



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Déardaoín, 22 Meán Fómhair 2011.

Thursday, 22 September 2011.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.

Prayer.

Order of Business

Senator Maurice Cummins: The Order of Business is Nos. 1 to 5 on the Order Paper. No. 1, motion re the address of Seanad Éireann by Dr. Maurice Manning, president of the Irish Human Rights Commission and chair of the European Group of National Human Rights Institutions on Wednesday next, 28 September, is to be taken without debate.

No. 2, the European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011 — all Stages, is to commence on the conclusion of No. 1 and to conclude no later than 3.30 p.m., if not previously concluded, with the contributions of group spokespersons on Second Stage not to exceed eight minutes and all other Senators not to exceed five minutes, and the Minister to be called on to reply to Second Stage no later than 1.55 p.m.; Committee and Remaining Stages are to be taken immediately on the conclusion of Second Stage. No. 3, motion re early signature of the European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011, is to be taken without debate on the conclusion of No. 2.

No. 4, the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 — all Stages, is to commence on the conclusion of No. 2 and to conclude no later than 7 p.m. if not previously concluded, with the contributions of group spokespersons on Second Stage not to exceed eight minutes and all other Senators not to exceed five minutes, and the Minister to be called on to reply to the Second Stage debate no later than 4.55 p.m.; Committee and Remaining Stages are to be taken immediately on the conclusion of Second Stage. No. 5, motion re the resolution to be prescribed for the information of voters pursuant to section 23 of the Referendum Act 1994 (No. 12 of 1994) in relation to the proposal to amend Article 15.10 of the Constitution which is contained in the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 and is the subject of a constitutional referendum, is to be taken without debate on the conclusion of No. 4.

Senator Darragh O'Brien: I do not know where to start with all of that. On the use of guillotines, there are two important pieces of legislation before the House today with which we do not have any difficulty in broad terms. The European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011 is something on which there is agreement in the main in both Houses and by most parties. Again, all Stages of the Bill are to be taken.

I am particularly concerned, however, about the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 on the basis that all Stages of the Bill are to be

[Senator Darragh O'Brien.]

taken and the guillotine is being applied simply because the Bill must pass this week to fit into the Government timeframe for holding the referendum on the same date as the presidential election. That is understood. The Houses are back a couple of weeks, however, and we could have been brought back early.

Senator Rónán Mullen: Hear, hear.

Senator Darragh O'Brien: I accept from my experience previously on committees that the powers specified in the Bill are needed by the Oireachtas but they are important ones and they should be looked at in great detail. Effectively, committees from here on in, and particularly the Joint Committee on Investigations, Oversight and Petitions, will be able to make findings of fact and to call and name individuals. All of us agree that the one thing every citizen in the country is entitled to is their good name. The legislation appears to be rushed. It is important, ground-breaking legislation that overturns the Abbeylara judgment. That we are dealing with it in a short time because it is being guillotined, is not the way to do business. I know there are time constraints but the Government should schedule its business more efficiently. Time and time again the guillotine was used in the last session. We have only just resumed in the past few weeks, although we could have come back earlier to deal with this legislation which has been discussed *ad nauseam* in the media. As legislators, we should have more time to deal with it. We will oppose the Order of Business today on the basis of an excessive use of the guillotine.

I ask the Leader to bring to the attention of the Minister for Communications, Energy and Natural Resources the need to urgently contact ComReg to ascertain the mobile phone giant Vodafone plans to switch customers to online billing without seeking their express permission. This was done last year by An Post when it tried to introduce minimum payments for people who are trying to manage household budgets. Vodafone appears to be telling its customers that they will get online bills whether they like it or not, otherwise they must opt out. Many people across the country do not have Internet access and, in addition, they are struggling to manage their household budgets. This is a retrograde step. We have already seen O² do this and Vodafone is planning to do it. I have no doubt we will also see State utility companies doing it, if it is allowed to happen. I therefore ask the Leader to contact the Minister for Communications, Energy and Natural Resources urgently on this matter. Next week, I intend to table an Adjournment matter in this regard. I ask him to bring my concerns and the concerns of other Opposition Senators about Vodafone's plans to the Minister's attention. Vodafone's initiative is anything but customer-friendly.

Senator Ivana Bacik: It is fair to say we all deplore the use of the guillotine in this House. It is not ideal but colleagues on both sides of the House appreciate that with the referendum set for 27 October we are constrained on the referendum Bills. Like Senator O'Brien, I would have liked more time to debate this referendum Bill in particular. There was less concern in the public arena about the wording of the judicial pay Bill, and so less need for time on it. The debate on judges' pay seems to have gone on for a long time, so it was time to draw a line under it.

I ask the Leader for a debate on international trade in the presence of either the Tánaiste or the Minister of State, Deputy Jan O'Sullivan. I seek that debate in the context of this week's ploughing championships. I welcome back all my colleagues who attended that event, which was hugely successful. It was great to see so many people attend.

Senator Catherine Noone: We were stuck here.

Senator Ivana Bacik: It was left to us to be stuck here. As Martyn Turner's cartoon described in *The Irish Times* yesterday, it was more like the presidential championships, given the number of candidates and political colleagues there.

An important delegation from China was at the ploughing championships seeking to do business with agricultural interests here. China is a hugely important market for us, as the Tánaiste and his Cabinet colleagues have recognised. We are all now familiar with the acronym BRIC covering the emerging economies of Brazil, Russia, India and China. In the university and third-level sector generally we are trying to encourage international students from those countries and the same applies to international trade. It would be useful for us to debate how best to foster links with emerging economies and China in particular. It is worth noting that a former Taoiseach, Bertie Ahern, has been forging his own links with China. I see that he is a consultant to major Chinese business interests concerned with building a new city there.

Senator Darragh O'Brien: We should invite him in for a chat.

Senator Ivana Bacik: Let us hope the new city in China is not built on foundations of sand.

Senator Darragh O'Brien: The Senator was doing so well up to that.

Senator Terry Leyden: Dr. James Reilly has been there too.

Senator Ivana Bacik: Foundations are inclined not to be so stable with the former Taoiseach, Bertie Ahern, as we know from our experience of this country's economy. We could, however, take a leaf out of Bertie's book in this case by fostering greater links with China. It would be a worthwhile debate to have in this House. I look forward to having co-operation on it from both sides, even if we have to take a few potshots at Bertie Ahern while doing so.

Senator Catherine Noone: He heard things are going well in China so he has gone over to crack that as well.

Senator Pat O'Neill: The Bertie bowl in China.

Senator Feargal Quinn: How can I follow that? I was interested to read in recent days that the new Greek property tax will be collected with electricity bills. It made me think how inefficient and costly is our tax system. I will give some examples. The Revenue Commissioners collect income tax, the universal service charge, capital gains tax and corporation tax. Local authorities, meanwhile, collect commercial rates, business improvement tax, district taxes, levies and the non-principal residence tax. An Post collects television and dog licence fees, which I am surprised still exist. The Private Residential Tenancies Board collects the residential landlord tax. As regards new taxes, I do not know who will collect water charges or the septic tank charge, if it is introduced. I note that Bord na Móna and others are competing for that tax along with the property tax. The various tax collection systems seem to be highly inefficient. In France, for example, rates are collected with electricity bills. In addition, people who do not have television sets must opt out of the licensing system, rather than opting in. The French system seems to be much more efficient, so perhaps we should examine it. I am raising this matter solely as a subject for discussion at some point. It might be more suitable as an Adjournment matter next week.

I have been a Member of the House for some years and I regularly raise issues on the Order of Business. Last week was the first time that, to the best of my knowledge, I got a reply a couple of days later from the Leader's office concerning something I had raised the previous week. I wish to express my thanks, appreciation and respect for the Leader's action.

Senator Paul Coghlan: I appreciate you calling me early, a Chathaoirligh. I made some pertinent remarks yesterday but I want to assure my good friend and colleague, Senator Darragh O'Brien, that I am glad to be in the Chamber with him. I must further assure him that I was neither in mourning nor in hiding on Tuesday. Yesterday, we were all like Gainsborough's "Blue Boy", but that had nothing to do with an event last Sunday.

An Cathaoirleach: We have moved on. Does the Senator have a question for the Leader?

Senator Darragh O'Brien: No, he has not.

Senator Terry Leyden: The world has moved on.

Senator Paul Coghlan: I thank the Cathaoirleach for reminding me. In that context, where I come from we were always capable of seeing the bigger picture and having regard for the greater good, as well as encouraging and nurturing those who have been neglected for long periods. Dublin supporters should enjoy the Sam Maguire while they have it on loan. It is another one of those temporary little arrangements.

Mention has been made of the guillotine which nobody welcomes on either side of the House. When in opposition, we always opposed it just as the current Opposition is doing now. They know as well as us, however, that Governments get caught in emergencies and time-frames, which is what has happened in this case. I plead with the Opposition to bear with us because we do not welcome the guillotine either, as has been said.

Senator Thomas Byrne: I welcome all the tourists and golfers who will visit County Meath this weekend for the Solheim Cup, which is a major boost for the country, the county, ladies' golf and ladies' sport in general. They are very welcome, as is the financial boost the competition will bring.

I would like the Committee on Procedure and Privileges to investigate the terms "constitutional" and "unconstitutional". Every time Opposition Senators — be they Fianna Fáil, Sinn Féin or Independent — bring forward a Private Members' Bill, we are told it is with the best of intentions. We are also told it is a fabulous piece of work, one could not have done a better job, it is fantastic, but it is unconstitutional. It seems we no longer need the Supreme Court; we should send Fine Gael Senators down there to adjudicate on whether something is constitutional.

Senator Catherine Noone: We would have the ability.

Senator Thomas Byrne: It is not appropriate that every time a piece of legislation is introduced by the Opposition, Senators and Ministers say, "Sorry, but it is unconstitutional". They do not know whether it is unconstitutional. Very often when such statements are made, no arguments, case law or precedents are put forward. They are simply used to rubbish legislation proposed by the Opposition. If the Government wants to show it is serious about legislation, it will have to take on board serious legislation that is introduced from this side of the House. They promised to do that, as well as having gaps between the various stages. That is in the programme for Government and was in the Fine Gael manifesto. However, the majority of legislation coming through this House does not have gaps between various stages, which makes it almost impossible for Opposition Senators to study the legislation seriously and table amendments.

I note the Dáil will have a day every month for Private Members' legislation which, I suspect, will come from Departments. The Government will welcome its own side with open arms. I ask if it will really work if everything is decided to be unconstitutional. In what circumstances

are Senators allowed to use the word, “constitutional”? This term is being bandied about this House without any grounds and in order to diminish the genuine work of legislators who are trying to improve the lives of people.

Senator Fidelma Healy Eames: I appreciate that yesterday the Cathaoirleach could not permit me to speak at the time. It is interesting to hear the point made by Senator Bacik today because I support the call for a debate with the Minister for Foreign Affairs and Trade on Irish-China relations. A number of weeks ago I attended a conference in the Institute of European Affairs. The attendance included people from China looking to do business with Ireland but also Irish entrepreneurs looking to do business with China. I learned that Ireland has no bilateral trade agreement with China. For that reason we are falling way behind. China has \$2.85 trillion in foreign reserves ready to invest. We have 450,000 people out of work and 1,000 young people are leaving our shores every week. We must consider how we can capitalise on opportunities. The Chinese are interested in us because we offer them an opportunity of having a gateway to Europe. We are the only English-speaking country in the eurozone. There could be mutual benefit for both countries.

I strongly encourage the Leader to ask the Minister for Foreign Affairs and Trade to come to the House as soon as possible in order to have a debate on how Ireland could benefit from a formal relationship with China. The trade missions of themselves are not enough. We need formal relations with China. The European Union does not have an overall policy as regards China. It seems the Chinese prefer to deal with us rather than be dependent on the US dollar.

On another point, the presidential campaign has shown that the nomination process is flawed.

Senator Darragh O’Brien: Hear, hear.

Senator Fidelma Healy Eames: We say the office is above politics, yet it is completely reliant on political parties or groups thereof nominating a candidate. This is not right and it is time the process was changed. We should also have the option to allow an agreed number of people nominate a candidate. I ask the Minister for the Environment, Community and Local Government to examine this option. This debate has taken up too much time——

An Cathaoirleach: Has the Senator a question for the Leader?

Senator Fidelma Healy Eames: We need to make changes so that the people are given a voice on the issue of the Presidency at the nomination stage.

Senator David Cullinane: A couple of days ago, I asked for a debate on the potential selling-off of a minority stake in the ESB. I reiterate that call and also ask for a discussion in the Chamber about the potential sell-off of State assets and properties. The Government is planning to sell off billions of euro of profitable State companies and State assets. It is interesting that something similar is happening in Greece because the IMF and the European Central Bank are forcing Greece — just as they are forcing Ireland — to sell off some of its family jewels. A Greek telecommunications company was bought by a German bank. The financial vultures, including German banks, who helped create the mess in Greece in the first place, are the very vultures coming in to feed off the carcass of valuable State companies. I would hate to see this happening in Ireland.

The Government found itself in the situation whereby the previous Government had put in place mechanisms which forced us to bail out the banks and very large amounts of taxpayers’ money was used to pay back the bondholders and private banking debts. It is ironic that private banking debt is being nationalised and we are having to pay back people like those German banks and bondholders while, at the same time, privatising valuable State-owned companies.

[Senator David Cullinane.]

Those same people who took a punt, a gamble, and are being paid back in full are now being given the opportunity to buy valuable State companies like the ESB. There is something inherently immoral about this situation. It shows the mess we are in and it also shows that when it comes to it——

Senator Fidelma Healy Eames: It shows the mess the country is in. That is the reason——

Senator Mary M. White: The Senator should be optimistic and show leadership.

An Cathaoirleach: Senator Cullinane, without interruption, please.

Senator David Cullinane: Sometimes the truth hurts but I remind the Senator that her party——

Senator Ivana Bacik: Her party voted for the bank guarantee; the Labour Party voted against it.

Senator David Cullinane: ——and the Labour Party opposed——

An Cathaoirleach: A question for the Leader, please.

(Interruptions).

Senator David Cullinane: ——in their manifestos the short-term selling-off of State companies and assets, yet they are being forced to do U-turns. The Government has choices available to it. It is easy for people who are now in government to say they do not have any choice but——

An Cathaoirleach: A question for the Leader, please.

Senator David Cullinane: ——we have choices. I am not calling for a shouting match with other Senators but I am asking that the Minister with responsibility for this area come to the House to have a discussion about which assets are going to be sold and how and why they are going to be sold. Then we can have a discussion about where money can be found rather than having to asset-strip this State and sell off the family jewels to pay back speculators and gamblers. I stand over my view that such payments are immoral and I hope the Minister will come to the House so that we can discuss it.

Senator Tony Mulcahy: I was contacted recently by a number of couples and also mortgage brokers who are trying to acquire mortgages from different banks. Even cast-iron cases of people in full-time employment are finding it very difficult to obtain a mortgage. The banks are now inquiring if housing estates are bonded even though these estates are unfinished and they also look for a guarantee that the local authority will take such estates in charge. At a time when property was never such good value, it is virtually impossible for a young couple to get a mortgage and this results in more people coming on to the social housing list. I ask the Leader to consult with the Minister for Finance to extend the remit of the commercial loan review group to cover mortgage holders so that they could apply to the group for a review of their mortgage application. As it stands, one can only get a mortgage if one has a full-time job and a suitable income. It may require legislation to include mortgage holders within the remit of the review group but it is essential to facilitate young couples who can afford to buy a house.

Senator Terry Leyden: I ask the Leader if he will consider taking non-Government motion No. 17 (4) on the Order Paper which states:

That Seanad Éireann calls on the Irish Government to formally recognise a Palestinian State at the UN General Assembly meeting in September 2011 and that such a state would be based upon Israel's pre-1967 borders with mutually agreed land swaps.

I raise this matter because of the unfortunate decision by the US Government to veto the proposal in the United Nations which is supported by quite a number of countries. We are in a very strong position in this House because the late Deputy Brian Lenihan was the first European foreign minister to formally recognise the right of the Palestinian people to self-determination and recognition and to live in harmony and peace with its neighbour, Israel. We have a very proud tradition in this regard. It has been the policy of the Labour Party and I remind the Minister for Foreign Affairs and Trade, Deputy Gilmore, that he is either a mouse or a lion in the Cabinet. In my view there is an undue influence exercised by the Minister for Justice and Equality, Deputy Shatter, to ensure that this Government vetoes the policy of the Irish State regarding the recognition of Palestine and the right of the Palestinian people to self-determination. There is undue influence being brought to bear in the Cabinet in this regard.

An Cathaoirleach: Has the Senator a question for the Leader?

Senator Terry Leyden: I am putting a question. The Labour Party must assert itself or it will become irrelevant in this Government and that is what is happening at the moment. This is a very serious situation for the Labour Party——

Senator Rónán Mullen: It should be radical or be redundant.

Senator Fidelma Healy Eames: That is not a question, it is an assertion.

Senator Ivana Bacik: I gave the Labour Party position on Palestine and on the Palestinian State very clearly yesterday.

Senator Terry Leyden: I am glad. Will the Senator stick by that position?

Senator Ivana Bacik: Yes.

Senator Terry Leyden: So the Labour Party, Senator Bacik, will recognise the Palestinian State in the United Nations? Will Ireland recognise the right of the Palestinian people, on a vote, to be part of the United Nations?

An Cathaoirleach: The Senator has no question for the Leader.

Senator Terry Leyden: Will the Leader accept the non-Government motion?

The massive Jewish vote in the United States of America influences government policy and Obama is now a tool of the Israeli State. It is not a question of “Yes, we can”, but “No, we will not”.

An Cathaoirleach: Those are points the Senator can make to the Minister when he comes
11 o'clock into the House.

Senator Terry Leyden: At the beginning of the end of his presidency, I hope the 40 million Irish Americans in the US will remember his statement last night at the United Nations.

Senator Catherine Noone: Based on the figures released this morning on mortgages and mortgage arrears, it seems that most of the figures relate to those who are three months or more in arrears. However, there appears to be a plethora of people who are in the realm of being one or two months in arrears. These numbers will increase. The number of those in

[Senator Catherine Noone.]

arrears has gone from 55,000 in June to 57,000 in August. This is a huge number of people who are two months in arrears. The Minister for Finance will be in the House today, but we need long-term solutions. Mention is made of debt forgiveness, but this is not debt forgiveness rather a restructuring of the debt with the banks. We need to get serious on this issue.

We hear this morning that Catholic parishes are being encouraged to give any surplus moneys they have to a fund for the general benefit of the Catholic Church. One potential use for moneys from this fund is to benefit victims of clerical child abuse. This is unsatisfactory. Archbishop Diarmuid Martin is trying to cater for possible future claims, but we need a more structured approach to this. We cannot have a situation where genuine claimants must rely on a nebulous fund to meet their claims. I call for whatever Minister has responsibility for this area to take this issue seriously. It is a situation that can only get worse. I urge the Leader to address this.

Senator Rónán Mullen: I listened with interest to my colleague and have great respect for her. However, the issue of the fund is an internal matter the faithful must work out. It is probably more a matter for a letter to *The Irish Catholic* than something on which we can adjudicate, because while it might be of great interest to some of us, it is of no interest to others.

Senator Catherine Noone: That may be so.

Senator Fidelma Healy Eames: That is the way of many of the issues raised in this House.

Senator Rónán Mullen: I respect the point the Senator made and know she made it with great sincerity and thoughtfulness.

I agree 100% with what was said about the use of guillotines in this House. It adds insult to injury when we have Second Stage speeches of only five minutes being allowed. How can anybody in the Upper House with a titter of wit consider legislation which introduces a constitutional amendment and speak about the essential principles of that in five minutes? It is bad enough that these pieces of legislation are being run through in one day and that there is a guillotine, but it adds insult to injury that only five minutes are being allowed for Second Stage speeches.

I welcome the apparent decision by the Government to oppose the resort-style casino in Tipperary and respectfully disagree with my esteemed colleague, Senator Mullins, on what he had to say about gambling yesterday. I know he is conscious of the need to protect jobs, but am sure he would agree with me that we also need to maintain the realisation that gambling is in many ways the new “alcoholism” in this country. It affects many young professional men in particular. The proposed casino in Tipperary was to be designed along the lines of the White House, but that would have offended both the Americans and good taste at the same time. I am glad the Government opposes the casino.

We should all regret that the State of Georgia has ignored the pleas of people like Pope Benedict, former President Jimmy Carter, Archbishop Desmond Tutu and others to give a new trial to Troy Davis and has executed him instead. Yesterday, the Leader said he thought there would be support for an all-party motion on this issue. I propose to contact the leaders of the other groups on a wording for this in which we could deplore the judicial killing of Troy Davis and affirm our ongoing opposition to capital punishment, in all circumstances and not just when there is doubt about the innocence or guilt of the party in question.

Senator Fidelma Healy Eames: Vote Gay Mitchell.

Senator Martin Conway: I agree with Senator Mullen's position on the proposed casino in Tipperary. It would have been a disgrace if that development had gone ahead. As a rule, gambling is fine when done properly. I know the Leader has an interest in this issue because I have spoken to him about it previously and have raised the issue on the Order of Business. I welcome wholeheartedly the announcement made yesterday that we will have new legislation on gambling. I note the Minister is considering legalising card houses, which is fine if done properly. Currently, these houses operate without any regulation. The crucial issue to be addressed by the Minister is the issue of online gambling. It is disgraceful that the national lottery operates an online gambling site. If Members here type in the national lottery website on their iPhone in this House, they will not gain access because, as a gambling website, it is banned by the ICT unit. The national lottery is a State run and owned company and it is appalling that it is involved in online gambling. Whatever legislation is introduced, it should ensure that the national lottery is banned from engaging in this type of behaviour.

It is bad enough to see ordinary people who apply for mortgages who get into trouble and cannot get them because of *paddypower.ie*, but the last thing this country needs is people being refused mortgages because *lotto.ie* is on their bank statement. I call on the Leader to speak to the Minister for Justice and Equality to ensure that as part of the upcoming legislation, the national lottery will be banned from engaging in online gambling.

Senator Labhrás Ó Murchú: Yesterday we had a fine session on the arts in Ireland on which I compliment the Minister. It struck me that he had a hands-on involvement with his ministerial portfolio and I would be very pleased if we could have another session because yesterday's was fruitful. I thank the Leader for facilitating it.

I would also like to thank the Leader and the Committee on Procedure and Privileges for agreeing to bring Dr. Maurice Manning to this House next week. He is a fine advocate of human rights and this House has a proud record in that regard. We should all accept that human rights are not the gift of any person to give or not give to any power to withhold. I was shocked yesterday when, once again, I realised that the rights of the Palestinian people have again fallen victim to power politics and domestic elections. That cannot be right. I believe the Seanad has the opportunity to show its independence. Although we are a small nation, we are seen as an honest broker by many. All I can feel this morning is sadness for the Palestinian people when they realise that the small person and nation have, once again, fallen victim to power politics. Obviously, we have great respect for America. We welcomed Obama with open arms and the empathy that exists between us could be seen clearly. However, it is sad that the people who have suffered so much for so long are now going to continue to suffer.

There is an extended aspect to this. The credibility of world powers will now be affected also. When people who welcomed what happened in the Arab world talk in the future of freedom, independence and sovereignty for all, that will not stand up, because we cannot have it both ways. Either people are for independence for all people and will recognise all people and give them their God-given right and their statehood, or not. It would be wonderful for Seanad Éireann to take up the point made here this morning. As Senator Leyden said, it would be wonderful if we stood by what we believed we were standing by a year or less ago and put that through today in a spirit of goodwill. I believe what happened yesterday and what will happen in the UN should not be a cry for vengeance but a cry for justice. We have the opportunity to do that in this House and I hope we will have the courage to do so.

An Cathaoirleach: On a point of clarification, did Senator Leyden move an amendment to the Order of Business?

Senator Terry Leyden: No, I made a request of the Leader.

Senator Michael Mullins: I congratulate the National Ploughing Association on the huge success of the event in Athy in the past few days and for doing such a wonderful job in showcasing the best of Irish agriculture and business. The next major event on the agricultural calendar happens in the east Galway town of Ballinasloe next weekend when a week-long fair and festival commences. We look forward to welcoming as many Members as possible to the town over the two weekends.

I welcome the farm safety awareness initiative launched yesterday by the Minister for Agriculture, Fisheries and Food at the ploughing championships. We should all strongly support that initiative and highlight it in the communities we represent. A total of 18 lives were lost unnecessarily in farm accidents last year and we should all take this initiative seriously.

I join in the condemnation of the execution of Troy Davis.

Senator David Norris: Hear, hear.

Senator Michael Mullins: It was not proven beyond reasonable doubt that this man carried out the atrocity for which he was executed. Seven out of nine witnesses withdrew their evidence, a murder weapon was never found and there was no physical evidence such as blood or DNA. The House should support an all-party motion to bring pressure to bear on countries that still impose the death penalty.

Will the Leader ask the Minister for Jobs, Enterprise and Innovation to clarify whether it is likely 8,000 agency worker jobs will be lost if a European directive is introduced at the end of December? There will be a briefing on this issue next week but it has to be of grave concern to Members that this number of jobs could be put at risk because of a directive. We need to ensure this does not happen. I ask the Leader to liaise with the Minister on this and to bring some clarity to it.

Senator Diarmuid Wilson: Will the Leader invite the Minister for the Environment, Community and Local Government to the House to update us on his proposals for local government reform and, in particular, to clarify his position on reported comments and comments he made in the House during a debate last session that he planned to reduce the number of county councillors in the forthcoming local elections? This is an important issue. He owes it not only to the House but also to county councillors and their electorate to spell out clearly his intentions in this regard. Will the Leader also ask the Minister to clarify his position on town councils and whether he intends to abolish or retain them and the reforms he proposes to make in this regard?

Senator Tom Sheahan: Ireland has been lauded for centuries for its production of bloodstock and as a country of equine excellence. I was dismayed and disappointed that our showjumpers failed to qualify for the Olympics, yet we are lauded throughout the world for our breeding and equine excellence. Will the Leader invite the Minister for Agriculture, Fisheries and Food or, preferably, the chief executive officer of Horse Sport Ireland, HSI, to the House to explain the health of that organisation? I believe there is a cancer in HSI and that is the main reason our showjumpers did not qualify for the Olympics.

Senator David Norris: I am glad to learn that there is a possibility that the Olympic torch may travel from the other part of the island down to Dublin. This is a direct consequence of the visit of the Queen of England. Irish people exploited this wonderfully because following the situation with the Chinese Olympics, it was decided not to allow the torch to travel outside the country holding the games. It is wonderful news that the Olympic torch will be brought to Dublin, particularly because we have had such thrilling athletes. I recall Ronnie Delaney in

1956 and that inspired me. I was so thrilled that somebody like him could take a gold medal in Melbourne. I heard the race on an old crackling wireless set. Dr. Pat O'Callaghan from Kanturk, County Cork, won two Olympic gold medals throwing the hammer. A bit of good news does nobody any harm.

In response to my friend, Senator Mullins, if it were possible, I would have loved to have attended the ploughing championships. I have a farming background and I am delighted young people are coming back to farming. I am concerned that what happened in England will happen here and there will be nothing but big ranchers. I like family and medium-sized farms and the life that goes with them but I agree very much with the Senator that this is an important industry and an important time and I hope we are able to do something about it.

This is his first term in the House but I am glad the Senator retains his party's spirit of opposition to the death penalty. It was dreadful that this man died yesterday because of the doubt involved. I do not know his background but a high proportion of these people are black, have inferior educational skills and are intellectually disadvantaged. A significant number of those have been proved to be innocent when it is too late. I recall a woman who spoke on radio a number of times in an incredibly moving way about the fact that she was picked up as a hitchhiker by a man who had murdered somebody. He then gave state's evidence. Her husband who had nothing to do with the murder was executed and, subsequently, found to be innocent. She is living in Ireland and she has found happiness again here with an Irishman. God bless her and how she got through this with her human spirit intact. We must continue to protest to our American friends that this is inhuman and cruel treatment of any citizen.

Senator Paschal Mooney: I applaud Senator Mullins for raising the issue of the unfortunate deceased, Troy Davis. As a member of the Council of Europe, I had occasion to visit the US with the relevant sub-committee. All members of the Council of Europe oppose the death penalty and I was part of an unsuccessful lobbying effort in the state of Illinois whose then governor had decided to introduce a moratorium on death row following a survey carried out by a group of legal students in Chicago which proved there were serious doubts about the convictions of many of those who had been condemned to be executed by the state. That followed a survey carried out by a group of legal students in Chicago which proved serious doubts about the convictions of many of those who were condemned to be executed by the state. As a result, the governor introduced a moratorium and Illinois has now abolished the death penalty.

I understand there is a convention in the United States that if in any changes to the US Constitution a total of 18 states subscribe to the view, there is then a sense of a need for change, with the US Supreme Court usually intervening and overturning the law. I understand 13 or 14 states currently outlaw the death penalty. In light of the comments made here and unanimously agreed, the Government should express serious concerns about the manner of latest execution.

Senator David Norris: Hear, hear.

Senator Paschal Mooney: We should keep in mind that at a recent Republican Party rally, one of the leading contenders for the presidency of the United States, Texan Governor Rick Perry, boasted that his state had executed in excess of 200 people. He was asked by the interlocutor if he had sleepless nights over this, and before he could answer, the baying mob — the only way I can describe it — at the Republican rally applauded and cheered him. These are democrats who lecture the rest of the world in democracy. That is the sort of reality we face with our allies and friends, and the point is often made that the US is our strongest ally.

[Senator Paschal Mooney.]

