

SEANAD ÉIREANN

Dé Máirt, 18 Deireadh Fómhair 2011.
Tuesday, 18 October 2011.

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Paidir.

Prayer.

Business of Seanad.

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

The need for the Minister for Justice and Equality to discuss the anti-social behaviour in the Templar's Hall area in Waterford and the need for an appropriate Garda response.

I have also received notice from Senator Thomas Sheehan of the following matter:

The need for the Minister for Health to clarify the proposed ambulance service reduction for Caherciveen station, County Kerry.

I have also received notice from Senator Paul Bradford of the following matter:

The need for the Minister for Education and Skills to reinstate an adequate school bus service to Adair national school, Fermoy, County Cork.

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

The need for the Minister for the Environment, Community and Local Government to review the housing regulations so that income derived from family income supplement is exempted when assessing applicants' eligibility for local authority housing and social housing options.

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

Order of Business.

Senator Maurice Cummins: The Order of Business is No. 1, the Central Bank and Credit Institutions (Resolution) (No. 2) Bill 2011 — Order for Second Stage and Second Stage, to commence on the conclusion of the Order of Business and to conclude no later than 6.45 p.m., with the contributions of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed six minutes, and the Minister to be called on to reply to the debate no later than 6.40 p.m.

[Senator Maurice Cummins.]

On another matter, I note that it is becoming a habit for Members to raise items on the Order of Business and then depart from the Chamber. I have no intention in future of replying to Members who will not remain in the Chamber to hear the replies.

Senator Marc MacSharry: I agree wholeheartedly with the Leader. Indeed, I have been guilty in the past of being obliged to leave early but I have always excused myself to the Leader. It is good practice either to do that or to be present in the Chamber to hear the response.

We will not oppose the Order of Business, but I wish to raise some pressing issues and perhaps the Leader will be able to work them into the schedule later in the week. First, there are reports from RTE today, following an internal investigation conducted by that organisation, that some 35 children have died in the care of the HSE since 2010. It is shocking in the extreme. Will the Leader make immediate contact following the Order of Business with the Department of Health and the Department of Justice and Equality? Indeed, the current Minister for Justice and Equality, Deputy Alan Shatter, took a very active and vocal role on this issue when it was dealt with in the other House under the previous Administration. I am very interested to hear his views on this. It is incumbent on Members of this House to have a debate on that issue this week if at all possible. Notwithstanding the fact that there are many health issues to be discussed, and I accept the Leader's invitation to participate in the debate on 27 October in the presence of the Minister for Health, it is important to note the reports this morning that 8,000 more people are now on waiting lists. I am sure the Leader will agree that this is unacceptable.

A huge issue faces our capital city this evening. A total of 249 residents, including 96 elderly people and a number of children, two of whom are under the age of two years, are being put up in the Regency Hotel because a court has ruled that their accommodation is unsafe for habitation due to health and safety concerns about fire.

Who certified these buildings? On behalf of this side of the House, I demand that we find out the names of the professional practitioners in engineering and in architecture who certified these buildings as complying with various regulations set out in the planning and the building control legislation. We have a responsibility to immediately repeal the Building Control Act and to change the rules in order fire certification is not just granted at design stage but at all stages up to completion.

I have heard about self-certification in recent days. There is no self-certification. Independent practitioners licensed and approved, whether by the Royal Institute of Architects in Ireland, Engineers Ireland or the various associations, who we assume operate to the highest standards in their particular professions are clearly not doing so. It begs the question as to how many other apartment blocks, housing developments or commercial developments throughout the country are defective as a result of an unhealthy proximity between developers and the various professions. If possible, will the Leader arrange an immediate debate on this issue? I am not sure who is the most appropriate Minister, although perhaps it is the Minister for the Environment, Community and Local Government.

While I appreciate a debate will take place in the coming days in the Dáil, could we too have an early debate on the Keane report? I appreciate we will debate financial matters this afternoon and we can touch on such issues but the nature of the issue of mortgage arrears and personal debt requires a specific debate in the House.

Senator Ivana Bacik: I join with Senator MacSharry in calling for a debate on how to prevent a repeat of the incident with the apartment block in Donaghmede. It is an appalling outcome to see hundreds of people, including elderly people and families with young children, being put

in most inappropriate and unsuitable accommodation for perhaps weeks or even longer because of the inadequate building and the failure to observe fire safety standards. I used the word “inadequate”, although it is a gross understatement. I understand from reading newspaper reports and from what Senator MacSharry said that the building was approved on the plans and that at design stage, it looked as if it would be compliant with fire and safety regulations. Clearly, the actual building differed significantly from the plans. It is an appalling outcome and there are huge questions to be answered.

We must look at how legislation can assist. Is any reform of legislation needed to ensure this cannot happen in the future? I agree with Senator MacSharry that perhaps the Minister for the Environment, Community and Local Government should attend the House. I have also asked the Minister of State with responsibility for housing to attend the House at an early date. There are issues in this regard with which he may also be able to deal.

A debate on the Keane report would be useful. Many others, including myself, have called for this already. I understand we will have that debate in early course.

Will the other group leaders let me know if they are willing to support a motion for cross-party support, that Seanad Éireann condemns the continued detention since 10 September of internationally renowned psychoanalyst, Dr. Rafah Nashed, by the Syrian Government, and which I have already circulated? I am very grateful to Senators Rónán Mullen and Jillian van Turnhout for assuring me of their support. Colleagues will recall that I have already raised this matter. It would be very appropriate for the Seanad to call on the Government to join with others, including the EU High Representative, Catherine Ashton, in calling for the immediate release of Dr. Rafah Nashed. The Governments of Argentina, Brazil and France have already called for her release and her continued detention in her in a women’s prison in Damascus is an appalling abuse of her human rights. It would be a useful exercise for us to call for her release and that of others arbitrarily detained by the Syrian regime.

In the context of an ongoing debate on the referendums, which is rather more muted than the debate on the presidential election, the Seanad debate on the Oireachtas committee referendum was a very good and an informative one. Is there some way of disseminating the speeches from that debate? I have sent them to anyone looking for information on the referendum. It would be a very good way to inform people about the content of that referendum.

Senator Sean D. Barrett: I wish to refer to the second editorial in *The Irish Times* today, namely, the Battle of Clontarf mark II. Some 3,000 people attended a protest on Sunday against Dublin City Council’s proposal to build a 9 ft. high barricade along the seafront from the railway bridge at Clontarf to the wooden bridge to access the Royal Dublin golf club. As speakers, including Roddy Doyle, said at the meeting the view of Dublin Bay should be one of the attractions of the city and should not be hidden.

I understand the Minister, Deputy Hogan and the Minister, Deputy Bruton, have strong views on the issue, as well as the Minister, Deputy Varadkar, who is responsible for tourism. The right hand side of the wooden bridge at Dollymount is where the flooding problem is and on the left-hand side a large area is silting up because of a causeway built by the city council to stop the water escaping into Sutton creek. The people would welcome more water. The sailing club in Kilbarrack had to shut down due to a lack of depth, while the other side of the causeway is flooding. The causeway should be breached and the water allowed to flow into Dublin Bay through the creek.

The people of Clontarf should be able to continue to enjoy the amenity of looking across to the mountains, ships and sea, as Roddy Doyle said. It is an area where people play and train for football. I hope the Minister, Deputy Hogan, takes the short journey from his office in the

[Senator Sean D. Barrett.]

Custom House to see the project at first hand and report back to the House that there are perhaps better ways of dealing with the flooding problem in Clontarf than building a 9 ft. high barricade.

Senator Martin Conway: Like other speakers, I would like to express my good wishes to those living in Priory Hall in Dublin. It is appalling that people have to move out of their homes because of faulty building standards. It is symptomatic of what took place in this country over the past ten to 15 years, when there was very light regulation of myriad sectors.

It is a shame to say that four or five years ago one could put the phrase “architectural services” over one’s door and masquerade as an architect even though one might not have had any qualifications whatsoever. One could also call oneself a quasi-engineer and get away with it. The problem is that thousands of people handed over good money to such people and expected their facilities to be properly certified. Ordinary decent people put their faith in the hands of so-called professionals who have turned out to be not at all professional or ethical in the way they did their business.

I agree with Senator MacSharry. The people who are responsible for this need to be brought to justice. I admire the judge who said he is going to monitor the situation on a weekly basis. I have no doubt that he will ensure there will be prosecutions. It is an appalling situation. I ask the Leader for a debate on the regulation of the architectural and engineering industries. Are they regulated enough? Has the new legislation covered them and dealt with the obvious flaws in the system over the past decade?

We need to ensure that what happened in north Dublin never happens again in any new building. Are other investigations taking place? Does the Department of the Environment, Community and Local Government have concerns about other apartment blocks in the city or elsewhere in the country?

Senator Terry Leyden: I ask the Leader to consider making a report to the House on the Judicial Appointments Advisory Board. New appointments were made on 7 June for a three year period. Under the 1995 Act the board can recommend up to seven people for judicial vacancies. Only one or two of those recommended can be appointed. The board has no statutory powers. It cannot call people for interview or discuss their background and would not be aware of any contributions to political parties or party affiliations.

Senator Michael Mullins: They know all about it.

Senator Terry Leyden: It would be useful if we could discuss the future role of the board. The new Government has promised transparency and that everything will be above board, fair, honourable and honest. It would be only right and proper that judicial appointments are made on the advice of the judicial advisory board. The person it recommends should be appointed on the basis of merit.

An Cathaoirleach: Senator, are you seeking a debate on this issue or have you a question for the Leader?

Senator Terry Leyden: I seek a debate on the matter.

An Cathaoirleach: Senator Leyden, bear in mind that the House does not have a function in the appointment of people. Do you have a question for the Leader?

Senator Terry Leyden: The question is simple. I ask the Leader to consider facilitating a discussion on the role of the Judicial Appointments Advisory Board with a view to giving it a new role as the body that would recommend judicial appointments in future. That would be more transparent and honest. For the next number of years, people who are not affiliated to Fine Gael or the Labour Party will not have a look-in. Let us be honest about that, and it is unfortunate.

Senator Martin Conway: We would consider Senator Leyden.

An Cathaoirleach: Senator, you are going down the wrong road. You cannot make insinuations like that.

Senator Terry Leyden: It is a very good and accurate road.

An Cathaoirleach: Have you a question for the Leader? You must respect the independence of the body you are talking about.

Senator Terry Leyden: Of course.

An Cathaoirleach: Have you a question for the Leader?

Senator Terry Leyden: I ask the Leader to place this matter on the agenda. We should discuss the role of the advisory body, in this day and age.

I note that RTE did not carry my comments about the appointments.

An Cathaoirleach: Senator, you have asked a question.

Senator Terry Leyden: I ask the Leader to consider this matter and to have a debate in the House on the role of the Judicial Appointments Advisory Board. It was set up by an Act of the Oireachtas in 1995. As Members of the Oireachtas we are entitled to bring the members of the board to account.

An Cathaoirleach: Senator, you will have nothing to say when the debate is held if you continue talking.

Senator Paul Coghlan: He might surprise you, a Chathaoirligh.

Senator Terry Leyden: By that time, someone from the west may have been appointed to something.

I commend the Minister of State at the Department of Health, Deputy Róisín Shortall—

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

Senator Terry Leyden: I ask the Leader to invite the Minister of State, Deputy Shortall to attend the House to discuss a very important issue which I commend her for raising on 23 September, 1 October and again today, namely, the underpriced selling of alcohol in off-licences and supermarkets. However, while the Minister of State may talk the talk, she does not walk the walk. Nevertheless, I commend her for at least trying to raise this very serious issue. I believe she would be happy to address the House on it.

Senator Jimmy Harte: I thank Senator Leyden for pointing out the obvious. What went on for the past 14 years will not continue for the next four or five years. He can be sure of impartiality in that field.

Senator Terry Leyden: We will wait and see.

Senator Jimmy Harte: With regard to the call for the Minister of State with responsibility for housing to attend the House to discuss Priory Hall in particular and cowboy builders in general, this problem is a product of the Celtic tiger. The taxpayer will pay the bill for Priory Hall and other similar building problems in every other county.

I ask the Minister of State to contact every county manager and planning office and ask them to review all the building projects they consider might be compromised. This is a huge problem. The bill will run into billions of euro. I do not know what it would cost to demolish and rebuild Priory Hall or to relocate the residents. The cost of relocation is only part of the cost. There is also the humiliation of families having to carry their goods out of their homes in plastic bags to the backs of cars and go to a hotel. This was not their fault and there has not been a flood or natural disaster. The recklessness of a developer and his associates is to blame, and we know who they are.

The judge in the case said this was one of the worst cases for centuries. No one has ever been evicted from their home in this country. Yesterday, people were evicted from their homes.

The previous Government must take responsibility. They may blame the builder, who is a convicted person of ill-repute. He is, ultimately, seen as a fool who has cost money to the economy and hardship to young families and elderly people who should not have to go through this.

An Cathaoirleach: Does the Senator have a question for the Leader or is he supporting the call for a debate?

Senator Jimmy Harte: I am asking that the Minister come into the House to discuss the issue and be called on to contact every county manager in the country to determine how immediate a problem this is.

Senator David Cullinane: Sinn Féin supports Senator Bacik's motion on Dr. Nashed, which it is hoped can be discussed in the House. However, even if it is not discussed, Sinn Féin will support the motion if put before the House.

