



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*  
(OFFICIAL REPORT—*Unrevised*)

*Dé Céadaoin, 27 Iúil 2011.*

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# SEANAD ÉIREANN

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*Dé Céadaoin, 27 Iúil 2011.*  
*Wednesday, 27 July 2011.*

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Chuaigh an Cathaoirleach i gceannas ar 10.00 a.m.

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*Paidir.*

*Prayer.*

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## Order of Business

**Senator Maurice Cummins:** The Order of Business is: No. 1, Criminal Justice Bill 2011 — Committee and Remaining Stages, to commence on the conclusion of the Order of Business and to conclude no later than 1 p.m.; No. 2, Criminal Justice (Community Service) (Amendment) (No. 2) Bill 2011 — Committee and Remaining Stages, to be taken at 1.30 p.m. and to conclude no later than 3.30 p.m.; No. 3, Civil Law (Miscellaneous Provisions) Bill 2011 — Amendments from Dáil Éireann, to commence on the conclusion of No. 2 and to conclude no later than 4 p.m.; No. 4, motion on the report by the Commission of Investigation into the Catholic Diocese of Cloyne, to commence at 4 p.m. and to conclude no later than 6 p.m., with the contributions of group spokespersons not to exceed eight minutes, the contributions of all other Senators not to exceed five minutes and the Minister to be called on to reply no later than 5.50 p.m.; and No. 5, Private Members' business, Family Home Bill 2011, to be taken at 6 p.m. and to conclude no later than 8 p.m. There will be a sos between 1 p.m. and 1.30 p.m.

**Senator Darragh O'Brien:** Mar a deirtear, Tús maith, leath na hoibre. The Seanad has made a good start in this term. I commend the Leader, the leaders of all the groups and all my colleagues because we have made some significant strides towards reforming the way we do our business. We have an eclectic bunch of Senators with different views and different ways of doing things, and that is important. We have made a start and laid the foundations to make this House relevant to the people. Reaching out to the public through the public consultation committee will be most important and I look forward to that.

We have a significant role to play not only in the scrutiny, but in the production, of legislation. Many Bills have been initiated in this House and our group will bring the Family Home Bill 2011 before it today. As I mentioned yesterday, it will give proper protection to home owners with distressed mortgages. I am certain a good debate will take place and I hope we get cross-party support for the Bill to enshrine in law what is required to help to protect our citizens in times of difficulty and that, at the very least, they can be sure they will have their family home.

I wish the Leader well over the summer. It is important people get a break as we have had a long year. However, when we come back in September, I would like to see an end to talk of the reform of this House and to start to do the work. We have had many discussions on reform. Those discussions are over; let us prove our worth.

**Senator Mary M. White:** Hear, hear.

**Senator Darragh O'Brien:** For some reason, the tricolour is not flying over the House this morning. Will the Leader talk to the Captain of the Guard, because we are here working and the tricolour should be flying over Leinster House?

**Senator Ivana Bacik:** The Senator is very observant.

**Senator Darragh O'Brien:** My Whip, Senator Diarmuid Wilson, noticed it. To be honest, I did not notice it.

**Senator Paul Coghlan:** It is flying in Killarney for the Irish Open.

**Senator Darragh O'Brien:** I have no doubt it is.

I hope Senators have a great break and a lovely summer and I look forward to coming back in September and working constructively with everyone.

**An Leas-Chathaoirleach:** The Cathaoirleach left a list with the names of five Senators — Senators Jim Walsh, Mark Daly, Brian Ó Domhnaill, Martin Conway and Michael Mullins — who did not get in yesterday on the Order of Business. After Senator Ivana Bacik, I will call those Senators in that order.

**Senator Ivana Bacik:** Usually the Senators who did not get in, speak after the leaders of the groups but I will leave that to the Leas-Chathaoirleach. On the last day of term, I join with Senator Darragh O'Brien in wishing everyone happy holidays. Although it feels a lot longer, I think we have only been sitting for ten weeks, just over two months. It has been such a busy and intense session that we all feel it has been a lot longer. In many of our cases, it was preceded by several elections.

In the period of time we have been sitting, we have already made progress on the reforms about which we have been speaking for so long. I agree with Senator Darragh O'Brien that it is time for action. We have commenced action on real and effective reform of the Seanad. We have already seen with the address of the President of the European Parliament, Mr. Jerzy Buzek, to the House and the debate on agriculture and fisheries with the Minister for Agriculture, Fisheries and Food, Deputy Simon Coveney, new models of debating issues here which are more meaningful and will lead to better outcomes for everyone, both Opposition and Government.

The House has passed, and will continue to do so today, a great deal of legislation, so it has been a very busy term from a range of perspectives. The Seanad Public Consultation Committee and our new rules on inviting distinguished guests to speak will also help to ensure the Seanad is a more effective place to be and the flag will continue to fly over Leinster House even when the Dáil is not sitting and it is just ourselves.

I thank the other leaders and colleagues in the Seanad for a very productive and fruitful term. I wish everyone well for the holiday period. I also wish them well for the forthcoming autumn term. In view of today's reports and dire warnings regarding the state of the US economy and in light of our own circumstances, I am of the view that in September we will be engaging in extensive debates on the economy, on pre-budget submissions and on the international economic context. Everyone will be pressing for such debates early in the new term.

**Senator John Crown:** I want to wish all of my colleagues who do not have day jobs a very nice summer recess. I will have a little time off in the coming weeks but I suspect that my day job will take precedence. I would have thought that with the decamping of the "junior" House

to Ballybrit, the temporary *fatwa* the press corps has imposed on the Seanad Éireann might have been lifted today. Judging by the absence of members of the press from the Gallery, it appears the *fatwa* remains in place. That is a shame. As a political neophyte — and as a partial insider and a partial outsider — in the few months I have been here I have noticed that there is a very anti-democratic tendency on the part of the press to ignore the debates which take place in one half of our constitutionally-mandated national Parliament. If I had one wish, it would be that this will change following the summer recess.

I wish to pose a few health-related questions and raise a number of points which I hope the Leader will bring to the attention of the Minister for Health. The first of these relates to the thorny issue of Roscommon hospital. I apologise for sounding like a broken record in respect of this subject. However, for the benefit of anybody who may not recall the position, I wish to indicate that at the time the rather precipitative decision was made to close accident and emergency services at Roscommon hospital — that decision may or may not have been justified and I reiterate that I am not an instinctive “save our hospital” type — I was troubled by the numbers being cited with regard to the alleged disparity in survival rates among patients with cardiac disease attending in either Roscommon or Galway. The latter is the preferred centre of referral and it was stated that the difference in outcomes for patients who suffered heart attacks was 25% versus 5%. I previously informed the House that I had seen figures from Roscommon hospital which suggested that for those admitted to the cardiac unit there, the mortality rate was approximately 5% to 6%. The Minister for Health countered my assertion by stating that he was not referring to global admissions to the unit but was rather referring specifically to those admitted to the hospital with a diagnosis of a heart attack or myocardial infarction.

I have been provided with raw figures which were obtained from a trawl of the charts of all patients admitted to Sligo General Hospital during an audit conducted by Dr. Paddy McHugh, the senior physician at the hospital who is in charge of cardiac treatment there. Dr. McHugh discovered that during the years 2008 to 2010, inclusive, approximately 45 people per year were admitted with a diagnosis of myocardial infarction. The mortality figures for the three years were not 25% on average, rather they were 12% for the first year, 4% for the second and 8% for the third. The total for the three years would have been 25% if it had not been divided by three in order to come up with an average. I presume this is not the mistake which was made by those who provided the numbers to the Minister.

I am not accusing the Minister of misleading anyone. However, I believe the numbers which were cited may not offer a fair reflection of the actual outcomes for patients admitted to Roscommon hospital with a heart attack. If for no reason other than to protect the reputations of the fine professionals who worked in the relevant unit at the hospital at a time when it was systematically starved of resources by, with respect, successive Governments of multiple hues, I contest that it would be unfair to suggest that these individuals were producing such inferior results. I wish to make the same request I put forward on a previous occasion, namely, that the Minister for Health to come before the House to indicate what is the numerator, what is the denominator, the number of patients who were admitted with a heart attack and the number who died. From where is the Minister obtaining his numbers in respect of this issue? I am of the view that the numbers he is citing may be inaccurate.

Will the Leader check with the Minister to ensure that there will be no adverse effect on cancer services in Waterford as a result of the announcement that the Whitfield Clinic has gone into receivership? Apparently Whitfield Clinic and Whitfield Cancer Centre have become administratively separate entities but I understand there is a degree of cross-ownership between them. Through public private partnership arrangements, Whitfield Clinic was, *de facto*, provid-

[Senator John Crown.]

ing many of the cancer services for the south east through its facility in Waterford. I am seeking some reassurance in respect of those services.

I am troubled by the fact that the Health Information and Quality Authority, HIQA, is bringing in UK inspectors to inspect the accident and emergency department in Tallaght Hospital. I am of the view that there are no excellent accident and emergency departments in our Republic as a result of the staffing issues to which I have often referred.

My final question relates to the Tánaiste and Minister for Foreign Affairs and Trade. It is widely reported that a major personnel change has taken place in the upper echelons of UNICEF Ireland. This is a charity which raises vast amounts of money from private individuals and this is then used for extremely good causes. In recent years it has been very successful in its work. It appears that decisions are being made by a group of people on the board of UNICEF Ireland regarding personnel changes. Those involved may or may not be justified in their actions. I would like the Tánaiste to indicate who is responsible for choosing and appointing the members of the board of this organisation. Ireland is a member of the United Nations and the Department of Foreign Affairs and Trade chooses our representatives to that body. Who is allowed to place the stamp of the United Nations on an organisation which is run by people who have various components to their curricula vitae? In the past, some of these individuals worked in the public service and some worked in other areas. The individuals to whom I refer are making decisions which could have an impact on the success of the fund-raising efforts of the organisation in question.

**Senator Cáit Keane:** Os rud é go bhfuil an Seanadóir Ó Clochartaigh ag éisteacht liom, ar an lá deireanach den téarma seo, tosóidh mé le cúpla focal Gaeilge. Ní iarrfaidh mé aon cheist deacair ar an Cheannaire inniu. I began my career as a Senator with a few words of Irish and I wanted to begin my final contribution before the summer recess in the same way. Senator Ó Clochartaigh requested that we might all try to utter a little bit of Irish and that is what I am doing.

I do not intend to put any difficult questions to the Leader so he will have an easy time of it.

**Senator Maurice Cummins:** I am delighted and I thank the Senator very much.

**Senator Cáit Keane:** I compliment the Leader on running a tight ship. It is good that Opposition Senators have stated that the way the House operates has changed. I cannot comment on that point. However, I am aware that the outside perception of the Seanad does not relate to what occurs in this Chamber. That is a matter to which consideration must be given because perception is extremely important. On yesterday's Order of Business, Senator MacSharry referred to the absence of the press from this Chamber. Senator Crown echoed those words during his earlier contribution. Members of the press only cover the Order of Business and the real business in which the House engages is not covered at all. That gives the Seanad a bad name. I was a member of my local council for 20 years and my perception of the Seanad was not as good as it is now. I have only been here for a few months but I have become aware of the work that is done here. Members of the public must be educated with regard to the work done by the Seanad. I look forward to the various parties making submissions with regard to how we can change the way in which the House is perceived.

I wish to compliment those on the other side of the Chamber who have provided strong opposition to the Government. Yesterday I was criticising them for calling so many votes but I accept that is part of what being in opposition involves. It is obvious that those on the Opposition benches have great stamina. I hope that, working together, we can make the House

a better place. I am enjoying the fact that we are all on a steep learning curve. Míle buíochas, a Leas-Chathaoirleach.

**Senator Brian Ó Domhnaill:** Ba mhaith liom cur leis na focail a dúirt na Seanadóirí eile agus briseadh deas a ghuí ar gach éinne. Tá súil agam go mbainfidh foireann an Tí agus na Seanadóirí go léir taitneamh as an aimsir mhaith atá againn faoi láthair. Tá súil agam go mbeidh aimsir níos fearr againn i mí Lúnasa.

I wish all Senators a good summer recess. I thank the staff of the House for their diligent work since the 24th Seanad commenced its business.

The first issue to which I wish to refer in respect of the Order of Business relates to the comments made by the head of financial regulation at the Central Bank during his appearance at the MacGill Summer School in my constituency. In my opinion those comments were completely out of line with public opinion. I refer, in particular, to his suggestion that the remuneration available for bank bosses should not be capped at €500,000. The head of financial regulation should not have made those comments and should not delve into such issues. I welcome the prompt response by the Minister of State and the Minister for Finance in totally rejecting his remarks. We learned last night that management at Allied Irish Banks supports Mr. Elderfield's comments and is seeking increases in bankers' pay. What else would one expect from those who brought this country to its knees? Each party in the Oireachtas should state unequivocally its total opposition to any increase in bankers' remuneration above €500,000. If people are not prepared to take a job on that level of pay, they should not be offered it. I ask the Leader for a debate in September on the status of the investigation into activities at Anglo Irish Bank. I hope the Minister for Justice and Equality, Deputy Alan Shatter, will come to the House for that debate. The full rigours of the law must be brought to bear on the people concerned.

I did not have an opportunity on yesterday's Order of Business to commend the Government on its achievement in securing a reduction of two percentage points in the interest rate payable on Ireland's bailout deal, which will bring about tangible savings to the Exchequer. Unfortunately, those savings will not be passed on to householders in any direct way via the budgetary process.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Brian Ó Domhnaill:** I do. This was a missed opportunity. Yesterday the Minister for the Environment, Community and Local Government, Deputy Phil Hogan, presented us with his proposals for the introduction of a €100 household charge from next January, an increase in refuse charges and a new charge for sewerage services to apply to the 440,000 people in rural areas who have their own septic tanks. Where will it all end? Yesterday was a black day for ordinary people and for those who own property, who are facing huge charges. Why was there no negotiation on that aspect of the EU-IMF package? The interest rate saving should have been passed on to consumers in the budget by dispensing with the introduction of the €100 household charge. We should have a debate in the autumn on the implications of all of these charges for householders.

It was regrettable that yesterday's debate on the Environment (Miscellaneous Provisions) Bill 2011 was guillotined. While I welcome the manner in which the Order of Business has been restructured — and credit must go to the Leader in that regard — it is unacceptable that legislation continues to be guillotined. Many of us had more to add to the debate in regard to special protection areas and so on.

**An Leas-Chathaoirleach:** That business was completed yesterday; the Senator cannot resume the debate on today's Order of Business.

**Senator Brian Ó Domhnaill:** I hope that as the Leader enjoys the Irish sunshine over the summer, he will reflect on the practice of guillotining Bills in this House. It should be a distant memory rather than protocol when we return in the autumn.

**Senator John Gilroy:** On 15 December 2008, the Swissco Limited plant in Little Island in Cork, manufacturer of ready-made meals, closed down, leaving 154 employees out of work. Despite a Labour Court ruling that these workers are entitled to two weeks redundancy in addition to their statutory payment and an agreement between management and staff to negotiate these and further terms, the company has walked away from its commitments. The plant was set up in 1974 and workers are owed in excess of €2 million. Many of the staff have worked there since the beginning and are finding it difficult in the current circumstances to find new employment.

An equally disturbing element of this case is that Swissco Limited received €3.9 million in IDA Ireland grant aid in 2006 and a further €4.1 million in 2007. In other words, it received Government funding of €8 million in the two years before it ceased operations in the State. The company's management structure is rather complicated. Its parent company, International Cuisine Limited, based in Durham in England, is owned by Singapore Airport Terminal Services Limited, which is owned by the Singapore Government. There have been several half-hearted attempts in the past three years to recoup the money owed to workers, including a farcical letter from the previous Minister for Foreign Affairs to Singapore Airport Terminal Services Limited. We have had every type of promise from other politicians, including the former Minister of State with responsibility for labour issues.

There are rumours that IDA Ireland is initiating legal proceedings to recoup its €8 million investment, but I have been unable to confirm this.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator John Gilroy:** Yes. I have been pursuing this issue since 2008 without much success. Will the Leader bring it to the attention of the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, for urgent investigation by his Department?

**Senator Trevor Ó Clochartaigh:** Ba mhaith liom tréaslú leis an Seanadóir Uí Catháin. Déanfadh sé an-difríocht má úsáidimid an Ghaeilge sa Teach seo eadrainn féin, idir na daoine atá fostaithe anseo san fhoirgnimh agus idir an pobal lasmuigh. Tréaslaím le gach éinne atá an Ghaeilge á úsáid acu. Molaim go ndéanfaimid i bhfad níos mó de amach anseo. Thar cheann Sinn Féin, ba bhreá liom gach dea-ghuí a ghuí ar mo chomhleacaithe, ar fhoireann an tSeanaid agus ar fhoireann Teach Laighin le linn an bhriseadh. Tá mé aireach chomh maith go bhfuilimid ag dul ar saoire, ach nach bhfuil fadhbanna ag dul ar saoire.

While we depart on our holidays today, there will be no reprieve from the problems facing the country. I feel somewhat guilty that we are adjourning so soon. Given the range of pressing issues that require to be addressed, we should have had another day of debate tomorrow. While I appreciate that we have moved forward and that work is ongoing, the public view is that we could do more and should set a better example.

I join Senator Brian Ó Domhnaill in calling for a debate on the new flat-rate household charge, which comes on top of the plastic bag levy, refuse charges, universal social charge, the increased cost of school transport, rising interest rates on mortgages and other debt, increased charges for sewage treatment services and so on. People are feeling the pinch and it is important

that the issues which make the headlines in communities are debated in this House. The people who will be most affected by this are those on low incomes, some of whom are already affected by the changes to working arrangements under the joint labour committee, JLC, system. Given his U-turn on this issue, the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Eamon Gilmore, should be called into the Chamber to explain his support for changes which will mean workers who are part of the JLC system will now earn little more than the minimum wage. That represents a complete flip-flop on the part of the Labour Party. What measures will the Government put in place to protect the position of workers on JLC contracts? My colleague, Senator David Cullinane, has repeatedly called for a full debate in the House on this matter, but it seems that certain Ministers' fatwa on journalists extends so far as a reluctance to come into this House to discuss pertinent issues.

The announcement that the presidential election will be held on a Thursday is a cause of disappointment to Sinn Féin. It will sideline many people who wish to vote. The Union of Students in Ireland has said it is not suitable to hold elections on a Thursday given that students studying away from home experience significant difficulties in travelling to and from their constituencies to vote. The arrangement is unfair and should be reviewed.

I have called on numerous occasions, as Gaeilge, for a debate on natural resources, achmhainní nádúrtha, but there has been no indication to date of when that might happen. Our natural resources offer a significant revenue opportunity for the Exchequer. It is only fair that the State should secure its fair share of benefits from our oil, gas, wind and wave resources. Given that oil exploration licences are currently out to tender, a debate on the issue with the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, would be timely. We must ensure the State secures the dividend to which it is entitled from all of our natural resources.

Guím gach ráth ar gach éinne don samhradh. Beimid ar saoire ach beimid ag obair linn. Níor mhaith liom go dtiocfadh an teachtaireacht amach ach an oiread go mbeimid díomhaoín ar fad, agus go mbeidh gach éinne bolg le gréine ar feadh mí Lúnasa agus tús mí Meán Fómhair. Ní bheidh — beimid ag obair linn sna toghcheantair. Guím gach ráth arís don samhradh.

**An Leas-Chathaoirleach:** I call Senator Martin Conway who has been given priority because he was listed yesterday but did not get in.

**Senator Martin Conway:** That is okay, a Leas-Chathaoirligh.

**An Leas-Chathaoirleach:** I am under orders from the Cathaoirleach.

**Senator Martin Conway:** In view of the fact that it is a glorious sunny day and we are breaking up on a positive note, I invite my colleagues to County Clare if they have not decided on where to go.

*(Interruptions).*

**Senator Martin Conway:** Senator Tony Mulcahy and I would be only too delighted to look after colleagues from any side of the House who decide to staycation in County Clare. One of the country's greatest tourist attractions is the Cliffs of Moher. I am delighted that the pickets have been removed and that all parties have returned to the negotiations. The Labour Relations Commission discussions have broken down and the matter has been referred to the Labour Court. I appeal to it to expedite the matter as a matter of urgency. I also appeal to both sides, management and unions, to bear in mind that what is happening at the Cliffs of Moher is extremely important in terms of the future of the tourism industry, given that the site has been entered for the competition to decide the seven wonders of nature. It would be

[Senator Martin Conway.]

wonderful if it was named as one of the seven top tourist attractions in the world. It is estimated that such a designation could lead to an additional 5 million tourists being attracted to the country every year.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Martin Conway:** I am coming to it in a roundabout way. The Leas-Chathaoirleach said I had priority.

**An Leas-Chathaoirleach:** The Senator is coming to it in a roundabout way.

**Senator Martin Conway:** I thank the Leader for the work he has done to ensure the project will be foremost in the mind of the Government. It is unfortunate that Fáilte Ireland has washed its hands of it and stated it is a matter for Shannon Development. I would like the Leader to write to Fáilte Ireland to point to the importance of the competition for Irish tourism, not just the industry in County Clare. He should ask the Government to instruct Fáilte Ireland to become an active participant in the project.

I wish everyone a nice, restful summer. We have been productive in what has been my first term in the House. The manner in which we have done our business has been extremely professional.

**An Leas-Chathaoirleach:** The Senator has done very well on his maiden voyage.

**Senator Thomas Byrne:** I am delighted the Family Home Bill, in my name and that of Senator Marc MacSharry, is on the Order Paper and listed for debate on Second Stage. If Senators have any doubt about it, they should contact FLAC which has provided briefing notes for a number of Senators on the Government side. Its comments on the Bill are generally favourable and while it has raised some issues about it, these have been dealt with in the overall context of Fianna Fáil policy. We have also discussed the Bill with the New Beginning group which was so successful in its court case this week. I pay tribute to it because it seems to involve genuine people concerned with protecting people in their homes. For those who have concerns about the Bill, I encourage them to consider the property law book by Andrew Lyall who points out that no guidelines are available to the Judiciary in regard to how it exercises discretion in granting repossession orders. That is what the Bill does — it fills a gap. I will not be accepting any ifs, buts or what ifs. This is a good Bill and if necessary, amendments can be made on Committees Stage.

A number of issues must be addressed regarding Phil's poll tax, as it will be called. He is setting neighbour against neighbour in council housing estates. Those who have bought their houses will be landed with the charge, while those who rent theirs, whether they are working or otherwise not in receipt of social welfare payments, will be exempt. My estate does not look like it is unfinished, but there are 50 empty units. Will I have to pay the charge? We do not know. The Government raised €400 million through a pensions tax in order to provide tax relief for the likes of Rupert Murdoch and Tony O'Reilly and we have not gained any benefit from it in terms of job creation. This poll tax will not be accepted. It is an unfair tax and there will be no requirement for local authorities to improve or cut services. Meath County Council has an excellent business development section which tries to attract business to County Meath. It is doing the job of the State agencies. There are great inefficiencies in local government, but this point has not been addressed. In this instance, there is an extra cost to the public. While we are expected to pay, there is no expectation that the local authorities will improve their services, answer the telephone or cut costs.

**An Leas-Chathaoirleach:** Is the Senator seeking a debate on the matter?

**Senator Thomas Byrne:** I am and asking that the matter to be examined again. There is an expectation that property owners will pay the charge in respect of a rented house, but that is not true if one considers the standard letting agreement, under which the tenant is usually liable for any current or future local authority rates or taxes on property. I suspect no owner will allow a tenant to get away with not paying the charge. The Government should stop blaming the European Union and the IMF. When we met them, we were told we had a national parliament and that it should throw this off the table.

**Senator Colm Burke:** I wish to follow up on the comments of Senator John Crown on the figures for County Roscommon. For the past few weeks I have been in discussions with a number of people involved in health care. The figures for the procedures they have carried out do not correspond with the figures given. One person has advised me they were credited with carrying out operations they had not done. These are the records sent from the hospital to the Department of Health. Will the Leader bring this matter to the attention of the Minister for Health? On the next occasion he is in the Chamber, he can deal with this issue to ensure proper records will be kept on the procedures and operations carried out and the information conveyed to the relevant authorities.

**An Leas-Chathaoirleach:** Is the Senator seeking a debate on the matter?

**Senator Colm Burke:** I am not calling for a debate but asking for the matter to be dealt with in order that proper records will be sent from hospitals to the central unit which records the numbers of procedures carried out. The information crediting consultants with operations is inaccurate, which raises serious questions about who is recording the figures. Records are kept very well in theatres but in-between the number of procedures seems to be incorrectly recorded.

People are sometimes critical of the medical professional. I spoke to someone at 9.15 a.m. who had been in the operating theatre for six hours last night. In an adjoining theatre an organ harvesting procedure was completed at 12.30 a.m. and the team flew back to Dublin to undertake appropriate transplants. Its members worked into the early hours of the morning. This shows the dedication and commitment of those involved in the medical profession and that we do not give them credit. We can be over-critical in how we approach some debates. I ask people to bear this in mind. The team in question worked very hard for many hours to ensure the quality of life of a number of patients would be utterly changed. I congratulate everyone involved in the medical profession. I ask the Leader to take into account the issue of records and how they are conveyed to a central unit.

**Senator Feargal Quinn:** It is interesting to find that this is the day the Leas-Chathaoirleach cannot ask if we are calling on the Leader to arrange a debate on an issue because the Houses are taking a break for a few weeks. I would like to give Members some homework to do. I was impressed by the words of the largest pharmaceutical company in Britain which stated the UK regime made it attractive to conduct more business there. It pledged to shift more manufacturing activities to Britain in response to the tax incentives offered. I would like to Members to do homework on the following issue. The Government did something similar in recent weeks in reducing the rate of VAT and the travel tax to provide an incentive for companies to conduct more business here. A very large number of those companies did not pass on that tax reduction. Our homework in the coming weeks is to remind those companies that did not pass on that reduction to do so. It is not easy to tell in some cases if they have done that because we would not remember what they were charging a few weeks ago but as far as I know all the newspapers

[Senator Feargal Quinn.]

have reduced their prices. I have been in a number of restaurants that brought down their prices but I am also aware of a number that have not done so. This applies to airlines too and a number have not reduced the travel tax or the value added tax, yet somebody in Britain is saying they will move their pharmaceutical business here because of the tax incentive introduced here. We have done that but I fear some of the businesses are not responding and if that is so, it is highly unlikely we will be able to make the case to any future Government to do the same.

**Senator Paul Coghlan:** On this glorious day when thoughts are turning to buckets and spades, sun, sea and sand, as alluded to already, we should remember that in the south west, the Leas-Chathaoirleach's own part of the country — Kerry, Cork and Clare — we have more blue flag beaches than any in many other parts of the country, which Senators are very welcome to visit. Further inland in that area is an iconic tourism project, Killarney House, about which there is heightened speculation that something very good is in the offing. I hope it is true and if it is, I would like to pay a brief tribute to the Minister and Minister of State in the Department of Transport, Tourism and Sport, Deputies Leo Varadkar and Michael Ring, and to the Minister for Arts, Heritage and the Gaeltacht, Deputy Jimmy Deenihan, who, through all the interest groups including the National Parks and Wildlife Service, the Office of Public Works, the local community and so on——

**Senator Thomas Byrne:** Where did all the other votes come from?

**Senator Paul Coghlan:** He put the decentralised Department building in Killarney to great use, and he is in the office every Monday morning at 9 a.m. or 9.30 a.m. meeting all of the interest groups.

**An Leas-Chathaoirleach:** Is that relevant to the Order of Business?

**Senator Paul Coghlan:** I believe it is, with respect. I would like to pay tribute to them and to Fáilte Ireland because Killarney House and gardens is in immediate proximity in the town yet is within the confines of the national park. It is fronted by the golden gates the Leas-Chathaoirleach would be familiar with——

**Senator Terry Leyden:** The golden gates to heaven.

**Senator Paul Coghlan:** ——and it could become the golden gateway to Killarney National Park, our foremost national park. It can be a beautiful civic space and amenity and can become the St. Stephen's Green of Killarney. The restoration of that property, which sadly has been allowed to become something of a ruin, would be a fitting tribute to the former owners, John McShane and his family, the man who built Washington, renewed the White House in 1852 and built the Pentagon——

**Senator Brian Ó Domhnaill:** He has a great memory.

**Senator Paul Coghlan:** It would be a tribute to the Earls of Kenmare and the late great Lord Castlerosse, who lived there until his death in the 1950s.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Paul Coghlan:** I would encourage the Leader, as was said earlier——

*(Interruptions).*

**Senator Paul Coghlan:** This is not the day to be overburdening the Leader but in fairness the Leader will be visiting it this coming Sunday. I do not know if he wanted me to say that but he will be there, please God.

**Senator Terry Leyden:** Is the Senator a director of the project?

**Senator Paul Coghlan:** I would encourage the Leader to spur on those relevant Ministers, who are doing such a good job, as is he and all of his colleagues with the consultation committee that is in the process of being set up. We had a wonderful debate with the Minister, Deputy Coveney, which I hope we will have more of in the autumn. We are going in the right direction. We should think positively, enjoy the beautiful day and wish the players in the Irish Open well. The flags of all the nations are flying well down there.

**An Leas-Chathaoirleach:** I thank the Senator for his three minute advertisement on Killarney.

**Senator Tom Sheahan:** We could have a sitting of the Seanad in Killarney House when it is——

**An Leas-Chathaoirleach:** Senator White, without interruption.

**Senator Mary M. White:** This morning in the Royal College of Physicians of Ireland I had the pleasure of attending the launch of the Irish Exporters Association's list of the top 250 exporters in the Republic and the top 50 in the North. We are privileged to have the global brands here. The top one, Johnson & Johnson, had exports worth €8.5 billion. Microsoft had exports worth €8 billion, and we have Google and Intel. We have a thriving exporting industry, led mainly by the multinationals. It is good to see that the Kerry Group is number 6 on the list of 250; Glen Dimplex is number 11; the Irish Dairy Board is number 15; and Glanbia is number 17. Our indigenous food and drink industry is most successful.

**A Senator:** Hear, hear.

**Senator Mary M. White:** Yesterday I drew attention to the dire straits of the 600 Irish suppliers to Superquinn and the overnight takeover of Superquinn by Musgrave. I am delighted to say that Musgrave will make a fund of €10 million available to the Irish suppliers, particularly the people who do not have credit insurance if the company to which they are selling goes out of business. The big companies I named earlier such as Intel, the Kerry Group etc. will have insurance against losses but the small indigenous companies employing five, 20 or 100 people could go out of business because they do not have credit insurance. They cannot afford to pay for the insurance but their small food industries are a major contributor to every parish and county.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Mary M. White:** The Bank of Ireland and AIB have worked in some way with Musgrave in providing the €10 million fund but I want them to cough up the other 35% of the approximately €50 million owed to those Irish suppliers. It is about time the screws were put on them, so to speak. I want to move an amendment to the Order of Business. I want to know the reason the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, can attend the MacGill Summer School in Donegal but he cannot come here.

**An Leas-Chathaoirleach:** The Senator is entitled to move her amendment——

*(Interruptions).*

**Senator Mary M. White:** Senator Cáit Keane is more impressed with the reality of the Seanad than her perception——

**Senator Cáit Keane:** When I am in the Chair——

**An Leas-Chathaoirleach:** ——but she cannot comment on the location of particular Ministers.

**Senator Mary M. White:** Are the Fine Gael Senators not mortified that the Minister for Jobs, Enterprise and Innovation, who is responsible for dealing with the biggest issue facing this country, namely, getting our 400,000 people back to work——

**An Leas-Chathaoirleach:** Is the Senator proposing an amendment to the Order of Business?

**Senator Mary M. White:** ——did not respect this House of the Oireachtas? How dare he?

**An Leas-Chathaoirleach:** Is the Senator proposing an amendment to the Order of Business?

**Senator Mary M. White:** I propose an amendment to the Order of Business that the Minister, Deputy Bruton, should return from Donegal and come into this House today to discuss what he intends to do about the indigenous businesses. We have a dynamic exporting sector but what about our domestic economy?

**Senator Tom Sheahan:** I am not calling for a debate or for any Minister to come before the House. I am looking for action on a very serious matter. In the course of my work during the week I made representations on behalf of a patient in my constituency who needs a very specific operation which necessitates a neuro-stimulator. Out of frustration the consultant e-mailed me yesterday from the department of pain management in St. Vincent's Hospital. That consultant has been instructed by hospital management not to operate on this lady because she is not from the Dublin region. There are only four centres that do this type of operation. St. Vincent's Hospital is the centre of excellence for pain management and for this surgery. Three other smaller hospitals do it, all of which are in Dublin. That consultant is instructed by hospital management not to operate on this patient because she is living outside the Dublin area. I do not want a debate or for the Minister to come into the House. I want action on this matter. I will give the details to the Leader. This lady is suffering cruelly with pain and she needs this operation but because of where she lives she will not be operated on. I know our health service is suffering but this is taking that to a new level.

**Senator Labhrás Ó Murchú:** Tá seans ann gur dea comhartha é go bhfuil an ghrian ag taitneamh. Seans go bhfuil Dia thar a bheith sásta linn toisc an obair atá déanta againn sa Seanad agus tá súil agam go mbeidh an scéal amhlaidh leis an bpobal. Tá sé fíor go bhfuil fuinneamh agus neart nua le tabhairt faoi deara sa Seanad seo. Gabhaim buíochas leis an gCeannaire agus le gach éinne atá freagrach as sin. Ní dóigh liom go bhfuil an obair maith á dhéanamh chun sinn féin a chruthú mar Sheanad. Séard atá i gceist ná go bhfuil muid ag díriú ar na rudaí is tábhachtaí — cúrsaí fostaíochas, cúrsaí airgid agus cúrsaí eile den saghas sin — de bharr an brú atá ann don phobal i gcoitinne. Tá súil agam, nuair a thiocfaimid thar nais tar éis an samhraidh, go mbeidh seans againn arís díriú ar rudaí a d'ardaíodh anseo gach maidin. Bíonn freagra le fáil ón gCeannaire gan amhras, ach is minic nach mbíonn ar ár gcumas freagra a fháil thar nais ó na hAíre iad féin. Tá sin thar a bheith tábhachtach. Leis an dul chun cinn agus an leathnú amach atá á dhéanamh ar an Seanad, tá súil agam go mbeidh seans againn díriú ar na ceisteanna agus sin a dhéanamh.

I suppose every day is an eventful day in the history of Ireland. Yesterday was eventful in Tipperary because the Minister announced that the two parts of the county would be amalgamated. I do not know whether this is good or bad news but I can tell the House that Tipperary was first divided in the 13th century to combat lawlessness at the time.

**Senator Tom Sheahan:** It is still there.

**Senator Labhrás Ó Murchú:** I can only assume the Minister's declaration yesterday indicates the county is now exceptionally law-abiding. Depending on where one comes from, one might assume the Minister is particularly happy with the progress of the hurling team this year. I am not sure of the reason. Irrespective of internal amalgamation in any county, such as amalgamation of the city and county councils, be it in Limerick or Waterford, for example, I genuinely hope there will never be amalgamation in respect of two or three counties, as mooted at one stage. I hope the Leader will keep an eye on this. My reasoning is that loyalty to a county is one of the most intrinsic elements of community life. This is diluted the moment there is amalgamation affecting two counties. I hope we are finished with that idea and that it will not be realised.