Senator Norris and I have visited various countries, particularly in the Middle East, where this point was repeatedly made. As friends and allies, we have a responsibility and obligation to point out when there is a flaw in a particular policy. That is not interference but a show of concern for what is a basic human right. In the context of what has been raised today, I ask that the Leader seek the Government to express serious concern about what has happened. It should reiterate that we, as a civilised country which is part of the European Union and Council of Europe, are totally and unequivocally opposed to the death penalty.

Senator David Norris: Hear, hear.

Senator Maurice Cummins: Senator O'Brien, the Leader of the Opposition, spoke about Vodafone. We will have the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, before the Seanad on 5 October and that matter can be raised. I thoroughly agree with the Senator. He also spoke about the practice of having all Stages of Bills on the same day, which is not something I like. In some circumstances we must use those mechanisms.

There were objections last week about the use of the guillotine but I never mentioned the word. With all Stages of the Bill last week I allocated up to 5.30 p.m. for debate, with two votes on the Order of Business against the guillotine. After allocating time up to 5.30 p.m., the Bill concluded at approximately 2.50 p.m. Today we are allocating more time for the Bills than was prescribed in the other House for debate, and I am suggesting that the debate on the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill may go until 7 p.m. It will be interesting to see if we reach 7 p.m.

Senator Darragh O'Brien: It is the principle. In fairness, the Bill has not been long published.

Senator Rónán Mullen: If everybody is allocated a minute for the Second Stage debate, it could be over in half an hour.

Senator Maurice Cummins: It will be very interesting to see how many contributions we have after all the protests——

Senator Darragh O'Brien: We will not be light on contributions from this side. The Leader cannot say that about the Government side.

An Cathaoirleach: The Leader, without interruption.

Senator Maurice Cummins: ——last week with regard to time allocated to a debate. We finished the Bill two and a half hours early.

Senator Darragh O'Brien: On a point of order, it is the obligation of the Government to fill time slots provided. The Opposition regularly contributes.

An Cathaoirleach: That is nothing to do with the procedure of the House.

Senator Darragh O'Brien: It is.

An Cathaoirleach: That is a political point.

Senator Darragh O'Brien: It is not. The bottom line is that we are being accused of not filling time last week.

Senator Maurice Cummins: I am talking about the protests which were made.

An Cathaoirleach: That matter can be taken up outside the Chamber.

Senator Rónán Mullen: On a point of order, I take it the Leader's criticisms are also directed at his own side.

An Cathaoirleach: The Senators may take that up with the Leader outside the House. The Leader, without interruption.

Senator Maurice Cummins: Senator Bacik spoke about developing links with China, a matter which was taken up by Senator Healy Eames and others. It is very important to develop further links with China and other countries at this point, especially when so many people are unemployed. It is desirable to develop relations with countries like China and the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Gilmore, is working on that now.

Senator Quinn made a very good point on the various collection agencies and the fact that the system seems very inefficient. I will take up the point with the Government, as it seems to be very inefficient to have so many collection agencies throughout the country. Senator Byrne mentioned the definition of "Constitution", which I will get. If Members in the House wish to use the word "Constitution", I cannot prevent them from using it.

Senator Healy Eames spoke about examining the presidential nomination process, which must be done after the forthcoming presidential election. Senator Cullinane spoke about the sale of State assets. As I mentioned, the Minister, Deputy Rabbitte, will be in the House on 5 October, and the Senator may raise the sale of State assets at that time. It is hypocritical of Sinn Féin to lecture the Government on asset sales when the party took a leading role on the issue in the North of Ireland earlier this year. At that time the Northern Ireland Executive established a central asset management unit in the office of the First Minister and deputy First Minister, with instructions to sign off £100 million in assets. People in glass houses should not throw stones, as I was always told.

Senator Mulcahy spoke about the ongoing problems of companies with credit from banks, an issue that can be raised with the Minister for Finance, who is due in the House next month. Senator Leyden mentioned motion No. 17, which has been discussed in the House. I reminded the House yesterday of Government motion No. 16 on Palestine, which is a very reasonable motion on the agenda. Some of the Senator's remarks were very close to anti-Semitism.

Senator Terry Leyden: That is not true. I reject that totally. That is an unfair comment. I am not anti-Semitic.

Senator Maurice Cummins: The Labour Party clearly outlined its position yesterday. Senator Noone spoke about mortgage arrears and the Government has promised to act soon in that regard. The matter may be discussed with the Minister for Finance.

Senator Mullen complimented the Government on proposed legislation to deal with online gambling. The Government's decision on the site in Tipperary was welcomed by most people. The all-party motion suggested could be achieved; rather than confining it to a particular item we should concentrate it against capital punishment. Senator Conway also mentioned gambling and the use by the national lottery of online gambling. I hope we will have the long overdue legislation on gambling in the House before Christmas, and I am sure we will have many contributions on the matter. I thank the Senator for raising the issue.

Senator Ó Murchú mentioned yesterday's debate on the arts, which was very good. If anything, the Minister was overly generous in his response. Although we allocated two and a half hours there was barely enough time for the debate. We can return to the subject. Some Members wished to make statements rather than ask questions, which is understandable. I

[Senator Maurice Cummins.]

hope we can have an ongoing debate on the arts. I thank the Minister for coming to the House yesterday and being so forthcoming.

Senator Mullins referred to the National Ploughing Championships. It is the third day they have been mentioned, quite rightly, because they are a wonderful national institution. He also got a plug in for his own town of Ballinasloe. We would all support the campaign that the Minister for Agriculture, Fisheries and Food has launched in relation to farm safety awareness. It is appalling to learn that 18 people died in farm accidents last year. On agency jobs and the EU directive, there is a need for clarity. Any job losses at this stage are a cause of concern for everybody.

I say to Senator Wilson that the Minister for the Environment, Community and Local Government, Deputy Hogan, has said that he will come to the House next month and I am sure the important matters the Senator raised — the reduction of county councils and the Minister's position in relation to town councils — will be discussed during the debate.

Senator Sheahan mentioned equine excellence, the bloodstock trade and the disappointing result of our showjumping team. We can address the matter with the Minister for Agriculture, Fisheries and Food, but I have no intention of bringing the chairman of Horse Sport Ireland into the House to address it.

Senator Norris mentioned the possibility of the Olympic torch coming to Dublin. It would be welcome to have that. He also spoke to us about the National Ploughing Championships. I cannot imagine Senator Norris moving to the country any time soon.

Senator Michael Mullins: He could be going to the country.

Senator Maurice Cummins: He could be going to the country — we wish him well in that — but I cannot see him moving to the country.

Senator Mooney mentioned the Council of Europe delegation to Illinois, and it was interesting to hear about that. The Government's position on capital punishment has been clearly outlined and we can address the matter in the proposed all-party motion.

An Cathaoirleach: Senator O'Brien, you have indicated that you intend to oppose the Order of Business.

Senator Mary Ann O'Brien: Yes.

Question put: "That the Order of Business be agreed to."

The Seanad divided: Tá, 27; Níl, 18.

Tá

Bacik, Ivana.
Bradford, Paul.
Brennan, Terry.
Clune, Deirdre.
Coghlan, Paul.
Comiskey, Michael.
Conway, Martin.
Cummins, Maurice.
D'Arcy, Jim.
D'Arcy, Michael.
Gilroy, John.
Harte, Jimmy.
Hayden, Aileen.
Healy Eames, Fidelma.

Henry, Imelda.
Keane, Cáit.
Kelly, John.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
Noone, Catherine.
O'Keeffe, Susan.
O'Neill, Pat.
Sheahan, Tom.
Whelan, John.
Zappone, Katherine.

Nil

Barrett, Sean D.
Byrne, Thomas.
Cullinane, David.
Daly, Mark.
Leyden, Terry.
Mooney, Paschal.
Mullen, Rónán.
Norris, David.
O'Brien, Darragh.

O'Sullivan, Ned.
Ó Clochartaigh, Trevor.
Ó Murchú, Labhrás.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

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

Question declared carried.

Invitation to Address Seanad: Motion.

Senator Maurice Cummins: I move:

That Seanad Éireann agrees with the recommendation of the Committee on Procedure and Privileges that, in accordance with Standing Order 57(2) of the Standing Orders relative to Public Business, Dr. Maurice Manning, President of the Irish Human Rights Commission and Chair of the European Group of the National Human Rights Institution be invited to address Seanad Éireann on 28 September, 2011 and the following arrangements shall apply. The proceedings which shall not exceed two hours shall consist of a speech by the Cathaoirleach welcoming Dr. Manning, an address by Dr. Manning, a contribution not exceeding five minutes by the Spokesperson of each Group at the conclusion of which Dr Manning will reply to questions which shall not exceed one minute in each case from Members, a speech of thanks by the Leas-Chathaoirleach for the address and a concluding contribution by the Leader of the House.”.

Question put and agreed to.

European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011: Second Stage

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

Minister of State at the Department of Communications, Energy and Natural Resources (Deputy Fergus O'Dowd): Before I outline the purpose and contents of the Bill, I would like to thank the Seanad for agreeing to discuss and consider all Stages of the European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011 today at short notice. Although a fairly technical Bill, it is of critical importance to the public finances and to our economy. Enactment of the Bill is required to allow Ireland to ratify the changes to the European Financial Stability Facility that were agreed by the Heads of State or Government on 21 July 2011 as well as earlier changes to the Greek loan facility. The changes agreed to the European Financial Stability Facility framework agreement, which I will go through shortly, are viewed by the Government and the other euro area member states as essential for ensuring financial stability within the euro area.

As Senators will be aware, euro area member states agreed in May 2010 to create a European Financial Stability Facility, EFSF, in order to financially support euro area member states which

[Deputy Fergus O'Dowd.]

are in difficulties caused by exceptional circumstances beyond their control. The EFSF was incorporated on 7 June 2010 for the purpose of providing stability support to such euro area member states in the form of loans of up to €440 billion. The EFSF can only advance loans up to the end of June 2013. After that, the new European Financial Stabilisation Mechanism or EFSM will take over.

In order to ensure that the EFSF secured a triple A rating and thereby borrow at the lowest possible interest rates, certain complex structures known collectively as credit enhancement measures were adopted. These involved the over-guarantee of bonds, cash buffers and the prepayment of margins on loans. A major effect of these measures was to reduce the effective lending capacity to some €250 billion, and they also increased the effective cost of borrowing for borrowers.

Ireland received one loan from the EFSF on 1 February this year worth €4.2 billion. The term of the loan is five and a half years, which means it will mature in July 2016. The total amount available to be disbursed to Ireland from the EFSF under the EU-IMF programme is €17.7 billion.

At the end of June 2011, euro area Ministers for Finance signed an amendment to the European Financial Stability Facility Framework Agreement, subject as usual to national ratification. The main purpose of the June 2011 amendment agreement is to increase the effective lending capacity of the EFSF back up to its headline volume of €440 billion from its effective capacity of €250 billion.

Senator Feargal Quinn: Is the Minister of State's speech going to be circulated? I have great difficulty following the numbers.

Deputy Fergus O'Dowd: I had assumed it would be circulated and apologise if it has not been.

An Cathaoirleach: Copies are being arranged at the moment.

Deputy Fergus O'Dowd: I apologise for that. As a former Senator, I know how important it is to circulate such scripts.

Senator Thomas Byrne: Contrary to what the Minister of State says, this Bill has not been introduced at short notice; we had to wait a couple of months for it. There are no explanatory memoranda with it, which is a new departure. While it is crucial we read the exact text of Bills, the explanatory memoranda are a help to legislators to give them an overview. We are indebted to the Oireachtas Library and Research Service for its work but this is an unwelcome departure.

Senator Darragh O'Brien: Like Senator Byrne, I have never seen a Bill with no explanatory memoranda. Could the officials clarify why the explanatory memoranda were not published with the Bill? I tried to get them before the debate and they were not available. That infringes upon the job Members are supposed to do, and this is very important legislation, which we support. There should, however, be explanatory memoranda with it.

Deputy Fergus O'Dowd: There should be explanatory memorandum but the Oireachtas Library has facilitated everyone with a very detailed digest of the Bill. We all know, particularly Fianna Fáil Members, why we are having this debate; it is because Fianna Fáil got us into trouble when it was in government with the bank guarantee and the way it ran the economy.

Senator Darragh O'Brien: Fine Gael supported the bank guarantee.

Senator Thomas Byrne: The Minister of State is making a serious contribution to the debate and on that basis, and also that all Stages are being held on the same day, a quorum should be called.

Notice taken that 12 Members were not present; House counted and 12 Members being present,

Deputy Fergus O'Dowd: On the absence of explanatory memoranda, I have a briefing that was circulated by the Department of Finance to all Opposition spokesmen in the Dáil and Seanad last Friday. This is clearly emergency legislation and it is important for the State that we pass it. I agree, however, that time is of the essence and this should have been circulated as explanatory memoranda but it has the same purpose and format.

To ensure that the EFSF secured a AAA rating and can thereby borrow at the lowest possible interest rates, certain complex structures, known collectively as credit enhancement measures, were adopted. These involved the over-guarantee of bonds, cash buffers and the prepayment of margins on loans. A major effect of these measures was to reduce the effective lending capacity to some €250 billion, and they also increased the effective cost of borrowing for borrowers. I have already read this but I will read it again anyway.

Ireland received one loan from the EFSF on 1 February this year worth €4.2 billion. The term of the loan is five and a half years, which means it will mature in July 2016. The total amount available to be disbursed to Ireland from the EFSF under the EU-IMF programme is €17.7 billion.

At the end of June 2011, euro area Ministers for Finance signed an amendment to the European Financial Stability Facility Framework Agreement, subject as usual to national ratification. The main purpose of the June 2011 amendment agreement is to increase the effective lending capacity of the EFSF back up to its headline volume of €440 billion from its effective capacity of €250 billion. This will be accomplished by increasing the over-guarantee percentage to 165% of the amount raised by the facility. Further amendments include specifying the margin applying to loans, changes to the pricing structure including the introduction of a new advance margin, a specific reference to Ireland becoming a stepping out guarantor, which occurred on entering the EU-IMF programme, and the potential transfer of EFSF rights, obligations and liabilities to the ESM.

Subsequently, on 21 July 2011, the Heads of State or Government announced further measures to ensure the financial stability of the euro area and stem the risk of contagion. These measures include a new programme of assistance for Greece and increasing the flexibility of the EFSF and the ESM by allowing them to act on the basis of a precautionary programme, finance recapitalisation of financial institutions through loans to Governments and intervene in primary and secondary sovereign bond markets on the basis of ECB analysis. Of particular interest to the existing programme countries, the Heads of State or Government agreed to reduce the interest rate on EFSF loans to Ireland, Greece and Portugal to lending rates equivalent to those of the balance of payments facility close to, without going below, the EFSF funding cost as well as lengthening the loan maturities. This was discussed further in Poland at the informal meeting of ECOFIN Ministers this week.

Following that discussion, the level of savings available is becoming clear. It is now calculated that overall savings from the reductions in the margins applying to the EU-related programme funding will be a total of approximately €9 billion over the average life of seven and a half years, as originally envisaged for the loans. This saving of approximately €9 billion represents 5.7% of the current forecasted level of GDP in 2011. In terms of 2012, the National Treasury Management Agency calculates that the savings on the EU funds to be approximately €900 million.

[Deputy Fergus O'Dowd.]

As already stated, this Bill is required to enable Ireland to ratify the agreed changes to the EFSF framework agreement. As most member states had not had time to ratify the amendments agreed in June before the subsequent amendments arising from the 21 July decision, the June amendments to the EFSF framework agreement and those arising from the decision of 21 July 2011 were consolidated into a single amendment agreement, as set out in Schedule 1 to the Bill before the Seanad today.

Urgent ratification of the amendment to the EFSF framework agreement is important for a number of reasons. Delays in implementing the measures announced by the Heads of State or Government on 21 July is adding to market volatility. Also, from a national viewpoint, neither Ireland nor Portugal can benefit from the reduced interest rate announced on 21 July last until the revised EFSF is implemented. It is only then that the necessary changes can be made to the Irish EFSF loan facility agreement with the unanimous agreement of the loan guarantors. All euro area countries confirmed at the informal meeting of Finance Ministers in Poland last weekend that they will work to ratify the amendments to the EFSF as quickly as possible. Several countries have already provided confirmation that they have ratified it. Ireland, as a recipient of assistance from the EFSF and a beneficiary of the changes, should not delay the ratification of the amendments to the EFSF.

The euro area Heads of State or Government also announced on 21 July 2011 that the new flexibilities announced for the EFSF would also apply to the ESM. This means that the ESM treaty signed by euro area Finance Ministers in July will, subject to the necessary parliamentary procedures, now require amendment. Technical discussions are continuing on the text of the required amendments. Legislation to ratify the revised ESM treaty, incorporating these amendments, will be brought before the Oireachtas later this year or early next year. The ESM is due to come into force and take over from the EFSF during 2013, subject to ratification by all euro area member states.

Senators will be aware that Greece entered its first programme of financial support in May 2010 on foot of an intergovernmental agreement to provide bilateral loans totalling €80 billion to it from the euro area member states, together with IMF assistance of €30 billion over a three-year period to mid-2013. Finance Ministers agreed at euro group in June 2011 to revise the Greek loan facility by extending the grace period between drawdown and commencement of repayment from three to four and a half years, increasing the maturity period for loans from five to ten years and to reduce the margin applying to loans to Greece under the Greek loan facility by 100 basis points. The Commission signed the amendment to loan facility agreement with Greece on behalf of euro area member states on 14 June 2011, subject to ratification by all euro area member states. The Bill provides for the amendment of the Euro Area Loan Facility Act 2010 to ratify these amendments to the Greek loan facility agreement.

On 21 July, the Heads of State or Government agreed to support a new programme of assistance for Greece and to increase the length of the grace period and the term of loans already made under the Greek loan facility agreement. The new programme will be facilitated by the amendment to the EFSF framework agreement but a second amendment to the Greek loan facility is required in respect of the longer grace period and a lengthening of the loan maturity to 15 years. Once finalised, the Commission will sign the second amendment on behalf of the euro area member states. As it has not yet been signed by the Commission, it is not possible to provide for its ratification in the Bill before the Seanad today. When it has been signed, we will have to bring forward separate legislation to ratify it. As the amendment to the EFSF framework agreement is important in terms of the stability of the euro area and to Ireland in securing an interest rate reduction, we cannot delay this Bill waiting for the second

amendment to the Greek loan facility agreement to be agreed and signed. However, the Bill includes the first amendment to the Greek loan facility agreement.

The Bill amends the European Financial Stability Facility Act 2010 and the Euro Area Loan Facility Act 2010. It has three sections and two Schedules. The amendment to the EFSF framework agreement is set out in Schedule 1 and the amendment to the Greek loan facility agreement of 14 June 2011 is set out in Schedule 2. Section 1 of the Bill provides that the references to the EFSF framework agreement in the European Financial Stability Facility Act 2010 shall include the amendment to the EFSF framework agreement. It also increases the amount that may be paid out of the Central Fund from €7.5 billion to €12.5 billion in line with the increase in the guarantee ceiling for Ireland as set out in Annex 1 to the amendment agreement. While this is notional because the amendment agreement specifically notes that Ireland and Portugal have become stepping-out guarantors, the Central Fund figure is being amended for reasons of consistency. Section 2 provides that the references to the loan facility agreement in the Euro Area Loan Facility Act 2010 shall include the amendment to it of 14 June 2011. Section 3 sets out the Short Title of Act.

I will now explain the main changes to the EFSF framework agreement. Article 1(1) provides for Estonia to become a party to the framework agreement. This was a requirement of it joining the euro at the start of 2011. Article 1(4), which amends paragraph (2) of the preamble to the EFSF framework agreement, sets out the changes arising from the decision of the Heads of State or Government in July to expand the financial assistance that the EFSF can provide in the future, beyond the loan facilities it is currently limited to. The changes include the provision of loans; precautionary facilities and loans to Governments of euro-area member states, including non-programme member states to finance the recapitalisation of banks; the purchase of bonds in the secondary bond markets on the basis of an ECB analysis recognising the existence of exceptional financial circumstances and risks to financial stability; the purchase of euro area bonds in the primary market; increasing the effective capacity of the EFSF to its headline €440 billion figure by increasing the level of over-guarantee from €440 billion, 120%, to €780 billion, 165%; and amending the pricing structure to cost of funds plus a margin of 200 basis points for the first three years for each financial assistance and 300 basis points thereafter. However, in line with the 21 July decision, the preamble will also state that Greece is to receive loans at lending rates equivalent to those of the balance of payments without going below the cost of funds and that these lending rates will also be applied for Ireland and Portugal and providing that the maturities for Greece are to be a minimum of 15 years and up to 30 years, and these should also apply for Ireland and Portugal.

The remaining paragraphs of Article 1, from (9) to (60) amend the Articles of the framework agreement to provide for the changes listed above. Many of the amendments are technical or text changes, such as changing “Loan Facility Agreement” in a number of Articles to read “Financial Assistance Facility Agreement”. I do not propose to go through them. Annex 1, containing the guarantee commitments for each euro area member state, has been amended because of the increase in the level of total guarantees to €780 billion. Ireland’s figure is increasing from just over €7 billion to just under €12.4 billion. However, the annex has also been amended to make it clear that Ireland, Greece and Portugal have become stepping-out guarantors, thereby bringing the effective level of total guarantees down to €726 billion, which is 165% of €440 billion.

Annex 2, which sets out the contribution key based on the ECB capital subscription, has also been amended because of Estonia joining the euro and the European Financial Stability Facility, EFSF. Ireland’s contribution key decreases from 1.5915% to 1.5874%.

[Deputy Fergus O'Dowd.]

Schedule 2 to the Bill sets out the amendment agreement to the Greek loan facility agreement. The changes are that the grace period at the start of each loan during which principal is not payable is increased to four and a half years from three years, the maximum term of a loan is increased to ten years from five years, and the margin applicable to loans from this facility is to be reduced by 100 basis points.

Now is a time for euro area member states to contribute to ensuring financial stability within the euro area. It is in all our interests. The revisions to the EFSF form a key part of the measures being put in place to ensure this stability. Ireland must play its part. Therefore, I urge Senators to agree to ratify the changes to the EFSF and the Greek loan facility agreement. I commend the Bill to the Seanad.

Senator Thomas Byrne: Certain Government Senators were disquieted by my quorum call. We will continue to call quorums until the Government adheres to its commitment in the programme for Government to deal with the problem of legislation being shunted through at high speed and to ensure that Standing Orders provide a minimum of two weeks between each Stage of a Bill except in exceptional circumstances. Unfortunately, the reality facing the Houses is that the exception is becoming the rule and every legislative debate is on all Stages. This does not provide for proper scrutiny of legislation or allow one to reflect after a Second Stage debate on what amendments might be made. It is not in the interests of democracy. I urge Government Senators not to express their annoyance with me or my colleagues on this side of the House, but with their senior colleagues who are failing to implement their programme for Government.

Contrary to the Minister of State's remark, we are not here at short notice. This agreement was signed on 21 July. Unfortunately, every European leader went away on holiday immediately thereafter. If necessary, it would have been appropriate to recall parliaments all over Europe to ratify this treaty, but that was not done. At all levels, the EU has shunted from crisis to crisis.

Nor are we present because of last November's EU-IMF agreement, as the Minister of State alleged. As the Bill's Long Title states, we are present to ensure the financial stability of the EU and safeguard the financial stability of the euro area as whole.

We welcome the Bill's publication, but it is too late. It is not right that many of the provisions, including those that relate to Greece and the European Financial Stabilisation Mechanism, EFSM, that need to be enacted or ratified by countries have not been finalised by various European bodies, including ECOFIN and the European Commission. I hope the EFSM is the complete solution. To date, we have lurched from one crisis to another. Chancellor Merkel, President Sarkozy and the Taoiseach went on holiday in August and left this matter on the back boiler.

I do not know what the issue was. Perhaps the Minister of State could explain it. A communiqué rather than the text of the treaty was provided on the website. Is the amendment in Schedule 1 the document that was signed on 21 July? I cannot see a date. The legislation ratifies the document, yet the latter is only a couple of pages long. This treaty was not available to the public on the day, but if it had been available to the Government, could we not have signed it then and ratified the treaty almost immediately?

The fault does not lie with Ireland alone. Parliaments across Europe should have been recalled where their approval was required for ratification. Undoubtedly, Fianna Fáil would have facilitated a recall. Events continue to overtake us.

Fianna Fáil has welcomed the reductions in the two funds' interest rates, which the EU has done in the interests of stability. We and the people at home want to know what impact the reductions will have practically. For example, what impact will they have on this year's budget and will they affect our deficit targets? We are unsure as to whether they will make achieving those targets easier. However, they are of benefit. The Minister of State must clarify the monetary figure we must reach to achieve our targets.

Today brought good news regarding economic growth. This type of good news tends to come before good news on jobs, which must be the priority at Irish and EU level. I have done a bit of research. An interesting wikipedia page — one must check it for accuracy — lists the unemployment rates in countries all over the world. The EU, in particular the euro area, and the US stand out as having high levels. This is not to shift responsibility for the unemployment rate from our Government, but the level is too high in Europe and the US. Europe has long-term strategies to deal with unemployment, such as the 2020 strategy and so on. All relevant Commissioners, European officials and Members of the European Parliament should down tools and consider what immediate solutions or help can be found for the unemployment situation. Europe's strategies are too long term and do not cater for the problem, which is specific to the EU and US rather than just Ireland.

The Government will publish a multi-annual plan shortly, albeit subsequent to the by-election and the presidential election. I urge the Government to publish its plan as soon as possible to give people some level of certainty. I can say this from a strong position, as we announced our plan in the middle of a by-election last year. It was the right thing to do. I urge the Government not to postpone publication for political purposes. It is important that people's lives and job creators have certainty. Consumers want to start spending again but cannot. They need certainty first.

There is little clarity regarding secondary bond purchases and how extensions of maturities on loans will affect us on a day-to-day basis. I do not know whether the Minister of State will be able to offer clarity. The situation changes constantly. Everyday there is another crisis or something that must be addressed, but there is no political will to do so. That will should come from all levels, including from Ireland. It is not good enough for the Taoiseach to say that Chancellor Merkel and President Sarkozy can meet. It is helpful if the leaders of Germany and France meet, but we always seem to be on the outside. We had no direct role in the negotiations that led to the interest rate reductions. They were handed to us on a plate. While we are grateful, Ireland is a member state of the EU and, like other member states, has a right and obligation to be involved in discussions on these issues at European level. It is not enough for us to stand idly by and let Chancellor Merkel and President Sarkozy get on with it. Germany and France are sizable contributors and important countries, but the basis of our membership of the EU is our involvement and voice at the table. We share sovereignty. We give something up, but we get something in return. To the public, this does not seem to be happening in the case of the Merkel-Sarkozy discussions, etc.

We will not oppose the Bill, but my concerns about the legislative procedure and the European and national parliamentary responses are genuine. I do not know how many European parliaments must ratify this treaty. I do not know whether the Minister of State can update the House as to which countries have already ratified it. Where do we appear in the pecking order? We could have ratified it more quickly and been an example to others.

Senator Michael D'Arcy: It is no pleasure to discuss this Bill, but we are doing so because of the position in which we find ourselves. Much of that position is self-inflicted. Senator Byrne was part of the infliction when his party was in government. He voted for his Government's appalling decisions.

[Senator Michael D'Arcy.]

We must consider some of the facts that are relevant to the context of our being here today. The euro has been a relative success in a number of areas but this is forgotten in respect of inflation and the interest rates that have obtained since its introduction. Over that past ten years, inflation has averaged less than 2%. That would have been very good for so many in this country and the eurozone as a whole had insane funds not been made available by banks, including from one bank to another. These funds were unchecked owing to the lack of regulation. We debated this last week. We learned the insurance bill could cost the State another €1 billion because of the lack of regulation.

The lack of regulation in this jurisdiction will cost the State approximately €50 billion because the banks did whatever they wanted and the actions of former Financial Regulator, Mr. Neary, went unchecked. I feel some sympathy for him because when he was Regulator the then Taoiseach, Mr. Bertie Ahern, was saying everything was grand and that we should keep spending. We cannot forget that. In addition, inflation was low. It should have led to an extremely strong economy, which we do not have today.

In addition to touching on low inflation, we must touch upon low interest rates. Owing partly to the consternation in the European markets during the summer months, we have benefited. This is because the ECB signalled six or seven months ago that there were to be four quarterly increases to the interest rate amounting to 1%. That 1% would have cost all the lending institutions, not just the banks underwritten by the State, €4.5 billion in extra payments, thereby affecting people with loans. The loan book is worth €440 billion and 1% amounts to a little under €4.5 billion in extra interest. To put that into context, it is the equivalent of the spending reductions and tax increases that will occur in the budget. It would have been the equivalent of two budgets in one year if the four quarterly increases were made. I am thankful they are not being made. I anticipate from the noises coming from the ECB that there could be a move towards decreasing the interest rates in line with the USA, which is holding its rates firm.

We must consider our current position. It is a little ironic that Mr. Geithner came over from the United States to push Europe in a particular direction through getting hold of the finances. The reality is that eurozone debts are between 50% and 60% of those of the United States. The United States owes just less than €15 trillion dollars, of which €10.5 trillion is publicly owned. The remainder is intergovernmental debt. I could not find the figures on the moneys owed in the eurozone but it appears they amount to approximately €6.5 trillion. Since the figures were broken down per state, I was not able to discern how much was publicly owned and how much was intergovernmental, be it owned by Governments or central banks.

We are not in as bad a position as many are saying. The problem is there is no political leadership. The primary political leadership should be coming from Germany and France, as was the case under former leaders such as Helmut Kohl and François Mitterrand. Unfortunately, Chancellor Merkel and President Sarkozy are putting their own political advancement over what should be done for Europe. I will not pretend it will be easy for them. The library research digest shows Germany is putting up almost €120 billion. That is a lot of money and will come from the German taxpayer.