Also, I support the call of previous speakers for the Minister with responsibility for housing to come into the House to debate planning and development regulations in this State, in respect of which one of the issues at play is enforcement. There is a wealth of planning regulations in this State. Many Members of the House who were previously councillors will have experience of the planning process in terms of development plans and will understand that there are in place robust regulations and that part of the problem is enforcement. This needs to be factored into any discussion we may have with the Minister.

Senator Harte spoke about builders taking responsibility. It is also important that the Government takes responsibility. I ask the Leader to arrange for a debate on a big issue facing this country over the next number of weeks, namely, the handover of €700 million to a single unguaranteed bondholder as part of Anglo Irish Bank bonds to be paid back over the next number of years. The sum of €700 million will be paid on 2 November and €1.2 billion will be paid in January. This is at a time when Members of this House are raising issues such as cuts to special needs, the closing of hospital wards, cuts in the education sector and across the board and in respect of social welfare payments which will affect families. We are facing into a budget which, depending on which Minister one believes, will contain cuts ranging from €3.6 billion to €4 billion. This is happening at a time when this Government is to pay €700 million to one unguaranteed bondholder despite that we are not compelled, legally or morally, to do so.

I call on the Leader to provide this House with an opportunity to discuss the implications of these type of decisions by this Government on behalf of the taxpayers.

Senator Tom Sheahan: I wish to raise two issues. Would it possible for the Leader to ask the Minister for Education and Skills to come to this House to explain why sample papers for Project Maths, which is a new syllabus, were only made available to students last week? It is not good enough that these sample papers only became available last week. Also, students and teachers have expressed concern about the Irish sample papers. I would welcome a discussion on this issue in the House with the Minister for Education and Skills.

This morning, I received from the secretariat of the Joint Committee on Finance, Public Expenditure and Reform a transcript of extracted questions asked by individual committee members at its meeting on 2 September last and matched up corresponding replies received from the various attending witnesses. I asked several questions at that meeting of 2 September, one of which related to the increase in variable rate mortgage repayments to which the Governor of the Central Bank, Professor Honohan, replied:

Senator Sheahan mentioned particular investments by the credit unions, which is a matter for another day. We know about these and the background to them. We are also aware of increased repayments on mortgages that have not been restructured because, as Mr. Elderfield mentioned, we have insisted on particular treatment, whereby borrowers are not moved from tracker to standard variable rates. The example the Senator has given is one in which the standard variable rate has gone up. That has been concerning us, but we do not have powers in this regard.

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

Senator Tom Sheahan: I am getting to it. Mr. Elderfield, when visiting UCC on Friday last gave a direction to the banking fraternity in regard to increases in standard variable rates despite his stating previously “.....we do not have powers in this regard”. Would it be possible for the Leader to invite the Governor of the Central Bank, Professor Honohan, and the Financial Regulator, Mr. Elderfield, to this House to discuss this issue?

An Cathaoirleach: This is a matter the Leader can raise with the Committee on Procedure and Privilege, CPP.

Senator Tom Sheahan: I raised another issue, that of investments by credit unions. The Governor’s answer, which I have in black and white, was that he did not want to address the specific investments that I mentioned. This answer is not good enough. If the Governor and his deputy will not give answers at a committee meeting, I suggest that they be brought before the House to give them.

An Cathaoirleach: This is a matter for the committee that the Senator attended.

Senator Tom Sheahan: This is the answer I received from the Governor.

An Cathaoirleach: The Senator is out of time. Does he have a question for the Leader?

Senator Tom Sheahan: Yes. Will the Leader arrange for the Governor of the Central Bank to attend the House so that he might answer questions——

An Cathaoirleach: That is a matter for the CPP.

Senator Tom Sheahan: —without giving the types of answer he gave at the committee meeting?

Senator Jim Walsh: I support Senator MacSharry and ask that the professionals involved, including architects and solicitors, as well as the company be added to the list of people who should be investigated and held to account. They extracted considerable and handsome fees and have some responsibility for this unfortunate situation in Donaghmede.

Will the Leader agree to work with the leaders of the groups in the House to table a motion in support of the recommendations of the Oireachtas sub-committee on the Dublin and Monaghan bombings? The Dáil passed an all-party motion and the Seanad should at least do the same. Unlike the Dáil, we should then pursue the matter.

In a similar vein, will the Leader consider a second all-party motion condemning the British Government for its failure to hold a public inquiry into the murder of Pat Finucane in 1989? Following Judge Peter Cory's investigation, this matter formed part of an agreement between the Irish and British Governments to the effect that public inquiries into a number of murders would be held. While an investigation concerning Billy Wright was held in the North and the Smithwick tribunal investigated the shootings of RUC members Harry Breen and Robert Buchanan, it is unacceptable that an international agreement has been disregarded by the British Government, as evidenced by the Prime Minister's announcement of a paper review of the murder. The family's members are dissatisfied and I am delighted that our Government is supporting them.

3 o'clock

Last week, I referred to EU scrutiny. We have 175 pages to read ahead of tomorrow's meeting of the Joint Committee on Foreign Affairs and Trade. This is no way for the Houses to do business where EU scrutiny is concerned. Not one member of the committee will have read all of these pages. Given the impact of the various directives and proposals from Europe, this approach is a shame. I appeal to the Leader, the Cathaoirleach and the CPP's other members to take this issue on board. The House was to have played a role in examining all EU proposals. It would have benefited the House and enhanced the Government's response.

As Senator Daly stated last week, 480 observations on these proposals have been made to the EU. Not one observation has come from Ireland. This is unacceptable and we should cry halt.

Senators: Hear, hear.

Senator Jim D'Arcy: I join Senators MacSharry and Bacik in asking the Leader to provide an early debate on the Keane report. The report deals well with the matter of people who are no longer able to pay their mortgages. Its suggestions on mortgaging to rent and reforming bankruptcy laws are welcome. However, the Taoiseach stated in the Dáil last week that he would welcome further suggestions. We need a full debate on what is a serious issue, particularly for those who wish to hold onto their homes but are unable to pay their full mortgages. Also in that regard, following a request from the Leader to arrange a meeting with New Beginnings, I have arranged it for 7 p.m. this evening in the AV room and I hope Senators can attend.

Senator John Crown: Last week, a paper was published in *The Lancet*, perhaps the world's most prestigious medical journal, outlining the implications for the citizens of Greece of cut-backs in terms of delivery of and access to their health system. For the first time we saw a real verifiable matrix which showed that this is not some vague aphoristic theoretical worry about what might happen if there are health service cuts at a time of budgetary constraint but what actually happens. It showed alarming declines in the provision of service for a number of conditions and quite alarming increases in areas such as HIV infection and other illnesses.

There is a budget coming up in the near future and it is widely predicted that in the clichéd prevailing circumstances we will see some further cuts in the health service. It is already creaking and the potential that another round of cuts will bring real verifiable and life-threatening complications for patients who need the health system is not something which is theoretical; it is very real.

It is distasteful for people to hear endless whingeing and bleating, often from well-paid consultants, about deficiencies in the health service but I want to propose what I believe would be a small partial solution. I ask the Leader if he would bring to the attention of the Minister for Finance and the Minister for Health the possibility, following somewhat similarly the philosophy of the old Irish sweepstake which was originally set up to fund hospital work in Ireland, of a national health service solidarity bond. This bond would be a call to the citizens of this country to get a low-yield, long-term low-interest rate bond guaranteed by the Government, effectively giving to the Government a supply of cheap low-interest credit for a fixed period of time, perhaps ten years. This, however, would have to be ringfenced for the health service. We would have to get a guarantee that it was not being used to pay Mr. Roman Abramovich — I am sorry, I know I am not supposed to mention individuals here——

An Cathaoirleach: It is fine.

Senator Marc MacSharry: He will not mind.

Senator John Crown: ——or any hypothetical oligarchs who may have substantial investments in failed Irish banks, but that it would be used specifically for the purpose of maintaining services within the health services currently constituted. I believe that this would be feasible. If it was appropriately constructed, perhaps — I do not know as I am not an expert in these matters — with some degree of tax efficiency, etc., it could provide an opportunity for those who are well paid, who are well disposed towards the health service and who wish to make a patriotic investment in their country to provide a source of credit at a time when we do not have access to traditional sorts of credit. I would be grateful if the Leader would bring these issues to the Ministers in question.

Senator Paul Coughlan: There are an increasing number of break-ins in rural areas. Over the past ten years or more, a number of Garda stations throughout Ireland which were not regarded as viable were closed. As Senators will be aware, in recent times there seems to have been an increasing number of thefts of items such as copper, money and jewellery. While there might have been some scaremongering allied to this as well regarding further closures, I do not know whether there is any hard evidence. Community alert committees are important throughout Ireland. They have done valuable work and maybe there is a need for more of them. The gardaí stay in touch and monitor the situation with the people involved in these communities and it is highly important work. Perhaps in due course the Minister for Justice and Equality could come to the House. I am not saying that any further closures are planned, but if some further rationalisation down the line is planned, it would be nice to know of it in advance. It would be helpful to local representatives throughout the various local authorities if they were made aware in advance. Much liaison is taking place and perhaps there is a need for more of it between local representatives and community groups. The Leader might consider whether it would be possible to invite the Minister to the House, if it is appropriate and if there is anything further planned. I am not saying there is.

Senator Paschal Mooney: There is.

Senator Paul Coghlan: I am aware that some of what might be mentioned in certain places could involve a little scaremongering. However, if there is to be further rationalisation, it would be timely that we might know about it.

Senator Mark Daly: I support my colleagues on their criticisms of the repayment of some of the unsecured bondholders. It is a startling fact that €34 billion worth of bonds were repaid to investors — investors are risk-takers — despite the fact that these bonds were insured by a Government against default. We did not ask the bondholders whether they were insured, we just wrote the cheque for €34 billion and sent it back to them. It is hard to credit that this country would pay that money and then cut our own citizens' services and entitlements. This is the height of bad government. Senator Crown referred to people who had paid for the insurance but did not need to exercise it with the result that the insurance company in question avoided any liability because of what could be described as bad management by the Government. Some of the implications for Ireland in the document mentioned are referred to as being of "some significance". This is the report we have received. Decisions on Libya, Belarus and other wide-ranging decisions were taken on 4 March 2011 when we did not even have a Government and they were rubber-stamped by the European bureaucrats and without much notice having been taken by anyone.

Other speakers have referred to the issue of the apartments at Priory Hall and that it will cost €200,000 to provide accommodation for the residents up to 28 November. Nobody knows what will happen after that but there are vacant apartments in the vicinity, in Belmayne and Clongriffin, which are in the control of the Government by way of NAMA. They are fully fitted out and ready to be used and yet €200,000 will be expended on hotel accommodation. Why are the facilities which, unfortunately, we own, not being used to accommodate these people? I note that unqualified people can set themselves up as architects and engineers because there is no law to stop them. Similarly, one can set up as a psychologist, put up a brass plate, take the money from people and give them advice which one is not qualified to give. This is also a failure of regulation and there are no implications for those who——

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

Senator Mark Daly: Along with my other colleagues I ask the Leader to bring the Minister to the House to discuss the crisis situation for those people who are being evicted. We also need a debate on the issue of bondholders to which I referred.

Senator Michael Mullins: I join with my colleagues in expressing our support for the residents of Priory Hall and to hope that this matter will be resolved quickly. It should not come as any great surprise to most people in this House that we are now beginning to see problems emerging as a result of the madness and the cowboy activities that went on during the Celtic tiger days. The dogs in the street know many homes and buildings were very poorly constructed and light touch regulation and lack of enforcement were major contributing factors. I join with the previous speakers in asking the Leader to ask the Minister to attend the House for a discussion on this matter. I look forward to the day when the Oireachtas, following the passing of the referendum the week after next, will have the power to investigate this type of wrongdoing and activity in this development. This is the only case that has come to light but I have no doubt we will see more examples in the future. On a more positive note, as somebody who called for the abolition of the travel tax, I am pleased the money is being put to good use and I welcome the announcement made by the Minister, Deputy Varadkar, in the past few days of a €9 million winter-marketing boost for tourism through which Tourism Ireland will promote——

An Cathaoirleach: Does the Senator want a debate on that?

Senator Michael Mullins: I wish to express our appreciation and thanks to the Minister for promoting Ireland to 20 million potential overseas visitors. It is good to note there has been an increase of 12.5% in the first seven months of this year in visitors to this country.

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

Senator Michael Mullins: I want to see more of this type of initiative happening in other areas where we can build on the good work that has been done over the past seven months. Hopefully, we will see tourism making a major contribution to getting us out of the economic difficulties we are in.

Senator Paul Coghlan: Senator Leyden, take note.

Senator Labhrás Ó Murchú: I support the call made by Senator Jim Walsh for an all-party motion on the Dublin-Monaghan bombings, as happened in the Dáil. It would be nice if that happened at a fairly early stage. I would also like to commend the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Gilmore, and the Government on their persistence in seeking justice for the family of the murdered solicitor, Pat Finucane, and for his memory. When we consider the outrage that was there at the time of the killing, not just in Ireland but also internationally, it was clear that the only reason Pat Finucane was murdered was because of some people whom he defended in the courts. It is generally accepted throughout the world that people involved in the legal process do not become targets in times of conflict. When the Finucane family got an invitation to visit the British Prime Minister, I am sure their hopes were high that they would get a positive response and that there would be a public inquiry into Pat Finucane's death. They were exceptionally disappointed when they got a negative response.