Yesterday at a committee meeting we discussed the appointment of a new chairman for the National Concert Hall. The debate widened very much into the area of arts and culture. I was very impressed with the unanimity of members regarding the importance of the arts and culture, not just to social life but also to economic life. I was very cheered when I understood the Minister for Arts, Heritage and the Gaeltacht would be appearing in the House yesterday or today to discuss this matter. He is a Minister for whom I have great regard, he is down to earth and there is no codology whatever attached to him. I would have liked the debate to have occurred before the summer recess and I hope the Leader will arrange for it soon, perhaps on the first day after the recess. There is a train of thought that arts and culture should be at the bottom of the list for funding but this does not take cognisance of their economic value and particularly the positive image of Ireland they generate abroad.

**Senator Trevor Ó Clochartaigh:** Hear, hear.

**Senator Labhrás Ó Murchú:** I hope that, in the very early stages of the next session, we will be able to discuss this.

I have raised on a number of occasions the 1916 commemoration, which is gradually approaching, and particularly the development of Moore Street. I would put my head on the block and go so far as to say that if we develop Moore Street in the manner suggested, we will not only have a reminder of the eventful historic period in question but also a huge tourist attraction at our disposal that would attract millions of people. We hear about the importance of the Alamo but it would be secondary to that of Moore Street. The Minister for Arts, Heritage and the Gaeltacht, Deputy Jimmy Deenihan, will probably be dealing with this. I understand he will be visiting Moore Street. Perhaps his visit could be combined with his visit to the House.

Tá súil agam go mbainfidh na Seanadóirí taitneamh as an samhradh. Chomh maith leis an Seanadóir Coghlan, I ask that those going to Killarney go via the Rock of Cashel and Brú Ború at its foot. They would all be very welcome because the significance of Brian Boru was that he united all the people of Ireland. When Queen Elizabeth II requested specifically that she be brought to Cashel, she must have been aware of the significance of the site in terms of it uniting all the people. Let this be our mantra in the next session of the Seanad.

**Senator Terry Leyden:** When the Senators are on tour, they might come to Roscommon also. The last High King of Ireland is buried in the abbey there so it might be nice to come along to pay tribute.

I thank Senator Crown for his comments on Roscommon County Hospital. The Minister for Health, Deputy James Reilly, should examine the Senator's statement. He said quite clearly that there is some confusion over the mortality rates at the hospital, reflecting in particular on the excellent work of Dr. Patrick McHugh, who served in the hospital as county physician from 1977 until this year.

The figures are quite dramatic: 12% in 2008; 4% in 2009; and 8% in 2010. The average is approximately 8%. The mortality rate reflects the general experience of patients throughout the country. It is not very fair to judge the work in any hospital on the basis of the number or condition of patients. Many patients are treated initially in Roscommon and then sent to Galway, where they are secured. The mortality rate at a hospital such as that in Galway does not reflect the reality of the work in Roscommon. The statistics are very unfair, therefore.

**An Leas-Chathaoirleach:** Has the Senator a question?

**Senator Terry Leyden:** The Minister, whom I do not believe will be here before the recess, should make a statement on this matter. The revelations are very difficult for and reflect badly on the excellent doctors and nursing staff who have worked in Roscommon in recent years. The statistics have certainly dented the morale in the hospital at a critical stage. We should reflect not on saving Roscommon hospital but on developing it. We have no choice but to proceed in this regard because the hospital is providing an excellent service.

Senator Crown has done a great service for the people of Roscommon and his fellow professional Dr. McHugh in trying to correct the figures in a very clear and comprehensive manner. Senator Crown's status is such that this will help the hospital. He has done a great service for the people of Roscommon and the medical profession in the county hospital. I thank him on behalf of the people of Roscommon.

I second Senator White's amendment to the Order of Business.

**Senator Eamonn Coghlan:** It would be remiss of me on the last day before the recess not to say a few words. It is 70 days since I first attended the Seanad. It has been most rewarding and fantastic to meet all the old and new Senators and the Members of the Dáil.

Senator Ó Murchú stated the arts and culture are not prioritised by the Government as much as other areas where funding is concerned. Six years ago or thereabouts, London was awarded the right to host the Olympic Games. Approximately four or five years ago, the then Minister responsible for sport established a task force to identify how Ireland could take advantage of this. I heard recently that tourism may be the driving force behind the Irish economy. Taking account of the leap year in 2012, today is exactly 366 days before the opening ceremony of the Olympic Games in London.

In recent months, before I came to the Seanad, I did some investigating when I heard various organisations in Ireland such as UCD, DCU and UL and young entrepreneurs were trying to bring various teams to Ireland to prepare for the London Olympic Games. To my knowledge, the National Aquatic Centre is the only organisation which has attracted a team, namely, the US synchronised swimming team. I am afraid it is too late. I do not know what work the task force has achieved to date but all indications are that the answer is "nil". I would love to know, because it will be a number of weeks before we return to the Seanad, what is happening with regard to taking advantage of the London Olympic Games and making it worthwhile for Ireland.

11 o'clock

While perhaps it is too late to bring teams to train in Ireland, it is not too late to attract the hundreds of thousands of tourists who will go to London to watch the Olympic Games. Why not attract them to Ireland to visit the ring of Kerry and Counties Clare and Mayo to see what a wonderful country we have. Irish sportsmen and sportswomen have brought much pride and boosted the morale and economy of Ireland, not only in recent years but in recent weeks. We are all very proud of them. In the coming days, the sportsmen in Killarney will show Ireland at its best, not only on the golf course but in the television pictures beamed throughout the world. What work has been done by the task force to take advantage of the London Olympic Games which are 366 days away?

**Senator Sean D. Barrett:** I was very pleased to hear Senator Coghlan compare Killarney national park to St. Stephen's Green. Those of us who live in the greater Dublin area will help him defend Killarney and I ask him to help us defend St. Stephen's Green because it is under threat from an extremely expensive and wasteful project which is damaging in environmental terms, namely to dig it up to make an underground railway station. I ask Senator Coghlan and the Leader to have a word with the Minister, Deputy Varadkar. He is inclined to cancel the project and the Ministers, Deputies Noonan and Howlin, might be happy with the money that would be saved. As we are on the topic of St. Stephen's Green, I compliment the Government on removing one of the eyesores in the area, namely, the Anglo Irish Bank sign. It was a great development.

**Senator Paschal Mooney:** Senator Ó Murchú and I share many interests. We had not discussed this in advance but I had also intended to call for a debate on the arts. The Leader explained during a previous sitting why he feels it is not possible to have such a debate before the recess and this is a pity. I am strongly influenced in making a contribution this morning by the comments of Colm McCarthy at the MacGill Summer School. He seemed to suggest we would not gain anything economically from promoting the arts. I must say I was somewhat astonished because this flies in the face of the reality, which is that the only heroes the Irish people look to are those in the sporting world and the arts. They are leading the field in this regard, as was explained. We are most definitely a country punching way above our weight in artistic and sporting endeavour.

I wish to lend my voice to those of Senator Ó Murchú and others in asking the Leader to introduce at the earliest possible opportunity a debate on the arts. It is important, if for no other reason than to allow the Minister, Deputy Deenihan, who has got off to a flying start, to come to the House and outline the Government's policy. I agree with Senator Ó Murchú that the Minister is a decent man. Such a debate might also help to improve the national psyche in that it would be an opportunity for all sides of the House to wallow in the national pride we have in our artists and sports people. Like many Members of the House I had the opportunity to visit the Abbey Theatre and I thank Senator Mac Conghail for allowing us that pleasure. We saw a play by a former Member of the House, Brian Friel, with whom I had the honour of sharing the Chamber. We also met some of the actors, who are wonderful people and great representatives of the continuing Irish theatrical tradition.

The storm clouds are gathering internationally with regard to the economy and I share Senator White's insistence — and that is the right word to use — that the Minister for Jobs, Enterprise and Innovation come before the House to outline the Government's policy. One has only to look at the financial press in the past two days, particularly the remarks of the former French finance Minister, Christine Lagarde, who is now in charge of the IMF. A newspaper article reports that she stated the single biggest threat now facing the world economy is the sovereign debt crisis. We are far from being out of the woods. In the same newspaper, David McWilliams bemoaned the fact that for the €1.1 billion we are giving away 14% of our

[Senator Paschal Mooney.]

major bank in what could be considered a fire sale but is being lauded as a sign of confidence in the Irish economy.

There are issues the House needs to debate. When the Minister, Deputy Bruton, was in opposition he spouted on national radio and television about everything that should have been done for the period he was not in government. Now that he is in government we do not see sight nor sound of him in the House. We deserve the courtesy of the Minister for Jobs, Enterprise and Innovation coming before the House——

**Senator Mary M. White:** Hear, hear.

**Senator Paschal Mooney:** ——because the economy is the single biggest issue, as Senator White stated. I hope the Leader will prevail on the Minister, whatever his reluctance is. I hear he is sulking for some reason. Perhaps the Leader will get him out of his sulk——

**An Leas-Chathaoirleach:** The Senator has made his point.

**Senator Paschal Mooney:** He might get a few weeks of summer sunshine and come to see us in September.

**Senator Michael Mullins:** I have no doubt the Leader will be able to organise bringing the Minister, Deputy Bruton, to the House early in the next session. I assure Senator Mooney the Minister is not sulking. He is heavily weighed down by the enormous mess——

**Senator Mary M. White:** You were not able to vote for him the last time for the leadership.

**Senator Michael Mullins:** ——he was left with——

**An Leas-Chathaoirleach:** That is a matter for the Leader.

**Senator Michael Mullins:** I ask that we use the same question and answer format we had for the debate with the Minister for Agriculture, Fisheries and Food, Deputy Coveney. I have no doubt the Minister will facilitate this.

I strongly support the request by Senator Ó Murchú for a discussion on the arts and culture. There is no doubt they have a huge contribution to make in the economic recovery of the country. Wonderful festivals are being held throughout the country and I must mention the two-week festival that concluded recently in Galway. As other Senators are extending invitations, I ask as many of them as possible to head west for the remainder of this week to enjoy the racing festival. When they are in Galway they should spread out to the east of the county and visit some of the wonderful tourist sites——

**Senator Trevor Ó Clochartaigh:** And the west.

**Senator Michael Mullins:** Yes, and the west. People naturally head west but they do not always head to the east of the county.

Yesterday, Senator Quinn raised the issue of the very low level of organ donation. We should have a very open and frank discussion on this in the Chamber. We need to do something dramatic to increase the level of organ donation in the country and the House should be used for a broad discussion and debate on it.

Unfortunately, people in every part of the country are seeing the enormous increase in the level of suicide, particularly among young men. Recently, I listened to a man speaking on the radio about 16 people he knew from his area in a county in the south of the country who had

lost their lives through suicide. This is a crisis of enormous proportions. If the numbers losing their lives through suicide were dying on the roads, a national emergency would be declared. The incidence of suicide is a national emergency. Will the Leader ask the CPP to invite an expert in this area to address the House to facilitate us all in having a frank discussion and to help us in order that we can help our constituents?

**Senator Maurice Cummins:** Ba mhaith liom mo bhuíochas a ghabháil don Seanadóir Byrne agus do Sheanadóirí eile ar son na hoibre a rinne siad sa Seanad agus sna rialacha nua atá againn anois.

I thank Senator O'Brien and other Senators for their comments on the improved ways we are going about doing our business and I hope the results of that will continue in the new session when we will experience new changes to Standing Orders, which will allow us to invite guests to the House who can inform us regarding various issues. It is hoped at least two people will address the House in the next session and that this will generate more coverage of the proceedings of the House. A number of Members have addressed the lack of coverage by the press. It is depressing that the McGill Summer School is getting more coverage than the Houses of the Oireachtas but the craic in Donegal is probably better than in Leinster House.

**Senator Paschal Mooney:** They were talking about fry-ups in today's newspaper.

**Senator Maurice Cummins:** Action speaks louder than words and we will go ahead and progress the reforms we initiated this term. We should expand on the new format we adopted when the Minister for Agriculture, Fisheries and Food attended the House. In that regard, the Minister for Arts, Heritage and Gaeltacht Affairs will probably come to the House on the first day of the new session for a wide-ranging debate on the arts and heritage and to address issues raised by Senator Ó Murchú and others. I hope a similar format will be used whereby the Minister and spokespersons will make statements, which will be followed by a question and answer session for the remaining hour and a half. That is the way we should try to make progress in the future.

I am delighted Tourism Ireland enlisted so many Senators to give a synopsis of what is available in various counties throughout the country and I am sure we will all avail of the beauty spots. I note Senator Crown's comments on Roscommon hospital. We have to move on and the Government's aim is to provide the best services for the people of Roscommon. With regard to his comments on Whitfield Clinic in Waterford, it is a matter of grave concern for the people of Waterford and the south east and we hope, in particular, there will be no threat to the radiotherapy facility. Over the past ten years commitments in writing were furnished and statements were made by former taoisigh and Ministers for Health and Children regarding the provision of radiotherapy services at Waterford Regional Hospital, which were never delivered on. A facility is available in the Whitfield Clinic and I hope it remains open and accessible to the people of the south east. An excellent service is provided at the clinic and I hope that will continue. The Government does not make appointments to the board of UNICEF Ireland.

Senator Keane referred to the difficulty with press coverage, which I have addressed. There are 34 new Senators and some of the older Senators are learning day by day. None of us professes to know everything.

Senator Ó Domhnaill raised the issue of the Financial Regulator's comments yesterday. The Government's position is clear on the salaries of bank officials and chief executive officers. It should not top €500,000 per annum.

With regard to the €100 household charge raised by many Senators, it was part of the bailout agreement. We have renegotiated quite an amount of the package, which we were told would be impossible to do. If anything further can be renegotiated, the Government will do it.

[Senator Maurice Cummins.]

Senator Gilroy has conducted significant research into Swissco Limited. If he wishes to pass any information he has to the Minister, I will facilitate that.

Senator Ó Clochartaigh referred to the problems that remain for the country. While it was good to secure the reduction in interest rates and longer maturity dates for the loans, we still have major problems to deal with and I hope they will be addressed during the Government's term in office. I will try to arrange a debate on natural resources in the next session.

Senator Conway referred to the Cliffs of Moher. The Minister for Transport, Tourism and Sport is well aware of the project, given the Senator has highlighted it on numerous occasions in the House. Like Senator Byrne, we all welcome the debate on the Family Home Bill 2011 and I am sure we will have a good debate.

Senator Colm Burke raised the issue of proper records being conveyed from hospitals to the HSE or the Department of Health. I can convey his concerns to the Minister. Everyone would like to note the undoubted dedicated skills and commitment of medical professionals in the country. They do an excellent job. We can be critical at times but, on the whole, they are wonderful people who provide an excellent service to the community.

Senator Quinn raised the issue of companies passing on the recent reduction in VAT and other taxes and I agree with his comments. I listened to a radio programme during which there were many complaints by members of the public about companies, restaurants and so on that had not passed on the reductions. The Minister will monitor this, as he said he would when he implemented them.

Senator Paul Coghlan asked about the restoration of Killarney house and gardens. He has piloted this project over a long number of years and it appears his wish will come true and that the house and gardens may be refurbished in the near future.

Senator Mary White is correct to highlight the success of our exporters and the Irish Exporters Association. Exports are important to our economy and this sector is performing well. I note her comments about the Musgrave group. I assure her and other Members that the Minister for Jobs, Enterprise and Innovation will attend the House during the next session and, hopefully, he will be here early in the session. Reference was made to him attending the McGill Summer School in Donegal but I understand a few Fianna Fáil Senators are present as well.

**Senator Paschal Mooney:** Just one.

**An Leas-Chathaoirleach:** The Leader, without interruption.

**Senator Maurice Cummins:** Senator Sheahan raised an important issue regarding a constituent of his and there seems to be discrimination regarding where the person lives in the context of receiving pain management. This is a matter that can be raised with the Minister for Health. It is disgraceful if people are discriminated against in receiving medical treatment because of where they live.

Senator Ó Murchú asked for a debate on the arts. When the Seanad resumes, the Minister for Arts, Heritage and the Gaeltacht, Deputy Jimmy Deenihan, will attend the House. I also note the Senator's point about the unification of the two Tipperary county councils. A few weeks ago I did not want to hear much about Tipperary after Waterford's defeat in the Munster hurling championship.

Senator Eamonn Coghlan raised the report of a taskforce on how Ireland could take advantage of the London Olympics. When the Seanad returns would be an opportune time to have a debate on the benefit of sport. The Minister of State at the Department of Tourism, Culture

and Sport, Deputy Michael Ring, is enthusiastic about his portfolio. I will invite him to the House to address the taskforce's report on how we can take advantage of next year's London Olympics.

I note Senator Barrett's point about metro north and St. Stephen's Green. I do not know what the decision will be on this matter.

Regarding Senator Mooney's point about the Abbey Theatre, I, along with many other Members, recently attended Brian Friels's *Translations* at the Abbey Theatre and was struck by the number of tourists at the performance. When I inquired further, I was informed tourists make up a sizeable number of ticket sales. The arts are a tourist attraction and that should not be lost on Colm McCarthy and others.

**Senators:** Hear, hear.

**Senator Maurice Cummins:** Senator Mullins inquired on the format for question-and-answer sessions with Ministers. I hope there will be such sessions with the Minister for Arts, Heritage and the Gaeltacht, Deputy Jimmy Deenihan, and the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton.

Senator Mullins raised the matter of increasing the level of organ donations. It could be debated on Private Members' time. Regarding his point on suicide, it is a national emergency and having an expert to attend the Chamber for a debate on it should be examined by the Committee on Procedure and Privileges.

I wish everybody a happy, enjoyable and relaxing holiday. I thank the Cathaoirleach and the Seanad staff who have to put up with us and all the changes we have to make.

**Senators:** Hear, hear.

**An Leas-Chathaoirleach:** Senator White moved an amendment on the Order of Business, "That statements on indigenous industry be taken today." Is the amendment being pressed?

**Senator Mary M. White:** I appreciate the Leader's point that the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, will attend the House in September. I have a huge responsibility as Fianna Fáil Seanad spokesperson on jobs and enterprise, however, and must insist that the amendment be put.

Amendment put:

The Seanad divided: Tá, 13; Níl, 29.

Tá

Byrne, Thomas.  
Daly, Mark.  
Leyden, Terry.  
MacSharry, Marc.  
Mooney, Paschal.  
O'Brien, Darragh.  
O'Sullivan, Ned.

Ó Clochartaigh, Trevor.  
Ó Domhnaill, Brian.  
Ó Murchú, Labhrás.  
Walsh, Jim.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Bacik, Ivana.  
Barrett, Sean D.  
Bradford, Paul.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Eamonn.

Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Crown, John.  
Cummins, Maurice.  
D'Arcy, Michael.

Níl—*continued*

Gilroy, John.  
Harte, Jimmy.  
Hayden, Aideen.  
Henry, Imelda.  
Higgins, Lorraine.  
Keane, Cáit.  
Mac Conghail, Fiach.  
Moloney, Marie.  
Moran, Mary.

Mulcahy, Tony.  
Mullins, Michael.  
O'Donnell, Marie-Louise.  
O'Keeffe, Susan.  
Quinn, Feargal.  
Sheahan, Tom.  
van Turnhout, Jillian.  
Whelan, John.

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

Amendment declared lost.

**An Leas-Chathaoirleach:** Is the Order of Business agreed to?

**Senator Mary M. White:** On a point of order, the people who voted against me on this should be embarrassed.

**An Leas-Chathaoirleach:** That is not a point of order.

**Senator Mary M. White:** This is about jobs, the economy, people doing jobs and small and medium businesses. Those who voted against the amendment should all be ashamed of themselves.

**An Leas-Chathaoirleach:** That is not a point of order. The Senator should resume her seat.

**Senator Tom Sheahan:** The Senator should move to Donegal.

**Senator Mary M. White:** All the big shots over here should also be ashamed of themselves.

**An Leas-Chathaoirleach:** Is the Order of Business agreed to?

**Senator John Crown:** On a point of order, this is way down the list on the scale of things in my life about which I am embarrassed.

**Senator Mary M. White:** Should we not support business to create employment? I know the difference it makes in people's lives when they get a job.

**An Leas-Chathaoirleach:** Is the Order of Business agreed to?

Question, "That the Order of Business be agreed to", put and declared carried.

### **Criminal Justice Bill 2011: Committee and Remaining Stages**

**Acting Chairman (Senator Terry Leyden):** I welcome the Minister for Justice and Equality, Deputy Alan Shatter. We are on Committee Stage. We will deal with each section.

Sections 1 to 18, inclusive, agreed to.

### SECTION 19.

Question proposed: "That section 19 stand part of the Bill."

**Senator Paul Bradford:** It is a little confusing. I refer to section 19 in the Bill as passed by Dáil Éireann which relates to the withholding of information. We had a brief discussion on this matter on Second Stage. The Minister might outline what the new provision will mean, what changes it introduces and how it will impact on legal service officers and others who engage with clients. Does it introduce a new onus on such people to be more forthcoming? What substantial difference is introduced by the section?

**Minister for Justice and Equality (Deputy Alan Shatter):** I again thank the Seanad for taking the Bill today and my colleague for raising the issue.

Section 19 is a very important section. It is worth recording what it states before I comment on it. Subsection (1) states:

A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in—

(a) preventing the commission by any other person of a relevant offence, or

(b) securing the apprehension, prosecution or conviction of any other person for a relevant offence, and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.

The relevant offences are the offences referred to and listed in the Schedule to the Bill. They are, essentially, offences that could globally be referred to as white collar crime offences.

Subsection (2) describes the position if someone is found guilty of an offence:

A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

The importance of this provision is to ensure, essentially, that when someone is aware that others are engaged in white collar crime or are planning to effect a crime that would fall into that category there is an obligation to report it to the Garda in order to assist it in either preventing the commission of to crime or in the investigation of the crime. There are a number of obvious examples that could be given.

For example, one could take a very simple situation of a private limited company where an employee is concerned about the manner in which financial matters are being dealt with in that company. He or she may be concerned that there is an attempt to defraud individuals that the company is trading with. There may be a concern that there is an attempt to defraud the Revenue. There may be a concern, perhaps, that a managing director of the company is trying to defraud the company. It may be an internal issue relating to a company. It does not have to be a limited liability company. There may be a business that is a partnership. Let us take some of the areas that have been in the public arena. Let us deal with the profession of which I was a member for many years. There may be a concern about an assistant solicitor working in a solicitors' firm, that a partner or a member of that firm was misusing clients' funds or was giving false undertakings to banks, possibly with regard to their own financial arrangements. Take, for example, instances we are aware of, that have occurred and been reported as resulting in individuals being struck off as solicitors by the Law Society where, perhaps, a solicitor gave undertakings to a series of different financial institutions in order to obtain loans that he or

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she would provide a particular property as security for the loans and it turned out that the property might have been adequate security for one loan with one financial institution but would not be adequate security for a range of similar loans with a multiplicity of institutions, none of whom had to wit to find out if the property was already pledged as security to someone else. That could result in a report.

Let us take a global banking issue without any particular reference to any institution in the State. I want to be careful to say nothing as Minister that might prejudice any investigation or prosecutions that might take place. If there were individuals within a banking institution who were concerned that there was a degree of false accounting, a presentation of profitability or capital values which would mislead shareholders, the stock market or investors or who were aware of these events, they would be under an obligation, under section 19 of this Bill, if they had knowledge that could prevent the commission of crime to report it to the Garda Síochána, or if they were aware that crimes were committed to assist the Garda in its investigation.

What is very important with regard to section 19 is the linkage with the whistleblower provisions in the Bill which seek to ensure that where people in good faith make a report to the Garda on an issue about which they are concerned that cannot detrimentally impact on their employment or result in losing their job, or being discriminated against in any shape or form in their job, or being prevented or blocked from promotions. It contains a whole range of protections.

Where does this change the law? At the moment, there is not as clear a provision in our existing law that creates those obligations nor do we have the whistleblower protection in the manner which is prescribed in this legislation. If in the context of the appalling decisions made within the banking sector, by financial institutions, and if in the context of the events of recent years, a person in a junior or senior position, in any of the financial institutions that got into trouble, was of the belief that criminality was involved in the manner in which an institution or a senior person in that institution was conducting business, under this legislation that knowledge would have required them to report it to the Garda Síochána and it would have been a very specific identifiable offence to cover it up. In the context of investigations that are current, when this legislation is enacted, people who have information that can assist the Garda in an investigation, who may be guilty of no criminality themselves, but they have information and they have not come forward with it, it makes it crystal clear that they have a legal obligation to give that information. Should they fail to do so, they themselves, if it emerges that they knew of or had access to information that would be of assistance, could be liable to a criminal charge. We know that in the context of investigations that occur, be it the banking crisis which the State has had to deal with or other areas of the law, there are on occasions individuals who have information that could assist the Garda in the investigation of serious crime or they may have documentation, or access to electronically held information, who may choose simply to keep their head down and do nothing. Some may do it out of fear for their physical safety and some may do it out of fear that it could detrimentally impact on their future employment positions.

Section 19, linked in to the whistleblower provisions, not only provides an incentive to be of assistance, it makes it a criminal offence to fail to be of assistance while at the same time giving a guarantee that if one provides assistance in good faith, it is not something that can be used to undermine one's employment position and it ensures that the protections needed in that context are available.

**Senator Denis O'Donovan:** I am in favour of the provisions of the Bill. I have two brief questions to which the Minister may not wish to respond immediately. The Minister touched

on an issue that I meant to raise yesterday in regard to the abuse of solicitors' undertakings. There is evidence in certain instances re some rogue solicitors of abuse where undertakings were given on several occasions for the same property. Can a mechanism be introduced such as registering independence whereby solicitors' undertakings can or should be registered to avoid that recurring because the system is open to abuse and has been so proven. Perhaps those well-publicised cases are not the conclusion of that particular issue with regard to undertakings. I am aware that banks and lending institutions are much more wary in regard to solicitors' undertakings and every solicitor's office is trawling through the past ten years as to when they gave undertakings. Most of these are innocuous where one returns the deeds or stamps and registers the documents.

My second point concerns legislation. Realising that legislation, by and large, cannot be retrospective, how does the Minister see the legislation being helpful in, say, the Anglo Irish Bank investigation? Certain events have taken place during the past three or four years and while the legislation *per se* cannot be retrospective, parts of the Bill can be helpful to ongoing investigations which the Garda may be conducting without breaching the confidentiality of such inquiries.

**Acting Chairman (Senator Terry Leyden):** Does the Minister wish to reply?

**Deputy Alan Shatter:** Yes. I thank the Senator for the questions he has raised and will take the second query first. The second one is very much to the point. The Senator is absolutely right, one cannot retrospectively criminalise a failure. If an individual had information on, say, 1 February 2010, they should have provided to the Garda in regard to current investigations and failed to provide it — it is not, of course, an offence, as we stand here today, for them to have failed to provide it. Let us assume this legislation is passed and signed by the President and is operative in, say, August. The person who had the information previously still has it today. If it is information they know of or information to which they have access, they still have it. At that point in time there is an obligation on them to provide it and if they do not within a reasonable period provide it to the Garda and if it emerges that this was information they concealed, which would assist the Garda in a current uncompleted investigation in respect of which no prosecution has yet ensued, they will be liable to be charged. I do not want to beat about the bush.

If there are people today who have information that they have not yet made available to the Garda Síochána with regard to the investigations taking place into our financial institutions, and if they have access, for example, to information held electronically that the Garda does not yet know about, and if they know how to access that information and have not revealed it, I want a message to go out from this House that following the enactment of this Bill they will be under a legal obligation to assist the Garda in its inquiries. Should it emerge, following the enactment of this Bill, that they failed to do so, they themselves will be liable to criminal charge. This is why this Bill is so important in the context of current investigations.

Current investigations will be assisted in the context of the Garda in relation to other provisions being able to make application to the courts — the District Court — to access documentation electronically held, information that may be held by witnesses and that would assist the investigation. Section 19 applies to people who are concealing and continuing to conceal where there is a current investigation in respect of which no decision has been made to prosecute.

Indeed, even where a decision has been made to prosecute, if the prosecution has not yet ensued and the trial has not taken place, under this legislation, a person would still be under an obligation to bring that information to the attention of the Garda because it would be

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relevant to the alleged committal — I must be careful in using that word — of a criminal offence. This is why this legislation is so important and why, on a sunny Wednesday at the end of July, the Seanad is sitting specially to assist us in completing its enactment before the summer vacation.

On the second question raised by the Senator, there was an appalling laxity with regard to dealing with undertakings. What happened with solicitors who gave undertakings that should not have been given with regard to bank borrowings that they themselves were engaged in was a product of the failure of the banks and financial institutions to provide adequate records and oversight. There was a lack of records of undertakings given. I share the view of the Senator that mechanisms to record undertakings are desirable, and I know the Law Society has a new approach to this issue. That is something we must consider further to ensure we have systems in place to prevent this type of thing from happening again. Of course, it was primarily the consequence of individuals behaving in a fraudulent manner by misrepresenting their financial circumstances and not making clear the nature of securities previously given to banking institutions. It was a product of circumstances about which we need to be cautious. As a member of the legal profession, I am conscious of this.

12 o'clock  
The legal profession, like any other profession, is not perfect; probably no profession will ever be perfect. There will always be individuals in every profession who misbehave. Many years ago, however, the position with regard to borrowing from a bank or any other financial institution was that the financial institution would have its own solicitor checking documentation and the borrower would have his or her solicitor; if it was a solicitor borrowing, he would probably represent himself. At any rate, the bank would have its own solicitor who would check documents. The criticism at the time was that the borrower ended up having to pay for two lawyers. If he was a solicitor he would presumably not pay himself for the work he did when he borrowed on the security of property he owned, but the ordinary borrower who was not a lawyer would end up paying his own solicitor plus the cost of the bank's lawyer whose job it was to ensure the documentation was in order.

In a move to try to reduce legal expenses for the public — a move that was well-intentioned — banks stopped employing their own in-house lawyers or other firms of solicitors to check that adequate security was given and began to agree to take undertakings from solicitors. Ninety-five percent of those in the legal profession, in fairness to them, dealt with those issues in a correct, trustworthy and honourable manner, and those 95% are now paying what I would describe as the cost of the small number of individuals who went rogue and misused the giving of undertakings for personal gain. This has resulted in enormous compensation claims against the solicitors' compensation fund, which is funded by honest solicitors, who are now picking up the tab for those who did go rogue.

There is a concern to ensure that where solicitors have been engaged in criminality and have been struck off, court proceedings by way of criminal prosecution should, where appropriate and within a reasonable period of time, be taken by the Director of Public Prosecutions. As Minister for Justice and Equality, I have no means of communicating directly with the Director of Public Prosecutions, who is, rightly, an independent officer by statute, but I am concerned that when the Garda completes an investigation into alleged criminality by members of the solicitor profession — or, indeed, any other profession — all appropriate prosecutions are initiated within a reasonable period by the DPP. Measures should not be unduly delayed and there should be no sense, whether we are dealing with alleged criminality in the banking sector, the legal profession or any other profession, that individuals within any particular group have impunity with regard to their bad conduct or alleged criminal conduct. We await the outcome of the consideration the DPP is currently giving to files that have been furnished to him.

**Senator Feargal Quinn:** I am fascinated by what the Minister has said. I wanted to refer to Senator O'Donovan's first query, because it seemed to me the question of retrospective legislation was sacrosanct but the Minister has opened my eyes to other possible situations. For example, a person may have opened a book last week and discovered something he or she had not known before. Although it may not have been a crime not to report this last week, when we pass this legislation, it will be a crime if the person does not report it at a later stage. This is a valid and correct point. In other words, the crime is the fact that the person has the knowledge but has not disclosed it. I wonder whether most people know that. It seems there will be a need to publicise the provisions this legislation will introduce. I can well imagine a person who thinks it is not illegal for him or her to keep quiet about something now, but when the legislation is passed, it will become illegal for the person not to pass on something they learned the previous month or the previous year. There will be a need to publicise it.

**Deputy Alan Shatter:** I agree with the Senator. I hope that what I have said today will receive some publicity; he can be assured it will be publicised. Of course, the provision does not apply to every bit of tittle-tattle, it refers to information that will provide, in the phraseology of the Bill, material assistance to the Garda in either preventing the commission of one of scheduled crimes or assisting in the investigation into such a crime after it is committed.

It is important that what we do in this House and the implications of the Bills we enact in the Houses of the Oireachtas are understood. The Senator can rest assured that I will be doing my best to ensure that when the legislation is signed by the President and brought into force, people understand the implications of this provision. The debates in the Dáil and in this House received some publicity and I am sure the Garda will make known the implications of this provision to individuals it believes have material information available to them that would assist in either preventing the commission of one of the designated crimes or the investigation of a crime it believes to have already been committed.

Question put and agreed to.

## SECTION 20

Question proposed: "That section 20 stand part of the Bill."

**Senator Ivana Bacik:** I would like to raise a question I asked the Minister regarding section 20 on Second Stage yesterday. This section, which deals with whistleblower protection, received great support on Second Stage. I believe it was added on Report Stage in the Dáil. At that point the Minister said that comprehensive legislation on whistleblowers would be introduced, as is the commitment in the programme for Government, in the medium term. I asked yesterday if there was any sense of what the medium term was or if he could provide a timeframe. He helpfully said he would be dealing with some specific questions when we came to particular sections on Committee Stage, so I thought I might ask the question again now.

**Deputy Alan Shatter:** I apologise to the Senator for not responding to that yesterday. The Minister for Public Expenditure and Reform, Deputy Howlin, has responsibility for producing the general whistleblower legislation, which is to apply across the public sector. We are conscious that what I describe as fragmented whistleblower provisions are already in existence in different Acts enacted by the Houses of the Oireachtas. In a sense, what we are doing in today's Bill is to introduce a specifically focused whistleblower protection provision, which will form part of what could, in a few days' time, be described as the fragmented spread of whistleblower legislation. The Department for which the Minister, Deputy Howlin, is responsible is examining bringing it together in one comprehensive whistleblower Bill, which the Government

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believes, if possible, is desirable. Because of the heavy legislative schedule it will be published, if not before the end of this year, we hope, early next year. I would not say it will be published in the early autumn; it will be towards the end of this year or early next year. Work has been commenced on its preparation.

Question put and agreed to.

Section 21 agreed to.

## SECTION 22

**Senator Feargal Quinn:** I move amendment No. 1:

In page 30, after line 48, to insert the following subsections:

“(3) Any judgement or order against a company disobeyed may by leave of the court, be enforced by—

- (a) sequestration against the property of the company,
- (b) attachment against the directors or other officers of the company, or
- (c) sequestration against the property of such directors or other officers.