We have not stabilised the debt structure. The European Union, as an entity, is less borrowed than the United States and many other economies. The truth is that some countries will have to pay more to assist those in difficulty. We know countries such as Ireland, Greece and Portugal are in difficulty but there are others that are close to the brink. If countries such as Spain and Italy go over and find themselves in a position like ours, the markets will be satisfied the ESM is not big enough to deal with what is to come down the tracks.

The International Bank of Settlements showed that the French and German banks are exposed to the tune of €475 billion in respect of Italian debt and another €175 billion in respect of Spanish debt. The existing funds will not be large enough if any of the larger economies find themselves in the Irish position. This was very close to being the case. The Italians were very much on the brink in that its debts were at a level that warranted a bailout in Ireland. Italy has reversed this but it is not far from a bailout.

I have some questions I would like clarified. With regard to secondary markets, we were told there could not be a default. Effectively the Greeks defaulted through an agreed default. We have been told consistently by the ECB that there can be no purchasing in the secondary markets of debt trading at a significant write-down.

The Minister of State referred to the purchase of bonds in secondary bond markets on the basis of the ECB analysis, recognising the existence of exceptional financial circumstances and the risks to financial stability. I can understand the latter but I would like some clarity on what constitutes exceptional financial circumstances. If the Minister of State does not have the answer, he may send it to me in writing.

On the ESM, I welcome very much the possibility of private sector involvement in debt restructuring. Where there is recklessness on the part of financial institutions, as there clearly was, be it in regard to lending to a country or a lending institution while understanding the risks being taken, and they find themselves in a position such as ours, they should lose some of their own funds.

Following the discussion between President Sarkozy and Chancellor Merkel, reference was made to the placing in constitutional law of an upper limit for a country in terms of borrowing. That would be helpful as it would prevent a country from going down the route of buying election results. I refer to electioneering throughout the political process. There is no better example than sports capital funding. Fianna Fáil Members were able to ask for and receive what they wanted.

Senator Thomas Byrne: We did not borrow for it.

Senator Michael D’Arcy: The Taoiseach, Tánaiste and Minister for Finance have been travelling to re-establish diplomatic ties with countries with which diplomatic relations have failed. We now have friends again in Europe and that is a result of six to eight months of very hard negotiations.

Senator Thomas Byrne: The Taoiseach should be told to telephone Angela Merkel; he has not done so.

Senator Michael D’Arcy: It should be noted that this work is not easily measured but it should be stated clearly——

Senator Darragh O’Brien: Even if it is not true.

Senator Michael D’Arcy: ——that it is bringing us forward and putting us in a position where we are obtaining a result rather than a bad negotiating position.

Senator John Gilroy: I will start by assuring Senator Byrne that if he detects a measure of disquiet on this side of the House, it is not any desire on our behalf to interfere with his procedural and democratic rights; it is more a measure of disquiet at the petulant manner in which he sometimes calls a quorum.

[Senator John Gilroy.]

I welcome the Minister of State to the House. The amendment relates to a technical change and does not appear to have any significant controversial element to it. Once the previous Government, with the support of all parties in the Dáil including Sinn Féin, but with the exception of the Labour Party, accepted in 2008 the argument in favour of guaranteeing the banks, a chain of inevitability was established which ultimately led to the Irish economy needing to be bailed out by the EU and others, including our nearest neighbours and friends in the United Kingdom who generously offered €3.8 billion, and unfortunately led us to losing our economic sovereignty.

However appalled we are at this and however much it grieves us to be in this position, we are democrats and bound by the decisions of the majority of the Oireachtas. Now that we are in government, we are contractually bound to uphold international treaties into which the State has entered. Much as everyone would wish this were not the case and that some other course was open to us which would allow us to become debt-free immediately and painlessly, unfortunately, such a route is not available to us. We have been left to deal with the legacy of 14 years of economic carelessness and simple incompetence. Looking back to find blame probably will not help us today, although it is necessary to do so. We note a new-found belligerence in Fianna Fáil unfortunately mingled with the same old delusions and denial. No doubt we will be entertained also——

Senator Darragh O'Brien: I am entertained now.

Senator John Gilroy: ——by some type of utopian economic promise from Sinn Féin.

As an act of solidarity we have supported the stabilisation funds and now find ourselves receiving €67 billion. We will hear much fine talk about burning bondholders, walking away from our obligations as a State and perhaps pulling out of the euro but the question remains, and it has not been addressed by those who advocate such a course — perhaps it might be answered soon — as to how we would fund our public services, schools and hospitals and pay our teachers, nurses, gardaí and fire personal. What would happen if we pulled out of the euro to find our debts remain in euros while our wages are paid in a devalued punt? I have heard these arguments put forward as policy with bogus simplicity and dishonest populism. We have heard them repeatedly, including as recently as this morning on the Order of Business. However, we all know that nonsense repeated, no matter how often it is repeated, remains nonsense.

The European Financial Stability Facility Act 2010 passed through the Houses in June 2010 with some amendments tabled by Fine Gael and the Labour Party on the dissemination of information. Like everything, it was opposed by Sinn Féin but there was no great disagreement on either side of the House on the principle involved. If the original Act generated no great political heat on its journey through the Oireachtas, an amending Bill which seeks to expand the provisions of the original Act should pass through the House without, in the words of a former Senator, leaving blood on the blouse.

To expand our guarantee commitments to €780 billion which will allow lending capacity of €440 billion seems prudent as the EU has stated the existing fund is too small. Of course, if Spain and Italy were to follow us into bailout territory, no expansion of this facility would be adequate as the combined indebtedness of these countries is €3,350 billion. The widened scope of activity for the European Financial Stability Facility, whereby it may in exceptional circumstances intervene in the primary debt markets and, more importantly, in the secondary markets, seems to be a reasonable option which will not leave the secondary market operators a free

run of the pitch, so to speak. It will allow the EFSF to become a player in its own right which has the potential to support in a wider way countries which are indebted.

The benefits for Ireland are substantial, and we hope everyone here would wish to see Ireland avail of these benefits and not use this debate as an opportunity for political party posturing. That we regret to find ourselves in this position hardly needs to be restated but now that we are here we had better make the best of it. Already we have seen the Government through the Ministers, Deputies Howlin and Noonan, achieve a substantial cut in interest rates with regard to the existing funding of the EFSF worth 2.47%, or €342 million, this year and this will increase to between €800 million and €1 billion as the drawdown continues. Allowing the EFSF to take active part in the secondary bond markets will help to stabilise bond rates for peripheral countries including Ireland. Ireland's ten year bond yields have already decreased from an unsustainable 14% to less than 9%—

Senator Darragh O'Brien: Back to where they were at the election.

Senator John Gilroy: —since the changes to the structure of the EFSF were announced in July. By any standard, this must be welcomed and a continued reduction in Irish bond rates will ensure we will be able to re-enter the markets sooner rather than later and regain the element of sovereignty we relinquished.

The changes outlined in the Bill are aimed at helping Ireland, Greece and Portugal in particular become fiscally sustainable. As Irish legislators we can only welcome this, irrespective of what we think of what led us here. Although it pains me to use the awful phrase “we are where we are”, the Bill represents an upside for Ireland and a win for the negotiators on the Government side. I hope Senator Byrne and his colleagues, who easily and fully praise Chancellor Merkel and President Sarkozy for their new-found acts of charity by offering a unilateral reduction, would be generous and patriotic enough to recognise the quiet diplomacy of our diplomats and Ministers who renegotiated this and achieved a very substantial decrease in the rates. This needs to go on the public record and any attempt by Fianna Fáil to hide this fact is dishonest.

Acting Chairman (Senator Paul Coghlan): I call Senator Darragh O'Brien.

Senator Darragh O'Brien: I thank the Acting Chairman.

Acting Chairman (Senator Paul Coghlan): I apologise. I should have called Senator Barrett.

Senator Sean D. Barrett: It is only a small difference between Kerry men and Dublin men this week so we understand.

Senator Michael Mullins: One point.

Senator Sean D. Barrett: I welcome the Minister of State and thank him for his speech. It was terrific to have a copy of it. He stated: “Now is a time for euro area member states to contribute to ensuring financial stability within the euro area.” Reading the Bill, all I could do was to assent grudgingly. I realise opposition might be futile, but we will return to this in a few months because we are papering over the cracks in the euro area. This is because the problems are much more fundamental than we realised at the time, and the euro is flawed in its design. We did not put enough thought into it when we joined it. As we speak, the Scandinavian countries and the United Kingdom were correct not to join it. This raises the issue of economic expertise in Ireland and what the Wright report stated about the Department of Finance having only 7% of its people qualified. Serious people warned us this would happen prior to when we joined the euro and we did not take a blind bit of notice.

[Senator Sean D. Barrett.]

This measure is a bandage. I approve of bandages in the short term as they bind up wounds and stop the spread of infection. However, it is also the socialisation of inefficient banking. This was done nationally on 30 September three years ago and today the European banks are doing it. Their inefficiencies and wasteful lending are being visited on the taxpayer yet again. Due to the faults in the euro, it is estimated that to leave it would cost €11,000 per family. Based on the Colm McCarthy estimate, we are approximately €18,000 worse off and our GDP will be 44% less in 2013 than it was in the national plan. One of the faults of the euro is that massive irresponsible bank lending was funded by the currency.

In 2001, Milton Friedman stated in *The Irish Times* that the euro was adopted for political purposes and not economic ones as a step towards the myth of a united states of Europe. He stated he believed the effect would be exactly the opposite as the need for different policies, such as tightening monetary policy in Ireland or a flexible monetary policy in Italy, would produce political tensions that would make it more difficult to achieve political unity. He stated Ireland was stuck with the euro and asked:

How would you break out, and start all over again to establish a new monetary system, the punt? You are not going to give it up. You have locked yourselves together and thrown away the key.

They have locked themselves together and thrown away the key. That is the basic design fault.

It is incredible, if the Minister reflects on it, that there is no exit from the euro. Someone said to me that if a man in College Park was offering free trips to the moon, a big queue would form but what would happen if one saw in the small print or if it was not stated that there was no way back? What kind of people designed the euro that one must repeatedly paper over the cracks by measures such as this? That must be the first thing when one is asked to make a contribution towards financial stability.

Peter Sutherland as good as said today that he cannot foresee a solution without some form of Greek restructuring, which is probably a nice word for a default. He knows more about Europe than probably the entire assembly of the House. Who allowed Greece to join and who is compelling it to stay? Would it not have been better if there had been sensible rules on joining and Greece was allowed to go now under some arrangement, devalue its currency and get back into business? I do not see the measure as helping Greece very much at all because of the design faults.

Another design fault is the one-size-fits-all approach. As Milton Friedman pointed out and speakers previously indicated, the policy that is needed in Germany is different from the policy required in the peripheral and Mediterranean regions. In this country's case it was a disaster. I refer to the massive lending of euro funds by our banks in real estate and financial intermediation. There was an increase in personal lending by a net €57 billion. Real estate lending increased from €4.8 billion to €97.5 billion. Lending for financial intermediation increased from €18.3 billion to €97.5 billion. Lending in construction increased from €1.8 billion to €22.3 billion. By contrast, the increase in advances after we joined the euro in manufacturing and agriculture were €4.8 billion and €2.6 billion, respectively, amounting to only 1.9% of the total increase in advances. European banks were lending irresponsibly, to what Morgan Kelly called inferior rugby players running Irish banks. It has been a disaster for this country that there were no procedures to control the capital inflow and its use.

It contrasts with the exercise of economic sovereignty in the 1990s. When we did devalue in 1992 we experienced a period of growth afterwards. Throwing away economic sovereignty, which I support the Government in now seeking to retain and restore to this country, was a

serious mistake. It was obvious that it would end up where it did on 29 and 30 September 2008. The reform agenda — the sticking plaster — must include a totally new regime for banks and a much smarter Department of Finance in terms of the treaties it gets us into, and a much more active Department in controlling public expenditure which to some degree includes measures such as the bailout. Putting in more money and returning to the markets encourages more wasteful public expenditure. The objective should be to get out of the markets and to run the country on a balanced budget basis. I am less than enthused about the goals.

In terms of problems such as regulatory capture, the growth of bureaucracy and interest groups, I support the whistleblower legislation to deal with that. In retrospect whistleblowers might wish to look at the 2005 report from the OECD which pointed out that public expenditure in this country was rising over 5% when it was actually declining in real terms in Germany by 0.5%. We had tied ourselves to Germany and pursued the exact opposite policies. That was bound to come unstuck. Those in the OECD who wrote the whistleblower part maintain that in this country the report was diluted. We were warned. It would be useful if we could find the original report. We were warned that pretending we were honorary Germans and behaving in the exact opposite way and being allowed to do that within the eurozone was bound to lead to the kind of tears we have experienced in recent times. I hope the whistleblowers in the Government will look at that.

The definition of successful macro-economic management was made by William Martin, the chairman of the US Federal Reserve. His most famous quote was about the trick being to take away the punchbowl just as the party gets going. Ireland had a European finance punchbowl. We gave in more punchbowls and then we gave the banks a free lift home with more than €60 billion worth of our money.

I do not see anything fundamental in what the Minister has brought before us to reform a system which was poorly designed and was a disaster for this country. Looking at the island of Ireland the sensible part was the Northern Ireland part, which stayed out of the euro. The euro is so flawed it cannot succeed. The reason we have the Bill today is that Europe has bankrupted the IMF. All the money that is used to bail out inefficient governments worldwide is gone. Europe has to get its act together, think the policies through and stop making decisions at 4 a.m. When Irish people reject European initiatives, which were flawed, as we did in two referenda, I hope the Government will not again run referenda twice because perhaps the people got the result right the first time.

Senator Darragh O'Brien: In response to two points raised by Senator Gilroy, I put on the record that we gave credit where it was due — excuse the pun — to the Taoiseach, the Minister for Finance, Deputy Noonan, and the Minister for Public Expenditure and Reform, Deputy Howlin, for the work in which they participated to ensure a rate reduction not just for this country but for other countries. I have no difficulty saying that they did a good job. All of us are keen to ensure that citizens are protected as best as possible. If savings accrue to the State, which from looking at the figures could be in the region of €800 million or €1 billion per annum, that must be welcomed. I welcome it unequivocally.

Since the Government came to power it has seen that this is not simply an Irish crisis. I agree with a number of points made by Senator Barrett. In particular, he said that Europe has been far too slow in dealing with the economic crisis. Mixed messages are being sent. Europe is not working as a community. Peripheral nations exist. The axis of power has definitely swung towards France and Germany. I do not get a sense from them that they are dealing with their partners in Europe on the basis of community but on the basis of sovereign state interests.

With that in mind I have a couple of questions to pose to the Minister. As part of the new arrangements in the EFSF each state must ratify and agree the new legislation. Finland and

[Senator Darragh O'Brien.]

other countries have sought additional collateral from Greece in particular before signing up to it. The Finns are the most prominent in that regard. None of the rate reductions to which I referred have been passed on yet because they are not in place. It is my understanding that the reductions will not come into effect unless all countries sign up to the legislation. Perhaps there is an update on the current Finnish position and how the negotiations are going with them and other countries.

The term “economic sovereignty” has been bandied about. I speak from my own point of view and do not expect everyone to agree with it. I and some of my colleagues met the troika in July of this year. We put that very question to the members on the Government saying it could not do X, Y or Z because we have lost our economic sovereignty. That is not true. Any Government has to work within the constraints of what is available to it, as was the case with previous Governments and the four-year financial package. It is for the Government to make choices on how it gets to the 3% deficit reduction target by 2015.

I reject the idea that this country has lost its economic sovereignty. It has not. I accept that the country must work within the confines of an international deal that has been put in place. It has had to do that as part of the eurozone in any event. When we put it to the members of the troika, they rejected that too. I will not be overly political but promises have been made on no income tax increases or social welfare rate cuts. Two weeks ago the Taoiseach said he would have to go back and negotiate with the troika on whether it is possible not to have any income tax increase. There is no specific reference in the agreement to income tax. We are talking about €2.1 billion being raised in taxes.

It is not true that we must go back and negotiate no increases in income taxes. The choices are for the Government to make. I know very well that they are difficult choices that will not meet with broad agreement. I have no doubt there will be issues that are contentious and controversial. The Government must be straight with people, however, and it cannot hide behind the deal with the troika, saying, “Our hands are tied because we cannot do this, that or the other”. The choices within reaching the 3% by 2015 are for the Government, as well as for the Seanad and the Dáil.

The fiscal plan will be published shortly and will be up for discussion in both Houses, which I welcome. It is a good initiative to show citizens in advance what we are doing in each area. If the new EFSF facility is passed by all member states and savings to this State are in the region of €800 million, will the Government’s targets take that into account? What will those choices mean for the general public? The Government is targeting €3.6 billion this year, with a further €3.1 billion next year on the basis that €800 million will come back to us next year. Given those savings, will the Government revise those targets downwards to ease the financial pressures?

We have been talking about the banking crisis, both here and in Europe, for months. I am seeking an update in this regard. The Government has continued to follow a policy — on which I did not agree with the previous Government either — of trusting AIB and Bank of Ireland to lend €3 billion each year to the business and SME sector. It is patently obvious that is not happening. Where is the national strategic bank, which was a good idea? It is necessary because I do not trust our two pillar banks. Is the national strategic bank plan still on the table? How regularly is the Government dealing with AIB and Bank of Ireland to ensure that they are hitting their lending targets for the economy?

Senator Aideen Hayden: I welcome the Minister of State to the House. There is a Chinese curse which states, “May you live in interesting times”. The times we live in are very interesting indeed and, like all Members of this House, I am almost afraid to turn on the radio every day

to find what state Europe is in now. We all receive representations, particularly from older people who are worried about the collapse of the euro and possible loss of their savings. Economic stability within the eurozone is critical for this country. As my colleagues have said, the Bill before us is not a controversial measure. I listened to a similar debate in the Dáil yesterday and it was interesting how measured it was, with a couple of notable exceptions. It is irresponsible for some Members of the Oireachtas to make statements about burning bondholders and express other extremely simplistic attitudes.

Senator Thomas Byrne: That was the Labour Party's policy before the election.

An Cathaoirleach: Please allow Senator Hayden to continue without interruption.

Senator Aideen Hayden: In effect, they are proposing what is economic isolationism for this country. One of the advantages of having this debate is not necessarily to examine the Bill's specifics, which in the main are not controversial, but to examine the wider issues around the euro and the stability of the single currency. Senator Barrett referred to the 1990s, which I would like to address briefly. I remember studying economics back in the 1970s when Ireland was categorised as a small, open economy — nothing better than a cork floating in mid-Atlantic. I remember the 1990s vividly when the Irish punt went from £1.20 sterling down to £0.80. Mortgages were trading at 17% and the situation was utterly distressing for the vast proportion of Irish people who lived through that era. We should bear in mind the stability the euro has brought to this country, particularly to ordinary people. There are criticisms nonetheless. This Bill is designed to engender stability. If anything, I would have a criticism of the level of the fund. Given what is currently going on in the international domain, the level of the stability fund will be insufficient. That matter will have to be addressed. There are cracks and to some extent Senator Barrett is right to say they are being papered over.

I would like to raise three issues in the spirit of this debate and looking at the wider issues of European stability. First, I have always supported the European project but there have been some fundamental flaws. We all witnessed the failure of European foreign policy during the break-up of the former Yugoslavia. I agree that the eurozone has been too slow and cumbersome in reacting to the current crisis and we need to learn from that. Surely a run on the euro could have been anticipated. There is plenty of international evidence of runs on other currencies and the sharks will always be circling when they can see weakness.

Second, it is a fact that the European experience has not always been in Ireland's interests. It will be an issue for us in future as to how we dealt with the eurozone at a time — I will not engage in bashing the previous government — when it did not suit this country to have euro interest rates at such a low level. They did not suit the economics of this country or, indeed, other peripheral regions. Similarly, as Senator D'Arcy has pointed out, rising interest rates do not suit this country now.

Third, I strongly believe that the weakness of our foreign policy, in the past decade in particular, has weakened Ireland's capacity to engage in supporting our interests. In the past it was beneficial to have a strong relationship with other peripheral countries. Through this we managed to achieve moving European funding away from the Common Agricultural Policy and through the Structural Funds, which were very beneficial. It is in our interests today to engage more with the other peripheral regions to ensure that in future the development of the euro is designed more to favour the needs of peripheral countries, and Ireland in particular.

Senator Feargal Quinn: I find this debate so interesting and in particular the views of Senators Hayden and Barrett. I wish they had been here in recent years to make some of those arguments. I wish Senator Barrett had been here back in 2001 when we could have heeded him.

[Senator Feargal Quinn.]

To a certain extent, however, they are talking about the past. Senator Hayden is right to mention the European movement and what went wrong in the past. Perhaps there were things we should have done differently, but we are where we are now and, therefore, the Bill is a necessary measure. We must help a fellow European member state, given that we were helped out when we needed it. The situation in Greece and some other countries in the eurozone should make us reflect more realistically on our own situation and what could have happened here. Greece is still procrastinating on introducing measures just to get back on track. I am due to visit Greece where I have friends. In reading the newspapers every day, one realises how easily that could have happened to us.

The Greek media have published a list of 15 austerity measures which, it is said, the troika was demanding the socialist government implement in order to receive the next tranche of aid. The measures include firing another 20,000 state workers, cutting or freezing state salaries and pensions, increasing heating oil tax, shutting down loss-making state organisations, cutting health spending and speeding up privatisations. How difficult will that be for them to take? One can see just how difficult it is by looking at the newspapers and television. International lenders have told Greece that it must shrink its public sector to avoid running out of money within weeks. It is a reminder of what could easily have happened to us, so we really have to be careful and wary of these developments.

The measures introduced here have allowed us to avoid many of what would otherwise have been incredibly harsh steps. It is interesting to note that one Greek newspaper suggested that the Greek Prime Minister, Mr. Papandreou, is considering calling a referendum on eurozone membership as a way of strengthening the Greek Government's hand in dealing with the debt crisis. I am not sure how this will be achieved but it is a reminder of the intensity of the situation.

In a related story, the Swiss firm, Roche, has halted shipments of cancer drugs and other medicines to a number of public hospitals in Greece after years of unpaid debts. The European Commission has denied its austerity measures are to blame for a decision by that company to stop the delivery of cancer drugs to Greek public hospitals. What is very worrying is that the company has warned Italy, Portugal and Spain, that they might be next. On the other hand, *EUobserver* writes that Ireland, which like Greece and Portugal is under the EU-IMF bailout, has not had any trouble paying its bills. The term, "any trouble" might not be the appropriate term. We should be thankful that we are in this situation because we have taken action to get ourselves back on track. It is the horror of what could have happened and could yet happen if we do not get it right.

We have had positive good results in recent times. The EUROSTAT figures show that our trade surplus was the third highest in the EU in the first half of the year. Our GDP increased to gain 1.6% today. There was a drop in export growth last month but we are still doing very well. There has been a 7% rise in exports over the period to €46 billion while imports rose by 9%. This is an amazing result. Ireland also has the second largest annual fall in EU hourly labour costs at 3.5% during the second quarter of 2011. We are becoming more competitive. However, I am quite concerned about the danger of complacency. The European Union noted it was pleased with Ireland's progress. There has been much bad news and doom and gloom. Both the Minister of State and I were in Drogheda recently. We listened to people who are trying to get on top of things. There is a belief that in recessionary times, nobody succeeds but I know of people who are succeeding in these tough times.

I support the Bill and I understand the Minister's intentions. This has been a good debate but we must ensure we do not become complacent.

Senator Kathryn Reilly: I welcome the Minister of State to the House. As other speakers have mentioned, my party opposed the original legislation which this Bill seeks to amend. At the time, my party colleague and then boss, Arthur Morgan, argued that the loans facilitated for Greece were not an act of solidarity to assist a beleaguered member state but rather a massive bailout for toxic banks. He predicted that this would lead to further difficulties and add to the debt burden. The Government at the time, in common with this Government, dismissed the claims and promised that the legislation would deliver stability and safeguard our economy, but since that initial legislation, some of his prophecies have, sadly, been vindicated. Austerity, bailouts and cuts did not work and Greece is looking at its next bailout.

The original legislation failed. It was a bad deal then and it will be a bad deal now and in the future. The changes we are discussing have come about as a result of a further round of economic changes arising from the July summit. It should be noted that this Government has consistently held to the terms of the original and maintained the position that the terms could not be substantially changed. It has continued to implement the cutbacks demanded by the troika on the basis that change was not possible, yet we have seen that, in July, the terms were changed to reflect that the deal was failing the Greek economy. We need an Irish Government which will stand up for Irish interests and not just sit on the sidelines and wait for changes to suit other states. We have become a beneficiary of the consequential reduction for Greece and this is to be welcomed. However, it must be remembered that this is only a fraction of the money paid to bail out the failed banking sector.

The original deal remains a bad deal because its fundamentals are wrong. This is not a dogmatic or ideological judgment but rather it is based on the evidence. We can note what is happening in our economy, what is happening to our people and the continual implementation of cuts and cutbacks in public services, the sale of public assets and the introduction of aggressive taxes come December. There is talk of growth but at the same time money and investment is being taken out of the economy.

It is both our people and our economy which suffer and nearly half a million people are unemployed, of whom 20% are young people under the age of 25. More than 40,000 people have emigrated and tens and hundreds of thousands of people are struggling to pay mortgages and utility bills and to buy food. The response has been to put a greater burden on poorer households by means of the household charge.

This is also a bad deal for Europe. Since the meeting in July, the euro has lurched from one crisis to another. Italy and Spain are now in the sights of the speculators, as are the French banks. Greek bond yields are now at unprecedented high levels and every commentator and economist is talking about default.

This legislation which we are being asked to consider had already failed the test of time before it had been presented in the House. This is not a crisis of sovereign debt and it cannot be solved by the nationalisation of private sector debt and the privatisation of national assets. This is a banking crisis brought about by the markets and years of reckless borrowing and lending, as other contributors to the debate today have mentioned. The level of bailout placed on national governments has brought economies to their knees. The July agreement sought to have governments solemnly reaffirm their inflexible determination to honour fully their own individual sovereign signature.

Regardless of the shapes thrown by the Government to the media, it has signed up to the Anglo Irish Bank promissory note and it is unwilling to go after many of the bondholders in any concrete way. Worse, given the lowering of economic activity in the State and the high levels of unemployment, the summit affirmed to meet commitments to sustainable fiscal conditions and structural reforms. In the case of Ireland, this is a commitment by the Government

[Senator Kathryn Reilly.]

to fully implement the austerity programme agreed by Fianna Fáil in 2010. However, another way is possible, as referred to by Senator Barrett. Now is the time for euro area member states to contribute to ensuring financial stability within the euro area. To do this what is required is a clear view of the scale of the problem facing all the European banks. Given the interconnected nature of the problem, it requires a European-wide solution to address the European banking crisis, including significant burden-sharing.

There is a need for a banking solution to the banking problem. We need to open up fully the asset books of all the banks across Europe. We need to have a look at the hidden liabilities and the true asset values in order to have a better idea of what we are facing. The EU-wide private sector debt cannot and should not be shifted onto the national balance sheet of small peripheral and open economies. Sovereign debt issues can be addressed and resolved by investment, employment and a return to growth.

We must look for a solution to the core issue and work on what is in the best interests of the Irish people. Sinn Féin believes there can be employment and growth across Europe. My party welcomes the reduction in the interest rates but this is only a returning of a small proportion of the moneys used to bail out the European banking system. Sinn Féin believes that the EFSF, European Financial Stability Facility, in its current form, will not deliver economic growth or employment and neither is it in the interests of the Irish people or the people of Europe. We will oppose the Bill for all our worth and argue once more for a more comprehensive and sustainable solution to the current crisis.

Minister of State at the Department of Communications, Energy and Natural Resources (Deputy Fergus O'Dowd): This has been an important debate. Whatever our political views, we are all here for the good of the country and everybody acknowledges that. I thank the Seanad for facilitating the taking of this legislation in one day. It is a unique and special circumstance, exceptional in every respect, and I acknowledge the commitment of all parties here to ensure we complete it. I will try to reply on all of the issues that were raised, and if any issues remain outstanding when I have finished, I am sure the Department and the Minister for Finance will be happy to respond on them.

Senator Byrne commented on how long it has taken for this Bill to come before the House. The Heads of State or Government agreed to change the European financial stability framework, EFSF, on 21 July and following this officials were engaged in the working out of the technical details. As soon as these technical issues were finalised, the Minister for Finance brought the Bill to Government and received permission to publish it in early September.

Senator Byrne also raised a number of other queries. As outlined by the Minister for Finance, Deputy Noonan, yesterday in the Dáil, there are specific Exchequer primary balance targets that Ireland is required to meet under the terms of the programme of financial support. These are set out in a technical memorandum of understanding which is part of the programme documents. As they are primary balance targets, they exclude Exchequer debt interest payments. They also follow from the exclusion of expenditure related to the banking sector recapitalisations and adjust for over or under performance in Exchequer tax revenues and PRSI receipts. We have adhered to the first three of those targets, which were set for end-December 2010, end of March and end of July 2011. The next target is set for the end of September 2011. In December 2010, the ECOFIN Council, in a revised excessive deficit procedure recommendation, decided that Ireland's general Government deficit must not exceed 8.6% of GDP in 2012. The recently announced interest rate reductions will be certainly of benefit in helping us to achieve this target.

There are other pluses and minuses, however, that we must take into account in formulating a view on the likely deficit for next year and the level of adjustment that will be required to ensure we adhere to the deficit target. The Minister, Deputy Noonan, will set out revised economic and fiscal forecasts in next month's pre-budget outlook. These forecasts will take account of the most up-to-date information available, including Quarter 2 national accounts data from the Central Statistics Office and the end of September Exchequer returns. As Members know, the Government is committed to reducing the general Government deficit to below 3% of GDP by 2015. The Minister for Finance will bring forward the budget in December.

