the Bill and get rid of the notion that the Bill contains measures to expand the pool of people who are entitled to be appointed as judges. If we take away the flesh and get down to the bone, we can see the truth of the contention I made that this Bill is primarily to facilitate a particular individual and to ensure the Department and the new Minister are not sued in the courts, as set out in this opinion of legitimate expectation. A process had been conducted and the appointment was actually announced on 28 July 2010 — almost 12 months ago. Is there a likelihood that the Department is now facing the wrath of this individual, who was either led up the garden path or coerced or encouraged along as a favourite son of the Department for appropriate rewards?

Yesterday the Minister either did not wish to advert to this or sidestepped it, but these are serious issues. It is important that the Minister, on behalf of the Department, come clean and confirm the existence of the correspondence I mentioned yesterday, a letter written by a senior officer to, I think, the Defence Forces legal service — I am not *au fait* with the internal workings of the military — expressing deep concern about the appointment in question. It is also of concern that when the appointment did not proceed, an opinion was obtained by that individual, as was his right, which I am sure was waved at the Department with talk of legitimate expectation and considerable financial loss for the Department by way of a lawsuit. These are the concerns I have, and they are deep-rooted.

The Minister gave the impression yesterday that he was, in this Bill, broadening the category of those who may be appointed as judges. I have no problem with that. However, if we consider the existing legislation — the 2007 Act or the principal Act from 1954 — we will see that such a provision already pertains. He should confirm that that is the case, although he is choreographing it in a slightly different fashion. I accept that he is probably broadening the category of people who are available to be appointed to the military court.

There is one issue on which I ask for clarification. The Minister was throwing darts at this side of the House and his predecessor, the former Minister for Defence, Tony Killeen, regarding the fact that there was a backlog of 22 cases. After yesterday's discussion I went to look at those 22 cases. Some of them are very technical and I have no doubt that under the old legislation, if the President decided to second a Circuit Court judge for six or eight weeks, that backlog would be cleared. Can the Minister tell me how many cases have been dealt with in the military court in the last 18 months or two years? Probably far fewer than 22. A backlog of 22 cases in the Circuit Court, High Court or Supreme Court would be laughed at. At the moment there are cases pending in the High Court that are ten years old, although I am not saying that is right. It is not fair to convey to the House that there is a backlog of 22 cases and that this cannot be dealt with in any other manner than through this legislation.

The issues I have raised here should be dealt with. The amendment seeks a reduction in the number of years a person must have been practising as a solicitor or barrister from ten to eight. That would not do any harm to the Bill. It could be incorporated along with the proposals to expand the provisions as the Minister set out.

[Senator Denis O'Donovan.]

I have always been courteous to this House and to Ministers. I have never come in here and tried to politicise an issue. However, I have a letter in my possession that I will not read from or refer to as it might be a source of severe embarrassment, if not to the Minister then certainly to the Department. I spent last night increasing my knowledge of this issue and I am far more confident today about what I am saying, which my colleague Senator Mullen also discussed. By the way, I did not realise until yesterday that Senator Mullen was on the same tack; we had not sought to compare notes prior to the debate. Senator Mullen seems to be aware of circumstances that are of deep concern.

I am concerned about any Department, whether it is the Department of Defence or the Department of Agriculture, Fisheries and Food, introducing legislation under threat of a lawsuit — it may have been verbal but it is a matter of fact. I have seen the opinion from the eminent Mr. Rogers advising the appointee about whom I spoke of his rights. Obviously the person concerned did not go to the trouble of getting that opinion for fun. The Department was concerned that it was caught in a bind. It had announced publicly from its press office on 28 July last year that it had made an appointment, but it rowed back because it was clear and obvious that the person was ineligible. At that stage, perhaps when this was conveyed to the individual concerned, he protested that he had been led up the garden path. The Department had offered him the appointment and promoted him to one of the highest positions in the Defence Forces, that of colonel, and he had a legitimate legal expectation that this would be carried out. In the legal opinion, which I have studied in detail — although I am not saying opinions are always the last word — the eminent senior counsel suggests there is a legitimate expectation not only of the appointment as judge but of all the benefits that go with that position.

In that regard it is important that the Minister explains to the House the full backdrop. I was easy yesterday and I made some points. As Senator Mullen stated there is a background to this case about which the House must know. This is nothing to do with scoring points against the Minister or the current Government. If the previous Minister were here I would make the same points to him, but he is not. I am uncertain but I am of the view that if the Minister then were faced with this difficulty almost 12 months ago he may have rowed back and decided not to proceed in that line.

The legislation appears to set out some issues with which I have no difficulty. However, if it is the case that it is being dressed up in an effort to protect the Department and an appointment, I have deep reservations and concerns. That would be a retrograde step. I note from another opinion I received that it could have constitutional implications and could be subject to challenges. Perhaps the Minister is not aware of this. Is the Minister or the Department aware that there are two reputable legal firms holding a watching brief on this development? The Minister may smile but will he inform the House of it in good faith? I accept the Minister's bona fides and I am here *uberrima fides*; I have no personal axe to grind. Most people who know of my career in politics acknowledge that I have rarely, if ever, gone down the road of scoring points or trying to fire cheap shots. I have no particular axe to grind with the Minister, although he may believe Senator Byrne, who is not here at the moment, may have. Will the Minister accept my amendments and confirm that the backdrop, as set down by Senator Mullen more cogently than I have done, does not exist or, if it does, will the Minister reassure the House that it has disappeared and that these issues are no longer relevant?

This has raised hackles among serving members at various ranks within the Defence Forces. Since yesterday, I have received several calls of concern and support for the points I have raised from serving officers and retired personnel. It gives me no great gratitude to have an

axe to grind with any Department. However, this matter will not rest in this House. If we vote it through today it will re-emerge.

It is important to realise that the Bill, although it has some salient features, serves the purpose of doing what I have said and addresses the fact that the Department is obliged to ensure a particular appointee can have his appointment fulfilled. Under the old law and the Acts of 2007 and 1954 that was not possible because of the question of eligibility. The State (Walshe) v. Murphy case decided in 1981 indicates that a successful challenge might emerge. In this regard I hope we will hold a more balanced debate today and that the points I have raised which are of importance will be considered. These are not made up. I have before me certain documentation and perhaps the Minister will allay my fears and those of other Members in his response. I reserve the right to contribute on other issues as the debate unfolds.

**Senator Rónán Mullen:** The Cathaoirleach may be able to assist me. I would be pleased to hear the Minister's response to the points raised by Senator O'Donovan. It might avoid repetition because if the Minister addresses particular points to our satisfaction, I will not necessarily rehearse the same points. However, I have no wish to forego the opportunity to speak to the amendments.

**An Cathaoirleach:** Senator, you may come back in. The reason I called you was that you are down to speak on amendment No. 2.

**Senator Rónán Mullen:** Since I can speak on amendment No. 2 in due course, I am content to hear the Minister.

**An Cathaoirleach:** We are discussing amendments Nos. 1, 2, 5 and 6 together.

**Minister for Justice and Equality (Deputy Alan Shatter):** First, let me give the formal response to the amendments. I will then address specifically the issues the Senator raised.

The essence of the amendments is to reduce the qualifying criteria required for appointment to the post of director of military prosecutions or as a military judge from the current position of the requirement to be a practising barrister or solicitor of not less than ten years standing to only requiring an individual to be a practising barrister or solicitor of not less than eight years standing. The effect is that one would be required to have only two years less experience.

The suggestion that the level of experience required for appointment to the post of director of military prosecutions or as a military judge to which these amendments apply should be reduced could lead to a scenario where an officer lacking in experience could be appointed to undertake the onerous duties associated with either the post of director of military prosecutions or as a military judge and it would turn on its head the logic of the existing provisions in the Defence Acts. Ten years experience as a qualified barrister or solicitor is not excessive having regard to the nature of the posts in question. Ten years experience as a qualified barrister or solicitor is the minimum number of years required before appointment to the District Court. Personally, I do not believe this position is of any less importance than that of a District Court judge.

It could be stated that the amendments betray a lack of appreciation of the duties associated with the post of director of military prosecutions and of a military judge, both of which may involve decisions leading to the termination of an individual's career in the Defence Forces, his or her incarceration or both. It is essential that anyone exercising the functions of either the director of military prosecutions or those of a military judge must be in a position to weight such onerous considerations appropriately and this comes only with experience. This is the basis upon which our judges are appointed in the Civil Courts and it was the basis upon which

[Deputy Alan Shatter.]

the Act of 2007 was drafted and enacted by the Oireachtas on the proposition of the former Fianna Fáil-led Government of the time.

Senator O'Donovan raises in an extraordinary way the circumstances of a particular individual. I will come back to that presently. However, his first accusation, a strange one, is that the Bill is designed to regularise a lacuna in the law. The Bill is designed to try to regularise a lacuna that arose and was, apparently, perfectly clear as of last summer to the former Minister for Defence in the Government supported by the Senator. A difficulty arose, the circumstances of which the Senator has described accurately in the sense that an individual was, apparently, appointed to this position or some announcement was made and the appointment was not proceeded with because there was some form of legal difficulty. That did not occur under my watch or during the lifetime of this Government. However, the problem arose. What did Senator O'Donovan's colleagues do when that problem arose? Absolutely nothing. They went into a state of suspended animation and the Military Court stopped sitting. That is what happened and I inherited that predicament when I became Minister. I asked questions as to what on earth was going on and I was informed what was going on.

I am aware of the predicament of that individual but I am not aware of certain aspects of that individual's predicament. Clearly, the Senator is being fed information. I do not doubt the good faith of Senator Mullen in these things. However, Senator O'Donovan has been given certain information. He should ask himself why he is being given this information. It is not an embarrassment to me since I was not Minister at the time and the present Government did not exist at the time. However, he is being given information that I did not know in one respect although I knew of the difficulties of this individual. He has put information on the record of the House today of which I certainly do not have knowledge and I am advised my officials do not have knowledge.

That is in respect of two matters. The first matter is I am informed that no official in the Department of Defence would have seen any advice given by legal counsel to the individual concerned. Obviously Senator O'Donovan has been given it. Some other people have obviously seen it. I did not know and it is news to me the name of the senior counsel who allegedly gave this individual advice. I presume the individual obtains the advice and I do not believe it is as appropriate. We talk about individuals in this Chamber — Senator O'Donovan has brought it up — because they have no opportunity to defend themselves when we talk about individuals in this Chamber.

Clearly advice was obtained by him, of which Senator Donovan is privy, and he has put on the record of this House that this individual thinks he has “a legitimate expectation of some description, a concept well known within the legal profession.” Whether the individual does or does not have a legitimate expectation I do not know and we have now discovered who his senior counsel was. There was certainly, I am advised, some correspondence received by the Department of Defence from this individual's solicitors and I presume there was some response to it, but that is not why this legislation is before the House. It would be quite improper to enact a piece of legislation designed to assist an individual and present it differently.

If I was going to seek to enact a piece of legislation designed to assist an individual I would not be proposing to this House that we extend eligibility for appointment to this position to solicitors and barristers generally of ten years standing. If this was a piece of legislation designed for an individual it would address that individual's circumstances and the last thing it would do was try and widen the pool of individuals to whom this legislation should apply. My problem is, and want to make it clear, that I am assuming that Senator O'Donovan is expressing concerns in good faith but he should examine what he is saying against the factual reality of what is contained in the Bill and perhaps take less than seriously some of the lobbying that he

is being subjected to. He has told the House that he got congratulatory phone calls yesterday evening from some members of the Defence Forces.

The real problem, as I see it, with this particular tribunal and the current prescription for eligibility to be a member of it is that it is far too narrowly defined and there are far too few individuals who are eligible for appointment. I am sure there is a discrete number of individuals who may be concerned that if we widen the pool of possible appointments they may not have an opportunity to be appointed. In fact, if one looks at this this is an area that needs reform because it is a closed shop in all practical terms. It is a closed shop because the appointments can only be made in favour of a readily identifiable small number of individuals, some of whom must be briefing the Senator, and there is a motive behind it. I am not going to suggest the Senator has a motive other than trying to tease out the legislation based on the briefing he is getting.

I would ask both Senators, in fairness, to read what the Bill says. This Bill is broadening the pool of individuals in a significant way from whom an appointment can be made to the position of military judge. I have absolutely no idea who may be appointed when there is a new competition. I will have no hand or part in the appointment beyond the committee that conducts the assessment of who should be appointed. It ultimately makes a recommendation which, as I understand it, is furnished to the Government to be passed on to the President, and I presume comes to the Minister for Defence to furnish the Government to pass on to the President.

I find it extraordinary where it is so clear that we are widening the pool way beyond the individual whose circumstances the Senator refers to as to who is eligible for appointment that the Senator is so convinced that this is a Bill that is designed to appoint a particular individual. What makes it even a little bit more odd is in circumstances where the Senator seems anxious, and both Senators seem anxious, that persons of reasonable experience and expertise are appointed, why they choose to drop from ten to eight years for the period during which someone needed to be a qualified barrister or solicitor before they could be pointed because you are now going for individuals with two years less experience.

I am advised that this issue may have arisen under a previous Minister who did not pursue it and on that occasion Senator O'Donovan was suggesting reducing the period from ten years to seven years. We are now a year further on. I do not know whether the Senator is advocating on behalf of some particular individual for this post who 12 months ago had seven years practice and 12 months on has eight years practice.

**Senator Denis O'Donovan:** I did not speak on this before, Minister. I had no involvement in it prior to yesterday.

**Deputy Alan Shatter:** If I am incorrect——

**Senator Denis O'Donovan:** The Minister is absolutely incorrect.

**Deputy Alan Shatter:** Perhaps it was the individual who has been lobbying the Senator who some time ago only had seven years experience and now has eight years. It may be unfair——

**Senator Denis O'Donovan:** I knew nothing about this until——

**Deputy Alan Shatter:** I do not wish to be unfair to the Senator but if he is the subject of lobbying on this issue I would be very interested——

**Senator Denis O'Donovan:** I am trying to get at the truth.

**Deputy Alan Shatter:** I would be very interested in knowing where the eight years originates from. Why is it not seven? Why is it not nine? Why is it eight? Why should it be eight when the Senator and I know and Senator Mullen knows that for an appointment to the District Court one has to be in practice for a minimum period of ten years? Why eight? In circumstances where a decision of a military judge can terminate someone's career in the armed forces, can make a decision which results in their disgrace and can make a decision which results in their incarceration why should someone of less experience be appointed to that role than a district judge who may impose a fine for speeding at 5 km per hour more than the speed limit prescribes?

The decisions this judge makes are particularly serious. We will come to a later amendment but it is worth dealing with its relevance to this. Who are the group who are going to make the decision when there is a new competition? Who makes that decision, essentially? Well, the decision is made by the Judge Advocate General who is an independent legal official entirely independent of the Department of Defence, the Chief of Staff who has his own statutory position and a judge of the High Court nominated to participate. One could not have three more independent individuals over whom neither myself as Minister has or should have any control in determining who should be appointed and nor has the Department of Defence at official level.

The Senator made accusations of bad faith in relation to this particular legislation because that is a summary of what he is saying. I could not as Minister allow the current situation to continue. The Senator has suggested that within the existing legislation there could have been some temporary appointment that could be made of an individual to determine the outstanding 22 cases. In the context of the military tribunal, 22 cases are a lot of cases. In the context of individuals facing court martial with a sword of Damocles hanging over their heads is a cause of great concern—

**Senator Denis O'Donovan:** Most of those cases are appeals.

**Deputy Alan Shatter:** —and we operate a system of justice where people are entitled to have accusations made against them determined and resolved within a reasonable period of time. The existing legislation does not allow for the appointment, as I understand it, of a substitute judge. The Senator may point out to me where I am mistaken. It provides for the possibility of the appointment of two military judges. We certainly do not need two and I do not want to hold a competition in circumstances in which the pool of eligibility is so small that we may not be able to identify individuals. It is not for me; the committee may not be able to identify individuals appropriate to appoint. This is not about doing an individual a favour. This is to do with reforming a piece of legislation enacted in 2007 which contained, as the Senator pointed out, a serious lacuna. This has been exposed by the difficulties that have arisen and just as I have sought to address it in this Bill, it could have been addressed before the end of last year by the previous Government. However, the previous Government was paralysed and failed to address it. It is not acceptable to me that this situation continues.