(4) An application may not be made, in the foregoing circumstances, for attachment against directors or other officers or for sequestration against their property unless the judgement or order of the court to which the application relates has contained a statement indicating the liability of such persons or of their property to attachment or sequestration, as the case may be, should the judgement or order be disobeyed by the company.

(5) In this section “attachment” and “sequestration” have the same meaning as they have in rules of court concerning the jurisdiction of the High Court and the Supreme Court.”.

This amendment is self-explanatory. When I became involved in preparing the Construction Contracts Bill, which was introduced in the House last year and which I hope will become law in the next few months, my attention was drawn to the number of contractors and developers who had not paid subcontractors. I assumed it was comparatively easy for the subcontractor to get the money he or she was owed if the contractor had the money but I discovered that in many cases the contractor had money but that the payment of subcontractors was not being enforced.

The proposed new subsections seek to cure what many subcontractors and suppliers call white collar crime — companies ordering goods and services and hiding behind the protection of limited liability and not honouring their debts. What I recommend in this amendment is already in law but it is contained in secondary legislation; it is provided in the rules of the Irish High Court, Order 42, rule 32. What I propose in this amendment will highlight this rule by moving it into primary legislation, which is a recommendation of the statutory Company Law Review Group that goes back to 2007. This expert group has already recommended that this be provided for in the new companies Bill 2012.

Companies that are solvent and pay their debts have nothing to fear from this proposal. However, if a company is successfully sued in the District, Circuit or High Court and a High Court order is obtained requiring it to pay and it does not do so, it will be in contempt of court. If it continues to disobey or fails to cease trading, technically under Irish company law, as it currently stands, if one cannot pay a Bill of more than €1,300 within 21 days and the debt is

not disputed, one is regarded as being insolvent and a creditor can have one's company wound up by the court. The proposed new subsections would send a very clear message to the corporate community, namely, to pay its bills or if it continues to trade in perhaps a reckless fashion and ignores a court judgment, it will face attachment and committal and risk having its personal property seized for failure to pay company debts.

The business community desperately needs greater protection here. It cannot wait until the companies Bill is eventually enacted which may not happen for another year or two. There is an opportunity to introduce this provision in this legislation; it is already down on paper in the rules of the Irish High Court and, therefore, it is capable of being introduced at this stage, although I can understand why the Minister may not be enthusiastic about accepting it today.

**Deputy Alan Shatter:** I have great sympathy with the case made by the Senator. It would be a very good thing to have this in legislation and not just in the rules of court. I am very conscious of the difficulties that have affected individuals in circumstances where court orders have been made and there has been failure to comply with them on occasions by individuals who appear clearly to have the assets to facilitate their complying with them and who, for sheer bloody-mindedness, do not do so or because they have a perception that if they lengthen things out unnecessary, the individual who is owed money will run out of resources to continue to pursue them through the court system. That is very much an abuse of the court system and it is something I want to see brought to an end. In the case of some individuals, no matter what provisions are introduced, inevitably people will be brought back to court.

In the context of this section, the text of the amendment is identical to section 54 of the draft companies Bill, which deals with enforcement of orders and judgments against companies and their officers. My officials have been in consultation on the Senator's amendment with the Department of Jobs, Enterprise and Innovation, which has responsibility for company law. Fortuitously, one of the few areas of law that does not seem to fall within the aegis of my Department is company law generally because we have an enormous spectrum of issues that are within the Department's jurisdiction.

The amendment the Senator proposes is not a criminal law provision and this is a criminal justice Bill effectively. It would be completely out of place in the Criminal Justice Bill before the House.

Section 54 of the draft companies Bill is one single provision within a larger, carefully constructed and interlinked wider series of provisions contained in a coherent and comprehensive code of company legislation. Its inclusion on its own in a criminal justice Act instead of a companies Act would undermine the coherence of the company law code.

Regarding progress on the companies Bill, I am advised that pillar A, comprising approximately two thirds of the Bill, was published on the website of the Department of Jobs, Enterprise and Innovation on 30 May 2011 and that work is advanced on the drafting of the remaining provisions of the Bill, those that will be described as pillar B. It is expected that the drafting of these provisions will be completed in the next 12 months and that the Bill will then be published.

Unfortunately, I am not able to accept the Senator's amendment, even though I have a great deal of sympathy with it. It falls outside my jurisdiction to deal with the companies legislation and I must be guided by the views expressed by my colleague in the Department of Jobs, Enterprise and Innovation that the matter is more appropriately dealt with within a coherent company law structure, as opposed to simply being picked out and put into this Bill. It is useful to use this debate to highlight the need to address this area and the huge importance of ensuring that where people are under obligations pursuant to court orders to make payments, that those

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payments are made and that we have an effective enforcement structure that facilitates dealing with those who are recalcitrant and do not regard the obligations imposed on them by the courts with the seriousness that they deserve.

**Senator Feargal Quinn:** I thank the Minister for his explanation. I was not aware of all detail of which he has informed me. I can understand why this measure may not be appropriate to include in a criminal justice Bill, although if someone is found to have willfully refused to pay something the court has charged them to pay, that is very close to being criminal. The Minister said that the companies Bill that will be introduced next year will probably include a provision like this if not exactly this one because this provision is the same as that included in the rules of the High Court. I appreciate the Minister's words and his explanation. I look forward to ensuring that this provision will be included in the companies Bill when it is introduced next year, and I understand that is not the Minister's responsibility but the responsibility of another Minister.

Amendment, by leave, withdrawn.

Section 22 agreed to.

#### SCHEDULE 1

Question proposed: "That Schedule 1 be Schedule 1 to the Bill."

**Senator Ivana Bacik:** I wish to raise an issue about the extent of the offences covered under Schedule 1.

This Schedule deals with the list of relevant offences defined under section 3. Most of those offences clearly cover the area we all understand to be white collar crime. The Minister added section 13(5) of the Unit Trusts Act 1990 in the Dáil on Committee Stage and pointed out that this was an offence requiring generally a complex investigation. Section 3 gives the Minister power to specify further relevant offences relating to a number of areas and it goes on to say if the Minister considers that it would be appropriate to add other offences "by reason of the nature of the offence ... and the prolonged period of time that is generally required for the investigation of such an offence as a result of the complexity that generally arises in such an investigation ....". It goes on to list why these investigations into white-collar crime tend to be complex. All of us accept that, which is why we accept the section 7 power to suspend detention, which is quite a significant departure from the current normal rules on detention under the 1984 Act.

I have a concern, raised by other criminal lawyers, about the scope of the offences allowed for under the Schedule. Most are very specific white-collar crime offences — under the theft and fraud offences heading there is an offence under section 4 — the standard theft offence — and sections 17 and 18 of the Criminal Justice (Theft and Fraud Offences) Act 2001. Section 4 is the theft offence, which can be as minor as shoplifting or as significant as a major white-collar crime. Sections 17 and 18 relate to handling and possession offences, which can range from minor to major incursions. Both are set out as indictable offences in the 2001 Act. Section 53 of that Act allows for summary trial, and in practice many section 4 thefts are prosecuted through a summary trial mechanism.

We all have a very clear idea about the sort of offences this Bill is designed to cover. The suspension of detention periods in section 7 should be used for offences where investigations are complex and the Garda may have to pause to examine documents or computer files. There is a valid concern that the Bill would allow for section 7 to be operated even in respect of an

offence that may ultimately be quite minor. I seek an assurance that this will not be done and that we might review the legislation if gardaí apply the provisions of the Bill to crimes that do not fall within the white-collar crime or complex investigation definition we have provided for.

I made a point in respect of the section 7 power on Second Stage. It is operable on the word of a member in charge. There are very extensive powers provided to members in charge. They have tended to be at a fairly junior level in a Garda station in my experience and they would not be as senior as gardaí running investigations. The Minister has a very extensive burden of legislation to come in the autumn, as promised, but it may be worthwhile to examine the nature of powers given to members in charge and if it is appropriate that the safeguards built into powers like the section 7 suspension power are the responsibility of a member in charge rather than a more senior garda. It could be appropriate to adjust that in future.

The key point in the Schedule is the scope of offences covered. I know the offences of burglary and robbery are excluded and would not be seen as white-collar crime offences. Theft and possession offences may be classed as white-collar crime but, equally, they may not be. The vast majority of thefts prosecuted are not white-collar crime. The concern is whether section 7 can be used where the section 4 offence of theft is being charged and where circumstances do not indicate white-collar crime or complex investigation.

**Deputy Alan Shatter:** I will respond to the member in charge issue. I assume the member in charge in the Garda Síochána will operate in good faith in dealing with section 7 matters. There are specific internal rules within the Garda in the context of applying these powers and I have no reason to believe they will not be properly applied in the context of the legislation. If some difficulties arise in the future we can revisit the matter but the way it is drafted currently is appropriate.

I take on board the Senator's comments. Some theft charges are extraordinarily simple. I recall being a very young lawyer, very wet behind the ears, with one of my first cases being a gentleman who broke into a butcher shop just off Grafton Street. He was caught walking down Grafton Street with a sack over his shoulder containing a number of chickens. It was late in the evening and he was unable to explain to the arresting garda why he had such a large number of chickens in a sack. The crime was discovered because the butcher shop window was broken. My capacity was tested to persuade the District Court judge to grant the man the benefit of the Probation Act as he was employed with the gas company and was the only person supporting his mother. I asked him why he felt the need to break into the butcher shop and I remember his response being that he had nothing else to do with his time that evening. Two weeks later he was back at my law firm having been arrested for another offence and at that stage I was of no use to him. He was sent down as a guest of the State at Mountjoy.

Theft can be very simple and may not need the usage of the powers in this Bill. I do not envisage that in simple cases prosecuted in the District Court these powers will be required. Theft can also be complicated, and my advice from the Garda with regard to the offences raised by the Senator is that in some cases investigation can be very complex. I assume the Garda Síochána will use its discretion as to when it is appropriate to utilise the provisions in the Bill.

I have seen criminal cases where prosecutions may involve a multiple allegation of different offences, which can include fraud and theft on the one charge sheet. In those circumstances it is appropriate that those powers are available. It is in the public interest that they be available to the gardaí so there is no artificial difficulty where the investigation involves fraud and theft and where these powers are utilised. Ultimately, based on the outcome of the investigation, it may be decided by the Director of Public Prosecutions to prosecute on the theft charge but not the fraud charge. There may be a difficulty with admissibility of certain evidence. We must

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be all-embracing to ensure that these powers do not create an artificial barrier to an appropriate prosecution being taken on a future occasion.

**Senator Ivana Bacik:** I take the Minister's point and it is clear that we want to see white-collar crime covered by this legislation. It is an act that is quite difficult to define precisely and I accept there may be complex investigations involving section 4 theft offences, or those covered in sections 17 and 18. That may be particularly true if there is a range of different offences covered. We all want to ensure, to use drug analogies, that the mules or couriers will not be prosecuted while people at the top levels escape. That is a key issue. We spoke yesterday about the need for enforcement, the strengthening of the Office of the Director of Corporate Enforcement and appropriate resourcing of the Garda, which is part of that matter.

In response to the Minister's anecdote about the man with the chickens, the defendant sounds like *Fantastic Mr. Fox*. I hope his ending was as happy as Mr. Fox's.

Question put and agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

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

**Minister for Justice and Equality (Deputy Alan Shatter):** I thank Senators for supporting the Bill and addressing the issues raised. The questions that were asked were important because they gave us an opportunity to tease out some of the key provisions of the Bill. I assure Senators that I appreciate the fact that we have been able to complete this Bill before the summer vacation. I look forward to it being signed by the President. I hope it will provide early assistance to the Garda in its current and future investigations. The legislation should help the force to prevent the commission of white-collar crimes and to undertake successful investigations into such crimes that may be committed in the future.

**Acting Chairman (Senator Terry Leyden):** I thank the Minister and his officials for coming to the Seanad for the debate on this important legislation. I thank Senators for their contributions.

**Senator Feargal Quinn:** I would like to express my appreciation to the Minister. When I first took an interest in this Bill, I found it very educational. I assumed its intention was to protect whistleblowers who wished to inform. I did not realise it made it a crime for them not to inform. That has been a real education for me. I congratulate the Minister on his enthusiastic pursuit of this necessary and good legislation to ensure it became law.

**Senator Denis O'Donovan:** I thank the Minister. Those of us on this side of the House are pleased that this legislation is about to come into force. It is not before time. I would like to mention one aspect of it that will be of practical importance to practising lawyers, gardaí and those prosecuting these crimes. The Minister has introduced a relatively simple mechanism that will allow the period of detention for questioning to be broken. It will be of great practicality when it is used by lawyers and gardaí. I hope it will benefit the course of justice.

**Senator Paul Bradford:** I thank the Minister for being with us. He has given us a comprehensive explanation of the purpose and workings of this ground-breaking legislation, which will send a strong signal to the wider public to the effect that we have one law for all sectors of

society. I hope the passing of this Bill will be recognised as such a signal. The Minister has responded to Senator Quinn's point that it is important for the withholding issue, which is so central to the purpose of the Bill, to be strongly broadcast beyond this House and understood by everyone it will affect.

**Senator Ivana Bacik:** I join other Members of the House in thanking the Minister and his staff for preparing this Bill. Each of us welcomes the commitment to pursue white-collar crime, as exemplified in this Bill. We particularly welcome section 19, which relates to the withholding of information. As Senator Bradford said, it is important for this provision to be publicised. I think it will be.

Question put and agreed to.

*Sitting suspended at 12.35 p.m. and resumed at 1.30 p.m.*

### **Criminal Justice (Community Service) (Amendment) (No. 2) Bill 2011: Committee and Remaining Stages**

Sections 1 and 2 agreed to.

#### SECTION 3

**Senator David Cullinane:** I move amendment No. 1:

In page 4, between lines 33 and 34, to insert the following:

“(c) Where a court, by or before which an offender stands convicted, is of the opinion that the appropriate sentence in respect of the offence of which the offender is convicted would, but for this Act, be one of imprisonment of more than 1 year and where a court decides not to make a community service order in relation to said offender, then a court shall provide a written reason to explain the reason for not making a community service order.”,”.

I welcome the Minister for Justice and Equality. He will know from yesterday's contribution that I support the substance of the Bill and I commended him and the Government on bringing it forward. However, I have tabled a couple of amendments, which will be helpful. If the Minister is not able to accept them today, he will certainly accept the thrust of the arguments we make in both cases and I hope he will take the points on board.

One of the reasons I tabled amendment No. 1 is that the purpose of this Bill is to make it easier for judges to consider imposing community service orders over custodial sentences. We all accept the logic of that in certain circumstances. In my experience, the court system and judges take the letter of the law very seriously, which is only right. However, jurisprudence occasionally throws up examples of judges creating formulas and four and five point rules. There are examples, such as the M'Naghten rules and so on, where formulas and tests of this kind can help to shape judges' thinking. Likewise, we see this with the requirement for mandatory and discretionary warnings for witnesses and what shape those warnings can take.

In this instance, it is not unreasonable to request the judge to give a written reason and state his or her decision in a very plain way as to why a community service order was not used. That would not be a major imposition on a judge and it would give him or her an opportunity in a rational and clear way to set out the reason he or she was not in a position to use the community service order and opted for a custodial sentence or some other form of justice.

Judges are often required to issue judgments, so this would not add to their workload in a significant way. It would add clarity and certainty to the laws surrounding community service

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orders and it would give shape to when and where they should be applied. A number of people outside the House, who have concerns, contacted me. Many of the arguments we hear about the judicial system is that judges can interpret laws in different ways. It should be very clear in this case and there should be clarity around when a judge should use a community service order. If a judge was not to use a community service order, he or she should provide a written statement as to the reason he or she did not do so. That would be of assistance to everyone, including the Minister and his Department. It would certainly be of help in shaping decisions which may have to be taken to strengthen this in the future, particularly as we are hopefully going to move towards an approach of using community restorative justice to deal with certain crimes committed in the State.

On Second Stage the Minister referred to the pilot projects which have been rolled out and which were supported by my party. The joint policing committee in Waterford requested that similar projects be rolled out there. Representatives from an advocacy organisation attended a meeting of the joint policing committee in order to discuss issues such as community service orders and community restorative justice. They made the argument that consistency is the most important aspect of this matter. In the context of cases where the Minister or others might be of the view that an order could be brought into play, judges should be obliged to indicate why such orders are not handed down. It would be of assistance if everyone involved could understand from where judges are coming in respect of this matter. As a result of the fact that there would be no cost to the State and because there would be no real imposition on judges, it is reasonable to ask the Minister to accept the amendment. If he is not in a position to accept it now, perhaps he might indicate that he will give consideration to the intention behind it.

**Minister for Justice and Equality (Deputy Alan Shatter):** As on Second Stage, I wish to thank the Senator and his colleagues in the House for their support for the Bill. It is important that when they make decisions, members of the Judiciary at all levels should provide their reasoning in respect of those decisions. At present, however, there is no requirement to the effect that written judgments should always be provided.

I appreciate that the proposed amendment is well intended. I believe the Senator shares my objective that community service orders be used, in the context of the provisions of the Bill, as frequently as possible and that people should not be sent to prison for very short periods at great cost to taxpayers, particularly when the latter would benefit to a much greater degree from those individuals carrying out community service in their localities and making restitution in respect of the crimes they have committed. Community service might also provide convicted offenders with an insight regarding other possible uses to which they might put their time. I am optimistic that this might result in fewer people reoffending in future. A range of benefits can accrue from using community service orders.

It is important that members of the Judiciary should apply the law as it will stand when this Bill is enacted. I do not doubt that they will do so. Having said that, I do not propose to accept the amendment for the following reasons. Under existing community service legislation, when considering imposing a sentence of imprisonment, regardless of the length thereof, a court may, as an alternative, impose an order of community service. The latter can be prescribed not only in circumstances where a sentence may be for one year or less but also in other circumstances.

Section 3(a) reflects the primary purpose of the Bill and involves the insertion of a new section 3(1) into the principal Act. This new subsection requires a court to consider making a community service order where a sentence of imprisonment of up to 12 months is contemplated. In essence, a judge who, in determining sentence, has concluded that a custodial sentence of up to 12 months is appropriate will, on foot of this Bill, be required to consider

imposing the alternative sanction of community service. However, in respect of sentences of greater than 12 months, the Bill will make no change. In such cases, a court may impose the alternative sanction of community service. However, there will be no obligation to consider doing so. The proposed amendment would, in my opinion, conflict with that provision in so far as it would require written reasons for not imposing community service in circumstances where there is no requirement to consider such and also in circumstances where such service would clearly be inappropriate as the mechanism to deal with the consequences of a particular offence. It would be odd that there would be no similar requirement in respect of sentences of less than 12 months where an obligation to consider community service does arise.

Before commenting further on the amendment, I wish to address, in more general terms, the requirement on our courts to provide reasons. There is already an obligation on all courts to give clear and adequate reasons for their decisions and there is well-established jurisprudence to that effect. In the District Court, judges state their reasons in open court but, as stated earlier, they are not required to provide those stated reasons in writing. It has been considered that because the jurisdiction of the District Court is limited to minor offences, it would be an undue imposition to place upon it a requirement to provide written reasons for its judgments in all cases. I do not propose to change that practice for the District Court or other courts at this time. The question of an obligation to provide written reasons for sentencing decisions is broader than the matters contemplated in this Bill and would require extensive consideration and consultation.

I would also be concerned that requiring the provision of written reasons in respect of relatively straightforward cases would result in undue delays in determining the outcome of court hearings. If judges were required always to provide written reasons, this would give rise to a situation that only rarely arises in the District Court where, having heard a case and handed down a conviction, a judge might be obliged to automatically adjourn proceedings until another occasion in order to prepare a written judgment prior to sentencing. There is no requirement in this regard at present.

Bearing in mind that which I have outlined, I consider that the amendment, if accepted, could be regarded as an incremental approach to introducing written reasons. I am of the view that the latter would create a potential imbalance on two fronts. Given that it is limited to sentences of more than 12 months, it would apply only to the higher courts and would require them to provide written reasons and would, in effect — I presume this is an unintended consequence — exempt the District Court. The latter is particularly the case in view of the fact that the legal limit for minor offences summarily dealt with in that court is a maximum of 12 months. I do not consider it appropriate to introduce this distinction between our courts. I understand what the Senator intends but there is a technical difficulty with the amendment, as proposed. The amendment might also create an imbalance in so far as the circumstances in which the obligation to provide written reasons would arise.

The amendment requires written reasons not for the purpose of explaining a sentence, whatever it may be, but rather for outlining the position in circumstances where a community service order is not imposed. I would have to question the justification for not having a similar requirement in respect of other alternative sanctions or custodial sentences. However, I acknowledge that an amendment to that extent would, of course, fall outside the remit of the Bill before the House. Nonetheless, the distinction between community service and all other sanctions which this amendment would create is one which I would not be inclined to introduce.

For the reasons I have stated, I do not propose to accept the amendment. However, I welcome the opportunity it has presented to outline some of the issues surrounding this matter. I fully and unconditionally accept the Senator's good intentions in tabling this amendment and

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I understand that some of the technical issues arising out of the manner in which it was framed may not have been to the forefront of his mind.

**Senator David Cullinane:** I accept what the Minister stated with regard to the amendment giving rise to a technical difficulty and I bow to his knowledge and experience. If, however, one follows the logic of his assertion, one could argue that we are creating an imbalance because we are asking judges to consider handing down community service orders only in respect of certain crimes which attract custodial sentences of up to 12 months. I do not, therefore, accept the argument he is putting forward. In the amendment, all we are asking judges to do is to consider imposing community service orders rather than handing down custodial sentences. It will be the responsibility of a judge to make a judgment and to consider what will be the most appropriate punishment to impose or approach to take. The intention behind the amendment is to require that judges provide written reasons for handing down custodial sentences of, for example, six or eight months rather than — as we are asking them to do — imposing community service orders. It do not accept that the amendment would create the types of technical difficulties to which the Minister referred. As legislators, we create the laws and can set down how judges should interpret them. To follow the logic of what the Minister is saying, many imbalances have been created through decisions made in the Oireachtas in terms of how judges must interpret the scope of the laws we pass and the provisions and criteria contained therein.

I do not accept the merit of the Minister's argument in this regard, notwithstanding his acknowledgement of our reasoning in putting forward this amendment. I do not understand how the provision could be seen to impose a burden on a judge. All that is required is that he or she makes a simple statement as to why it was decided to impose a custodial sentence rather than a community service order. If judges do not make use of this legislation in the way that we hope, we will have to review it at some point. The provision of a written statement explaining why a custodial sentence was chosen would provide an insight into the reasoning and motivation of judicial decisions in this regard. That is all we are seeking. We are not looking to create any unnecessary imbalances between any of the courts in the State. It is not inappropriate for us to ask a District Court judge to do something that a Circuit Court judge, for example, is not obliged to do. It is appropriate in certain areas and I cannot see how it could be deemed otherwise.

**Deputy Alan Shatter:** For the reasons already given, I cannot accept the Senator's amendment, although I accept his good intentions in putting it forward. The Judiciary is obliged to comply with legislation enacted by the Houses of the Oireachtas. As such, it is important, in enacting legislation, that our intent is clear and that we do not create unnecessary difficulties or anomalies.

Leaving aside the technical problems that arise, the amendment makes reference to the provision of a written statement, not simply the giving of reasons. I certainly hope that where a judge has open to him or her the consideration of sentencing an offender to a term of imprisonment of one year or less and where he or she, notwithstanding the obligation imposed by this legislation to consider first a community service order, decides to impose such a sentence, reasons will be given for the decision. It is part of the concept of the administration of justice in this State that reasons should be given in respect of judicial decisions. It may not be necessary to do so in writing, but it is important that it be done. That information helps us to develop an understanding as to the application of legislation and, in this instance, an understanding of the rationale behind decisions to impose a prison sentence as opposed to community service or other possibilities such as fines or the application of the Probation of Offenders Act.

The essential objective of the Bill is to provide, within our courts system generally but particularly at District Court level, a uniformity of approach in regard to sentencing and the application of the community service orders scheme. It is my hope that the enactment of the legislation will produce that uniformity. The probation and welfare service will be called upon to prepare reports on the implementation of the community service orders scheme and that will provide a useful national oversight as to the extent to which the scheme is being uniformly applied. As I said yesterday, research has indicated that a significant small number of courts were producing the overwhelming majority of community service orders while, in other courts, a community service order was something of a rarity. These provisions will come into force in September, after the legal vacation has ended. With the assistance of the probation and welfare service, I hope an oversight of the working of the scheme will be available by the late autumn of next year. Should there prove to be any difficulty with the working of this legislation or should we discover it is not being utilised in the way envisaged, I assure the Senator that I will revisit the issue.

Amendment put and declared lost.

Section 3 agreed to.

#### SECTION 4

**Senator David Cullinane:** I move amendment No. 2:

In page 5, between lines 24 and 25, to insert the following:

“(iv) having considered a victim impact statement prepared by the victim of a crime, where applicable, if said victim so wishes to furnish such statement.”.

The issue of victim impact statements was raised with me by various interested individuals from outside the House. I have used the phrase “where applicable” because in some cases it may not or will not be applicable to make provision for such statements. Moreover, what is proposed will only apply where the victim wishes to furnish a statement. When a community service order is made, the probation officer must draw up a report. It is not unreasonable that the victim should be provided, as part of that process, with a mechanism to contribute by way of a victim impact statement. It could be argued that this would constitute a form of restorative justice and an appropriate and important measure for both the accused person and the victim.

There has long been discussion in legal circles in regard on the problem of the estrangement of victims within the criminal justice system. I have heard the Minister speak about this in recent years. Society’s primary concern in regard to the administration of justice is that we receive protection from criminals, but it is also important that victims are placed at centre stage in the justice system. Victim impact systems can help to remedy the estrangement experienced by many victims within the judicial process.

Every crime has a victim. As such, the effect of the crime on the victim should at least be a consideration where a judge is leaning towards the imposition of a community service order rather than a prison sentence. We must examine the possibility of including victim impact statements as part of the process of determination of an accused person’s suitability for community service. It may be the case that the effects on the victim of the actions of the accused are such that it is not appropriate for the latter to be at large in the victim’s community. Naturally, the judge’s discretion in this matter will be retained, but he or she should have the opportunity to take such factors into consideration. I appreciate the point made by the Minister on Second Stage that this legislation relates to offences on the lower end of the scale whereas

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victim impact statements generally apply to specific, more serious offences. Nevertheless, we should consider whether there is scope for the provision of such legislation under the terms of the legislation.

It is crucial that we seek additional ways to make victims of crime more involved in the criminal justice system generally. Victims want to play a part and to have their say. No matter what the crime is, that opportunity should be open to individuals. Victim impact statements could form part of what the Minister is intending to do in the area of community service orders. There is always room for improvement in ensuring victims have a greater voice and that their account of their experience of crime is an integral part of the criminal justice system.

It could be argued that the victim's experience of the crime suffered is an integral part of the criminal justice system. The victim is looking for justice and that is what the justice system is about. Those who are guilty of offences should be subject to the law of the land and the victims should be protected and should receive justice. The best way to ensure a victim receives justice is to make a victim impact statement and give an account of the experience. I ask the Minister to accept this amendment. We also tabled this amendment in the Dáil in the hope the Minister would accept it. We are always hopeful that the Minister is open to persuasion. Whoever he is texting on his mobile phone may be able to persuade him.

**Deputy Alan Shatter:** I thank the Senator for raising this issue. I have a particular interest in ensuring we put victim interests centre stage and in addressing some of the gaps in our legislation with regard to victims and their rights. I published two Private Members' Bills in this area and a victims' rights Bill is to be prepared and I hope it will be published in 2012. It is one of the priority measures in the Government programme for law reform agreed between the Government parties, Fine Gael and the Labour Party.

I cannot accept the amendment. Under the Criminal Justice Act 1993, as amended by the Criminal Procedure Act 2010, a court shall, in determining sentence to be imposed, take into account, and may, where necessary, receive evidence or submissions concerning any effect, whether long term or otherwise, of the offence on the victim. The court shall also, upon application of the victim, hear evidence from that person as to the effect of the offence on such person.

The 1993 Act, as amended, applies to a range of offences against the person, namely, sexual offences, offences involving violence or the threat of violence to a person, an offence under the Non-Fatal Offences Against the Person Act 1997 and an offence consisting of attempting or conspiring to commit or aiding or abetting the commission of the aforementioned offences. In effect, where sentence is being imposed for one of the above-mentioned offences, the victim may apply to the court to be heard by it in respect of the effect of the offence on the victim and, when so requested, the court is required to hear that person.

The impact of the proposed amendment would be to extend, in respect of the offences to which they would apply, the use of victim impact statements beyond that provided under the 1993 Act. At the same time, the amendment would limit this extension to circumstances where community service is being considered, which would be inconsistent. I do not consider this an appropriate amendment to the existing use of victim impact statements. A Bill concerned with increasing the use of community service is not the right mechanism for making changes to victim impact statements. Any extensions or amendments to the use of victim statements could properly be considered in the context of the Criminal Justice Act 1993 or in the context of legislation to deal with victims' rights. In the context of the victims' rights Bill, it is my intention to review the current law that applies to the use of victim impact statements and the making

of such statements. I hope to publish the Bill in 2012. There is scope for the greater use of victim impact statements but there are certain types of offences to which a victim impact statement is not relevant. We must ensure we do not overburden the courts to hear statements that are of no great relevance, where they may not be required and in circumstances where victims may have no interest in making such statements. I would like to see this area dealt with in a broad sense. Within the victims' rights legislation there may be an all-embracing, comprehensive provision dealing with victim impact statements and addressing the circumstances in which it is appropriate to extend them so the court is aware of the impact of particular offences on victims when considering sentencing options.

In considering options, the court must consider a broad range of issues, not just the impact on the victim of a particular offence. The impact on a victim may not only derive from the nature of the offence but may be partly or substantially influenced by the unfortunate victim's history, by other issues in the victim's life or background and this could result in what would generally be understood to be a minor offence having an impact that could not readily be anticipated or understood. These are matters we must address carefully so there is a balance in how we approach it. It has long been my view that the position of the victim must be strengthened and some of the changes I have been advocating have been implemented in recent times. Some have not been implemented and at European Union level there is work under way to provide European Union regulation on victims' rights. A framework document has been in existence since 2001 and discussions are ongoing in order to ensure victims of crime are treated uniformly across the European Union. I have been at a number of meetings of the European Council of Justice Ministers and at informal meetings where the substance of the regulation was under discussion. It has been published in draft form and work remains to be done on it. The work I intend to develop in my Department will also be influenced by the work at European Union level. It is important to have uniformity of approach. I hope the work we are doing will ensure the best possible regulation is adopted at European Union level. I cannot accept this amendment.

Amendment, by leave, withdrawn.

Section 4 agreed to.

Sections 5 to 14, inclusive, agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

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

**Minister for Justice and Equality (Deputy Alan Shatter):** I thank Senators for their support and for taking the Bill today, allowing us to complete it. I share the hope of everyone here that it will make a significant difference to the manner in which sentencing is dealt with, particularly at District Court level.

**Senator Denis O'Donovan:** I thank the Minister for this legislation. I have long been a supporter and advocate of community service orders, which is a relatively new concept in legal history. We must ensure the District Courts use these orders and that not using them is the exception rather than the rule. It is a good system and helps to keep people on the fringes of crime out of the courts system. It gives young people a chance and, because of my political career, my limited experience is that many young people will mend their ways when given a chance rather than a custodial sentence. I recall an incident in which a vessel was boarded by

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Naval Service officers, who found that someone was illegally fishing salmon. This poor man, who was an ordinary Joe Soap, ended up being wrongfully incarcerated for three months, and when he came out he said to the lads in the local pub, “When I went in I knew nothing about crime, but I have learned a lot. I know how to steal televisions.” This guy learned more about crime in prison than he had known previously. He should never have been incarcerated.

I fully support the purpose of this legislation and I hope it will make a significant difference to our legislative approach in dealing with minor offences.

**Senator Colm Burke:** I thank the Minister for introducing this legislation, which is welcome and is extremely important. Like Senator O'Donovan, my experience in the District Court has been of a limited nature. I was surprised by the figures given for the use of community service orders.

It is also welcome because it deals with the imposition of fines. The Act of 2010 helped in this regard. Previously, excessive fines were imposed on people and, particularly in view of our economic circumstances, many people were not able to pay them. My experience, in the past three or four months — it may have been the last District Court case I appeared in — was that a fine of €4,000 was imposed on my client and the immediate response was to appeal the matter to the Circuit Court, which would have taken up even more of the time of the court and the gardaí involved. A community service order might have been a far more appropriate procedure in that case.

Something to which I referred last night was the need to steer people away from getting even as far as the District Court. I mentioned people who had dropped out of school. Interestingly, in the survey to which I referred last night, more than 70% of the people we surveyed five years after leaving the facility with which I was involved had neither a father nor a grandfather who had worked. These people were going down the road towards crime. The more we can do to steer people away from going down that road, the better. The next step when matters do reach the courts, is the community service facility. This is a welcome Bill and it is important that it is implemented. I thank the Minister and his officials for introducing it.

Question put and agreed to.

### **Civil Law (Miscellaneous Provisions) Bill 2011 [*Seanad Bill amended by the Dáil*]: Report and Final Stages**

**Acting Chairman (Senator Jillian van Turnhout):** This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 113, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question “That the Bill be received for final consideration”, the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For the convenience of Senators, I have arranged for the printing and circulation of the amendments. The Minister will deal separately with the subject matter of each related group of amendments. I have also circulated the proposed grouping in the House. Senators may contribute once on each group of amendments. I remind Senators that the only matters that may be discussed are the amendments made by the Dáil.

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

**Minister for Justice and Equality (Deputy Alan Shatter):** I welcome the opportunity to return to the House to report on the further amendments made to the Bill in Dáil Éireann. A total of 33 amendments were proposed and approved during Committee and Report Stages. These

were all Government amendments and were for the most part technical changes or text corrections. Two new Parts were added to the Bill, concerning the handling of documentation on the conclusion of tribunals of inquiry and the transfer of the family mediation service to the Legal Aid Board. All of the amendments made to the Bill since its passage by the Seanad have been in preparation by the Office of the Parliamentary Counsel, and I am pleased that they became available for inclusion during the Dáil stages.

I should also mention that among the amendments approved by the Dáil were those dealing with the extension of rights to civil partners with regard to the acquisition of citizenship, which I promised we would address when the Bill first came before the Seanad. This had been advocated by Senators, particularly Senator Zappone, and I am pleased to report that progress. For ease of reference and to facilitate the debate, I will group the amendments to correspond with the different Parts — 15 Parts in total — in the Bill as passed by the Seanad and the two new Parts derived from amendments in the Dáil.

The first group of amendments is Nos. 1 to 5. These essentially relate to the Long Title and to Part 1 of the Bill. Amendment No. 1 amends the Long Title, while amendments Nos. 2, 3 and 4 concern corrections to the collective citation of the Bill, while amendment No. 5 refers to the commencement provisions. Those sections of the Bill that will require commencement orders are clearly set out.

**Acting Chairman (Senator Jillian van Turnhout):** I call on the Minister to speak on the subject matter of the amendments in group 2.