Reference was made to the interest rate and the issue of savings. I understand from the NTMA that there will be a relatively small benefit this year from the recently confirmed interest rate reductions. A coupon payment is due on the first European financial stabilisation mechanism drawdown towards the end of this year. On the basis that the full margin cut is applied to this loan for the full life of the loan, the cash savings will be in the order of €130 million.

With regard to the position of other member states, the amendments to the European Financial Stability Facility must be approved by all 17 euro area member states. A number of states have confirmed that they have already approved these amendments and all countries have committed to passing these amendments by mid-October. Ireland, Portugal and Greece cannot benefit from the reduced interest rate and increased flexibility until the revised EFSF is implemented. This is one of the main reasons the ratification of the EFSF and the revised Greek loan facility agreement are now an urgent priority.

Events in the European Union are moving rapidly. I am well aware, as is the Government, that we need to continue to look at the bigger picture. I believe our contribution to this debate has been influential, despite our current difficult circumstances. I commend the Bill to the House.

Question put and agreed to.

An Cathaoirleach: When is it proposed to take Committee Stage?

Senator Michael D'Arcy: Now.

Agreed to take remaining Stages today.

**European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011:
Committee and Remaining Stages.**

Sections 1 to 3, inclusive, agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

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

Senator Darragh O'Brien: I appreciate the Minister's response to the comments made. This has been a good debate. The legislation is necessary and I do not propose to delay the House further on it. There is a genuine desire on the part of all sides to ensure this country recovers as quickly as possible for the good of its citizens. This side of the House and my party will support these and other difficult measures. The months coming up to the budget will be diffi-

[Senator Darragh O'Brien.]

cult, but I hope that when it comes to dealing with the pre-budget outlook and the budget, the Opposition will be found to be a responsible opposition. It is important that our citizens see as unified an approach as possible. While we may argue about certain points of policy, we all know the direction we are going. There is confidence, and there should be, that we will come through our difficulties for the good of the generations that will follow us. This is one step in that regard.

We can do so much in this country, but I have one word of caution with regard to the response at European level. We would all like to see a more co-ordinated and robust response from Europe. I agree with comments made earlier by Senators Hayden and Barrett that in many instances we are not dealing with some of the fundamental problems. This Bill is a step in the right direction, but it will not be the last. The EFSM will be a more permanent mechanism. Hopefully, Europe and Ireland will learn from the mistakes of the past and be able to move forward so that we have stable European and Irish economies where job growth will return, people will be able to afford to pay their mortgages and bills and quality of life will be improved.

Senator Sean D. Barrett: I echo Senator O'Brien's thanks to the Minister for his response to the issues raised. The term "eurosceptic" is an issue. There should be two definitions for that term. One should relate to being eurosceptic with regard to the currency — I am in that category — and the other to being eurosceptic with regard to the European Union. I am not in that category but we must distinguish between the two.

The Union operated successfully between 1955 and 1999 and it could go back to that. The definition still holds in Scandinavia and the UK. As everybody has said, we need to strengthen economic policymaking in this country. It is critical and the Ministers for Finance and Public Expenditure and Reform and their Ministers of State know they have the support of the House in doing that.

I refer to the retrieval of sovereignty. It is somewhat remarkable that for a country that spent so many years achieving sovereignty, it was all given away on 1 December last. As we pass the portraits of the great men who achieved independence for this country in the hall as we enter Leinster House, we must pay attention to that again. Ireland is damaged when people on this island transfer powers to Westminster in the case of Northern Ireland or to Brussels in the case of the Republic of Ireland. There are two kinds of unionists. I look askance at Northern Ireland Unionists for transferring powers to Westminster and European unionists here who transferred powers to Brussels unthinkingly.

Joining the currency with all its flaws while knowing the UK would not do so did nothing for Irish trade. EU member states only account for 31% of our trade, although we save on transactions. However, this precipitated a disastrous exercise in Ireland by German and French banks and today we are tidying up more of the mess while also dealing with the domestic banking collapse. Some thought should have been given to whether we wanted massive capital inflows used for speculation, financial intermediation and property prices. It was inevitable that a small economy such as ours would not be able to take that inflow of capital, even though people still utter clichés about how valuable is foreign direct investment. It is not if it goes to the wrong sectors. We conducted that experiment and the result has been a disaster.

One does not repeatedly conduct a science experiment and blow up the laboratory. Ireland will be a leader regarding fundamental reforms in how public business is conducted and public expenditure is appraised and in adopting a sensible approach to investment rather than a casino approach because we have suffered more than anyone else. That is why the public elected us. As the Minister for Education and Skills pointed out, the greatest ever change in any European

democracy occurred in this year's general election. It demands that we invent a new style of governance, which will be superior to much of the problem the Minister of State has brought to our attention today.

Senator Michael D'Arcy: It is positive that we have reached the conclusion of the debate. I agree with other Members that legislation should not be concluded in one day. It is difficult to complete analysis of Bills to ensure there are no loopholes in them. Our role is to scrutinise legislation. This has happened twice in the past week but I do not know if anything could have been done in the context of scheduling. I am glad the House is operating in a positive manner and I direct that view, in particular, to Senator O'Brien.

In response to Senator Barrett, one of the Government's primary objectives is to ensure we regain our financial sovereignty. We did not have more or less financial sovereignty going back generations than we have today when we were ruled by another nation. The people whose portraits are on the walls outside this House gained our financial sovereignty and they our nation's currency. We did not give away our financial sovereignty by deciding to participate in the euro in the same way as other countries. Ireland was one of the newest countries to join the euro. The euro model did not have structures in place for emergencies. That is what this legislation is about and there will be further legislation to ensure if there are difficulties, structures will be in place to ensure we go in the right direction.

Senator Sean D. Barrett: That should include the ability to leave it.

Senator Michael D'Arcy: Absolutely. I heard the discussion about an orderly exit. If that has to happen, legislation will be debated in the House and it will get a good hearing. I thank the Minister of State. I have been critical of the Department of Finance in the past but its officials have upped their game and I anticipate they will continue in that vein.

Senator John Gilroy: I thank the Minister of State for attending. I welcome the robust and interesting debate we had. I do not share Senator Barrett's analysis if I understand it correctly. It is a debate for another day but the notion that no country would welcome an inflow of capital should be rejected. That makes no sense and, therefore, I surely have misunderstood his argument.

This important legislation has been thoroughly debated, which is a good sign for the House.

Minister of State at the Department of Communications, Energy and Natural Resources (Deputy Fergus O'Dowd): I thank Members for their contributions. The ten-year bond spread for Greece earlier on the Bloomberg website was 22% while ours was 8.6%.

Senator Michael D'Arcy: Down from 14%.

Deputy Fergus O'Dowd: We have recovered a great deal of ground and we are getting it right. There is hope and change is happening. We are all united on the fundamentals, notwithstanding the differences between parties. We are getting our act together.

It is being increasingly recognised internationally that Ireland is different, that we are meeting our requirements and that the tough decisions that have been made and that will continue to be made are in the interests of our society. An article appeared on the website of *The Wall Street Journal* yesterday under the headline "Ireland achieving quiet success", which stated: "As the headlines of Greek tragedy and Italian farce continue, one solid national performance has been largely overlooked." That is ours and the article basically says we are getting our act together. If we can show we are different and can attract inward investment, we can restore competitiveness and create jobs. I acknowledge Senator Barrett referred to the building bubble

[Deputy Fergus O'Dowd.]

and so on. I thank the officials from the Department of Finance who helped me in preparing for the debate.

Question put and agreed to.

**European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011:
Earlier Signature Motion**

Senator Michael D'Arcy: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to her.

Question put and agreed to.

**An Bille um an Tríochadú Leasú ar an mBunreacht (Fiosruithe Thithe an Oireachtais) 2011:
An Dara Céim**

**Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011:
Second Stage**

Tairgeadh an cheist: “Go léifear an Bille an Dara hUair anois.”

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

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): In order to restore the confidence and trust of the people in the institutions that serve them, we as a Parliament must reform what we do and how we do it. A key element of the parliamentary reform programme outlined in the programme for Government is the proposed constitutional amendment contained in the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011. This Bill before us today will ensure the Houses of the Oireachtas, either individually or collectively, have the power to conduct full parliamentary inquiries that would be effective, cost-efficient and conclude within a reasonable timeframe.

The Abbeylara Supreme Court decision currently limits the ability of Dáil committees to hold full investigations into crucial issues of public concern. The same impediment would be felt by Seanad committees. A parliamentary power of inquiry is necessary and intrinsic to the proper functioning of a representative and responsible parliamentary democracy. General powers to investigate matters of public importance are commonly available to the legislatures of almost all member states of the European Union. Apart from Ireland, some form of parliamentary investigation is to be found in the basic constitutional law of 12 EU member states in the form of an express provision in their respective constitutions.

As public representatives, it is our responsibility to translate the wishes of the people into policies and programmes that further our economic and social development. Where issues arise regarding such policies and programmes, the Dáil and the Seanad should be able to inquire into them fully and make findings and recommendations accordingly. How can we provide good law if we have not the power to see the effect of laws? How can this Parliament hold the Executive to account if it cannot inquire into the conduct of people who work for the Executive? How can it scrutinise the spending of money properly voted in these Houses if it cannot

hold public authorities to account and inquire into their actions? We have the duty to shape our laws and to serve our citizens. As a Parliament, we must be able to address the concerns of the public in regard to policy and its administration if we are to be strong, relevant, and active.

We need a position where the Houses have robust powers to obtain and analyse essential and comprehensive information and draw the necessary findings and recommendations. This is crucial for issues of public importance in order for the Houses to be better able to serve the people, and for the Houses to be better equipped to undertake their responsibilities. Giving the Houses the power to undertake full inquiries will ensure they are central players rather than mere observers in the examination and investigation of such issues. Such power will strengthen these Houses and in doing so enhance public accountability. Such power will help distinguish Parliament from the Government and demonstrate the capacity of Parliament not only to hold government to account, but to seek and get answers on matters of concern to our citizens. Therefore, we must ensure that we as a Parliament use this power appropriately and for the benefit of the wider society and economy. There are significant public policy benefits from the operation of an effective system of parliamentary inquiry, and we must harness these benefits.

It is now nine years since the Supreme Court, in the *Abbeylara* case, raised issues regarding the power of the Oireachtas to conduct inquiries. There since has been important consideration and deliberation of the issues involved, including by the Law Reform Commission in its consultation paper on public inquiries, and more recently by the all-party Joint Committee on the Constitution in a report published earlier this year. The proposed wording of the referendum and the policy approach being adopted by the Government to provide a clear constitutional power to conduct inquiries is closely in line with the recommendations of the fifth report of the all-party Joint Oireachtas Committee on the Constitution of which I was a member. That was an extraordinary deliberative, balanced and protracted piece of work. We invited some of the finest legal experts on the Constitution before us and its final report and recommendations were unanimously agreed after almost a year of careful consideration.

One of the central recommendations of the joint committee was that a constitutional amendment expressly providing for an inherent power of investigation was needed. The joint committee found that the option would be open to the Oireachtas, in the absence of a constitutional amendment, of legislating for a statutory power to inquire. Under this approach the Oireachtas would seek to rectify the defects identified by the court in the *Abbeylara* judgment by revising existing legislation. However, it would be necessary for this legislation to conform to the constraints and limitations relating to the scope of Oireachtas inquiries identified in the *Abbeylara* judgment.

The implication of the Supreme Court's findings was that under the current constitutional position an Oireachtas inquiry could not investigate any matter which had the potential to impact adversely on a person's good name or reputation. This conclusion by the Supreme Court could potentially seriously curtail the capacity of the Oireachtas to carry out any meaningful inquiries. Consequently, a constitutional amendment is essential to overcome these core issues. A constitutional amendment will ensure that the Oireachtas is not severely restricted in the issues into which it can conduct inquiries and the scope of these inquiries. It also ensures that should the Oireachtas wish to conduct an inquiry, it can do it itself and it is not confined to either a tribunal of inquiry or a commission of investigation.

Both of those tools will remain available and not every issue will be suitable to be investigated by an Oireachtas committee. Some will require the old tribunal of inquiry mechanism under the 1921 Act, and some will be best suited to a commission of inquiry mechanism of investigation, as we recently saw with the Ryan report.

[Deputy Brendan Howlin.]

The proposed inquiry system will not displace the comprehensive work that committees of the House already undertake. On the contrary, it is intended that the new inquiry system would complement and reinforce the existing role of Oireachtas committees in reviewing important public policy issues. This will be achieved by providing committees with a new avenue to investigate and inquire into serious issues of significant public concern that may emerge from the committees' work. This is likely to encourage greater co-operation with the everyday work of committees in light of the strong new inquiry powers expected to be available to committees.

This is a critical part of a process to strengthen Parliament. Too often in the past we have seen the Parliament as the mere tool of the Executive, there to rubber-stamp decisions made in private. We must have a functioning Parliament that questions the Executive and agents of the State, and which can rigorously test policy issues and failures.

The primary issue that this proposed constitutional referendum addresses is the power of the members of the Dáil and Seanad, acting through a committee, to conduct a public inquiry. It addresses the source, nature and scope of the power of the Members of the Oireachtas to conduct a public inquiry, which is liable to result in findings of fact or expression of opinion adverse to the good name, reputation or livelihoods of persons.

Earlier this month, at the same time as the referendum Bill was published, my Department also published an explanatory note on the Bill as well as an overview of the proposed system of inquiry. To facilitate comprehensive discussion of and inform debate on the issues involved, the draft heads of the Houses of the Oireachtas (Powers of Inquiry) Bill were published with the referendum Bill.

Senator Darragh O'Brien: I apologise for interrupting but will copies of the Minister's speech be circulated?

Deputy Brendan Howlin: I will ask for copies to be brought over. We were informed that the debate was to commence at 3.30 p.m. I was actually at lunch and my officials were elsewhere, but we rallied quickly. Forgive us. I am just impressed with the expedition with which the House was able to deal with the previous Bill.

Senator Thomas Byrne: It was guillotined.

Deputy Brendan Howlin: I understood the debate was not to commence for another couple of hours but the previous issue ran out of steam, but in any event——

Senator Thomas Byrne: On a point of information, that was because all Stages of the Bill were put on today, so there was no opportunity for anyone to put forward amendments after reviewing Second Stage.

Senator Maurice Cummins: Rubbish.

Senator Thomas Byrne: It gives the lie to the notion——

An Cathaoirleach: The Minister without interruption, please.

Deputy Brendan Howlin: I do not want to intervene in the domestic affairs of a House of which I am not a Member, so I will continue.

Senator Thomas Byrne: It is the programme for Government.

Deputy Brendan Howlin: I miss the robustness of the Senators' contributions in the other House.

Senator Darragh O'Brien: Fan go bhfeicimíd.

Deputy Brendan Howlin: The Bill will underpin the proposed constitutional amendment and provide a comprehensive legal framework governing the establishment and operation of the inquiry system. In publishing the draft heads of the Bill, it was important that we had a clear perspective to show the electorate and indeed members of the House how the system is to work. I and my officials have already briefed the Joint Committee on Investigations, Oversight and Petitions on the details of the enabling legislation. I see copies of my speech arriving. Assuming the people vote for it and the Bill is enacted, it will give the committee real powers to make decisions in relation to both the scope of an inquiry — the mere fact it is warranted and should be held — and its terms of reference.

The Bill's primary purpose is to amend section 10 of Article 15 of the Constitution in order to provide for the Houses of the Oireachtas to conduct full inquiries. Section 1 of the Bill provides for the insertion of the text set out in the Schedule. Section 2 contains a standard provision that specifies how the amendment and the Act shall be referred to. The Schedule contains the proposed text of the constitutional amendment in the Irish and English languages. If the electorate expresses approval in the referendum, the three new subsections set out in the Schedule will be inserted into article 15.

Subsection (2) of the Schedule ensures there is absolute legal certainty that the Oireachtas is empowered to hold inquiries into matters of general public importance. The absence of specific and explicit recognition in the Constitution of a role for the Oireachtas in undertaking inquiries in which findings of personal culpability or responsibility could be made could provide grounds for a legal challenge to Oireachtas inquiries on the basis of institutional bias. This is the legal concept that, irrespective of the circumstances of a particular case, a body might be inherently biased on account of its political nature and composition. I reject the contention that, simply by virtue of its political structure, a body cannot make objective decisions. We need to deal with that. However, the wording does not and cannot discharge the members of an Oireachtas committee of inquiry from the requirement not to prejudge the outcome of an inquiry and to behave impartially in respect of any matter that is the subject of an inquiry. The legislative framework governing the operation of the inquiry system requires the setting of clear protocols that minimise the risk of the committee of inquiry not behaving in an impartial manner.

In addition, subsection (2) provides that the inquiry must be into a matter "stated by the House or Houses concerned to be of general public importance". The enabling legislation contains the proposed process to be undertaken and states the evidence to be provided to allow the Houses to make an assessment that a matter is of general public importance. Matters must be of grave public concern and of a magnitude and consequence that require an inquiry. It is intended that such full inquiries will be into issues where the Oireachtas has a clear legislative, oversight or public policy role in making findings and recommendations firmly underpinned by extensive fact-finding. This provides a clear, well-defined context within which such inquiries may take place.

Subsection (2) also provides that the manner in which an inquiry is conducted will be provided for by law. The draft heads of the enabling legislation provide a framework within which the Houses of the Oireachtas can formulate rules and guidelines governing the conduct of inquiries. The published draft heads are extensive, but if Senators have suggestions that would enhance the system, I invite them to provide their ideas before I publish the Bill in advance of

[Deputy Brendan Howlin.]

the referendum I would very much welcome any submissions that Members wish to provide I have issued the same invitation to the other House.

Subsection (3) of the Schedule to the Bill grants the Oireachtas a power to investigate the conduct of individuals and make findings. In doing so, it addresses two of the major concerns that the Supreme Court identified in the *Abbeylara* judgment. In order for Oireachtas inquiries to be effective and consistent with the role, function and responsibilities of the Oireachtas, it is considered essential for them to be able to investigate individual conduct. This is particularly true where individual conduct or the conduct of a group of individuals played a significant role in giving rise to the set of circumstances that required the Houses to carry out an inquiry in the first instance. It should be possible to make findings of individual misconduct, wrongdoing or incompetence if such findings are necessary and consistent with the facts adduced. This would be done with the object of making recommendations for change. Such recommendations could relate to legislative or regulatory frameworks or the role, structure, governance and management systems of public bodies. Subsection (3) explicitly provides that an investigation can be carried out into the activities of any person or persons irrespective of whether they are members of either House.

Subsection (4), as amended in the Dáil, makes it clear that an Oireachtas committee of inquiry must strike an appropriate balance between the rights of persons and the public interest, having due regard to the principles of fair procedures. In full parliamentary inquiries, the balance between the rights of persons and the public interest must be consistent with the constitutional principle of fair procedures. There is no doubt about that. Fair procedures and the rules of natural justice must be respected in any inquiry that puts good name or reputation on the hazard. It is important to state that the manner in which the Oireachtas strikes the balance between the rights of persons and the public interest will be reviewable by the courts. That is the strong, clear legal advice the Government has been given. In assessing the issue, the courts must then take into account the responsibility assigned to the Oireachtas to determine this balance. In addition, in reviewing the procedures of any inquiry, the courts will assess the balance the inquiry has sought to strike between natural justice and the public interest.

As I highlighted earlier this week in the Dáil, I have no doubt that there will be practical difficulties for the Committee on Investigations, Oversight and Petitions and the inquiring committee in ensuring that the balance is exercised fairly and objectively and that it is achieved. However, the difficulties can be teased out and they are not a reason to shirk our responsibilities as a parliament. Subsection (4) is necessary if inquiries are to be implemented in a pragmatic way and to employ fair procedures in a manner that is balanced against the public interest. It ensures that inquiries will be effective, cost efficient and completed within a reasonable time-frame. Members will not need to be reminded that justice and the people's interest have been thwarted over decades with protracted commissions of inquiry constantly being drawn into court challenges, going on endlessly and costing a fortune. We must have alternatives available and enable the Houses to do the people's business.

Witnesses to Oireachtas inquiries will, of course, have an extensive range of legal rights. However, if Oireachtas committees of inquiry were required to provide in all circumstances the full spectrum of rights normally afforded to witnesses in tribunals of inquiry, the costs and duration of Oireachtas inquiries would be likely to be prohibitive. We would simply be replicating what has happened at the tribunals. The constitutional amendment before us does not disregard the rights of witnesses to fair procedures. I want to say that explicitly. As set out in the draft heads of the underpinning legislation, high hurdles have been set to ensure that fair procedures are adopted and that inquiries are carefully and correctly conducted.

For example, the legislation envisages that all of the primary procedural rights will be available in the proposed new Oireachtas inquiry system. These rights were previously identified as necessary by the courts to ensure that the rules of natural justice are observed. It is intended, however, that it would be a matter for each Oireachtas committee of inquiry to determine how these rights should be afforded to witnesses in any particular instance, having due regard to the principles of fair procedures. This will depend on the specific circumstances that pertain in each individual case and will be governed by rules agreed by the House or Houses concerned. To put it simply, if a witness is merely giving technical evidence, her or she does not need to be accompanied by a lawyer and the State should not have to pay for that, which should be clear enough.

However, if somebody is fundamental to an inquiry and his or her good name is very much at risk, it may well be determined by the committee that the person should be represented by counsel at the inquiry. That is the balance the committee itself must strike in the first instance and ultimately, if the citizen involved feels that the balance is not consistent with fair procedures or natural justice, or is incorrect, of course, he or she will have the right to have the decision reviewed by the courts.

It is my intention over the coming weeks to publish a further revised Bill. This will be done, having reflected upon and considered the debates today, any other points that Members might make in submissions to me. If the referendum is approved by the electorate, this Bill will be formally initiated in both Houses. Discussion of the Bill by the House will provide an opportunity to review the proposed system of inquiry further.

There are significant public policy benefits from the operation of an effective system of parliamentary inquiry. We need to harness these benefits. These included the ability to lead change, to govern effectively, to hold the Executive to account and above all to better serve citizens. I have believed for many years that we need to restore real powers to the Houses of the Oireachtas to do the people's business in a way that is at present absent and is not mirrored in other Parliaments that take parliamentary inquiry as part of its normal business. I believe the people will support this. If it is supported and enacted, it will devolve new onerous responsibilities on the Members of the House, particularly those on the oversight committee in the first instance to make impartial decisions.

Let me refute the suggestion made in a commentary on a television programme that somehow the Executive will be setting the terms of reference of inquiry. The terms of reference will be set by the oversight committee which is chaired by a member of the Opposition and I indicated when I was in discussion with that committee that as a rule, I would regard it as improper to have Whips applied to those making the decisions. I believe it should be done on the basis of objective evidence presented to the committee.

Senator Thomas Byrne: We will see that in practice.

Deputy Brendan Howlin: This is a challenge to the committee and I ask Members to look beyond what happened in the past and to see how we can grasp the potential to make this Parliament effective, to do the people's business and to ensure that we do not allow people with deep pockets and endless resources to frustrate the public good and never achieve a proper inquiry or see an end result to issues that have animated public concern over many years.

Senator Darragh O'Brien: I thank the Minister for his comprehensive outline of the legislation. I give the Bill a guarded welcome. The Minister rightly suggests that we are entering new territory. I have some genuine concerns about the Bill. I served on the Committee of Public Accounts in the previous Dáil and I saw how the Abbeylara judgment inhibited the effectiveness of that committee in the writing of reports. The case of FÁS was a prime example.

[Senator Darragh O'Brien.]

It also showed, however, what committees can do in delivering speedy, comprehensive and cost effective reports on behalf of the citizens. We are bringing forward real powers of inquiry in this Bill. I have a number of questions.

I am on the committee that has been established to initiate these powers. Will the referendum affect the Committee of Public Accounts in a positive way, in regard to setting aside the implications of the Abbeylara judgment? In my view the Committee of Public Accounts is the more important committee of the House. Should the legislation be passed by the referendum, will the Committee of Public Accounts have additional powers?

The Minister has referred to the setting of protocols and has extended an invitation to Members to make submissions. My party colleague, Deputy Dara Calleary, has made one. The Minister said: "In addition, the courts in reviewing the procedures of any inquiry would assess

the balance which the inquiry has sought to strike between natural justice and the public interest." Is that after the event? Members of the Oireachtas are privileged to have parliamentary privilege when speaking in the Oireachtas. In the main, Members do not abuse this privilege and it is guarded very carefully. All of our citizens are entitled to their good name and this is a given when a citizen appears before a committee, yet we are introducing a mechanism that if somebody has a complaint about the way a committee has treated or ruled against the person, he or she has recourse to the courts. I wonder whether in the terms of reference of a given inquiry should individuals who will be called to appear before it have an opportunity to look at its terms of reference, rather than letting the committee make a ruling. If a ruling is made, it is in the public domain and we know that people can be tainted from that.

Is the Minister planning to preclude any Government or any Minister or member of the Government party from instructing or suggesting that the investigative committee make inquiries? I have seen how the Committee of Public Accounts, on which Senator Clune and I served under the chairmanship of the former Deputy, Bernard Allen, worked very well on a non-political basis across parties. This proposed investigative committee will have members who are new to the Oireachtas. It will need to be watched over very carefully. Has the Minister plans to preclude this and future Governments from making suggestions on instructing the committee to carry out certain investigations?

The Minister mentioned the rule that the party Whip will not be applied when members are serving on this committee. If it is possible, that should be tied into the Standing Orders of the committee and if at all possible tied into the legislation, as is the case with the planning Act that governs all the local authorities for county development plans where there is supposed to be no Whip system in place. Unfortunately, in practice, the Whip is applied.

Everybody who has served on a committee will know that certain members will prepare well while others do not and will simply throw out the best phrases to gain media attention. What is crucial for a committee which effectively will have the power to make a ruling, and findings of fact against persons or bodies, is the support of a secretariat in the first year of its establishment. The members of the committee — I do not suggest that members are not serious about this work — need to be informed about the importance of their role and to guard the real powers that are available to them.

I agree with the thrust of what the Minister is doing, but I am very concerned. We must cross the Rubicon

Deputy Brendan Howlin: We can tweak it as we go along.

Senator Darragh O'Brien: Yes, we must do so.

Will any measures be introduced whereby a member of the committee who is acting in an overtly political or biased manner, or who has a conflict of interest, can be sanctioned by the committee, its chairman or a committee on members' interests?

If the courts have ruled on an issue, is it open to the committee——

Deputy Brendan Howlin: What sort of a ruling?

Senator Darragh O'Brien: Any sort of ruling. Most people in the north east of the country would be aware of a medical case that has gone to court but there is still great interest in the House about how it is being dealt with. If an issue has already been ruled upon in the courts, is the committee open to calling those people or bodies before the committee to begin an investigation all over again, even though there is already a ruling by the courts?

The Minister stated, and I agree, that fair procedures and the rules of natural justice must be respected in any form of inquiry that puts good name or reputation at risk. The committee through its establishment, however, will put at risk the good name of bodies, organisations and individuals.

Deputy Brendan Howlin: Some of them need to be put at risk.

Senator Darragh O'Brien: I agree but I am referring to instances such as someone being wrongly jailed. There are many bodies and individuals who need to be brought in and their good names must be at risk but there are others who, if it happens in the next couple of years, might have their names blackened and then it could be found that the committee has acted improperly. The committee will be open to legal challenge, there will be another Abbeylara type judgment and the whole house of cards will come tumbling down. I support what the Minister is trying to do, although I am nervous about it.

Deputy Brendan Howlin: The Senator should be brave.

Senator Darragh O'Brien: I will be brave; the Minister's head is on the block.

Deputy Brendan Howlin: I am happy to do it, I have done it many times.

Senator Darragh O'Brien: This was a commitment in the programme for Government but was it necessary to introduce the Bill so quickly? The Minister said he would revise the Bill in the next couple of weeks but the referendum is set for 27 October. Any Bill the Minister's produces will be another that must be guillotined.

Deputy Brendan Howlin: It will not be enacted until after the referendum. It is merely for information so that people, before they vote, will have a clear idea of the detailed process. That is why I decided to publish extensive heads and then a complete Bill in advance. It will not be introduced until people vote for it, presuming they do vote for it; it will not be introduced if they do not.

Senator Darragh O'Brien: We will support the Bill, there is no question of that. I merely advise the Minister to be cúramach because this could be a powder keg.

Senator Tom Sheahan: Under the heading of parliamentary reform, the programme for Government commits to holding a referendum to amend the Constitution to reverse the effects of the Abbeylara judgment to enable Oireachtas committees to carry out full investigations. Both Fine Gael and the Labour Party had committed to this in their general election manifestos. In the "New Politics" policy document of 2010, Fine Gael committed to radical reform of

[Senator Tom Sheahan.]

political structures, including a reversal of the *Abbeylara* judgment, which limits the powers of Dáil committees to conduct investigations.

The key issue arising from the *Abbeylara* judgment from the point of view of Oireachtas committees is that no Oireachtas investigation can be pursued if the good name of any citizen who is not a Member of the Oireachtas might be impugned. The right to a good name is protected by Article 43 of the Constitution and the Oireachtas does not have the inherent general power to set up an investigative committee.

Following the shooting dead of John McCarthy by Garda officers in *Abbeylara* in April 2000, the Oireachtas established a subcommittee to inquire into the circumstances surrounding his death. The possibility arose that the findings of the subcommittee might have an adverse effect on the constitutionally protected right to a good name for some of the gardaí concerned. A number of gardaí, having been compelled to appear before the subcommittee, challenged its constitutional standing on the basis the Oireachtas did not have the power to establish such a committee. That is why we are here today.