I have rejected the amendments proposed by the Senators because they will reduce the qualification criteria by moving from ten years to eight years and, in my view, this is completely inappropriate. To be very fair to Senator O'Donovan, without him realising it, from inquiries I have made, his proposed amendment could only benefit a very small number of people in extending eligibility. It is a readily identifiable very small number of people. I am willing to accept this is not the intention of the Senator's amendment and perhaps the Senator himself has been misled on that issue. I do not want to make any allegation of bad faith but I ask both Senators to look at what the legislation states as opposed to the assumptions they are making.

I am informed that Senator Mullen became excited about this issue again on the Order of Business today. I suggest the Senators look at what the legislation——

**Senator Rónán Mullen:** I would not go so far as to say I was excited.

**Deputy Alan Shatter:** ——states. For the first time, the legislation opens up eligibility for appointment to this tribunal to a wider group of legal professionals who have expertise. It moves away from this being a closed shop appointment confined to a small group of individuals. I do not believe it is in the public interest that we maintain the current position. I also say to both Senators, had the difficulty that occurred last August or September not occurred, and had I been in office and looked at this legislation and the narrow confines of the group of individuals who could be appointed, I would have been looking to bring forward reforming legislation. This would have been in the same context as more than a decade ago because I was concerned as long ago as the early 1990s that the pool of individuals for the selection of High Court, Circuit Court and Supreme Court judges was confined to members of the Bar. I thought it incredible that we had thousands of solicitors around the country who could not be appointed to those positions.

On that occasion I was the moving party in commencing a process which resulted in the change to our courts legislation which now allows for the appointment of solicitors all the way from the District Court — to which they could always have been appointed — up to the Supreme Court. We need to widen the pool of lawyers of expertise who can be appointed to adjudicating positions. This legislation is part of that type of reform. This is a reforming measure to bring eligibility criteria into the 21st century and not to confine it and lock it down to a small group of individuals.

I hope that, before Senator O'Donovan responds, Senators would accept my good faith in this regard. Why would I want to cover up something that was a mess created under the watch of the previous Government? I ask if someone can explain that to me because I do not understand it and it makes no sense. I want to solve a problem. I want to get this appointment made appropriately from a pool of qualified individuals and to resolve the log-jam that has occurred and to make the legislation function.

**Senator Rónán Mullen:** I have listened with great interest to what the Minister has said. He said certain things with which I agree very much. He has not managed, however, in making some of these points, to note the not so subtle distinctions between the amendments I am proposing to the legislation and those of Senator O'Donovan. He and I are coming from slightly different places, although I completely accept Senator O'Donovan's bona fides in the way he has addressed the issue. However, I have a slightly different approach. What the Minister needed to acknowledge was that the totality of my amendments, were they accepted, would leave very much in place a situation where there would be a very wide pool of applicants for the posts of military judge and Director of Military Prosecutions. That is to say that I am very open to opening the potential list of applicants beyond membership of the Permanent Defence Force. My amendments would allow that any solicitor or barrister with the requisite years of practice would be in a position to apply for these posts. This is a very important point because it lays bare the inadequacy of the Minister's apparent claim that were he to accede to what is being sought in the Seanad, it would leave a very closed shop to the benefit of one or a few.

I refer to a couple of general points which need to be addressed and which were raised by the Minister. I do not believe that it is inappropriate to talk about individuals in this Chamber or in the other House. Sometimes the only way one can make sense of an issue is by talking about individuals and this is very much an instance of same. As I explained yesterday, the context in which this Bill was brought forward is crucial and, in my view, it has very much to

[Senator Rónán Mullen.]

do with the interests of a particular individual. There is nothing wrong in talking about individuals and the Members of this House have been very responsible in not naming that individual, simply out of a desire not to embarrass the person. I have no difficulty because I do not know that individual and I have no difficulty with that person. I have no difficulty even with that person being appointed to the job if he or she is suitably qualified. However, I have a difficulty with any possibility that legislation is designed with the needs of a particular individual in mind or partially in mind, without this House being told so. That is the first issue.

The second issue has to do with motives. We are in the position of talking about this issue today because, effectively, we have had contact with what are, in fact, whistleblowers. These people, in good faith, have raised a problem about what has been happening. They have drawn our attention to a certain factual substratum behind the proposed legislation. The reason I became exercised in this Chamber this morning rather than excited — I inform the Minister it would take more than that to excite me — is that some Senators did not recognise a genuine issue for the Order of Business when they heard it. I was leading to a proposal that the House would not consider this legislation further today until Members of the House and others and the public have had an opportunity to consider the issues properly because I think an issue of impropriety of some kind has arisen. This is the reason I raised the issue this morning on the Order of Business and it is an important issue having to do with how we order our business in the House.

The other issue has to do with motives. There is nothing wrong with taking information from people who have certain motives, provided those persons and the recipient of the information are fully informed as to how that person stands to benefit or not from what transpires. This is called declaring an interest. In any contact I have had with any person to do with these issues, any interests have been fully declared to me.

There are two aspects underlying my amendments. I expressed in detail yesterday my concern about the factual background which has led to this particular legislation. I remind the Minister that I am not in opposition. A degree of oppositional politics is necessary, but I have no beef with the Minister. I have no desire to catch him out on anything or oppose him for the sake of it. I am approaching this issue in absolute good faith. As I indicated yesterday, I support two out of three of the central proposals in the Bill. On another matter, the Minister made a comment recently on the abortion issue. I would not mind having a friendly chat with him about that at some point.

**An Cathaoirleach:** That is not relevant to the amendment.

**Senator Rónán Mullen:** The Cathaoirleach has no need to worry; I do not intend to rehearse it today.

I am merely anxious that the Minister should know that I have a great degree of goodwill towards him. That was why I pointed out yesterday that either he has good reason to be annoyed with his officials and with the Defence Forces for not putting him fully in the picture on this matter or we have good reason to be annoyed with him for not putting us in the picture. I remain concerned that the Bill seems to be designed in part to suit the needs of a particular individual, needs that have arisen because this individual was, in the opinion of the highest appropriate authority and as communicated to the highest appropriate person in the Defence Forces, not statutorily eligible for the position to which he was appointed. The Minister referred to the situation some minutes ago as “some form of legal difficulty” with the appointment. With the greatest respect, he should be more specific. To talk about “some form of legal difficulty” is to imply a mere technicality.

We have to talk about the details of the individual case. This was an individual who, on several occasions, had not managed to get selected as a legal officer. In the opinion of the highest appropriate person, this individual did not meet the statutory legal eligibility because he had not operated in a post for which it was a requirement to be a barrister or solicitor. The Bill would let this person off the hook in that respect. I do not for one minute allege — and I am pleased he has indicated there will be a further competition — that the Minister is trying to rig the situation to ensure this person gets the job in a future competition. The Bill will leave it in such a way that many people will be able to apply for the job, which is perfectly appropriate. However, that is not enough. The Minister said it would be quite improper to enact legislation designed to assist an individual. This Bill does not do so; that is not my contention. Nevertheless, it will let off the hook a person whose eligibility for a particular post was rejected in that this person will now be deemed eligible.

As I said, I am concerned that the Bill seems designed to suit a particular person. I am concerned that the Minister would come into the House and not explain to us that among the effects of these provisions is that a particular person stands to benefit. That is not transparent. The Minister was helpful in telling us some of what he knew about this matter, but I ask him to be more detailed about what precisely he knew. At what point was it disclosed to him that the situation had arisen? Whose idea was it that the Bill should be designed to allow a selection committee to overlook the absence of the relevant experience in respect of a job for which it was a requirement that the person be a barrister or solicitor? Who suggested that the amendment be included to allow a selection committee to make that decision?

The Minister rightly observed that this provision will open up the shop to more applicants. However, that opening up will accommodate the person who was appointed previously and in respect of whom the problem arose. If the shop is opened up in this way, it is likely that a person who is well known would stand a very good chance of subsequently getting the job. That is why it is relevant to ask how the matter came to the Minister's notice and why this particular amendment was drafted.

The Minister made an excellent point in speaking about these amendments, specifically the provision which seeks to lower the requirement regarding legal service as a barrister or solicitor from ten years to eight. He correctly drew a parallel with the District Court and made all the relevant points about the importance of the role of military judge. He spoke about the possibility, for example, of an officer's career being exterminated. He talked about how inappropriate it would be to have a lower standard of required legal experience than would apply in the case of a District Court judge. He is absolutely right, and perhaps that is the reason we should not lower the required period of experience from ten years to eight. If the Minister implements that reduction, it will leave several people within the Defence Forces — not just one individual — in a position to apply for the post. He is correct to refer to the District Court, but he does not point out that when it comes to the appointment of a judge of that court, there is no backdoor mechanism which allows it to be overlooked that a person does not have ten years experience.

The Minister cannot have it both ways. He cannot, on one hand, insist that we retain as sacrosanct the requirement that a person must have practised as a solicitor or barrister for ten years and, on the other hand, propose an amendment which would allow a selection committee to drive a coach and four through that requirement in respect of a particular post, not in terms of the duration of the work but in terms of deeming eligible for a post an officer who happens to be a barrister or solicitor but who has not worked for ten years in a role in which it was required that he or she be a barrister or solicitor. Would the Minister prefer somebody who has been busy prosecuting courts martial for eight years and knows his or her way around the military justice system or somebody who has been in a desk job for ten years, with no involve-

[Senator Rónán Mullen.]

ment in work which required him or her to be a barrister or solicitor? It seems invidious that the Minister would seek to open a loophole for one category but not another.

There is something undesirable about the way in which this legislation has come before us. I am not blaming the Minister, because I do not know who to blame. I do not know if the fault lies with the Minister, his officials or the Defence Forces, but we should have been told. On any index of transparency, corruption and democratic accountability — and there are such indices — something that must cause concern to people of good faith is a situation where the Executive of a country would not disclose significant factual background to the Legislature. In this instance, it is not so much that someone wanted to pull the wool over our eyes but that someone was quite content to leave the wool over our eyes if we were not in a position to pull it back ourselves. That is problematic.

If only to rule out the suspicion of preferential treatment, this factual background should have been brought to our attention. In the courts it is not enough that a judge be impartial; he or she must be seen to be impartial. In the same way it is important that this legislation should have been seen to be grounded in good faith. For all I know, the Minister may be tearing strips off his officials in the background. We need to know precisely who knew what. The fact remains that what is proposed in this amendment allows a selection committee to overlook an otherwise ineligible person, which would in this instance benefit a particular person in any new competition for the job in question.

It is important to stress that we are discussing a judicial position. The Minister made that very clear. The individual in question will be able to impose fines. However, he or she might also be amenable to a desire from other quarters to the effect that trials be shortened. He or she might also be obliged to make decisions regarding legal aid. These are all matters in which the State might have an interest. That is why the process relating to the appointment of this person must be extremely transparent. I am of the view that there is departure from transparency in what the Minister is proposing.

I will cut to the chase in the context of what I propose in my amendment. In so far as the appointments of the Director of Military Prosecutions and military judges are concerned, it is currently required that people being appointed to such positions be serving members of the Permanent Defence Force, that they should have ten years' experience as practising barristers or solicitors or, alternatively, that they have served for "any period in a position in the full-time service of the State (including as a member of the Permanent Defence Force and as a civil servant within the meaning of the Civil Service Regulation Act 1956) for which qualification as a barrister or solicitor was a requirement". It was this which allowed legal officers within the Defence Forces to access these positions. Such individuals may not have been working in the Four Courts or in solicitors' offices but they would have spent ten years in a job which required them to be practising barristers or solicitors.

If there is a shortage of candidates for the post of military judge, in particular, and Director of Military Prosecutions, then might it not be inappropriate to allow people with eight years' experience who have been operating in a military court setting to be considered? Even if I am wrong in that regard, I must ask whether the Minister would automatically insist on the same high threshold for the position of military judge as that which obtains in respect of the Director of Military Prosecutions. He correctly stated that ten years' experience as a barrister or solicitor is required in order to be appointed as a judge of the District Court. What is the requirement to be appointed as Director of Public Prosecutions, DPP? Is there are parallel between the latter and the Director of Military Prosecutions?

Is the Minister insisting that the threshold of required experience as a barrister or solicitor should not be lowered from ten years to eight in the case of the post of Director of Military Prosecutions? Even if he disagrees with me and insists on a requirement of ten years' experience serving as a barrister or solicitor, then the second half of my amendment should apply *a fortiori*. In other words, we should delete from the Bill the power the Minister proposes to grant to the selection committee. I accept the good faith of selection committees. The Minister referred to three officers who will serve on such committees appointed to choose military judges, namely, the Chief of Staff, who would be in frequent contact with the Department, the Judge Advocate General — I accept the independence of the latter but nonetheless these are posts which emanate, in one way or another, from power — and a judge of the High Court, the independence of whom I would certainly accept.

There is another amendment in my name which, for the avoidance of doubt, would assist in ensuring that the most independent type of scrutiny possible would apply in respect of applications. However, I will not speak to it now.

It is wrong that we should allow the selection committee to, as is stated in two separate locations in the Bill, consider the service of an officer. I admit that such an officer must be a qualified barrister or solicitor but what if he or she were not in a role which requires him or her to be a barrister or solicitor? The Minister's proposed change would mean that such an individual's duties and role could be considered and that said duties and role could be deemed to be substantially similar in substance and effect to the duties and role of a person who has served for ten years in a position which required him or her to be a barrister or solicitor.

The Minister is also allowing the selection committee to deem such service to be service as a practising barrister or solicitor. In other words, he is opening a hole a mile wide in respect of the possible access route to this post. He cannot state that the reason he is doing so is in order to open up competition. The latter is already being done through the freeing up of access to the positions to which I refer to people outside the Defence Forces who possess the requisite ten years' experience. In addition, he is also opening up the possibility for the President of the Circuit Court to appoint judges of that court to fill any vacancies that arise on a temporary basis. I fully support his actions in that regard.

The Minister cannot claim that what is being done relates to opening up competition. The hole it opens would not actually admit many more people into consideration. However, it will give a great deal of power to the selection committee to deem that someone within the Army is fair dinkum and is suitable for appointment as a military judge even though he or she may not be serving in a role in respect of which there is a requirement that he or she be a practising barrister or solicitor.

It beggars belief to suggest that this change has not been designed with a particular set of circumstances in mind. The Minister should be honest and state that I am correct in this regard. The relevant provision would not have been drafted if a particular set of circumstances had not arisen. As it stands, the Bill would open up the possibility of the President of the Circuit Court appointing temporary judges and also the wider possibility of non-serving members of the Defence Forces who possess the requisite legal experience obtaining positions as military judges. That is all great and there would be ample competition. As a result, I would argue that there was no need to introduce the provision to which I am objecting.

It is a question of how we regard judges in our society, particularly in the context of the military. Justice within the military is an extremely fraught issue. There is international case law relating to Turkey, etc., in this regard. The last thing the Minister should do is make the appointment of military judges less transparent. The way in which to ensure that the process remains transparent is by putting in place a criterion of practice in respect of the appointment

[Senator Rónán Mullen.]

of judges. That has been the method used heretofore. In other words, people were appointed on the basis of the length of time they had been practising or serving in a particular role.