**Deputy Alan Shatter:** I presume the first lot of amendments have been accepted.

**Acting Chairman (Senator Jillian van Turnhout):** We will have one question at the end of the debate.

**Deputy Alan Shatter:** Amendment No. 6 relates to amendments made to Part 4 and concerns the appeals procedures with regard to decisions of the Private Security Authority. Amendment No. 6 provides for a new section 16 to the Bill, in Part 4, the purpose of which is to make a number of amendments to the Second Schedule to the Private Security Services Act 2004 in order to simplify and streamline the procedures for making appeals to the appeal board and for the determination of those appeals in as speedy a manner as possible. The amendments will allow the appeal board to make decisions more quickly. This will be of tremendous benefit to those who make appeals on decisions of the authority — decisions which may have an impact on their ability to carry on a business or take up or continue in employment. To that extent, the amendments are very much in line with the commitment of this Government to remove or minimise any barriers to business or employment.

Does the Acting Chairman wish me to move on to the next group of amendments?

**Acting Chairman (Senator Jillian van Turnhout):** Yes. It is an omnibus question, so I call on the Minister to speak on the third group of amendments.

**Deputy Alan Shatter:** Will I go through all of it?

**Acting Chairman (Senator Jillian van Turnhout):** Yes, unless someone wishes to speak, in which case I will intervene appropriately.

**Deputy Alan Shatter:** I did not want to prevent that.

Amendments Nos. 7, 8, 10 and 11 are technical amendments to improve the text. They are amendments made to Part 6 with regard to the Employment Equality Act 1998 and the Equal

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Status Act 2000. Amendment No. 9 adds a subsection to section 20, the purpose of which is to remedy an omission in section 75(7) of the Act of 1998 to protect the independent functions of the officer delegated to hear and issue a decision in a discrimination case.

Amendment No. 12 adds a subsection to section 23, the purpose of which is to clarify an ambiguity that arose in the amendment of the text of section 79(6) of the Act of 1998 by the Equality Act 2004. The amendment ensures that investigation of a preliminary matter carried out under either section 79(3) or section 79(3A) will be followed by investigation of the substantive case.

Amendment No. 13 adds a new section to the Bill to correct an omission in the Equality Act 2004. Section 83 of the Act of 1998 provides for the hearing by the Labour Court of appeals to decisions of the director of the Equality Tribunal. A case in which a preliminary issue is successfully appealed to the Labour Court is referred by the court to the director for investigation of the substantive issue under section 83(5). This amendment ensures that this arrangement applies also to preliminary issues considered under either section 79(3) or the new section 79(3A).

Amendment 14 relates to amendments made to Part 10 concerning amendment of the Irish Nationality and Citizenship Act 1956. The purpose of Amendment 14, which amends section 31, is twofold: to provide for statutory backing for citizenship ceremonies for those applicants granted Irish citizenship, and to make the necessary amendments to the Irish Nationality and Citizenship Acts to give effect to the Civil Partnership Act of 2010 and to improve recognition of the position of civil partners, thus making it easier for them to acquire citizenship.

I wish to highlight the following points in section 31. Paragraph (a) inserts a definition of “civil partner” in section 2. Paragraph (b) contains an amended version of “citizenship ceremony” to allow a ceremony to be held before “such other person as may be designated for that purpose by the Minister”, in addition to judges or retired judges. Such persons could be, for instance, county registrars. Paragraph (d) includes a number of amendments to section 16 to amend the definition of “Irish associations” to include civil partners. Paragraph (f) is an amendment to section 19(1)(e) to include a reference to civil partnership, while paragraphs (g), (h) and (i) replace sections 20, 22 and 23, respectively, with appropriate wording referring to civil partners or civil partnership.

Our citizenship laws do not, as stated in the Seanad, make specific provision for citizenship ceremonies. The pilot ceremony held was based on a provision in the legislation that allowed the Minister, in specific circumstances, to arrange for the swearing in of citizens in a place other than a District Court. The exceptional circumstances that facilitated these arrangements derived from the huge backlog that had accumulated and the incapacity of the court system to cope with the extent of the backlog arising from decisions made on citizenship applications. This lacuna needed to be addressed to ensure that when the backlog was addressed, there would be a statutory basis for continuing to have citizenship ceremonies. The object was not to return to a position where individuals granted citizenship would find themselves required to attend at District Court sittings around the country, possibly to be fitted in somewhere in the middle of criminal prosecutions or at the end of a day of criminal hearings in circumstances with no sense of ceremony or importance attached to their becoming citizens.

Citizenship ceremonies are intended to mark in a formal way the significance of the granting of citizenship. Following a successful pilot ceremony on 24 June, we decided to have further citizenship ceremonies in the State for all successful applicants for a certificate of naturalisation. Senators may be interested to know that, throughout Thursday and Friday of this week, in Cathal Brugha Barracks in Rathmines there will be citizenship ceremonies to facilitate the

swearing in as Irish citizens of in excess of 1,300 applicants whose applications proved successful. I hope the ceremonies will be regarded as significant, memorable, important and worthy of celebration by the applicants and those accompanying them. I hope they will provide a sense of dignity that was not evident prior to the pilot ceremony. All being well, it is planned to hold a further ceremony outside Dublin in August for which arrangements are being made. It is intended to hold a ceremony in Cork in September and there will inevitably be further ceremonies organised in Dublin.

The civil partnership amendments stem from Senator Katherine Zappone's proposals in this regard. As we did not have time to debate her amendment in the Seanad, I assured her that I would, in so far as possible, introduce amendments in the Dáil to address further areas of citizenship law in the context of civil partnership. I believe I have kept my promise in that regard

The fifth group of amendments, Nos. 15 to 19, creates a new Part 15 to provide for the handling of documentation following the end of a tribunal. Amendment No. 15 sets out relevant definitions, while amendment No. 16 is a technical amendment.

Amendment No. 17 provides the statutory basis for the procedures for the deposition of material following the completion of a tribunal. It is to be transferred to the Minister under whose aegis the tribunal was established. However, certain material may be returned to the person who gave it to the tribunal if the chairman is satisfied its retention is not necessary in order to understand any of the proceedings, any interim report or the final report of the tribunal.

Amendment No. 18 provides for the application of the provisions of the National Archives Act 1986 to tribunal documentation other than material that constitutes departmental records. Amendment No. 19 provides for the extension to tribunals of inquiry of the existing provision in section 40 of the Commissions of Investigation Act 2004 regarding the non-applicability of the Freedom of Information Acts 1997 and 2003. The amendment was designed to ensure material internal to a tribunal, including documentation relating to parties not the subject of public inquiry and also documentation relating to the internal deliberative process of the tribunal which was not subject to a freedom of information application for obvious reasons during the existence of the tribunal, would not then become subject to a freedom of information request after the tribunal was finished. The exclusion concerned will not relate to material where the record was created before the making of the order establishing the tribunal and material relating to the expenses and administration of the tribunal. These will continue to be subject to freedom of information requests. These issues are addressed expressly because they were raised as issues of difficulty that needed to be addressed by Mr. Justice Mahon in regard to the Mahon tribunal.

The sixth group of amendments, Nos. 20 to 26, relates to a new Part, Part 16, to provide for the transfer of the Family Mediation Service to the Legal Aid Board. The amendments provide for the necessary measures to effect the transfer. The promotion of mediation in the legal system is a commitment in the programme for Government and I have great personal enthusiasm for it. I mentioned in the House that I would try, if possible, to include in the Bill provisions for the transfer of the service to the Legal Aid Board. With the considerable assistance of the Attorney General's office, the Parliamentary Counsel, the Legal Aid Board and my officials, it proved possible to make legislative provision for this transfer on Report Stage in the Dáil. The new Part 16 provides for the transfer of responsibility for administration of the service to the Legal Aid Board; the necessary amendments to the Family Support Agency Act 2001 and the Civil Legal Aid Act 1995; and the transfer of staff and property of the service to the Legal Aid Board. The House will agree that it makes good sense to reorganise the service in the way

[Deputy Alan Shatter.]

proposed. My overall strategy on mediation will involve at a later stage the publication of a comprehensive mediation and conciliation Bill to provide a framework for the better operation of alternative dispute resolution mechanisms in our legal system. Proposals for that Bill are at an advanced stage of preparation in my Department.

The seventh group of amendments, Nos. 27 to 33, relates to the original Seanad Part 15, headed “miscellaneous”, and deals with a number of appropriate miscellaneous provisions. Amendment No. 27 is a technical amendment to section 42 of the Bill. It provides that, *inter alia*, all civil actions involving accidents sustained by a person on board a vessel at sea will be excluded from the remit of the Personal Injuries Assessment Board. Legal advice has clarified that EC Regulation 392 of 2009 which provides for the implementation of the 1974 Athens convention relating to the carriage of passengers and their luggage by sea, as amended by the protocol of 2002, will not take effect in Ireland for a number of months. It is, therefore, necessary to insert an amendment to include a reference to Part III of the Merchant Shipping (Liability of Shipowners and Others) Act 1996. Part III provides for the implementation of the version of the Athens Convention of 1974, as amended by the protocol of 1996 that has effect currently. The amendment also makes future provision for the effect of ratification of the Athens Convention, as amended by the protocol of 2002. The amendment confirms, in the minds of Senators, that this very comprehensive Bill has an international and transnational flavour in that at this time of the year it has allowed us to travel to Greece as well as remain in this House.

Amendment No. 28 is a drafting amendment to correct the collective citation of the Freedom of Information Act as it appears in section 40 the Commissions of Investigation Act 2004. Amendment No. 29 realigns the fines provided for in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 with the fines for offences under the family law code. It is designed to eliminate the risk that a higher penalty applies where a spouse commits the offence than if the same offence were committed by a civil partner.

Amendment No. 30 provides for the enforcement of foreign family law maintenance orders. This is an important provision and relies on section 8 of the Enforcement of Court Orders Act 1940. This provision will allow a judge, if he or she feels it would be effective, to make what would generally be termed a garnishee order if there are moneys owed to the debtor by a third party in order to ensure money is directed to the creditor; and to make an order that is broadly similar to the concept of appointing a receiver by way of executable execution if there are moneys which will become due. These two provisions cover circumstances where money may be owed to a maintenance debtor for work done. The amendment limits this to the extent of any maintenance outstanding. The final element retains an existing power in the 1940 Act to allow a judge make an order to sell goods if he or she feels this would be effective to recover the debt due to the maintenance creditor. This was rarely used in the past, but it is worth retaining as it may be useful on some future occasion. An existing pre-emptive arrest provision has been deleted on the advice of the Attorney General.

Amendment No. 31 will insert a new section 48 to make changes to the provisions of sections 32, 34, 35, 36 and 38 of the Courts of Justice Act 1936 in respect of sittings of the High Court on circuit. They will replace the current requirement applying to such sittings to allow for increased efficiency in the delivery of service, greater flexibility and use of limited judicial and administrative resources.

The amendments concern a technical amendment regarding the revised second schedule of appeal towns; the replacement of the requirement that sittings take place twice yearly with a requirement that they be held not less than once a year; that Dublin will become the default venue for hearing Circuit Court appeal cases; that the President of the High Court will hence-

forth decide whether a High Court sitting is warranted or whether the list might be amalgamated with a list in another location; and the repeal of a dormant provision about Commissioners of the High Court.

Amendment No. 32 amends section 65 of the Courts of Justice Act 1936 to provide a clear legal authority for the prescription of certain court fees to contribute to the recovery of the directly attributable costs of court services provided in the various court jurisdictions and offices and in particular, the fees charged in respect of proceedings conducted in the Commercial Court, which was a recommendation in 2009 of the special group on public sector numbers and expenditure. Amendment No. 33 is a technical amendment regarding the revised second schedule of appeal towns.

I hope Senators can see the benefit of the amendments tabled. In them I have also tried to respond to issues raised by Members of the Seanad and Dáil during the course of the comprehensive debate on the Bill. As I also stated when debating the two measures we dealt with earlier, I appreciate the Seanad sitting until 27 July to facilitate completion of the enactment of this Bill which impacts on a broad range of legal areas and which, I believe, will be of substantial benefit in implementing many reforms which are long overdue.

**Senator Katherine Zappone:** I thank the Minister for his very comprehensive report on the amendments. As he may have anticipated, I wish to offer some comments. When we were last together in the Chamber, I had tabled amendments to the Bill. As he promised, he raised these issues in the Dáil. My amendments were rooted in an attempt to ensure civil partnerships registered in Ireland or recognised by Irish law would be treated the same as marriages in the area of immigration. I find amendment No. 14 to be serendipity in law, as it also includes the Minister's wonderful innovation of a citizenship ceremony. I acknowledge what a great idea this is. I know it will mean a great deal to many people.

I acknowledge the Minister's support, and the support of the officials in his Department who were in contact with me as this progressed since we last met, for the comprehensive and fair reform of law which is taking place through this comprehensive Bill. It will make a very important difference to the lives of many, particularly to their stability and sense of security. This is a very good day for them and for others who are following in their footsteps. It is a particular pleasure that this can be concluded in the Seanad.

**Senator Colm Burke:** I thank the Minister for bringing forward the Bill. Section 32 of the Bill deals with the Coroners Act. Coroners are not required to hold inquests within a specific period of time. I raised this matter with the Minister previously, along with my colleague, Senator Tom Sheahan, who was also aware of an unreasonable period of time being allowed to elapse before an inquest was held. I know this point cannot be dealt with in the Bill but I ask the Minister to take it on board and deal with it in future legislation. I welcome the Bill. It covers a wide range of areas. It is of a very technical nature but it is also very important.

**Senator Denis O'Donovan:** I wish to add my voice in support of the Bill. I compliment the Minister on taking on board certain matters raised in the House and returning to us with amended legislation, which indicates the capacity of the Minister to accept amendments, particularly the amendment raised in a heartfelt and sincere way by Senator Zappone.

I congratulate the Minister as I received an e-mail stating he will put in statutory form the vetting of people dealing with children. This is a welcome move and was an issue dealt with by the Joint Committee on the Constitutional Amendment on Children. I thank the Minister for bringing it forward.

[Senator Denis O'Donovan.]

With regard to tribunals, I have held the view for many years, which I have expressed in both Houses, that I have some degree of difficulty with how the nation has dealt with tribunals of inquiry. During his time in office, will the Minister analyse the benefits and salient features — and those features not so salient — of tribunals of inquiry? I was involved in the Whiddy disaster tribunal in the early 1980s, and as I understand the original legislation three of four events have warranted tribunals of inquiry. One of these was the Whiddy disaster which saw the loss of 50 lives and another was the Stardust disaster. However, have we coughed up too easily on tribunals for non-serious reasons? I am not taking away from any of the tribunals, but any tribunal lasting for ten or 12 years and costing the State excessive sums of money does not do justice to the notion of what tribunals are for. I know it does not affect this Bill, but perhaps in the course of the Minister's term of office he will examine the concept of the tribunal of inquiry. Do they deliver what it was intended they would deliver or are they a glorious waste of money with few or no results? The Minister may not wish to answer this today, but on another occasion he is in the House he might provide a balanced answer in this regard.

The Minister has referred to what becomes of tribunal documentation and I would like to know where all of the documents from the Mahon tribunal are stored. One would probably need a room much bigger than the Seanad Chamber to store them. Perhaps they can be stored on disk.

I thank the Minister for the Bill, which will be important. Some of the Minister's predecessors had a notion to attempt to codify the entire criminal law. I am not sure whether this is a utopian dream. Will it ever happen? Can the Minister see it being achieved? From an academic point of view it would be wonderful if sometime in this new century, perhaps in five or ten years, we had codified, omnibus criminal law legislation or an all-encompassing document that would piece everything together. Perhaps that is a dream rather than a possibility.

**Senator Ivana Bacik:** I welcome the amendments to the Bill, on which we have had a full debate. We were conscious that a wide range of issues were covered and the amendments also cover a similar range of issues.

With regard to Senator Denis O'Donovan's comment on codification, I raised this issue with the Minister in the context of this legislation because it is a hobby horse of mine. Having endless miscellaneous provisions Bills is not the best way to reform the law, although I accept that is the way we tend to do it and that piecemeal reform of different areas of law is necessary. I welcome the reforms in this legislation, but the codification project initiative on criminal law initiated by a previous Minister, as Senator Denis O'Donovan said, is worth continuing. I could not see where it was at the last time I checked. Perhaps the Minister has information on it. UCD had a team examining how to go about the project and a report was produced last year, but I do not know what the current position is.

I particularly welcome amendment No. 14 concerning citizenship and civil partnership which will have a profound effect on the lives of persons who have entered civil partnership with those who are not Irish citizens. Once they fulfil the conditions, they will have the right to apply for citizenship. I echo the comments Senator Katherine Zappone in welcoming the amendment. Like Senator Denis O'Donovan, I welcome the Minister's signing of the vetting provision.

**Deputy Alan Shatter:** I thank everyone for their kind comments. As I said when I was appointed Minister, it came as a shock to the principal Opposition spokespersons in the Dáil when I took them aside and said that if they produced worthwhile amendments to legislation, I would take them on board. If they are worthwhile ideas that are not well put technically, I

will examine how they can be reframed. In the past ten years we had reached a point where Governments had an automatic knee-jerk reaction to amendments tabled by Independent Deputies and Senators and other Opposition Members. It did not matter how valid a proposal was. There was always a reason it could not be taken on board, but too frequently the reason was spurious and it was more about the Minister preserving some sense of personal importance than the legislative process.

I have particularly enjoyed our engagement on this legislation because I have a menu of another three dozen issues I would have liked to have addressed in it, but we did not have the time to do so. The gap between the Seanad and Dáil debates gave us a little more time. It was always my intention that we would address in legislation the issues raised by Senator Katherine Zappone and we had the opportunity to do so. However, we did not have the opportunity to address a few more that I wanted to raise. I am not sure whether another civil law (miscellaneous provisions) Bill will be introduced this side of Christmas, but we will have another one next year. Whether additional family law reforms will be included in it or whether we introduce a family law (miscellaneous provisions) Bill in the new year is an issue on which I have to make strategic decisions. It may be partially influenced by how much time I have available during August.

The changes we are making in the citizenship area and citizenship ceremonies are important as they are symbolic of a new approach in a new Ireland by a new Government. Through this approach we value those who have come to reside on the island with us and their wish to remain part of an Irish community and acquire Irish citizenship. We treat them with respect. The oath used at District Court level is somewhat antiquated and Senators may have missed the fact that I reframed it to extend the wording used. Previously, one made a declaration of fidelity to the nation and loyalty to the State and that was the extent of what an applicant swore but the 1,350 applicants who between 10 a.m. tomorrow and 5 p.m. on Friday will be sworn in in a series of ceremonies can make a new oath. It will comprise a declaration of fidelity to the nation and loyalty to the State and also an undertaking “to faithfully observe the laws of the State and to respect our democratic values”. That is important and adds meaning to the oath people will take.

Senator Colm Burke again raised issues relating to the Coroners Acts. I am conscious coroners must have discretion regarding when they hold hearings because there can be many background reasons hearings are delayed. For example, a Garda investigation may be under way and a hearing in the Coroners Court could create a difficulty and prejudice a criminal trial. Care needs to be taken in this regard. Toxicological results may also be needed. There is a broad range of reasons for delays, but I am well aware from my days in legal practice that there have been occasions on which for no apparent reason a hearing has been unduly delayed or prolonged or where there has been a partial hearing and an adjournment and I am concerned that the issue be examined. I will consider the general legislation applying to coroners to establish whether it can be updated. I am conscious that one cannot fix a definitive date by which a hearing must take place and a verdict brought in by the jury in the Coroners Court but within the provisions of allowing an exercise of discretion based on background circumstances, there has to be some meeting point whereby it can be ensured where background reasons for delay do not appear to remain that no undue delay occurs because that can cause substantial additional distress to bereaved family members in circumstances where a coroner’s verdict is required. It can also create major legal difficulties in addressing issues arising from a person’s death.

Senator Denis O’Donovan keeps raising issues and says he does not expect a reply and that he will give me time to reply. I appreciate that, but when I am not aware of something, I will not jump in and reply. I am happy to reply to all the issues the Senator raised, albeit some of

[Deputy Alan Shatter.]

them do not arise under the Bill. I hope to bring forward sooner rather than later a comprehensive Bill relating to tribunals of inquiry to replace all existing Bills, update our law in this area and address issues of concern. Based on our experiences of the longevity of many tribunals and their cost, there is an understandable lack of enthusiasm for further tribunals. Some have sat for an extraordinary period. I got into difficulty recently when I tabled motions before both Houses relating to a tribunal that had been sitting for six years without anyone knowing where matters stood or without transparency as to where matters stood in order that we would receive a report. The consequent report was helpful and gave some indication as to what was happening. We cannot allow tribunals appointed to deal with matters described as “urgent and important” to carry on for many years at enormous public expense with the matters having long since ceased to be urgent. They may remain important, but the urgency becomes lost in translation between the time a tribunal is established and hearings are completed and reports published. We need to take much more care of this issue in the future. I hope we can address these issues.

I am conscious that the 2004 Act which provides for inquiry in a manner that is less expensive and prolonged and, in some ways, more efficient than tribunals of inquiry also provides us with an alternative mechanism to which we can resort, when necessary. None of us can anticipate when in the future another tribunal may be required and it is important to bring the laws surrounding them up to date. The legislation governing them is from the early 1900s and I hope to bring forward amending legislation before the end of the year. A substantial amount of work has been done on it in the Department already.

There are, however, several matters making their way through the Supreme Court that need to be clarified before we finalise the legislation. Several comments were made by a member of the Supreme Court in recent days with regard to the impact of tribunals, the importance of the views expressed by them and their costs. A number of people would have some sympathy with the views expressed in Mr. Justice Hardiman’s recent judgment.

The criminal law codification project is important and much time and work is required to bring it to finality. The more compact and coherent we can make our laws, the better it is for public access to them and their general understanding by legal representatives and those required to administer them.

While it is straying from the Civil Law (Miscellaneous Provisions) Bill, I thank Senator O’Donovan for raising the matters of giving statutory effect to the Garda vetting bureau, providing for the use of soft information and providing mechanisms as to how organisations will register for vetting purposes and obtain such information. The good news is that today, at 2 p.m. we published the heads of a Bill to deal with these provisions as well as prescribing criminal offences for circumstances in which an organisation fails to deal with or ignores a vetting issue of an employee who may have unsupervised access to children. Each head contains detailed explanations. The Bill will be worked on over the summer by my Department and the Office of the Attorney General.

This afternoon the heads of the Bill will be sent to the chairman of the Oireachtas Joint Committee on Justice, Defence and Equality, Deputy David Stanton, with the request that the committee members receive them for consideration. The Government wants to involve Members of both Houses to assist in the development process regarding the detailed provisions as further consideration is required to bring it into the formal full state of a drafted Bill.

There is sufficient detail in the heads which will facilitate Members and allow them to make their observations on the legislation by the end of September. The objective is to publish the

final form by 31 October and to commence Second Stage in either this or the Lower House, subject to parliamentary availability, in early November with enactment before Christmas.

This is long-promised legislation and, as a member of the former Oireachtas committee on children, I recall recommending the former Government publish it by December 2008. A series of promises were subsequently made by the Government about heads of a Bill and so forth but nothing came forward. When we took office, the Minister for Children and Youth Affairs and I discovered some initial but not substantial work had been done. I agreed with the Minister to take over this work. I promised Cabinet colleagues that I would publish this legislation by 31 July and I am pleased I have managed it four days sooner.

I look forward to people's inputs to the Bill. It is not being published on tablets of stone and I have no doubt more work will have to be done on it. I thank my officials for the substantial work they have done. I reacquainted myself with comparative legislation in other countries. The approach we are adopting is very different to the UK and Northern Ireland, which has recently been the subject of criticism because of the enormous volume of information and bureaucracy it is creating that may make it ineffective. It is a good coincidence that on the day the House is debating the Cloyne report we have published this important and substantive measure in child protection.

I thank Senators for their support for the Civil Law (Miscellaneous Provisions) Bill and the amendments we brought forward.

Question put and agreed to.

Question, "That the Bill do now pass.", put and agreed to.

*Sitting suspended at 3 p.m. and resumed at 4 p.m.*

### **Commission of Investigation Report into the Catholic Diocese of Cloyne: Motion**

**Acting Chairman (Senator Diarmuid Wilson):** I call on the Leader of the House to move the motion on the report by the Commission of Investigation into the Catholic Diocese of Cloyne.

**Senator Maurice Cummins:** I move:

"That Seanad Éireann:

- notes the publication of the report by the Commission of Investigation into the handling by Church and State authorities of allegations and suspicions of child sexual abuse against clerics of the Catholic Diocese of Cloyne;
- expresses its sympathy with the victims whose suffering is set out in the report;
- expresses its thanks to the Commission of Investigation for their work carried out with sensitivity
- expresses its dismay at the disturbing findings of the report and at the inadequate and inappropriate response, particularly of the Church authorities in Cloyne, to complaints and allegations of child sexual abuse;
- deplores the Vatican's intervention which contributed to the undermining of the child protection frameworks and guidelines of the Irish State and the Irish bishops;
- welcomes the publication of the Children First National Guidance the full and consistent implementation of which will be given priority, and welcomes the approval by

[Senator Maurice Cummins.]

Government for the preparation of legislation to require statutory compliance with the Children First National Guidance;

- acknowledges that child protection requires a cross-societal awareness and a purposeful co-operative response from all organisations working with children;
- welcomes the publication of the provisions concerning the Criminal Justice (Withholding Information on Crimes against Children and Vulnerable Adults) Bill 2011 and welcomes the announcement made that the heads of the National Vetting Bureau Bill 2011 will be published by the end of July 2011 and furnished to the Joint Committee on Justice, Defence and Equality for a consultative process; and
- affirms its determination that the State will take all necessary measures to protect its children.”.

I reserve my right to speak at a later stage in the debate.

**Minister for Children and Youth Affairs (Deputy Frances Fitzgerald):** I thank the House for the invitation to speak in this debate on the Cloyne report. This debate is important because it allows this House to register and commend the bravery of all those individuals who came forward and told the commission of their experiences. Without their crucial input we would not have a report of such detail and quality. I hope they will find some measure of comfort in the response to the report to ensure that experiences such as theirs are never repeated, especially within an organisation that has preached and preaches love, friendship and respect, but, unfortunately, whose practices did not match that which it preached. This debate allows me to reiterate the sincere apologies for the failings of the State as expressed by the Minister for Justice and Equality, Deputy Shatter and me at the launching of the report.

This is the fourth full-scale investigation into the handling of allegations of child abuse by Church authorities. What is particularly grave about the Cloyne report is that it analyses practices of a Catholic diocese almost to this day. As recently as three years ago, unacceptable practices were being followed by a diocese that misled the State about its approach to the handling of sensitive child abuse allegations which means the damage continued long after it should have ceased. One victim of child abuse who recently wrote to *The Irish Times* referred to, “old feelings of insecurity, anger, mistrust and disgust”. Chapter 27 of the report bears reading again in this regard. Those words ring true for so many who held on to the belief that wrongs perpetrated against them in the past would surely never be repeated and that the organisation had learned its lessons.

My task is to move beyond examination of the past to a future where children are safe, whether in the family home, at school, in church or engaging in any other activities, formally or informally. The Government is acting with urgency and an absolute determination to bring forward a programme of decisive actions to strengthen the State’s child protection framework.

On behalf of the Government and in conjunction with my colleague, Deputy Shatter, I am engaged in a series of measures designed to enhance child protection. The Minister, Deputy Shatter, has published the Criminal Justice (Withholding Information on Crimes against Children and Intellectually Disabled Persons) Bill 2011. The week before last I published the Children First National Guidance 2011. The guidance provides a robust code for the protection and welfare of children, offering clear direction to individuals, organisations and agencies on what they need to do to keep children safe. I urge people and organisations to familiarise themselves with the guidance. In recognition of the importance of Children First, the HSE will publish an associated child protection and welfare practice handbook, which will assist front-

line professionals in the conduct of their duties. These two publications will provide clearer direction and support to front line staff and organisations working with children. They will also set out the respective roles of the statutory agencies responsible for child protection.

I also recently received Government agreement to introduce legislation to require, for the first time, statutory compliance with Children First. This will include a statutory requirement on individuals to report to the relevant authorities in circumstances where, in good faith, they have reasonable concerns about the abuse or neglect of a child. However, as I have emphasised repeatedly, the scope of Children First extends beyond the narrow focus of reporting *per se*. We do not want to create a reporting culture solely. I propose a much broader-based and comprehensive approach to child protection, laying down the broader responsibilities of organisations which are in contact with or provide services to children. This will include a requirement on sharing information which is so important if we are to protect children. If we are to protect children we need organisations working cohesively and comprehensively together at local level. The need for such requirement was proven again on foot of reports of the Donegal case.

We learned of the shockingly inadequate and inappropriate response by the diocese of Cloyne to complaints and allegations of child sexual abuse in the period between 1996 and 2008. The diocese did not comply with the church's adopted guidelines, nor did it comply with Children First. It is therefore vital that guidance translates into implementation. We must have compliance without exception or exemptions. Never again should someone be allowed to place the protection of the institution or organisation above the protection of children. When it comes to child protection, the days of voluntary compliance are over.

The new legislation I will introduce will provide for a strong system of inspection and oversight. On the need to provide demonstrable evidence that the guidance is being implemented correctly across all sectors, we will also have an assurance framework, setting out the responsibilities of each Department and sector working with children. I will chair an inter-departmental committee to ensure this framework is implemented. We must focus on appropriate management, consistency of response and the creation of a world class model of child protection. In this regard the recruitment of 270 additional child protection social workers is continuing. We expect that 260 of these posts — exempt from the public service recruitment embargo — will be filled by the end of this year. My colleague, the Minister for Justice and Equality, Deputy Alan Shatter and the Department of Justice and Equality, has today published the heads of a Vetting Bill, another very important part of the architecture of child protection and which has been requested for a long time. This Bill will be considered by the committee and the Minister will give more details about the Bill today.

I will soon be in receipt of the long awaited report of the HSE audit of child protection in Roman Catholic dioceses, which should indicate whether all allegations known to church authorities are being properly reported to the State authorities, namely the Garda Síochána and the HSE. I expect the first part of that report in September. In the meantime I have asked the HSE's national director for children and family services, Mr. Gordon Jeyes, to engage directly with the national board for safeguarding children on a programme of action designed to ensure that the Catholic Church responds properly and comprehensively to all child protection concerns. The church has indicated its wish to co-operate with the statutory authorities and Mr. Jeyes has already made contact with the board.

The Government requires church authorities to evidence a decisive shift to a culture of transparency and public accountability. In that regard, I have called for the publication by the National Board for Safeguarding Children of the audit of each diocese. It is in the church's interest and in the interest of ensuring child protection guidelines are in place that this be done.

[Deputy Frances Fitzgerald.]

I welcome the call by the Archbishop of Dublin, Diarmuid Martin, for publication of all audits. We await the response from the board and the bishops to these calls. There may be a preference to publish the reports into several dioceses together.

This debate affords us an opportunity to acknowledge the people who are doing good work in the area of child protection. These include the practitioners in the professional and voluntary sectors, medical professionals, gardaí, youth workers, teachers and coaches throughout the State who already passionately employ best practice in child protection. They understand their duties and do not need legislation to keep children safe. It takes an entire community to protect children, as we have seen from recent cases. There is an onus on everybody who has contact with children to act; it is not simply a matter for front-line social workers or any one professional group. There is a responsibility attaching to a broad sector of the community and all of those who have contact with children in a variety of settings, including voluntary and statutory settings, faith groups and Departments and State agencies. We must have clarity and action across the board. Many of those who are getting it right when it comes to child protection are working within the Catholic Church. In particular, I acknowledge the great deal of positive work done in recent years in the area of child protection by committed lay volunteers.

It is easy to condemn previous generations for not shouting “stop” in the face of the horrors visited on children. However, we can only guess at the spiritual and cultural pressures which led to the deadly silence that pervaded during a century of abuse. That has now changed. Earlier today I attended the launch of a report setting out young people’s own experience in care. This is another group from which we did not hear in the past, but we are now hearing directly about their experiences. The curtain has been pulled back. As we have seen in all of these reports, even when the information is in the public arena, we must continue to be vigilant.

The Taoiseach’s speech last week ended the deadly silence on the issue of child abuse within the church. It was more than a condemnation; it was a call on the church to respond with compassion, demonstrate openness and exemplify best practice. The manner in which the church responds to that call will be its lasting legacy and an indication of how it sees itself being a part of our children’s future. I thank Senators for the opportunity to speak on the report and look forward to their contributions. We have a major task before us to ensure children’s voices are heard and that we put in place a strong and appropriate child protection system which applies to all sectors.

**Senator Darragh O’Brien:** I propose to share time with Senator Terry Leyden.

**Acting Chairman (Senator Paschal Mooney):** Is that agreed? Agreed.

**Senator Darragh O’Brien:** I welcome the Minister, Deputy Frances Fitzgerald, to the House and thank her for her contribution. The support for the cross-party motion in the House shows we are all supportive of the Government in its endeavours in regard to child protection. Both church and State must do everything possible to ensure children are provided with the protection they deserve. It is saddening to contemplate the necessity of introducing legislation to provide for mandatory reporting. As a father of a child of almost three years of age, my perspective on life has changed in recent years. Having one’s own child brings the horrors detailed in the Cloyne report close to home. This abuse was visited upon children by people who were trusted and held in high regard. It is sad that the State must legislate for mandatory reporting in order to ensure it happens. People should, in any normal course of events, report any instance in which they suspect a child or vulnerable adult is in danger or is being abused.

Children are central to the well-being of the State and it is to them we will leave our legacy. It is up to us as legislators to ensure they have the protection they deserve. The motto of the

school I attended, St. Sylvester's national school in Malahide, was "I measc na bpáistí a bhfuair mé thú a Íosagáin". There are thousands of priests and lay people working within the church in Ireland and children are also central to their work. In all our discussions, we must acknowledge, as the Minister did, that as well as those who have let down their church, community and society, there are many good people within the church who have done their best to serve their communities.

I welcome the announcement by the Minister for Justice and Equality, Deputy Alan Shatter, regarding legislation on vetting. The Minister, Deputy Fitzgerald, has indicated she will bring forward legislation to place the Children First guidelines on a statutory basis, which is crucial. I acknowledge that the previous Government bears a responsibility for the delay in the long-awaited referendum on children's rights. Will the Minister indicate when she expects to bring that forward? Enshrining child protection in the Constitution is perhaps the most important response we can make to the findings of this and any future reports.

This debate relates specifically to the Cloyne report. I join the Minister in commending the victims who have shown such bravery in interacting with the investigation. It must be terribly difficult for them to do so and we can only hope this is the start of a healing process. There are many people with strongly held religious views who trusted the church and who feel terribly let down by the actions of some of its members. Without taking from the church's role in these matters, I welcome the Minister's apology on behalf of the State and the recognition that we, as legislators, have had failings in this area. This is not a political issue; it is incumbent on all of us to work together to ensure these types of abuse never recur.