The Supreme Court subsequently found the Oireachtas did not have the general power to set up an investigative committee. Rather, under the Constitution, it had limited powers to inquire into certain matters with a view to drafting protective legislation. In the *Abbeylara* investigation, there was no suggestion the Oireachtas was considering making legislation. The sole purpose of the subcommittee was to investigate the circumstances surrounding Mr. Carthy's death. This was beyond the inherent powers of the Oireachtas under the Constitution.

The Supreme Court further held that the powers of the Oireachtas under the Constitution did not allow it to make findings of facts that could potentially damage the good name of persons who were not Members of either House of the Oireachtas. As the Minister outlined, there are names that must be brought in and put to the test.

Another important factor considered by the Supreme Court concerned the constitutional right to fair procedure. The court held that in restricting the right to cross-examine witnesses before the subcommittee, the committee had breached the constitutional rights of those concerned. Gardaí called to testify before the subcommittee were permitted to cross-examine witnesses only at the end of the subcommittee oral hearings and then subject to the approval of the subcommittee. The Supreme Court concluded this approach did not meet the constitutional requirement of fair procedure.

The Thirtieth Amendment of the Constitution (*Houses of the Oireachtas Inquiries*) Bill, which has been published by the Minister, is to ensure the Oireachtas has an effective system of inquiry to secure effective and cost efficient parliamentary scrutiny of issues of significant public importance and is essential in facilitating more open, transparent and better government, as promised in the programme for Government. This is a key element of the Government's ambitious political reform programme. This Bill will enable the constitutional reform to allow the Houses of the Oireachtas to undertake full inquiries into matters of general public importance in an effective and efficient manner, responding to the issues raised by the Supreme Court in the *Abbeylara* case.

The late Deputy Jim Mitchell was the instigator and chairman of what is generally considered to have been the most successful Oireachtas inquiry to date. The success of the inquiry is attributed to its relatively low cost, efficient turn-around, tangible outcome and importance in the public policy context. In 1998, the media published allegations that the Revenue Commissioners had made a deal with AIB over a significant deposit interest retention tax liability owed to them. Within days of the issue being reported in the media, the Chairman of the Committee of Public Accounts, Deputy Jim Mitchell, sought Dáil support to conduct an investigation into

the matter. The Committee of Public Accounts established a subcommittee and within 14 months had secured the necessary powers to hold the inquiry. It held public hearings and published its first report. In the year that followed, the Revenue Commissioners conducted a look-back audit generating £173 million — €220 million in today's money — in payments from the financial institutions in tax, interest and penalties. Individual bogus non-resident account holders were subsequently targeted in a massive sweep that brought hundreds of millions of pounds to the Exchequer.

Commenting on the inquiry, *The Irish Times* noted it cost £1.8 million and the televising of its public hearings enthralled a large section of the public. People could see their representatives demanding answers from representatives of the State bodies and financial institutions involved in that scandal. The inquiry's work helped to restore trust in the political system which had been shaken by damaging revelations concerning payments to politicians and low standards in public office. Perhaps the Minister will indicate what can be covered by these inquiries. It would be generally accepted that as a consequence of the Abbeylara decision the Oireachtas is not in a position to conduct an inquiry into the most recent banking scandal. I would favour constitutional change to allow for such an inquiry.

Speaking in April, following publication by the commission of investigation of its report into the banking sector, *Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland*, the Minister, Deputy Noonan, indicated that while he favoured the holding of such investigations by the Oireachtas, owing to the failures of the previous Government to effectively address the Abbeylara judgment it is not possible for Oireachtas committees to effectively fulfil this important oversight role. He stated that the Government would, therefore, hold a referendum to address the consequences of the Abbeylara judgment and would bring forth proposals in this regard in the course of the year. Hence here we are.

I have a few questions for the Minister. Can the Minister give us examples of the possible subjects of inquiry? Public concern in regard to certain issues may assist in decisions on what needs to be investigated. I believe we should have a full investigation into the banking issue. It was revealed earlier today by FÁS that it provided false information to a committee last year. What type of sanctions will be applied in that regard? Can persons brought before an inquiry block inquiries through the courts? What procedures are in place to permit smooth movement of an investigation through a committee so as to ensure people with deep pockets cannot block them through the courts? A particular case comes to mind.

Acting Chairman (Senator Paschal Mooney): Senator Sheahan must conclude.

Senator Tom Sheahan: Will legal representatives be asked or summoned to appear before an inquiry? Following the committee inquiry in regard to impeachment of Judge Curtin, legal fees of €2 million were sought and that was in respect of attendance at only a few meetings. It is hoped that will not happen again. What sanctions will be in place in respect of people who, having been called as witnesses to attend before the committee, do not co-operate and opt to take the fifth amendment?

Acting Chairman (Senator Paschal Mooney): Apologies. I am aware Senators have undertaken a lot of research in this area. While we are dealing here with complex legislation, the chairman may only allow each Member the amount of time allocated in today's Order of Business.

Before calling the next speaker, I welcome Councillor John McCartan who is in the Visitors Gallery. Councillor McCartan is a colleague of mine from County Leitrim whose father Mr. Joe McCartan served this House with great distinction for many years, both as a Member and

[Senator Paschal Mooney.]

as Leas-Chathaoirleach. He also went on to become a Member of the Dáil and European Parliament.

Senator Jillian van Turnhout: I welcome the Minister, Deputy Howlin, and the Government's proposed amendment to the Constitution, which will give the Houses of the Oireachtas full inquiry jurisdiction and rectify the deficiencies identified by the Supreme Court in the *Abbeylara* judgment.

While listening to Senator O'Brien, Sir Humphrey Appleby telling "Yes, Minister" that this is a courageous decision came to mind.

Deputy Brendan Howlin: Many courageous decisions will be made by this Government.

Senator Jillian van Turnhout: I am sure the Senator did not mean it in the same spirit as Sir Humphrey Appleby. I worked in a previous capacity with the Minister and I am aware of his commitment to fairness and on this issue.

In July, we had an opportunity to speak in this House on the Cloyne report, which right I fully exercised. I take this opportunity to reiterate my admiration for the work done by Judge Yvonne Murphy, as chairperson of the commission, and her fellow commission members. The Murphy reports were empowered under the Commissions of Investigation Act 2004 which was enacted to provide a more timely and cost-effective option to the tribunal of inquiry mechanism by taking a less adversarial approach, thus reducing the likelihood of resource to judicial intervention.

The Murphy reports have shown that this legislation is capable of providing for a robust, effective and efficient means of conducting investigations into matters of significant public concern. I understand that the proposed amendment is intended to provide a further improvement to and additional option within our inquiry mechanisms. I fully support the finding of the Joint Committee on the Constitution that the Constitution should expressly provide the Oireachtas with the power to conduct inquiries into matters of general public importance for the purpose of making findings in respect of the conduct of named individuals. I believe that subsections (2) and (3) of the proposed amendment meet these criteria. However, subsection (4) is a cause for concern for me. It gives the Oireachtas the power to "determine the appropriate balance between the rights of persons and the public interest and for the purpose of ensuring an effective inquiry". I am concerned about where that balance is.

Deputy Brendan Howlin: That is the unamended text.

Senator Jillian van Turnhout: So the text has been amended?

Deputy Brendan Howlin: Yes.

Senator Jillian van Turnhout: My apologies. I expected this legislation to be taken later today and had not obtained an amended copy as I was attending a committee meeting. I will reserve my comments in that regard to a later stage. I support what the Minister is trying to do. I will examine the amended text and come to it on Committee Stage. I support the purpose of the Bill.

Senator Ivana Bacik: I welcome the Minister to the House and apologise to him for not being here for the earlier part of his speech. I appreciate, as I am sure do all Senators, the Minister's work in the past and the risks he and his colleague, former Deputy and now MEP, Mr. Jim

Higgins, have taken in terms of investigation and bolstering the role of Oireachtas Members in conducting investigations.

I support the amendment, the purpose of which is to ensure dynamic and effective parliamentary inquiries. As stated by the Minister in the Dáil, it is also about rebalancing powers of the Legislature against powers of the Executive. The Minister has long been a critic of the over-dominance of the Legislature by the Executive. I agree entirely that it is unhealthy in any democracy for the Executive to have too much power. It is important we give our Legislature robust powers, including powers of inquiry.

Senator van Turnhout rightly referred to the recommendation of the Joint Committee on the Constitution in its fifth report, published earlier this year and which specifically recommends that, following the *Abbeylara* judgment of the Supreme Court, an amendment should be introduced to expressly provide the Oireachtas to carry out inquiries. The Supreme Court found, in the *Abbeylara* judgment, that any implicit powers of the Oireachtas did not extend to making findings of fact concerning individual culpability of non-members of the Oireachtas which involved damage to the good name of such individuals. It was necessary to introduce this amendment.

While Senator O'Brien stated that this legislation is being in some way rushed, I do not believe that is fair. The Joint Committee on the Constitution did a great deal of work on this issue, which has been a matter of public debate for some time. Nine years have passed since the Supreme Court issued its judgment and 11 years have passed since the tragic shooting of John Carthy in *Abbeylara*. It was necessary to introduce this amendment early in the lifetime of this Oireachtas in order to make it a relevant and effective body and to give us, as a Parliament, powers to carry out investigations. I believe in the right of parliaments to make inquiries.

As it happens, I am not sure the *Abbeylara* inquiry was the appropriate type of inquiry for us to launch. At that point, concerns were raised about the effectiveness or relevance of the Garda Síochána Complaints Board, which predated the Garda Síochána Ombudsman mechanism, which is the clear mechanism for investigating such shootings. Like other speakers in the Dáil and this House, I extend sympathy to the family of John Carthy. A question is raised as to whether it was the appropriate type of inquiry.

More appropriately — others have spoken about this — the far more obvious type of inquiry which needs to be undertaken, assuming the referendum is passed early in the term of the Oireachtas, is an inquiry into how the bank guarantee came to be passed. What were the events of that fateful night in late September 2008 about which, despite the volumes which have been written, we are still unclear? The Labour Party voted against the bank guarantee and we were the only party to do so. At the time I was an Independent Senator, and I was the only Independent Senator to vote against it. The Labour Party had very clear reasons for voting against it, which have been vindicated since. It would be important to see where the root of the bank guarantee came from and it would be an ideal theme for an inquiry.

To speak briefly about parliamentary inquiries, having seen committees in action as a member of various committees in the previous session and this one, the committee system can show parliamentary inquiries at their best where there is forensic questioning by a small number of well-informed Deputies and Senators who are investigating and asking questions of individuals or representatives. However, at their worst committees can be terrible talking shops and hot air fora, and a great deal of waffle can be spoken. It is important to keep committees tight in general and to keep their powers focused.

Deputy Brendan Howlin: Have you visited the tribunals?

Senator Ivana Bacik: Exactly, there is a clear parallel with the costly tribunals.

[Senator Ivana Bacik.]

Looking at the heads of the Bill, which helpfully have been published along with the referendum wording, it is useful to note a good deal which is included borrows from our experience with the different model of the Commissions of Investigation Act 2004. It is good to see many of the procedures used in that Act will be incorporated into the powers of inquiry Bill if it is passed. We have learned that this model can be a more useful and forensic model of investigation.

To turn to the words of the constitutional amendment, in so far as there has been criticism of the amendment — generally it has had a great deal of cross-party support — it has been of the proposed article 10.4°, which was amended by the Dáil on Tuesday to insert the words “with due regard to the principles of fair procedures”, and this answers at least one of the amendments being tabled today.

Like many lawyers and other people, I was concerned that as originally drafted, there appeared to be at least a diminishing of the role of the courts in conducting judicial reviews of the way in which parliamentary inquiries were conducted. The amendment, which as the Minister stated made explicit something he already regarded as implicit, puts beyond doubt the ongoing role of the courts. I thought Donncha O’Connell put it very well in an article he wrote, where he stated with regard to the original wording that just because deference might be suggested in the terms of an article it did not mean that judicial deference would be shown. In other words, that judges would certainly not regard themselves as excluded.

Deputy Brendan Howlin: They are not timid.

Senator Ivana Bacik: They are not timid, as we know. Judges have done a very important job in preserving this principle and I have no doubt it would have been preserved. However, this puts it beyond doubt.

Concern was raised that the wording, “It shall be for the House or Houses concerned”, implied it should exclusively be for the House or Houses. This is the phrase that implied exclusivity. This reading of the amendment is now clarified by the insertion of “with due regard to the principles of fair procedures” because the due regard the Houses would have would be a matter for the courts to judge. In other words, they will look at whether the House had due regard to the principles of fair procedures. This may have been the kernel of the difficulty with the original wording. The courts will decide whether the regard the House or Houses had to the appropriate balance was due in accordance with the Constitution.

I am glad this amendment has been proposed. Donncha O’Connell and Eoin Daly had raised concerns and various points had been made in the media about the spectre of McCarthyism and vindictive Members of Parliament conducting inquiries that went well beyond any type of reasonable exercise of parliamentary investigative powers. This criticism was somewhat overblown but nonetheless I am glad the amendment has been proposed.

Yesterday, the Minister, Deputy Shatter, referred to an amendment he made in the Dáil to the wording of the amendment on judicial pay to insert the word “proportionate”. He called it the “to be sure to be sure” amendment and the same description could be used about this.

Looking at the heads of the Bill published by the Minister, it would be worth strengthening some of them in light of the “to be sure to be sure” amendment, particularly head 11 which refers to the oversight committee and making rules relating to the conduct of proceedings. It states the rules shall include rules relating to fair procedures applicable to witnesses and that these rules should also refer to the granting of legal representation or rights to cross examine which, as the Minister stated, might be granted in certain cases. They are not by any means precluded under the legislation. Head 11(4)(h) refers to the type of rights that might be

balanced, and specific reference should be made to the rights of persons against whom allegations of wrongdoing have been made, in particular the right to a good name. This is referred to earlier in head 11 but it would be worth emphasising it as a right to which the Houses of the Oireachtas would have to have regard in drawing the appropriate balance that is required to be drawn.

Acting Chairman (Senator Paschal Mooney): The Senator's time is up.

Senator Ivana Bacik: I apologise.

Acting Chairman (Senator Paschal Mooney): Forgive me.

Senator Ivana Bacik: I am only getting going.

Acting Chairman (Senator Paschal Mooney): What is good for the goose is good for the gander.

Senator Ivana Bacik: This is the substantive point I wanted to make. I also wanted to raise some procedural points on how the investigators would be chosen. Very detailed provisions are made about the tendering process by which persons would be appointed to assist investigators. Who are the investigators themselves would depend on the ambit of the inquiry; for example, they might be accountants or auditors in an inquiry into banking.

I very much welcome the Bill. It is very important that the amendment is passed to ensure robust powers of investigation to us as an Oireachtas and that it will assist in rebalancing our powers against those of the Executive.

Senator Rónán Mullen: On a point of order, Senator Barrett will speak first from our group but I would like to ask in view of the importance of this topic, and the fact that I have tabled an amendment and so would like to speak for a little longer on Second Stage so as to avoid an excessively protracted Committee Stage, whether the Deputy Leader will agree to allow the second rota of speakers to speak for eight minutes if they wish to do so.

Senator Ivana Bacik: I have no objection to this.

Acting Chairman (Senator Paschal Mooney): The proposal must come from the Acting Leader.

Senator Tom Sheahan: We will accede to Senator Mullen's request in the interests of fairness and make the proposal.

Senator Rónán Mullen: I thank the Acting Leader.

Acting Chairman (Senator Paschal Mooney): To confirm, it is proposed that all non-spokespersons will have eight minutes rather than the original five minutes to contribute on Second Stage. Is that agreed? Agreed.

Senator Sean D. Barrett: As the Minister came to the House early I might finish early and donate some time to other Members. I agree with virtually everything that has been said on all sides of the House on this matter, where people have caveats and where they strongly support it. My heart is enthusiastic, my head supports it but my wallet is a bit worried and if I wore a wig of the legal kind I would be delighted at the prospect of more litigation, but this is the path we run.

[Senator Sean D. Barrett.]

I admire greatly the introductory part of the Minister's speech, as I admire the reforms he has made in other areas. We need to make Parliament relevant. It is a huge part of why I have been sent here. Public trust and confidence has been lost in many institutions and this certainly influenced me to want to be here. Parliament is crucial for a country which has so much despondency with institutions and which had to be rescued by the International Monetary Fund, the EU and the ECB. The general election was not about changing the Government, it was about changing governance and I am delighted to see that we are doing so.

The Abbeylara decision filled the country with despair because we felt no redress was available. We need to restore confidence in the idea that the citizen has rights. This is what the Minister has done. The early parts of his speech harked back to a time when Parliament was held in high esteem by the people. Henry Grattan never held office, but what was known as Grattan's Parliament played host to oratory. Edmund Burke, an important person in the development of Westminster Parliament, was of Irish descent. Daniel O'Connell achieved major gains for the majority community of this country through his membership of the Westminster Parliament.

As the Minister stated, Parliament is not a tool of the Executive. Many of the Comptroller and Auditor General's reports to the Committee of Public Accounts are excellently researched and contain thorough analyses and scarifying numbers. The committee's Chairman issues these reports, but they disappear into the sand. We must examine how to develop the research element undertaken by that valuable constitutional officer, namely, the Comptroller and Auditor General.

The question of the banks is the leading issue. The Joint Committee on Finance, Public Expenditure and Reform, chaired by Deputy White, has asked that those involved send on their accounts of the event, an idea that relates to a query by Senator Bacik. Deputy White's post box is not overburdened by responses as to what the bankers believed they were doing. The banks do not realise the damage they have done to the country and are largely insulated from the consequences of their actions. In that light, this procedure is necessary. It is also necessary, given the number of people in Departments who do not write anything down because someone in the press might discover it under the Freedom of Information Act. That Act has led to less information being revealed than we had hoped.

Like other Senators, I support the Bill broadly. A caveat relates to section 4. I appreciate the Minister's work in this regard. A committee chairman will need to be alert in case a member steps out of line. Even then, he or she might be too late and people who felt aggrieved by the proceedings could look for compensation. This would open up another gravy train, which we do not want. Members will need certain training to be able to fulfil the requirements contained within section 4. We do not want to get the Oireachtas into trouble or incur extra burdens on the taxpayer. We need to know the fair procedures fully.

I am concerned about people bringing their lawyers into the Oireachtas. Where it occurs in other jurisdictions, no one answers a question until a cadre of lawyers tells him or her what or, more likely, what not to say. This is a danger. Everyone also fears the example set by US Senator McCarthy, which is another situation we do not want.

Hopefully, this procedure will not lead to yet another round of litigation, we will all be prepared and there will be good chairpersons. I am glad that the Whips' rule will not apply. It is a part of the Irish parliamentary tradition. Parnell invented the Whip system as a Member of the UK Parliament.

Like the Minister, I am concerned about people with deep pockets. Two eminent people outside the front gate of Trinity come to mind. Edmund Burke stated: "A perfect democracy

is therefore the most shameless thing in the world.” I commend this amendment, as it advances our democracy. However, Oliver Goldsmith stated: “Laws grind the poor, and rich men rule the law.” Through Parliament, people who are not rich will have redress to secure their rights.

The early parts of the Minister’s speech was an account of how the Parliament evolved to meet citizens’ needs. On this basis, I gladly commend the Bill to the House.

Senator Deirdre Clune: I welcome the opportunity to contribute on the Bill and the welcome change it proposes. The people will be able to decide whether they want to change their Constitution to ensure the Oireachtas is given powers of inquiry. As other Senators have stated, it will rebalance the power deficit between the Legislature and the Executive. The people will be consulted, an important factor at a time when, according to some, there is a democratic deficit and people do not feel involved with their local and national representative bodies. From this point of view I welcome the Bill. The Minister has championed this cause for many years. It is appropriate that he be the person to steer this and related legislation that is to be published soon through the Parliament.

I have listened to the contributions of Members from both sides. While I share some of their concerns, I welcome the amendment because we will be well able to step up to the challenge. However, I am concerned about committee members speaking out of turn and inciting defamation court cases by impugning people’s good names. According to the Oireachtas Library’s documentation on this Bill, the Supreme Court was particularly concerned about members of the Abbeylara sub-committee commenting openly in the media prior to and during that inquiry. This concern was raised a number of times during the Dáil’s consideration of this Bill. It can be addressed so that members will take the situation seriously. Committee members will be well briefed and supported in their work.

Like Senator Darragh O’Brien, I was a member of the Committee of Public Accounts during the previous Dáil. The committee never divided, as its members worked together to deal with the business before them. They were supported ably by the Comptroller and Auditor General. The committee’s work under various chairpersons stands to its reputation. It is a leading light of the Parliament. It does its work without fear or favour. I hope and expect this approach will be taken by other committees. The Minister is well aware of the potential pitfalls, but we should all embrace this opportunity.

In my experience, the Committee of Public Accounts takes its business seriously. The Joint Committee on Investigations, Oversight and Petitions will also step up to the plate and perform its duties in a way worthy of the electorate.

Senator Thomas Byrne: I thank the Minister for attending. It is welcome when the Minister with responsibility for a particular Bill appears before the Seanad, as it does not always happen.

I will bore the Government side by pointing out that it is a specific commitment in the programme for Government not to hold all Stages of a Bill on the same day. I have no problem with guillotines and time limits should be applied when scheduling business. We never seem to use the time we have anyway. However, holding Committee Stage straight after a Second Stage debate is pointless. We might as well not have Committee Stage, as one will not have had enough time to reflect on the issues and to be informed by the Second Stage debate.

The procedure on most legislation in this House now flies in the face of specific commitments from the Government, which is not right. We will make that point time and again, using whatever procedures we must to continue to do so. There is a rush now but the Government has been in power since February. This could have been dealt with.

Deputy Brendan Howlin: We are here since March.

Senator Thomas Byrne: The election was on 25 February. I accept the Government was formed in March. We support the legislation but we have concerns about it. I do not claim to have expert knowledge but I would like the Minister to answer on an issue, as I presume it has been dealt with by the Government or Attorney General. The Abbeylara decision referred to a prohibition on making adverse findings of fact.

Deputy Brendan Howlin: It refers to potential.

Senator Thomas Byrne: I believe “adverse findings of fact” is the language used by Mrs. Justice Denham and others in the majority.

Deputy Brendan Howlin: There was no Abbeylara judgment in that regard and we were not off the ground. It was concerned with the potential to make adverse findings.

Senator Thomas Byrne: I wonder why the word “adverse” will not be in the constitutional amendment. The constitutional amendment refers to findings of fact but in my brief reading of the Supreme Court judgment, it refers to adverse findings of fact. Does that create any difficulties? I am sure the Minister will have the answer and I do not claim to have any specific knowledge on the matter. As far as I can see, we are providing for a different position which might not be as strong as could be required. I acknowledge that many people have studied this issue in greater depth than I.

Senator Ivana Bacik: The Supreme Court indicated there was a very limited power inherent in the Constitution in any case for Oireachtas committees. The Dáil and Seanad had a limited power.

Acting Chairman (Senator Paschal Mooney): That is not a point of order, although I am sure the Minister is flattered that you are helping his case.

Senator Thomas Byrne: My point was about the Supreme Court ruling.

Senator Ivana Bacik: I take the Senator’s point.

Senator Thomas Byrne: The Supreme Court found it unconstitutional to make adverse findings of fact. I am wondering why we are not allowing for the Oireachtas to make adverse findings of fact. Could somebody make the argument that a finding of fact does not mean an adverse finding of fact? That is significant and I would like to know the advice given. I am not making a case or claim but the issue occurs to me having briefly read the judgments.

The operation of this legislation will require behavioural changes for Members. It is all very well for us to speak about any issue and criticise individuals, which all of us do. We all talk about bankers, developers and how they have ruined the country. Most of us expressed our disappointment with the likes of Seán FitzPatrick and Michael Fingleton. I have made strong statements about those individuals and a vice chairman of a committee made strong and derogatory statements about Michael Fingleton and Seán FitzPatrick while in the Seanad. They are correct. However, if those individuals were to be brought before an Oireachtas inquiry, will the fact that Oireachtas Members could have already prejudged their position on the individuals, as evidenced in Seanad and Dáil debates, harm the role of the Oireachtas in investigations? I have mentioned two individuals but do not want to prolong difficulties; I have made statements about them before. Surely such individuals could protest against a Deputy’s presence on a committee if he or she has already criticised them in the Dáil or Seanad.

How can this be dealt with? I presume a fundamental point of fair procedure would be for those on the committee not to prejudge an issue. I could not sit in judgment of the individuals

I mentioned as I have prejudged them; they have contributed to ruining the country. That opinion should exclude me from the workings of a possible committee. It is difficult as nobody can blame Oireachtas Members for being angry at those individuals. These powers will mean Members must moderate language and statements in the Houses of the Oireachtas, despite our full privilege to say what we like. I presume somebody could make a case that a judgment has already been made in a matter.

We must be aware of that matter and the potential difficulties for a banking inquiry. I would like to see the bank guarantee fully investigated, although I know the late former Minister, Mr. Brian Lenihan, gave his full side of the story before his unfortunate departure to the next life. We would like to see exactly what went on because we have felt significant consequences. It is also worth noting that there have been at least three inquiries into the bank guarantee, including a commission of inquiry.

What concerns me is that conclusions in those reports were not accepted by the parties now in Government. We are afraid that a commission of inquiry could occur under relevant legislation, with certain procedures and eminent people put in place to make those investigations, but the Government may not be happy with the outcome; in such a case the matter could be put before an Oireachtas committee that could be prejudged and political. These are obvious dangers.

If we are to investigate a matter that has not yet arisen, we should moderate our tone, which will be difficult for all of us. We have all made certain types of statements and findings of fact.

Senator Darragh O'Brien: For some it will be more difficult than others.

Senator Thomas Byrne: We must reflect the frustration of the people at times. There is no doubt that when unemployment is so high and our problems have been caused by so few, that is entirely understandable. If we sit in judgment of individuals we will enter a different scenario. These are the small issues I have. I have not had the opportunity to read the Bill because of a lack of time.

Senator Rónán Mullen: I did my best to extend the time.

Senator Thomas Byrne: I accept that. We are all on the one side and there should be a more thoughtful processing of legislation.

Deputy Brendan Howlin: It was published a week last Monday.

Senator Thomas Byrne: We must be very careful in this regard. There will be significant responsibilities and burdens on Members in investigating people. The text of the constitutional amendment does not seem to exclude the possibility of making criminal findings against individuals, where we can argue that somebody is guilty of a crime. I am not sure that would be a role for the Oireachtas but it is not excluded by the current wording. I wonder if that is the intention.

Senator Rónán Mullen: I will support the Senator's amendment on that.

Senator Thomas Byrne: I do not know how a future Supreme Court will interpret this provision if it is litigated upon. If amendments are proposed by Senator Mullen and rejected by the Seanad, there may well be a negative impact in the interpretation of the Supreme Court.

Senator Rónán Mullen: There will not. There cannot be.

Senator Thomas Byrne: It may be. There is a range of issues to consider with the legislation and we are rushing it slightly. I thank the Minister for attending the Seanad.

Senator Rónán Mullen: I was about to check that point, which must be examined before Committee Stage.

Senator Thomas Byrne: That is the point. We do not have the time.

Senator Rónán Mullen: I wanted to check whether the Senators will support my amendment. I suspect I will find out before Committee Stage.

Senator Darragh O'Brien: We will let the Senator know in due course.

Senator Rónán Mullen: I welcome the Minister to the House. I am sure he has come across a play I am very fond of, Robert Bolt's screenplay of "A Man for All Seasons". There is a moment in that where Sir Thomas More addresses the man who will be his son-in-law, Will Roper, and states:

This country is planted thick with laws, from coast to coast, Man's laws, not God's and if you cut them down — and you're just the man to do it — do you really think you could stand upright in the winds that would blow then? Yes, I give the Devil benefit of law, for my own safety's sake!

I have grave reservations about this referendum proposal, although I acknowledge the Minister's bona fides and commitments in this issue. We are making a mistake and losing sight of important principles, and certainly the separation of powers. There is also a need to respect fair procedures in a very fundamental way. My proposed amendment on Committee Stage will reflect that.

There are three parts to this proposed constitutional amendment. There is the idea that the Houses will have powers to conduct inquiries on matters of general public importance, but I am not convinced. We should see our role as scrutineers of policy and legislation——

Deputy Brendan Howlin: Uniquely in the world.

Senator Rónán Mullen: ——and we have mechanisms to establish proper inquiries as I shall outline and as the Minister knows.

In the course of such inquiries we may make findings on conduct. I thought, as I listened to Senator Thomas Byrne, of the line "he strikes but fears to wound". I am worried that even at a time like this the best we can get, by way of opposition, is some form of general warning, wringing of hands and concern that "there might be issues here lads" without any real commitment to putting forward well thought out amendments that might address issues of possible concern. We can foresee, at this time of weak opposition, what future abuses we might have to contemplate when there is even less opposition in Parliament. We are making a great mistake.

I note the recent effort to amend this to read "it shall be for the House or Houses to determine but with due regard to the principles of fair procedures". The fact is it is left to the Houses to determine the balance between the rights of persons and the public interest. The Minister said — I paraphrase him and hope not unjustly — we should not worry about or be hidebound by what went on in the past and warned about people with deep pockets presumably having access to the courts. Such access is a fundamental right and should never be denigrated in any way in this Parliament. The whole concept of the separation of powers means that we should never make the slightest attack on people's access to the courts. By analogy, the attitudes underlying this legislation mean that the High Court rather than the Seanad Committee

on Members' Interests was wrong in the case of former Senator Callely. We need our courts to make rulings on fair procedures and human rights even when they risk making unpopular decisions and delaying inquiries. We are going down a bad road if we set up politicians to judge these matters when politicians, time and again, have shown themselves to either lack the calibre to make fine distinctions and judgments on serious issues concerning people's reputations or lack objectivity and are too prone to give into the temptation of partiality depending on their party political interests.