The Minister is moving the process away from one of transparency and raising the possibility that people could be before military judges whose degree of competence for the job has not been assessed in a transparent way. In such circumstances, the selection committee will be able to consider the totality of someone's Army career and state that he or she is a good and smart person — he or she may be perfectly competent in other ways — and can serve as a military judge. It is my opinion that the Minister is inviting a judicial review in this instance.

On Second Stage, Senator Coghlan referred to section 7 and the fact that it states that the Minister for Defence may consult the Minister for Justice and Equality.

**Acting Chairman (Senator Diarmuid Wilson):** We are on section 3.

**Senator Rónán Mullen:** I am just making the point in passing. Section 7 highlights the constitutional frailty of the position as it stands. Even though Deputy Shatter is perfectly competent to serve in the roles of Minister for Defence and Minister for Justice and Equality, the two positions should probably not — for all the obvious reasons relating to a democracy — have been combined. Just as there is a separation of powers, there should also be a separation of functions between control over our police service and control over the area of justice. I intend no reflection on the Minister, I am merely making a constitutional point.

There is a departure from transparency in respect of what is currently contained in the Bill. He will allow the selection committee to drive a coach and four through the normal statutory requirement regarding the period of service someone is obliged to have as either a practising barrister or solicitor or in a role where he or she is required to be a barrister or solicitor. That is a major mistake.

**Acting Chairman (Senator Diarmuid Wilson):** Before calling the next speaker I wish to point out that we have spent 65 minutes discussing this section. Members should bear in mind the fact that the order of the House is that Committee Stage must conclude by 4.15 p.m.

**Senator Paul Coghlan:** I was going to state that the picture had become clearer following the Minister's contribution. Having heard what Senator Mullen had to say, however, I am of the view that a cloud has appeared. I do not understand why those opposite are seeking to reduce the requirement relating to experience from ten years to eight. I believe what the Minister has said in that regard is far preferable in the interest of having the better qualified person. It would appear to me — a layman — even though the Senator is accusing the Minister of having someone in mind that he——

**Senator Rónán Mullen:** I am not accusing him of that.

**Senator Paul Coghlan:** I apologise. However, it would appear that the Senators on the other side seem to have someone in mind. They want to keep this very restrictive practice and closed shop. As the Minister has said, there was some effort 12 months ago for seven and now 12 months on for eight. I am not accusing either of the Senators. I accept everybody's bona fides. However, it would appear that perhaps whoever is briefing had someone particular in mind.

**Senator Rónán Mullen:** I believe the Senator did not hear me. My amendment would leave it very wide.

**Acting Chairman (Senator Diarmuid Wilson):** Senator Coghlan, without interruption.

**Senator Paul Coghlan:** I agree with the Minister's intention and the thrust of the Bill to widen the pool. He told us yesterday of 22 cases and we must agree with him in the interest of natural justice, equity and fair play trying to break the logjam. He came to office and presumably found a Bill there. He did not design it initially, but may have refined it with his officials. I accept that the Minister is a totally disinterested party acting solely in the public interest.

It has been established that there has been lobbying. I know nothing of any individual and thankfully no one has lobbied me or made any approach. The Minister clearly has had no hand, act or part in any such activity either. Perhaps there is a readily identifiable person in the minds of people on the other side of the House. As Senator O'Donovan has said, some individual engaged an eminent attorney and got an opinion from that senior counsel. The Minister's bona fides and good faith and his open and disinterested approach must be accepted. Of course we accept the bona fides of the Chief of Staff, the Judge Advocate General and a High Court judge. I do not yet understand why the Opposition Senators are trying to narrowly confine this. I accept there is an individual because Senator O'Donovan has admitted that. I do not need to know; I am not interested.

In the Minister's defence, like all of us he has had to declare his interests. He is not hiding anything and we are not hiding anything. For all the reasons outlined this Bill is urgently required.

**Senator Denis O'Donovan:** I thank the Minister for acknowledging my bona fides and disinterest in this area. I also accept the Minister's bona fides, but somebody is leading somebody up the garden path. Perhaps the Minister has not been shown the full file on the matter either. Whatever about the matter of seven years last year, I was not aware of this Bill. Even if it was there, I had no interest until a few days ago. I did not speak on it to the best of my knowledge because I do not believe it came before this House last year. The Minister should not throw in red herrings. The blame lies with the Department.

The Minister has gone on about eight years and ten years. Last year on the advice of the Department, a particular individual, who did not have one day's experience in any court, was recommended and was basically sworn in. Let us get the facts clear here — he had not one day. A perusal of the CV on the *www.military.ie* website shows him as having no legal appointment and was not involved in any way in the legal services over the particular year. The Minister's predecessor, Mr. Killeen, who has now left politics, did not proceed because he was under threat. There was legal action. The Minister has admitted today that letters came to the Department about this person being ineligible. So Mr. Killeen, with the threat of possible legal action and on the advice of senior people in the Department, stood back from this. Perhaps he should have taken action.

The Minister now finds himself in this position and I accept his bona fides. Supporting what Senator Mullen said, it is very difficult to get away from the fact that a favoured person within the Department was on the verge of being appointed, but could not be appointed under the existing legislation because he or she was ineligible. Now that person may reap the rewards of this new legislation.

Perhaps naively, I proposed a reduction of the requirement from ten years to eight years to facilitate a greater number of people. I have no problem with the proposal to widen the net to include people outside the area. However, I want to ensure the Minister and the senior people in the Department know that I have no particular person in mind for this job. The bulk of my information came from somebody who is no longer in military service, but I have taken an interest. We are introducing legislation on whistleblowers and there is deep concern among military personnel, including people who have served abroad. Some people would turn in their graves if they knew what was going on. Let us call a spade a spade and let us not dress mutton

[Senator Denis O'Donovan.]

up as lamb. While I accept the Minister's bona fides in what he is trying to do, there is a history here which has not been outlined to us clearly. I believe the failed appointment, so to speak, of this individual has caused serious embarrassment at the top level in the Department and needs to be put in the public domain. As the Minister has said, there was a threat of legal action. The person involved sought legal opinion when he thought he might not be appointed. I accept that legal opinion might not be available to the Minister or the Department, but he did not seek that for the sake of spending a few extra bob.

There is a serious agenda by somebody in the Department of Defence to get this person appointed to a particular position and I am not convinced that the Minister knows the full facts. Perhaps he should ascertain them before Report Stage tomorrow evening because I will have another letter, which might create embarrassment for somebody here or somebody in the Department, indicating that there is considerably more beneath the surface. In one sense I am being denigrated here for proposing to reduce the requirement from ten years to eight years and it is implied that I am trying to facilitate someone. I put up my hands and say in good faith that I am not. Most people who have served with me in the Oireachtas over 17 years know that I do not play political ball. However, when I come across something of importance, I want to air it.

Last year the Department indicated that this matter needed to be resolved but in favour of A, not to widen the circumstances. That person did not have one day of legal practice in any court, civil, criminal or military. All is not what it may seem and I am not convinced. I accept the Minister's bona fides that he is trying to resolve this problem. I also accept what has been said about the 22 outstanding cases. Some of these are on appeal and are of a technical nature. Many of those could be disposed of in one or two weeks. One must also question appointing a Circuit Court judge or somebody of that capacity permanently to the military court. Military courts do not have the day-to-day backlog that District Courts have. I know that the District Court judge in my area sometimes sits until 6 p.m. or 7 p.m. There are backlogs in the Circuit Courts, Central Criminal Court and all the way up the system despite extra judges having been appointed. By in large, and I am subject to correction on this, in any given year a military judge will deal with perhaps 15 or 20 cases, some of which are of a minor nature.

I have no agenda and I appreciate that the Minister accepts my bona fides.

I do not have anybody in mind for this job but I reckon that in terms of transparency the truth must out. Do I sleep? Do I dream? Do I wonder and doubt? Are things what they seem or are there visions about? There is something beneath the surface that has not emerged yet.

**Senator Cáit Keane:** I have nothing hidden beneath or above the surface. I have studied the Bill. I spoke on it yesterday and am speaking on it again today. I corrected the Order of Business for the simple reason that I thought Senator Mullen was being selective in what he was saying. We have a rule in this House when the person is not here to defend themselves. We do not have time on the Order of Business to discuss a Bill and put the entire issue before the House. That is the wrong place to raise it.

**Senator Rónán Mullen:** I impugned no person's integrity.

**Senator Darragh O'Brien:** It is not wrong to raise it on the Order of Business.

**An Cathaoirleach:** Senator Keane, without interruption.

**Senator Darragh O'Brien:** On a point of order, the Senator did not correct the Order of Business. The Cathaoirleach is the person who presides over the Order of Business.

**Senator Cáit Keane:** I raised a point of order.

**Senator Darragh O'Brien:** She did not correct the Order of Business this morning——

**Senator Cáit Keane:** There was a mistake in the information being given on the Order of Business.

**Senator Darragh O'Brien:** It is a perfectly reasonable time for any Member of the House to raise any issue on the Order of Business.

**An Cathaoirleach:** That is not a point of order, Senator.

**Senator Cáit Keane:** That being said, I am here in the Seanad to examine and advance the legislation to determine what I believe is right and wrong with the legislation.

Why would I or anybody else look to find something wrong with the legislation? Why would we want to cover up a mess that existed before this Government came into office? Why would one cover up anything? One would want to put every mess that existed previously out in the open if one were politically minded to do so. I believe I heard the Minister say yesterday that there are 22 cases outstanding in legal limbo. That is 22 families that must be dealt with but the previous Minister obviously saw fit to sit on the fence and do nothing.

In terms of the legislation before us, we must be sure that it is the correct way to proceed. When I heard that under the old rule there would only be five people eligible to compete for this post., and I was not aware of that until yesterday, I thought it was madness. If I were hiring a personal assistance or whatever I would interview more than five people, and I have done that. That is a very limited pool.

Time is one thing but we could have some doodah, as it were, sitting a long time on a Bench who may not be worth his or salt.

**Senator Martin Conway:** Hear, hear.

**Senator Cáit Keane:** We want good people in every job. We have spoken about banks and appointing people to organisations, and I will not mention any organisations because they have all made the news, where people came from other facets of life. They were brought into banking positions but they were the best people for the job.

I want to refer to what was said by both Senator O'Donovan and Senator Mullen. Senator O'Donovan said the issue raised hackles within the Defence Forces. I am not here either to pity the Defence Forces or shy away from their hackles being raised. If anything, we as Senators should be raising our hackles in terms of people on the outside.

**Senator Rónán Mullen:** Thank you.

**Senator Cáit Keane:** I would not be embarrassed at all. This legislation is correcting that mess.

This Government created a facility that would protect whistleblowers but I would point out that there is a difference in terms of a whistleblower, a vested interest and a conflict of interest. There are three different items we have to consider. We have information on what is lobbying. It is banned under certain legislation. We only got information on the NAMA aspect yesterday. It is banned under that legislation. Vested interests are banned. We are not supposed to take into consideration any vested interest but we are to take into consideration people who have

[Senator Cáit Keane.]

a conflict of interest. I support legislation to protect whistleblowers who have the interest of society as a whole at heart, not vested interests or conflicts of interest but the interest of the good of society. That is what I am here to protect, nothing else. Nobody has made representations to me, and I would not make up my mind on that. I am reading the Bill. Is it a good Bill? Yes, because it opens up the scope for more than five people to apply. It is a good Bill also in that it provides for a substitute military judge and a director of military prosecutions to come in. All of that is good and that is the reason the Bill must be supported.

On the issue of the select committee, we have heard *ad infinitum* about the Minister in previous Governments choosing his own people for a particular job.

**An Cathaoirleach:** Senator, the Minister mentioned the select committee but the select committee has nothing to do with the amendments before the House.

**Senator Cáit Keane:** I am correcting a fact. The Cathaoirleach let it go with the other speaker. I intend to say what I have to say on that aspect.

**An Cathaoirleach:** We must keep to the amendments.

**Senator Rónán Mullen:** On a point of order, although I am not sure it is a point of order, the misunderstanding arises in that there is a difference between the select committee, which has nothing to do with what we are doing here, although it will in due course, and the selection committee which I believe is what was referred to.

**An Cathaoirleach:** Yes.

**Senator Cáit Keane:** Forgive me.

**An Cathaoirleach:** We are not speaking about that committee. We are on the amendments.

**Senator Cáit Keane:** I thank Senator Mullen for that. It is the selection committee. In every other facet of life——

**An Cathaoirleach:** We are not speaking about the selection committee because it is not covered in the amendments before us.

**Senator Cáit Keane:** I will contribute again when we are discussing the selection committee.

**An Cathaoirleach:** You can speak on the section.

**Senator Cáit Keane:** I thank the Cathaoirleach.

**An Cathaoirleach:** Senator Coghlan, do you wish to speak again?

**Senator Paul Coghlan:** I will make a brief point. Senator Mullen admitted, in regard to these amendments, that he had contacts but did those contacts declare their interest to him?

**An Cathaoirleach:** That is not relevant.

**Senator Paul Coghlan:** He might specify that.

**Senator Rónán Mullen:** I will make a brief point. I notice the Leader is in the House. This is an important issue and it is important legislation. I wonder if the Leader would consider the possibility of extending this debate to ensure we are not guillotined on such important legislation to do with our Defence Forces. I ask that the debate might be adjourned if we run short

of time today. Members are raising in good faith important issues to do with transparency and the judicial system within the Defence Forces. I take the opportunity to ask the Leader to give some thought to that suggestion before the bell goes on this debate.

Arising from what Senator Coghlan stated, it must be understood that everybody in this House is in favour of widening the pool. Were the amendment to reduce the required years of service from ten to eight to be accepted, it would benefit about five legal offices and make them eligible in those circumstances, but I understand, and this is the key point, that under what the Minister is proposing there would be about ten to 12 people eligible for this post within the Defence Forces. That is the figure we must focus on because these appointments often come from within but what we are all agreed on is that the pool should be widened dramatically. The eligible pool under what I am proposing would be something of the order of 5,000 if we were to count all the practising barristers and solicitors with the requisite years of experience.

**An Cathaoirleach:** The Senator has tabled another amendment specific to that aspect. We are not discussing those amendments.

**Senator Rónán Mullen:** It addresses what Senator Coghlan spoke about. Senator Coghlan and Senator Keane seem to be under the impression that what I am proposing would leave a narrow pool of applicants for these posts. That is not the case. I am with the Minister in terms of widening the pool to include non-serving members of the Defence Forces with the requisite number of years experience practising as solicitors and barristers.

I want to ask a question of the Minister as we are on the issue of openness and transparency. We have been careful to ask questions rather than make statements where we did not have the full facts. I would like to know, as we are discussing this case, whether it ever happened that a Secretary General of the Department of Defence, past or present, wrote any reference for the particular individual whose appointment forms the background to part of this legislation and whether there would be anything——

**An Cathaoirleach:** Will the Senator explain to me how that is relevant to these amendments?

**Senator Rónán Mullen:** I am using the floor of the House to tease out an issue. I am doing so in good faith, and I am not making any statements but I would like to know if the Minister can assist me in answering that question, yes or no, and what he would think of it if it were the case that such a reference was given because it goes to the——

**An Cathaoirleach:** It is not relevant to the amendments.

**Senator Rónán Mullen:** It might be relevant because it goes to the issue of whether, within the Civil Service, there is a desire to get through the appointment of a particular person. I am not saying I would have a major problem with that if there was openness and disclosure about it and provided nothing would be done to prejudice the cause of others who might also want to apply.

This is a question of transparency and openness and of ensuring everybody gets considered fairly and on their own merits.