In that regard, I intend, in co-operation with my colleagues across the House, to keep a watching brief on the issue of child protection. I remain concerned regarding interagency cohesion and how the HSE interacts with the Garda and social support services. I propose that in the new session we might be able to agree, as we have in this instance, a cross-party motion on the State's response to child protection issues. The church has an absolute responsibility in the matters we are dealing with today, but the State has an equal responsibility on the broader issues of child protection. I hope the Leader and the leaders of the various groups in the House will come together in September to look at these issues, particularly in the context of the proposed referendum on children's rights. It is perfectly appropriate to examine how the church has failed, as we are doing today, but we must also examine how we, as State legislators, can safeguard all children into the future. I would be grateful if the Minister would give an indication in regard to the date of the referendum.

**Senator Terry Leyden:** I thank Senator Darragh O'Brien for sharing time. It is important that as many speakers as possible have an opportunity to contribute to this important debate. I commend the excellent work of Ms Justice Yvonne Murphy, chairperson of the commission of investigation into the Diocese of Cloyne, and her colleagues, Ms Ita Mangan and Mr. Hugh O'Neill, in producing this detailed and comprehensive report. I thank the Minister, Deputy Frances Fitzgerald, for coming to the House for the debate on this extremely important matter.

Members of this House have expressed their sympathy for the victims whose suffering is set out in the report. Nothing will ever compensate them for the sexual abuse they suffered during the period covered by the report, namely, January 1996 to 1 February 2009. Section 1.18 in the overview to the report outlines the reaction of the Vatican to the matter. We all have a responsibility in respect of this issue. The State also has an enormous responsibility. That is why it is extremely important, as Senator Darragh O'Brien indicated, that a date be set in respect of the holding of the referendum. The Minister formerly served as a member of the all-party committee and she took a very active role in its deliberations. Former Members of this House also served on that committee, which was chaired by the former Minister for Edu-

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cation, Mary O'Rourke. The recommendations made by that committee in respect of the vetting agency are being adhered to, in the main, and the Minister, Deputy Fitzgerald, is establishing this entity on a statutory basis. In fact, the Minister is complying with most of the all-party committee's recommendations. The fact that Deputy Fitzgerald has been appointed as a full Cabinet Minister is an indication of the recognition by the Government of the role of children in society. Former Ministers of State previously held positions in the Government.

The leader of my party played an important role in respect of the Ryan report, particularly in the context of his contacts with the papal nuncio. That fact was placed on record at the time but I wish to highlight it again now. I hope there will be a positive response from the Vatican in respect of the Cloyne report. Ireland's ambassador to the Holy See, Mr. Noel Fahey — an old school friend of mine — has retired and a vacancy exists as a result. I hope there will be a continuation of direct ambassadorial links between the Vatican and Ireland. Such links have played an important role in the past. We should not forget the support the State received in the past — in the context of the international arena — as a result of its contacts with the Vatican.

This matter does not just relate to the clergy, it also involves lay people. The case in Donegal is a typical example of the involvement of lay people. I served as a member of the visiting committee of the Curragh Prison and I came into contact with many people who were in prison as a result of child abuse. I made the point to those individuals that they were charged with a particular responsibility above and beyond all others and that they broke the trust relating to that responsibility. That is why they are being targeted more than others. I am of the view that lay people, parents and anyone else who has been involved in any form of child abuse must serve their sentences. I hope that the cover-up which has obtained in this country for so long will be broken for all time and that children will be placed first.

**Senator Imelda Henry:** I second the motion.

The revelations contained in the Cloyne report are extremely disturbing. As the Minister stated, it was only possible for those revelations to be made because victims were courageous enough to come forward and relate their horrific stories of abuse. The Cloyne report is one of many that investigated the handling of allegations of child abuse by the church authorities. The Diocese of Cloyne did not implement the procedures set out in church protocols for dealing with allegations of child sexual abuse. It operated under a culture of unbelievable non-compliance with child-protection practice and reporting requirements.

The Catholic Church in Cloyne represented a danger to children. This could be the case in other diocese and that is why audits must be carried out and reports published as a matter of urgency. A timescale must be set down in respect of the latter. I welcome the Children First national guidance document, under which all organisations and individuals working with children will be required to share information with the statutory authorities where such information relates to child welfare or protection concerns. Failure to comply with aspects of Children First will give rise to a range of civil and criminal sanctions. This is a welcome development.

The behaviour of Bishop Magee, his disappearance and silence is disgraceful, particularly in view of the fact that serious allegations have been preferred against him. In order for the church to regain respect, Bishop Magee should return immediately in order to take the opportunity to explain to his congregation — and to the Irish people in general — the reason he did not adhere to guidelines laid down in respect of child sexual abuse. His doing so would also be of major benefit to the many fine priests in this country who have ministered, with humanity and care, to large sections of the community.

I compliment the Minister for Children and Youth Affairs, Deputy Fitzgerald, and the Minister for Justice and Equality, Deputy Shatter, on dealing efficiently with the important aspects of Government policy. They have been put in a position where they can no longer accept the word of the church. The decision to recall the papal nuncio to the Vatican for consultations is a matter for the Holy See. I hope the papal nuncio, in his report to the Vatican, will explain how serious the people and the Government are about the dreadful way in which the church ignored warnings. When legislation is passed there will be no hiding place for bishops, priests or members of the laity of any denomination. Finally, I commend the Taoiseach, Deputy Kenny, on unequivocally stating the people's disdain for what happened in Cloyne.

**Acting Chairman (Senator Paschal Mooney):** Am I correct in understanding that the Labour Party Senators are sharing time?

**Senator Aideen Hayden:** Yes.

**Acting Chairman (Senator Paschal Mooney):** That is fine. I call Senator van Turnhout.

**Senator Jillian van Turnhout:** I wish to begin by thanking the Leader and the Cathaoirleach for ensuring that this important debate is taking place before the House rises for the summer recess.

Article 19.1 of the UN Convention on the Rights of the Child states "State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". Ireland ratified this convention in 1992 and the Holy See ratified it in 1990. The Cloyne report covers the period from 1996 to 2009. This debate must focus on the role of the church. We can discuss the role of the State on another occasion. I hope we will have an opportunity to do so when the forthcoming reports to which the Minister referred, including that relating to the 200 children who have died in the care of the State, are published. I assure colleagues that I will have plenty to say at that time on the role of the State. Today, however, I wish to focus on the Cloyne report.

The people of Ireland are hurting and they are angry. Those who were sexually abused by Catholic priests in the Diocese of Cloyne and elsewhere are hurting, as are their families, friends, partners, spouses and others who love them. There is much pain among members of the wider community. Many Catholics, including me, feel betrayed by the actions of those priests who sexually abused children and the actions or inaction of those within the hierarchy who covered up those crimes. Many priests must surely feel that pain, that hurt, that sense of being so badly betrayed.

People are angry because this is the fourth report to deal with the neglect or emotional, physical or sexual abuse of children by priests or religious in this country. There is massive anger as a result of the fact that a great deal of this abuse was perpetrated by people whose actions were covered up by others. There is also outrage because so much of the abuse of children was carried out in an environment where many adults had knowledge but where they chose to remain silent. People are incensed because so much of the abuse of children about which we have read in these reports was totally avoidable. Something has fed the anger to which I refer, namely, the responses of those who bear responsibility for causing the abuse of children, for covering up such abuse or for remaining silent while others around them engaged in abuse.

The Christian Brothers apologised for the shocking abuse of children revealed in the Ryan report when it was published. Only days beforehand, however, the Christian Brothers had written to the Residential Institutions Redress Board rejecting any allegations of systemic abuse

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and stating that the only form of corporal punishment allowed was moderate slapping on the palms of hands. By that time, the Christian Brothers would have known that such denials were not borne out of honesty. When survivors of industrial schools and members of the wider public learned of those denials, the apology rang rather hollow. The reluctance of religious congregations to pay their fair share of the cost of redress did not reveal an appreciation of the revulsion many people felt on reading about the degrading and disgusting treatment of children that was related in the Ryan report, nor did it demonstrate an act of remorse or recompense which many would have expected as an absolute minimum.

This was followed by the reaction of the Irish Catholic hierarchy and the Vatican to the Murphy report. Irish bishops were collectively shamed by the extent of the cover up in the Dublin Archdiocese and said it revealed a culture of cover up that existed throughout the church in Ireland but individually they said they had done nothing wrong and insisted that there was nothing in the reports that should cause any of them to have to resign despite the wishes of so many of those who had been sexually abused as children.

In early 2010 Irish bishops went to Rome to meet Pope Benedict who, in turn, sent a papal letter to Irish Catholics. The voices of survivors were ignored and no one took responsibility. Instead of acknowledging that this was a Catholic Church problem on a global scale, everything from secularism, petty gossip, homosexuality and the media were blamed and all this time the anger of the people of Ireland was rising.

Apologists will also decry the lack of attention during this debate to the failings within the State and its child protectionism practices but that is nothing more than an attempt to divert the attention away from the Catholic Church as we discuss the Cloyne report. It makes me think of when I was young and had done something wrong and was caught out by my mother and I would immediately have pointed to my brother and say, "but he did it too". My mother, who is a wise woman, would have said "wrong is wrong and two wrongs do not make a right". Today we should deal with the role of the church and equally on other occasions, as we have done recently when we dealt with the Fourth Report of the Special Rapporteur on Child Protection, deal with the role of the State.

Two weeks ago the Cloyne report was published. It quickly became clear that the oft-repeated claim by Catholic bishops that all the revelations of the abuse of children and its cover-up by them was a thing of the past was seen for what it was, just another self-serving attempt to minimise the findings of previous reports so that bishops could remain in office and manage any loss of reputation to the Catholic Church.

The people of Ireland were rightly angered to learn in the Cloyne report that all the time the church was insisting that the application of its own child protection guidelines meant that such a cover-up could never happen again, the reality was that Bishop John Magee had no interest in those guidelines and he delegated their implementation to Monsignor Denis O'Callaghan who did not even agree with their content and, as a consequence, child protection practices in the dioceses remained dangerous for many years.

Apologists for the Catholic hierarchy, few and far between as they have become, pretend that instructions from the Vatican, like the 1997 letter from the Papal Nuncio sent to Irish bishops on behalf of the Vatican congregation of the clergy, did not contain explicit instructions not to follow civil obligations but it is clear what was intended for bishops was to follow Canon Law only and not the guidelines that they had presented to the Irish people. Wrong is wrong.

Few people in Ireland have had any time for the excuses that some choose to make to justify and explain away the blatant disregard of child welfare, their safety and protection. For many years the response of the Government has not reflected that hurt and anger that the people of

Ireland have felt. This failure to properly articulate how the people felt ended last Wednesday in the Dáil when the Taoiseach, Deputy Enda Kenny, responded to the publication of the Cloyne report. He said: “The rape and torture of children were down-played or managed to uphold instead, the primacy of the institution, its powers, its standing and reputation”. He went on to say: “There is little I or anyone else in this House can say to comfort that victim or others, however much we want to”. My understanding is that many victims or survivors are more comforted to hear the political leader of this country articulate very clearly their anger, disgust, revulsion and sadness that all of this has happened.

While our anger, disgust, pain, revulsion and sadness are all totally understandable, much more is needed. Many people who deeply care about advancing the safety, welfare, protection and rights of children had been advocating for a long time for many changes in administration, in practice, in legislation and in our Constitution where we need to strengthen the rights of children. I agree with Senator Darragh O’Brien that this rises above party politics and groupings. This is an issue on which we can find common agreement. In this regard, I acknowledge the plans outlined by the Minister for Children and Youth Affairs and also the plans that the Minister for Justice and Equality is taking on.

The Government, the survivors and the people of Ireland, not just Irish Catholics, await an appropriate response from the Holy See to the revelations of the Cloyne report and to reports which preceded it. What is required is an acknowledgement of their part in the long-standing cover up of the sexual abuse of children in this country by Catholic priests. That should be followed by an unconditional apology for that cover up and an unambiguous instruction to priests and the hierarchy to follow civil obligations, not just civil laws, and to always put children first.

**Senator Aideen Hayden:** I wish to share four minutes of my time with Senator O’Keeffe.

**Acting Chairman (Senator Paschal Mooney):** That is agreed? Agreed.

**Senator Aideen Hayden:** Like the previous speakers, I was shocked, appalled and horrified by the contents of the Cloyne report. It has already been said many times that Cloyne is different because it did not happen 20 or 30 years ago, it happened yesterday or the day before when child protection plans were in place. Therefore, we must look upon it in a different way to some extent than we look upon some of the other more historical reports of what happened in Ireland of long ago.

If the Vatican is shown to have encouraged disregard of the rules, then the State’s response should go beyond any token gestures and should pursue the Vatican for liability. Bishop Magee should not be allowed to divest himself of any responsibility, escaping to America where he is hidden in some location unknown. The church cannot and must not be allowed to escape liability where liability can be established. Nor can the church avoid its obligations to guarantee the State and the children of Ireland that all of those currently in its care are given the concern and care they deserve.

The Vatican acts as a church when it suits and as a state when it is more convenient. I welcome the actions of our Taoiseach and our Tánaiste. Ireland needs to clarify and renegotiate its relationship with the Vatican as a state and the seat of the Catholic Church and this must and should be based on mutual respect, a respect that is not evident in the evidence of the Cloyne report.

In regard to an oft-quoted matter in the media in recent days, the confessional has been cited as a special tenet of the Catholic religion, however, there is a tension between the secrecy of the confessional and the culture of openness that is required to protect children. A higher

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bar of care is required from any organisation that requests or requires the State to give it a special status. There can never be absolute privilege where the welfare of children is at stake.

As has been alluded to by other Senators, the State itself has a responsibility. This is not an issue that has been specific to the Catholic Church or the Protestant Church, it extends into institutional care and even as far as swimming clubs. We must take responsibility upon ourselves as a society. The major defect in this report is that it is evidence that the voices of children do not count in Irish society in the way in which they should. All of those children were members of families and attended schools and yet their voices were not heard.

The Constitution does not provide the protection it should for children. Ireland and its Constitution need to be reformed in favour of a human rights approach. Rights should not be based on economic precepts but on civil and political rights and must protect the poor and vulnerable in our society.

I call for four things to be done. The first is for the National Board for Safeguarding Children in the Catholic Church to complete its audit of every diocese in Ireland. I also call for the Bethany Home survivors to be included in the Magdalene laundries inquiry. We can never go forward unless we draw an appropriate line under the past. I welcome the commitment to put the Children First National Guidance Document on a statutory basis with civil and criminal sanctions for those who fail to comply. I welcome the launch today of Listen to Our Voices, an essential part of ensuring the safety of children in the care of the State. If we are ever to protect children, we must commit ourselves to truly hearing their voices.

**Senator Susan O’Keeffe:** I thank those people who worked to produce the Cloyne report. I also thank those in the church who care about their congregation and who work hard to minister to them and look after them. I commend the joint action taken by the Minister, Deputy Shatter, and by the Minister present, Deputy Frances Fitzgerald, on bringing in new legislation and on the Children First guidelines. I commend particularly the way in which they worked together to do that to show joined up thinking that has been lacking over many years.

Nineteen years ago this month I made a television programme called “Sins of the Fathers” and it was the first time that the matter of child sex abuse was brought to the public’s attention. What it showed clearly 19 years ago was that the Catholic Church hid its guilty priests and brothers or moved them on, or both. It looked after priests rather than victims and it ostracised those within the church who tried to speak out and encourage a different culture, and they were prepared to go to court to defend their priests against victims.

Here we are, on a hot summer’s day, 19 years later, and what do we know today? We know exactly those same truths, some of them in the Cloyne report and some in other reports. Make no mistake, many of the stories that contain other truths will never be recorded and can now never be recorded. It was clear from the outset what was going on with the church yet it has taken us 19 long and tortuous years to arrive at exactly where we were.

What the Cloyne report brings, however, is a dispassionate and detailed account of the failings of an organisation to discharge its duties that it knew it ought to discharge. It was and is no ordinary organisation. It is one that set itself up to bring the love of God, no less, to millions of people and to preach salvation through a certain morality.

There is one small sentence in the Cloyne report. It states: “Bishop Magee took little or no active interest in the management of clerical child sexual abuse cases until 2008...”. Instead, the Catholic hierarchy has caused millions of euro to be spent on reports — the Cloyne report cost €1.9 million — while they failed to pay their share of the costs, and argued over whether they should pay at all. They have punished victims again and again by lying in private and public

and by keeping quiet until investigation forced shreds of the stories from them, sometimes refusing to give information to people. They have hidden behind their power, their privilege and their education for years, and they are still doing it. They have ultimately twisted the core morality of the Christian faith, the one I was given as a child — love thy neighbour as thyself.

In the end we have seen individual priests rightly stand trial but the church hierarchy, those who run the organisation, the red hats, have escaped. They carry on behaving with the authority of a state. Indeed, they are a state with poison as its lifeblood. It is corrupt and malfunctioning to believe it still has those rights because they lost those rights a very long time ago the first time they covered up for a priest who abused a child. We did not know about that then, but we do now.

We must have the pursuit of proper accountability for our people. Those who rule and run the church, the executive of the church, must answer for what they have done because without that accountability this will remain a story of individual priests and individual pain, and that is a lie. It was far more than that.

**Senator Rónán Mullen:** I move amendment No. 1:

To delete “deplores the Vatican’s intervention which contributed to the undermining of the child protection frameworks and guidelines of the Irish State and the Irish bishops; and substitute the following:

“profoundly regrets the Vatican’s intervention in 1997 which contributed to the undermining in the Cloyne diocese of the child protection frameworks and guidelines of the Irish Bishops;

also regrets the absence of satisfactory national guidelines in this State prior to 1999 concerning the reporting of knowledge or suspicion of child abuse, and regrets that Oireachtas Éireann has not yet enacted legislation to compel such reporting and to underpin inter-agency sharing of information;

notes the 2001 Motu proprio from the Vatican Congregation of the Doctrine of the Faith which reformed the Church’s handling of abuse cases and notes that, since then and as evidenced by the approval of the US bishops’ ‘Essential Norms’ document in December 2002, the Vatican has supported national church policies which require compliance with national civil laws on reporting abuse allegations;

notes the Commission of Investigation’s acknowledgement that the standards adopted by the Church in Ireland are ‘high standards which, if fully implemented, would afford proper protection to children’ and that the ‘standards set by the State are less precise and more difficult to implement’;

affirms the work of the National Board for Safeguarding Children established by the Irish Bishops Conference, the Conference of Religious in Ireland and the Irish Missionary Union and urges all the relevant religious authorities to co-operate fully with its work;”.

I welcome the Minister to the House and commend her on what was a fine speech, which I have read. In moving my amendment I want to make it clear that I agree with almost everything in the all-party motion and I acknowledge there was much in the Taoiseach’s speech of last week made in support of the same Dáil motion with which I would agree.

Both the motion and the Taoiseach’s speech justly highlight the plight of the victims of child sex abuse, the disastrous and infuriating failure of the church in Cloyne to safeguard properly

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against clerical sex abuse, and the Vatican letter of 1997, which contributed to the undermining of child protection guidelines in Cloyne.

It is worth mentioning at this juncture that the Cloyne diocese may not be alone in its failure since 1996. We await the publication of audits into other dioceses, and I take this opportunity to heartily express my wish that any bishop or church leader who did not implement church guidelines on this issue since they were promulgated in late 1995-early 1996 should leave office forthwith and not wait for the findings of an audit to make their dereliction of duty clear.

The Government's motion also points to the important and laudable strides made and being made by the State in strengthening protection for children against both predatory abusers and institutional torpor and apathy, yet I take issue with aspects of the motion, and hence the reason I submitted an amendment, and I thank my colleagues who have supported it.

A clear presupposition of the motion is that the church and the church alone is at fault in the area of child sex abuse while the State and the State only is making progress in regard to the protection of vulnerable children. Nowhere does the motion acknowledge church progress on the issue and nowhere does it acknowledge State failure. Despite what Senator van Turnhout and others have said, honesty and critical appraisal matters, and while a fair assessment of church and State culpability is of lesser importance than the justice due to persons sexually abused by clergy, facilitated by the gravely inadequate behaviour of certain church authorities, it still matters, and not simply because we as legislators have a duty towards objectivity, even-handedness and truth. It matters because a fair assessment of where both church and State went wrong and where they are going now is essential for formulating best policy, law and practice to protect children.

The pretence exhibited by the Government's motion that failure in child protection belongs somehow exclusively to the church contributes to a culture of complacency within Government and State agencies and in turn draws society's attention and media scrutiny away from the gross abuse of children currently taking place under the watch of the State and without its needed intervention.

Examples of State failure concerning child abuse include the lack of inter-agency co-operation, the failure of many Health Service Executive areas to implement the Children First guidelines properly, the Roscommon and Galway abuse cases, and the neglect motivating the current investigation into the deaths of almost 200 young people in the care of the HSE in the past decade, yet there has been nothing like the pressure on the State to get its house in order as there has been on the church. There have been no resignations, nor has there been a concerted media campaign calling for such recommendations. I do not remember any judge-led commissions established to report on the abuses overseen by contemporary State agencies. Instead, we get a self-congratulatory, all-party motion on the progress being made on the Government side. We get a motion deploring the Vatican letter of 1997 critical of mandatory reporting, a motion which ignores the fact that the State still has not legislated for mandatory reporting and expressed similar doubts in 1996 under the then Fine Gael Minister for children, Austin Currie.

That is simple hypocrisy. By unfairly imputing *mala fide* on the part of the Vatican by employing the term "deplore", for the Cloyne report, which is what I rely on for the definitive version of events, it makes no such accusation, this motion conveniently side-steps genuine difficulties with mandatory reporting, difficulties the Government still seems to be vaguely aware of except when it is targeting the church's own expressed doubts about mandatory reporting. That is why Senator Van Turnhout is wrong to say that our focus today must be on

the church exclusively, if that is what she is suggesting. This entire motion extols what the State proposes to do and therefore that argument simply does not hold water.

The motion makes no mention of the strides being made by the church in regard to child protection, achievements the Cloyne report documents. It makes no mention of the current guidelines that according to the Cloyne report are superior to those of the State, and it makes no mention of the highly encouraging work of the National Board for Safeguarding Children.

This is not simply a matter of adding balance to the debate. By ignoring areas where the church has succeeded as opposed to failing miserably the State potentially blinds itself to valuable lessons. That again contributes to State complacency and shields it from its own failings. Church complacency on child protection, as the Cloyne report reminds us had, and in some thankfully diminishing cases continues to have, devastating consequences. That is no reason to assume that State complacency in the area of child protection is any more benign. We as legislators have a duty to guard against State complacency and we fail in that duty by passing this motion unamended.

The Taoiseach's speech changes the context in which we are debating this motion, the same motion accepted by the Dáil. I would like to acknowledge that none of us can ever do enough to appreciate fully the horror of child abuse and the particular horror that is child abuse by ministers of the church. The writer Stephen Rossetti titled a book on the subject, "Slayer of the Soul".

That title captures something of the profound evil involved.

Part of the context for the Taoiseach's speech and its reception by many in the public is the simmering outrage of many good people over the evil perpetrated by people in positions of responsibility in their church, and the failure of others to take hold of the problem and root it out. That is why many have returned to the Taoiseach's assertion that he is a practising Catholic. Some of those who are most angry are sincere practising Catholics. I am conscious that many of us who will approach this issue today approach it as practising Catholics who are deeply angry over the evil in our church and the failings of some of its leaders.

The duty of Catholics is the same as that of any person of good will. We need to be unswervingly truthful in our analysis of the issues and we must approach them as legislators with a responsibility to respond to and lead public opinion. We have now arrived at a new and challenging moment in the relationship between this State and the Vatican. I hope good can come out of the current crisis.

I prefer to think of last week's speech by the Taoiseach as the first of two. It was a speech in which he was unswervingly angry and gave expression to the anger that many people feel about the evils in our distant and recent past. The speech failed to acknowledge serious failures of legislators throughout the 1990s and the good work done in recent years in the church, especially at the level of the Vatican since 2001. In that sense, the Taoiseach could be said to have told the truth but not the full truth in his speech. The allegation about interference up to three years ago was, in the end, unsubstantiated and, therefore, may have been untruthful. We await further details. It is not unreasonable to hope, therefore, that there will be an even better speech in the future and that the forthcoming engagement with the Vatican will lead to acknowledgement on all sides of the serious faults in the approach of church and State and of the goodwill and constructive contributions on all sides in recent years.

In asking Senators to consider my amendment, I ask them to approach the matter in a spirit of honesty and realise that those of us who seek full clarity, to develop issues and add to the motion we believe to be deficient in some way are in no sense apologists, as has been implied. We simply believe the truth — the full truth — will set us free and that nothing should be said in this House today that will take from the anger we must all feel over any failure to protect

[Senator Rónán Mullen.]

children, be it at an institutional or hierarchical level or on foot of the ordinary failures of people to point out and report what they needed to report.

We face a better future on this issue but we will only have this if we refuse to instrumentalise this issue and use it to pursue other agendas, which we are sometimes in danger of doing. We need to demand nothing less than the highest possible standards for the protection of children and we need to demand them equally of all people, be it the Pope, bishops, lay people, gardaí, social workers or health care officials. Only if we approach the issue with unswerving honesty will we really do right by the victims of abuse and work might and main to prevent further abuse of innocent victims.

**Acting Chairman (Senator Paschal Mooney):** I ask Senator Quinn to second the amendment.

**Senator John Crown:** I really do not want to trivialise this debate. On a point of order, could the Acting Chairman clarify for me whether we are allowed to read speeches verbatim from scripts?

**Acting Chairman (Senator Paschal Mooney):** The convention is that Members should avoid, where possible, reading from scripts. There is no legal Standing Order preventing it.

**Senator John Crown:** It is a matter of convention and not of Standing Orders.

**Acting Chairman (Senator Paschal Mooney):** It is a practice that has evolved in the House that some Members might not necessarily welcome. The reading of scripts should be avoided, if possible, but it is not against Standing Orders. While the Chair does not have an opinion on this, I suggest that the Senator's remarks may provoke a positive reaction among some Members of the House.

I call Senator Quinn.

**Senator Marie-Louise O'Donnell:** On a point of order, I wonder why Senator Crown asked that question.

**Acting Chairman (Senator Paschal Mooney):** Senator Crown is entitled to ask any question, as is any Member. If Senator Marie-Louise O'Donnell wishes to receive an answer from Senator Crown, I suggest she ask him for it outside the Chamber.

**Senator Marie-Louise O'Donnell:** We did not hear why he was asking the question.

**Acting Chairman (Senator Paschal Mooney):** That is not a point of order.

**Senator Marie-Louise O'Donnell:** I would be interested in hearing Senator Crown's reason.

**Acting Chairman (Senator Paschal Mooney):** The Senator's point is not a point of order. If she wishes to elicit from Senator Crown his motives for raising any question, or the motives of any other Member, I suggest that she ask them in the antechamber afterwards. I do not want to prolong this discussion because we are wasting the time of Members. There is a long list of speakers on the motion and, in the interest of facilitating every Senator, I suggest they proceed as quickly and efficiently as possible. I ask Senator Quinn to second the amendment.

**Senator Feargal Quinn:** I support Senator Mullen's amendment. I welcome the Minister to the House. I listened very carefully to every word she had to say and am very impressed with what she has done and continues to do.

I have had two educational experiences in recent months, the first of which was when my local Church of Ireland asked me to commence the reading of the King James version of the Bible, which was published 400 years ago this year. I started reading and everybody did so afterwards. What I found interesting about this was not so much the Bible, although I should have read more of it, but the fact that for many hundreds of years, until 1611, church and state authorities tried to keep citizens in the dark over what was happening. They did so by removing information from citizens and by only allowing the Bible to be published in Latin. Therefore, they translated their own words in English. One may ask what this has to do with the motion. It seems to me there was a tradition for many years of church and state authorities keeping citizens uninformed regarding what was happening.

My second experience occurred some nights ago. Some of us had the opportunity to accept the hospitality of a Member of the Seanad and attend “Translations” in the Abbey Theatre. It was interesting to see a portrayal of the introduction of education into Ireland in 1833, and to see how this happened. From that year on, primary education has been very much in the hands of the church. We benefited to a very large extent from well-educated youth since then. The amendment attempts to introduce some balance in respect of the work done by the church over the years, not just in education but also in health. It is fair to say that when the hospitals were in the hands of the nuns, they were very effective and efficient by comparison with those that came later.

Power tends to corrupt. In spite of the wonderful work done by priests and nuns, some or, by the sound of it, quite a few, got so used to power and controlling through fear that they abused that power. Thus, the horrors we hear about in the Cloyne report were investigated and discovered.

The report on child sexual abuse makes for horrific reading. More shocking was the effort to protect the abusers from the law. It is very hard to understand the efforts made to keep the facts from the public eye. Therefore, I welcome this debate and the all-party motion that has been tabled, except for one part of it. I support the amendment to try to introduce balance into the debate.

Over the years, in business and other aspects of life, I have tried to find solutions to various challenges and to avoid confrontation. In trying to attempt to obtain solutions, I have tried to avoid using extreme language. I have a problem with the word “deplore”. It may well be that many agree with the use of the word, which Senator Rónán Mullen asks to be removed from the motion. I accept everything in the motion except one short paragraph that states, “deplores the Vatican’s intervention which contributed to the undermining of the child protection frameworks and guidelines of the Irish State and the Irish bishops”. I am happy to support every aspect of the motion but believe the word “deplore” does not recognise the work done by various church bodies which I hope may result in full co-operation from those who have responsibilities. That said, I support the motion.

The first two paragraphs of the amendment state:

profoundly regrets the Vatican’s intervention in 1997 which contributed to the undermining in the Cloyne diocese of the child protection frameworks and guidelines of the Irish Bishops;

also regrets the absence of satisfactory national guidelines in this State prior to 1999 concerning the reporting of knowledge or suspicion of child abuse, and regrets that Oireachtas Éireann [this is a reminder to us of our responsibility] has not yet enacted legislation to compel such reporting and to underpin inter-agency sharing of information;

[Senator Feargal Quinn.]

The third paragraph notes that the 2001 *motto priori* from the Vatican's Congregation of the Doctrine of the Faith reformed the Church's handling of abuse cases. It also notes that since, as evidenced by the approval of the United States bishops' "Essential Norms" document in December 2002, the Vatican has supported national church policies which require compliance with national civil laws on reporting these abuse allegations. It notes the commission of investigation's acknowledgement that the standards adopted by the church in Ireland are "high standards which, if fully implemented, would afford proper protection to children" and that "standards set by the State are less precise and more difficult to implement". I have a concern about the original motion because I believe it is not balanced and has not included that.

The last paragraph in the amendment "affirms the work of the national board for safeguarding children, established by the Irish Bishops' Conference, the Conference of Religious in Ireland and the Irish Missionary Union, and urges all the relevant religious authorities to cooperate fully with its work".

The reason I have quoted all of that is because there is a danger that the amendments are not always read.

**Acting Chairman (Senator Pascal Mooney):** The Senator will have to conclude.

**Senator Feargal Quinn:** We have experienced horrific stories, which we have heard once again today. We have also read them in the Cloyne report. It is essential that we take action, but let us get a balanced view on this. Let us take into that balanced view the fact that considerable efforts are being made on the part of the church.

**Senator Maurice Cummins:** The Commission of Investigation into the Catholic Diocese of Cloyne is a deeply upsetting document that describes the handling of allegations, complaints, suspicions and concerns about child abuse in that diocese.

Yet again, following on from the Ryan report and the first Murphy report into the Dublin Archdiocese, we have heard more harrowing stories and learned more about the terrible cost of child abuse. We have learned of more lost childhoods, more traumatised adult lives and more relationships deeply affected by the appalling actions of certain priests and their church superiors.

It is all the more upsetting that this report covers a period as recent as 1996 to 2009, during which we have learned the Cloyne diocese failed in large measure to comply with the Catholic Church's own 1996 guidelines on clerical child sex abuse.

Despite their assurances to the contrary, their clear focus was on the avoidance of scandal and the preservation of the good name and status of the institution and of the priests. How senior members of the church could in any way have reconciled their consciences with their stealthy suppression of such awful acts against innocents, is impossible to understand.

The report describes how the diocesan authorities handled abuse allegations and were effectively able to ignore the church's own guidelines in respect of the handling of complaints. This failure by the church authorities to follow their own pronouncements and put children first was deeply immoral, shameful and indeed scandalous.

All of these children were human beings entitled to dignity and respect. The perpetrators of the abuse robbed them of their innocence and that entitlement. The church, as an institution, further abused and denied them their dignity when it ignored and covered up their complaints. We saw again in Cloyne, obstruction and obfuscation on the part of the diocesan authorities

in dealing with complaints of clerical sexual abuse, and long delays in taking clearly unsuitable priests totally out of ministry.

The careful, conclusive and detailed investigation by Judge Yvonne Murphy and the commission is to be commended, but essentially this report is the victims' vindication. We owe them a deep debt of gratitude and a huge respect for their courageous co-operation with the commission. In breaking their silence and bringing this shameful behaviour into the public domain, they have once again reminded us all of the absolute need to tackle this type of crime and not sweep it under the carpet, as has been the practice in the past.

Because it may not have happened to us personally, or in our own families, does not mean that we should not face it head on as if it had. We have a duty, as a society, to stand up in solidarity with the victims and their families and to deliver the message that child abuse is evil, wrong and will not be tolerated.

The shame and horror of this report must be noted by every citizen of this country, so as to ensure that every one of us puts the protection of children first. Child abuse is, and always has been, a criminal offence. Where the church has failed to deal with it as such, the State will fulfil its obligation to keep its children safe.

I am proud to be a member of a Government party that has shown decisive leadership and has taken swift action in this matter. As the Minister for Justice and Equality, Deputy Alan Shatter, pointed out last week, "the time for words alone and political rhetoric is long since gone."

The appropriate authorities to deal with abusers are the Garda Síochána and the courts. No one is above the law of the land. Along with the review of the Cloyne report by the Garda Síochána to see if any further action can be taken against the abusers referred to in it, I am pleased with the development that the Garda Síochána is also setting up a special telephone line which victims of clerical abuse, or anyone who has information about it, can contact.

The establishment of the Department of Children and Youth Affairs is a clear signal that our young people deserve attention and recognition, and to have their needs prioritised at Cabinet level. The Minister for Children and Youth Affairs, Deputy Frances Fitzgerald, has received Government approval to place the revised Children First national guidelines on a statutory basis. The intention is to place a statutory obligation on every organisation working with children to protect and safeguard those children when in their care, including statutory, private, community and voluntary organisations.

As the Minister for Justice and Equality, Deputy Shatter, mentioned in this House earlier today, he has published the heads of a Bill to place the vetting of persons working with children and vulnerable adults on a statutory basis. This Bill, which will be submitted for drafting with a view to enactment in the autumn, will provide a legislative basis for the existing arrangements. It is legislation that, I am sure, will receive the unanimous support of this House.

These actions are but part of a comprehensive range of measures, which have been outlined by the Government and the Minister, designed to address not only the problem highlighted by the commission's report on Cloyne, but also to provide the foundation for an immeasurably strengthened system of child protection, which is so necessary.