However, I understand that one thing came out of that meeting. It was quite clear that the British Prime Minister believed there was state collusion in the killing of Pat Finucane. We all know full well this issue is not going to go away. It may even pass from one generation to the next. I commend the Government and I would like the Leader —

An Cathaoirleach: Does the Senator want a debate on it?

Senator Labhrás Ó Murchú: I would like the Leader to convey our views to the Tánaiste urging him and the Government to continue along the lines they have been taking, because it would make a lot of sense to have the public inquiry sooner rather than later. As long as we are waiting for this inquiry, the matter will fester and will only create enmity. I compliment the Government on meeting the Finucane family so quickly after it was refused an inquiry. That sent out the right signal.

Senator Paul Coghlan: Senator Leyden, take further note.

Senator Mary Ann O'Brien: I would like to focus on the Department of Education and Skills. We are all aware that given our financial circumstances and given it is one of the top-spending Departments, there have been huge cutbacks in the Department. However, we need to use common sense when it comes to making these cuts, rather than purely look at things as though through the lens of an accountant doing an accounting exercise. Our civil servants seem to forget that their decisions impact on ordinary human beings and, in this case, on a segment of society that is particularly vulnerable and relatively voiceless. One would also have to ask whether the savings accrued are even worth speaking about.

I refer to the 1,300 visually impaired students attending mainstream education all round this country at both primary and secondary level. We are all aware of the benefits of mainstream education for the students in question as well as the wider student body. However, the continu-

[Senator Mary Ann O'Brien.]

ation of these blind and visually impaired students in this type of education is coming under huge threat due to the cutbacks being inflicted on resource hours for these children. In recent years, there has been a 10% cutback in resource hours. Let Senators here imagine the case if they had a blind child in school and were told there would be a 10% cutback in resource hours. That does not appear much, but when these students are only left with three and a half hours per week, the percentage is very serious. The three and a half hours allocation is applied as the standard resource, with no regard for whether the child is totally blind or visually impaired. As Senators can imagine, this causes huge problems for all the stakeholders involved with the child. It does have an impact on the other children in the mainstream class, whether the civil servants like to admit it or not. No more than 40 of these students are totally blind and each of them has no choice other than to learn through the medium of Braille. Learning the Braille code, as well as all the other challenges facing a blind child that are not encountered by a sighted child, is an exhaustive process. Therefore, one must question the standard allocation of resource hours across the board without any consideration——

An Cathaoirleach: Does Senator O'Brien have a question for the Leader?

Senator Mary Ann O'Brien: I do. On a point of clarity, a blind child must follow the same set national course as a sighted child, as well as learning all these new skills. I would like the House to examine the one size fits all approach to education, which applies in other cases, in respect of visually impaired children and whether this type of approach follows international best practice. We are not supposed to be spending any money but it is a minuscule amount of money to give these children back a couple of hours so that they have five or six hours a week.

Senator Colm Burke: I have heard some of the debate on the radio about the Priory Hall incident. I am surprised at the lack of information. It is not just about the builders being responsible; other people, including engineers, signed off on payments. Planning regulations apply to every property sold and an engineer must sign a certificate of compliance with planning and building regulations. For the certificate to be acceptable, the engineer must have insurance. To suggest that unqualified people were signing off on these certificates is incorrect. The sad aspect of this is that, where a person is buying a house in a building estate, the person is entitled to send in an engineer at various stages before payments are certified. We abolished the staged payments system, which has not necessarily worked to the purchaser's advantage. With apartments, we do not have the same facility for the purchasers' engineers to inspect the work as it is being done. Perhaps the Minister should revisit the matter of how new complexes are being built so that purchasers' engineers can inspect the building as it is being built, in the same way as applies to housing.

An Cathaoirleach: These are matters Senator Burke can raise during the debate.

Senator Colm Burke: Perhaps the Leader can convey to the Minister the possible need for a change to the regulations in that area.

Senator Maurice Cummins: The Leader of the Opposition, Senators MacSharry, Bacik, Conway, Harte, Cullinane, Walsh, Daly, Mullins and Burke all addressed the question of the plight of people and families in Donaghmede. This item was raised on the Order of Business last Wednesday or Thursday. At that time, I replied that the people who certified these buildings include architects, engineers, the lenders who lent the money and the legal profession on behalf of many clients. Many questions must be asked and answered about this situation. The judge stated that the situation was totally unacceptable and one he had not come across before. I assure Members that we will have a debate on the matter at a later stage and the Minister of

State with responsibility for housing will be present. It is an appalling situation that families, children and elderly people have had to put up with in 187 apartments. Some 137 are occupied and those people have to leave their homes in this day and age, which is disgraceful. Many people have to answer for this debacle.

On a similar matter, I have arranged a debate on the Keane report on Tuesday. Members asked for it last week and it has now been arranged.

Senator Bacik called for an all-party motion on Dr. Rafah Nashed. We will look at that and we can have a motion on it. Senator Crown mentioned a similar motion. I am sure we can also come up with an all-party motion on the item he raised last week, which he has circulated to the party leaders.

Senator Barrett spoke about the flood defence wall in Clontarf. I was nearly going to say “the Battle of Clontarf”. The idea of having a nine-foot barrier to prevent flooding does not seem very pleasing. It is an amenity that residents and people in the area have enjoyed for a long time and it would be a shame if it was lost. I will raise the matter with the Minister for the Environment, Heritage and Local Government.

Senator Conway raised the question of regulation of the various professions and asked whether the legislation was robust enough. This is a question we can address to the Minister for the Environment, Community and Local Government when he comes to the House. Senator Leyden spoke about the role of the judicial appointments board. We will certainly have a more transparent system with the appointment of the board than we had previously.

Senator Jim Walsh: Better than last week.

Senator Paul Coghlan: At least they will be qualified.

Senator Maurice Cummins: I am sure the matter will be addressed in the House, and we will also have the legal services Bill, which is a very important Bill—

Senator Jim Walsh: Will everyone in the Gallery get one?

Senator Maurice Cummins: —dealing with consumer protection. I am sure it will be welcome on all sides of the House. Senator Leyden also raised the question of below-cost selling of alcohol. This is a matter that the Minister of State at the Department of Health, Deputy Shortall, has dealt with on several occasions. I am sure she would be willing to come to the House and discuss the matter again.

Senator Cullinane mentioned the payment of a large sum to a single bondholder at Anglo Irish Bank. The Government is in constant negotiations with our EU partners and the troika with regard to renegotiating the bailout, with considerable success, as everyone will recognise. Senator Sheahan mentioned sample papers for Project Maths and Irish. This can be raised with the Minister for Education and Skills when he is in the House next week to deal with Committee Stage of the Qualifications and Quality Assurance (Education and Training) Bill. Senator Sheahan also expressed concern that the Governor of the Central Bank and the Financial Regulator had given answers to the Joint Committee on Finance, Public Expenditure and Reform that were in conflict to statements they made elsewhere. This is something that should be raised with the relevant committee. If the people in question are giving one statement to a committee and another to a collection of bankers, it is a serious matter which the Senator should address to the committee.

Senators Walsh and Ó Murchú asked for an all-party motion on the Barron report. I would certainly be amenable to the placing of such a motion on the Order Paper and I will try to address this at an early opportunity. Similarly, there is the question of a public inquiry into the

[Senator Maurice Cummins.]

death of Pat Finucane. Last week, the Taoiseach made a clear statement in the other House on this matter in which he outlined his concerns. The family met the Minister for Foreign Affairs and Trade only last week and Senators can be assured the Government will continue to pursue this matter with the British Government until it is solved.

On the issue of EU scrutiny, I agreed last week with Senator Walsh that there should be more such scrutiny in this House. I am working on this and I hope we will see some progress. Senator Jim D'Arcy spoke about New Beginnings. I compliment the Senator on his invitation to the group to address any interested Members in the audio-visual room at 7 p.m. today.

Senator Crown suggested that we introduce a ten-year health service bond. This is something I will certainly raise with the Ministers for Finance and Health. Senator Coghlan mentioned the closure of Garda stations. This is something we can address when the Minister for Justice and Equality comes to the House. There are many rumours circulating. We will arrange a discussion with the Minister for Justice and Equality to deal with the issues.

Senator Rónán Mullen complimented the Minister for Transport, Tourism and Sport, Deputy Leo Varadkar, on the €9 million winter tourism marketing promotion. The 12.5% increase in tourism numbers in the first seven months of the year is welcome. This significant turnaround is a result of the policies the Government is implementing. I hope it will continue.

Senator Mary Ann O'Brien called for a debate on education and skills. The Minister will be in the House next week for a debate on education issues. We all recognise the difficulties experienced by visually impaired students.

Order of Business agreed to.

Central Bank and Credit Institutions (Resolution) (No. 2) Bill 2011: Second Stage

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

Minister of State at the Department of Public Expenditure and Reform (Deputy Brian Hayes): This Bill is essential not only for sound financial stability reasons but also for our future general economic well-being. It is vital that our national banking authorities have the most comprehensive and effective tool-kit available to them to preserve and protect individual financial institutions and the financial system as a whole. The Bill is designed to provide these important tools in order to ensure the future protection of our financial system, depositors and taxpayers.

The programme for Government recognises the importance of having this type of legislation in place, with a commitment to introduce a comprehensive special resolution regime, SRR, for dealing with bank insolvencies and a bank levy. The Bill provides a basis for achieving these important commitments in the programme for Government in order to ensure that the financial industry contributes to the cost of any resolution measures in the future.

This Bill differs from the Credit Institutions (Stabilisation) Act 2010 enacted by the Oireachtas in December of last year. That Act was focused particularly on providing for the reorganisation and restructuring of the domestic banking system in line with the EU-IMF programme of support for Ireland. It conferred powers on the Minister for Finance, after consulting the Governor of the Central Bank, to seek court orders to issue directions to banks, restructure them, reorganise their assets and-or liabilities and ensure they are in a position to generate capital.

The Credit Institutions (Stabilisation) Act was introduced as emergency legislation and will cease to have effect on 31 December 2012, or at a later date substituted by resolution of

both Houses of the Oireachtas. It is necessary, therefore, to have a more permanent statutory framework in place to address credit institution resolution requirements that may arise at any time in the future. Part 1 of the Bill deals with certain preliminary items. For example, section 2 sets out the definition of various terms used and section 4 sets out the purposes of the Bill.

Part 2 addresses matters relating to the exercise of the resolution powers provided for in the Bill. Section 9 sets out the conditions that must be met before an intervention under the Bill can be made in respect of an authorised credit institution.

Part 3 provides for the establishment of a fund, to be known as the credit institutions resolution fund, to finance the cost of the resolution tools provided for in the Bill including providing capital for a bridge bank and reimbursing the Minister for any financial incentives provided for the transfer of assets and liabilities. Section 12 provides that the Minister may contribute to the fund such sums as he considers appropriate from the Central Fund. This provision is necessary to ensure that the fund can access funds quickly if it needs to. However, the Minister is entitled to be reimbursed from the fund for all such contributions. Section 13 provides that all authorised credit institutions will contribute to the fund in accordance with regulations made under section 15. The Minister may, by regulations, also provide for the administration and operation of the fund.

Part 4 provides for the establishment of bridge banks to be considered in the context of a potential transfer of assets and-or liabilities from a credit institution experiencing difficulties. Section 17 provides that the Central Bank may establish a bridge bank to act as a temporary transferee where it may not be possible to find a private party willing to become a transferee immediately but where it is likely that a willing transferee will emerge within a reasonable period. Any capital requirements for the bridge bank will be met from the resolution fund, subject to written ministerial consent. Section 18 provides that a bridge bank will be taken to hold a banking licence and may carry on banking business.

Part 5 provides the Central Bank with the power, subject to meeting the prescribed circumstances, to transfer the assets and liabilities of a relevant institution to a third party. This may include, if necessary, transferring the assets and liabilities to a bridge bank provided for in this Bill. Section 21 sets out the conditions under which the Central Bank can make a proposed transfer order in respect of an authorised credit institution. Sections 22 to 24, inclusive, provide the Central Bank with powers to impose requirements on authorised credit institutions in order to facilitate the making of more effective and efficient transfer orders, provide that directors will have a duty to comply with such requirements, and permit the bank to disclose to potential transferees information acquired on foot of a requirement, as well as information provided voluntarily by the authorised credit institution. Section 28 provides that the consideration for assets and liabilities transferred under a transfer order should correspond to their market value and sets out the process for determination of that market value. Sections 29 and 30 set out the contents of a proposed transfer order, and the procedures to be followed by the Central Bank in applying to the court for a transfer order. Sections 31 to 34, inclusive, set out the publication procedures and arrangements for varying or setting aside the court order. Sections 35 to 44, inclusive, provide for a limited compensation regime for creditors of a transferor, in line with emerging international best practice, and provide for the appointment of an assessor who will determine the fair and reasonable amount of compensation, if any, payable, and provide for related matters. Section 46 provides that the Minister may, at the request of the Central Bank, provide a financial incentive to any person, including a bridge bank, to become a transferee. Section 48 sets out the process for determination of market value of assets and liabilities to be transferred under a transfer order. Sections 49 and 50 give clarification as to the effect of a transfer order. Section 51 makes specific provision for the transfer of foreign assets and liabilities under a transfer order.