I have absolutely no doubt about the intelligence of Members on the Government side. They are very fine Senators and very intelligent, but their making arguments just to support the Government without engaging in detail with the substance of what others are proposing is reminiscent of what Gilbert and Sullivan had to say about the fellow who became the captain of the “Queen’s Navee”:

[Senator Rónán Mullen.]

I grew so rich that I was sent  
By a pocket borough into Parliament.  
I always voted at my party's call,  
And I never thought of thinking for myself at all.

**An Cathaoirleach:** That is not relevant to the amendments at all.

**Senator Rónán Mullen:** I urge the Members, for the sake of——

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

**Senator Rónán Mullen:** ——this House, to engage with our proposal because I know they have the capacity to do so.

**Senator Maurice Cummins:** I have listened to the debate for one and half hours and it seems to be just one circle after another. I have no intention of extending the time, therefore. We have discussed the amendments at length and the Minister has given an adequate and very clear interpretation of the Bill, in addition to very clear answers. If points had been raised other than those raised on Second Stage and those we have discussed *ad nauseam* here today, I would certainly increase the time allowed, but I will not do so in this case.

**Senator Denis O'Donovan:** I second the request of Senator Mullen for further debate. With all due respect to the Leader, for whom I have much respect, we have only dealt with three or four of the 15 amendments. Some very important information has emerged today from the Minister regarding a likely legal challenge on this issue. The former Minister, Deputy Killeen, procrastinated because correspondence had been received by the Department stating trouble would arise if he did not proceed. He was caught in a crux. Obviously, the election occurred sooner than he wanted and there were developments since then. I can understand why a Minister would be anxious to proceed with this legislation but it is important that all the amendments tabled, especially on Committee Stage, be teased out. The first three or four amendments have been grouped. Some of the amendments are mine and the amount of debate in which I have engaged has been quite reasonable. Will the Leader consider deferring Report Stage and having this debate continue tomorrow evening, even if we must sit early on Tuesday? It is worth teasing out properly because there are serious circumstances behind the scenes causing me much concern and angst. It is fine to blame what happened last year for what is occurring but the fact is that there was a legal threat to the Department, and the Minister was advised accordingly. I accept this must be resolved, and I accept the Minister's bona fides is in this regard, but there are skeletons in the cupboard that we have not yet seen.

**Deputy Alan Shatter:** The only skeleton in the cupboard is one left behind by the previous Administration. Let us be absolutely clear about this. I did my best to set out very clearly how matters stand. I have listened to Senator Mullen and, at greater length, to Senator O'Donovan making exactly the same speech as if I had given no explanation of any description to the House. Perhaps Senators O'Donovan and Mullen will do a little more research. Perhaps when we return to this matter in the House tomorrow, they will state the exact number of individuals within the Permanent Defence Force who would benefit from the amendment they propose, which would have the effect of reducing the period of ten years to eight years.

**Senator Rónán Mullen:** We told the Minister. Approximately five would benefit.

**Senator Denis O'Donovan:** That is irrelevant.

**Deputy Alan Shatter:** Senator Mullen says it is five individuals. He is accusing me of trying to enact legislation to benefit an individual when we know this legislation will extend eligibility for appointment to thousands of barristers and solicitors. However, for some reason, both Senators have made a mountain out of a molehill with regard to this legislation and seem to be engaging in special pleading for what Senator Mullen states is five members of the Defence Forces. I do not know the exact number; it is possibly fewer than five.

I am accused of trying to introduce legislation that provides a far broader test of eligibility in order that there will be a real pool of people from whom the military judge can be chosen. For an hour and a half, Senators Mullen and O'Donovan have entertained this House because they want to try to ensure the next military judge will be chosen from a group of five.

**Senator Rónán Mullen:** That is outrageous. The Minister is misrepresenting us.

**Senator Denis O'Donovan:** The Minister is protecting his——

**Senator Darragh O'Brien:** I ask the Minister to withdraw that.

**An Cathaoirleach:** I must put the question.

**Senator Darragh O'Brien:** The Minister has made a statement that calls into question the bona fides of both Senators Mullen and O'Donovan.

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

**Senator Darragh O'Brien:** I ask the Minister to withdraw those remarks.

**An Cathaoirleach:** As it is 4.15 p.m., I am now required to put the following question in accordance with an order of the Seanad of this day: "That amendment No. 1 is hereby negatived; that the Government amendments undisposed of are hereby made to the Bill; in respect of each of the sections undisposed of, that the section or, as appropriate, the section, as amended, is hereby agreed to; that the Title, as amended, is hereby agreed to; and that the Bill, as amended, is hereby reported to the House."

The Committee divided by electronic means.

**Senator Diarmuid Wilson:** Under Standing Order 62, I request a manual vote.

Question put.

The Committee divided: Tá, 28; Níl, 13.

Tá

Bacik, Ivana.  
Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Eamonn.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D'Arcy, Jim.  
D'Arcy, Michael.  
Gilroy, John.  
Heffernan, James.

Henry, Imelda.  
Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Moloney, Marie.  
Moran, Mary.  
Mullins, Michael.  
Noone, Catherine.  
O'Keeffe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.  
van Turnhout, Jillian.  
Whelan, John.  
Zappone, Katherine.

Níl

Barrett, Sean D.  
Byrne, Thomas.  
Daly, Mark.  
Leyden, Terry.  
MacSharry, Marc.  
Mullen, Rónán.  
O'Brien, Darragh.

O'Donovan, Denis.  
O'Sullivan, Ned.  
Power, Averil.  
Reilly, Kathryn.  
Walsh, Jim.  
Wilson, Diarmuid.

Tellers: Tá, Senators Paul Coghlan and Susan O'Keeffe; Níl, Senators Ned O'Sullivan and Diarmuid Wilson.

Question declared carried.

**Civil Law (Miscellaneous Provisions) Bill 2011: Report Stage and Final Stages.**

**An Cathaoirleach:** I welcome the Minister for Justice and Law Reform, Deputy Alan Shatter, back to the House. Before we commence, I remind Senators that a Senator may speak only once on Report Stage except the proposer of an amendment who may reply to the discussion on the amendment. On Report Stage each amendment must be seconded.

Government amendment No. 1:

In page 6, to delete line 1 and substitute the following:

“(5) The Equal Status Acts 2000 to 2008 and *sections 25 to 27* may be”.

**Minister for Justice and Equality (Deputy Alan Shatter):** This is a technical amendment to ensure the citation reference to the Equal Status Acts is correct. It is very minor amendment.

Amendment agreed to.

Government amendment No. 2:

In page 17, to delete lines 7 to 13 and substitute the following:

“20.—Section 75 of the Act of 1998 is amended—

(a) by the substitution of the following subsection for subsection (4A):

“(4A) Other persons with relevant qualifications or experience may, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, be appointed to be equality officers or equality mediation officers on such terms and conditions as may be so approved.”,

and

(b) in subsection (6), by the substitution of “the delegation of a function under subsection (4B)” for “the delegation of a function under subsection (4)”.

**Deputy Alan Shatter:** Amendment No. 2 corrects an omission in the Equality Act 2004. That Act moved the existing provision for delegation of functions by the director of the Equality Tribunal from section 75(4) of 1998 Act to a new subsection (4B). However, section 75(6) of the 1998 Act, which refers to the delegation of such functions by the director was not amended by the 2004 Act to reflect the amendment reference to subsection (4B). This amendment also reflects the transfer to the Minister for public expenditure and reform of the consent function

of the Minister for Finance in section 75(4A) of the Employment Equality Act 1998 by an order of the Government which come into effect on 6 July 2011.

Amendment agreed to.

**An Cathaoirleach:** Amendments Nos. 3 and 4 are related and may be discussed together. Is that agreed? Agreed.

**Senator Denis O'Donovan:** I move amendment No. 3:

In page 20, line 45, to delete "12th anniversary" and substitute "3rd anniversary".

I hope the Minister and I can revisit this amendment in good faith. On Committee Stage I spoke at length on the issues arising but, unfortunately, the relevant part of the Bill was guillotined. I strongly believe that the Minister should consider a period of three years. He has stated that while he has an open mind, he is keeping the five year clause. As I was not in a position to deal with this amendment on Committee Stage, I propose to press the question regarding amendments Nos. 3 and 4.

**Senator Ned O'Sullivan:** I second amendment No. 3.

**Deputy Alan Shatter:** We had an extensive discussion on reform of our law on bankruptcy on Second Stage and Committee Stage. It is fair to say my proposals received a positive welcome from most Senators. However, I emphasised these early reforms were in advance of the more comprehensive reform required under the EU-IMF programme of financial support for Ireland. Essentially, I am providing in section 20 for an automatic discharge for the first time of bankruptcies on the 12th anniversary of the adjudication order, with no conditions.

Senator O'Donovan's amendment No. 3 seeks to reduce that automatic discharge period further, from the 12th to the third anniversary. Such a reduction would be premature in advance of more comprehensive reform of bankruptcy law. A reduction of that kind would be unwise without a simultaneous examination of the conditions under which persons are to be discharged from bankruptcy. These conditions are fundamental to the current system and include the following payments of costs, fees and expenses of the bankruptcy and preferential payments. As I advised the House previously, preferential payments cover outstanding moneys due and payable to the Revenue, payable rates and, importantly, moneys that may have payable to former employees.

While I cannot accept the amendment, I am not opposed in principle to a further reduction in the period of time concerning automatic discharge. Work is under way in my Department on more substantial bankruptcy proposals and it is in that context that I envisage a further reduction in the period of automatic discharge.

Amendment No. 4 seeks to further reduce the number of years after which a bankrupt can apply to the court for discharge from bankruptcy from the proposed five years to three years. While I appreciate the reasons for the Senator's amendment, I cannot accept it. The reduction in the application period to the court from the current 12 years to five years for a discharge from bankruptcy, subject to existing conditions including payment of expenses and preferential payments, is a significant advance. We should wait to see how this provision operates in practice before going further. In any event, the application process for discharge is distinct from automatic discharge under current law. For these reasons, I am afraid that I cannot take on board either of the amendments tabled by Senator O'Donovan.

**Senator Denis O'Donovan:** I anticipated the Minister's response because he expressed a strong opinion during our last discussion. As I, too, feel strongly about the issue, I propose to press the question.

**Senator Martin Conway:** Is it the case that Members can only speak once on the entirety of Report Stage or can we speak once on each amendment?

**Acting Chairman (Senator Paul Coghlan):** Once the Minister has responded, only the proposer can comment further.

**Senator Martin Conway:** I indicated a wish to contribute before the Minister responded.

**Acting Chairman (Senator Paul Coghlan):** I apologise. I did not see the Senator.

**Senator Martin Conway:** I only wanted to agree with the thrust of the Minister's comment.

**Acting Chairman (Senator Paul Coghlan):** The Senator will have to do so on another amendment.

Question put: "That the words proposed to be deleted stand."

The Seanad divided: Tá, 26; Níl, 15.

Tá

Bacik, Ivana.  
Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D'Arcy, Jim.  
D'Arcy, Michael.  
Gilroy, John.  
Heffernan, James.

Henry, Imelda.  
Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Mac Conghail, Fiach.  
Moloney, Marie.  
Moran, Mary.  
Mullins, Michael.  
Noone, Catherine.  
O'Keefe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.  
van Turnhout, Jillian.

Níl

Barrett, Sean D.  
Byrne, Thomas.  
Cullinane, David.  
Daly, Mark.  
Leyden, Terry.  
MacSharry, Marc.  
Mooney, Paschal.  
Mullen, Rónán.

O'Brien, Darragh.  
O'Donovan, Denis.  
O'Sullivan, Ned.  
Power, Averil.  
Walsh, Jim.  
Wilson, Diarmuid.  
Zappone, Katherine.

Tellers: Tá, Senators Paul Coghlan and Susan O'Keefe; Níl, Senators Ned O'Sullivan and Diarmuid Wilson.

Question declared carried.

Amendment No. 4 not moved.

**Senator Katherine Zappone:** I request that the Bill be recommitted in respect of amendment No. 5 as I did not get to speak on Committee Stage.

**An Cathaoirleach:** Is that agreed? Agreed.

Bill recommitted in respect of amendment No. 5.

**Senator Katherine Zappone:** I move amendment No. 5:

In page 31, between lines 13 and 14, to insert the following:

“31.—The Irish Nationality and Citizenship Act 1956 is amended by the substitution of the following for the first three lines of subsection (1) of Section 15A (inserted by section 5 of the Act of 2001):

“15A. Notwithstanding the provisions of section 15, the Minister may, in his or her absolute discretion, grant an application for a certificate of naturalisation to the non-national spouse or civil partner of an Irish citizen if satisfied that the applicant—”.”.

My amendment proposes to insert a new section into Part 10, which focus on the Irish Nationality and Citizenship Act. The intention is to ensure in law that non-Irish persons in civil partnerships with Irish citizens will receive the same citizenship rights as non-Irish persons in civil marriages. I wish to point out two additional sections of the Irish Nationality and Citizenship Act which could be amended within the Civil Law (Miscellaneous Provisions) Bill for the Minister’s consideration as he brings it to the Dáil. My comments on these two sections will be rooted in the same principle behind the amendment tabled today, namely, that civil partnerships registered or recognised by Irish law be treated the same as marriages in the area of immigration.

As the Minister is well aware, the passage of the Civil Partnership Act 2010 signalled the Government’s intention to provide similar rights, protections and responsibilities for same-sex couples as for married couples and viewed this as a major step towards equality for same-sex couples. It is my view that the establishment of a separate institution for same-sex couples, namely, civil partnership, was not the most effective and efficient way to equalise treatment between same-sex and opposite-sex couples. Nor do I think it was the right thing to do. However, the matters of ethics, justice and equality in this regard are for another day. Even with the Civil Partnership Act there remain a number and types of differences between civil partnership and civil marriage and some of these differences, it would seem to me, can be eradicated with very little debate. The Civil Law (Miscellaneous Provisions) Bill presents an opportunity to amend the law and reduce some of these differences and, as the Minister indicated in his speech in the Chamber last week, the Bill has significant scope and seeks to achieve many reforms of several Acts of the Oireachtas.

The amendment I have tabled would simply eradicate the way in which the Irish Nationality and Citizenship Act discriminates against civil partners in respect of the naturalisation process. Under the law as it stands, spouses of Irish citizens seeking naturalisation can avail of more favourable eligibility conditions than applied to civil partners of Irish citizens. Of course, this is in the context of the Minister’s discretion. One of these more favourable eligibility conditions is with regard to the minimum number of years a spouse must be a resident. As the law stands, a spouse must be a resident for at least three years whereas a civil partner must be a resident for at least five years. By simply inserting the words “civil partner”, the amendment will extend the same naturalisation rights to a civil partner as enjoyed by married spouse. The acceptance of this amendment would bring about further parity between non-Irish civil partners of Irish citizens and non-Irish spouses of Irish citizens under our naturalisation and immigration system.

I understand Government policy is that a civil partner will be treated as equivalent in immigration matters to a person who is married to another person of the opposite sex. It is also my

[Senator Katherine Zappone.]

understanding that in his response to a parliamentary question tabled by Deputy Caoimhghín Ó Caoláin in April, the Minister indicated his intention to bring forth an amendment on a future date which would see the provisions of the Irish Nationality and Citizenship Act extended to cover civil partners of Irish citizens. The amendment I have tabled seeks to do this.

Although I have tabled only one amendment, I wish to identify two additional sections of the Irish Nationality and Citizenship Act which could be amended when the Bill moves to the Dáil that would further the equal treatment of civil partners and spouses under immigration legislation. The first is section 22 which ensures the death of an Irish citizen or the loss of his or her citizenship does not impact on the citizenship of his or her spouse or children. I put forward for the Minister's consideration that an amendment could be inserted into the Civil Law (Miscellaneous Provisions) Bill to include civil partners and the children of civil partners under the protection of section 22.