I shall cut to the chase. It is the final subsection of the proposed wording contained in the Bill that I worry about because it strips the constitutional protection of natural justice from those who are the subject of Oireachtas inquiries. This is the case even allowing for the recent amendment that substituted the phrase "it shall be for the House or Houses concerned to determine the appropriate balance between the rights of persons and the public interest" with "it shall be for the House or Houses concerned to determine, with due regard to the principles of fair procedures, the appropriate balance between the rights of persons in the public interest". The amendment changes nothing because it remains with the Houses of the Oireachtas only to decide what constitutes an "appropriate balance with due regard to fair procedures". As such, this Bill effects a very dangerous power grab by the Executive via a vetoing of the possibility of judicial review.

It also means that the voluminous criticisms of the Bill levelled prior to the amendment stand. The Minister has adopted a rhetorical strategy similar to the Minister for Justice and Equality, Deputy Shatter, *vis-à-vis* the Twenty-ninth Amendment of the Constitution Bill which is to say that all inadequacies in the text itself can somehow be resolved by the jurisprudence of the higher courts, a jurisprudence which seeks to harmonise all constitutional provisions. This ignores the simple fact that the text, as it stands, is simply not in harmony with the separation of powers doctrine inherent in the Constitution as well as the clear case law supporting a person's right to benefit from the principles of natural justice *nemo iudex in causa sua* and *audi alteram partem*.

This issue is no small matter given the political composition of an Oireachtas inquiry and the potential impact on a citizen's good name resulting from any adverse findings. It is one thing, and perfectly legitimate, to allow Oireachtas inquiries to make robust findings of fact and to draw conclusions from them. This can only happen after the most thoroughly and patently fair investigation because the alternative is McCarthyism. A citizen whose reputation is impugned by the findings of an Oireachtas inquiry may not challenge the findings in the courts because of parliamentary privilege. His or her only hope of making sure that conclusions are rooted in fact is to be allowed to put forward his or her side of the case before a neutral arbiter. This is all that natural justice means, to have an unbiased committee that listens to both sides of a case before making any decision. How worrying it is then that we are seeking to deprive individuals of the fundamental right to fair play under the guise of cost effectiveness. There are broader concerns at play here. To exclude the courts entirely from reviewing the fairness of an inquiry is an attack on the separation of powers which must be justified by more than political expediency.

In the heat of a general election the people of Ireland were called upon by the Labour Party and Fine Gael to vote for real change. Yet the first page of Fine Gael's new policy document identified "a hugely centralised State with few real checks and balances and an over powerful Executive that increasingly ignores the Dáil" as key failures of the political system in Ireland. This Government seems determined to push forward with their own initiatives which have the potential to reduce transparency, undermine fair play, indirectly extend Executive power and dangerously tilt the balance of rights in our Constitution.

Deputy Brendan Howlin: Extraordinary, it is a falsehood.

Senator Rónán Mullen: The Minister's answer to this charge has been that he has published the draft heads of a Bill that will commit the Government to natural justice during any inquiry. Leaving aside the various objections to the text of the heads, it may simply be answered that protection at a legislative level is much weaker than protection at a constitutional level. It is the easiest thing in the world to change an Act of the Oireachtas if the safeguards contained in it do not suit any future Government and this is the reason those who framed our Constitution saw fit to protect us from this kind of petty tyranny by giving us the safeguard of natural justice at a constitutional level.

Not only that but almost all of the most recent Oireachtas inquiries, such as the DIRT and Curtin inquiries, as well as the independent inquiries such as the Murphy commission, required special legislation to deal with their particular circumstances. This being the case it is highly likely that a future Government will be tempted to weaken the safeguards in the Minister's heads of Bill.

I shall conclude shortly and ask the Acting Chairman's indulgence. When one considers what is at stake it is highly likely that a future Government will be tempted to weaken the safeguards in the Minister's heads of Bill when passing future special legislation to deal with an inquiry under the amended constitutional article. I need a few more seconds and I would be grateful for the Acting Chairman's indulgence given all that has been said today about guillotines and so on.

Senator Ivana Bacik: We have already amended the Order of Business to facilitate the extension of this debate.

Senator Rónán Mullen: I am grateful but the Senator will see the justice of my position. She may be satisfied that I will conclude with a quotation from a member of her party: "The joint committee's eventual wording was widely accepted as being a sensible and balanced amendment." I have endeavoured, in my amendment, to reintroduce this wording into the text of the amendment Bill. It is such a pity then that the Government has seen fit to amend the wording of the final subsection that was arrived at after such careful consideration. Instead it asks us to take what Donncha O'Connell, NUIG, whom I believe to be a member of the Labour Party, writing in *The Irish Times* last week called "frankly a rather Olympian leap of faith".

In conclusion, I ask the House to ponder seriously whether this Bill lives up to the ideals of fair play and justice to which Ireland is committed. Equally, it should ask itself whether the commission of investigation we brought to life a short seven years ago, and has done so much good since, might not be the best way forward if there is need for a public inquiry.

Senator Paschal Mooney: I am afraid that I am one of those people who is betwixt and between. I hate being in such a position because the arguments put forward by both sides contain considerable merit. I was in the House when the Abbeylara inquiry was brought to a sudden halt, literally overnight. I remember the late Seán Doherty chaired the committee investigating the telephony elements of a tender that was within 24 hours of completing witness statements and producing a finding. In its aftermath I applauded the efforts by the Minister present and Mr. Jim Higgins, MEP. I particularly applauded the efforts of Deputy Alan Shatter, now the Minister for Justice and Equality, who if I am correct went to the High Court at his own expense, or perhaps at the expense of the Houses, representing the Houses of the Oireachtas. The initiative was taken within these Houses to challenge the decisions taken that stopped the inquiries. I applauded that instinctively at the time because I felt that the people are sovereign and elect the Members of both Houses to represent them in all things. While I

accept the idea of the separation of powers, Members were obliged to act in the public interest at all times and that was the motive behind the initial inquiries that were stopped suddenly.

That was my starting position but then I read articles in the immediate aftermath of the publication of this Bill that seemed to suggest that a certain architecture had subsequently been put in place that addresses the difficulties that arose around the time of the Abbeylara and other inquiries and focused the minds of the Judiciary to such an extent that they stopped us collectively from conducting similar investigations.

I was struck, and still am, by the fact that Governments have appointed judges or former judges to head inquiries and those inquiries appear to have been carried out in a fair and judicious manner with minimum cost to the State — the Murphy report is one example — and in a speedy and efficient manner. That raised the question in my mind of whether taking this road will result in a lawyers' charter. All the safeguards that are built into the Bill, coupled with those that Senator Mullen suggests are not included, appear to be centred around the rights of the individual, and those constitutional rights must be protected at all times. A citizen, therefore, much as they might believe they are competent in the area of law, will inevitably have recourse to the legal system. The question thus arises as to whether these inquiries, once they are initiated, become a lawyers' charter and we ultimately find ourselves in a situation where we should not have taken this road at all. That is where I am betwixt and between.

I assume the Referendum Commission will discharge its obligations to the public in advance of this referendum by putting forward the for and against positions; in other words, it will explain the reasons for them. The Referendum Commission takes a neutral position on referenda and puts forward the pros and cons to the voters, like a balance sheet——

Deputy Brendan Howlin: It is explained.

Senator Paschal Mooney: Fair enough, but in that explanation it outlines the upside and the downside. That is what I am attempting to confirm. The McKenna judgment ensures that the Government of the day, even though it has the right to initiate legislation leading to a constitutional referendum, cannot now use public funds to put forward that view actively. That is where the Referendum Commission steps in. It appears that the Minister will not only be under the scrutiny of these Houses in this regard but also under the scrutiny of the Referendum Commission, which I believe is a positive aspect of an open democracy. The Referendum Commission has done a very good job to date and undoubtedly if and when legislation comes before the Houses to abolish the Seanad, the commission will come into its own in ensuring that the people of Ireland have a fair and balanced approach to the workings of this House.

Will the Minister clarify, when this legislation is passed and, presumably, approved by the people in a referendum, what will happen the architecture already in place which appears to have served us relatively well, particularly where the Government has the right to appoint somebody to investigate matters of public interest, as it has done successfully previously? As we inherited practically all our parliamentary practices from the “mother of parliaments”, it is striking that its system also provides for the government of the day to appoint judges, former judges or people of expertise to carry out inquiries, for example, the Chilcot inquiry. John Chilcot, whom I had the pleasure of knowing in his other role as the head of the Northern Ireland civil service during the Troubles, headed the inquiry into the Iraq war.

Will all that go by the board? In future, where matters of public interest arise, will that particular procedure not be activated by the current or any future Government? Will the Government simply decide it has no need for that system any more because the Houses now have the right to carry out these investigations? That raises all the issues Senator Mullen

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mentioned with regard to impartiality and independence. We are all prejudiced to some degree and that prejudice, be it for good or ill, is based on past experiences or knowledge. I remember the McCarthy investigations when I was a child, and Senator Mullen has also referred to them. That was an extreme example. In fact, we tend to look to the American democratic system as the most effective in terms of the inquiries that are regularly carried out by the members of Congress. They are open and transparent, and that is the American way of doing things. Generally, we have applauded that. They appear to have been able to investigate those who are involved in a particular subject to such an extent that a great deal of information emerges from the questioning and the inquisitorial nature of congressional committees. I presume the Minister is influenced to some degree by the American system of congressional committees of inquiry. In my opinion, that appears to influence a great deal of what is in this legislation.

Ultimately, the people will decide on this. Considering the most recent experience of politicians investigating themselves, which has already been referred to, we have not really done a very good job and the commentary outside the House on this legislation has focused on that. Where there have been internal inquiries carried out by politicians, they have not worked.

An Cathaoirleach: The Senator must conclude.

Senator Paschal Mooney: Thank you. I will have to stop as I was trying to stop everybody else when I was in the Chair.

I am not sure I fully agree with Senator Byrne's contention that if we make public statements criticising individuals who subsequently might appear before a House committee, that somehow disbars us from participating in those committees. This issue has arisen a few times and perhaps the Minister has an opinion on whether prejudicial remarks made by politicians will disbar them from subsequently being involved in committees of inquiry. The way the legislation is framed suggests that irrespective of the personal opinions or those publicly stated in these Houses under privilege it should not necessarily disbar them. Ultimately, it is about findings.

Finally, am I right in suggesting that the conclusions of any inquiry are essentially findings and that if subsequent legal sanctions are to be introduced, does that mean the separation of powers comes into play and the Attorney General or the Director of Public Prosecutions can then, as happens with the current tribunals, act on those findings if the findings indicate there is some implication that the law has been broken? If this legislation passes, is it correct to suggest that these inquiries will essentially be providing findings and that they will come to a conclusion but they will not necessarily be acting in a judicial context? Will they be quasi-judicial——

Senator Ivana Bacik: They cannot impose sanctions.

Senator Paschal Mooney: ——or is it essentially just inquiries?

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I thank all the Senators for their thoughtful contributions. They have obviously reflected on this.

I have been reflecting on this matter for a long time, and I worked in the all-party committee on it. I will deal with the specific points raised as I realise people's thought processes are evolving. However, I ask them to start from the basis of respect for democracy and for the people's choice in selecting Members of these Houses. They should not be fearful that somehow the elected representatives of the people are so unworthy and flawed that they cannot be trusted to act fairly or impartially, as was implicit in some of the comments. There is almost a notion that we are so flawed that we cannot be trusted so we will leave it to the courts or

tribunals or somebody else. However, the really accountable people are those who put their names on a ballot paper and are elected.

I am not suggesting that we trample on the separation of powers; in fact, it is the reverse. I am saying we should assert the separation of powers by giving to the courts what is for the courts, but not shrink from what is properly the purview of parliament, as has been the case for too long in this jurisdiction.

Senator Sean D. Barrett: Hear, hear.

Deputy Brendan Howlin: Some people want to continue that. They can create as many straw men as they wish to show how flawed we are to do the work but, objectively, there are many decisions in the courts that are the law but are not necessarily just. We need to have that debate.

This is a simple proposal. It does not trample on the separation of powers in any way; it simply asks Parliament to function like virtually every other parliament on earth, to hold inquiries and to find facts that impact on policy and legislation and that hold public officials to account. It is not so shattering or awful; it is normal. Many things that are normal elsewhere are not normal in this jurisdiction and we want to reassert that.

Senator O'Brien talked about the impact of the proposal on the Committee of Public Accounts. I went through the structure of this in detail and how it would operate, assuming the people supported it. A committee of the Houses could determine an issue was of such importance it needed to be investigated. It would apply to the Committee on Investigations, Oversight and Petitions and make a case and the Committee on Investigations, Oversight and Petitions would decide if investigation was merited. If it determined it merited investigation, it would draw up the terms of reference and prescribe a timeframe and make a submission to the Dáil and-or the Seanad and the Houses would then vote on the proposal. If the Committee on Investigations, Oversight and Petitions did not feel investigation was warranted, there would be no further appeal. It has the power over this objectively. The chairman is independent and drawn from the Opposition benches, currently a member of Sinn Féin, and would operate without a Whip in making that decision. That is how a functioning parliament would work. The Committee of Public Accounts would be the same as any other committee; it would simply make an application. This would enhance its powers but it would not be able to determine any more than any other committee that an inquiry should take place, it would be a matter of making a case.

The legislation provides for a mirroring of the procedure carried on in the DIRT inquiry, with a fact finding phase. The first phase would be the gathering of information privately to form the basis of the inquiry. The fact finding could be done by the Comptroller and Auditor General, the Ombudsman or someone completely new where the facts are not adduced in private first, such as a lawyer, an accountant or someone with a specific knowledge of the skills required in a particular area. That would be the basis for making the determination, the same as the Comptroller and Auditor General does for the Committee of Public Accounts.

Would the protocols be subject to court oversight? It is important to be clear on this. From the very beginning, the focus has been on subsection (4) of the Schedule, "where it shall be for the House or Houses concerned to determine with due regard to the principles of fair procedures". I put in "with due regard for the principles of fair procedures" although I was absolutely assured by the Attorney General that of course fair procedures apply under Article 40.3 of the Constitution and would be vindicated and justiciable by the courts. Putting it in explicitly, however, makes it crystal clear that someone must determine with due regard to the principles of fair procedures if it is alleged the Houses have not applied them fairly and of course the

[Deputy Brendan Howlin.]

courts would do that. The notion that somehow the courts would be timid in asserting that right flies in the face of our experience and all advice I have from the law officers of the State.

Someone might feel aggrieved in the balancing act that the Oireachtas should do. We will deal with that in Senator Mullen's amendment, where he wants to ouster the Oireachtas from the balance. It is a matter of practicality. The line committee, having been authorised by the Committee on Investigations, Oversight and Petitions, is sitting and someone makes an application. The ruling must be there, we cannot trot off somewhere else on a day by day basis for ruling. Practically it should be for the Houses under set norms and protocols to make that determination. If someone feels their constitutional rights, or rights beyond the Constitution in terms of our international obligations or the provisions of the European Union Charter on Fundamental Rights, have been breached, he has the right to have that oversight checked by the courts. It is not an issue.

The notion that Minister's should not make suggestions and questions about the role of Whips arose. Ministers should not be any different from anyone else in having views on this. Many Members suggested there should be an inquiry into the banking system. Am I to be precluded from having an opinion on that? I should not be, I am an elected Member of the Houses and should be allowed a view.

The oversight committee is restricted, it will not conduct the investigation, it will determine the terms of reference; it is the gatekeeper of the investigation. It will determine if the issue is of such importance that it requires investigation and will craft the terms of reference. The line committee or a subcommittee of it will actually conduct the investigation.

In the past, the Executive set the terms of reference for tribunals of inquiry. I have been involved in one or two inquiries; I worked hard to get the Morris tribunal established and its terms of reference, which were voted through the Houses by a majority. My original proposal to establish a tribunal of inquiry into activities in Donegal was defeated by one vote. Amazingly, included in the terms of reference of the Morris tribunal, which people say is the model we should use, was the conduct of Jim Higgins and me as whistleblowers but excluded from the terms of reference was the conduct of the Minister for Justice, Equality and Law Reform. It was an extraordinary set of circumstances because that was the nexus of where decisions were made.

Senator Darragh O'Brien: That answers my point, that was my concern.

Deputy Brendan Howlin: The terms of reference will not be laid down by the Executive.

Senator Thomas Byrne: There already has been a Government commitment to hold an inquiry under this system, the Michael Shine affair. Does that stand?

Deputy Brendan Howlin: If this process is accepted by the people in a referendum, the process to determine appropriate matters for investigation lies with the oversight committee.

Senator Thomas Byrne: The Minister for Health has already given a commitment on behalf of the Government.

Deputy Brendan Howlin: I am saying what the law is and I would like the House to engage with this and not with who said what. This is a process and I recommend it be approved. It is modern, democratic and open.

I have not responded to all Senator Darragh O'Brien's points yet. Obviously legal and secretarial support will be required. On the issue of bias and the suggestions that if anybody

made a general utterance, he or she would be precluded from involvement in a committee, my experience is that judges allow themselves a great deal of tolerance. They do not preclude themselves if they were involved in cases but objectively discussing the banking system in general principles is quite different from being involved in an investigation of a narrow terms of reference. There must be a test of objective bias and that will be determined in the selection of members who are appropriate to serve on any committee.

Senator Rónán Mullen: It will be a nightmare.

Deputy Brendan Howlin: Why would it be a nightmare?

An Cathaoirleach: Will Senators allow the Minister to finish?

Deputy Brendan Howlin: These issues are a nightmare for people who do not respect Parliament or the notion that we could have objective people as Members of Parliament.

Senator Rónán Mullen: From a small group.

Deputy Brendan Howlin: You can create straw men to defeat any proposal and then one is left with the *status quo*. The *status quo* is not working. We have had tribunals of inquiry that have lasted decades and cost hundreds of millions. We want an efficient system. We want Parliament to work. We want people to engage with Parliament rather than creating straw men who will say it cannot work and we will do nothing and leave it as it is, at the mercy of God.

Senator Rónán Mullen: False choice, Minister.

Deputy Brendan Howlin: Instead of that, let us try to engage in a process and see what happens. Why should the Members of the Oireachtas uniquely be incapable when every other parliament that I have looked at, can do it well and impartially and do not ridicule their members for having opinions?

Senator Ivana Bacik: Hear, hear.

Deputy Brendan Howlin: Let us consider the role of the Houses of the Oireachtas and the separation of powers. As I said, it will not be a role for the committee to second guess the courts. I accept Senator O'Brien's natural admonition "Bí curamach", but we must be courageous as well. We have to test the waters, if this model is not completely robust, we will tweak it again but the constitutional framework will give us the scope to do that. If the issues are explained properly to the people, they will welcome it. Senator Sheahan alluded to the promised radical reforms; these promises reforms will be delivered. He also spoke positively on the role of the Committee of Public Accounts.

I do not think I should venture into the scope of inquiries. I will allow individual committees to discuss that and come up with suggestions. I do not expect a queue of inquiries. As Members have alluded to, there will be three different mechanisms if this Bill is enacted to look into matters of public concern. We have two at present — the tribunals of inquires mechanism under the 1921 Act, the original Act that has proven fraught; and the more recent mechanism, the Commission of Investigations Act 2004, which has worked but is not completely satisfactory. When a report on an issue such as an accusation against Fr. X or Brother Y, and it is a matter of public policy, people want to see public accountability. There needs to be more than that, in some circumstances. Not everything will be suitable. If we have three different mechanisms to hold inquires, all the better.

[Deputy Brendan Howlin.]

As I say, most of the focus has been on subsection (4), the power of the Oireachtas with the specific additionality that I included with due regard to the principles of fair procedures. There can be no doubt that the Oireachtas must have regard to the principles of fair procedures. There was never any doubt in the advice I have, but now it is stated explicitly. I assure Members that where it is believed that the fair procedure is breached, the courts will be there to vindicate people's rights in that regard. It is the intention to insert that balancing in the public interest. In all the discussion, and we can dress it up how we like, on the balancing of fair procedures and the rights of the individual, we must take account of the public good and the rights of the overwhelming majority. The idea is that in the first instance it will be done by the Oireachtas in this process.

Senator van Turnhout raised the Cloyne report, which I mentioned and Senator Bacik raised the need for a robust parliament, which I totally agreed with. She also referred to balancing the Executive and wondered if the Abbeylara sub-committee selected the right subject matter. The consequence is that what was exposed in the court case was that there was no inherent power to have any inquiry. I must say, and I am entirely biased, that I believe that had the Abbeylara sub-committee been allowed to complete its work, it would have been very efficient and balanced and would have been much less costly than the tribunal of inquiry that took years to conclude its business. That, however, is a matter for debate.

Senator Bacik made the point on paragraph 4 that "it shall be for the Houses to exercise this balance". I have taken a legal opinion on this section. Had it been the intention of the drafters of that subsection that it was an ouster clause for the courts, the words "exclusively" or "solely" would have been used. There were not used deliberately because it is not an ouster clause and is not intended to be.

Senator Sean D. Barrett talked about making parliament relevant, and I entirely agree with him. I noted his phrase "that it not about changing Government alone, but about changing governance". That is important. He also raised ways of avoiding the cadre of lawyers descending upon us.

Senator Thomas Byrne: They will find a way.

Deputy Brendan Howlin: I think there must be balance in all of this. There will be issues in the future where people's good names are at risk and where it is right and proper for them to have legal advisers on hand but there will be cases where not everybody needs to be "lawyered up", to use the American phrase, for every issue all the time. If the very simple objective is to get to the truth and tell the truth, the vast majority of inquiries can be held expeditiously and well. Senator Clune referred to her experience as a member of the Committee of Public Accounts. Senator Thomas Byrne criticised the process of taking all Stages together, but I will leave that to the House to decide. He also spoke at length on the objective bias issue. Those involved in an inquiry cannot make utterances during the course of the inquiry which would prejudice the independence of their decision making. It will be a discipline for those involved in any inquiry in the future to stay silent until the inquiry is over. This will evolve in time as we have more experience with the process. To reiterate the interjection of Senator Bacik, there is no role to determine criminal guilt in any inquiry under the separation of powers.

I indicated that it is important that members of the committee many not make public comment that might appear to prejudge specific evidence before the committee of inquiry. Indications of a view being held by a committee member while the hearing is proceeding would be contrary to the normal accepted principles of fairness. The courts have developed legal tests for the objective or individual bias issue and I expect these will be applied too in the cases of

Oireachtas committees of inquiry. It is fair to say that these tests do not support the view that any public representative in the Oireachtas who has expressed his or her opinion on the cause of the banking crisis would necessarily be precluded from participation in the inquiry. It would certainly not be the case that the Oireachtas could not hold an inquiry into the banking crises on account of public comments of Members. One can have a general view of banking without prejudicing any individual inquiry and hearing evidence on it. This can be done.

I found Senator Mullen's contribution extraordinary.

Senator Rónán Mullen: I thank the Minister.

Senator Ivana Bacik: I do not believe the Minister's remark was a compliment.

Deputy Brendan Howlin: While I respect Senator Mullen and consider his voice to be important in this House, I heard in his contribution a total disregard, a disparagement almost, for elected Members. That is worrying in somebody who is elected to a House of Parliament.

Senator Rónán Mullen: Perhaps my contribution came a little close to the issue in light of the events of last year.

Deputy Brendan Howlin: I have no idea what that comment means.

Senator Rónán Mullen: It will be a matter for Committee Stage.

Deputy Brendan Howlin: I respect Parliament and all those who are elected to it. While I do not agree with everyone who has been elected, by and large they represent a cross-section of the population. I do not disparage anybody who is elected but respect all of them and the people who elected them. The notion that somehow this House is so flawed that we cannot do people's business in an objective way is, as a general principle, wrong.

Senator Rónán Mullen: The word I used was "calibre".

Deputy Brendan Howlin: For all the straw men that Senator Mullen puts up, the net issue is simply that he does not want parliamentary inquiry. I did not hear his reasoning for the belief that Ireland, uniquely, should not have such inquiry. God knows the experience of the past decade and the types of activity we had across the public sphere indicate that this country needs parliamentary inquiry.

The Senator is wrong in arguing that the implication of introducing the legislation is that the *Abbeylara* judgment was wrong. The decision by the courts was an interpretation of the Constitution, which is the absolute prerogative and right of the courts to determine. They saw objectively, factually and accurately that there was no inherent power to conduct inquiries. The Government has stated it will redress and fix that and that is the job of the Legislature. It is not a criticism of the judgment. The courts tell us all the time that we must legislate to fix loopholes. The problem is that we do not normally proceed with sufficient alacrity to fix such loopholes. It is a perverse view that this enactment is a criticism of the court ruling in the *Abbeylara* case.

As I have stated repeatedly, the proposal does not in any way deny access to the courts to the general public or anyone involved in an inquiry. The courts will retain oversight in respect of anybody who is aggrieved by the decision subsection (4) would give to the Houses of the Oireachtas to make a discernment, balancing the principles of fair procedure and the public interest. Parliament needs to do this and if it does not get it right, the matter can be determined elsewhere.

[Deputy Brendan Howlin.]

Senator Mullen asked why we would choose this legislation as the first issue to address. It is an important issue because it strengthens the hand of Parliament and the earlier the Oireachtas strengthens its hand, the better as it will allow us to do all the other things we need to do in committees and investigations. Matters could arise tomorrow or the next day which would require investigation in the House but we are currently precluded from conducting such investigations. The Senator argued that this indicates we do not have any interest in other matters.

Senator Rónán Mullen: I do not recognise my speech from the Minister's remarks.

Deputy Brendan Howlin: He referred to further constitutional change. As the Minister with responsibility not only for public expenditure, but also reform, I have established a political reform division in my Department and intend bringing to the Houses an array of legislation and constitutional proposals, including whistleblowers legislation, a Bill on the registration of lobbyists and an amendment to the Freedom of Information Act to restore the position that existed prior to the enactment of recent changes. I met the Committee on Procedure and Privileges last night to discuss another constitutional referendum to deal with communications by citizens with Members of the Oireachtas regarding allegations of wrongdoing. I also intend, with my Government colleagues, to establish a forum on the Constitution next year. Other constitutional amendments which will be brought before the Houses include a referendum on children's rights, which we have committed to holding early next year, and there will be other referendums.

Senator Rónán Mullen: We are all scared of one of them.

Deputy Brendan Howlin: As Senator Sheahan indicated, we intend to be a radical, reforming Government and I hope our efforts will be given a fair wind.

Senator Mooney, who is unfortunately no longer present, referred to the separation of powers and his fear that he was both in favour of and opposed to the legislation. I heard a similar tone in many speakers' contributions. Maintaining the *status quo* is always easier than taking a step forward but we must take a step forward on this issue.

Senator Mooney also referred to a number of other vehicles for inquiry, namely, the type of inquiry that produced the Cloyne report and inquiries under the original 1921 Act, all of which will remain in place. The Houses will have options when making a determination. The Senator also referred to the mother of parliaments. Westminster has various instruments available to it, one of which, the Crown inquiry, is normally but not necessarily conducted by an eminent judge. The Saville inquiry was an example of this type of inquiry. We have seen how effective parliamentary inquiries can be in the United Kingdom in the case of the most recent controversy surrounding phone-tapping. In that case, individuals were brought before a parliamentary committee and asked questions directly, which is not possible in the Oireachtas.

We want to make the Oireachtas more effective in doing the people's business. This is an important but not excessively radical step. We must convince people to support the proposal, which will involve debunking some straw men which will be put up to confuse issues.

Senator Rónán Mullen: The Minister is taking a very dismissive approach to arguments that have been put in good faith on the basis of considerable research.

An Cathaoirleach: Please allow the Minister to continue without interruption.

Senator Rónán Mullen: He should argue his case without using disparaging language.

Deputy Brendan Howlin: I am sorry if the Senator considers my language disparaging. I hope I will deal fairly with the content of his contribution to which I listened objectively, as I did in the case of all the contributions in the other House. It was for that reason that I tabled an amendment to address a number of issues that were raised. One finds, in dealing with any legislation, that I never regard my side of the House as having a monopoly on wisdom and I listen to Members' contributions. However, if the principle involved is to find a mechanism to stop me, which I believe to be a principle I heard in the tone of the Senator's delivery, which basically was that——

Senator Rónán Mullen: The Minister is wrong.

Deputy Brendan Howlin: That is my view.

Senator Rónán Mullen: It is not worthy of him.

Deputy Brendan Howlin: We are not having a dialogue on it.

Senator Rónán Mullen: He would contribute to debate in the Seanad if he were impassioned.

An Cathaoirleach: Please allow the Minister to continue without interruption.

Deputy Brendan Howlin: We can have this provision enacted. We will have further debate if people support the legislation. It is probable that we will have some experiences in the inquiry system which may cause us to revisit the issue in future. I strongly commend the Bill to the House.

Cuireadh agus aontaíodh an cheist.

Question put and agreed to.

**An Bille um an Tríochadú Leasú ar an mBunreacht (Fiosruithe Thithe an Oireachtais) 2011:
Céim an Choiste agus na Céimeanna a bheidh Fágtha**

**Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011:
Committee and Remaining Stages**

An Cathaoirleach: Before Committee Stage commences, I would like to deal with a procedural matter relating to Bills to amend the Constitution. The substance of the debate on Committee Stage relates to the wording of the proposed constitutional amendment, which is contained in the Schedule to the Bill. The sections of the Bill are merely technical. Therefore, in accordance with long-standing practice, consideration of the sections is postponed until consideration of the Schedule has been completed. Is that agreed? Agreed.