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Part 6 provides the Central Bank with the power, subject to meeting certain preconditions, to appoint a special manager to an authorised credit institution or its subsidiary or holding company. The purpose of the special manager will be to manage the business of the institution having regard to any recovery and resolution plans or to wind down the institution with a view to liquidation. Section 55 sets out the preconditions which must be met. Sections 58 and 59 set out the procedures which must be followed by the Central Bank in applying to the court for a special management order and in publishing the order.

Sections 60 and 61 set out the arrangements for varying or setting aside the court order. Sections 63 and 64 deal with the terms of the appointment and remuneration of a special manager. Section 67 sets out the functions of special managers and provides that the special manager shall take over the management of the business. Section 69 sets out the effect of the appointment of a special manager. Section 74 provides for the circumstances in which the special management of an authorised credit institution terminates.

Part 7 provides for a modified liquidation procedure which requires a liquidator to prioritise eligible depositors' access to their deposits over the usual objective of ensuring the best return to all creditors. The insured depositors may be paid by the deposit protection scheme, or their deposits may be transferred to another institution. Sections 77 and 78 set out the grounds on which the Central Bank may present a petition to the court for the wind-up of a credit institution, and the Central Bank's role in the wind-up of a credit institution where the Central Bank is not the petitioner. Section 80 sets out the two objectives of a liquidator in the winding up of an authorised credit institution. The first objective is to facilitate the Central Bank in ensuring that each eligible depositor receives the prescribed amount payable from the deposit guarantee scheme. In the event of a conflict this objective takes precedence over the second objective, which is to achieve the best results for the institution's creditors as a whole.

Section 81 provides that the Central Bank may facilitate the transfer of accounts of eligible depositors by making money available from the deposit protection account in pursuance of objective 1. Sections 83 to 87 provide for the establishment of a liquidation committee composed of two persons nominated by the Central Bank and one person nominated by the Minister, the purpose of which is to monitor the liquidator's process in achieving this prioritised objective, namely the efficient payment of eligible depositors the sums due to them under the deposit guarantee scheme. Once that objective has been achieved, the liquidation committee can be stood down because the Central Bank's key concern in supervising the winding up will have been satisfied.

Part 8 provides for the preparation of recovery and resolution plans, which allow the Central Bank and authorised credit institutions to identify possible actions that could be taken where an institution is experiencing difficulties. Such plans are prepared in advance of any difficulties and facilitate contingency planning by both the institution and the Central Bank. Sections 91 and 92 provide that the Central Bank may direct an institution to prepare a recovery plan setting out actions that could be taken to facilitate its survival and recovery in a situation where the institution might be experiencing financial instability, and submit the plan to the Central Bank for assessment, and that the Central Bank may direct the institution to implement such a plan where it believes it to be necessary. Section 93 provides that the Central Bank may prepare a resolution plan for authorised credit institutions which have been directed to prepare a recovery plan. This resolution plan will set out the Central Bank's contingency preparations for the exercise of the Central Bank's functions under this Bill in relation to that credit institution.

Part 9 of the Bill contains a number of miscellaneous provisions necessary to ensure that the powers provided under the Bill are effective. Section 95 is a significant provision as it is necessary to ensure that the reorganisation and restructuring measures provided for in the Bill can be recognised in other EU member states through the mechanisms available in the Credit Institutions Winding Up Directive, CIWUD Directive, on the reorganisation and winding up of credit institutions. This directive provides that the authorities in the home member state alone are empowered to decide on the implementation of reorganisation or winding up proceedings of an authorised credit institution in accordance with its own laws and that such decisions will be effective in all the other EU member states. This is particularly important given that many agreements, including debt agreements, entered into by Irish credit institutions are governed by laws of other EU member states.

Sections 97 and 99 provide for confidentiality provisions in the operation of the Bill if these are considered necessary in particular instances for stability reasons. Section 100 deals with agreements to which an authorised credit institution, any of its subsidiaries, its holding company and any sister company, is party or in which they have an interest. Agreements may provide for their termination or other consequences in certain circumstances. This section provides that none of the specified consequences will arise by virtue of certain actions, including, among others, the enactment of the Bill, the publication of the Bill, the making of any statement by the Minister, the Central Bank or an authorised credit institution in regard to the Bill and the use of any powers under the Bill.

Sections 102 and 103 provide for the limitation of judicial review and of certain rights of appeal to the Supreme Court. Sections 106 to 108 provide that the Central Bank may issue a code of practice relating to the operation of the Bill or guidelines on the exercise of its functions under it and also that the Minister may specify a relationship framework to govern his relationship with the Central Bank.

The Minister for Finance brought forward a number of amendments to the Bill during its passage through the Dáil to enhance its provisions in the light of further deliberations since its publication, including discussion with the EU and IMF authorities and in the Dáil. These involved amendments to the Bill itself, amendments to the Credit Institutions (Stabilisation) Act 2010, referred to as the “CIS Act”, and amendments to credit union legislation. A significant number of the amendments to the Bill and those to the CIS Act mirror each other and are designed to ensure that our resolution mechanisms are robust and usable. Specific amendments were made to revise the provisions enabling burden sharing with the subordinated bondholders in the banks and to deal with the resolution of credit unions.

Although the tight timetable for Committee Stage amendments does not always allow for prior consultation, it was possible to take on board certain concerns raised by credit unions through Report Stage amendments. The point was made by the Minister for Finance when he spoke on Committee Stage that there was a fair degree of consultation between the credit unions and the Minister before he tabled the amendments on Report Stage. That is an important point. There was a fair degree of consultation on the issues that were brought to the attention of the Minister and the Department of Finance by the credit union movement.

I will outline some of the main issues addressed in amendments made to the Bill as published. In line with discussions around emerging international best practice in the context of a transfer of a bank’s assets, a number of the amendments provide for a limited compensation regime for creditors of a transferor. These amendments allow the High Court, on application by a creditor, to permit the creditor to apply for compensation where the court has been satisfied that the amount received by the creditor on the winding up was less than it was likely to have been had the transfer order not been made, or that the creditor’s burden in receiving less was, relative

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to the benefit to the financial stability of the transferor, the financial system or the economy, disproportionate having regard to the creditor's circumstances. The amendments provide for the appointment of an assessor to determine the fair and reasonable amount of compensation, if any, payable to such a creditor and to provide for consequent matters.

Discussions with the Troika highlighted the value of an expanded reference to transfers being at market value, of providing for the meaning of market value and of engaging in a competitive process where practicable. Accordingly, a new section was added to Part 5 setting out the process for determination of market value of assets and liabilities to be transferred under a transfer order. Accordingly, a new section was added to Part 5 of the Bill setting out the process for determination of market value of assets and liabilities to be transferred under a transfer order. It is also provided that the procedure to be followed if the transferor disputes the consideration for assets and liabilities as set out in the Bill as published is amended.

The Bill now includes additional powers for the Central Bank to facilitate the making of more effective and efficient transfer orders. Practical experiences with transfers of assets and liabilities under the CIS Act indicated that there was a body of work that must take place in advance of the transfer order, including engaging with potential transferees, preparing a data room and other information. There may be particular difficulties in ensuring an institution undertakes this work, including directors' duties and confidentiality constraints. Accordingly, a number of amendments to Part 5 of the Bill give the Central Bank a power to direct an institution to take certain actions that are necessary for the sales process to get under way and make consequent amendments to address the issues around confidentiality and fiduciary duties.

The changes made in the Bill to the CIS Act were developed following the Department's experience in applying for direction orders, transfer orders and subordinated liabilities orders under the CIS Act. While the CIS Act will cease to have effect on 31 December 2012, or a later date substituted by resolution of both Houses of the Oireachtas if that is practicable, a number of important applications may yet be brought under that Act in the coming months.

In regard to other future subordinated liabilities orders, amendments made permit the Minister for Finance to rely on systemic and financial stability issues in making a proposed subordinated liabilities order rather than just the preservation or restoration of the financial position of a relevant institution. This amendment makes these provisions consistent with the provisions governing the other orders that can be sought under the CIS Act. Also, the range of matters that the Minister may have regard to when considering making a proposed subordinated liabilities order have been extended to ensure that the Minister takes into account additional market based issues when considering whether to seek a subordinated liabilities order.

In regard to credit unions, the Bill amends the Credit Union Act 1997 to enhance the Central Bank's ability to issue regulatory directions to cover a number of matters which are likely to be relevant in a resolution context, for example, where a credit union is unable to meet its obligations to its members. These could include a direction on maintaining capital or reserves; provisioning policies; the strengthening of systems and controls; the reduction of risks; and requirements regarding regulatory compliance. These provisions were amended on Report Stage on foot of consultations with credit union interests to address the genuine concerns raised. The resulting text meets the financial stability needs of the Central Bank while providing for a balanced and proportionate approach from a credit union perspective.

The Bill has also amended sections 97 and 129 of the Credit Union Act to provide for the automatic extension of the rules of the transferee credit union so that its common bond covers that of the transferor credit union and related matters.

Ireland is not alone in moving to introduce legislation to deal with failing financial institutions. A number of countries, for example, the UK, Denmark and Germany, have had to take steps to enhance the national and international frameworks for resolving financial institutions in difficulty. The EU and the G20 are now paying close attention to this area and the European Commission is expected to publish a proposal for an EU-wide crisis management framework later this year. It is important that Ireland now has a permanent resolution framework to deal with future problems that may arise in credit institutions and that it will never again allow the financial burden for resolving banks to be disproportionately placed on the taxpayer. The Bill provides such a permanent special resolution regime for this State that will allow the Central Bank to deal in an effective manner with credit institutions that are failing or likely to fail in the future. It also provides that this will be done in a way that provides maximum protection for the Exchequer and confidence in the financial system as a whole. I, therefore, commend the Bill to the House.

Senator Marc MacSharry: This is exhilarating legislation. I thank the Minister of State for attending the House and giving such a detailed presentation. We will support it. It was first moved on 28 February, when former Senator Donie Cassidy sat where Senator D'Arcy is now sitting. It ceased to exist following the dissolution of the House in April and was reintroduced by the Minister for Finance, Deputy Noonan.

We welcome the Bill. It goes without saying that every Irish person would have wanted the Bill on the Statute Book before the beginning of our banking crisis in 2008. It would have limited the amount of exposure to the taxpayer we have had as a result of the extensive guarantee which, in the words of Patrick Honohan, was unavoidable at that time. Had appropriate resolution legislation been in place in all European countries and in Ireland we would not have experienced the difficulties we have had.

I have only one question on the Bill, namely, the need for a regulatory impact assessment. One was not carried out. While we will support the main thrust of the Bill, it is important to outline to the House why one was not done and whether there are plans to do one at this late stage. Under the process we follow, a regulatory impact assessment is not normally required in the context of the budget, but in this instance it might be prudent to undertake one.

Given the developments within the credit union movement, the Minister has had an opportunity to make some additions to the Bill. We will support the Bill in this House and in the other House. It is prudent, pending further legislation later in the year on the credit union movement. It is important that we get the balance right, in terms of the appropriate legislation and levels of capital and while also acknowledging the great role credit unions have played in society. We need to ensure they can do their work on an ongoing basis. Senator Sheahan was very vocal on that point in the past.

Next weekend substantial negotiations will take place which will affect us all in a European context. When the Minister, Deputy Noonan, was before the House last week I referred to them and I hope the Minister of State will be as open as he was to the suggestion I made then. When people move to recapitalise the banks, something which I believe is inevitable in a European context, it will be done in a way which is more favourable to shareholders than what happened here.

There was shock and horror at the Irish situation. Europe took the high moral ground and said we had created a reckless scenario and had to have higher levels of capital within our banks. The issue was allowed to linger in the marketplace, the result of which was to reduce the value of shares to effectively nothing, as happened in the case of Irish Life & Permanent and others, and then to recapitalise the banks, which in turn wiped out shareholder value. In the event that a softer approach is taken to the larger European banks and their shareholders,

[Senator Marc MacSharry.]

we should do our very best to ensure that it can be applied retrospectively to our situation. We were seen to be the bold boy of Europe, who binged during a boom based on a transaction tax and, as a result, are now paying the penalty. While I would be the first to acknowledge the failures of the previous Government's performance on certain issues, and often did when I was sitting on the benches opposite, it was not within the bounds of any Government, much less one led by Fianna Fáil, to have such an impact on the Portuguese, Greeks, Spaniards and French. We must accept the impact of the world global crisis on the situation in those countries. The public mood might not acknowledge this at present, because there is considerable and understandable anger. In due course when calmer, and perhaps better, times prevail we will look at this era with more depth and acknowledge that while there were great failings by the Government and the regulatory authorities some circumstances were unavoidable because of how the eurozone operates. I remember saying, perhaps four or five years ago when I sat where Senator D'Arcy sits now, that the fatal flaw of the eurozone was that it did not adequately reflect the fiscal needs of a smaller economy that constituted less than 1% of the currency area. The Minister of State, Deputy Martin Mansergh, corrected the young Senator MacSharry for speaking gibberish, but how right I was.