The second is section 23 which ensures when an Irish citizen marries a non-national he or she does not lose his or her Irish citizenship due to the marriage even if he or she acquires the nationality of the non-national. I suggest for the Minister's consideration the development of an amendment that would simply propose parity for civil partners in this regard.

**Senator Ivana Bacik:** I support of Senators Zappone's amendment. She has explained very eloquently the rationale behind it. It is very much in keeping with Government policy that recognition would be given to civil partners in this context and it has been promised. We had an extensive debate in the House on the Civil Partnership Bill and during that debate it was certainly discussed that measures such as this would need to be introduced to give effect to the rationale of the Civil Partnership Act. There was also a debate on the merits of civil partnership against gay marriage and like Senator Zappone I have strong views on this, but I accept the debate on this amendment is not the time or place to discuss this matter.

**Senator Sean D. Barrett:** I second the amendment.

**Senator Rónán Mullen:** There is considerable merit to this amendment and I say this as somebody who had significant concerns about the civil partnership legislation which I need not rehearse here. I do not know whether Senator Zappone stated she disagreed with the civil partnership legislation. The concerns I had were to do with the fact that it did not include all people and other categories of people in caring dependent relationships and the particular problems for freedom of conscience generated by the legislation. Those were rehearsed in detail last year and it is regrettable that the debate was guillotined and we did not have an opportunity to discuss our concerns in full. Extensive contributions were characterised as filibustering. It is regrettable we are again in the era of the guillotine. Had we not had a guillotine last year, those of us who had concerns about the civil partnership legislation would have had an opportunity to demonstrate clearly that we were in favour of a range of supports being made available to people in various caring dependent relationships, including people whom civil partnership reaches but also others who are not the beneficiaries of the civil partnership legislation such as carers and other relatives in certain situations.

Recently, I had occasion to deal with a person who had great difficulties with having his foreign fiancée admitted to the country so he could get married. We have the rather strange situation whereby a citizen or resident of another EU country can bring in his or her partner from outside the EU, but the rights of a resident of the first country are not as straightforward. It is an invidious situation whereby people with loved ones abroad are not in a position to be with them. I know there must be limits or one could end up with a m'asal beag dubh type scenario if it were to be opened up completely and this would not be desirable from a public

policy point of view. To use that awful phrase, “we are where we are”, and even if, as I believe, the civil partnership legislation introduced is flawed I recognise it establishes a category of people who enjoyed certain protections under Irish law and this is one of the protections that a person should be able to access.

**Senator Denis O’Donovan:** I support the amendment. It is fair and reasonable and outlines an unintended defect of the Civil Partnership Act. I am concerned a successful challenge might emanate based on what Senator Zappone outlined.

**Senator Cáit Keane:** I support a woman who has done her homework. I do not have the homework done on this matter but I understand from where she is coming and I support it in theory. Will the Minister consider it? While I do support it, I do not have enough information on it at present. I would not like to support something in the dark. I want to know a, b, c and d. I am in favour of it but I want to know whether the Minister can see any flaws. Senator Zappone said the Minister stated he was proactively encouraging work on this matter. I hope the Minister will accept the amendment and, if not, I ask him to give his reasons.

**Senator Paschal Mooney:** I also support this in principle. It reminds me, as somebody who like many Members on both sides of the House has over many years lobbied on behalf of the undocumented Irish in the United States, that one learns a great deal. I learned a great deal from Senator Zappone in justifying the reason this amendment should be accepted by the Minister.

I learned a great deal about US immigration law and its emotional impact in the home of the brave and land of the free. For example, this legislation, if enacted, I suggest would be in advance of the situation in the United States. One hears on a regular basis from those on the right wing that those who are undocumented entered the country illegally and should, therefore, go back in line. I understand from immigration lawyers that there are approximately 15 different lines a person must join before even being considered for entry into the United States. One of the most iniquitous is for spouses of naturalised citizens of the United States. It can take up to 15 years for a spouse or their siblings to enter the United States despite that the partner is already in the United States legally.

For that reason, if for none other, I would not like to see any extra imposition, burden or obstacle placed in the way of Irish citizens who have entered into civil partnerships and are as of last year protected by the law. I hope the Minister can see fit to accept this minor change, one that will have enormous positive benefits for human beings. We are speaking here about human beings and not numbers, statutes or laws. It is in that spirit that I have made my contribution. I am very much aware of the impact of less liberal laws on immigration in America, which quite frankly is a scandal. Immigration reform should be addressed but is not because of the many Neanderthals and right wingers saying immigrants should get back in line. I would not like to see a situation develop in Ireland whereby people would be told that because of the legal protection afforded to partnership, the other half of that partnership should be told to get back in line.

**Senator Averil Power:** I, too, support Senator Zappone’s amendment and hope the Minister will take it on board. The recently enacted Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provided the general foundation in this regard. The tax rights and responsibilities in this regard are dealt within in the Finance (No. 3) Bill 2011. The issue of immigration is the one area remaining to be addressed. I have not had time to examine in detail the other amendments proposed by Senator Zappone in regard to the other two changes

[Senator Averil Power.]

that may be considered in the Dáil but they sound eminently reasonable. I hope the Minister will also take them on board.

Addressing civil partnership issues was one of the biggest achievements of the previous Government. I accept what Senator Zappone had to say in regard to true equality. I am committed to full marriage equality and it does not represent true equality to me either. However, I believe that legislation is an important stepping stone. In that regard, we should ensure that all the rights contained within that legislation are implemented as soon as possible. I hope the Minister can take on board the amendments proposed by Senator Zappone. Our aim in this House is to assist him in ensuring that the immigration issue is addressed now rather than in future legislation.

**Senator Ned O'Sullivan:** I support Senator Zappone's amendment and compliment her on bringing forward a thoughtful and cogently argued amendment. I hope the Minister will be able to take it on board.

**Senator Paschal Mooney:** Hear, hear.

**Deputy Alan Shatter:** I thank Senator Zappone for tabling the amendment. I welcome the reception it has received in the House. I advised the House on the last occasion that I would be bringing forward further amendments. I envisaged I would be bringing forward an amendment on this issue, which addresses certain technical matters. We also looked at sections 22 and 23, as mentioned by Senator Zappone. Work on that amendment was not finalised in time for this debate. I ask Senator Zappone to withdraw her amendment because I propose bringing a more detailed amendment forward in the Dáil. If all goes well, this Bill will shortly complete its passage in the Dáil, which will allow me to come to this House during the final sitting week of the Seanad to finalise matters.

I had hoped to bring before the Seanad today the amendment in relation to giving statutory backdrop to citizenship ceremonies. Existing legislation provides, in relation to a person granted citizenship in this State, that once the Minister makes a decision, the person registers with the District Court clerk and is given a date upon which to return to swear his or her fidelity to the State. In this regard, people are often left sitting at the back of the court and are slotted in between a couple of criminal trials. Current legislation allows that for exceptional reasons the Minister may arrange something different. The exceptional reason which provided the legal backdrop to the ceremony recently held is the approximately 3,000 to 4,000 persons who have been granted citizenship waiting to have their citizenship finalised. The courts would be completely overwhelmed if they had to deal with these cases. What became a delay in the Department could have become a court backlog and as such we are bringing forward a formal statutory mechanism which will make statutory provision for the ceremonies, while still preserving individuals' entitlement to go to the District Court if need be. There will be some people who may not be available when ceremonies take place.

My intention is to bring forth a comprehensive amendment. I had hoped to have it today but I do not. I understand that matters in that regard have been completed in the Attorney General's office and that it will be ready for Committee Stage in the Dáil. If Senator Zappone agrees to withdraw this amendment, the matter will be dealt with at that stage. The issue will be addressed in this legislation and I thank Senator Zappone for bringing it forward.

It is worth putting on the record of this House that I believe it is important we address the different legacy issues that arise following enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2010 in order that there are not areas in which there are gaps and lacunae. There are other sections in this legislation, other than the ones mentioned

by myself and Senator Zappone, which require further examination to ensure we have equality. It will not be possible to have all of those issues addressed within the context of this Bill. However, I am hoping to ensure that in so far as there are any remaining gaps, they will be addressed in the Immigration, Residence and Protection Bill. Committee Stage of that Bill will, it is hoped, be taken by the select committee early in the autumn following the summer recess. It is hoped the Bill will come to the Seanad before Christmas. It is my objective to have that legislation enacted before the end of the year. We will do our best to have incorporated within it any other anomalies that arise under citizenship laws following on from enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2010.

I thank Senator Zappone for raising this issue and ask her to bear with us on this matter. It is encouraging that this principled approach is supported on all sides. It gives me the momentum to ensure we get it through the Dáil and back to the Seanad before the summer break.

**Senator Katherine Zappone:** I thank Senators for their support. I also thank the Minister for his fulsome reply. As I understand it, the Minister wishes to bring my amendment and a couple of others before the Dáil for consideration. On that basis, I am happy to withdraw the amendment. I am extremely happy and delighted to hear that he will be bringing before the Dáil an amendment providing for the statutory backdrop to the citizenship ceremony. When granted citizenship in 1995, I went through the type of ceremony described by the Minister. It would have been wonderful to have had the opportunity to attend the type of ceremony which the Minister is putting in place. I am glad to hear that this will be provided for in the Bill.

**Deputy Alan Shatter:** Members may be interested to hear that the pilot ceremony went well and we learned from it. Arrangements are being made in my Department for a series of ceremonies to take place during the last week in July. We are hoping in that context that hundreds of people granted citizenship and who would otherwise have to wait until late autumn before having the opportunity to formally become Irish citizens in the courts would have the opportunity to do so.

I do not want these ceremonies to be confined to Dublin, although a number of those held in July will be in Dublin, with one outside the city. I hope as we get into the early autumn there will be a ceremony in Cork and other locations. Officials in my Department are working seriously on the matter and we hope this will be the norm for the future.

Amendment, by leave, withdrawn.

Bill reported without amendment.

**An Cathaoirleach:** Amendment No. 6 arises from Committee proceedings. Amendments Nos. 6 and 7 are related and will be discussed together by agreement. Is that agreed? Agreed?

Government amendment No. 6:

In page 32, line 43, to delete “substituting” and substitute “the substitution of”.

**Deputy Alan Shatter:** These are technical amendments to correct the text in Part 11 concerning amendments to the Immigration Act 2004. They are very minor technical amendments, and we hope that Act will be reformed by the end of the year.

**Senator Paschal Mooney:** Am I permitted to ask the Minister a question on immigration, as these amendments relate to the topic?

**An Cathaoirleach:** They are amendments Nos. 6 and 7.

**Senator Paschal Mooney:** I am not suggesting that I will oppose these technical amendments. I congratulate the Minister on the initiative he mentioned relating to a citizenship ceremony but is it his intention, in the context of the review inferred in the comments, to consider a nationality test? This matter came up with previous Ministers responsible for justice matters over the past ten years, and I am not suggesting putting unnecessary obstacles in place. The test would be in common with our near neighbour in the United Kingdom and the United States. It would examine a general knowledge of Ireland, an ability to speak and converse in English and matters of this nature.

We have learned and the Minister will continue to learn from the failures of other countries, particularly the UK, where the immigrant population was not integrated as effectively as it should have been, resulting in the ghettoisation of immigrants throughout the UK. I know the Minister and his Department will continue to follow the principle of dispersal in this regard to ensure there is greater integration, and I am thankful we have not seen racist reactions on a comprehensive basis that can be seen in the UK. Perhaps these amendments would afford the Minister the opportunity to expand a little on his thoughts in that area.

**Deputy Alan Shatter:** I will comment generally on citizenship before returning to the specific question. Our citizenship laws are spread across a series of Acts, and it is my objective to bring together our laws in one codified Act with some reforms therein. In the context of the significant legislative agenda of the Department and obligations we must meet under the EU-IMF agreement, the objective is unlikely to be fulfilled until 2013. In the meantime I hope to bring forward minor amendments and if they cannot be achieved in this legislation, they might be done at a later stage.

The issue raised by Senator Mooney is important and it has been part of the political discussion, although it has not received too much public attention. Other countries across the world in granting citizenship display a variety of approaches and tests, often involving linguistic or historic facets, and there may be elements of the democratic background and tradition of the country. Applicants for citizenship are required to meet certain standards in the tests.

I considered the idea and we will examine it further but no definitive decisions have been made. It would be inappropriate to introduce legislation providing for such a test now. When I came to the Department on 9 March, there were 22,000 outstanding applications for citizenship received by the Department, with 17,000 there in excess of six months. The waiting time is an average of 25 months, so while some people have been waiting for seven or eight months, others have been waiting for between two and half years and three years for the granting of a citizenship application.

I told the House the last day that we have managed to process in excess of 6,000 applications this year, whereas just over 5,000 were processed in the entirety of 2010. It is my objective this year to focus on applying our existing laws humanely and with common sense to address the backlog. I am looking to get us to a position during the first half of next year where anybody applying for citizenship, except where there are exceptional circumstances, will have a decision within six months.

There is a large backlog to address that is putting significant pressure on officials. Some of our systems have been changed in comparison with the approaches of the previous Government, and this has brought about greater efficiencies in the processing of applications. The focus for the next 12 months will be to get to the position outlined, with citizenship ceremonies for people who become Irish citizens. They will see it as a memorable day rather than an ordeal they had to endure in the back of a court. It should be seen by such people and their families as important.

In the overall reform and codification of the law we will return to other issues that may need to be addressed. The matter raised by the Senator is under consideration, although no decision has been made about it. Should an idea of that nature be introduced, we must ensure it does not act as an unfair barrier to individuals becoming Irish citizens. For example, on occasion people may come here and be granted political asylum, with other family members admitted to the country for the purposes of family reunification. They may be elderly and there could be no prospect of them returning to their native countries but they may not develop the full linguistic skills in English that younger people would develop. Historically, this would have been the case with many of the Jewish people escaping pogroms in Europe who arrived in this country in the early part of the last century. In those cases the grandparents spoke Yiddish, with younger people speaking fluent English while not understanding Yiddish. Such people remained in Ireland for many years, and this pattern has been repeated with people from other national backgrounds.

It is important that people who become Irish citizens feel part of this country and integrate within it. They should be part of the local communities and understand our democratic traditions while communicating in our language. An interesting issue which could cause controversy in this House is in which language we want immigrants to become proficient. Would it be Irish or English? Would people be upset if we directed that the language be English as a priority over Irish? If the language was directed to be Irish, how many people would argue that a substantial portion of native Irish citizens are incapable of conducting a conversation in Irish?

**Senator Paschal Mooney:** King Solomon would say it could be either English or Irish.

**Deputy Alan Shatter:** I am merely pointing out that it is not a simple issue when one takes into account the traditions of this country and the different positions people take. It may be more difficult than addressing the issue in the UK or the United States. It is a reasonable issue to be raised by Senator Mooney. It is something that might form part of an interesting public debate. In so far as it is an issue for legislation, it certainly will not be dealt with in 2011 or 2012 because of the huge agenda we have to deal with.

Amendment agreed to.

Government amendment No. 7:

In page 33, line 27, to delete “substituting” and substitute “the substitution of”.

Amendment agreed to.

**An Cathaoirleach:** Amendments Nos. 9 and 10 are cognate with amendment No. 8. Is it agreed that amendments Nos. 8 to 10, inclusive, be discussed together? Agreed.

Government amendment No. 8:

In page 33, line 35, to delete “Finance” and substitute “Public Expenditure and Reform”.

**Deputy Alan Shatter:** These are similar technical amendments to reflect the transfer to the Minister for Public Expenditure and Reform of the consent function of the Minister for Finance in the setting of fees relating to immigration matters. They are to take account of the new configuration of the Government.