I move:

That, in accordance with precedent and Standing Order 122, consideration of sections 1 and 2 of the Bill be postponed until the Schedule has been disposed of.

Question put and agreed to.

AN SCEIDEAL

SCHEDULE

Tairgeadh an cheist: “Gurb é an Sceideal an Sceideal a ghabann leis an mBille.”

Question proposed: “That the Schedule be the Schedule to the Bill.”

Senator Rónán Mullen: Tairgim leasú a 1:

In Part 1, page 6, to delete lines 12 to 16, and substitute the following:

“4° Déanfar stiúradh na bhfiosruithe sin a rialáil le dlí. Déanfar leis an dlí sin cóimheá a bhaint amach go comhréireach idir cearta na pearsan aonair agus an leas poiblí le linn imscrúdú éifeachtach a dhéanamh faoi nithe a bhfuil tábhacht phoiblí ghinearálta iontu.”,

I move amendment No. 1:

In Part 2, page 6, to delete lines 27 to 31, and substitute the following:

“4° The conduct of such inquiries shall be regulated by law. Such law shall balance, proportionately, the rights of the individual with the public interest in the effective investigation of matters of general public importance.”.

Before addressing the amendment, it should be noted that we are dealing with very important matters.

We are dealing with a constitutional referendum, the fundamental law of our country and what precisely that law should say. It bears repeating that the manner in which the two constitutional referendum Bills in two consecutive days has been guillotined is nothing short of shambolic and, particularly, the issue of hearing it all in one day. The Government has prided itself on instigating a new politics of real change, yet these past two days have seen the worst of the old politics rule in the Seanad.

I take issue with the Minister, for whom I have great respect. I greatly enjoyed his contributions and listened carefully to what he had to say, and to his use of phrases, such as “straw man”. That is not *ad hominem* but it sidesteps the possibility that people could have sincere concerns. I am giving the Minister a level of opposition on this legislation which he perhaps did not get in the other House or from others but it does not mean that I am not sincere and that I have not done a good deal of homework on it.

Deputy Brendan Howlin: Nobody suggested that.

Senator Rónán Mullen: I was careful to quote people, such as Donncha O’Connell from his own party. Indeed amendment is inspired by the conclusions of the all-party committee. To use the term “straw man” is to fail to understand that there are issues of great complexity here on which people have been deliberating. The term “straw man” implies improper motivation and I ask the Minister to reflect on that. I know the Minister’s motivation is honourable but I see major pitfalls in what is being proposed and I cannot resile from that position.

The Minister wants to know my attitude to Oireachtas committees of investigation. I have no problem with Oireachtas committees of investigation but I do have a problem with empowering them to make findings adverse to people’s reputations. I said somewhat jocosely that, perhaps, I might be a little close to the issue. I simply meant that the actions of the Oireachtas committee and the Seanad Committee on Members’ Interests last year did not cast Oireachtas investigations in a good light, in terms of the way questioning took place and the way people communicated outside. It is not the answer to say, “We will have to be a little more careful, lads, how we conduct ourselves in future”. I would not find it remotely comforting if I thought that judges were saying to each other, “We will have to moderate the way we express our views or people would think we were biased”. That would leave me with the impression that they are probably still biased, they are just being a little more careful about it.

An Cathaoirleach: That is not relevant to the amendment. The amendment is specific and the Senator is straying outside its remit.

Senator Rónán Mullen: I accept that.

An Cathaoirleach: This is not a Second Stage debate.

Senator Rónán Mullen: I will get on to it.

Senator Maurice Cummins: The Senator got extra time for Second Stage.

Senator Rónán Mullen: I accept that. This highlights the shambolic procedures in this House that we have a situation where——

Senator Ivana Bacik: On a point of order, they are not shambolic. We have plenty of time for debate.

An Cathaoirleach: The Senator——

Senator Rónán Mullen: The Cathaoirleach was indulgent enough, for which I thank him, to allow me go from five minutes to eight minutes but that is simply——

An Cathaoirleach: That has nothing to do with it.

Senator Rónán Mullen: ——and I did steal a yard or two, to borrow GAA parlance.

An Cathaoirleach: Senator Mullen has plentiful opportunities to express those views but we are on the amendment.

Senator Rónán Mullen: May I make a point?

An Cathaoirleach: We are on a Committee Stage amendment.

Senator Rónán Mullen: We do not have a mechanism between people addressing the issue immediately in hand and people making points of order but there are things we have to say. One is, that it is ironic that we are talking about strengthening the powers of this Parliament and this Oireachtas when we are doing it in a way that we are not even allowing a free ranging discussion on the issues that surround it, including the issues I am raising.

An Cathaoirleach: We are on the amendment.

Senator Rónán Mullen: Anybody listening to this with an degree of fairness would have to recognise that we are extremely limited in our approach. I have been making the point that we have been——

An Cathaoirleach: The Senator may well be but we are on the amendment and he will have to stick to the amendment.

Senator Rónán Mullen: I am putting this amendment because I am concerned that what we are doing here is giving politicians some kind of a pretend relevance in circumstances where we do not actually get to scrutinise legislation with the effectiveness with which we ought. I am sorry if that sounds like a disobliging comment about the workings of this Oireachtas but the very reason the Government is proposing to abolish this House is that it is making claims that our democratic institutions are not functioning effectively, so I do not see how I can be accused

[Senator Rónán Mullen.]

of dissing colleagues. I am not dissing anybody in particular but I am dissing the culture around here and our inadequacy to do certain things.

There is a calibre issue when politicians ask questions. They can be extremely partial in the way they ask questions and certain issues get explored and certain issues do not. That is why we need to be very careful how we adjudicate on issues in regard to fair procedures in particular.

What the proposed legislation contains is that it shall be for the House or Houses concerned to determine, with due regard to the principles of fair procedures, the appropriate balance between the rights of persons in the public interest. It is my contention that no matter how one reads that, it has, at the very least, a chilling effect and, I suspect, much more in terms of any ability of the courts to make determinations on what has happened in regard to fair procedures and specifically in respect of the balancing of the rights of persons in the public interest.

Balancing the rights of persons in the public interest is a judicial function and it requires skills of a judicial kind, skills we have not generally seen in this Oireachtas. It may be present on occasions but I am not confident, on the basis of the radio advertisement, that “past performance is no guarantee of future reliability”. Past performance is not particularly consoling when one considers how this might operate prospectively. My proposed amendment states:

The conduct of such inquiries shall be regulated by law. [That does not exclude the Oireachtas]. Such law shall balance, proportionately, the rights of the individual with the public interest in the effective investigation of matters of general public importance.

The amendment seeks to rebalance, to make more explicit the role of the Judiciary in overseeing what goes on so that we guarantee a proper balance of the rights of the individual with the public interest. I am not attacking, in my amendment, the right of these Houses, *per se*, to conduct inquiries and make findings in respect of the conduct of persons, even though I have grave reservations about how all of that will work out. I will express those reservations in the coming weeks. It would be at least something if there was an acceptance that what is proposed is a constructive amendment. For the most part, this amendment is simply the incorporation of the recommendation of the recent Joint Committee on the Constitution report of January 2011 on Article 15, review of the parliamentary power of inquiry.

The Minister, Deputy Brendan Howlin, sat on the committee and agreed to its conclusions. The joint committee’s eventual wording was widely accepted as being a sensible and balanced amendment. It certainly received none of the opprobrium from commentators that the Government’s proposed wording has received. The virtue of this amendment is that it rectifies the most obvious and dangerous flaw of the Government’s proposal, that of precluding judicial review of inquiries findings and of the success or otherwise of the Houses of the Oireachtas in reaching a fair balance between the rights of the person and the public interest as well as their ability to have due regard to the principles of fair procedures.

The only adjustment I have made to the joint committee’s proposal is to introduce the word “proportionately, after the word “balance”. This does require a degree of scrutiny and some background knowledge. I have included this word because, I believe, the term “balance” by itself, allows too much scope for the courts to be less than rigorous in appraising whether a fair or reasonable balance has been reached between the individual’s rights and the public interest. In this regard I am aware of how the courts have applied the proportionality test during the past decade or so, in such a way as to lean heavily towards the adjudication of public interest considerations over and above personal rights, *vis-à-vis* property rights. The courts have their trends and tendencies as well.

It is absolutely right and proper that we in the Legislature would seek to shape how the courts do their work but we must never try to usurp what is the proper function of the courts. In a sense I agree with the Minister that there is no interference with the separation of powers once one rebalances in the Constitution what is going on. In theory one could get rid of the courts and have all matters decided by tribunes of the people in Parliament.

We could argue that is not an interference with the separation of powers, because the Bill now redefines the particular separation of powers that is to apply. However, there is an appropriate separation of powers and that is what motivates my amendment. As I said, the courts have applied the proportionality test over the past decade or so in a way that leans heavily towards public interest considerations over and above personal rights, and that in the context of property rights adjudication. The courts have, likewise, adopted a deferential approach to the intentions and means of the Oireachtas in seeking to achieve the end that is public interest. Without the term “proportionately”, the courts will have even more freedom to continue this custom if a case is taken against a finding by an Oireachtas inquiry. That is the rationale for my amendment. I have proposed this amendment after careful consideration and with regard to the reality that the Minister proposes powers to investigate matters and to make findings relating to the conduct of people. It is in the sense that this is the Minister’s proposal that I see it as urgent we rebalance the relationship between the Oireachtas and the courts in terms of determining what is appropriate as we consider both the rights of persons and the public interest.

Senator Darragh O’Brien: I want to get back to a couple of issues. The Minister spoke about serving as a Minister or as a member of the Executive and I raised a question——

An Cathaoirleach: We are on a specific amendment.

Senator Darragh O’Brien: Yes, we are on a specific amendment, but on Second Stage I mentioned that there were some issues I wished to come back to on Committee Stage. I also have a comment to make on the amendment.

An Cathaoirleach: I will allow the Senator to make his points when we come to the Schedule, but we will deal with the amendment now.

Senator Darragh O’Brien: The Minister’s response to Senator Mullen may indicate the Senator got under the Minister’s skin a little. To be fair, people have considered this legislation. I have no doubt that Senator Mullen’s amendment tries to safeguard what many of us here are trying to safeguard, namely, to ensure that this legislation is as good as it can be before it goes to the public for a referendum. That said, I remind Senator Mullen that just because my party agrees with the principle of this Bill, this does not mean we cannot put forward robust opposition or ask questions. This is not a question of us wringing hands. In many instances we have no difficulty in putting our cards on the table straight up. If we agree with a Government measure, we will agree openly and will not table amendments for the sake of it. I do not suggest that is what Senator Mullen has done.

I will not say any more on the amendment. I am interested to hear what the Minister has to say before deciding whether to support it. However, I would like the opportunity to comment further when dealing with the Schedule.

Senator Ivana Bacik: I thank Senator Mullen for tabling this amendment because consideration of his amendment has assisted us in robust consideration of the overall amendment in the Bill. On Second Stage I indicated I was concerned initially when reading the wording that the words “it shall be” in paragraph 4° might imply exclusivity. The Minister answered my

[Senator Ivana Bacik.]

concern and the concerns of others comprehensively in his Second Stage response. It is worth noting the point he made that it was never intended that there would be an ouster clause in paragraph 4°. Reading it now, particularly with regard to the amendment inserted when the Bill passed through the Dáil — “with due regard to the principles of fair procedures” — I believe it answers the concerns expressed by Senator Mullen and others about potentially excluding the courts from any kind of supervisory role. That is the concern Senator Mullen seeks to address in his amendment, borrowed from the report of the Joint Oireachtas Committee on the Constitution. However, that report proposes a rather different wording at paragraphs 2° and 3°. There is a general change to the wording we are now debating of the Government’s Bill. That is what generally happens. The committee simply puts forward proposals for wording that are of assistance to us.

It is worth looking at what the committee said in its report in respect of this particular provision when one is considering Senator Mullen’s amendment. It pointed out that one cannot exclude constitutional justice considerations. It considered whether that could be done and decided it could not. It went on to mention the need for a robust amendment which would include some constitutional ordinance allowing for *re* Haughey rights to be balanced against the public interest in the facilitation of effective parliamentary investigations. That is what paragraph 4° seeks to do and it does so fairly, in a way that does not require the amendment tabled by Senator Mullen. The committee report discusses how *re* Haughey rights have been interpreted in the past. In the beef tribunal, for example, they were interpreted to allow all witnesses, including whistleblower Deputies who had made allegations against others, have legal representation and for a farmers’ association against which no imputation had been made to have legal representation.

What we are talking about here with the Government’s proposed wording is the setting up of genuine inquisitorial or investigative powers for Parliament to empower it. However, this model is different to the models we are used to as adversarial lawyers, which are the more adversarial models at issue in the tribunals. It is rights in an adversarial setting that are at issue in *re* Haughey. As the Minister pointed out, these are not mutually exclusive models. We now have provision in the 2004 Act for commissions of investigation, as we saw with the Murphy report, the Cloyne report and so on. Those are important models, as are the tribunal models. However, different matters would lend themselves more than others to different types of inquiry. It is clear with the example from Britain and the inquiry into phone tapping, some matters will lend themselves particularly well to parliamentary inquiries. We have hamstrung ourselves in the nine years since the *Abbeylara* judgment. The previous Government did not see fit to address the inadequacy in our Parliament of not having the investigative powers the Minister has described as being the norm in other parliaments.

There is no requirement for the amendment proposed by Senator Mullen. Having shared concerns with the Senator and other lawyers and individuals who had come to me about the wording, I think those concerns have been answered. I listened carefully to the Minister and to Senator Mullen and believe the Minister has answered the concerns.

It is important to look at paragraph 4° as providing for an admonition or requirement that the Houses of the Oireachtas must concern themselves with the balancing of rights, but not in a way that excludes the jurisdiction of the courts, which ultimately are the final arbiters as to whether the Houses have had due regard — an objective test — to principles of fair procedures in seeking to achieve an appropriate balance. Of course, it is important that in conducting any inquiry the Houses must seek to balance rights. What the *Callely* case shows us is that the courts have not been deferential to the Oireachtas, far from it. It also shows us that the Houses

must have regard to fair procedures. It is useful that this has been made more explicit in paragraph 4^o than it would be in Senator Mullen's amendment or in the draft wording proposed by the committee.

Senator Maurice Cummins: I must take issue with Senator Mullen with regard to his remarks. When addressing Members, he suggested the “calibre” of some people was in question. That was very disparaging.

An Cathaoirleach: We are on the amendment now.

Senator Maurice Cummins: I am getting to my point. He made a very disparaging remark with regard to the “calibre” of people. These people were elected by the people, who have put their trust in them, particularly the 166 elected Members of the Dáil. We cannot say the Members of this House were elected by the people. A committee will be formed from these people, which will include some Members from this House and there will be no Whip on the committee. The members of that committee will be people who are capable of showing fair balance and proportion. What is suggested does not in any way usurp the functions of the courts.

In questioning the “calibre” of people, Senator Mullen seems to think, like suggested by George Orwell in his writing, that all are equal, but some are more equal than others. He seems to think that he is more equal than others.

Senator Rónán Mullen: I never said that.

Senator Maurice Cummins: That is what I understand from what he said.

Senator Rónán Mullen: I would not offer to audit Senator Cummins' accounts because I have no qualification in accountancy.

Senator Maurice Cummins: In questioning the calibre of elected Members, particularly those elected to the other House, he talks about the people who elected them and it is the “calibre” of the people he mentions.

Senator Rónán Mullen: That is more of the populism that will bring trouble for us.

An Cathaoirleach: We are on the amendment.

Senator Thomas Byrne: We have considered Senator Mullen's amendment, but, unfortunately, we will not support it.

I say “unfortunately”, because Senator Mullen brings a good knowledge to the debates in here. There is a tendency among Ministers to dismiss utterly anything that comes from this side, and the Minister for Public Expenditure and Reform has shown a slight tendency to do this today. That is unfortunate and we keep seeing it.

There was a serious deficiency with the amendment as originally proposed. Luckily enough, there was much media commentary about it, because frankly, the Houses did not have enough time to discuss the matter. As we rush through this legislation, we cannot be sure that something which might arise is being adequately dealt with here.

The Minister did not answer the question I asked on Second Stage.

Senator Susan O'Keeffe: The Senator was not here——

Senator Thomas Byrne: I was here for most of it.

An Cathaoirleach: We are on the amendment now.

Senator Thomas Byrne: I am speaking on the amendment, but I wondered why the Oireachtas is not given power to make adverse findings, and that was not answered. Given the fact that a Minister has already promised an inquiry, how does that fit in? I am not in favour of an inquiry here, but the principle of the Minister——

An Cathaoirleach: That is outside the scope of this amendment.

Senator Thomas Byrne: It is not outside the scope of the amendment. It is about fair procedures. This particular group is very genuine and the particular doctor at issue was referred to as “Dr. Filth” in a newspaper article. I want to be clear that I am not supporting the doctor. However, the Minister was under significant political pressure in respect of a particular doctor, refused a public inquiry, as the previous Government had done, and then two months ago stated that there would be an Oireachtas inquiry once the referendum has passed. That is completely at odds with what the Minister is telling us today.

Deputy Brendan Howlin: I am telling the House what the legal situation will be.

Senator Thomas Byrne: He is telling us that the Minister for Health does not have the power, or will not have the ability, to establish inquiries.

Senator Maurice Cummins: Not at all.

Senator Thomas Byrne: That is at variance with what the Minister for Health told the campaigning group——

Deputy Brendan Howlin: Any Minister and any Member can ask at the committee. Every Member of the House, whether Minister or otherwise——

Senator Thomas Byrne: The Minister for Health, on behalf of the Government, has promised an investigation. That is worrying because——

Deputy Brendan Howlin: He might well be very persuasive on that basis.

Senator Thomas Byrne: He may well be, but that is the point. When the Minister of State, Deputy Brian Hayes, came into the Seanad a few weeks ago, he said that there was no Whip in the Seanad, that the Government is not responsible for Seanad Éireann and that his colleagues could vote whatever way they want. However, they all voted with the Government and all the Independents came over to this side for the first time ever.

There is a serious worry about fair procedures. Senator Mullen outlined that case last year, although I will not name it because I do not want to be associated with it or use that person to justify my point. The fact is that during inquiries such as the Abbeylara inquiry, there was a running commentary every day of the week on the plinth about what was going on in the committee. It made the headlines every day. I have not read the heads of the Bill, but this will have to be addressed. Members will not just have to keep schtum, as the Minister suggests, they will have to be obliged by law to do so and not give informal briefings which will lead to reports in the newspapers that an inquiry will find a certain person guilty. These are the dangers involved. The Judiciary never gives briefings to the media, and they have been criticised for not answering in particular cases, but we do not hear off-the-record briefings from judges in this country. The danger is that this will happen and make it a totally flawed process.

This can be good, and I fully believe we should have the right to summons people in here to speak to us. It is terrible when people refuse to come in here. However, we must be conscious that we could destroy the process ourselves if we do not have the right and fair procedures and if we trample on people's good names. We could ruin it for everybody and then there will be court cases, lawyers and bills. We will blame the Supreme Court, as some people are tempted to do today, but as the Minister said today, the Supreme Court is merely interpreting the Constitution. I said this morning that there is no need for that, because many Fine Gael Senators seem to pronounce on constitutional issues in the Seanad. The court's job is simply to interpret the Constitution, and it did that correctly in the *Abbeylara* case. If people's rights are trampled upon and if Members are out there plugging themselves on television during an investigation, the Supreme Court is going to step in. This will have to be firmly dealt in the law that is passed. In fairness to the Minister, his amendment ensures this, but the fact that he had to amend it in guillotined legislation gives cause for concern.

Senator Jim Walsh: I have followed the debate with interest and I think we have come to the nub of the issue. I hear what Senator Byrne is saying, and I must defer to the fact that he is a solicitor, but my interpretation of the amendment to section 4 differs from his. I find myself much more disposed to the amendment, unless the Minister can clarify its precise legal nature.

The amendment before us seeks to ensure that any laws would balance proportionately the rights of the individual with the public interest. It looks to me as if what we are asking the people to do is to accept that the Houses of the Oireachtas in their sole determination and with regard to the principles of the procedures, will in fact strike whatever appropriate they feel is right between the right of the individual and the public interest.

I listened carefully to what Senator Byrne said about the fact that this could be appealable to the Supreme Court. No more than the Minister, I am not a lawyer, but like him, I have a certain analytical bent. It would appear to me that if the Constitution contains a clear provision that the Houses of the Oireachtas can determine the balance to be taken — a constitutional right the Oireachtas is now getting — I cannot see how the Supreme Court can overturn that. Perhaps it might be able to do it in cases where there might be obvious bias involved. That brings us to the kernel of the issue. It is right that the Oireachtas would have the principle of being able to investigate certain matters of public interest. When it comes to balancing individual constitutional rights, we should ensure that these are in no way diminished within our Constitution. This change could give effect to that.

Mention has been made of the *Callely* case. People who participated on that committee provided their viewpoint in this Chamber and on the airwaves before they ever participated in the committees. It was pretty obvious that some people already had their minds made up. I read the judgment, and the courts found very heavily in favour of Senator Callely. I appreciate that the committee was under much media pressure, but we cannot administer justice strictly along populist lines.

An Cathaoirleach: That matter is before the Supreme Court.

Senator Jim Walsh: This is why I am coming back to this reason for personality.

An Cathaoirleach: I am just pointing out to you that that matter is still before the Supreme Court.

Senator Jim Walsh: I am aware of that and I am conscious of the huge cost that has been incurred to date and that will be incurred. I would like to see far greater emphasis placed on the stressed taxpayers who are trying to meet the public cost and that we would not be wasting

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money in future. That is one of the reasons I am supportive of the thrust of what we are trying to do here. That balancing issue is a fundamental issue.

It has been said by some commentators that the functioning of these Houses is very much controlled by the incumbent Government. Practically nothing happens in this House without it being handed down from the Government. I made that point yesterday in respect of the Judiciary and it is a point I make today as well. Issues will come up where political influences can and will be brought to bear which will distort the outcome and the findings, and in particular, the independence of the individuals participating on it. I have no doubt that will happen.

I participated, along with some Members here, in inquiries these Houses held on matters of public importance, and there were external attempts to bring influence to bear. We know how our political system works. I have grave concerns in that regard.

This is a wide-ranging amendment to our Constitution. If it is adopted, the powers of the Oireachtas will equate to those of the courts, if the Oireachtas itself decides that an issue should come before an inquiry of either or both Houses. There is nothing I can see — unless the Minister can point me to something — within the referendum that will go before the people that will in any way restrict the range of matters that may go before an inquiry here, as long as somebody decides they should. Unfortunately, it is likely that the power to decide what inquiries will be carried out will be limited to 15 Members of these Houses who happen to be members of the Government. It will be controlled by the Government. That will be the effect of the amendment. Some commentators have said, and I fully agree, that if this provision is introduced, there should be a weakening of the control of these Houses by the Government. I see no expressed or implicit suggestion——

An Cathaoirleach: On the amendment.

Senator Jim Walsh: ——that will be done. I do not expect it to be done, and consequently I have these reservations. We are now going into a referendum campaign on the issue, and I regret the fact that greater time has not been allocated to teasing out these issues within the Houses because they go to the root of how we wish to see society governed. At issue is the principle of the right of an individual to his or her reputation and good name, which should not be taken away for wrong or opportune reasons. I feel strongly about this, even though I fully concur with the principle of what the Government is trying to achieve.

I have great reservations about the amendment. I listened to the Minister's explanation, which gave us a legal insight into the difference between what is before us and what will be in the referendum. I would like to see the amendment going further. The precise nature of the issues that can be considered for inquiry by these Houses should be clearly prescribed, not just in legislation, which can be changed by these Houses, but within the wording of the amendment.

Senator Darragh O'Brien: I would like to comment on the Schedule.

An Cathaoirleach: We are discussing the amendment first.

Senator Darragh O'Brien: Can the Minister respond?

An Cathaoirleach: Yes, on the amendment.

Deputy Brendan Howlin: I thank all Members for their contributions. It has been said that the legislation is rushed, but people have been thinking about this for a long time. We have had a commitment to do this since we negotiated the programme for Government. We said we would do it on the basis of the report of the all-party Joint Committee on the Constitution,

which has been in the public domain since January. Before the summer, I wrote to the spokespersons of all Opposition parties, including the Technical Group, and the Cathaoirleach outlining the draft amendment. I invited any Opposition person who wished to receive a briefing over the summer. One party, the Fianna Fáil Party, took up that offer, and was briefed. I wrote again at the end of the summer to those who had not taken up the offer, again offering a briefing, and eventually all parties were briefed. This is a process that has been going on for a while. The net issues, although they are big, are not all that complex. We can talk about them forever, but people need to make up their minds.

I will deal with Senator Mullen's amendment. As I said in my Second Stage speech, I respect the Senator's viewpoint, his analytical ability and his perspective. His contribution is important, because these matters must be teased out properly. I was slightly taken aback by some of the phrases used by Senator Mullen; for example, he said that I failed to understand the complexity of the issue.

Senator Rónán Mullen: I regret saying that, if I said it.

Deputy Brendan Howlin: I see.

Senator Rónán Mullen: Did I say it about the Minister?

Deputy Brendan Howlin: I am afraid the Senator did.

Senator Rónán Mullen: Well, I can only express the hope that it was a typo or that I read it wrongly.

Deputy Brendan Howlin: I think it was an assertion. I hope I do understand the complexity of the issue, as I have been engaged with it for a while.

There are various solutions that the Senator came up with. There are some people who, honestly and legitimately, do not believe that inquiries are at all the proper function of Parliament. That is fine. If that is their view, it is a principled position. However, the vast majority of contributors here have said they agree with the notion that we should be like other Parliaments and have the power of inquiry, but are concerned about the fourth clause of the provision proposed by the Government in terms of its potential to rebalance rights. At the all-party committee, we spent a long time tackling that issue. Up to now, the rights of the individual have consistently trumped the common good. Somewhere along the line, the public interest must be put on the weighing scales.

Senator Jim Walsh: I am sorry to interrupt the Minister, but what is the difference between the common good and the public interest?

Deputy Brendan Howlin: Let me quote from the report of the all-party committee. Senator Bacik already did so, fairly. This is the nub of the issue that we tried to grapple with. She said, "A robust amendment would include some constitutional ordinance allowing for reHaughey rights to be balanced against the public interest in the facilitation of effective parliamentary investigations". Nobody wants to oust the four re Haughey rights that have been clearly set out. Every person has the right to be heard, to be represented by counsel in certain circumstances, to rebut any evidence that is adduced against him or her, and to directly present his or her case to whatever tribunal, investigation or committee is dealing with it. However, these rights cannot be elaborated to the extent that the tribunals of inquiry have, with an endless, expensive process that prevents public business from being achieved. One can talk about a principle or one can talk about the practical requirement of the people. There is a fair balance here.

[Deputy Brendan Howlin.]

The joint Oireachtas committee stressed in its report the requirement for a new inquiry system to balance the rules of fair procedure against the public interest in the facilitation of effective parliamentary inquiries. It is intended that it would be a matter for the Oireachtas committee of inquiry, under rules laid down by the House and by the law — I have published the draft heads of a Bill in this regard — to lay out the procedural rights, which have, in any event, been previously identified as necessary by the courts, and should be afforded to witnesses. This will depend on the specific elements that pertain in each individual set of circumstances. As I have said, if the witnesses are merely giving a technical background, they do not need to be represented. As Senator Bacik indicated in her contribution, in some of the tribunals, anybody who applied for legal representation had it, and they sat for months on end with the clock running and the taxpayer picking up the bill.

We cannot have that; we need to have balance, and somebody has to set that balance. I am suggesting that it be set by the committee under clear rules and procedures laid down in law, and that all of it be subject, ultimately, to the oversight of the courts, because if fair procedures were breached there is no doubt — this is a strong legal opinion from the Attorney General — that it is reviewable by the courts. The manner in which the principle is applied in practice will be subject to review by the courts after, in the first instance, the balance has been struck by the Houses of the Oireachtas.

Unfortunately, Senator Mullen's amendment dislodges that balance and does not advance us in terms of ensuring that we have effective inquiries, which is the purpose of what the Government wants to do. Some of the phrases that Senator Mullen used — he said that when people read the amendment, it had a chilling effect on them because of these extraordinary powers——

Senator Rónán Mullen: I did not say that.

Deputy Brendan Howlin: “Chilling effect” was the phrase used by the Senator.

Senator Rónán Mullen: I spoke about an interpretation that one effect of the constitutional amendment might be to have a chilling effect on the courts.

Acting Chairman (Senator Maurice Cummins): The Minister to reply, please.

Deputy Brendan Howlin: Virtually all the focus on the debate has been as if somehow the inquiry system would be some sort of investigation into individuals. I believe it would rarely if ever involve an investigation into individuals. It would investigate all the matters that cause controversy in the health services or whatever. People would be involved and that is why we must have the potential for findings that might show that someone did not act correctly or to prevent something happening. That might impact on their good name. This is why we need these powers. However, by and large, the normal policy issues will be investigated.

Senator Walsh suggested this would almost be the equivalent of a court. This would be an investigation that comes to recommendations. It cannot find criminal responsibility anywhere, it is not a court of law and it cannot impose penalties. That is a matter for the courts. It is simply to examine policy and to examine activity in the public service or with anyone else.

Senator Thomas Byrne: Will it make findings?

Deputy Brendan Howlin: Yes. It could make findings that might inform future policy or law.

A Senator: Or conduct.

Senator Rónán Mullen: “Conduct” involves, at the least, a moral statement.