The Minister of State, Deputy Hayes, and I had an exchange in the House on the Family Home Bill, which he described as not necessary because the code of conduct on mortgage arrears was working so well. He favoured a non-judicial resolution process and said the Attorney General had raised issues as to the constitutionality of the measures being proposed. Later today the Minister of State will have an opportunity to debate the Debt Settlement and Mortgage Resolution Office Bill 2011 when it is put to the Dáil. He will then have an opportunity to vote on the Bill, which will be put forward by Fianna Fáil during Private Members' time. I ask him to keep an open mind on that Bill. Last week, the Taoiseach described the Keane report as a subject for discussion and promised an open debate and to keep an open mind on any suggestions that might be put forward.

The Minister of State may recall Senator Barrett saying he worried that in previous Administrations there were back stairs in the Department of Finance for the exclusive use of bankers and developers. I am concerned that those back stairs are still there. Once the best intentions of Government take hold "the house always wins". I have no doubt of the Government's commitment to help mortgage holders but I feel the odds are stacked too much in favour of the banks. On the Order of Business earlier today, we talked about self-regulation where a potential perpetrator assesses who a perpetrator is. That is incorrect. That is why the Family Home Bill would have allowed the courts to make a series of orders, other than repossession. The Bill to be debated in the Dáil this evening will establish a debt resolution office which could make orders. That would motivate banks to use the same level of creativity in seeking to solve families' problems as they did in the creation of derivatives worldwide, which put so many western economies in difficulty. We cannot leave regulation completely in the hands of banks and rely on codes of conduct which the Central Bank admits the banks do not follow, particularly those not affiliated to the Irish Banking Federation, such as Start Mortgages. The Fianna Fáil Bill would be better than the scenario proposed in the Keane report.

Not everything recommended in the Keane report is bad. It contains some good points. However, we need something more penetrative and radical. We have nothing to fear from the troika or others if we take steps along the lines I propose.

I commend the Bill to the House and I thank you, a Chathaoirligh, for indulging me on those other issues. I do not believe we have anything to fear from the troika or others if we take steps along those lines.

Senator Michael D’Arcy: I take this opportunity to respond to Senator MacSharry’s comments on the mortgage situation. Those of us dealing, on behalf of members of the public in mortgage distress, have had our experiences with the banks. I refer to the BlackRock assessment of Irish banks, which was undertaken approximately six months ago, and to the statement of the Minister for Finance that BlackRock believed approximately €6 billion was needed for covered Irish institutions in difficulty with their mortgage loan books. Non-covered institutions which trade in this jurisdiction also bring other money to the table in terms of funds required to write down loan books. The loan book of the covered institutions is approximately €116 billion. It is not possible to calculate the exact amount for the non-covered institutions.

In my experience — I put this to the Minister on the last occasion he was in the House — the Irish covered institutions are not writing down their mortgage loan books. This was verified by a gentleman from AIB when he said that to date, its mortgage loan book had been written down by €600,000. I do not know the full amount of its loan book. That AIB has to date only written down €600,000 means the covered institutions are not writing down sufficient amounts of their loan books despite having received recapitalisation of €6 billion plus. Despite the money having been put in place to allow this to happen, it is not happening.

I congratulate the regulator on his intervention last Friday in regard to increases by banks on variable interest rates. While I accept Senator MacSharry has his own views on the Bill, I wished to put those comments on record. The banks, in particular the covered banks, are not moving on this issue.

During that fateful night in September 2008, when we were engaged in debate, many speakers made a contribution but only one asked if there was a liquidity crisis, to which the response was that it was purely a liquidity crisis as a result of the collapse of Lehman Brothers and the banks opting not to lend to each other. It was the current Minister, Deputy Noonan, who asked if what we were experiencing was a solvency crisis, to which the response was “No”. However, it turned out to be a solvency crisis, leading to the putting in place of the Credit Institutions (Stabilisation) Act 2010. There was a substantial debate in this House in regard to the significant powers of the Central Bank under that Act. As I see it, this Bill replaces that Act in time, in terms of putting those powers on a permanent footing.

The permanent special resolution regime is to be welcomed. This puts in place a trigger to prevent the transfer of public funds to institutions and to ensure the State coffers do not always have to underwrite our unusual version of capitalism. As I have stated previously, it is unusual because when profits are to be made shareholders benefit but when things go wrong the State must step in and the taxpayer ends up paying for everything.

This is good legislation, which I welcome. I have a couple of important questions for the Minister of State. All banks and credit unions are obliged to pay into the resolution fund. I assume these funds will be collected in a similar fashion to other levies, namely, via the Revenue Commissioners. If not, how are they to be collected? If money is to be transferred into the resolution fund, I can only assume that the banks will pass the cost on to the consumer in some guise. I am not against this if the charge on the consumer is not too onerous. The efficiency of the banks’ practices and structures is one matter, but if they pass a substantial cost on to the consumer, the people trading with the banks — the taxpayer in another guise — will be hit. The shareholders took a hit, but the bondholders will get away again.

The Oireachtas Library’s digest is excellent. I welcome that banks can be wound down and liquidated under the regime to be put in place. Too often, they have not been allowed to fail. We were told that Anglo Irish Bank was systemic, but I have queries in this regard, given that it only had a client base of 5,000 or 6,000 people. While a great deal of money was levered in different directions, one bank with a small client base has cost the State tens of billions of euro.

[Senator Michael D'Arcy.]

Page 15 of the Bills Digest contains the analysis. The IMF and the World Bank state that the priority of different classes of claimants should be set out by a special resolution regime. Under the tiering, the first person who gets his or her money——

Acting Chairman (Senator Ned O'Sullivan): The Senator has one minute remaining.

Senator Michael D'Arcy: Will the Acting Chairman afford me a few more minutes? Between the six Members present, we would be doing well to get the full four hours out of this.

Acting Chairman (Senator Ned O'Sullivan): Many Senators have indicated, but I will do my best.

Senator Michael D'Arcy: I have spoken with people whose businesses have gone into receivership and been liquidated. Liquidators and receivers take their money out of the process first and the charges they apply are criminal. There is much discussion on reducing fees for lawyers and consultants and on changing the way we do business to ensure a genuine, fair regime, but the fees for liquidators and receivers are outrageous.

Employees are the second group to get money out of the banks in this process. This cannot be argued. Central and local government then get their taxes. Practically at the bottom of the pile are depositors. Legislation guarantees deposits up to certain limits, but I question the extent to which we are moving towards ensuring that the *status quo* remains in place. It is not satisfactory that the same people are always getting their money back first.

I wish to touch upon a number of other banking issues.

Acting Chairman (Senator Ned O'Sullivan): Time.

Senator Michael D'Arcy: We have four hours. We will be okay.

Acting Chairman (Senator Ned O'Sullivan): I confined Senator MacSharry and must do the same with Senator Michael D'Arcy.

Senator Michael D'Arcy: He kept going for a few extra minutes.

Acting Chairman (Senator Ned O'Sullivan): And you have gone beyond him.

Senator Michael D'Arcy: The credit unions have been magnificent. As a young man in the 1980s when the country found itself in a similar position, the banks closed and refused to lend. It did not matter what business one was in, be it farming or something else, the credit unions were open. They kept many businesses going and people in employment because they kept credit flowing.

Acting Chairman (Senator Ned O'Sullivan): I ask the Senator to conclude.

Senator Michael D'Arcy: We should accept that the Credit Review Office, CRO, is somewhat irrelevant. To date this year, some 83 cases in respect of amounts of over €250,000 have been taken to it. People do not reach the CRO because the banks do not give them an opportunity to apply for loans. This is the reality.

Acting Chairman (Senator Ned O'Sullivan): I ask the Senator to conclude.

Senator Michael D'Arcy: This is my last point.

Acting Chairman (Senator Ned O’Sullivan): I hope so.

Senator Michael D’Arcy: The banks do not give people the opportunity to apply. They say, “Do not even bother. We do not want to move it up our chain of command because we do not think you are going to get there.” It is crucially important that a measurement regime is put in place. We need to see that people are given the opportunity to apply because there are quite a few people who do not apply——

Acting Chairman (Senator Ned O’Sullivan): Senator D’Arcy has gone two minutes over. I must call a halt. In fairness, there are a number of speakers.

Senator Michael D’Arcy: This is my final point, if the Acting Chairman would let me finish.

Acting Chairman (Senator Ned O’Sullivan): No. I ask Senator D’Arcy to conclude.

Senator Michael D’Arcy: I am just about finished.

Acting Chairman (Senator Ned O’Sullivan): Just conclude please.

Senator Michael D’Arcy: It is important that we are given the opportunity to have a calculation process of the number of occasions people want to apply where the banks tell them not to. That would be important so that the banks cannot state that only 83 have come forward. That is a very misleading figure.

Acting Chairman (Senator Ned O’Sullivan): Senator Barrett has eight minutes. Hopefully, he will stay within it.

Senator Sean D. Barrett: I shall seek to be economical.

There is a general welcome for the Bill. As always, I welcome the Minister of State, Deputy Brian Hayes, when he comes in to this House. I agree with much of what Senators MacSharry and Michael D’Arcy have said.

Looking at where we stand, I would have concerns that the pillar banks represent a duopoly. I do not know why we chose that form of doing things. To have two protected banks has the consequence of driving out other banks. Foreign banks may leave the Irish market, as companies do in insurance when they see the Government intervening to designate certain producers or insiders in a market as protected institutions.

I would have liked to see some idea of a utility bank where the people could be perfectly assured that their money was safe and that they would behave like Irish banks used to, from 1783 until 2005 or 2006, that one could trust them with one’s deposits and they would not act like a casino bank. The worrying aspect in this one is — there are strong measures taken by the Minister to prevent the growth of casino banks again — that there is the moral hazard problem that the good people in the business, if we get into trouble again, would be bailing out the bad ones. However, I note that there is provision to liquidate banks and get rid of them.

All told — I heard the troika, both in Kenmare and in TCD yesterday — the Government will be getting an accolade for its new banking policy. It is strict. I even heard people state it may be the model in Europe, that the Government has set the bar so high. This is good. We fell so low, we should now set it high. I do not want to anticipate what the troika will say but from the nuances we observed, it is pleased.

We must look at why the rules which were there were never enforced. Why did the Central Bank not say something about 100% mortgages or require larger deposits? The general view would be that the powers were all there and they were not used, and I suppose that is why this

[Senator Sean D. Barrett.]

legislation is necessary. It could have been prevented had there been more active interventions by the Central Bank acting under the rules we had up to now. Is there a problem with legacy staff in banks who got us into this problem, and, indeed, the Central Bank? At the Joint Committee on Finance, Public Expenditure and Reform, the Chairman, Deputy Alex White, no doubt will be telling the Minister that there are too many people hanging around banks who were there in the bad times and they do not form part of the procedures to get the system back in order.

I do not have legal training, but I was concerned at sections 102 and 103 on the limitation of application for judicial review and certain rights of appeal to the Supreme Court. I thought those were sacrosanct and one could not bring in legislation stating one can never apply for judicial review, but I will leave it to the Minister of State to state whether it is possible to amend people's rights to a judicial review and to appeal to the Supreme Court, as appears to be envisaged in sections 102 and 103.

The Minister of State dealt with Part 5. On the market value of assets, we are not selling ghost estates because we were afraid we would not get any money for them and we will not deal with rents coming down because of the upward-only rents review. The sooner property prices go right down to the floor, the sooner the recovery of this economy will start. I never believed in the concept of long-term economic value and it was hotly disputed by economists when it was first mooted. It is a case of putting it on E-Bay to find out the value and to do it fast because the economy will then start to recover. This is preferable to pretending that items on balance sheets, as previous Senators said, have a fictitious value and this makes the people who own those balance sheets feel better.

This area was epitomised by the backstairs lobbying to which Senator MacSharry referred and by regulatory capture and the need for scrutiny and for an active Seanad. More checks and balances and more governance are required. I suggest all the Governors of the Central Bank should be interviewed by an Oireachtas committee. I note the programme for Government states that the Governor alone would be interviewed and the Governor regularly facilitates the joint committee on finance by his attendance and reports. This should also apply to the Central Bank board members.

The Minister of State has endeavoured to put in place the best administrative procedures for which I commend him. I suggest there has to be an early warning system in place in the Central Bank to communicate to the ECB in case there were to be significant inflows of capital which would destabilise the Irish banking system because it borrowed abroad and which would drive the property sector wild. We do not need large capital inflows. About 98% of previous inflows simply pushed up the prices of existing assets in land, housing and commercial property while only 2% went to agriculture or industry. A capital inflow into a small economy — as Senator MacSharry said — is not necessarily a good thing when we go out looking for an investment. I agree we need investment in industry and services and in products we can sell, but pushing up asset prices is not what we are interested in. The small countries have to be protected by the ECB from massive flows — as Greece must be — from France and Germany. In the past, large inflows of foreign investment might have been welcome but if such inflows are of the wrong kind, as Greece and Ireland discovered, they can do a lot of damage to an economy.

We need wise regulation of banks and bankers must be better trained because this was a problem. The troika delegation was highly impressed with the questions from our students. However, remarkably few of those students were ever employed in Irish banks or indeed by the Department of Finance. The Wright report has drawn attention to the fact that only 7% of the staff of the Department of Finance had qualifications in economics. I know the Depart-

ment gets annoyed and telephones Marian Finucane's programme to complain about that figure but I understand it is the correct one. A large investment in human capital is required both in the banks and in the regulatory authorities in order to provide proper administration. It might be said we are closing the stable door long after the horse has bolted but we must ensure that no other horses do as much damage as happened to the Irish economy. I commend the emphasis in the legislation which will receive the much more important commendation from the troika whose members are pleased with our progress. We will probably end up with one of the more tightly regulated banking systems in Europe and that would be a very good outcome.