Amendment agreed to.

Government amendment No. 9:

In page 33, line 43, to delete “Finance” and substitute “Public Expenditure and Reform”.

Amendment agreed to.

Government amendment No. 10:

In page 33, line 50, to delete “Finance” and substitute “Public Expenditure and Reform”.

Amendment agreed to.

**An Cathaoirleach:** Amendments Nos. 11 to 13, inclusive, are related and alternate to each other and may be discussed together. Is that agreed? Agreed.

Bill recommitted in respect of amendments Nos. 11 to 13, inclusive.

**Senator Sean D. Barrett:** I move amendment No. 11:

In page 37, to delete lines 22 to 29.

Cuirim fáilte roimh an Aire agus é ar ais sa Seanad. This amendment was not previously discussed, as the section was not reached on Committee Stage. I thank the Leader for facilitating this discussion.

The Taxing Master is dealt with in Part 14 of a Bill with 15 Parts. When a Bill is a composite measure that deals with a wide range of subjects, it is important that we go through it to the end. If this was a Bill dealing with a single subject, I might not have the same concerns. Three paragraphs refer to the period of office; paragraphs (a) and (c) refer to it not exceeding five years and the Taxing Master not being eligible for reappointment.

I will discuss paragraph (b) first as it stands alone. It provides that the retirement age should be 65 years. I am pleased to have the opportunity to put the contrary case to the Minister and to hear his counter argument. Lowering the retirement age goes against much of the current thinking about age and retirement and is most unusual. The IMF-EU agreement, to which the Minister referred four times on Second Stage, moves towards a later retirement age, 66 years in 2014 and later to 67 and 68 years. My colleague, Professor Crown, would also say the movement was towards later retirement and would reassure the Minister that the 65 or 70 year old of today was in far better physical and mental condition than when the legislation was framed with a retirement age of 70 years. I cannot see a medical reason in favour of earlier retirement, as life expectancy is increasing. Judges continue in office until the age of 70 years and many barristers continue to work for even longer, depending on whether there is a demand for their services.

One of my hopes on becoming a Member of the House was to bring forward research from the university if it could aid in policy-making. We have just received a draft of the first TILDA report on ageing, which the Government is most generously funding in Trinity College. There will be a presentation on it at the Kenmare Economics Conference. The authors say their preliminary findings show there is a clear shift into the categories who do not plan to retire or do not know if they will. There is a shift away from early and modal expected retirement ages, particularly since November 2010. That is the proposition.

I understand there are only two Taxing Masters. This is not an *ad feminem* or *ad hominem* argument. I am glad to reassure the Minister after our earlier discussions that I do not know either of the two Taxing Masters, but in the wider society in general are we not moving towards an era in which there will be later rather than earlier retirements? The research appears to

indicate that is the case. The people who criticised the last Government by occupying St. Andrew's Church were very active on that occasion. Is the thinking in the provision similar to that which required women to retire on marriage? Why are we requiring the Taxing Master or anybody else in the public service to retire five years earlier than was the practice heretofore?

With regard to the role of the Taxing Master——

**Senator Ivana Bacik:** On a point of order, Government amendment No. 12 puts the retirement age back to 70 years. We are discussing that amendment with amendment No. 11.

**An Cathaoirleach:** We are discussing amendments Nos. 11 to 13, inclusive, together.

**Senator Ivana Bacik:** I am pointing this out to assist Senator Sean Barrett.

**Senator Sean D. Barrett:** I am delighted to hear that news and thank the Minister and Senator Ivana Bacik for drawing it to my attention.

The next provision I wish to address is the one that imposes a term limit. When we were working on this amendment, we went through 757 pages of *Taxation of Costs* by James T. Flynn and Tony Halpin and term limits were not mentioned, nor was the early retirement point dealt with by Senator Ivana Bacik. The Taxing Master has an extremely important role to play. Will he or she be compromised by the fact that he or she must find something else to do in five years? Paragraphs (a) and (c) provide that the appointment cannot be renewed. We require independence rather than a Taxing Master who is wondering what his or her next career step will be. I favour tenure for the Taxing Master in view of the important task he or she carries out.

As the Minister brought to our attention, this is included in the IMF-EU agreement which states the legal profession needs regulation. We have a problem with excess costs. According to data from Forfás and the Central Statistics Office, since 2006 legal costs have increased by 12%, while accountancy costs have decreased by 7%; therefore, a 20 point differential has opened up. We have a serious problem with legal costs and I am anxious that we have a stronger Taxing Master, with security of tenure in the post, tackling these costs, rather than introducing the uncertainty that he or she could be gone after five years, or that he or she might need to make arrangements with people as to his or her future career, which could compromise the independence of the post. It could result in Members of the Seanad and the Minister answering to the IMF for why we did not reduce legal costs and for why we inadvertently undermined the independence and authority of the Taxing Master. I oppose the fixed term and the provision that one may have only one term on both of these grounds.

**Senator Katherine Zappone:** I second the amendment proposed by Senator Sean Barrett.

**Senator Denis O'Donovan:** I concur with the amendment.

**Senator Paschal Mooney:** As Senator Ivana Bacik pointed out, the Minister has reversed the provision on retirement age by proposing the substitution of 70 years for 65 years. Having elicited further information from the Minister on the other matter, I believe I am on a roll; perhaps, therefore, he might also indicate whether he is considering changing the retirement age for members of the Garda Síochána which has been a matter of great controversy——

**An Cathaoirleach:** That matter is not covered by this group of amendments.

**Senator Paschal Mooney:** It is a great loss of talent at 57 and 60 years of age when they do not wish to retire.

**An Cathaoirleach:** That is completely out of order. It has nothing to do with the Bill.

**Senator Paschal Mooney:** We are talking about retirement ages in this context.

**An Cathaoirleach:** This relates to the Taxing Master only.

**Senator Paschal Mooney:** I appreciate that I am stretching it, but it might be an opportunity for the Minister to elaborate.

**An Cathaoirleach:** It is irrelevant.

**Deputy Alan Shatter:** I thank the Senators for tabling the amendments. I listened carefully to what was said the last day and, as Senator Bacik pointed out, we are tabling an amendment to return the age to 70; nothing more needs to be said about that.

I want to put into context what we are doing and why we are doing it and why I cannot take on board the other amendment. As Senator Barrett correctly said, there is statutory provision for two taxing masters and we have only one at present; the other taxing master retired at the end of last year. There is, under the EU-IMF agreement, an obligation to introduce various reforms relating to the legal profession and that legislation should be published by the end of September. Substantial work has been done on the preparation of a legal services Bill but there is work to be done in the Attorney General's office so the Bill is only in the developmental stage at this point.

The Bill will deal comprehensively with the issue of legal costs, including dispute resolution for those costs in circumstances in which a litigant is successful in the courts, an order for costs is obtained against another litigant and where they cannot agree on what costs should be paid by the unsuccessful litigant. At present the matter goes to the taxing master who makes an adjudication on the appropriate sum. Also, if there is a dispute between a solicitor and a client over the fees charged either by the solicitor or the solicitor and counsel, that currently is dealt with by the taxing master. While we have regard to the report produced by the Competition Authority, the Horan report, and other reports subsequent to that we are dealing with the whole area of legal costs and the necessary reforms. The Bill will provide for a new and more modern adjudicative process and will set out a range of important principles in the area.

To some extent, then, the debate about age becomes irrelevant because it is envisaged there will be a new format within which legal costs will be dealt with and transitional provisions will apply to whoever is the taxing master or masters at the time when the legislation comes into place. We provided for a fixed term, which will only apply to the future appointment of taxing masters, because it is envisaged that there will be only one further appointment of a taxing master based on the reforms provided for in this legislation and within the five year period the new system will be in place and transitional provision will apply to existing taxing masters. It does not make sense to provide for a term of more than five years for whoever may be appointed to fill the gap that currently exists to ensure that while the legislation is being developed, enacted and ultimately brought into force, we still have a functioning system for costs adjudication. It makes sense that whoever is next appointed is on a fixed term contract that would not exclude him from involvement at a later stage in the new body that will be created. Unless we appoint someone who is over 60, whether 65 or 70 is the retirement age will not greatly matter because there should be no age discrimination with regard to who is appointed.

I am happy to incorporate in the Bill the change from 65 to 70 but to deal specifically with Senator Barrett and Zappone's amendments, amendment No. 11 opposes all of subsection (6) and would strike out all three of the proposed new terms of appointment of a taxing master, namely that such appointment should not exceed five years, that it is non-renewable and that it be subject to retirement at age 65. The age 65 issue is being addressed in the Government

amendment but this amendment would eliminate the other two matters from the Bill. Amendment No. 13 would only apply to the retirement provision in seeking to amend the retirement age to 66. We are returning it to 70 so taking on board what Senator Bradford said, we are taking the view that 70 is the new 50. I hope when I reach that age that I still feel like a 50 year old.

We had a useful and helpful debate on these provisions and in the circumstances I hope Senators will not press the amendments. The age issue was the main issue to be addressed. It is reasonable in the context of the development of the legal services Bill that the other matters remain in place and I am looking forward to a detailed debate on that Bill when it is published and introduced. I thank Senators Barrett and Zappone for getting me to tell the House more about that Bill. Senator Mooney did not on this occasion get the additional bit of news and I will resist the temptation to remind him that the previous Government requires me to reduce Garda numbers from 14,500 to 13,000.

**Senator Rónán Mullen:** Well resisted.

**Senator Thomas Byrne:** On what page of the EU-IMF agreement was that?

**Senator Sean D. Barrett:** I compliment the Minister on this constructive discussion. Our concerns were that the fixed five year term might reduce the calibre of applicant and lead to the loss of talent because the term is not renewable. A newly recruited taxing master would have to leave after five years so I wanted to give the Minister and the courts as much discretion as possible so we get the necessary talent in what we all agree is an absolutely essential job under the EU-IMF agreement. I will withdraw the amendment while the Minister considers those points.

Amendment, by leave, withdrawn.

Government amendment No. 12:

In page 37, line 27, to delete “age of 65 years” and substitute “age of 70 years”.

Amendment agreed to.

Amendment No. 13 not moved.

Bill reported with amendment.

**An Cathaoirleach:** Amendments 14 to 16, inclusive, are relative and alternate and may be discussed together by agreement.

**Senator David Cullinane:** I move amendment No. 14:

In page 40, to delete lines 10 to 35.

I welcome the Minister back to the House. It will come as no surprise to him that I oppose any attempt to hollow out the Official Languages Act. This is a breach of fundamental rights, language rights and, I would contend, a breach of the Constitution.

Under Article 8.1 of the Constitution, Irish is the first official language. It has further protection under other articles of the Constitution. Article 25.4.4° states that an official translation shall be provided for legal reasons, Article 24.4.5° states that where both texts, Irish and English, are enrolled in Supreme Court, that is considered conclusive evidence of such law being in force and Article 25.4.6° states that where there is a conflict between both languages,

[Senator David Cullinane.]

the first official language shall prevail. It is surely repugnant to the spirit, if not the letter, of the Constitution that an Act can dilute the provisions for the language in the manner of this Bill, especially as Irish is the first official language of the State.

It is obvious to me there can be simultaneous translation of the legislation. I do not know why we must wait for a period for the legislation to be translated.

Is this a cost issue, because I see the cost as being the same. Will the Minister outline the reasons because there have been examples where we have had to wait for a translation and it took months if not years for the translation of some documents. My understanding is that the translations can be done at a relatively reasonable cost if done on a simultaneous basis. I do not understand why that cannot be done. Again, this is an attempt by the IMF and the ECB to dictate to the people of Ireland what we should do. It is fundamentally important that something as important as our language is protected. As the Minister will know I opposed the IMF-ECB deal in its entirety but for this bailout to be used to dilute the relevance and place of the Irish language in the Constitution is an absolute disgrace and an affront to the people.

There has been a great deal of discussion over the past number of months if not years about the potential loss of Irish sovereignty and the fact the IMF-ECB deal in itself resulted in a loss of sovereignty. To have our language diluted and treated in this way at the behest of the IMF in order to rush through material is completely unacceptable. If the matter is put to a vote I will be supporting motions Nos. 15 and 16 tabled by other Senators rather than our motion No. 14, because the intent is the same. It is important we defend the Irish language. I cannot see the reason that the translation cannot take place at the same time and I ask the Minister to respond to those concerns.

**Senator Fiach Mac Conghail:** Fáilte, I welcome the Minister for Justice and Equality and I congratulate him on the extraordinarily moving Citizenship Ceremony in Dublin Castle on 24 June, where some immigrants became naturalised Irish citizens. Long may that continue; it reminds all of us of our own renewal of citizenship.

I have a number of questions. I do not understand why the amendment of the Official Languages Act is occurring in this Bill. From where I am coming from, it is a red herring. I am a native speaker, Irish is my first language. Under the programme for Government, it was promised to review the Official Languages Act 2003 and, in my view no changes to the Act should be made before that review, with the inclusion of stakeholder in the process, is conducted. In terms of enacting good law, this section sidelines a very important issue, the Official Languages Act 2003. There are many things wrong with that Act. I am absolutely burdened and it has a really negative impact on the Irish language to have to translate everything from Irish into English and then for all of that to be published and printed. Much of it is a waste of money. In the Abbey Theatre I use the Irish language all day every day. For every single word to be translated into the English language and to be printed can ironically do a disservice to the Irish language. Having said that, I will be supporting amendments Nos. 15 and 16.

I do not understand the reason that both amendments are in Irish and in English when the Bill is in English. Yesterday, An Coimisinéir Teanga, Seán Ó Cuirreáin, said he was looking forward to a very comprehensive review of the Official Languages Act 2003 and acknowledges the fact — I will read it out in Irish:

Maidir le ceist chonspóideach na bhfoilseachán oifigiúil a chuirtear ar fáil i nGaeilge faoin Acht teanga, molann tuarascáil an choimisinéara go dtabharfaí tús áite do na foilseacháin is mó a bhfuil éileamh ag an bpobal orthu, pobal na Gaeilge agus na Gaeltachta san áireamh.

Even the Coimisinéir Teanga is acknowledging that not everything needs to be printed in English to try to avoid additional costs on the taxpayer. However, I will be supporting the amendment.

**An Cathaoirleach:** Is the Senator seconding the amendment?

**Senator Fiach Mac Conghail:** I second amendments Nos. 15 and 16 on the basis the issue should be dealt with separately as promised in the programme for Government.

**Senator Thomas Byrne:** Níl áthas orm labhairt ar an rún seo. Tá an Rialtas nua ag déanamh an rud céanna le gach píosa reachtaíochta a thagann os comhair an Tí agus ag déanamh rudaí ar bhonn *ad hoc*. Maidir leis an rún seo agus an chuid seo den Acht, section 46 refers to Acts of Oireachtas, it does not refer to developments plan, official translations or anything else. Let me read Article 25.4.4o of the Constitution:

I gcás an tUachtarán do chur a láimhe le téacs Bille i dteanga de na teangacha oifigiúla agus sa teanga sin amháin, ní foláir tiontú oifigiúil a chur amach sa teanga oifigiúil eile.

Where the President signs the text of a Bill in one only of the official languages, an official translation shall be issued in the other official language.