I hope that in some way the publication of this report will help the victims and let them know that they are not alone in their suffering. They have the solidarity and support of all of us, while their abusers are only entitled to our condemnation.

Having read and listened to the stories of victims, it is my sense that the greatest help we can give those truly courageous people is to redouble our efforts to ensure that this will not happen again to other families and other children.

[Senator Maurice Cummins.]

I would like to thank the Minister for Children and Youth Affairs, Deputy Fitzgerald, and the Minister for Justice and Equality, Deputy Shatter, who will reply to the debate, for attending the House to discuss the report with us. I assure them of the support of this House as they continue their essential work in ensuring the safety and protection of children.

I would hope that the amendment that has been tabled will be withdrawn. We had total unanimity in the other House, as should be the case here.

**Senators:** Hear, hear.

**Senator Maurice Cummins:** The word “deplore”, in my view, is not strong enough. I hope we will have the same unity and unanimity in this House. The victims deserve no less.

**Senator Mark Daly:** In 1987, the *Journal of Interpersonal Violence* published a study entitled “The self-reported sex crimes of non-incarcerated paedophiles”. This study found that in a lifetime, a single child abuser will sexually abuse and rape, on average, 150 children. It is estimated by One in Four that only one in 100 victims of child abuse who come forward and report incidents of rape and sexual abuse to the Garda Síochána will see their abuser being successfully convicted.

With so few convictions, it is little wonder that so much abuse went on for so long. It was exacerbated by the silence and inaction of the church, as we see in Cloyne. In the former boarding school in Carraig Na bhFear, Coláiste an Chroí Naofa, a priest teaching in the school was convicted of ten sample charges of indecent assault in one case. Seven formal allegations of child abuse have also been made against another priest of the Missionaries of the Sacred Heart and a former teacher in the same school. Despite seven separate cases being reported to four different Garda stations between 1986 and 2008 about this priest, the Director of Public Prosecutions declined to pursue criminal prosecutions. However, the Missionaries of the Sacred Heart settled a civil case before it was brought to court with one of those who alleged they were sexually assaulted.

On foot of these original allegations and subsequent civil action, the Missionaries of the Sacred Heart placed the priest under a restricted ministry order in 1996 which was intended to restrict the activities of the priest including limiting his travel, work and access to children. The priest, however, acted in direct contravention of this restricted ministry order and violated the safeguarding of children standards and guidance documents for the Catholic church. The religious order in question has also failed to enforce this order and guidelines.

For example, part of the restricted ministry order states the priest must inform his community leader of his movements in and outside Ireland. In March last year, the priest in question was advertised in *The Irish Catholic* newspaper, which also ran the headline, “Abuse Era at an End”——

**An Leas-Chathaoirleach:** The Senator may not display material in the Chamber.

**Senator Mark Daly:** I am sorry.

The priest in question was advertised as a spiritual director for a pilgrimage to Fatima, a location where he could have unsupervised access to children. The head of the order did not know he had gone to Fatima until I told him.

Similarly the priest travelled to Rome in Easter 2011 without informing the designated person or Pope Benedict in his role as vicar of Rome. Only last year when I started to make inquiries into the issue at Carraig Na bhFear that the Missionaries of the Scared Heart wrote

to the superior general in Rome asking for the priest to be removed from the priesthood. Only in the past few weeks did the superior general forward this request on to the Congregation of the Doctrine of the Faith.

It is my information that the first allegation of abuse against this priest was investigated in the 1980s by Fr. Ciarán Mac Cárthaigh. I have grave concerns for the many victims of Carraig Na bhFear and Cloyne who have not yet sought help to deal with the crimes that were perpetrated against them. I met with Cardinal O'Malley of Boston and following the Boston example, myself and Ian Elliot, the chief executive officer of the church's national board for safeguarding children, met with the Missionaries of the Scared Heart, including the incoming provincial superior, Fr. Joe McGee, as well as Fr. Pat Courtney, on 23 June 2011. At this meeting, they indicated they would follow the example of Boston and contact past pupils and teachers of the Carraig Na bhFear school during the period in question. The order would also place advertisements in the *Irish Examiner* outlining that abuse had taken place and urged victims to come forward to get help. They have since told me they will not do this.

I have asked Ian Elliot to carry out a review into the Missionaries of the Scared Heart child protection policy as a matter of extreme urgency. The order should follow the example of Archbishop Diarmuid Martin to employ a retired Garda detective to interview on a weekly basis all priests which the order has placed on restricted ministry order.

The laws of the statute of limitations for civil cases need to be extended for child abuse. The whistleblower legislation has to protect good priests and people who come forward. Mandatory reporting legislation, similar to that in Western Australia, needs to be introduced. The Children First child protection policy guidelines need to be put on a statutory footing.

Parents need to be aware that while no charges were pressed despite the seven allegations of abuse reported to four different Garda stations against Fr. Donncha Mac Cárthaigh, the aforementioned priest——

**An Leas-Chathaoirleach:** The Senator cannot name an individual in the House. It is totally inappropriate. This is the wrong forum in which to name people in this situation.

**Senator Mark Daly:** Thank you, a Leas-Chathaoirligh.

He was a selector on the Cork minor football team from 1991 to 1993 and manager of the Cork under-16s football team.

**An Leas-Chathaoirleach:** The Senator is going down a very dangerous route. We have to be very careful. There are constitutional issues involved. I know there is parliamentary privilege but there is also abuse of it. I must protect somebody who is not here to defend himself. The Senator must be extremely careful he does not abuse his privilege.

**Senator Mark Daly:** Thank you, a Leas-Chathaoirligh.

The Missionaries of the Scared Heart imposed a restricted order which should control the priest in question's access to children. Victims needs to know there is help and they are not the only ones who have suffered abuse. Nothing we say here and no words of mine can comfort them in their suffering due to a crime so outrageous.

**Senator Ivana Bacik:** I wish to share my time with Senator Whelan.

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

**Senator Ivana Bacik:** I offer my sympathy to those brave survivors and victims of clerical abuse in the Cloyne diocese who opened a window on what happened there. I commend the

[Senator Ivana Bacik.]

team which prepared the Cloyne report which makes for compelling reading and provides succinct findings as to what happened in the diocese.

Along with previous reports, some common themes emerge around the denial of abuse by Catholic church authorities such as their primary concern often being to protect abusers rather than to protect children. There was also a lack of concern about children who were at risk of abuse.

Two particular features mark out the Cloyne report. First is the very recent nature of the allegations made. Complaints and allegations against clerics were made between January 1996 and February 2009. There can be no excuses for the covering up of child sexual abuse at any time. The fact that cover-ups and failures to act were continuing to occur until 2009 is a particularly disturbing feature of this report.

The second feature is the response of the Vatican to the church's own framework document for dealing with child sexual abuse. As the report stated, it undermined the status of those procedures and gave support to those high up in the Cloyne diocese who did not support the policies and failed to take action to protect children at risk of abuse. I agree with the Leader of the House that it is appropriate this motion deplores the Vatican's intervention which undermined the guidelines of the Irish bishops and the State's. I am glad the Tánaiste and Minister for Foreign Affairs and Trade has taken up this matter.

Those who proposed an amendment to this motion should withdraw it. All of us should deplore the intervention of the Vatican. This motion, which the Labour Party is proud to support, also deals with failures by the State. The Minister for Children and Youth Affairs gave a sincere apology for these. The Government is committed to taking steps to ensure child protection. I welcome today's publication of the heads of the national vetting Bill which will contribute to the effective protection of children.

**Senator John Whelan:** I deplore the contents of the Cloyne report and do not know how anyone could do otherwise. We should stop playing with semantics and call a spade a spade. Child abuse is a heinous and horrendous crime against vulnerable children. The Cloyne report is not the first of its kind and will not be the last. There have been the Murphy, Ryan and Ferns reports. Unfortunately, a litany of further reports are awaited.

More unfortunately, the cover-up continues and those involved have not learned any lessons. If this were drug dealing, for example, it would be regarded as organised crime, such is the manner in which the prevention of investigations and holding culprits to account was orchestrated. Who needs guidelines to tell them child abuse is wrong? Does anyone know the whereabouts of Bishop John Magee? Are the Garda authorities looking to question him to see how he could help in their investigations of matters arising from the Cloyne report? If we want the full truth, we must have the co-operation of those who can assist us in getting it. Bishop Magee is either a fugitive or a missing person and it would be helpful if he, other bishops, the Papal Nuncio or anyone else how knows his whereabouts could make themselves available to the authorities. It is bizarre that he disappeared off the face of the earth only a fortnight before the report was published. It is all very well to cry crocodile tears and apologise but expressions of profound regret do not hold much water when the cover up of child abuse continues.

**Senator John Crown:** To answer Senator O'Donnell's query, the reason I raised it is that when I started in the House, I was informed we were not supposed to read prepared scripts. I noticed Senator Mullen's eloquent, powerful——

**Senator Mary M. White:** On a point of order, Senator Crown was using his mobile telephone.

**An Leas-Chathaoirleach:** That is not a point of order. The Senator is a long-standing Member.

**Senator Mary M. White:** We were requested by the Cathaoirleach not to use our telephones.

**An Leas-Chathaoirleach:** The Senator should avoid remarks that will provoke response. Allow Senator Crown to continue.

**Senator John Crown:** I am being courteous to Senator O'Donnell who asked a question of me. Senator Mullen read a densely typed script.

I will put my cards on the table. I was raised a Catholic, I served as an altar boy and I was a member of the Legion of Mary. I received a wonderful education from the Sisters of St. Joseph in New York, the Irish Christian Brothers and Carmelite priests. I never once encountered anything other than extraordinary kindness and responsibility from anybody with whom I interacted. I had a fine education and I was one of the three in four. The education I had gave me an ethnical framework which I carried forward in my life, I will admit, somewhat selectively but, on many of the issues I feel deeply about, I see inspiration in the stories that were told me.

This was the church of Mother Teresa and Fr. Damien who voluntarily exposed himself to leprosy and, ultimately died from that dreaded disease in pursuit of his work with the lepers of Molokai. This was the church of the kindest man in history, St. Francis of Assisi, and of Fr. Max Colby, who put his own life on the line for holocaust survivors but this is a church with a dark side as well. This is the same church that tortured and caused and tolerated to be burned alive Jews and heretics throughout much of its history. This is the church that condoned and facilitated slavery and colonisation. The kindness and abuses existed side by side because it was populated by the same frail humans that populate every other organisation. The abuses did not stop because the church reformed itself; they stopped because humane, civic power grew up around it and constrained its activities to the spiritualist sphere where they should be maintained.

Theocracies, in particular, do not give up power voluntarily. It must be acknowledged that over the past months representatives of the US diplomatic service had to serve civil litigation papers on the Vatican because of child abuse allegations and charges that had arisen in a school for the deaf in Milwaukee. These papers had repeatedly been refused by Vatican recipients and functionaries. When those trying to serve them arrived, they dropped their hands to their sides like a deadbeat dad refusing to take child maintenance orders and said they were not required or desired. Ultimately, those trying to serve them had to go to the diplomatic service to do so. Parenthetically, the lawyers came from a law firm in St. Paul, Minnesota; I love the irony.

In general, we must have rigid, unshakeable civic control over civic functions and the functions of church and State must be separate. There is a bigger lesson to be learned from this. I regret that good colleagues whose judgment I value in many areas have chosen to delete the word "deplore" from the motion. It should be reintroduced and the amendment withdrawn. No word other than "deplore" adequately characterises our feelings for the cover-up by people from an organisation, which despite the great good it has done in many ways, we have seen through history is capable, because it is populated by the same frail humans as these Houses and other organisations, of committing great evil.

**Senator Paul Bradford:** I wish to share time with Senator Paul Coghlan.

I come from the diocese of Cloyne and, therefore, I am aware of the pain and suffering of many people in the community arising from the report. However, the pain and suffering of the

[Senator Paul Bradford.]

vast majority of parishioners across the diocese does not compare to the ongoing pain and suffering of the victims of clerical sex abuse, not only in Cloyne but throughout the country. It does not require a motion or a debate for all of us to record our abhorrence at such activities. As previous speakers said, it would have been preferable if an all-party motion had been agreed. That may yet prevail but we must try to move forward and ensure a better place for children in our society.

Our State is more or less 100 years old, depending on which starting date one uses for modern Irish history but it must be acknowledged that while political independence was achieved, it was replaced with an authoritarian form of government, which created a harsh place for our children not only in churches but in our homes and schools. That is something we must deeply regret. Generations of children have been treated as third class citizens and that must never again be allowed. We have a great deal of rebuilding to do not just of lives but of the type of society we want to put in place. In the short term, we must demand of the church authorities in so far as we can and in the strongest fashion that civil law is fully respected and that church members who are a threat to children are reported to the appropriate authorities and dealt with. That is the absolute minimum.

We need a much more substantial debate to go through the Cloyne report and the broader societal problems and I hope we will have that in the autumn. I support the motion and I wish Ministers well in their renewed efforts to improve the lot of children. I acknowledge the pain and suffering of the victims and ask everybody to ensure this misery will never again be inflicted on any child in our society.

**Senator Paul Coghlan:** I join others in complimenting the authors of the Cloyne report. What is chronicled therein is appalling and shocking and I compliment the Ministers for Justice and Equality and Children and Youth Affairs. The State is playing catch-up because this culture of covering up was prevalent throughout society, including in probably every church and organisation. We witnessed this in banking, business and everywhere else. We all need to condemn it.

I compliment the Minister for Children and Youth Affairs on her contribution. I am well aware of the views of the Minister for Justice and Equality and I note the common ground between the Taoiseach's comments last week and Archbishop Martin, who is a good man. There are good people in the church and it is terrible that so many people have brought the church into such disrepute. It will not be easy to repair this damage. Bishops, priests and anyone else in authority who violated or harmed children should be outed and resign. Archbishop Dermot Clifford owned up to the fact that he found Bishop Magee had told lies. He said it was indefensible that he had failed to supervise his own child protection delegate.

The issue regarding the confessional is a red herring. These people do not go to confession. Child abuse was known about and this knowledge should have been available through soft information. We do not have to do anything about breaching the secrecy of the confessional to get at these criminals. I am reminded of the story of the criminal and his son who went to confession one Saturday evening. When they came out the criminal asked the son what he told the priest. The son said he told him about the robberies they had committed in the preceding months. The father exclaimed that one goes to confession to tell one's sins and not one's business. These people will not go to confession to own up to their abuses and we need to wake up to this.

Over the years, the State has failed on the ideals of the 1916 Proclamation and on what was written in 1937 Constitution. However, I am glad we are now dealing with matters and I hope we are dealing with them adequately. I compliment the Ministers on their efforts.

**Senator Trevor Ó Clochartaigh:** Ba mhaith liom mo chuid ama a roinnt leis an Seanadóir Cullinane.

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

**Senator Trevor Ó Clochartaigh:** I dtosach báire, ba mhaith liom tacú leis an rún thar cheann Sinn Féin. Is é an tuairim atá againn ná gurb iad na daoine a déanadh an docair seo dóibh na daoine is tábhachtaí maidir leis an díospóireacht seo. An dualgas atá againn ná deimhniú go bhfuil gach tacaíocht agus gach cúnamh le fáil dóibh ón Stáit agus ón eaglais chun cabhrú leo. Is lá maith é, ar bhealach, go bhfuil an tuarascáil curtha amach ach is lá deacair é do na daoine sin.

The report is a damning indictment of the hierarchy, but also asks very serious questions of the State. We need to ensure that every help and support that should be given is given to the people who suffered at the hands of priests and anybody who suffered any form of child abuse. The State has neglected its duties by failing to put in place mandatory reporting requirements and I welcome the moves being taken by the Government to put them in place. However, this raises the issue of putting in place the resources required. In recent years, social workers have been grossly under-resourced. There is no point in having a wide and robust debate if the Government will not put in place the resources required so we do not see people who have suffered abuse of any type not having resources available to them. The most important issue is that they are helped.

I wish to raise an issue that has not been discussed in the debate so far. Last December, the Executive in the Six Counties announced the establishment of an inquiry into historic institutional abuse in the North. A cross-departmental working group was established to examine how an inquiry would proceed and it reported to the Executive almost a fortnight ago. A number of the 26 Catholic Church dioceses across the Border are being examined, including Raphoe, Derry, Clogher and Armagh. It would be useful to co-ordinate with the initiative under way in the Six Counties with regard to future inquiries. It would also be of benefit to members of the Northern Executive to learn about our experience in the Dáil and the experience of victims' groups and civil society.

**Senator David Cullinane:** No Member of the House would choose to have to again discuss a report on child sex abuse in the State; sex abuse carried out by members of the Catholic Church; and the complicity of the institution of the church in what was the rape of children and the cover-up and protecting of paedophiles over and above the children of the State. My generation grew up learning about how children were abused in State care in industrial schools and how priests were moved from one parish to another. Priests, who were essentially paedophiles, were transferred from one village to another village. A paedophile priest is no different to any other paedophile. My generation grew up learning of these horrors but we understood it was not only about the Vatican or the institution that was the Catholic Church, but that the State was also failing in its responsibilities to protect children.

A number of weeks ago, we discussed the abuse of women in Magdalene laundries. There is a long history and legacy of abuse in the State in respect of children. The generation who learned of these horrors and who saw them as something of the past and of a different generation was absolutely outraged to read the Cloyne report which brought the reality of child abuse to as recently as 2009. This was a shock to many people who had hoped the condemnation we had heard from the Vatican and senior representatives of the Catholic Church, the acts of contrition, the promises of change and the guidelines being put in place would lead to better protection of children. Many people are appalled and shocked that this was not the case.

[Senator David Cullinane.]

All of the words of condemnation and the acts of contrition, whether by politicians or members of the Catholic Church, will mean nothing if we do not introduce new guidelines and legislation that ensures we protect children. Above and beyond any of this is the need for the Catholic Church in the State to recognise the rights and protection of children must come before the rights and protection of the church. If only it understood that the failure to protect children and their rights is and was undermining the integrity and the future of the church in the State. I hope no future generation of Irish people will be confronted by the horrors of child abuse because of the actions of priests and the failure of the institution that is the church to properly safeguard and protect children.

**Senator Mary Moran:** I wish to share time with Senator Harte.

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

**Senator Mary Moran:** I welcome the Minister, Deputy Shatter, back to the Chamber. I welcome the opportunity to speak on this motion and I thank all involved in the preparation of the Cloyne report. The disturbing findings of the report, the inadequate and inappropriate response, particularly of church authorities in Cloyne, to the allegations of child sexual abuse and the intervention of the Vatican to pervert the course of justice has again shaken our nation to the very core.

Members of the clergy have always been revered in this country. The Catholic religion is a huge part of our culture. I remember as a child going to relatives' houses where they had what was termed the "priest's room", namely, the best room in the house where only the priest was brought and children were not allowed in. Now we hear how a bishop misled a previous child abuse inquiry and lied about how he was handling the situation.

Like many others, I was educated in a convent school and brought up to respect the clergy. I brought up my own children in the same way. However, I also brought them up to take responsibility for their actions. I am disgusted at the terrible example being shown by Bishop Magee, who is hiding in the arms of the church. I ask that he be brought back to answer the charges.

It is time to remove the clergy from their pedestal and insist it is mandatory for priests, just as for all people working or likely to work with children, to secure clearance from the Garda. Priests can never feel the right to be above the law again. I find it completely unacceptable and very distressing to have read recently that a number of priests have resisted requests for them to be submitted to the Garda vetting procedure.

As a practising Catholic I feel shaken to the core by the revelations of the Cloyne report. As a mother, I cannot even begin to imagine the horrors for these children and their families. We now realise that in the very heart of our clergy evil was present. The Cloyne report demonstrated exactly how much. Understandably, we have lost our sense of trust in the clergy. It is vital that we move forward and acknowledge the efforts of those members of the clergy trying to undo the wrongs committed by previous generations. We should not tar them all with the same brush and we should acknowledge the decent members of the clergy who are trying to provide answers while Bishop Magee remains in hiding. They are trying their level best to rebuild our trust and they publicly condemn the terrible mental and physical atrocities suffered by victims.

At mass last Sunday, the local curate gave a moving sermon in which he condemned Bishop Magee for his actions. He questioned his faith and his reasons for remaining in the church and revealed his disgust and disappointment with the findings of the Cloyne report. The priest

received a deservedly warm round of applause for his honesty and humanity, something that has been absent from these offending priests for a long time. It is vital that we ensure this situation never recurs. I would welcome the publication of legislation to provide strict punishment measures for failure to comply with the child protection code. I commend the motion to the House.

**Senator Jimmy Harte:** I welcome the Minister for Justice and Equality and I thank the Minister for Children and Youth Affairs, Deputy Fitzgerald, for taking the time to attend.

Child abuse is physical and psychological terrorism. “Terrorism” rather than “abuse” is the word we should be using. Given that these children were terrorised, I agree with the Leader that the word “deplorable” is not strong enough. No one could find a word in any language that would be strong enough to describe just how these children were terrorised.

Like Senator Crown, I attended a Catholic school and was educated by priests in Letterkenny. I was also an altar boy. My experience was positive, but the one in four who did not have that privilege suffered at the hands of the church. I am from the diocese of Raphoe and I suspect the next report on it will be much the same as the Cloyne report. Many people in the north west are concerned about it.

The Patrick MacGill school is under way this week in Glenties. Anyone who has read *The Children of the Dead End* knows what the Catholic Church got up to 100 years ago when children were dying in houses while priests called around to collect money for churches and their own homes. That was terrorism of the family, but this report shows terrorism of the child.

Were Jesus Christ on Earth today, He would do as He did in the temple — He would go to the Vatican and kick over the tables. He would be on the side of the children, not the church.

**Senator Diarmuid Wilson:** A number of colleagues on both sides of the House wish to contribute to the debate. Will the Leader extend the debate by 15 minutes to facilitate them?

**Senator Maurice Cummins:** No, I will not accede to the request. We will have ample time to discuss other reports when we return. We have allowed sufficient time for contributions and the Ministers have given of their time to attend.

**An Leas-Chathaoirleach:** The time is ordered.

**Senator Diarmuid Wilson:** Perhaps the Minister will consider curtailing his comments.

**Senator Maurice Cummins:** We are sticking to the Order of Business.

**Senator Diarmuid Wilson:** I register my protest officially.

**Senator Jim Walsh:** May I share time with Senator Ó Murchú?

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

**Senator Jim Walsh:** I compliment the Minister, Deputy Fitzgerald, on a measured and sincere contribution. We owe it to the victims to take that approach at least. The rape and abuse of children are heinous and abhorrent crimes. In many instances, to deprive children of their innocence is to deprive them of their futures. I have seen the lifelong effects. They have had relationship difficulties, their sexual and personal development has been stunted, their faith has been undermined and, in many cases, they have committed suicide. Families have been sundered where these crimes are committed within the family. People in positions of trust in the church betray everything for which they stand when they abuse young children. Not only

[Senator Jim Walsh.]

do they betray their responsibilities to the children, they also betray their faith, their vows of chastity and other believers. They are unfit to hold the sacred offices they have assumed.

I have reservations about the effort to lumber the Vatican with all of the blame. It is not without a degree of blame, as is the case with the hierarchy. However, if we are to resolve this issue in the interests of children and assuming there are no other agendas at play, we must focus on ensuring that the necessary cross-societal approach is taken.

The Ferns Report was published in 2005. I was familiar with many of the victims and some of the perpetrators. The report recommended mandatory reporting and an underpinning of the exchange of information on an interagency basis. Neither has been enacted. Current practice in the diocese of Ferns is for allegations and suspicions to be brought to an advisory panel first, then they are brought to an interagency committee comprising the Garda and the HSE after which they are brought to the attention of Mr. Ian Elliott's office, the National Board for Safeguarding Children. If they proceed subsequently, they are brought to the attention of the Holy See. If people are found guilty through the civil process, of which there have been a number of cases, they are automatically dismissed from the priesthood by the Vatican.

It is interesting that, when the State sought its records, it needed to ring the diocese to find out when the latter passed the information and to whom it was given. This shows the deficiencies within the system. I welcome the Minister's commitment on mandatory reporting and the underpinning of the exchange of information, as both are essential. It is invidious of the State to allow to continue a situation in which the Diocese of Ferns must act outside the law to get it right. If we are to put children first, we must get our own house in order. If we do, we can rightly and justifiably ensure that everyone else puts children first as well.

**Senator Labhrás Ó Murchú:** Where there is honest and open debate, it is often the case that illumination is provided by all those participating. Such has occurred in this debate. I welcome the announcement by the Leader that he intends to introduce a motion in September to broaden this discussion so that we might also take on board the State's culpability. I also welcome the fact that both sides of the House have involved the State in the debate and generously acknowledged the church's contribution. I compliment the Minister, Deputy Fitzgerald. I was not expecting the tone of her contribution. It was a good start in itself. When referring to the Taoiseach's statement, she stated:

But it was more than a condemnation, that statement. It was a call on the church to respond with compassion, to demonstrate openness, and to exemplify the practices called for by Pope Benedict.

I welcome her remarks. I also welcome her acknowledgement of the State's inadequacies and her promise to act urgently in that regard.

The histories of Ireland and the church contain many dark episodes, yet the one our debate addresses is one of the darkest of all time. Not only have the perpetrators of such heinous crimes betrayed trust and faith, they have betrayed the very founder they profess to follow. The founder of the Christian faith clearly warned those who would corrupt or scandalise children. It is a basic tenet of our religion. We each have personal experiences of that religion through our education, the alleviation of poverty, health care and many other forms of help. This will not be forgotten.

I wish to read from a missive I received from a scribe with whom every Member is familiar, namely, Councillor Mannix Flynn.

**Senator Fidelma Healy Eames:** That is unfair.

**An Leas-Chathaoirleach:** Senator Ó Murchú's time is up.

**Senator Labhrás Ó Murchú:** He was on the receiving end of abuse. In his missive, he states that the truth that will set us free is not words or deeds. It is when the soul that left a long time ago is nurtured back to its rightful place in a future republic, a true republic brought about by the people of Ireland, which will finally know the value of personal and collective responsibility and accountability. If we are to be genuine, this should also be the House's aim.

**Senator Marie-Louise O'Donnell:** May I share time with Senator Healy Eames?

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

**Senator Marie-Louise O'Donnell:** When he was Cardinal Ratzinger, the Pope stated: "Standards of conduct appropriate to civil society or the workings of a democracy cannot be purely and simply applied to the Church". Fantastic. The word "deplores" as positioned in the motion can be applied. There is no language to outline what occurs when people abuse children. God is taken from them and they are condemned to a world where a child is without the idea of God and God without the idea of child. They are synonymous. I agree with the Leader that there is no word strong enough in this regard.

In his amendment Senator Mullen wishes to change the word "deplores" to "profoundly regrets". The implication with the idea of "profoundly regrets" is the same as regrets in any way of life, which is that it is sad, we must move on and that in some way, what is regretted is forgivable. The events in Cloyne are beyond sadness, were unacceptable and can never be forgiven. The word "deplores" should stand.

**An Leas-Chathaoirleach:** Senator Healy Eames has one minute.

**Senator Fidelma Healy Eames:** I do not know if I can manage it in one minute as I had a five-minute speech prepared.

**An Leas-Chathaoirleach:** The Senator must do so as the business is ordered.

**Senator Fidelma Healy Eames:** I deeply regret that we have not been given the time for comment and debate which the report deserves. If I have to cut to the chase, like everybody else I deplore what is contained in this report, which comes in a long line of other reports dealing with disgraceful events. These include the Ferns, Murphy and Ryan reports, which detailed acts against our innocents and children. I ask the Senators tabling the amendment to withdraw it in the interests of those we are trying to protect. The State must take much blame but we have evidence that this is being changed by the leadership of our Taoiseach, the Minister for Justice and Equality, Deputy Alan Shatter, and the Minister for Children and Youth Affairs, Deputy Frances Fitzgerald.

Senator Mullen and I come from the same Catholic secondary school. I have read his words on *motu proprio*, in the Pope's own words, which propelled me to investigate what he said.

**An Leas-Chathaoirleach:** The Senator's time has expired.

**Senator Fidelma Healy Eames:** The Pope, or Cardinal Ratzinger as he was at the time, spoke about truth and argued that the truth must be pursued. There is a hierarchy in the Vatican which acted to cover up that truth and intervene in Cloyne. That was completely inappropriate. Words without matching action are hollow and hypocritical, and we have had enough of that.

[Senator Fidelma Healy Eames.]

I had much more to say but I now wish the State well in ensuring that never again can this happen to our innocents, our children. I deeply regret not having enough time to speak in that respect.

**An Leas-Chathaoirleach:** Unfortunately, although four or five other Senators wish to contribute, I cannot change the way business has been ordered.

**Minister for Justice and Equality (Deputy Alan Shatter):** This is an important debate and although I was not in the House until half an hour ago, I followed the discussion on the monitor. I am aware of the speech delivered by my colleague, the Minister for Children and Youth Affairs, Deputy Frances Fitzgerald. There is nothing she said with which I disagree and since the Government was formed, she and I have been working together in the interests of protecting children. I have listened to the speeches and nuances and it would be a terrible shame if this House divided on today's motion. I am conscious that the Dáil did not divide despite the nuances in the speeches delivered. This is too serious an issue to bring about a division. We should stand united in both Houses and focus on one issue, the protection of our children.

When I read the Cloyne report I said that in publishing it I felt a terrible sense of despair. That sense of despair derived from the fact that we have gone through two decades of promises that our children would be protected. The sense of despair derived from the personal stories told in that report of what happened to victims. It derived from the fact that up to the end of 2008, the promises made that systems were in place to protect children had not only been violated but there had been a terrible breach of faith. Individuals who made a public presentation of concern were engaged in a private agenda of cover-up and denial. That is unforgivable.

I come from a minority religious tradition and I have no ill to bear against the Catholic Church or any other tradition on this island. Senators will be aware that for many years I have been equally critical of the State in its failings with regard to child care. There are failings disclosed in the Cloyne report on the part of the State but the greater failings by far were on the part of the church. There was a terrible breach of faith on the church's part which I know from communications I received is a cause of terrible concern and stress to many good people and parish priests within the Catholic Church, who themselves feel betrayed.

I am conscious that, like others, I am limited in what I can say because of time constraints. It is important to set the record straight in the context of debate which has occurred both in this House and outside it since the publication of the report. The framework document of 1996, referred to in page 48 of the report, recites what was understood to be the intention of the church. It states "In all instances where it is known or suspected that a child has been, or is being, sexually abused by a priest or religious the matter should be reported to the civil authorities." From the perspective of the State it was understood that this would occur.

What the State did not know as we went through the 1990s to the early 2000s was that the Irish bishops, having sought recognition from Rome for the framework document, discovered that not only was it not forthcoming but the papal nuncio in 1997, writing to the bishops and detailing the view of the congregation for the clergy, essentially warned them against applying the provisions in the framework document. In particular, the papal nuncio noted "In particular, the situation of 'mandatory reporting' gives rise to serious reservations of both a moral and canonical nature." He went on to say that "the procedures established by the code of canon law must be meticulously followed under pain of invalidity of the acts involved if the priest so punished were to make hierarchical recourse against the bishop."

The Cloyne report records "There can be no doubt that this letter greatly strengthened the position of those in the church in Ireland who did not approve of the framework documentas

it effectively cautioned them against its implementation.” It went on to record the view of Monsignor O’Callaghan, which was not just influenced by that document. There has been a misrepresentation of the history of this. The Congregation for the Doctrine of the Faith in May 2001 made a very specific statement that with regard to allegations of child abuse which reached the threshold of “a semblance of truth”, they should be first referred directly to the Congregation for the Doctrine of the Faith in Rome so the body could advise on how it should be dealt with in Ireland.

There has been a misrepresentation to suggest that in 2001, that body agreed the framework document provision under which there was an undertaking to give a report to the civil authority. The reality is the body did not support the framework document and the Cloyne report records that Monsignor O’Callaghan’s view of the 2001 instruction, as expressed in a letter of April 2002, was that: “the subtext was the need for the procedures in canon law which will respect the rights of the accused priest.” The reality is the rights of the accused priests were put before the protection of children. It was not until 2010 that a different approach was referred to.

When it comes to dealing with this issue, our priority must be the protection of children. A moral theologian, in a recent article in *The Irish Times*, made a pretence that in 2001 the church had made a decision in the Vatican that there should be reports to the civil authority. The excuse for a lack of such reports was that the State had not introduced legislation in Ireland which made——

**Senator Jim Walsh:** On a point of clarification, although I do not wish to be contentious——

**An Leas-Chathaoirleach:** The Senator may not interrupt the Minister’s conclusion.

**Deputy Alan Shatter:** The State did not introduce such legislation because it took in good faith what was stated in the framework document. That was the failing. We must ensure that we have a structure of laws in place which truly protects our children and imposes obligations on those who learn that children have been abused or are at risk of being abused to report this to the Garda Síochána to ensure investigations take place and action is taken to protect children.

As a State, we cannot sustain a position where individuals are known to be abusing children and are left free to abuse children. The Taoiseach referred in his speech to the rape and torture of children. For some of us who have worked in this area for so many years and who use the phrase “child abuse”, the reality is that the description is too clinical. It does not tell the true story. The Cloyne report discloses a litany of rape, abuse and torture of children that should have been reported to civil authorities and was not. It is right that this House joins in expressing a view on it. It is also right that, with a new Government, we vigorously implement the new child protection guidelines and procedures that have been long promised and long required. More has been done in the past four months in that area than has been done in the previous 14 years and by the time we get to the end of the year we will have a robust legal system to address this area.

I hope that as a result of the Cloyne report, those genuinely concerned about this in the church will enable the guidelines to be fully implemented. I praise Archbishop Martin in this context. I wish Ian Elliott well in the work he is doing and it is an unfortunate error that Bishop Magee has failed to publicly respond to the report published. It is unfortunate he has disappeared and there is a serious misjudgment in the papal nuncio leaving this country. It is of great importance that, without further undue delay, the Vatican responds in substance to this report and gives the people of this country the assurance they require that in future the protection of our children will be the priority.

6 o’clock

**Senator Rónán Mullen:** On a point of order, I want to echo what was said about my regret that more time was not made available given the sensitivity of the issue.

**An Leas-Chathaoirleach:** That is not a point of order.

**Senator Rónán Mullen:** The tone of this debate in the Seanad was far better than the tone in the Dáil. While I disagree with the inaccuracies in what the Minister said, the tone of this debate is better.

**An Leas-Chathaoirleach:** Is Senator Mullen pressing the amendment?

**Senator Rónán Mullen:** I will press it but I will not ask the House to divide.

Amendment put and declared lost.

Motion put and declared carried.

### **Family Home Bill 2011: Order for Second Stage**

Bill entitled an Act to prohibit the granting of a court order for the possession of a primary family home except in circumstances where the court has been presented with a verifiable, detailed and independent analysis of the repayment capacity of the family home owner, and where the court has had an opportunity to review the original mortgage application, and consideration is given to a range of alternative actions that will seek to protect the homeowner's possession of the family home.