Deputy Brendan Howlin: Yes. If someone is derelict in their duty and that is found by the investigation and the evidence adduced is clear, should that not be shown? Is the problem in this country not that all the failures are said to be systemic and no one is responsible for anything? I was going to entice myself to talk about financial services but I will resist. It is clear that in certain activities in the past people who were charged with doing a job failed and we should have that investigated. We trust in the Members of the Houses to make laws that impact in a minute, intimate way on the lives of everyone. Often they impact in more ways than on a person’s good name, as important as that is. We make laws that impact on people and we try to do so fairly and in a balanced way. That is our job. We levy taxes and so on and all of this impacts on the citizen. However, there is a view somehow that the issue of a person’s good name is in a class of its own and we should not challenge it in an impartial or fair way but I do not accept that.

Senator Byrne referred to the attitude of the Government to the Opposition. I will try to prove that I genuinely have an open mind and that for any legislation I bring to the House I will be open to hearing the case for any amendment or rebuttal. I did the same in the other House. Deputy McDonald tabled an amendment which I considered to have merit. I spent one day with the Attorney General and her staff. The legal advices I had were to the effect that it was unnecessary and that the oversight of the court and its fair procedures are absolutely implicit. However, I insisted on including it because I sought for it to be explicit so there would be no doubt in people’s minds when it came to voting on it.

When the Parliamentary Counsel is drafting constitutional amendments to be put to the people and to be inserted in the Constitution, he measures out words like precious metal. One must argue, parse and analyse each word. The notion of including another sub-clause necessitates pushing the case, especially if the view is that it is unnecessary.

Senator Thomas Byrne: I made a point about “adverse findings” rather than “findings”.

Deputy Brendan Howlin: The word “findings” is an all-embracing phrase. The word captures whatever findings are made. One need not specify “adverse”, “positive” or anything else. “Findings” can be whatever they are.

Senator Thomas Byrne: It is interesting that the Supreme Court described “adverse findings”.

Deputy Brendan Howlin: It is, but I will not suggest what the Supreme Court had in mind. However, the intention is to be able to make findings which could be good or bad.

I do not believe I have left out anything else. I thank Senator Mullen for his contribution and his amendment. I genuinely believe the amendment I have fits the policy as intended from the year long deliberation involving some of the best legal people coming in to discuss the matter with the all-party committee. The intent was to include in the mix the notion of balancing rights; it is not to oust the courts. The courts are in place to vindicate rights not only Article 40.3 rights, but other rights of the Constitution and our international obligations to fair procedures. They are in place.

My fear relates to the other side of things and one of the Deputies in the other House referred to it. My fear is not that the legislation would push people’s rights but that, ultimately, it might not be robust enough in not going down the route of having lawyers in and causing difficulty. However, we will see how that works out in practice. If people engage with it in a fair way and are supportive, it will be an important new development for the Houses of the Oireachtas. However, it will not be the *modus operandi* in all cases. The 1921 Act inquiry

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system will still be available if ever it is used again. We will also have the new investigation committees which effectively conducted the Cloyne report. This would represent a new power and vehicle if the people support it and for this reason I do not support the amendment.

Senator Darragh O'Brien: I refer to the schedule.

Acting Chairman (Senator Maurice Cummins): We are discussing the amendment. I assure you that you will get in eventually on the Schedule.

Senator Darragh O'Brien: That is fine.

Senator Rónán Mullen: I thank the Minister for his response. I reiterate that I do not mean to suggest in any way — I am sorry if I did — that the Minister lacked an understanding of the complexities. I put on record my acknowledgement that the Minister has been heroic in the part he has played in the hunt for accountability throughout the years. I completely accept the Minister's bona fides and grasp of the issues. However, I have a problem with what is taking place. Issues of complexity arise and I take the view that my amendment addresses this complexity in a necessary way.

The Acting Chairman and I have joked in the past about the phrase “every dog and devil” and its utility in various contexts. The issue of using the word “calibre” is relevant to my amendment. In no sense do I question anyone's intelligence or integrity, but another phrase about dogs is “there is no point in having a dog and barking yourself”. When it comes to making important and delicate judgments that is where judges come in. This is why we have tended almost always to put judges in charge of tribunals and commissions of inquiry. They have a particular expertise and training. As I said to the Acting Chairman in the course of my informal exchange, I would not offer to audit his accounts because I have no skills in accountancy. The consensus view here appears to be that with regard to the conduct of the Seanad Committee on Members' Interests last year, some people did not contribute and others did contribute and were vocal. Some had legal training and some did not. In hindsight that mishmash proved to be problematic.

No disrespect is intended. A variety of skills and talents are on offer but first and foremost we are here to be legislators, to consider Government proposals on policy and legislation and to act accordingly. Giving us investigative functions raises important questions. It remains my view that there is a problem with the investigative function that would be conferred in us and with the way in which the balance between the rights of persons and the public interest is sought to be achieved. I am open to correction but I do not recall receiving as the head of the group representative——

Deputy Brendan Howlin: I confess it was the Dáil.

Senator Rónán Mullen: Only today I discussed this issue with my personal assistant. We should be invited more often to briefings on legislation by various Departments. The national vetting bureau Bill is a very good development and Senator van Turnhout would share my view. Perhaps the Minister could make that view known at Cabinet. I realise there are certain administrative difficulties when one is dealing with Independents but it would reflect well on the way we do business.

I want to get to the core of the issue. Senator Bacik did not contradict my proposed amendment in any substantial way on its merits. I am not being unfair in saying that.

Senator Ivana Bacik: I did.

Senator Rónán Mullen: She spoke very eloquently about the undeniable improvement that had been made to the Government's wording. I do not deny for a moment it is an improvement that there is an invocation of the need to have due regard to the principles of fair procedures. My amendment put the issue beyond doubt.

I invite the House to think of it in this way. One can widen the scope Members of the Oireachtas have to investigate matters and make findings adverse to people's reputations, among other findings. Given that politicians, for the most part, are not professionally trained to conduct such business, have relatively little experience in this area and are subject to certain temptations in terms of populism and partisanship, we ought not widen the scope of our potential for investigations and encroach in any way on the guarantees of fair procedures.

We can maintain the limited scope of our investigations to investigate into matters relating to policy or legislation and how they have worked, but we should stop short of making any kind of findings adverse to people's reputations, or their moral conduct at the very least. If we limited the scope of our potential investigations we might more easily consider the possibility of interfering with the level of guarantee of people's rights. When one does both one runs into trouble.

We are widening our capacity to make investigations and serious findings. Make no mistake about it, such findings will be ventilated in the public and will be very embarrassing for people. People will wonder why inquiries were allowed to make such findings against them if the same respect is not shown for the right to due process they would enjoy in other fora. That is the issue.

Expanding the scope of potential investigations that may be made by Members of these Houses and at the same time allowing any diminution of the level of guarantee of fair procedures is a dangerous cocktail. That is the essential problem. Perhaps the Minister has an answer to my question. What would happen if a witness before a future tribunal is in a position to pay for his or her legal advice and another is not? Will we tell such a person that as we are not paying for it we will not allow anyone to avail of it? What about a person with a stammer or extreme self-confidence problems who needs to be represented and would regard representation by an advocate as a fundamental right?

Perhaps the Minister has thought about these things. I regard these issues as important. I am providing examples within the limited time available. There are serious issues. There is a problem in terms of widening our powers while not allowing any diminution whatsoever in the respect and attention given to people's rights to due process and fair procedures. I cannot put it any more urgently than that.

I am glad the Minister and I have reached a position of mutual respect for each other's sincerity. I regret he cannot accept my amendment and I cannot support the Bill as it stands. My position is considered, not obstructive.

Senator Jim Walsh: I would like to see the amendment to the Constitution restricted in scope in the first instance. If experience taught us the change was right, fair, impartial and had no political influence brought to bear on it, perhaps we could consider expanding it. It may be dealt with in legislation. The headlines in any newspapers in future could be cause for an inquiry in these Houses. I have no doubt some of the inquiries will be generated by the media, whether they have a foundation. I have concerns in that regard.

The issue of training was raised by Senator Mullen and some consideration should be given to it how it informs the conduct of inquiries. We will be under scrutiny when the Bill is initiated and it is imperative that the first few inquiries perform to the standards we aspire to and everyone else wants. Will there be a requirement in law and a declaration or undertaking given

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by those who will participate to act impartially and fairly in the exercise of their functions in the enquiry? Will legislation make it an offence for any attempt to bring external influences to bear on any individuals before or during an inquiry?

We cannot interfere with tribunals of inquiry or commissions of investigation. If we are putting inquiries on a parallel basis it is imperative the same protections and safeguards are in place.

Senator Ivana Bacik: I do not want to prolong the debate unnecessarily because we have thrashed out the issues fully. In response to Senator Mullen, I oppose his wording and the Government's is infinitely preferable. There is a particular merit, as I said, in having a specific admonition that the House or Houses of the Oireachtas in conducting an inquiry shall determine the balance between the rights of persons and the public interest. It boils down very simply to what we all favour, namely, giving Parliament increased power to investigate matters in this way. It seems some of us do not trust parliamentarians to carry out an inquiry fairly.

Senator Thomas Byrne: With good reason. There will be legal bills.

Senator Tom Sheahan: The interests of the greater good or the public interest has to be borne in mind. I tried to take in all of Senator Mullen's arguments and understand his point of view. I would take his stance if I was trying to protect a person or a large body from the public interest. I will keep in mind the public interest and the greater good.

Deputy Brendan Howlin: I am obviously not going to have a meeting of minds with Senator Mullen and I daresay it will not be the first or last issue on which we will have a different view. I hope we will leave respecting each other's differences. The issues are well rehearsed. The correct balance is in the proposed wording. I reject the amendment because it upsets the fair balance and would bring us back to a situation where the public interest is not well served.

Senators have spoken about the tribunals of inquiry as they stand and what we would happen if we do not make this change. Even on the narrow issue of fair procedures and individual rights, I am not sure that the current tribunal system has been greatly fair.

Senator Jim Walsh: Mr. Justice Hardiman's judgment made that very clear.

Deputy Brendan Howlin: There have been instances where significant allegations were made and left hanging for years on end before they could be rebutted. That is not good. People should have the right of rebuttal and the amendment will create a much more speedy system of doing that. Adversarial as these Houses sometimes are, Members of these Houses will demand in a much more overt way that due process be complied with than in any other forum I can think of.

The notion that one will only have legal advice if one can pay for it will not come into the matter. We published the draft Bill setting out how the committee will be conducted. It will be a matter for the committee to determine in individual cases whether someone should have legal representation or not. If someone is incapable of making his or her own case, no colleague in the Oireachtas would say such a person should not be represented. Does any Senator know any colleague who would deny fair procedures like that or who would not be challenged immediately by their colleagues if they did so? I do not think that will arise.

Senator Walsh wants a more incremental approach. He wants us to undertake some reform.

Senator Jim Walsh: It is a very wide issue.

Deputy Brendan Howlin: I am glad he was not around in 1937. If he had been, we certainly would not have the safeguards that are afforded to the Houses of the Oireachtas now in terms of guaranteeing our papers or the right to have privilege. If I were proposing that we should have absolute privilege for any utterance made in the House I think the Senator would be doing a war dance. One may already impugn somebody in the House and take their good name and there is no comeback. That is in the Constitution. Parliament needs certain rights to do the people's business. In the context of the rights that are there already, this measure is modest enough. I hope people will accept that.

Senator Mullen asked three questions. Practical matters, such as procedures and training, will have to be done. The other issues of impartiality, external influence or leaking to the media are covered in the draft heads which I have already published. For example, to leak an accusation against someone before the report is done will be an offence, punishable under law.

Senator Jim Walsh: Would it be an offence for an external person to try to influence the committee?

Deputy Brendan Howlin: I invite the Senator to read the Bill when it is published. Only the draft heads are available now. If he thinks it is not robust enough I will look at anything he suggests.

Senator Thomas Byrne: I did not have time to read the draft but I am encouraged by the Minister's response to those questions. There have been leaks from tribunals and there continues to be leaks from them. However, we should not say tribunals are a total waste of time.

Deputy Brendan Howlin: They are not. I never said that.

Senator Thomas Byrne: They may be a waste of money but they have not been a waste of time.

Deputy Brendan Howlin: I am simply saying they are not perfect.

Senator Thomas Byrne: Tribunals have succeeded in bringing forward many facts which were in the rumour mill but were not on the public record. They have played an important role in that.

Senator Jim Walsh: At €100 million per book.

Senator Thomas Byrne: Of course there is the issue of cost. On the other hand, the committees of inquiry have done a good job. The Minister was unfair when he talked about Father X or Brother Y. That only happened in certain specific cases where criminal trials were pending. Many priests were named, particularly in the Dublin report. Many of the priests referred to in the Cloyne report had not been brought to court and could not be named for that reason. We had a commission of inquiry on the banking crisis by a foreign individual, but the Government parties were not satisfied with his conclusions. They were not happy, politically, with what he said in his report. The reply from the Minister for Finance, as outlined by Deputy Howlin, was that we would have to reverse the Abbeylara judgment and have another inquiry, presumably in order to get the right political answer. That is what concerns us, in general. I also cite the example of the Minister for Health, Deputy Reilly. He could not provide one inquiry so he offered an Abbeylara inquiry. This devalues the currency of an inquiry.

There have been few tribunals since the legislation was passed. I believe the Tribunals of Inquiry (Evidence)(Amendment) Act 1921 was the last passed by the Westminster Parliament to apply to Ireland. I suppose it is good to be moving away from our former masters. There

[Senator Thomas Byrne.]

have been very few commissions of inquiry. We must ensure the matters dealt with by the new system are so important that they are also a rarity. Fair procedures is part of that. It is wrong of Senator Sheahan to accuse Senator Mullen of trying to protect people by looking for fair procedures. Of course he is trying to protect people. If Senator Sheahan was before an inquiry I am sure he would like to know that correct procedures were followed. We are trying to get things right.

The Minister has struck the right balance between the public interest and the Constitution. I do not have a copy of the Constitution before me——

Senator Ivana Bacik: We have some over here.

Senator Rónán Mullen: I have it on my iPhone

Senator Thomas Byrne: There is no point reading the Constitution in any event. One would have to read the late Professor Kelly's book to show what the Supreme Court said and what the Articles all mean. I do not have €300 to pay Messrs. Hogan and Whyte for their book. This is an issue we might take up again.

Senator Mullen's amendment consists of two sentences. The first sentence, which states that the conduct of such inquiries should be regulated by law, would be enough. That is the language of the Constitution. It does not generally go further to specify how the regulation by law would take place. I am satisfied that by inserting this provision with due regard to the principles of fair procedure the Minister has come a long way. The debate, in both Houses, shows the intent of the proposal. The interpretation is very clear. However, it will mean armies of lawyers getting their costs and running to the High Court. That is going to happen. As the Minister said, people will assert their rights.

I hope there will be severe penalties for any Member of this House who briefs the media, gives interviews or claims credit either for starting an investigation or for the result of it. That would be unfortunate and it must be provided for in the Bill.

The Minister makes reasonable points, as does Senator Mullen. On balance, Fianna Fáil will not be supporting Senator Mullen's amendment and we regret that we cannot do so.

Senator Rónán Mullen: I was particularly impressed by what Senator Byrne said just now. However, the logic of what he said should cause him to support the amendment. We will agree to disagree.

The Minister made several points about tribunals of inquiry. I do not think anyone would disagree with what he said. In my previous existence as an opinion columnist I questioned aspects of how tribunals of inquiry worked. I do not think I heard the Minister make the same criticism of commissions of inquiry. I do not want to invoke the concept of straw men, but we can sometimes have false dichotomies. Does the Minister have the same problem with the way commissions of inquiry have been operating? It seems to me they have been a vast improvement. The Cloyne report, for example, was done in a relatively short space of time and on a very sensitive issue. The commission was headed by a person with the requisite training. The appropriate role for these Houses is to discuss what a good inquiry such as that comes up with and to see what policy or legislative measures should follow it.

The difference between a judge and a politician is that judges, generally, do not care whether they are popular or not. I remember, at a prominent State funeral, a certain judge was seen in the back of his State car. It was remarked that no Minister would do that. Ministers make sure they are seen in the front of their cars.

Acting Chairman: We are straying a long way from the amendment, Senator.

Senator Rónán Mullen: It is that very remoteness from public opinion that is such an important part of the safeguard of impartiality. All of us here are conscious of what people think of us. That is going to impact. We will be like the young barrister cross-examining the Jack Nicholson character in “A Few Good Men”. We are going to want to say to someone that we want the truth, make them angry and have them tell us we can’t handle the truth. I am worried about the potential for grandstanding this could import. That is not an unreasonable position.

If the Minister is trying to save money we can have measures that involve paying lawyers less. We can curtail costs. However, it does not mean that we should do away with skills which are important. As a general rule, commissions of inquiry are headed by persons with legal experience, generally, but not always, a judge. There is a reason for this practice because we regard ourselves here as being more like a jury at most and better again that we would be the people who scrutinise the findings made by expert impartial people who are not unduly concerned by public opinion. This does not in any way curtail our freedom to make the important legislative and policy choices.

Senator Darragh O’Brien: As the Cathaoirleach has observed, the House has spent two hours on this amendment and there has been a lot of grandstanding this afternoon. Senator Mullen is saying that no politician, no Member of the Houses of the Oireachtas, can make a difficult decision if it will prove to be unpopular. I remind him of those Members in the previous Government who had to pass budgets which they knew were not politically favourable to them.

Senator Rónán Mullen: It showed some late capacity.

Acting Chairman (Senator Maurice Cummins): No interruptions, please.

Senator Darragh O’Brien: I will not delay the amendment any further. However, Senator Mullen is incorrect in two points. He is trying to protect against people who were elected to this House making up their minds. I wish to ensure there is no bias in the process and there are ways to do this. I refer to the Standing Orders of this House and the other House relative to private business——

Deputy Brendan Howlin: That is something for another day.

Senator Darragh O’Brien: It means that people would absent themselves from a committee if something arose at the committee related to their constituency. Then I can understand how there might be a consideration made regarding public opinion. A member of the committee would then be obliged to state that the issue or incident related to his or her constituency or that a conflict of interest had arisen. I refer the Minister to the Standing Orders Relative to Private Business 1939.

I served as Vice Chairman of the Committee of Public Accounts. This committee worked very well on a cross-party basis. Members of that committee did not necessarily need to have been trained as auditors, accountants, lawyers, school teachers or candlestick-makers because it did not make any difference so long as people were well prepared. I suggest that anyone elected to these Houses will have a breadth of experience which many other people in other professions would never achieve, despite having any amount of college degrees. I trust that my colleagues would make proper decisions, even though they may be difficult decisions. I agree that discussion of the Standing Orders of the committee is for another day. We must ensure

[Senator Darragh O'Brien.]

that when conflict arises, particularly as regards matters relating to a constituency, that it is dealt with.

Deputy Brendan Howlin: I am not suggesting that this mechanism is to trump all other mechanisms rather I am saying that we need Parliament to have a mechanism. The commission of investigation route will be used in the future and also the tribunals of inquiry route will be appropriate for other investigations. We are broadening the options available to work in the public interest. This is what is being asked for. I refer to Senator Mullen's final commentary. His is a fair argument and it is that he does not trust Members of the Oireachtas to hold inquiries——

Senator Rónán Mullen: What about people's reputations?

Deputy Brendan Howlin: Everything we do by way of investigation will impact on people, whether a class of people or an individual person. I trust my colleagues. I acknowledge it will be a new challenge for them. Members will have to recuse themselves from participation in some work on the basis of constituency or previous utterances. A discipline will be required but, by and large, people involved in other work in the past have maintained that discipline. I accept Senator O'Brien's view that politicians can make difficult decisions in the national interest——

Senator Rónán Mullen: It is very different.

Senator Darragh O'Brien: The Senator said that politicians were not capable of making unpopular decisions and that is not true.

Deputy Brendan Howlin: Populism is the issue. Senator Mullen's argument is that politicians court popularity and I do not think this is true. I do not think with my job if I was to court popularity——

Senator Rónán Mullen: The Minister is in power and there is a price to be paid. He had better be ready to put up with a bit of unpopularity.

Acting Chairman (Senator Maurice Cummins): Senator Mullen has had ample time and he should allow the Minister to reply.

Deputy Brendan Howlin: I will do my duty by my country and which is my constitutional duty. I am happy and honoured to do so.

Senator Rónán Mullen: Yes, I know the Minister will do so.

Deputy Brendan Howlin: I think we have heard enough.

Senator Rónán Mullen: If I may respond very briefly to the issue about grandstanding, I do not know to whom Senator O'Brien was referring but if I was interested in grandstanding, I would try to find an audience first.

Senator Darragh O'Brien: The Senator would be hard pushed to find one.

Senator Rónán Mullen: Everybody here has contributed from a position of deep sincerity.

Acting Chairman (Senator Maurice Cummins): These points are not relevant to the amendment and I ask the Senator to resume his seat.

Senator Rónán Mullen: I will say what is relevant. I would ask the Minister whether he can think of a single aspect of any commission of inquiry which he found to be unsatisfactory and which necessitates the creation of this new mechanism. I ask for a practical example.

Senator Thomas Byrne: The results of the banking inquiry.

Senator Rónán Mullen: Senators O'Brien and Byrne are somewhat contradicting each other. I have no problem accepting what Senator O'Brien says, that we are capable of making unpopular decisions and of adjudicating certain matters. However, Senator Byrne gave the particular example of the Nyberg report. In the subtext of what Senator Byrne says there is that concern that one group of politicians might use an inquiry of the kind that is envisaged to say some quite unfair things or to draw some quite partial conclusions about other politicians. That is something my Fianna Fáil friends might very well wish to consider.

Acting Chairman (Senator Maurice Cummins): I call Senator Walsh. We have had a lot of repetition from speakers.

Senator Thomas Byrne: On a point of order, is it not the case that Members may speak on Committee Stage for an unlimited time?

Acting Chairman (Senator Maurice Cummins): Yes, of course.

Senator Thomas Byrne: There is an amount of tut-tutting going on which——

Acting Chairman (Senator Maurice Cummins): Please, Senator Byrne.

Senator Thomas Byrne: ——is totally inappropriate. Our time is precious here and the Chair is trying to restrict it.

Acting Chairman (Senator Maurice Cummins): I am not restricting any speaker.

Senator Thomas Byrne: We are not filibustering, we are trying to tease out the issues.

Acting Chairman (Senator Maurice Cummins): Senator Byrne, no one suggested that anybody was filibustering.

Senator Thomas Byrne: There is a lot of tut-tutting going on when Members rise to speak.

Acting Chairman (Senator Maurice Cummins): Excuse me, Senator Byrne, there is no tut-tutting going on.

Senator Thomas Byrne: There is a lot of tut-tutting about Members speaking.

Acting Chairman (Senator Maurice Cummins): Any Member who has indicated a wish to speak has been allowed to speak and will be allowed to speak but I will not allow any more repetition. I call Senator Walsh.

Senator Jim Walsh: I am a little concerned that the Minister is dismissing the concern to ensure that the rights of the individual would be balanced proportionately with that of the public interest. I have listened carefully to the Minister and I believe these rights are inherent in the measure. From that point of view I am reassured. However, the kernel of my concern surrounds the capacity of individuals to operate independently as individuals in what is a very partisan forum which is the other House and to a lesser extent, this House. I refer to the type of influences that can be brought to bear along

5 o'clock

[Senator Jim Walsh.]

with subtle pressure, and the partisan nature of the Houses, could have serious repercussions for a person's reputation if the make-up of the investigating group was of a different political persuasion. We need to be very careful. All that is needed is one bad example to reflect on the Houses and the whole system. It will be imperative that as many safeguards as possible are included in the legislation to avoid any infringement in that area.

Cuireadh an cheist: “Go bhfanfaidh na focail a thairgtear a scriosadh.”

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

Rinne an Choiste vótáil: Tá, 25; Níl, 3.

Question put:

The Committee divided: Tá, 25; Níl, 3.

Tá

Bacik, Ivana.
Barrett, Sean D.
Bradford, Paul.
Brennan, Terry.
Byrne, Thomas.
Clune, Deirdre.
Coghlan, Paul.
Comiskey, Michael.
Conway, Martin.
Cummins, Maurice.
D’Arcy, Jim.
D’Arcy, Michael.
Henry, Imelda.

Keane, Cáit.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
Noone, Catherine.
Norris, David.
O’Brien, Darragh.
O’Donnell, Marie-Louise.
O’Donovan, Denis.
O’Keeffe, Susan.
O’Neill, Pat.
Sheahan, Tom.

Níl

Mullen, Rónán.
van Turnhout, Jillian.

Zappone, Katherine.

Tellers: Tá, Senators Paul Coghlan and Susan O’Keeffe; Níl, Senators Rónán Mullen and Jillian van Turnhout.

Question declared carried.

Faisnéiseadh go raibhtheas tar éis glacadh leis an gceist.

Question declared carried.

Faisnéiseadh go rabhthas tar éis diúltú don leasú.

Amendment declared lost.

Aontaíodh an Sceideal.

Schedule agreed to.

Aontaíodh ailt 1 agus 2.

Sections 1 and 2 agreed to.

Aontaíodh an Réamhrá.

Preamble agreed to.

Aontaíodh an Teideal.

Title agreed to.

Tuairiscíodh an Bille gan leasuithe, glacadh é chun an breithniú deiridh a dhéanamh air agus ritheadh é.

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

Ráiteas faoi Eolas do Vótálaithe: Tairiscint

Statement for Information of Voters: Motion

Senator Maurice Cummins: Tairgim:

“GO ndéanfar an ráiteas a leagtar amach sa Sceideal a ghabhann leis an Rún seo a fhordú mar fhaisnéis do vótálaithe de bhun alt 23 d’Acht an Reifrinn, 1994 (Uimh. 12 de 1994), i ndáil leis an togra chun Airteagal 15.10 den Bhunreacht a leasú, ar togra é atá sa Bhille um an Tríochadú Leasú ar an mBunreacht (Fiosruithe Thithe an Oireachtais), 2011 agus atá ina ábhar do reifreann bunreacht.

An Sceideal

Reifreann a bhaineann le Fiosruithe ag Tithe
an Oireachtais.

Is é atá beartaithe leis an mBille um an Tríochadú Leasú ar an mBunreacht (Fiosruithe Thithe an Oireachtais), 2011 leasú a dhéanamh ar na forálacha den Bhunreacht a bhaineann le cumhachtaí Thithe an Oireachtais fiosrú a stiúradh faoi aon ní a luafaidh an Teach nó na Tithe lena mbaineann ina thaobh go bhfuil tábhacht phoiblí ghinearálta ann. Leis an leasú beartaithe, chuirfí na fo-ailt seo a leanas le hAirteagal 15.10:

‘2° Beidh an chumhacht ag gach Teach fiosrú a stiúradh, nó fiosrú a stiúradh i dteannta an Tí eile, ar mhodh a ndéantar socrú ina chomhair le dlí, faoi aon ní a luafaidh an Teach sin nó na Tithe sin ina thaobh go bhfuil tábhacht phoiblí ghinearálta ann.

3° I gcúrsa aon fhiosraithe den sórt sin, féadfar imscrúdú a dhéanamh faoi iompraíocht aon duine (cibé acu is comhalta de cheachtar Teach an duine nó nach ea) agus féadfaidh an Teach sin nó na Tithe sin fionnachtana a dhéanamh maidir le hiompraíocht an duine sin i dtaca leis an ní lena mbaineann an fiosrú.

4° Is faoin Teach sin nó faoi na Tithe sin a bheidh sé an chóimheá chuí idir cearta daoine agus an leas poiblí a chinneadh, ag féachaint go cuí do na prionsabail a ghabhann le nós-anna imeachta córa, chun a chur in áirithe go ndéanfar fiosrú éifeachtach faoi aon ní lena mbaineann fo-alt 2°.’.

MÁ THOILÍONN TÚ leis an togra, cuir X os coinne an fhocail TÁ ar an bpáipéar ballóide.

MURA dTOILÍONN TÚ leis an togra, cuir Xos coinne an fhocail NÍL ar an bpáipéar ballóide.

[Senator Maurice Cummins.]

Is féidir cóip den Bhille a iniúchadh nó a fháil saor in aisce in aon Phost-Oifig.

I move:

THAT the statement set out in the Schedule to this Resolution be prescribed for the information of voters pursuant to section 23 of the Referendum Act 1994 (No. 12 of 1994), in relation to the proposal to amend Article 15.10 of the Constitution which is contained in the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 and is the subject of a constitutional referendum.

Schedule
Referendum relating to Inquiries by the
Houses of the Oireachtas

The Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 proposes to amend the provisions of the Constitution relating to the powers of the Houses of the Oireachtas to conduct an inquiry into any matter stated by the House or Houses concerned to be of general public importance. The proposed amendment would add the following subsections to Article 15.10:

‘2° Each House shall have the power to conduct an inquiry, or an inquiry with the other House, in a manner provided for by law, into any matter stated by the House or Houses concerned to be of general public importance.

3° In the course of any such inquiry the conduct of any person (whether or not a member of either House) may be investigated and the House or Houses concerned may make findings in respect of the conduct of that person concerning the matter to which the inquiry relates.

4° It shall be for the House or Houses concerned to determine, with due regard to the principles of fair procedures, the appropriate balance between the rights of persons and the public interest for the purposes of ensuring an effective inquiry into any matter to which subsection 2° applies.’.

IF YOU APPROVE of the proposal, mark X opposite the word YES on the ballot paper.

IF YOU DO NOT APPROVE of the proposal, mark X opposite the word NO on the ballot paper.

A copy of the Bill can be inspected or obtained free of charge at any Post Office.”

Cuireadh agus aontaíodh an cheist.

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Maurice Cummins: On Tuesday, 27 September 2011 at 2.30 p.m.

The Seanad adjourned at 5.20 p.m. until 2.30 p.m. on Tuesday, 27 September 2011.