In my view this section is clearly unconstitutional and it might be wise for the President to consider that if the Bill is passed and she is asked to sign it into law. It seems to be completely unconstitutional that we have a legislative provision that allows the publication in any format in one official language only, whether it is Irish or English. This has nothing to do with how many people speak Irish or English or the very worthy comments of the Minister on the languages we should be teaching our immigrant population. It has nothing to do with county development plans or the excessive translations that go on there. This is about the Constitution and whether we adhere to it and whether we continue to do so. This is the only country in the world that cannot publish its legislation in both official languages at the same time. There are countries with three or four official languages and they are well capable of publishing legislation in their official languages. It is a crying shame and a national embarrassment that we cannot do this. It was raised and I am thinking of three Fine Gael Members, Senators Conway, Keane and Mullins, who spoke very eloquently before on this issue. I do not expect them to disobey the whip and I would not ask them to do it as I would not do it myself, but I plead with them to talk to their Ministers about this. It has happened on an *ad hoc* basis to a number of Bills before the Oireachtas. Now we have legislation which purports to amend the Official Languages Act, which is not within the domain of the Minister in my understanding. Has the Minister with responsibility for the Gaeltacht given his views? Will the Minister explain the views of the Minister for Arts, Heritage and the Gaeltacht on this issue? The Minister accused me, wrongly, yesterday of seeing a scandal around every corner. I think it is scandalous that we cannot publish legislation, as is required by the Constitution. This is not a question of whether something is ideal, as one Minister said last week when she said it would be ideal if we could publish it. It is a constitutional imperative; it is the right of the Irish people.

We must comply with the Constitution. We must give our national language the respect it deserves. If we are not prepared to publish legislation, the laws of the land, in both languages as we are required to do, how can we expect people to speak Irish and to try to develop the language? We can have all the debates we want about stádas na Gaeilge in this House but we cannot publish legislation in Irish. I am appealing to the Minister to withdraw this section and accept the amendments that have been tabled. It would be useful if legislation in both languages were published on the Internet. That is what our amendment requires. People do not purchase

[Senator Thomas Byrne.]

the Bills from the Stationery Office: a printed copy of this Bill costs €4.57. Everybody gets legislation off the Internet. That is the way of the world. If we are serious, we must react to modern times in complying with the Constitution. In complying with our culture, history, traditions and the future of the country, we should be requiring that our legislation is published in both official languages. I believe it is a requirement that we do so.

**Senator Cáit Keane:** Ní raibh a fhios agam go raibh cainteoir ó dhúchas — an Seanadóir Mac Conghail — in aice liom anseo. Ní cainteoir dúchais mise, ach tá cúpla focal agam. Tá sé ráite ag Conradh na Gaeilge go bhfuil lagú á dhéanamh ag an Oireachtas. Ba mhaith liom ceist faoi sin a ardú. Deirtear go mbeidh cead ag an Oireachtas Achtanna a fhoilsiú ar an Idirlíon in aon teanga amháin. Níl sé ráite sa Bhille cén teanga atá i gceist. It is a bit of a flaw that it is not specified in the Bill. In my innocence, I might presume it would be published in the Irish language, as the first language of the country, rather than in the English language.

We are moving in the age of the Internet. We always compare “snail mail” with Internet mail, and efficiencies with inefficiencies. I want to know the reason for any change being made that will affect the Irish language. It is important for this House to do what it can to safeguard the Irish language. I note that the Bill provides for Acts to be published “in one official language only”. It does not state which of the two languages it is intended to use. I presume it is the Irish language, as the primary and first language of the State. If this legislation were challenged in court, I think this would be found to be a weakness in it.

If this change is being made in the interests of efficiency, I suggest we should specify the language in which the legislation should be published. It could then be published in the second language within three or four days if there was a reason for it. If, for example, we were introducing emergency legislation to prohibit a doctor from coming to this country to save a person’s life, one might argue for pig iron that it should be prepared in Irish as well as in English. One would not want to stand in the way of saving somebody’s life, but one would want to strive to ensure the Irish language has as much precedence as the English language. Having said that, one has to be reasonable.

I want to know the Minister’s reasons for this measure. I have not heard them. Why has it been decided that this change is necessary at this time? If the Bill were to provide that the legislation be published on the Internet in the other language “without delay”, a concrete number of hours or days should be specified. That would give people confidence that we were not weakening the language in any way. If we were trying to deal with a life and death situation, that is one of the ways I would look at it.

Senator Mac Conghail seconded the amendment before the House. My understanding is that he spoke against it, in a way, by suggesting that not everything should be published in Irish and in English immediately, with every “t” crossed. If I could get some information——

**Senator Fiach Mac Conghail:** On a point of order——

**An Cathaoirleach:** Senator Mac Conghail seconded the amendment.

**Senator Fiach Mac Conghail:** I said “printed”. I did not say——

**Senator Cáit Keane:** Okay.

**An Cathaoirleach:** We cannot take amendments on the floor. He seconded the amendment moved by Senator Cullinane.

**Senator Cáit Keane:** I am trying to differentiate between the possible reasons for this measure. I am asking the Minister whether this is being done to make a difference on the Internet. Will the Minister provide for a timeframe? Will he say whether it would be published within hours if it were a life and death situation? I do not know what the reasoning behind this is.

Debate adjourned.

### **Business of Seanad**

**An Cathaoirleach:** The Leader of the House has indicated that he wishes to make a change to the Order of Business.

**Senator Maurice Cummins:** I propose that the Report Stage debate on the Civil Law (Miscellaneous Provisions) Bill 2011 should conclude at 6.30 p.m. That will allow the Minister to respond to the questions that have been posed.

**An Cathaoirleach:** Is that agreed? Agreed.

### **Civil Law (Miscellaneous Provisions) Bill 2011: Report Stage (Resumed)**

Debate resumed on amendment No. 14:

In page 40, to delete lines 10 to 35.

—(Senator David Cullinane).

**Senator Paschal Mooney:** Níl mórán Gaeilge agam. Is féidir linn labhairt as Gaeilge. I wish I could converse sufficiently effectively to be able to put forward my points of view, but that is my weakness. I have always admired Senators on all sides of the House who have been able to speak in our first language. They might ask why I do not go out and learn it, but that is another matter.

Like Senator Keane, I would like to establish what the thinking behind this aspect of the legislation is. The Minister may have thought he would have a rough ride in his first few months in office. I assure him that all Ministers feel the ire of people in the Irish language movement when any attempt of this kind is made. Someone in the Department of Justice and Equality has landed him with a hot potato. When the Minister got up this morning, I am sure the last thing on his mind was that he would have an argument about whether texts should be published as Gaeilge or as Béarla.

It is interesting that there has been a focus on the publication of Acts on the Internet. There is a facility whereby Google, which is one of the most popular search engines, can be accessed as Gaeilge. As Senator Mac Conghail indicated, Gaeilge is the first language of many people. If such people want to acquaint themselves with this legislation, they will be unable to do so if they are using the Irish language version of Google.

I take the point made by Senator Keane about the likelihood of people rushing to the Government stationery office to pay a few euro to look at legislation. It is worth noting that nine separate Acts, some of them going back to the 1950s, are being changed by the legislation before the House. The use in the Bill of the phrase “other enactments” indicates that other Acts might be amended as well.

For reasons of curiosity, if nothing else, people who examine this Bill may inquire into what it is all about. It is rather unique in the sense that we do not often have consolidating Bills that cover such a wide sweep of matters. The Minister mentioned on Second Stage that one of the

[Senator Paschal Mooney.]

Acts being amended relates to mining, which is far removed from some of the other issues we have discussed.

Like Senator Keane, I am curious to know what the thinking in the Department was when it was decided to include this provision in the Bill. It does not strike me as something that would save any money because it is about the click of a switch. We need to bear in mind that a strong campaign, supported by all sides in this House and the other House, was fought before Irish attained its status as an official language of the European Union. Having supported that actively, it is somewhat disappointing to learn that this important legislation will not be given the due right it should be given by being printed in the Irish language.

I remind the Minister that I do not get up to scream about the Irish language every day of the week. I take Senator Mac Conghail's sensible point about the Official Languages Act 2003. It was wise of the head of the language organisation to acknowledge that there are flaws in the 2003 Act. I have often wondered whether it is absolutely essential for every piece of legislation to be printed in both languages. That is a matter for another day. We are talking about the Civil Law (Miscellaneous Provisions) Bill 2011. I await with great interest the Minister's thinking on this amendment.

**Senator Martin Conway:** I agree wholeheartedly with most of what Senator Byrne has said. He made an interesting point about the constitutionality of this provision. I would welcome the Minister's commentary in that regard. I would regret any movement away from the publication of legislation in both languages. The spirit of the requirement that legislation be translated into Irish is central to our existence as a people. I have concerns about the manner in which it has been imposed through the Official Languages Act 2003, however.

I agree with what other speakers said about the commitment in the programme for Government to review the 2003 Act. I hope we can have a national debate on it. As Senator Mac Conghail and others have said, it is a complete waste of public money to produce a county development plan as Gaeilge at a cost of €40,000 or €50,000, only for it to be bought by just one person. It is not engaging with the spirit of the Irish language to require that to be done.

When I listen to people like Senators Keane, Ó Clochartaigh and Mullen speaking, it strikes me that Connemara Irish is absolutely beautiful. We have received e-mail correspondence advising us that Irish classes are being organised. I look forward to participating in them. The whole notion of the Irish language is such a strong part of our existence that we should never, if at all possible, move away from the principle of producing documents in our native language in the first instance and, obviously, as Béarla as well. The constitutional point that was made was very interesting. I await the Minister's commentary in that regard.

**Senator Rónán Mullen:** Ba bhreá liom tacú leis na leasuithe atá os ár gcomhair. Glacaim leis go bhfuil Sinn Féin sásta cúlú lena leasú sa chás go mbeimid an ann leasú eile a chur chun vóta. Measaim gur fiú é sin a dhéanamh. I remind Senator Byrne not to be too quick to encourage Senators on the other side of the House not to defy the party Whip.

**Senator Thomas Byrne:** I would not like to ask them to do anything I would not do.

**Senator Rónán Mullen:** The possibility of doing so should always be on the agenda. We live in hope. The issue at stake here is clear. Anything related to the Irish language raises profound sensitivities in many people and for good reason. Regardless of their level of competence in the language, many people very much cherish it and insist on it being shown respect. Respect for the language and the perception that there is respect for it is a critical part of promoting it.

Senators Cullinane and Byrne set out the constitutional issues very well. The significance of the place of Irish as the first language in the Constitution should give us the key to how to resolve this matter. When we deal with legislation we are dealing with the front of the national house. This is not simply a matter of the publication of different types of documents, annual reports and such like but the publication of national legislation. Anything that gives the impression that the Irish language is not *de facto* the first official language but some kind of an optional extra would be very much to be regretted.

Tá sé ráite ag Conradh na Gaeilge go bhfuil athbhreithniú ar Acht na dTeangacha Oifigiúla 2003 geallta i gclár an Rialtais. Why not wait until the review of the Official Languages Act, on which people may be consulted, has been completed before introducing such a radical change? Chomh maith le sin, d'fhéadfaimís a rá go bhfuil sé íorónach go bhfuil an leasú seo sa dá theanga.

Normally we only receive amendments to legislation in the second language, namely, English, notwithstanding that the Bill will have already been published in the Irish language. The question arises as to whether it is possible to have legislation published bilingually in Irish and English at Bill stage. This would lessen any possible delays that may arise from the eventual translation of the legislation.

There are other ways of addressing this issue. There is a second Rannóg an Aistriúcháin. Surely if the two translation departments were re-organised, we would be able to ensure that, once passed, legislation would be published in both languages within an acceptable timeframe.

We also need to keep in mind the European context. It is ironic that having achieved status for Irish as an official language of the European Union, a measure is being proposed to downgrade its status in its usage in a legislative context and in the eyes of members of the public.

The Minister may choose to inform the House that certain mischief needs to be avoided and certain problems will arise if legislation is not available within a short period of being passed. If that is the case, will he consider introducing a note of exceptionality? If he really believes this subsection should not operate to prohibit the publication on the Internet of an Act of the Oireachtas in one official language, could he not provide for the publication of legislation in one official language only in exceptional cases? If he were to introduce such a notion, it would at least show that he does not consider it desirable that people would become casual about the Irish language.

The comments of Senators on the growing importance of the electronic media are especially significant. If the mentality on display here had prevailed in the past we would still have An Gúm but we would not have TG4. Books and the written word are important but, by heavens, the electronic word is extremely important. The late availability of published or past legislation in Irish in electronic format would send out an extraordinarily negative message. I ask the Minister to take into account the concerns expressed by Senators, including the suppressed concerns of Seanadóirí on his side of the House, and have them reflected in some form of change to what has been proposed.

**An Cathaoirleach:** Has Senator Jim Walsh crossed the floor?

**Senator Jim Walsh:** Tá a fhios agam nach bhfuil mórán ama fágtha don díospóireacht seo, ach ba mhaith liom a rá go bhfuilim i bhfábhar an leasaithe atá á phlé againn agus go n-aontaím go hiomlán leis an méid atá ráite ag na Seanadóirí eile. An rud is tábhachtaí ná go bhfuil athbhreithniú ar Acht na dTeangacha Oifigiúla geallta i gclár an Rialtais. Mar sin, bheadh sé i

[Senator Jim Walsh.]

bhfad níos fearr dá gcuirfeadh muid an t-alt seo ar ábhar na Gaeilge ar leataobh go dtí go mbeidh an t-athbhreithniú sin críochnaithe. Tá an méid a bhí le rá ag an Taoiseach san olltoghchán sna bunscoileanna suimiúil freisin.

This is not an appropriate Bill for making such a significant amendment. It should be possible, when the Bill is being prepared, for both language versions to be done at the same time. There is a lead in time as the Bill goes through the House. All that would be required when the Bill is passed is for the amendments to be included and changes to be made in the text. I have difficulty in accepting this proposal, which I hope is not another part of a move to abandon compulsory Irish. I urge the Minister to take on board the good arguments that have been made by many speakers.

**Deputy Alan Shatter:** I thank Senators for their comments and assure them that there is no evil plan attached to this. I should inform the Senators from Fianna Fáil who contributed that the previous Government made a decision that it was necessary to introduce a similar provision in the law. One was being prepared to be included in the somewhat smaller Civil Law (Miscellaneous Provisions) Bill that my predecessor published.

Senator Mooney referred to the number of Acts that the legislation before us addresses. It addresses 40 different Acts in the context of the reforms it introduces. I reiterate that this is not about in any way undervaluing the Irish language or not regarding or recognising its constitutional importance. It is important to note that section 7 of the Official Languages Act 2003, which came into force in July 2006, provides for the printing and publication of Acts of the Oireachtas in both languages simultaneously. This provision was introduced in the context of a Supreme Court judgment which was delivered in 2001. Another judgment on statutory instruments issued in 2010 reinforced the constitutional obligation to make both Irish and English language versions of legislation available “within a reasonable time or as soon as may be practicable”, in other words, not instantly. The previous Attorney General was concerned about the difficulties that could arise when new laws have come into force but are not accessible to those affected, particularly in the case of new criminal law. Following consultations with the Oireachtas commission, the then Attorney General recommended an amendment be made to the Official Languages Act to the effect that nothing in the Act should prevent the publishing of an electronic copy of a new Act on the Oireachtas and departmental websites following the passage of the legislation. This, as I stated, was agreed by the previous Government.

This amendment, which is technical in nature, would simply allow publication in electronic form of legislation as soon as it has been signed by the President in order that there is instant accessibility to what the legislation contains. It does not in any way prevent publication in both languages. Formal publication will thereafter have to take place in both languages.

I draw specific attention to what is in the Bill before us. It provides additional protection for victims of domestic violence and a new mechanism to enable the enforcement of maintenance orders for unsupported spouses and children. The Bill gives example of the reason it is necessary, as soon it is signed, that it be available in final form and published on the Internet. Some weeks later, in the normal way, the legislation will be formally printed and published in both languages. It is not fair to individuals when legislation is not printed and made available in its final form for a period because, for some, even a few days can make a difference to their lives. If one is a victim of domestic violence and new protections are available, one needs to know this, as do lawyers and the Judiciary. It is not a luxury. That is why the issue is important.