Acting Chairman (Senator Ned O'Sullivan): I thank the Senator for keeping within the time constraints.

Senator John Gilroy: I welcome the Minister of State to the House. I also welcome this addition to the armoury of our regulatory authority. I will resist the temptation to point a finger of blame but it is recognised that when the financial crisis started the number of mechanisms available to deal with it were inadequate, crude and blunt in their application, be they bailout, examinership or nationalisation, or some variation of all three. I do not intend to speak on the detail of the Bill but I will do so on Committee Stage tomorrow.

There is no question as to the need for this Bill. It has been acknowledged by Professor Honohan and others that had such powers been available to the previous Government on the infamous night in September 2008, the decision would not have narrowed the options taken and would not have resulted in such disastrous consequences for our country and for our people. This statement is in no way intended to allow the previous Government escape from responsibility for that decision, because the warning flags were raised early in 2008 at the very latest. The previous Administration, if it had cared to notice, could have taken some pre-emptive action at that time.

The special resolution regime being introduced gives considerable power to the Central Bank to deal with distressed institutions or those institutions showing signs of distress. This is welcome. I was very interested to hear Peter Brierley from the Bank of England identify the weaknesses in insolvency law that pertained before Britain introduced its special resolution regime. The need for early intervention was the key element to ensure the continuity of key banking functions. He also identified the issue of confidence or the lack of it and there was particular recognition of a key group of investors that insolvency laws do not recognise, namely the depositors. These are welcome additions to the resolutions.

There are some key differences between the UK model and the one we propose to introduce here, in that the Bank of England takes the lead as a lead agency and makes recommendations to the financial services authority there, whereas here, it is the Central Bank, in consultation with the Minister. This is an important difference. Will the Minister explain why we saw fit to take that direction as opposed to following the UK model? I suppose that following the collapse of Northern Rock, it became obvious that something more needed to be done and perhaps that is why the UK authorities moved so quickly to implement their resolution regime. It helped restore confidence in the British system, avoided contagion — which was vital — and allowed the UK economy escape the worst of the banking crisis.

The mere existence of a special resolution regime helps confidence flow through the entire financial super structure, which is important and welcome. The Bill proposes to introduce a range of tools to help resolve problems. However, as suggested by Senator Barrett and said by some commentators, it is like closing the door after all the horses have gone. Even if we acknowledge that damage has been done on a massive scale and that this is unlikely to happen again to the same degree, it is important to provide resolutions and a legislative framework for

[Senator John Gilroy.]

the future. We have seen how our banks have remained in a state of denial about the reality of the destruction of their balance sheets and, for one reason or another, have failed to face up to the consequences, making a bad situation even worse.

The requirement in the Bill that all credit institutions will provide recovery or resolution plans will ensure that the mistakes of the past are not repeated and that the regulatory authorities are clearly apprised of the condition of balance sheets and other elements within the banks, so that any land mines are discovered at an early stage. If this provision had existed prior to 2008, the Financial Regulator would not have fallen asleep at the wheel, as he appeared to do.

The proposal to establish a bridge bank eliminates the necessity of moving, in the first instance, towards nationalisation. This is welcome and allows a great deal of flexibility to be introduced into the system. Transfer orders are technical in nature, but they are a welcome addition to the suite of responses. The special management orders will ensure that the wishes of the regulatory authorities are implemented in full, on time and in a transparent and accountable manner. This is also welcome.

One of the more important elements of the Bill relates to trigger mechanisms and I have one or two questions on these. It is proposed the trigger mechanism will be called into action when breaches or disturbances in the licensing conditions of the banks become apparent. In that regard, will it be necessary to introduce any secondary or supporting legislation around the Central Bank Act 1971, where the conditions are attached to the banking sector? Also, what is the target this fund seeks to accumulate or do we have a target? Is it necessary to have a target and if that target has not been specified, why not?

Senator Michael D'Arcy touched on another question. Is there a need or an opportunity in this Bill to redefine the ranking of debtors? It seems to have caused us much difficulty in the past. I understand it must be done in a Europe-wide context. As we move towards European co-ordination of banking resolutions, is this something we must put on the table in Europe? I will reserve further comment until the debate on Committee Stage tomorrow but I wish to make two further points.

I am interested to see the amendments the Minister proposes regarding credit union, to which the Minister of State referred in his contribution. Perhaps more information can be provided on this before tomorrow. This measure has the potential to interfere with the spirit and the law of what credit unions do. They are core assets in every community.

Concerns have been raised in Europe about some of the provisions in the Bill, which I will discuss further tomorrow. In the meantime, perhaps the Minister of State can bring forward more information on why the Troika and Europe raised such concerns and why we are diverting towards a different course. I welcome the provisions of the Bill and thank the Minister of State for his attention.

Senator Kathryn Reilly: The issue of financial regulation — of ensuring the probity of financial institutions — goes to the core of the economic issues faced in the State. Failures of financial regulation have played out on a macroeconomic level and have had a direct impact on local communities and the local economy, with businesses failing to get access to credit and mortgage holders struggling to meet payments. We all accept there is a need to ensure probity and fitting regulation of financial institutions. I am pleased the Minister took on board amendments reflecting the concerns regarding credit union regulation raised by my colleagues in the Dáil. The Minister and his departmental officials must be commended for this.

Recent decisions by the regulator have reduced the lending facilities of a large number of credit unions and these decisions undermine the ability of credit unions to make good the common bond between their members, which is the very basis of the credit union movement. The imposition of these restrictions is a blunt instrument that will be felt by the credit union members throughout the State.

Credit unions are not banks and they operate on a sustainable, not for profit basis and provide inexpensive credit to those most in need. Decision making is at ground level and lending is based on saving history, reflecting the trust between members. Liquidity across the credit union movement is approximately 40% and, while there may be difficulties with individual credit unions, as a body the credit unions remain relatively healthy. The target for intervention should be the credit unions that require some form of temporary financial injection or restructuring because of the economic downturn.

With respect to the scale of the crisis being faced by some of the credit unions in the credit union movement, the Minister previously said that recapitalisation would require between €500 million and €1 billion. Is that still the understanding? The credit union movement suggests that figure is only a percentage of the true figure. The interim report of the Commission on Credit Unions was released on Friday and I look forward to the development of legislation to deal with deposit protection, resolution, stabilisation, liquidity and the regulation and governance of credit unions. I remain concerned that the actions of the regulator may pre-empt the findings of the commission. This move may suit the conventional model of bank lending but may fail to reflect the model of credit union lending and the flexibility credit unions require.

My party has a problem with this legislation and what it represents. The recapitalisation of the banking sector has ended up servicing bad loans and paying off investors and bondholders. It has not resulted, and will not result, in a return to lending to home owners or local businesses that need credit. While Sinn Féin recognises the need for a resolution Bill to deal with failing banks, we do not have confidence in or agree with the model that is being introduced today. We feel that what is being proposed allows the Minister for Finance to pour more money into restructuring the banking sector, providing another potential blank cheque for banking and credit institutions. How can we expect those institutions to behave responsibly if we have already agreed to pick up the costs of the banking sector? How can we expect them to act in the interests of savers if we underwrite their risks and lending practices?

For years we were told that bankers and developers were risk takers and that they were drivers of economic growth and creators of wealth. However, while they did take risks, it was ultimately with our money, and while they did create wealth, it was only for a privileged few. We believe the model for bank resolution should place responsibility on the banking sector for clearing up its own mess. The days of “too big to fail” are over, as are the days of taxpayers picking up the bill. The banking sector continues to make profits and, in some cases, pay exorbitant bonuses. Now the institutions need to start putting aside funds to use in the event of failure so that they can pay for themselves.

The Government has said it has no choice but to follow the plans laid down by the previous Administration. In particular, the Labour Party made much of its opposition to the bank guarantee scheme—

Senator John Gilroy: Unlike Sinn Féin, which supported it.

Senator Kathryn Reilly: —but continued to support the pouring of taxpayers’ money into failing banks, including €3.4 billion to Anglo Irish Bank every year for the next 14 years and €700 million to one unguaranteed, unsecured bondholder in the coming weeks. In this legis-

[Senator Kathryn Reilly.]

lation we are creating the ability for future Ministers to do what the Labour Party objected to in the past but has failed to put a stop to. This is a continuation of the bank bailout.

We recognise that the Government has amended this legislation to reflect the concerns of the credit union movement, but we feel the lessons of the past have not been learned and that the banks should take more responsibility for their own operation. We will be opposing this legislation, as we did in the Dáil, because we feel it represents another blank cheque for the banks, allowing them the opportunity to repeat the mistakes of the past. I thank the Minister for coming to the House.

Acting Chairman (Senator Paul Coghlan): The Senator has gone slightly over time, but I am indulgent.

Senator Kathryn Reilly: Táim críochnaithe anois.

Deputy Brian Hayes: It was worth it.

Senator Deirdre Clune: I am glad of the opportunity to contribute on this Bill, which is necessary and important. It is important for many reasons but mainly because of the signal it sends out internationally, although I know that jars with many in this country who are suffering the consequences of the collapse of the banking system and the property boom. It is important to send out a signal internationally that we are establishing a strong banking regulatory regime that can intercede to ensure that financial institutions that are important to the economy can be managed if they fail, with the aim of avoiding the catastrophic consequences of previous bank failures. We are establishing such a system permanently against the backdrop of EU discussions. I know it is of little comfort to hard-pressed taxpayers, but it is important that we have such a system.

The Bill gives powers to the Central Bank to deal in a much more effective manner with banks that are likely to fail. As outlined previously, it offers many tools for doing this, including bridging banks, the ability to transfer assets and liabilities from failing banks, special management orders and special resolution regimes, all of which are extremely important.

The Credit Institutions (Stabilisation) Act 2010 was enacted by the last Dáil as a temporary measure which would cease to apply at the end of 2012. When that legislation was going through the Houses there was a great deal of concern that it conferred enormous power on the Minister for Finance to seek court orders to issue directions to banks, restructure them and reorganise their assets and liabilities. Without casting aspersions on any individual, this seemed to present a danger of investing too much power in one person. I am pleased that in this Bill, under section 8, a different approach is being taken whereby conditions must be met before the Central Bank can intervene and that the latter, under the Governor, is the body responsible to initiate any actions that may need to be taken under the legislation. That is an important difference which should address Members' concerns in this regard.

The Bill deals with the continuing consequences of decisions made in the recent past. The various inquiries into what happened since 2008, including the Honohan report, Regling and Watson report and Nyberg report, all found that the problems arising in the banking sector were domestic in origin but brought to the fore by global influences. Several speakers referred to the guarantee initiated by the previous Government in September 2008. It is now clear that the problem was not one of liquidity but of insolvency. Different actions might have been taken if that information was available. The former Minister for Finance, the late Brian Lenihan, was clear in the information he gave to the Dáil at the time, which was the information available to him. If the full facts had been made available to him, the situation today might be different.

The Honohan report indicates that the Central Bank was working in early 2008 on a framework for a resolution similar to that set out in this Bill three years later. The wheels of bureaucracy take a long time to turn when it comes to such matters. Many speakers referred to the need for the type of regulation provided for in the Bill. It is one of several measures that will help to restore confidence in our economy. The international media and the troika, representatives of which are in Dublin this week, agree it is an important step along the road. The appointment of Mr. Matthew Elderfield as regulator was another important development in terms of restoring confidence in our ability to ensure effective regulation of the financial sector. I welcome his comments at the weekend regarding interest rates. Action to protect home owners with variable mortgages was long overdue in terms of ensuring they do not bear the full brunt of the costs associated with the difficulties in the banking sector.

On the special resolution regime, I assume the taxpayer will bear at least part of the cost of this initiative. How does the Minister of State envisage it will proceed? There are 40 banks and building societies licensed under the Central Bank Act and once the 2010 Credit Institutions (Stabilisation) Act expires banks and building societies will be liable also to contribute to the fund. The Minister of State might give some idea of the structures that will be involved in that regard.

The Bill will not be attractive to the many people watching proceedings in this House and in the Dáil but if we had this Bill in place we might not have to deal with issues such as the pension levy, budget 2008, the universal social charge, small and medium enterprises not getting funding, businesses collapsing, people struggling with mortgages, young people having to leave the country and all the social consequences of that, the pension time bomb we saw depicted on television last night, and the budgetary position facing us in December. However, I will not be negative by saying it is closing the stable door after the horse has bolted. It is necessary legislation that we must put in place to instill confidence in our banking sector.

Senator Paschal Mooney: I welcome the Minister of State to the House once again. I enjoyed his debate this morning on the Pat Kenny radio programme with the finance spokesperson of the party that will solve all our problems.

Senator Kathryn Reilly: Hello. Hello.

Senator Paschal Mooney: I did not mention any party.

Acting Chairman (Senator Paul Coghlan): Order. One voice, please. Senator Mooney has the floor.

Senator Paschal Mooney: I am aware this has been gone into previously but it is important to examine the context and the background of this legislation, which is to be welcomed. A great deal went on in the past 15 years but I suggest that the virus that led to the economic collapse we and the world economy are facing goes back to the Reagan-Thatcher years when they decided that the market would decide, that light touch regulation globally was to be the order of the day, and that the markets would sort themselves out. It worked fine for 20 years but then the rot set in and we were caught up in that at the same time as we were expanding an economy by spending too much money. I recall asking the then Leader of the House, Mary O'Rourke, in mid-2006 whether she should have a debate because figures had come out earlier that week that indicated that 25% of our national wealth was being generated by the construction industry while the European average was 10%. Even at that time the warning signs were visible.