**Senator Marc MacSharry:** I move: "That Second Stage be taken today."

Question put and agreed to.

### **Family Home Bill 2011: Second Stage**

**Senator Marc MacSharry:** I move: "That the Bill be now read a Second Time."

I am delighted to have the opportunity to introduce this Bill. Senator Thomas Byrne and I worked on it and it was informed by a body of work that continued for two years or more. It involved the Prevention of Family Homes Repossessions Group in Sligo and listening to wider commentary and debate. The Bill enjoys the support of New Beginning, FLAC and all other interest groups working in this area. From discussions throughout the House, it enjoys the support of many Senators in a personal capacity on all sides of the House. I thank them for their support of myself and Senator Thomas Byrne.

I have an inkling that someone will use the word "Constitution" at some stage in this debate so I felt it was important that I should begin with the same word. Article 41.2 of Bunreacht na hÉireann reads: "The State, therefore, guarantees to protect the Family in its constitution and authority as the necessary basis of social order and as indispensable to the welfare of the Nation and the State". There can be no more important consideration than the protection of the family. I have said that many times over the past two years as previous Members can confirm. On that basis, we tried to provide a set of tangible solutions to give families the protection that Article 41.2 of the Constitution lays down as their right. There is agreement on all sides of the House when we look back on the debate on the Labour Party motion about mortgage arrears. In that context we tried to come forward with workable solutions. We have done just that because, as the programme for Government states, the recommendations of the Cooney report are inadequate to address the scale of the current crisis. A more radical approach is needed to protect families in fear of losing their homes. That is one of the many sections in the programme

for Government with which I agree. This Bill is not adversarial in nature and provides us with an ideal template to act together. As the Minister for Justice and Equality, Deputy Alan Shatter, said about the last debate, it would be a shame if the House was to divide on this issue when division is not necessary. This is a subject on which we should promote unity. If the Minister feels he must use the word “Constitution” later, and I will speak after him, I urge that the Cabinet facilitates the unity of purpose these Houses have in seeking to tackle the issue rather than leading a process of manipulating the House in such a way as to promote its abolition. At this time there is such agreement on the issue.

Senator Thomas Byrne will address the sections of the Bill. They are controversial for some and radical in nature but the programme for Government states that radical proposals are required. The code of conduct on mortgage arrears, while honourable in what it sets out, is not working. The Central Bank inspections found that, despite its statutory nature, fewer than 33% of financial institutions inspected were following the code of conduct. This week the regulator said that the code of conduct needs to be improved. He suggested the improved version would be ready by the autumn. The existing one is not working and is being ignored. Hands up anybody who knows somebody who has gone to his or her bank, said he or she is 48 years of age, has ten years left on his or her mortgage and that if he or she could turn it into a 20 year mortgage, he or she could pay it off instead of being in arrears. That has not happened. This Bill would give the court a set of tools which would give it options to give families protection. These options include the elongation of a mortgage and interest only payments. Such flexibility is demanded of us at this time.

Everyone on this side of the House wished the Taoiseach, the Minister of State at the Department of Foreign Affairs and Trade, Deputy Lucinda Creighton, the Minister for Finance, Deputy Michael Noonan, and the Minister of State at the Department of Finance, Deputy Brian Hayes, well in the negotiations in Brussels last week. We all hailed their success and congratulated team Ireland, as we pulled on the team jersey, on securing an interest rate reduction for the people and the elongation of our debt repayments. Surely, it is not just an option but our constitutional responsibility to be as flexible as possible with the people and the families of Ireland. Articles 41.1 and 41.2 of the Constitution guarantee protection.

Obviously, the Bill was written in conjunction with senior counsel; therefore, I would challenge any suggestion it was unconstitutional. If anybody intends to state the Attorney General’s office has an issue with it, let that issue be outlined this evening because there are precedents. The Credit Institutions Stabilisation Act 2010 entitles the Minister to burn bondholders. We agree with this. In the cut and thrust of politics the Government parties, when in opposition, opposed that Act, but they now have the benefit of using it. We support that legislation. There is a code of conduct in place. Why is that not unconstitutional if the argument against the Bill is that there is a constitutional issue?

As I said, we believe the Bill would give real tools and offer real solutions to give families breathing space to ensure they could meet their commitments. It is not about debt forgiveness and or somebody else paying one’s bills. It is about being as flexible and innovative as we can be in helping families, the cornerstone of the State, as we demanded of the European Union and the IMF. After nine years in the House, it is my ardent wish that on this one occasion we say this is the basis of a Bill which would work for the people. We are not saying in the same way as was stated in the Fine Gael general election manifesto or as the Minister of State, Deputy Brian Hayes, said that this is a complex issue to which we do not have any solutions. The Minister has said he accepts a package of measures must be introduced, as well as a variety of solutions, as required. I agree that there is no single solution which would fit all. The Minister went on to state that the Government was anxious to listen to and work with colleagues on bringing forward a workable range of solutions. He said it wanted to work with others to ensure

[Senator Marc MacSharry.]

solutions were found. Here is a set of solutions and a Bill we should embrace. We could seek to change and further improve it on Committee Stage with the advice of the Attorney General, the Minister's good advice and the expertise available in these Houses. Is the last act of this House in this session to create division on an issue on which we are all united?

The Whip should never be used in this House. Governments, whether they include Fine Gael, the Labour Party or Fianna Fáil, have pursued an agenda which has manipulated a process to ensure the abolition of the Seanad. It is disgraceful that there is no media coverage of the proceedings of the House this week. The contempt the media show for the people by completely ignoring this House when discussing important issues such as this is reprehensible. I appeal to everybody in the House that if the Government has a particular view on this issue — we must remember this is Second Stage — not to let it manipulate a process to ensure the abolition of the Seanad. Let us ensure the House passes the Bill on Second Stage in the knowledge that we, on this side, do not have all the solutions. The Bill does not provide all of the solutions, but it is definitely part of the solution. *Carpe diem*, seize the day. We can do this together. It is not about Senator Marc MacSharry, Senator Thomas Byrne or Fianna Fáil but about the Houses of the Oireachtas ensuring Articles 41.1 and 41.2 of the Constitution are upheld in the interests of all the people.

**Senator Thomas Byrne:** I hope Senators have had the opportunity to read the e-mail sent to them by Mr. David Hall of the New Beginning group which was very successful this week on behalf of some of its clients and which has adopted a very positive approach to the Bill. Ms Noeline Blackwell from the Free Legal Advice Centres has corresponded with certain Senators on the Bill and is adopting a broad and positive approach.

The purpose of the Bill is set out in the Long Title: a “Bill to prohibit the granting of a court order for the possession of a primary family home except in circumstances where the court has been presented with a verifiable, detailed and independent analysis of the repayment capacity of the family home owner, and where the court has had an opportunity to review the original mortgage application, and consideration is given to a range of alternative actions that will seek to protect the homeowner's possession of the family home”. It has been pointed out by numerous people and in academic textbooks, including Lyall's textbook on property law, that currently the courts have no guidance in this area. Part of the purpose of the Bill is to give such guidance to the courts and a range of options they could use when deciding on such issues. Traditionally, the granting of a repossession order has been a discretionary function. I note the Department of Finance's interest in this issue, but the Land and Conveyancing Law Reform Act 2009 is a matter for the Department of Justice and Equality. I hope, therefore, there is cross-departmental co-operation on this matter because there is a range of solutions. We are speaking in the context of the decision handed down in the High Court by Ms Justice Dunne. I do not want this decision to delay the Bill because it could operate independently of it because it covers specifically section 97(2) of the Land and Conveyancing Law Reform Act 2009. It does not refer to other legislation in any great detail.

Section 1 would allow the Minister for Finance to bring this legislation into operation. Section 2 would provide for certain definitions, including a code of conduct in dealing with mortgage arrears. I hope the argument will not be that the Bill is unconstitutional because the code of conduct would interfere with the rights of banks. In a time of economic crisis it is the function of the State to interfere with and regulate the workings of the banks in the interests of consumers and keeping families in their homes.

Section 3 refers to the application of the Bill. Section 3(a) refers to an order for possession of a mortgaged property that is a family home pursuant to section 97(2) of the Land and

Conveyancing Law Reform Act 2009. Section 3(b) refers to an order authorising the exercise of the power of sale of a mortgaged property that is a family home pursuant to section 100(3) of the Land and Conveyancing Law Reform Act 2009. Section 3(c) refers to an order seeking possession of any property that is a family home on foot of a legal mortgage or charge. Section 3(d) refers to an order declaring the amount due on foot of a mortgage to be well charged on a dwelling that is a family home.

Section 4 would put in place certain preconditions in respect of the commencement of proceedings. Subsection (1) would provide that the mortgagee would have to certify in writing to the court that the code of conduct had been complied with, while subsection (2) would disallow the commencement of legal proceedings where mortgage interest supplement was payable. I note FLAC's comments that in the absence of reform of the mortgage interest supplement scheme, this could inhibit the take-up of mortgage interest supplement. In fact, the Fianna Fáil policy attempts to be comprehensive in that we deal with the issue of mortgage interest supplement which is a function of the Department of Social Protection which again emphasises the cross-departmental nature of the issue. It was promised for the spring, but it has not yet happened. It must happen as soon as possible. The concerns of FLAC about the section would be completely eliminated if the mortgage interest supplement scheme was reformed.

Section 5 deals with the preconditions in respect of the grant of an order for possession. It would prohibit the court from granting an order for possession or sale, unless it had reviewed an independent report from the Money Advice and Budgeting Service, MABS. One may argue MABS has insufficient resources, but it has been charged with this task in the Bill and we should give it the resources it needs to carry it out.

Section 5(b) provides that the court would receive and review copies of the original mortgage application and all supporting documentation accompanying the application. That is a very important function of the court in dealing with allegations of fraud and collusion in the financial institutions.

Section 6 lists the options in paragraphs (a) to (f) that the court would have to consider as an alternative to an order of possession. It would be able to make an order "(a) that the mortgagor make interest only payments on the mortgage for a period not exceeding four years; (b) that the mortgage period be extended by a period not exceeding 20 years; (c) that the mortgage payments due be deferred for a period of one year [in other words, there would be a one year payment holiday]; (d) that the terms and conditions of the mortgage be amended so that the interest rate can be changed, taking into account prevailing market conditions [this is an attempt to go after the sub-prime lenders who charge interest rates way above prevailing market conditions]; (e) that the principal sum due on the mortgage be reduced in a fair manner provided the mortgagee be granted a share in the mortgagor's equity in the family home, as the court considers appropriate [that would give the court the option of looking at a debt for equity arrangement; I acknowledge this is a complicated area, but the court should have this power]; (f) that the deferred interest scheme recommended by the expert group referred to be put in place".

As the Bill would provide options for the court as an alternative to possession, we would be legally forcing the banks to give due consideration to these options in advance of a court hearing. We would be forcing the banks to consider the modification of mortgage terms before they consider repossession. The provisions of section 6 should be considered not only in the context of court action but also as a way of dealing with mortgages. In fact, many banks do some of these things on an *ad hoc* basis, but we are trying to make it more schematic. We know from the delegation who spoke to the Central Bank, the European Union and the IMF

[Senator Thomas Byrne.]

that they are looking at this issue and have put funds in place to facilitate mortgage modification schemes.

**Acting Chairman (Senator Paul Coghlan):** The Senator's time is up.

**Senator Thomas Byrne:** I wish to comment briefly on section 7 which provides for orders for possession in certain limited cases, including where the mortgagor refuses to co-operate——

**Acting Chairman (Senator Paul Coghlan):** I am bound by the order of the House.

**Senator Thomas Byrne:** May I finish the point I wish to make?

**Acting Chairman (Senator Paul Coghlan):** I am tied by the order made.

**Senator Thomas Byrne:** The limited cases also include where the borrower has perpetrated a fraud on the bank without the knowledge of the bank and where the borrower has fundamentally breached the terms and conditions laid down. Paragraph (*d*) relates to trophy homes which could be repossessed if there was an alternative available or if a local authority tenancy was available.

**Senator Michael D'Arcy:** Having a house or property repossessed leaves a scar on the Irish psyche. The number of repossessions is low compared with the number in the United Kingdom. In 2008 there were 40,000 house repossessions in the United Kingdom, but that number climbed to near 80,000 in 2009. I have been unable to find the figures for 2010. In Ireland the number of repossessions is low; it is not even up to the hundreds. It is important, therefore, to put the question in context.

No Member of the Oireachtas could give the banks credit for what they have done, but having dealt with them on behalf of individuals in serious financial difficulty, my experience is that the main banks are adhering to the code of conduct. The sub-prime lenders ran amok and gave loans to people who never had a possibility of repaying them. These lenders are flying in the face of the commitment given by this and the previous Government that people will be given every opportunity to outlast the financial difficulty they face. They are being allowed to get away scot-free.

On 25 July the High Court heard the case of *Start Mortgages Ltd. v. Gunne*. It seems to be the case that in some circumstances the banks are not allowed to repossess property. I have only seen a brief outline of the case, but case law is catching up on us fast. I am sure the Attorney General will advise the Minister and the Department on whether the legislation needs to be amended, but in this case it could potentially be appealed to the Supreme Court. We will await the outcome of that case.

I do not know if this Bill would be of great benefit. If I thought it would be, I would be the first to stand up and support it strongly. However, I do not see how it would help us in the here and now when the banks are not forcing people out of their properties, yet circumstances could change. There is anecdotal evidence of a logjam and that at the end of the two year process provided for in the code of conduct the banks could start a flood of repossessions, but I do not see that happening, as they have acted responsibly. Some people acted irresponsibly when taking out loans and I question whether we should enact laws to allow them not to pay for the property they bought and signed for. Some will be caught because we cannot save everybody. The previous Government insisted on saving all of the banks and that has been shown to have been a poor decision for the country. What we must try to do is ensure we do the best we can for most people, but we cannot save everybody.

**Senator Fiach Mac Conghail:** I congratulate Senators Marc MacSharry and Thomas Byrne on drawing up the Family Home Bill 2011, the spirit of which I commend. Sometimes the Legislature needs to be led by public opinion, but it also has to be one step ahead. I disagree with Senator Michael D'Arcy that the Bill is not required at present. We are in grave and uncertain times and if we were to enact legislation in keeping with the spirit of this Bill, we would be a step ahead and able to introduce its provisions to deal with the potential immediate danger arising from the non-payment of mortgage arrears. It is on that basis that I would prefer the Bill to be enacted in order that we would be prepared for what will result from the increasing credit squeeze and the lack of significant economic growth. The Bill could be reassuring for citizens.

The Free Legal Advice Centres have commented on the Bill, the purpose of which is to give options to the courts in dealing with those in mortgage arrears. This is to be welcomed. The options range from deferring debt payments into the future which would work for some individuals with short-term problems to more radical solutions which would require the lender to reduce the level of debt. This in itself, without it being exploited, offers reassurance and it means that the Government and the Seanad are listening to the day-to-day concerns of citizens.

Bearing in mind Senator D'Arcy's comments, we might not be in a position to do as proposed. David Hall of New Beginning said that, by the end of March of this year, more than 11% of the 782,429 private residential mortgages held in Ireland, to the value of more than €116 billion, were either in arrears of 90 days or had been restructured. That could be the tip of the iceberg. I suggest that the principle and spirit of this Bill be taken on board on an all-party basis. I am sure the Government could adopt it. I am not an expert on this but am sure Fianna Fáil would agree to it if the spirit of the Bill were taken on board by the Government side. I suggest that we have, for once, leadership in a way that will provide succour, security and confidence to citizens.

FLAC stated that, while it is certainly necessary to provide solutions relating to mortgage debt, it is concerned that a feature of this recession is that so many people are indebted to a number of creditors. It implied it is crucial to have a settlement that takes an overview of the entire range of a person's debts and that mortgage debt that is likely to present a serious problem feature within that holistic solution. I commend the Bill to the House and support it.

**Senator Aideen Hayden:** I welcome the opportunity to discuss this very serious Fianna Fáil Bill. It is fitting that this is the last debate in the House before the recess. In a previous debate, we outlined on a number of occasions the serious issues that affect those facing negative equity and, more important, the inability to repay their mortgages. We sometimes forget the realities and the facts. The reality is that 80,000 people with mortgages have renegotiated. Of those 80,000, 40% have non-performing loans. We are facing a very significant difficulty in the housing market; there are no two ways about that.

That the market is currently non-existent is an issue for the country as a whole. It is a zombie market. Until we draw a floor under mortgage repossessions, we will never return to what could even remotely be called an active market. I very much believe we need measures to resolve the current problem. I welcome the opportunity our colleagues have given us to debate this issue.

As colleagues are aware, we put forward other proposals for the Government. It has acceded to considering the issue of mortgage arrears. We have asked the Government to examine mortgage-to-shared-equity schemes and mortgage-to-rent schemes. These proposals will be considered seriously by the Government.

[Senator Aideen Hayden.]

I accept the points made by our colleagues. The Bill represents a serious attempt on their part to make progress on mortgage debt. Unfortunately, however, I have reservations. The Bill is too focused on a judicial solution to what is not necessarily a judicial problem. Largely removing responsibility from the judicial system would be in the best interest of distressed mortgage holders.

I am concerned about the decision of Ms Justice Elizabeth Dunne. There are six references to the Land and Conveyancing Law Reform Act 2009 in the Bill. On that basis alone, it makes it significantly flawed.

The Bill focuses very much on extending the period within which people can reside in the family home within the context of finding a final solution. Unfortunately, evidence from the United Kingdom and elsewhere shows that when people cannot pay, extending *ad infinitum* the potential for them to remain in their existing circumstances is actually damaging to their long-term prospects. What is needed is a mechanism to draw a line in the sand by way of achieving a final resolution. In that context, the Bill's dependence on MABS is a flaw. MABS is not a statutory body, nor is it a body capable of reaching a final applicable settlement. It does not have the necessary statutory powers. If one refers to the programme for Government, which was agreed by both parties in government, one will note MABS is being converted into a personal debt management agency with strong legal powers and the capacity to reach settlements. This is a necessary prerequisite to what is being proposed in this Bill. I am not suggesting what is proposed is not without merit but that a number of prerequisites need to be realised before the Bill could have the teeth I believe its advocates would like it to have.

Section 6 considers alternatives to an order for possession. Unfortunately, I am not convinced that Fianna Fáil's advices on the constitutionality of the provisions are necessarily robust. We probably need more opportunity to flesh out this aspect of the matter. There is a danger in the sense that many mortgages were negotiated with the assistance of mortgage brokers. This presents an issue for the average mortgagor in that attestations were signed relating to their incomes. Perhaps an unforeseen consequence of what is being proposed in the Bill would be that borrowers would be made liable or, under section 7, guilty of committing fraud. I refer to the way in which many mortgages were negotiated during the Celtic tiger years. While the proponents of the Bill have the best of intentions, I, as a practising solicitor, am well aware that the realities of what happened on the ground may not be best reflected in the provisions of the Bill.

The commitment to considering the matter further within Government through an inter-departmental group will result in far more information and far greater clarity regarding the way in which Government thinking is developing. The group is due to report in September of this year. I would very much like if it were possible to re-present this Bill along the lines of the group's proposals based on there being greater clarity on the legal position. As a new Senator, I am not sure if it is possible. I commend my colleagues on their genuine and sincere efforts to resolve in the House the problems of distressed homeowners.

**Senator Darragh O'Brien:** I wish to share my time with Senator Walsh.

**Acting Chairman (Senator Diarmuid Wilson):** Is that agreed? Agreed.

**Senator Darragh O'Brien:** We have discussed this Bill before and I have noted with interest the comments of Senator Hayden. Let us call a spade a spade; no one has an overall solution, just as there was none in the Labour Party motion agreed in the House. On this side of the House, we made a conscious decision to proceed as we have done because 50,000 homeowners

are in arrears for 90 days or more. There were 148 repossessions of family homes in the first quarter of this year.

The Labour Party motion proposed that the Government should consider the establishment of schemes to support distressed homeowners. Colleagues have raised issues in this regard. If there are elements in this Bill that have merit, Senators should allow Second Stage to be passed and then propose amendments. There is no difficulty in doing this. This House has a role not only in scrutinising legislation but also in producing it. I ask colleagues of all parties and none to turn words into deeds. Second Stage could be allowed to pass this evening with the support of the Senators and, as Senator Hayden rightly stated, further or detailed discussion should happen on Committee Stage, during which we will be more than happy to consider amendments. However, I do not want a situation to arise whereby this is kicked back to a report. I am interested in hearing what the Minister of State, Deputy Brian Hayes, has to say in his response to this genuine effort to come up with a solution.

The part of north Dublin from which I come was the fastest growing area in Ireland. It has the highest proportion of first-time buyers who are stuck in apartments and, as a result, cannot have families and are scared they will be reduced from two incomes to one. Those who are not yet in arrears have no money to spare because they have already faced two rate hikes from the ECB but they are likely to face two more this year. At every opportunity, the banks seek to change variable mortgage rates and tracker mortgages are also becoming more expensive. Some people are paying 5.25% on variable rates while other unfortunates who dealt with sub-prime lenders like Start Mortgages are paying 15% to 17%. This is not going to get easier. Senator Mac Conghail indicated earlier that the situation is not grave yet but, while I acknowledge the spirit in which his remark was made, we should equip the courts with the tools they need to deal with the underwriting of the original mortgages. Were the lenders right to offer these mortgages?

I do not intend to be confrontational but this is a frustrating business. We can allow the Bill to pass Second Stage. With a 58 seat majority, it will not bring down the Government but it presents the Seanad with an opportunity to turn the words of this well crafted Bill, over which my colleagues have laboured for two years, into deeds by allowing it through Second Stage. We are prepared to consider amendments to address the Government's concerns. This Bill is important for thousands of families. We passed a Labour Party motion in the interest of showing that we would do our business differently. For once, let us do our business differently this evening.

**Senator Jim Walsh:** I thank Senator Darragh O'Brien for sharing his time. This Bill is analogous to the debate we held earlier in that most objective contributors recognised the failures that occurred in the church at the centre, in dioceses and in the State. If the issue of child protection is to be our priority, we have to correct the failures within that area. In this instance, however, we are dealing with failures by the Government and Opposition of the day, the regulator, the Central Bank and the Department of Finance, all of which led to the property bubble. As a consequence, a large number of people who were prudent in most of their financial dealings are now faced with the threat of losing their homes and shelter for their family. As they thereby come to rely on the State, it makes no sense for us to ignore this issue.

This Bill is the first serious attempt to address the issue and it has been worked on by Senators MacSharry and Byrne and others over a lengthy period of time. Passing it on Second Stage without division, as we often do in this House, does not prevent it being changed by a Government Bill, and amendments from all sides can be tabled on Committee Stage. In this way, the House would send out the signal that we are concerned about people with young

[Senator Jim Walsh.]

families who are at risk of losing their homes. Some of these people have already committed suicide. Do we not feel an obligation to prevent further tragedies?

Another reason to act now is that the number of distressed mortgages and small business loans which are not in NAMA could give rise to added concerns about the solvency of our banks. It behoves nobody to allow that to continue without trying to address it.

I encourage the Seanad to show its independence by accepting the importance of this legislation and identifying defects on Committee Stage. I appeal to the Senators opposite not to send out a signal that we are abandoning people who are in genuine difficulty because of the recession and who can see no solution unless the State becomes involved.

**Senator Fidelma Healy Eames:** I commend Senator MacSharry on tabling this Bill. As Members of the last Seanad, we spoke at length about protecting the family home. The objective of the Bill is laudable because I do not know what we would be without our homes. The issue of home repossessions continues to seep through our constituencies, with ripple effects on children, relationships and families. The issue should not be underestimated because, as one couple told me recently, worry has entered people's beds. Family home repossessions also put pressure on State agencies and local authorities, not to mention the NGOs that work in the area of housing.

The spirit of the Bill, therefore, is laudable. We should view it as a spur for considering new ideas, creative approaches and realistic schemes to release families from the threat of repossession so they may continue to enjoy a working relationship of some form with their banks while maintaining their dignity. The aims of the Bill accord with our public policy of keeping families in their homes. Countless reports and statistics point to a correlation between a secure home and education and health. A secure and unthreatened home is the foundation for a better future for our children. Bearing in mind our earlier debate, children should be at the centre of our deliberations.

Home repossessions invariably involve a lengthy process of negotiations between banks and mortgagees. The period before repossession can be very stressful for families who are just about keeping their heads above water to make their repayments. Such families have yet to become repossession statistics but none the less they suffer anxiety and stress because the mortgage is only one of many bills they must pay.

The Bill gives rise to certain issues, however. It prohibits repossessions in a number of instances, including the enforcement of a power of sale, a possession order and a well charging order. Section 4 provides that repossessions will be prevented where it is shown that the Central Bank's code of conduct on mortgage arrears has not been followed. However, pursuant to the Central Bank Acts the code and the revised code already have a legislative basis. As the language used in the code is explicit in requiring lenders to apply the protections of the code to borrowers, the provision under section 4 appears to be accommodated in existing schemes. Codes also offer a more flexible means of responding to a changing environment and can be easily adapted to fill gaps and deal with new developments. As Senator Hayden noted, the Bill is overly reliant on judicial solutions to a problem that is not judicial in nature.

Section 5 prohibits repossessions in the absence of an independent report prepared by MABS. Has the opinion of MABS been sought regarding this consultancy role? Does it have sufficient resources to supply such reports in a timely and efficient manner and what principles would it apply? I fear that, similar to the backlogs that exist in the Garda vetting unit, the result could be further delays that prevent banks and mortgagees from working together to produce alternative solutions.

In regard to the reference in Section 5 paragraph (b) to the “original mortgage application”, is it not the case that the rules of evidence would demand that the original documentation be presented, in which case this section is unnecessary? I note the efforts of the group of lawyers, working as New Beginning, in their examination and defence of mortgage holders. It is my understanding that this issue of the accuracy of documentation was a key aspect in the defence of those facing repossession in that case, as it should be. Section 7 ties in with this in the provision that a mortgagor will face repossession where he or she has perpetrated a fraud on a bank. However, if a mortgage applicant claims to be earning a multiple of his or her actual wage, is there not, in the context of the relative bargaining positions of the two parties, a higher obligation on a bank to seek proof of such claims instead of relying on what might be termed “constructive knowledge”?

It is incumbent on us as legislators to arrive at new and more reasoned solutions to the problems that arise on a daily basis in this area. I accept that this is what the Members opposite seek to do in bringing forward this legislation. However, there are other, more appropriate, solutions we can consider. Two years ago, I spoke to a retired and honourable bank manager who said his claim to fame was that he had never foreclosed on a home during his 30-year career. His solution to the problem of mortgage debt arrears was that in the case of a mortgage of €300,000, for example, where the mortgage holder can no longer make the repayments, that he or she be reassessed and, on the basis of that reassessment, the mortgage split into what he called a “live” portion and a “parked” or “warehouse” portion. The “live” debt would be serviced based on the applicant’s current ability to repay, while the remainder would be warehoused, with the mortgage holder having to meet only a small payment at a simple interest rate on that portion. This would facilitate people in meeting their repayments while ensuring the debt, instead of becoming a bad debt, remains as a performing asset on the bank’s books.

In the United States, legislation has been introduced whereby mortgage repayments must account for no more than 37% of a person’s or couple’s income. This will support home owners’ ability to meet their mortgage repayments while protecting the sustainability of their financial commitments and, thus, their quality of life. While Senators opposite referred to the lengthening of mortgage repayment terms, I would go further in proposing that we consider inter-generational mortgages. People nowadays have smaller families and larger homes. This working generation should not have to shoulder the entire burden of debt accrued via the neglect, irresponsibility and lack of regulation of previous Administrations. We must look at these and other solutions.

I commend Senator Marc MacSharry on his efforts in bringing forward this legislation. Our motto in tackling these issues must be *carpe diem*. I look forward to the Minister of State’s response.

**Senator Sean D. Barrett:** I welcome the Minister of State, Deputy Brian Hayes. He, the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, and the Minister for Finance, Deputy Michael Noonan, were described by Senator Susan O’Keeffe as the “Celtic troika” in their attempts to right the country’s finances. I welcome the Bill introduced by Senator Marc MacSharry. It is one element of the effort to rearrange the financial architecture of the State, as the Minister of State and his colleagues are seeking to do. An article in *The Economist* on 15 September last year entitled Houses Built on Sand showed that Ireland had the highest rate of house price inflation, by a factor of two, among all the OECD countries. CSO data show that the cost of a second-hand house in Dublin increased from €104,000 in 1997 to €512,000 in 2006.

We must move away from the policies that did so much damage to the economy. The construction industry brought down the banks, and the banks, in turn, brought down the country,

[Senator Sean D. Barrett.]

which led to our rescue by the IMF and the ECB. One of the basic principles to which we must return is the notion that a house is for living in rather a means of securing capital gains or tax breaks. There must be resistance to the inordinate lobbying power enjoyed in the past by the sectors which caused the problems in our economy. In the week of the Galway races, we all recall what used to happen in the famous tent. It was far too easy for members of bank management to go in the back stairs of the Department of Finance on 28 September 2008 and emerge with almost unlimited moneys.

The banks built up the problems that came to light in 2008 through lending practices over several years. The largest sectoral increases in bank lending, in the years after joining the euro, were in real estate, which increased from €4.8 billion to €97.5 billion, followed by lending for financial intermediation, much of which went into higher property prices, which grew from €18.3 billion to €97.5 billion. By contrast, agriculture and industry accounted for only 1.2% of the total increase in lending. This type of irresponsible banking must be curtailed in future. It is important that we retain a focus on this issue, because the Civil Service, as we have learned, did not have sufficient expertise to do so. The Wright report indicated that only 7% of staff in the Department of Finance have an economics qualifications. It is vital that Senators and Deputies bring forward legislation to make up those gaps in oversight and expertise. I welcome the decision to put the appointment of chairmen of State bodies before the Oireachtas for approval. All appointments to the boards of the Central Bank board and the Financial Regulator should be subject to scrutiny. Those people have done immense damage to the country.

We must encourage a culture whereby a house is primarily a principal residence, not a source of tax-free capital gain. The provision of housing should not be a benefit gig for builders in a tent at a race meeting. There must be no support for any fiscal privilege, as it is called, attached to trading up. In the past, a person who could not afford to live in a smaller house might move to a larger one to avail of a larger tax write-off. All such capital gains were tax free. In future, housing policy must be based on keeping people in their houses, as Senator MacSharry's Bill seeks to do, with a fairly modest cut-off in terms of salary multiples. I am not particularly interested in the problems of people who might have to leave large estates in County Meath or trophy houses on Ailesbury Road. Going back to the rule of two and a half times a single income or three and a half times a joint income, one might conclude that the average house should cost approximately €100,000, based on average earnings.

As the country with the worst house price inflation and the most irresponsible lending by banks, which bankrupted themselves in so doing, there is much to do to address the housing problems in this State. The Regling-Watson report posed the most fundamental question in pondering what on earth the banks thought they were doing. As we approach the third anniversary of the bank rescue, we still do not know the answer to that question. The banks have been remarkably successful in avoiding being accountable to either House in terms of providing any rationale or justification for their lending policies. Senator Jim D'Arcy observed that the numbers affected by the issues dealt with in this Bill are small, but the potential danger is great. An immense burden has been placed on a generation by irresponsible banking and lackadaisical central banking.

Restoring affordability and sustainability to the provision of housing should be a main objective of Government. When the Minister of State with responsibility for housing, Deputy Willie Penrose, was in the House recently, we argued that NAMA should sell its housing stocks so that somebody can live there. The State should not feel an obligation to keep house prices artificially high for fear of the impact on certain assets in some balance sheet or other.

I welcome the Bill introduced by the Fianna Fáil Members. It shows that Senators are seeking solutions to a serious problem and finding ways to assist individuals, such as those in north Dublin to whom Senator Darragh O'Brien referred, who bought their homes at the peak of the boom on the basis of advice from professionals to get on to the housing ladder as quickly as possible. As part of the ongoing rearrangement of financial architecture in the State, the Government should reconsider the restoration of building societies. Contrary to subsequent developments, they started out as mutual benefit societies which sought to help people who wanted to become home owners. Unfortunately, they were incorporated into other corrupt institutions.

Part of trying to get the country's finances in order is to have a safety net for home owners, as proposed by Senators Byrne and MacSharry. While I was sorry there was not unanimity on the previous motion, this is a matter in which the House should send a unanimous message that it will assist the many home owners in mortgage difficulties. House prices got way out of line with everywhere else as *The Economist* pointed out, as well as way out of line with economic growth and incomes.

**Minister of State at the Department of Finance (Deputy Brian Hayes):** I was interested to hear the contributions from all sides of the House on this important issue. I congratulate Senators MacSharry and Byrne on publishing this Private Members' Bill. Having proposed seven different Private Members' Bills in 14 years in both Houses — all of which were rejected I hasten to add — it is always encouraging when Members bring forward their own legislation. It takes much work. Whether the Bill is successful, raising an issue ultimately leads to it being addressed by legislative and non-legislative means. I know Senator MacSharry has worked hard on the issue of home repossession.

One of the great advantages to a Minister attending the Seanad is that it gives him or her an opportunity to brush up on constitutional knowledge. From reading articles 18 to 24 in the Constitution, I note I have no standing in this House and the Government is responsible to the other House, not to this. Recently, I read an interesting book that stated that as the Government has no standing here, this House could do its business without the Government represented at all. This would be an excellent idea at 7 p.m. on a lovely evening like this.

**Senator Mark Daly:** We could call for a free vote.

**Senator Thomas Byrne:** The Minister of State can just hand around his speaking notes.

**Acting Chairman (Senator Diarmuid Wilson):** The Minister of State is held in high regard here.

**Deputy Brian Hayes:** I am a sort of invisible man here. I will give the Government's viewpoint but it is a matter for Senators to decide what position they will take. It is also important to recall that no Bill becomes a law until it is passed by both Houses of the Oireachtas and both have the power to initiate Bills.

Home repossession is an issue that involves many Departments, including Finance, Social Protection, Justice and Equality and Environment, Community and Local Government. Sometimes, that may have an advantage in that various people have to be brought together to work out a solution. Other times, it is like early 1990s governmental babble for getting nothing done. The programme for Government has given a firm commitment to address home repossessions but it requires the buy-in and support of all Departments. This Private Members' Bill will help ultimately in framing a solution that can work for people.

[Deputy Brian Hayes.]

Senator Hayden's point on whether a judicial response to this matter is required is valid. I believe it is not. What is ultimately required is a solution outside of the courts. That does not mitigate the right at some point for legislation.

The Government does not support the Family Home Bill 2011 as it is unnecessary. Measures are already in place to reduce the risk that families in genuine difficulties with mortgage repayments could be evicted from their homes. The Central Bank code of practice on mortgage arrears is a more flexible way of dealing with mortgage arrears cases than an Act of the Oireachtas. Non-judicial resolution procedures are more appropriate to deal with cases of people in genuine difficulties in meeting their mortgage repayments.

The Bill, as drafted, could also risk serious legal uncertainty and may raise constitutional issues. Article 15 of the Constitution unequivocally prohibits both Houses of the Oireachtas from proposing a law or a resolution which may be deemed unconstitutional. While I accept that the Opposition does not have the benefit of the advice of the Attorney General and other law officers of the State, the Government believes this Bill, as drafted, is unconstitutional.