**Senator Fiach Mac Conghail:** On a point of order, why did the Minister not have the courage to use the words “in the English language”, rather than “in one official language”?

**An Cathaoirleach:** That is not a point of order.

**Deputy Alan Shatter:** The Bill deliberately reads, “in one official language”. It may be possible to deal with things differently in the future. The reality is that legislation is enacted in the English language and that amendments are furnished in English. The legislation we are dealing with is in English and when it goes to the Dáil it will be in English. The final print will be instantly available in English. Often crucial amendments are made to legislation on Report Stage and within a day or two the President may sign the legislation. It is not possible on technical legislation such as this, which deals with 40 Acts, to provide for instant translation.

**Senator Jim Walsh:** Can the translation not be done when the Bill is published?

**Deputy Alan Shatter:** We were acting on the advice of the Attorney General and the previous Attorney General, neither of whom believed there was a constitutional difficulty of any nature.

Question put: “That the words proposed to be deleted stand.”

The Seanad divided: Tá, 23; Níl, 15.

Tá

Bacik, Ivana.  
Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D’Arcy, Jim.  
D’Arcy, Michael.  
Heffernan, James.

Henry, Imelda.  
Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Moloney, Marie.  
Moran, Mary.  
Mullins, Michael.  
Noone, Catherine.  
O’Keeffe, Susan.  
O’Neill, Pat.  
Sheahan, Tom.

Níl

Barrett, Sean D.  
Byrne, Thomas.  
Cullinane, David.  
Daly, Mark.  
Leyden, Terry.  
Mac Conghail, Fiach.  
MacSharry, Marc.  
Mooney, Paschal.

Mullen, Rónán.  
O’Donovan, Denis.  
O’Sullivan, Ned.  
Power, Averil.  
van Turnhout, Jillian.  
Walsh, Jim.  
Wilson, Diarmuid.

Tellers: Tá, Senators Paul Coghlan and Susan O’Keeffe; Níl, Senators David Cullinane and Diarmuid Wilson.

Question declared carried.

Amendment declared lost.

**An Cathaoirleach:** As it is now past 6.30 p.m., I am required to put the following question in accordance with the order of the Seanad of this day: “That the Bill, as amended, is hereby received for final consideration and that the Bill is hereby passed.”

Question put.

The Seanad divided: Tá, 26; Níl, 12.

Tá

Bacik, Ivana.  
Barrett, Sean D.  
Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D'Arcy, Jim.  
D'Arcy, Michael.  
Heffernan, James.

Henry, Imelda.  
Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Mac Conghail, Fiach.  
Moloney, Marie.  
Moran, Mary.  
Mullins, Michael.  
Noone, Catherine.  
O'Keeffe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.  
van Turnhout, Jillian.

Níl

Byrne, Thomas.  
Cullinane, David.  
Daly, Mark.  
Leyden, Terry.  
MacSharry, Marc.  
Mooney, Paschal.

Mullen, Rónán.  
O'Donovan, Denis.  
O'Sullivan, Ned.  
Power, Averil.  
Walsh, Jim.  
Wilson, Diarmuid.

Tellers: Tá, Senators Paul Coghlan and Susan O'Keeffe; Níl, Senators David Cullinane and Diarmuid Wilson.

Question declared carried.

### Adjournment Matters

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### Schools Building Projects

**Senator Thomas Byrne:** I thank the Minister of State for coming and congratulate him on his appointment. He will make an excellent Minister of State and it is great for someone so young to rise so quickly. He is a good man and I know he will do good work.

I am bringing this motion before the House in order to be helpful. I have often found the Department of Education and Skills to be lacking in terms of forward planning, although it is improving to some extent, and as such, I do not consider it has got this latest announcement quite right. The Minister announced the establishment of two new second level schools in County Meath, one in Navan and other in Ashbourne, to be established between 2012 and 2017. If the school in Johnstown, Navan is not established this year, we will have a major crisis. I thought we would have one last year when the school had not been established fully. It needs to be built by 2012 at the latest. We will need another secondary school in Navan by 2017. However, this will not do anything to solve the problems in the constituency of Meath East that I used to represent in Dáil Éireann; it will merely solve the serious problems in Navan. I welcome the announcement of the establishment of a second level school in Ashbourne. There is already a secondary school located there, but it is operating at capacity, as are many schools in surrounding areas.

These are not the only areas in County Meath which have seen substantial increases in population. In my submission I mentioned Stamullen, Duleek, Laketown, Bettystown and Mornington. Laketown, Bettystown and Mornington make up the second largest conurbation in County Meath in which a secondary school was recently established. The population of the St. Mary's electoral division of County Meath has increased from 9,044 to 10,772, an increase of 1,700 since the last census. It is situated near Drogheda, where it is proposed to provide a secondary school, but I do not know whether it will be able to cope with this increase. It will be interesting to see what percentage of that figure is made up by children because there are three children in my house and two children in my next door neighbour's, while the couple across the road also have two children. I suggest most of the increase in the population is accounted for by children which will lead to serious problems if we do not deal with the matter soon.

The Julianstown electoral division in County Meath which covers Laketown, Bettystown and Julianstown has seen its population increase from 8,289 to 9,588. I am interested in seeing the final figure and again suggest most of the increase is accounted for by children.

The population of the electoral division of Duleek in which there is no secondary school has risen to 5,177. If we add the population of the electoral division of Ardath, 1,911, we see there has been another substantial increase in population. This is not the result of new houses being built or people moving in, as there has not been much development since 2006 in these towns. In fact, there are houses in Duleek which have been unoccupied since 2006. In addition, the population of the Stamullen electoral division which covers the town of Stamullen and the villages of Gormanston and Clonalvy has increased from 3,844 to 4,683. There will be a crisis in these towns, none of which is mentioned in the Minister's announcement on the establishment of new secondary schools.

The position on primary school accommodation is probably not as severe, but we are keeping a watching brief in the area. Children living in Stamullen could possibly travel to Balbriggan, but that would not be ideal. Children living in Duleek could possibly travel to Navan, but the problem there is at crisis point. Therefore, we need another secondary school in east County Meath to deal with the severe shortage of spaces.

I would like to make one final point. A school was announced for Kingscourt, County Cavan, on the border with County Meath. It is a very good town and this is a worthy project, but there is a fantastic secondary school in Nobber, only five miles away. In what is a lightly populated area I cannot see why there is a need for two secondary schools. Therefore, I call on the Minister to review the position. My party Whip and colleague in County Cavan will not be too happy when I say this, but I need to speak what I believe to be the truth.

**Minister of State at the Department of Education and Skills (Deputy Sean Sherlock):** I thank the Senator for his gracious and kind comments which are greatly appreciated. He might drop me a note on the issues he has raised because we should engage on what is a genuine undertaking on his part.

I am taking this Adjournment matter on behalf of the Minister for Education and Skills.

I thank the Senator for raising the matter as it affords me the opportunity to outline to the Seanad the current position regarding the provision of new post-primary schools to cater for demographic increases. The Department's most recent statistics indicate that the number of pupils at second level is projected to increase by 24,900 from the current level of circa 317,400 pupils to 342,300 by 2017. The projections indicate that pupil numbers will continue to rise until 2024, when it is expected there will be in the region of 383,000 pupils in the second-level system. That represents an increase of 65,700 pupils over the current levels.

[Deputy Sean Sherlock.]

The Department is utilising a geographical information system, GIS, to identify the areas in which there will be a requirement for significant additional school provision at both primary and post-primary levels over the coming years. This detailed analysis is now being finalised and action plans are being drawn up for each priority location in order to determine how to meet the additional school accommodation requirements for each area for the next four to five years.

It is within this context that the Minister recently announced that up to 40 new schools are to be established within the next six years, comprising 20 new primary and 20 new post-primary schools. Of the 40 new schools, 17 will be in the Dublin area, with a further 12 in the commuter belt of Wicklow, Kildare, Meath and Louth. Six new schools will be established in Cork, three in Galway and one each in Wexford and Cavan. Included in this announcement are new post-primary schools for Navan, Drogheda and Ashbourne, which will greatly enhance second-level provision in the wider area referred to by the Deputy. In addition, the Department recognised a new post-primary school for east Meath, located in Laytown, in 2008-09. The school is currently located in temporary accommodation beside the site on which the permanent new school is under construction. The new permanent school building, which will provide accommodation for 1,000 pupils, is expected to be ready in July 2012. This school caters for children from the east Meath areas of Laytown, Bettystown, Stamullen and Julianstown. I thank the Senator again for raising this matter.

**Senator Thomas Byrne:** I thank the Minister. I did not expect an answer that was much different from that. I acknowledge the Department's work in the area and the provision of Coláiste na hInse, which was mentioned. However, the reason I raised this issue is that I do not feel the Department has got it fully right. I ask that it reconsider in particular whether there is adequate second level provision in the Slane and east Meath electoral area, including the towns of Duleek, Stamullen, Laytown, Bettystown and Mornington and the south edge of Drogheda, which is in County Meath.

### **Job Creation**

**Senator David Cullinane:** I welcome the Minister of State. To give some background to tabling of this subject for discussion, in 2007 the former Oireachtas Joint Committee on Enterprise, Trade and Employment had a discussion about unemployment black spots, and a former member of the Lower House, Arthur Morgan, asked that a cross-party delegation of that committee travel to such areas. The areas chosen included west Waterford and east Cork, and the group visited the town of Dungarvan. The visit was made on 21 and 22 January 2008 and the group then published a report, which made a number of recommendations, including the provision of enterprise supports, incubation units to be supported by the IDA, and broadband infrastructure. One of the key points made in the report was about the need for a university in the south east and the requirement for Waterford IT to be elevated to university status to allow the region the opportunity to compete with other regions and countries. One of the critical aspects of this was the requirement for a greater emphasis on research and development and for Waterford IT to be in the top tier of research and development universities.

Dungarvan town has seen many job losses over the last number of years, including at Waterford Foods, Pfizer, the leather factory and Waterford Crystal. Today an announcement was made by GlaxoSmithKline in Dungarvan, a key plant in the town, that 130 jobs are to go. The number of jobs being lost is really 145 because 15 positions will be lost by what they call natural wastage. These jobs are of fundamental importance to the town of Dungarvan, as is the factory itself, socially and economically. We can add to this the cost of all of the other jobs

that have been lost. I express my sympathies to the families who will be the victims. It is awful whenever a person loses his or her job.

What are the Minister's intentions on foot of the recommendations made by the all-party Oireachtas committee that the State and the Government should take action and give support to towns such as Dungarvan to prevent job losses and encourage enterprise development? We must make sure that those in towns such as Dungarvan or Youghal in Cork have the same opportunities as those in the bigger cities and are not left behind. When the all-party group travelled to Dungarvan in 2008, there were 170,000 people in this State out of work; there are now 460,000. In Dungarvan town alone there are 2,497 people currently out of work. If we add 130 more to this figure we can see how devastating this is for the town.

What action has been taken up to now on foot of the recommendations made in the report? What action does the Department intend to take to deliver on the recommendations? What action will the Government take to deal with the job losses at GlaxoSmithKline? Given that there are still 600 people working in the plant, we must ensure those jobs are protected. I ask the Minister to respond to the bad news that came from Waterford today about the 130 job losses.

**Deputy Sean Sherlock:** I thank the Senator for raising this matter. As the Senator has raised the issue of the job losses at GlaxoSmithKline, it is important for us to join with him in acknowledging the addition to the numbers unemployed in Dungarvan. I acknowledge what the Senator is saying in that regard and I join with him, although I do not want to give just platitudes, in extending our sympathy to those families. I have listened to his comments about the recommendations of the report of the Oireachtas Joint Committee on Enterprise, Trade and Employment. I must note for the record that the Senator's Oireachtas colleague Deputy Ciara Conway also contacted me today about the GlaxoSmithKline announcement. I was told that while the head count reduction is regrettable — there is no question about that — the company's aim is to remain focused on the long-term future of the site, ensuring that it remains competitive. Although the site remains strategic within the company's network, the company must continue to control its cost base and be more flexible because of global trends. That is the line coming from the company on this.

It is easy for us as Ministers to stand here and say this is down to a global phenomenon, but a foreign direct investment company is particularly subject to retrenchment in terms of its cost base, especially if it is competing against other aspects of its own structure, and it is appropriate for it to reduce its costs. The unfortunate thing about that is the resulting job losses. If it does have a programme of retrenchment, the important thing is that the company makes itself sustainable so it can preserve the remaining jobs. We must try our best to work with the State agencies in that regard.

I have noted the report referred to by the Senator, which was produced in 2008, a time when the country as a whole was facing immense challenges. We all know that job creation is central to our economic recovery and it will be clear from the programme for Government that job creation is at the core of the Government's policies. The role of my Department is to ensure we have the right policies in place to support and enlarge our enterprise base in order to facilitate job creation and job retention.

The jobs initiative announced on 10 May focuses our limited resources on measures that offer the greatest potential for expansion and employment creation. The initiative represents a positive intervention to support those entrepreneurs and business people who will create jobs and rebuild our economy. The key elements were the 12.5% corporation tax and its retention and the introduction of a new, temporary, second reduced rate of VAT to apply primarily to restaurants and catering services, hotel and holiday accommodation and various entertainment

[Deputy Sean Sherlock.]

services. I hope these reductions were adhered to in Waterford especially in recent weeks with the visit of the tall ships and I hope that the hospitality sector there has done well out of it. Our hope is that this will continue. Other elements include the halving of the lower rate of employers PRSI on earnings of up to €356 per week; the focus of the State's capital expenditure towards more employment-intensive projects in the areas of education, local and regional roads and sustainable transport projects; and the provision of an extra 20,900 activation places for the unemployed. The jobs initiative is an important first step in this regard.

One announcement for the south-east region this year will create 50 new jobs in Waterford. Also, jobs announced for the region in recent years continue to come on-stream. As well as marketing the region for new green-field investment, IDA Ireland continues to work with existing clients to broaden their mandate in Ireland and also with existing clients to re-invest in sites in the region. While we are operating in difficult economic times, there are still investment opportunities in global markets. There are 31 IDA Ireland-supported companies in Waterford city and county employing approximately 5,300 people. Clear evidence of a transition towards more knowledge-based and higher value activity is apparent in the resilience of companies such as Bausch & Lomb, Honeywell, Citi Hedge Funds, Genzyme and Sun Life Financial.

I will be visiting Waterford Institute of Technology, WIT, because I have heard about the great work under way there in the life sciences, information and communications technology, international services and high technology engineering areas. WIT is one place earmarked for a visit by me as the Minister of State with responsibility for research and innovation. It is important to spin out as many companies as we can, locally if possible, from such institutes as WIT.

**Senator David Cullinane:** I refer to the last point made by the Minister of State. This is precisely why we need a university for the region. Some people maintain that if a university were in place, there may be greater research and development opportunities and we might not have seen the job losses announced at GlaxoSmithKline. The Minister of State is correct to suggest this is about reducing costs in the company. The company wishes to reduce costs by €10 million. The costs of these job losses will be €3.3 million. However, the money being borrowed from the IMF and put into the banks, the cost of the bailout to the State and the profit which our European partners will make will be in the region of €9 billion. Yet, such companies are struggling and need support.

I thank the Minister of State for his response. I welcome that the Minister of State will visit Waterford Institute of Technology but I hope the Department of Jobs, Enterprise and Innovation will consider the town of Dungarvan. I do not share the Minister of State's view that IDA Ireland is doing its best for the town. There have been no major investments in the town in recent years. There have been major job losses but no new opportunities. I hope the Minister of State will take this on board.

The Seanad adjourned at 7.15 p.m. until 10.30 a.m. on Friday, 8 July 2011.