[Senator Paschal Mooney.]

If we fast forward to the events leading up to the bank guarantee it is interesting, and I was not aware of this until I did some research on this legislation, that the Department was working on a Bill similar to the one before the House in June 2008. In fact, according to the Honohan report a discussion paper was published on 24 January — pack paper 37 — a Central Bank and Financial Services Authority of Ireland paper on this and other issues and it was discussed by the domestic standing group. The Honohan report highlighted that while the decision to introduce an extensive blanket guarantee, and many people trace that night to the beginning of the problems that are continuing to face taxpayers, was necessary at the time due to “the hysterical state of global financial markets”, which is an interesting reference from a conservative banker, it complicated and narrowed the resolution options available and therefore increased the taxpayers’ exposure to losses.

Mr. Peter Nyberg, in his report on the same period, states:

. . . preparation of a background paper in June [of 2008], the possibility of implementing such legislation was discussed ... It was concluded [rather significantly, and one would love to get into the minds of the people at the time but perhaps we never will] that the legislation would be complex and would take considerable time to prepare . . . It was also thought that it might encounter legal difficulties, given the relatively high degree of protection afforded to property rights under the Irish constitution. In addition, there appears to have been some concern that any leakage to the effect that such legislation was being drafted could have had a serious destabilising effect on markets.

It is interesting that in the lead-up to the guarantee, there were commentators — the Minister of State will recall this — bemoaning the fact that Ireland did not have legislation providing for some type of bank resolution scheme. However, we were not alone in this regard; according to the various reports, such a scheme was not the norm among industrialised nations. It goes back to the Reagan-Thatcher era where a lack of discipline in the financial markets culminated in a situation where people fooled themselves into believing the markets would sort everything out irrespective of what was going on in the broader economy. As we now know, the opposite has happened. It calls to mind landing an aeroplane and the craft going into reverse thrust. That is what has happened in this and other economies in the industrialised world in the last four years. Our economy has ground to a shuddering halt and now we are trying to regain lost ground.

In that context, I welcome the Bill before us today. I will not go into the detail because it has been covered by other speakers, but I particularly welcome the provisions in respect of credit unions. Reports in the newspapers some weeks ago referred to a credit union in Bundoran which had entered into bilateral negotiations with several of its debtors who, like many others throughout the country, are experiencing difficulty in repaying their loans. While the credit union had agreed in some cases to accept payments as low as €80 or €100 per month, those payments were not being met. When credit union officials tried to contact the people concerned in their homes, they were met in many instances by younger members of the family who told the officials their parents were on holiday. Yet these people could not afford to meet a monthly repayment of €80.

The difficulty in regard to credit unions relates not only to their loan books but also to a lack of moral hazard in that there seems to be a view that they are an easy touch and that people can get away with ignoring their financial responsibilities. I do not know whether the Government can do any more in the context of legislation than what the credit unions themselves are doing. As we all know, the banks are not being tolerant towards those who owe them money. I hope the provisions in this legislation will help to stabilise the credit union

sector, which we all support as a community-based service. The best case scenario is that only a small proportion of the many credit unions operating throughout the State are in difficulty and that the Government — and ultimately the taxpayer — may not have to provide the €500 million to €1 billion that is earmarked for this purpose. Will the Minister of State comment on the criteria that will apply in respect of that funding or whether it is essentially a firewall that will only be called upon in the event that it is needed?

I welcome this legislation. One might say it is long overdue but the reality is that there was no way to prepare adequately for what has happened in the domestic and global economy. We must deal with the legacy of that. I hope the Bill will help to stabilise and improve the environment for both the banking and credit union sectors.

Senator Tom Sheahan: I welcome the Minister of State, Deputy Brian Hayes. He indicated in his opening statement that Part 3 of the Bill provides for the establishment of a fund, to be known as the credit institutions resolution fund, which will provide capital for a bridge bank. Will this bridge bank effectively be the NAMA of credit unions? One wonders whether there is a need for such a body. It is my understanding that even prior to the introduction of this legislation in both Houses, negotiations are ongoing between stronger and weaker credit unions in regard to resolution. What does the Minister of State envisage as the specific function of the bridge bank? Will he comment on the reference to financial incentives that are to be reimbursed to the Minister? I do not expect that the €500 million to €1 billion earmarked for credit unions will be required.

At a meeting I had with the Registrar of Credit Unions, Mr. O'Brien, some days ago, he used the term “mother ship” to describe a situation where it is envisaged that larger credit unions will take over perhaps three or four smaller unions in a particular area, resulting in a spoke-type structure. My concern is that the funding provided under this Bill will act as a financial incentive to these mother ships to swallow up smaller credit unions and thus threaten the local decision-making capacity that is a fundamental part of their service to communities. The Minister of State indicated that Part 5 will provide the Central Bank with the ability “subject to meeting the prescribed circumstances, to transfer the assets and liabilities of a relevant institution to a third party”. Does this imply that weaker credit unions will have to go through the bridge bank before they are assigned a mother ship to look after them?

Sections 91 and 92 provide that the Central Bank may direct a financial institution that is experiencing difficulties to set out a recovery plan. As I said, my understanding is that negotiations are already taking place between stronger credit unions and some of the 27 weaker ones. Under these provisions, the recovery plan must set out actions to be taken to facilitate an institution's survival and recovery. Will the Minister of State indicate how many such recovery plans are under discussion in the credit union sector? Bearing in mind that this legislation is not yet in place, is that tool already being utilised by the Department to reinvigorate or save some of the 27 credit unions that are in difficulty?

The ECB has noted some concerns regarding certain provisions in the Bill. For example, section 12 requires authorised credit institutions to contribute to the credit institutions resolution fund at a level to be determined by the Minister. Different contribution rates may be applicable to different institutions depending on the varying degrees of risk. Contributions may be made to the fund by the Minister for Finance, for which he is entitled to be reimbursed, but the Central Bank itself cannot contribute to the fund. From where will the Minister get the money to contribute to the fund? The ECB opinion on the Bill criticises the method of calculation in respect of the contributions that certain institutions will be required to make.

In regard to transfer orders, the Bill provides that the financial incentive may be paid by the Minister, on the Central Bank's request, to a transferee. In the case of credit unions, it is the

[Senator Tom Sheahan.]

large mother ships to which the funding will transfer. Will all of this be based on the financial incentive? Regarding the transfer of assets and liabilities to the bridge bank, the Central Bank must, as far as possible, have carried out a competitive process to ascertain the market value. This is another issue on which the ECB has queried the proposed mechanism of evaluation.

Section 67 defines the function of special managers, who will comprise an elite group. Special management has the effect of suspending the rights and powers of shareholders and members. General meetings will only be convened at the direction of the special manager. That is all the power that is being given to the special manager. The person will, in the opinion of the Central Bank, have the requisite knowledge, expertise and experience of the financial services sector to be a special manager of the relevant credit institution. I wonder if they would be former bank managers?

The restriction on judicial reviews and appeals is heavy handed and is using a sledge hammer to crack a nut. With the consent of the Central Bank, the special manager can remove any person from the position of director, secretary or other officer or any person in the employment executive or consultancy, without notice, and possibly with immediate effect while persons affected can claim damages. Why is this type of legislation being created where there is a gap which enables people to claim damages for the loss of employment? I have already mentioned the recovery plan. Has it been implemented, or has the bullet been taken without the recovery plan being put in place?

On the issue of the rights of appeal, even the heading, “restriction on judicial review and the limit on appeals” is worrying. Also the issue of the property rights of shareholders could be dealt with in a more delicate manner.

Senator Rónán Mullen: This Bill offers the necessary framework to the regulatory authority to address and resolve the problems of financial institutions that find themselves in distress. As we reform and rebuild our supervisory structure it is important that the Central Bank, as the resolution authority, can avail of such resolution powers as will be regarded internationally as a prerequisite in the post financial crisis supervisory infrastructure.

The *ad hoc* approach to this crisis as it develops must be replaced by a more permanent and transparent mechanism for bank resolutions if it is to have an effect on the banking system and retain public confidence in the future. We are not the only country caught in the bind of having to bail out our financial sector to avoid wider economic collapse. Our nearest neighbour, the UK, was one of the first countries to experience the difficulties of distressed banks in the current crisis. However, it must be remembered that its banking fiasco cost 5.5% of GDP in recapitalisation and other measures while ours is costing significantly more.

It may be useful to remind ourselves why banks are such a crucial element in the health of a modern economy. Commercial banks play an important role in the financial system in the economy. As a key component of the financial system, banks allocate funds from savers to borrowers in an efficient manner. They provide specialised financial services which reduce the cost of obtaining information about both savings and borrowing opportunities. These financial services have to make the overall economy more efficient. That their function is so important would, on its own, necessitate tight regulation but we know that banks are inclined to play fast and loose with investor cash in a drive to generate fast and massive profits.

In his book *Open Dissent*, Mike Soden looked at the culture of silent dissent in Irish corporate life and a situation where there is an unwillingness to speak openly about the effects of cronyism between developers, banks executives and the regulators. We now know that banks took huge risks by lending to a relatively small circle of developers with the effect that our banks grew rapidly on a lending spree, funded by foreign bondholder cash. In other to prevent

such a cataclysm from engulfing us in the future we must resolve to drive through the necessary effective measures. I am impressed at the Minister of State's inclusion in the Bill of powerful tools to intervene where there is a problem. The tools to achieve the objectives are bridge banks, the ability to transfer assets and liabilities from failing banks, special management orders, modified liquidation process specific to credit institutions, the formulation of recovery and resolution plans and the establishment of new credit institutions resolution fund.

In addition to the power to intervene, we also need the will and the courage to intervene. It emerged recently that senior officials at the Department of Finance had decided to discard the counsel of more junior colleagues when they raised questions about 100% mortgages and other initiatives that put the property market into potential peril. *The Irish Times* obtained some papers, from speeches and Dáil Question Time, that show initial concerns expressed over certain mortgage practices. However, later versions of the papers show that the angle was changed by senior officials to give a more positive spin on the property market and to downplay a prediction that inflation would rise in 2006.

The Department of Finance also made public other papers under the Freedom of Information Act that shed light on the thorny subject of 100% mortgages. A September 2005 examination of this type of mortgage resulted in a prediction that they might have an inflationary effect but senior finance personnel overruled advice from the Department of the Environment, Community and Local Government about intervening in the situation. Can we be sure that in the future our regulatory and oversight authorities will not be in any way dissuaded or pressurised to avoid action against a rogue element in a large bank?

Section 8 sets out the conditions that must be fulfilled before the Central Bank can make an intervention in respect of a credit institution. It is the Central Bank, in the first instance, that will be required to form the opinion that intervention is required. This is an important change of focus from the existing Credit Institutions (Stabilisation) Act 2010. Under the latter the power of initiation rests largely with the Minister. That is justifiable in dealing with the current emergency and in the context of the large amount of financial support from the State to the Irish banking system.

In the permanent resolution regime that is provided for in the Bill, it is important to place the power of initiation to address a failing credit institution with the appropriate banking authority. However, the Bill provides that the Governor of the Central Bank will be obliged to consult the Minister in appropriate circumstances. This raises a key question regarding the fitness for purpose of the regulatory authorities. After all that has happened, it is worth remembering that the current crisis was born of a failure of the same regulator in whom the Minister now proposes to vest his power. The unhappy memory of the assurances by the former Financial Regulator, Mr. Neary, in late 2008 that the Irish banks were well capitalised and stable still looms large in the public mind. It is the failure of regulation that has been consistently the most troubling aspect of this crisis.

The Financial Regulator and Central Bank should have been more proactive at a much earlier stage in cooling the ardour of the property market. Even without the interest rate instrument, there were several things which could have been done, ranging from moral persuasion to insisting on prudent loan to income and loan to property price ratios, from raising risk ratings from property to insisting on more diversified loan books within the banks. Close relationships between regulator and banks — difficult to avoid in a small country — will have to be ended. Significant progress has been made on this front to date with the appointment and work of Mr. Elderfield, the new regulator.

The warnings were there before the start of the crisis. The Comptroller and Auditor General's report from 2008 was very critical of the Financial Regulator, stating that the regu-

[Senator Rónán Mullen.]

lator was 30% off target for its own stated inspection target of banks. According to the tables in the report in the same year, there were no unscheduled visits to the banks; in other words, spot-checks did not happen. This begs the question as to what might have been the case had we had the legislation in 2008 when the banking system was on the brink of collapse. The Nyberg report stated that the existence of a resolution regime in itself would not necessarily have been a panacea to avoid high fiscal cost to the State in the absence of burden sharing with creditors. We have not seen the anticipated progress on that front from Europe either.

I welcome the Bill and the fact that the regulator has increased staffing levels up to 520 this year, an increase of 160 on last year and a further 200 staff are expected during the next two years. I hope we are on our way to better times. Mr. Elderfield has stated that the problem at the heart of the crisis was the focus on principles based regulation which has become a code word for light touch regulation. The Central Bank Reform Act 2010 introduced much needed reforms in areas such as fitness and probity of senior staff in key positions in the bank.