The Central Bank's code of conduct on mortgage arrears applies to mortgage lenders in their dealings with borrowers in respect of the principal private residence in the State. Adherence to the code is mandatory for all mortgage lenders registered with the Central Bank. It sets out the framework that lenders must adhere to when dealing with borrowers in mortgage arrears or pre-arrears. For the purposes of the code, pre-arrears arise when the borrower contacts the lender stating that he or she is in danger of getting into repayment difficulties.

The code contains two safeguards to prevent the repossession of family homes. First, the lender must make every reasonable effort to agree an alternative arrangement with the borrower, or his or her nominated representative, before applying to the courts to commence legal action for repossession of the borrower's primary residence. These alternative arrangements are considered as a mortgage arrears resolution process, MARP. It sets out a procedure that lenders must apply to mortgage accounts where arrears have arisen and remain outstanding for 31 days from the date the arrears first arose. A lender must explore all options for alternative repayment arrangements when considering the case.

The second safeguard provides that where a borrower co-operates with the lender, the lender must wait at least 12 months from the date the borrower is classified as a MARP case before applying to the courts to commence legal action for repossession. When determining the 12 month period the lender must wait before applying to the courts to commence legal action and any time period during which the borrower complies with an alternative payment arrangement, makes an internal appeal or makes a complaint to the financial services Ombudsman must be excluded.

The Government believes detailed customer rights in mortgage products must be set out in a code of practice rather than specified in an Act of the Oireachtas. The reasons people may be unable to meet their mortgage repayments varies considerably. So too do their prospects of being able to meet their repayments in the future. It is important, therefore, that resolution measures be flexible and are able to respond quickly to changing circumstances.

The code of practice is a more effective mechanism to protect home owners. It sets out rules to address a wider set of circumstances and can be quickly altered to address changing circumstances. If we set this out in primary legislation and there were difficulties with it — or, alternatively, the primary legislation was shown to be non-operable — it would require a fundamental change in the legislation to change it quickly. There are many court cases in which precedents are established through the courts which alter the Government's view on regulation

or legislation. The view is that it is easier to do this by way of a code than through primary legislation.

I will now turn to some of the specific measures in the Bill. I am particularly concerned with sections 5 and 6. Under section 5, the courts would have no power to make an order for repossession if the Money Advice and Budgeting Service, MABS, reports that the borrower has no capacity to repay money due on foot of the mortgage. This would seem to place a significant burden on MABS and give inordinate weight to reports prepared by it. We must remember that MABS is a non-statutory body and is essentially an advisory service.

I can immediately see two difficulties with this approach. First, it does not take into account the value of the family home that the borrower lives in. Public policy should be concerned primarily with supporting families in genuine need. Second, what would happen if MABS were to determine that the borrower did have the capacity to repay the mortgage and the borrower did not agree with that determination? Would MABS, for instance, be indemnified if the borrower decided to pursue legal action? I believe that any commitment to alter the status of MABS at this stage is premature. I agree with Senator Hayden's comments in this regard.

The view of the Government is that we do want to transform the role of MABS; we have a definite view as to its future role. However, to change the legislation in this way, before the primary legislation dealing with MABS has been altered, is really putting the cart before the horse. I ask people to think about that. It would not have the effect that colleagues understandably want it to have. MABS will ultimately be changed, but the effect in the legislation would be ahead of this change.

The Minister for Justice and Equality is taking the lead in introducing non-judicial debt settlement systems. A personal insolvency Bill is in the course of being developed in the Department of Justice and Equality to provide for a new framework for settlement and enforcement of debts and for personal insolvency. While this will encompass reform of traditional bankruptcy law, its primary focus will be on introducing new non-judicial debt settlement mechanisms that both debtors and creditors can use in a fair and workable way.

Section 6 lists six new orders that the courts may issue as an alternative to an order for repossession. One of these proposed alternative orders is that the terms and conditions of the mortgage be amended to change the interest rate to a fixed or variable interest rate, as the court considers appropriate, taking into account prevailing market conditions. If the courts were allowed to make such an order, it would give them the right to retrospectively and unilaterally rewrite valid contracts freely entered into between two competent parties some time in the past. Giving the courts this right would create unnecessary uncertainty in the law. Such uncertainty over mortgage contract arrangements would also make it very difficult to raise much-needed international funding across mortgage books into the future.

Another of the proposed alternative orders is that the court could order that the borrower remained in the family home as a court-approved tenant of the lender for a rent and on terms fixed by the courts. I could not accept this approach as I believe it would be unfair to lenders to force them to become landlords against their will. Furthermore, it takes no account of the scale of the existing family home and the borrower's accommodation needs. The problem is highly complex, as colleagues have said, and a one-size-fits-all solution will not work. I made that point myself in the House when I addressed this issue by way of a Private Members' motion some weeks ago.

The banks have developed, and continue to develop, a range of solutions designed to deal with individuals in an appropriate and fair manner. The expert group on mortgage arrears put forward 62 recommendations which should extend those solutions and also, importantly, ensure

[Deputy Brian Hayes.]

fair and consistent treatment of consumers. These recommendations are currently being implemented and need to be given some time to take effect.

Notwithstanding this, the Government is fully committed to ensuring that all possible solutions are fully considered and that appropriate solutions are applied fairly and consistently. In this regard, a new working group is being established under the economic management council to consider the state of implementation of the key expert review group recommendations and develop further necessary actions to alleviate the increasing mortgage over-indebtedness problem. This is an issue of considerable priority for Government. The strength of the economic management council is the fact that the Taoiseach, the Tánaiste, the Minister for Finance and the Minister for Public Expenditure and Reform are key members, and they take on work which cross-cut departmental priorities for the Government.

I ask the House to give us a bit more time to work up a number of solutions to deal with this issue. Even though the rate of repossessions is low so far — even this year alone, it has been low — the problem is not going away. This is a problem that has been stored up, as Senator Barrett said, not just because of the disastrous decisions taken by the banking sector but also because of the appalling regulation by the Financial Regulator and the Central Bank that went on for far too long. We need to get back to traditional banking — banking that is based on common sense and in which the customer is at the centre of the bank's endeavours, rather than the property bubble which was allowed to get way out of control.

I thank both Senators for introducing this Bill. The view of the Government is the view of the Government but, as I said, it is a matter for colleagues to make up their own minds.

**Senator David Cullinane:** I welcome the Minister of State back to the House and I welcome the fact that the Fianna Fáil Party has tabled this Bill. I find myself agreeing with much of what was said by Members on the Government benches and by the Minister of State. There are many shortcomings in the Bill; however, it is something that could be introduced by the Government. If it is not minded to support this Bill I hope action will be taken to deal with the very real issue of the crisis that many homeowners are facing in this country and also the issue of homelessness.

Recent figures released by the Central Statistics Office showed that for the first part of this year, house prices fell by about 12.5%. That shows we have not reached the bottom in terms of house prices, and there is the potential for further reductions. The ESRI also announced recently that it believes we will not return to the house price levels we saw during the boom years until 2030. We are faced with a real crisis. There are 86,271 mortgage holders who are classified as being in serious distress. This figure includes defaulted and renegotiated mortgages. More than 11% of all mortgage holders are facing some form of difficulty. This figure increased by 6,000 in the first quarter of 2011. This represents 500 families who are falling into serious mortgage distress every week.

We are here today trying constructively to come up with solutions to help families who are in mortgage distress. It must be pointed out that the reason many of those families find themselves in distress, and the reason many people find themselves unable to pay their mortgages, is the instruments and policies that are being delivered by this Government and that were implemented by the previous Government in trying to fix the fiscal problems faced by the country. The reason many people are finding it difficult to pay their mortgages is that they have lost their jobs, are underemployed or have seen their social welfare cut — and, of course, they have been subjected to the universal social charge and all of the other levies, taxes and wage cuts that have been imposed.

There is no doubt that there is a direct correlation between the policies which the Government will put in place to try to adjust what is a very real problem in terms of the fiscal situation and the fact that there is a knock-on effect for many families. They have less money to spend and are trying to juggle between paying the mortgage, heating bills and other bills. I also accept that this is a very complex issue. However, it is galling for many people to find themselves in this situation when they were encouraged during the Celtic tiger years to be part of the boom and buy a property. Getting on the property ladder was the thing to do. People feared that if they did not purchase a house during that time they would be unable to do so in the future.

Many people in their 30s are those most affected by this. It is the generation which is living this nightmare more than any other. Some people bought multiple properties as speculators. I do not have any grá for any of those individuals. My primary concern is for people who bought a home and made an investment for themselves and their families. Those people find it galling that we arrived at this situation because the banks here were lending recklessly.

All of the Irish banks competed with each other. There was a race to the bottom in terms of who could lend to people at a cheaper rate, give them the best possible rates and offer 100% , or sometimes 110% or 120%, mortgages. There was a rush to get as much cheap money as possible from German banks, bondholders and individuals, all of whom had no difficulty fuelling the property bubble, lending money into the banks and creating that situation.

We spoke about white collar crime in the House earlier and the link between politicians, developers and the entire political system in terms of the property bubble. White collar crime is not a victimless crime. This issue is linked to that. This week one bondholder in Anglo Irish Bank will be paid €800 million. Over the course of the coming weeks €18 billion in borrowed money will be transferred from this State, which we had to borrow at a very high interest rates——

**Deputy Brian Hayes:** No, we are not borrowing €18 billion. It is from our own resources.

**Senator David Cullinane:** We have to borrow other money because we are putting this money into the banks.

**Deputy Brian Hayes:** The €18 billion is ours.

**Senator David Cullinane:** It is still money that we have to borrow in any event.

Some €15 billion of the €18 billion will be used to pay back bondholders. Some of it is to recapitalise the banks but much of it is to pay back the bondholders which the Government committed to paying back. Much of the money involves unguaranteed bonds which will be paid back by the Government. I gave the example of one bondholder who will receive €700 million.

The total amount of distressed mortgages is €12 billion. There does not seem to be any problem in putting together convoluted schemes or setting up structures and policies to deal with the developers. We set up NAMA, which was quite complex, because the Government at the time had to fix a particular problem. There does not seem to be a difficulty in terms of complexity in these areas, but it seems to be a difficulty in helping those with distressed mortgages.

If we continue with the kind of policies initiated by the previous Government the path of austerity which it laid down will result in cuts of €4 billion, €5 billion or €6 billion this year. Whatever the total figure will be it will amount to money being taken from the pockets of many families who are already struggling to pay their mortgages. We will create an even bigger problem.

[Senator David Cullinane.]

Of course we have to look at instruments and ways in which we can help those who are currently in distress, for which there is no easy solution. We also have to be conscious that we do not add to the problem and end up in a situation where in a year, two years or three years the figure of 80,000 increases to 100,000 or more. That will happen if we continue to make the mistakes made by the previous Government.

**Senator Susan O’Keeffe:** I welcome the Minister of State to the House. I particularly welcome the idea of the Economic Management Council having a working group. Perhaps it would help if in three months time it or the working group came back to us and let us know how they are getting on.

As we all agree, there is no quick and easy solution. If there was I am sure the Minister of State would have found it by now and we would not be sitting here. Senator MacSharry has contributed to the urgency of this debate with his Bill. I am heartened by the response of the Minister of State today in regard to what is happening. Many of the solutions will be found by people sitting around tables, holding discussions and trying to work out the best solutions. They need to be flexible. The Bill was brought together at a time when the need for flexibility was not so obvious as it is now.

I am certain that the spirit and content of the Bill will form part of those conversations. We on this side of the House want to make sure that there is not a further delay. I appreciate the comments of Senator Cullinane. I do not believe there is a delay for the sake of it. While he may have no standing we would welcome the opportunity for us to have something further to add or to listen to what the Economic Management Council is considering in six, eight or ten weeks time. Perhaps we could all contribute to that debate, which could send a signal about the unity of the Seanad or its capacity to be flexible.

I do not agree with Senator O’Brien’s idea that we should send a signal to the wider world about how clever we are in here that we would all agree to a Bill and negotiate amendments or whatever. That is rather cumbersome. If the Bill is not right——

**Senator Thomas Byrne:** That is a statutory process. That is the way it works.

**Senator Susan O’Keeffe:** If, based on advice, the Bill has been deemed not to be constitutional then we should not try to agree with each other just for the sake of it, which is what I understood was suggested by Senator O’Brien, or for the greater good of the Seanad or unity outside the House. I do not think anybody outside this House believes anything other than that politicians are unified in trying to find a solution to this problem. That is why we are all here.

I do not agree with passing the Bill and taking Committee Stage for us to amend it if it is not right in the first place. There are far too many people relying on the outcome of any judicial and non-judicial decisions made by the banks or Government. I disagree with the Senator on that point. If that were possible I would like to hear the response of the Minister of State.

**Senator Mark Daly:** I welcome the Minister of State to the House. I liked his discussion on the Constitution and the independence of the Seanad. The term “A nod is as good as a wink to a blind horse” came into play at one stage. He said he is part of the Government while we are independent and that it was up to us to make a decision because he was not going to tell us what to do. I hope that my colleagues opposite listened to the esteemed Minister of State and will take his comments on board.

He referred to the code of conduct which is a very technical area. I commend Senators MacSharry and Byrne for publishing the Bill. It is an enormous piece of work and a great deal of thought and effort has gone into it. Senator Byrne discussed a particularly interesting aspect of the Bill with colleagues from Fine Gael in the Dáil. A proposal on the debt for equity option is contained in section 6. This is a very practical solution which has not as yet been included in legislation. It provides that a house owner can go to court to make the bank take a share in the property thus avoiding an upset to the balance sheet of the bank. Senator Byrne discussed this provision a year ago and a former Fine Gael Deputy from Offaly worked with him on this issue. It is a practical solution which will work. The balance sheets of the banks will not be put out of kilter. It would mean that monthly repayments would be reduced but so too would the house owner's share of the ownership. When the individual concerned is back on a firmer financial foothold, he or she can buy back the equity. For example, if a house had been purchased with a mortgage of €500,000 and is now valued at €200,000, the bank could take a share in the house which in this example would mean a three fifth share in the property. The monthly mortgage would be reduced by an equal amount. As my colleagues have said, if the banks pursue the owners through the courts and have them kicked out of their houses, these people will end up depending on the social welfare system and the State will have to provide them with housing in any event. There is no point in the banks taking possession of a house to sell it because the banks are not willing to lend money to any prospective purchaser. We are in a financial quagmire as regards property and this Bill is a very good attempt at a resolution.

I note Senator O'Keeffe has called for no delay, ironically, on the day the House will rise for the summer recess. She also called for action and this Bill is just that. She said that she did not agree with parts of the Bill but once Bills are before the House they can be changed exponentially because everyone's input is put into the pot, so to speak, and changes are possible.

I am interested to note the constitutional and legal advice on this issue. However, the code of conduct cannot be used by borrowers in a repossession court case. If a bank has not followed the code of conduct, this can be taken to the Financial Regulator but that is not much good to a person whose house has been repossessed. This is the same Financial Regulator who was not doing his job previously. It is not an inspiring suggestion that one should go to the Financial Regulator to say that the banks are not following a code of conduct. This is not a sufficient solution and there is no real penalty for the banks if they do not follow the code of conduct. In that respect, Fianna Fáil will call for a vote on this motion. The problem is massive and people with more knowledge of economics than me have told us that this is the second tsunami, that it is like NAMA, only bigger. The banks will eventually come to us looking for more money. The numbers are relatively small as a result of the moratoriums put in place by the previous Government. I maintain that Senator O'Keeffe's suggestion is rhetoric of the highest order. We can sit here all this week and we can tease out the problems that have been identified by the learned people in the Office of the Attorney General. Other speakers have highlighted that the distress is causing people to take their own lives. People are dying as a result of this undue delay which so concerns Senator O'Keeffe. We are going on holidays tomorrow and this Private Members' Bill will not be passed by the Government but I hope her colleagues will show some independence.

**Senator Martin Conway:** We started the day on a very positive note and we are preparing for our holidays. It is somewhat ironic that our last bit of business is this major issue which affects thousands of people. I commend Senator MacSharry for this Bill. I assure him I read his letter and I have studied this proposal which I regard as a genuine attempt at a solution and he has put substantial work into its preparation. It deals with a very important issue and he must be commended for raising the debate and setting the agenda. I do not think anyone

[Senator Martin Conway.]

has the solution yet, neither the Government nor the Opposition nor anyone else. In my humble opinion, there eventually will be a write-down in mortgages for ordinary people because it was lulu, Monopoly money that existed back in the mid-2000s. As was quoted by a previous speaker, the cost of €104,000 for a three bedroom semi-detached house in Dublin increased to €516,000. That €516,000 did not really exist; it was borrowed when there was no logical reason for lending it. Section 6 is very interesting. Fifty per cent of mortgages given out at a certain point in the past decade would fall into that category as described in subsection 6(2). Were they to be stress-tested and tested in court, it would show that all sorts of shenanigans and fraud took place regarding the preparation of the documents. It is unreal that, for instance, overtime payments and travel expenses were taken into consideration when evaluating a person's income. There is no such thing as a permanent job anymore and yet, overtime and travel expenses were being taken into consideration when deciding to grant a mortgage. This shows how nonsensical the situation had become.

I know of at least two cases in one of the major banks where accountants fraudulently prepared income and expenditure for applicants and this is appalling. There is much merit in section 6. There should certainly be stress-testing of impaired mortgages. I refer to section 6(1) which proposes an interest-only period for a maximum of four years and the write-down of the value and the extinction of the time period. Many of the measures in these proposals have been happening for people entering into negotiations with their banks and once a case goes to court it is beyond such negotiation. I dealt with one case where a mortgage had been an interest-only payment since 2005 and now the person cannot even fund the interest-only payment. There is significant merit in the proposals but we probably need to be make more fundamental and radical changes.

The economic management council is a good idea and it has worked. We have seen what has happened in Brussels and I commend all involved.

**An Leas-Chathaoirleach:** The Senator has two minutes remaining.

**Senator Martin Conway:** I know people are anxious to leave but this is a very important discussion. We may be having discussions about the role and the future of the Seanad but that is the last thing on the mind of anyone on the point of losing his or her home. The Government has a serious responsibility to devise practical solutions to this problem. I acknowledge that important steps have been taken. For example, I welcome the Minister of State's indication that there are proposals to assign greater powers to the Money Advice and Budgeting Service, MABS. That service is doing good work, but its staff are snowed under.

I commend the Members opposite on their noble effort in bringing forward this legislation. We look forward to working with them in devising constitutionally and legally sound legislation that will address these issues.

**Senator John Crown:** I support the proposals put forward by Senators Marc MacSharry and Thomas Byrne. The key message that must go out from this House is that, collectively, the body politic understands the effect, at a micro level, of what has happened at the macro-economic level. We must demonstrate an understanding that decisions made at high levels which led to major economic problems have had serious consequences for individuals. The message must be that the same level of consideration we are giving and seeking at national and international level for our national debt problems will be applied to individual citizens of our Republic who find themselves with unsustainable debt burdens which could lead to the loss of their family home. I have offered suggestions in this regard which I hope we will pursue in the autumn. They include the mobilisation of personal pension funds and the repatriation

of foreign-held national pension assets which could be used domestically if an appropriate, modest bank were set up with some portion of the funds.

The Taoiseach and the Minister for Finance have appropriated a certain amount of credit for the renegotiation or rescheduling of our national economic commitments. They have done on a larger scale what Senator MacSharry and his colleagues are proposing we do on a smaller scale for individual citizens. The recent changes to the terms of Ireland's EU-IMF deal are essentially the slipstream collateral benefits of Greece allowing the mortgage on its national home to be put on an interest-free basis for several years. We found ourselves in the same continental ghost estate as Greece and, as a result, a certain amount of collateral benefit accrued to us. These are the same types of arrangements that some distressed home owners in this State have been offered by their banks and the same type of renegotiation of mortgage terms that this legislation proposes should be extended to all distressed home owners.

A rather vicious disinformation campaign is being waged in those countries that provided the assets which were unwisely given as loans to Irish home owners. The basic thrust of this disinformation is that we were irresponsible, dissolute, feckless drunks who borrowed the savings of German hairdressers to go on a ten-year binge of oysters, Mercedes and holidays in Marbella. On a point of order, I understand "feckless" is an appropriate word for use in the Chamber; it would only be inappropriate if I were to omit the "less" part. We all know that is not an accurate portrayal of what happened in this country or of the behaviour of the great majority of people who now find themselves in distressed circumstances.

The great bulk of the debt which was ultimately incorporated into our banking bailout, and which has become the noose with which we are being strangled internationally, arose as a consequence of the decision by a large number of individual citizens to do as their parents, grandparents and great-grandparents had done, namely, to purchase a house. They did not necessarily buy plush mansions or lavish palaces. In general, they bought the same types of houses their ancestors had bought, the difference being that they paid grossly inflated prices for them. They did so because they were advised by professionals, who had a fiduciary responsibility to provide good advice, that the old rules had changed, that one no longer had to think in terms of two and a half times one's salary but instead should aim for a multiple of three, four or five. People were no longer limited to borrowing 80% of the purchase price and in some cases were lent more than 100%.

People did not necessarily make irresponsible personal decisions. While everybody who purchased a home at an unwisely inflated price — I include myself in that group — has a degree of personal responsibility, the reality is that for many of our citizens, they did it because the very priest class of advisers — bank managers, mortgage advisers, accountants, people whose advice one could trust on the basis that they knew more than oneself about these matters — told them the rules had changed. All we are doing here is seeking to apply the same justice and logic to individual home owners that we are asking, on the macro scale, of the Germans, Finns and French. Authorities in those countries also had a fiduciary responsibility to their pension fund holders — the German hairdressers and so on — to invest their funds wisely; instead, they invested in the bubble Irish real estate market. We are asking that the same level of consideration be shown to distressed home owners that we are asking others to show to us.

I welcome and support the legislation. We must give high priority to the issue of family home protection by way of this and other measures in the coming year.

**Senator Colm Burke:** I thank Senator Marc MacSharry and his colleagues for introducing these proposals. However, I do not support the draft Bill because, like the Minister of State, I am of the view that it is unconstitutional. The judgment delivered by Ms Justice Dunne on 25 July casts doubt on the legality of any repossessions in respect of a certain cohort of distressed

[Senator Colm Burke.]

mortgage holders. It is interesting to note that in all four of the cases she dealt with, the moneys were advanced in 2007 and the borrowers ran into arrears by 2008.

Ms Justice Dunne's findings point to a defect in the Land and Conveyancing Law Reform Act 2009. The Government will have to introduce amending legislation to deal with that. The judgment observes of the 2009 Act, which sets out the obligations, rights and powers of mortgagees:

It only applies therefore to mortgages created by deed after the 1st December, 2009. It appears that there is a lacuna created by the repeal of [section] 62(7) in that, as I have found, those lenders who did not have an entitlement to apply for an order pursuant to [section] 62(7) by the 1st December, 2009, are not in a position to avail of the provisions of the 2009 Act to apply for an order of possession, as their right to apply for such an order is not saved by the provisions of the [Interpretation Act 2005]. It is not for the court to supply that which is not contained in the 2009 Act.

The 2009 Act has created its own problems in repealing section 62(7) of the Registration of Title Act 1964 and replacing it with a provision that does not apply in certain circumstances. One assumes a significant number of cases were on hold pending this decision. This development emphasises the importance of looking carefully at legislation. Even the best brains in the Attorney General's office and in Departments do not foresee all the implications and potential legal anomalies of legislation, as is clear in this case.

I agree with the Minister of State that certain aspects of the Bill are not constitutional. For example, section 6(1)(e) refers to "an order that the principal sum due on the mortgage be reduced". In layman's terms, that is similar to informing someone who owns 100 acres that a court can make an order stating that he or she now only owns 50 acres. In a technical sense, that is what the section does and it would not stand up to scrutiny if the Bill were passed and referred to the Supreme Court by the President.

Other speakers referred to the market that previously existed in the context of mortgages. Earlier, I mentioned the four cases in respect of which Ms Justice Dunne handed down her judgment on 25 July and I outlined the fact that those to whom these cases relate borrowed all of the moneys involved in 2007 and got into serious difficulties within 12 months of doing so. The difficulty in respect of the period 2004 onwards is that one could not give people advice. My experience of that period was that when approached by people if I informed them that what they proposed was not a good idea and that they should not proceed with it, they would go elsewhere. That was the problem which we in the legal profession encountered at that time. My major complaint in respect of the period to which I refer relates to mortgage brokers and people being encouraged to borrow because the structure relating to how we earned our fees was based on how much money was loaned out. As a result, mortgage brokers were shopping around and giving out loans which should never have been extended to people. I agree with other Senators regarding alterations being made in respect of the incomes people were deemed to earn and the fact that bonuses, travel expenses and overtime were taken into account in this regard as if these were entitlements that would automatically be paid into the future. That was not the case.

I agree with the Minister in respect of the Bill. While I welcome the discussion on the matters to which it relates and while I accept that a solution must be found as soon as possible, I do not believe the legislation deals adequately with the problems.

**Senator Labhrás Ó Murchú:** There is no more prevailing image in Irish history than that which depicts a family being evicted from its home. If one looks at any of the drawings and paintings relating to evictions in the past, one can see that people's suffering is amplified when there are children involved. In general, artists always depicted children as being confounded by what was happening to their homes and as wondering to where their families would go next.

The battering rams used in evictions may no longer be in use but, unfortunately, the emotional battering ram to which people can be subjected still exists. There is a need to treat this matter with a sense of urgency. During the lifetime of the previous Seanad, Senators MacSharry and Healy Eames used to lead the charge in respect of this issue on an almost daily basis as they sought to keep other Members up to date on developments. In many ways that indicated the partnership that existed between those then in government and those in opposition. I have always been of the view that such a partnership is required in respect of an issue of this nature.

I accept the assertion by a previous speaker that it would be better if these matters could be resolved without involving the Judiciary. On the other hand, there is no indication that this will happen. The banks have not sent out a message to the effect that as a result of their being recapitalised, and so on, they have a contribution to make in the context of easing people's suffering. Neither the previous Government nor the current one have been successful in obtaining such a reaction from the banks. We are not privy to the conditions that were attached to the recapitalisation programme. Do we have an input or a say in respect of how the banks operate? The State is a shareholder in several banks and has appointed people to their boards of directors who should make the case in respect of the individuals to whom I refer. However, I have not seen any results in this regard and people have already been evicted from their homes.

I realise that it was made in goodwill but I do not accept the logic behind a previous speaker's comment to the effect that because there has not been an acceleration with regard to the number of homes being repossessed, there is no need to be concerned. A couple of issues arise in this regard. First, introducing legislation, particularly if it appears to be strong in nature, sends a signal to the banks that it can be used in respect of them. The second issue is that there is no guarantee that an acceleration will not occur in respect of repossessions. I would be quite surprised if such an acceleration did not occur. The banks have not extended a flow of cash to small to medium-sized businesses. We are all aware of businesses which could do a great deal with a cash flow of €10,000 or €20,000.

We cannot obtain any answers in respect of what is happening with the banks. There appears to be cross-party agreement regarding this matter but we have not yet made a breakthrough. The position will be the same in respect of repossession. It is for this reason that the legislation must be passed. The Bill does not represent a knee-jerk reaction. Senator MacSharry has been working on it for a considerable period and I am aware that he has consulted widely with many of the players involved. Those who represent people who have already been or who are likely to be evicted have shown an interest in the legislation because they see it as something which will fill the vacuum.

It would have been great if we could have progressed the Bill beyond Second Stage. Some Senators on the Government side made excellent points and these could have been discussed further on Committee Stage. If it had been necessary to tweak the Bill to some degree or even to alter it substantially to satisfy constitutional requirements, that could have been done on Committee Stage. If the Bill does not proceed, other legislation will not be introduced in this area. The Government may be in a position to inform us that it intends to introduce alternative legislation but I do not believe that will prove to be the case. That is a pity because it sends

[Senator Labhrás Ó Murchú.]

out the wrong message from this new Seanad. We have more or less agreed that we will keep partisanship to a minimum in this House and that we will try to be co-operative and positive. That was in evidence on today's Order of Business when Opposition Senators praised the Government for the progress it has made in Europe in respect of renegotiating the interest rate relating to our loans. That is the spirit which is required in the Seanad at present. Partisanship is too expensive emotionally.

I suppose it is somewhat late to do so but I request that the Bill be allowed to proceed to the Committee Stage, particularly as this would be good in the context of what we are trying to achieve. If the Government is eventually obliged to adopt the legislation in full, then so be it. It would be bad for the image of the Seanad if this legislation were allowed to fall now. It would be a major breakthrough if it could proceed to committee stage in the interests of those who spend their nights worrying and who cannot sleep and in the interests of their children, who are concerned with regard to whether they will have a home in which to live six months from now. Strong action is required and perhaps at this late stage the Government will agree to allow the Bill to proceed.

The Minister of State was always one of the best performers in this House when he served here as a Senator. He often took a stand that was extremely independent-minded in nature in respect of particular issues. Perhaps there is a possibility that he found his time here productive and that, in the context of some of the positions he adopted in the past, he might decide to give the legislation a chance and allow it to go forward.

**Senator Marc MacSharry:** I take this opportunity to welcome to the Visitors' Gallery Mr. John Lee of the *Daily Mail*, the only person in the media who had the courtesy and manners to acknowledge the existence of this House and to come here to listen to this important debate.

**An Leas-Chathaoirleach:** I am not sure it is appropriate for the Senator to do that.

**Senator Marc MacSharry:** Regardless of whether it is in order to do so, I welcome Mr. Lee and I apologise to the Leas-Chathaoirleach.

I thank all Senators for their contributions. There is much in the Bill that everyone would welcome. As the Minister of State indicated, the Government has four main issues with this legislation. The first of these is that the Bill is simply not necessary. However, almost everyone agrees that it is necessary. The Minister of State said that the existing code of conduct is good. The programme for Government clearly states that the code and the recommendations put forward in the Cooney report are inadequate. It is now proposed that an interdepartmental working group of the economic management council be established to examine this issue.

Relying on the code of conduct in its current form is similar to handing passengers on the *Titanic* inflatable armbands as the ship went down. Senator D'Arcy stated that so far the code of conduct is working. That is not the case.

The Central Bank stated on 1 July that 66% of financial institutions were not living up to the realities of the code of conduct.

The issue of the code of practice being statutory was raised by Senator Fidelma Healy Eames.

8 o'clock It is statutory only in the sense that the Financial Regulator is empowered to make it under statute, but, as Senator Mark Daly said, one cannot individually challenge a bank in court in this regard. Therefore, in that sense it is not statutory. The banks are the ones which do this. For example, a bank will ask if an official engaged with punter X and offered an extended term. When the official confirms that he or she did so, the

bank will ask what extended term the official offered, to which he or she will reply “an additional two years”. A 48 year old homeowner with ten years remaining on his or her mortgage knows he or she could meet his or her repayments if the ten-year term remaining were extended to 20 years. When has such a term been extended for anybody? The answer is it has not been.

It concerns me that the bankers, as Senator Sean Barrett said, are still getting up the backstairs in Government Buildings. When I was on the other side of the House, I said this was happening and that it was wrong. This is not about protecting the banks but about protecting the fabric of Ireland and families. We want to protect what is provided for in Articles 41.1 and 41.2 of the Constitution. It is unconstitutional not to support the main thrust of the Bill and allow its passage on Second Stage. A number of the issues raised can be embraced on Committee Stage when a new section could be inserted to address a particular issue or a particular provision could be deleted if it might pose a danger to its constitutionality. There is much to support in the Bill.

There is the legal uncertainty. Senator Colm Burke mentioned the case taken by the New Beginning group which wrote to every Member of the House asking him or her to support the Bill. While Ms Justice Dunne has taken issue in this respect, that does not impact on the 2009 Act; it merely interprets it. Clearly, the Government, as the Minister of State said, might have to rectify the matter and could do so on the first available opportunity on Committee Stage of this Bill.

We would all like it if this was a non-judicial issue, but the reality is it is such an issue every Monday. The Bill contains proposals to sort out that matter by giving options to the courts. It would not prohibit repossession in every instance, but it would give tools to the courts to help families. If enacted, very few such cases would go to court. The bankers who were so creative and innovative when they came up with derivatives to bust the world to the tune of hundreds of billions of euros and dollars would focus their minds on coming up with derivatives that would help families to meet their obligations and allow them to stay in the family home.

Senator Colm Burke mentioned section 6(e) in terms of a debt for equity swap and said he was concerned that it might not be constitutional. However, in the middle of June he voted in favour of a motion brought forward by Senator Aideen Hayden supporting a debt for equity option.

Senator Michael D’Arcy started for the Government side and I wrote down a number of the words he used. He said: “There is nothing in this for us.” I am bound to say to the Minister of State that before this debate took place the Cabinet insisted on the Whip coming down on this issue. Having considered the points made, the only reason he and his colleagues have not to support the Bill on Second Stage is that, “There is nothing in this for us.” This is not about who came up with the proposal. We do not want ownership of it. This is a collective approach. It has often happened that a Bill has been agreed to on Second Stage and a wide variety of changes have been made on Committee Stage. Unlike what Senator Susan O’Keeffe said, that is the nature of the legislative process. Good legislation is all-encompassing. I beseech all Members on this one occasion to take the Minister of State’s advice and use their own mind because I know from speaking to many of them in recent weeks that they want to support this legislation. There is enough support for it to be passed on Second Stage. It does not offer the ultimate solution, but would be a start, as all speakers have acknowledged. Let us embrace it now; *carpe diem*. Let us do it together. I commend the Bill to the House.

Question put:

The Seanad divided: Tá, 20; Níl, 23.

Tá

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

Mullen, Rónán.  
Ó Murchú, Labhrás.  
O'Brien, Darragh.  
O'Donnell, Marie-Louise.  
O'Sullivan, Ned.  
Power, Averil.  
van Turnhout, Jillian.  
Walsh, Jim.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Bacik, Ivana.  
Bradford, Paul.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D'Arcy, Jim.  
D'Arcy, Michael.  
Harte, Jimmy.  
Hayden, Aideen.

Healy Eames, Fidelma.  
Heffernan, James.  
Henry, Imelda.  
Higgins, Lorraine.  
Moloney, Marie.  
Moran, Mary.  
Mulcahy, Tony.  
Mullins, Michael.  
O'Keefe, Susan.  
Sheahan, Tom.  
Whelan, John.

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

Question declared lost.

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

**Senator Maurice Cummins:** The House will adjourn *sine die* but will meet again in the middle of September at the same time as the Dáil. Before we adjourn, I wish Senator James Heffernan who is getting married in a week or two the very best of luck. I also thank Deirdre, Jody, the ushers and all other staff members for their work. I hope everybody will return suitably refreshed. I suppose those on the opposite side of the House will be refreshed and ready to have a go at me in September. I wish everybody the best of luck and hope they enjoy the few weeks break. We hope to be back on 14 September.

The Seanad adjourned at 8.20 p.m. *sine die*.