I hope we can achieve a culture change both in the financial services industry and in the regulatory authorities. Without that culture change, geared towards serving customer needs and compliance with regulations, all the rules in the world will not prevent another crisis in our banks.

Senator Catherine Noone: I welcome the Minister of State to the House and I also welcome the Bill. It will ensure a cohesive strategy will be put in place which will help stabilise our financial institutions and restore confidence in the market. This is an urgent challenge and one which requires problems to be addressed very quickly, as the Minister of State and previous speakers have pointed out. The problems in the most troubled credit unions cannot wait until further credit union legislation is published towards the end of the year.

A series of changes within this Bill will address the concerns of the Commission on Credit Unions, the Irish League of Credit Unions and the Credit Union Development Association. Beyond credit unions, the Bill also seeks to ensure a number of other measures are implemented and extends the remit of the stabilisation Act, as other speakers have said, beyond 2012 in order to ensure further consistency in policy.

A key part of the Bill involves special resolution regimes, as Senators Gilroy, Clune and others have mentioned. Special resolution regimes were not in place in most industrial countries prior to the crisis, something to which Senator Mooney referred. It is worth stating that they give an increased range of policy options when in place, and also increase the flexibility of a Government to respond in the event of a liquidity crisis.

It is my belief that had this legislation been in place in September 2008, many of the problems may have been addressed earlier and effective legislation could have been put in place at an earlier stage. As such, this is a Bill that will aid our current situation and plan for the future to ensure that the Government of the day — whoever it may be — has the tools at its disposal to deal with a future crisis.

Normal corporate insolvency procedures are inadequate for financial institutions in various ways. A special resolution regime is a useful mechanism for financial institutions and for the Government of the day in a liquidity situation. There are a number of reasons for this. The most relevant is that banks are much more likely than businesses to trigger knock-on effects throughout their industry and need special mechanisms.

A special resolution regime, as approved and advocated by the IMF, seeks to create such mechanisms. The Bill empowers the Central Bank to establish bridge banks, which would be licensed to carry on business and whose capital would come from the resolution fund. This

would compartmentalise systemic risks and would strengthen the system further. It would help confidence to flow, as various speakers have said.

Another element of this Bill is that many of the provisions laid out in the stabilisation Act will now apply indefinitely. The stabilisation Act and its provisions will expire on 31 December 2012. This Bill is very much drafted with a view to the future, something I welcome. Similarly, it would widen the scope of the financial institutions which fall under the stabilisation Act, which would be a positive development in order to ensure cohesion in the system.

I commend this Bill to the House. It is an essential mechanism for the present and an important building block for the future. We are confronting our current challenges, as we in this House know all too well, yet this Bill also sets out a course for the future to ensure we never find ourselves in such a situation again.

Minister of State at the Department of Public Expenditure and Reform (Deputy Brian Hayes): I thank all Senators who contributed to the debate. There were at least 15 speakers which means at least 25% of the Seanad contributed, a significantly higher percentage than in the Dáil when the Bill was discussed some time ago. I congratulate my colleagues for the range of issues put on the record today.

There is a broad range of support for the resolution mechanism outlined in the Bill, largely because it has been the work of two Governments and has been in gestation for quite some time. It is fair to say that one of the great inadequacies of this crisis over the course of the past number of years, not just in Ireland but across Europe and elsewhere, has been the complete failure to put in place a banking resolution mechanism which deals with insolvent and defunct banks. It is easy to say that after the pony has bolted but as long as these provisions are not in place the risk to the financial system and our banks is even greater. That has been reflected across the House in the contributions made.

I was very taken by some of the remarks. Senator Barrett spoke about the importance of having better trained bankers. There is a lot of common sense in that. We need to get between the jargon and what has happened historically over the course of the past number of years. Our banking system became totally dysfunctional. It was based on a model which was completely unsustainable, a point made by Senator Mooney. Anyone who questioned that was seen as some kind of pariah and going against the trend.

The Minister for Finance used the phrase “retrofit” in the other House. We need to retrofit the current financial system with the legislative means to ensure this crisis can never happen again. That means upping the entire regulatory and legislative code in place which can make a difference. We need to return to a traditional banking methodology.

When the banking recapitalisation scheme was first mooted in March this year it was put to me at the time by officials in the Department of Finance that banks can only lend on the basis of how much they have. Therefore, the more they have the more they can lend. Typically the rate of deposits to borrowings should be about 120%. In the Irish banking model that figure grew to 180%. Anyone looking at the balance sheets of our banks could see the recipe for disaster that emerged from 2008-11. The real problem emerged many years before when the credit sequence was allowed to get out of kilter.

There are very logical questions that flow from that. How was the situation allowed to exist in what were substantially publicly owned companies within the regulatory framework, the Central Bank and the political system? These are questions we will answer for quite some time.

We should return to a traditional banking model based on common sense and bankers knowing their communities, like the credit unions who know who and who not to lend to. That type of Colonel Mannering banking is based on people knowing what is going on. That did not

[Deputy Brian Hayes.]

happen in this country over the past ten years as communities and individuals were given an opportunity to take out 100% mortgages and the like. Senior bankers should know what is going on, understand what is happening in their communities, take responsibility for it and demand that local banks are engaged in communities. If we follow that model it will be successful in getting credit flowing again.

We have already put in place, through the credit institutions scheme legislation, the means through which the subordinated debt write-down could be obtained for the State. Even when the legislation was challenged it proved to be robust.

Senator Reilly and others said there has been no burden sharing to date. That is not the case. Significant burden sharing has taken place in regard to subordinated debt to the tune of over €5 billion.

One of the reasons the Troika has spoken so highly of the bank recapitalisation is because it has proven not to be as expensive as first envisaged in March. We only own 15% of Bank of Ireland and funds have come into it through the private market, which has been a huge confidence boost for the country. The full ECB exposure in this country has reduced over the course of the past number of months.

For the first time in eight months deposits have come back into the country after the enormous sums taken from our banks. We are in a better position in terms of bank recapitalisation and our banks are now in a better position than Swiss banks because they have become over capitalised. Arguably, that is the model which other European banks will have to follow if credibility is to be restored to the European banking system. In the decisions the Government has made on recapitalisation since March — I believe there is an appreciation of this — that model has been proved to be successful in attempting to regain confidence in the international markets. We should not underestimate that. I make those points merely by way of introductory remarks.

A range of issues were raised and we may have an opportunity on Committee Stage to return to them. The point was made, I think by Senator MacSharry, as to why we did not have a regulatory impact analysis and why it was not published. He is right to raise this matter. In the programme for Government a commitment was given that for all legislation there would be a regulatory impact analysis and that it would be published. That was not possible in this case, given the talks that were taking place between the Troika and the Government and the exacting timelines that were required in getting the legislation through. Senators will be aware that this is a condition of the Memorandum of Understanding. Commitments were entered into and the Government thought it prudent to keep to those commitments in the enactment of this legislation.

Senator MacSharry is right in saying the regulatory impact analysis did not occur. It will occur for all future legislation. In the case of the Construction Contracts Bill, which I have sponsored and which I hope will be before both Houses soon, we published the regulatory impact analysis over the summer, allowing for consultation. That is not to say that consultation has not happened with stakeholders throughout the financial industry on this Bill. It has.

Senator Michael D'Arcy mentioned the special liquidation procedure. An important aspect of a successful special resolution regime for banks is the facility to allow an institution to be wound up while minimising the impact on depositors, particularly those covered by the deposit protection scheme. The Bill provides for a modified liquidation procedure which requires the liquidator to prioritise insured depositors' access to their deposits over the usual objective of ensuring the best return to all creditors. The insured depositors may be paid by the deposit protection scheme or their deposits may be transferred to another institution. A liquidation

committee will be established to monitor the liquidation process in achieving this prioritised objective. Once this objective has been achieved the liquidation will proceed as normal. The Bill puts a committee in place to look into this issue and to set out a scheme which will be followed.

Senator Barrett raised the question of large capital inflows. It is the job of the Central Bank to monitor such flows, having regard to its responsibility for overall financial stability within the economy. The Central Bank is now operating the monitor risks at a microprudential as well as a macroprudential level. I hope that reassures Senator Barrett that, were it to happen, a massive inflow into the Irish banking system would be highlighted by the Central Bank. There was a complete lacuna here in the past when very significant sums were coming into our banks. That issue is now covered. Given what has happened in the last few years, the Central Bank is well appointed to deal with this issue and to highlight it, if it were to emerge.

Senator Gilroy spoke about the resolution fund, and this was also referred to by a number of other Senators. The introduction of a bank levy is one of the objectives set out in the programme for Government. The Bill will provide for the introduction of a levy through the establishment of a resolution fund based on contributions from authorised credit institutions. However, it is important that the timing of the imposition of this cost on the financial sector and its potential impact on the financial position of authorised credit institutions be considered carefully and not rushed into, particularly given the difficulties still facing the overall sector. It is the Government's intention to move on this fund. It was flagged in the programme for Government.

Putting the fund in place will require temporary funding from the central funds of the State. A resolution fund will be set up initially with funds provided by the State. Senator Gilroy asked why the Irish fund required the consent of the Minister. It is because the funds come from the Minister and from the State. It is my understanding that this is not the case in the United Kingdom. The fund will be in place initially on a temporary basis until the levy is introduced. The money will come from central funds. When the levy is introduced the State will get its money back and the fund will be established on a more permanent basis. Central funds will be made available on a temporary basis. That is why the consent of the Minister is required. Under EU law, those funds cannot be provided by the Central Bank. They can only be provided through central funds.

Senator Michael D'Arcy: Is it not likely that the banks will simply pass the levy onto their clients?

Deputy Brian Hayes: A levy will be introduced but it will take some time for that to happen. The timelines the Government has set require that the parameters of the fund be established by the end of this year. That gives us some time to work out the scope of the levy. We should not assume that it will be paid for by customers. One of the Government's recapitalisation objectives is to make a smaller banking system, without creating what Senator Barrett referred to as a duopoly. A better funded and more efficient fund within the banks is required. The resolution fund must be a fundamental part of this process.

Senator John Gilroy: The implication of what the Minister of State is saying is that the Minister will step out when the fund is permanently established. I see no explicit reference to that in the Bill.

Deputy Brian Hayes: We can look at that matter further when we debate that section on Committee Stage tomorrow.

[Deputy Brian Hayes.]

With regard to Senator Gilroy's query as to why the Minister's consent was required, it is because he provides the funds to allow the system to be put in place. When the Minister steps back he will get his money back. The suggestion that some undue influence would occur is something we can look at. I do not believe that is the intention.

Section 15 provides that the Minister shall make regulations prescribing the rate of contribution to the fund by the authorised credit institution. In making those regulations, the Minister must balance the need for the fund to grow to an effective size with the need for the rate of contribution to be consistent with monitoring the commercial viability of such credit institutions. The Central Bank is undertaking an analysis of the appropriate collaboration of the banks. The Bill gives the Minister the power to set out the regulations and he will have due regard for the industry-wide concerns about them. A fair degree of consultation will take place on that point in advance of the regulations being put on to a statutory basis.

Senator Mooney asked about credit unions and his concerns were reflected by Senators on all sides. I repeat a point that has already been highlighted in Chapter 3 of the interim report of the Commission on Credit Unions. There was a significant fall in incomes in 2010 which has been felt by all categories and sizes of credit unions. Costs have risen significantly and arrears have increased dramatically since 2008, with a current average of 18% of gross loan book for the sector. Some 98 credit unions have arrears of more than 25% of their gross loan book. The picture is difficult and grim. In his reply to Committee and Report Stages of the Bill in the Dáil the Minister made the point that he is putting in place a means to identify the safety and security of the credit union system, both in the Bill and in how it is operated. That is something that has been reflected in all sides of the House and for which there is support. Nothing in the Bill should cause undue concern to the credit union movement.

Senator Sheahan spoke about a possible future composition of credit unions where a number of credit unions might merge in a regional structure and back-office staff could be put in place nationally or regionally with credit unions feeding into that structure. We must ensure that the same prudential system we expect for banks is in place for credit unions, without being so hamfisted as to demolish or make it more difficult for credit unions to advance. We all accept the importance of the credit union movement which impacts almost three million people countrywide and of the hundreds of branches that make such a difference across our communities. However, I do not believe that in the full light of day this legislation will be seen as a rough tackling of credit unions, rather it will ultimately make safer the environment in which credit unions can act. We can tease out that issue during the next Stages.

On Senator Sheahan's point on bridge banks, this Part of the Bill provides for the establishment of bridge banks to be considered in the context of a potential transfer of assets or liabilities from a credit institution experiencing difficulties. Bridge banks have become one of the tools available to the Central Bank to resolve a bank in crisis through the transfer from the distressed bank of certain assets and liabilities such as deposits so as to facilitate continuity of banking services to certain customers such as depositors. This Part of the Bill provides that the Central Bank may establish a bridge bank to act as a temporary transferee where it is not immediately possible to find a willing private party to become a transferee but where it is likely a willing transferee will emerge in a reasonable period of time. The bridge bank could be that mechanism for a number of credit unions which are in difficulty until such time as they have obtained full recapitalisation and are in a better condition. In response to the Senator's question about whether that could happen, the answer is "Yes, it could".

Section 17 provides for the formation of the bridge bank, namely, a private company limited by shares and wholly owned by the Central Bank or its nominee, where it is in the public interest to do so. The purpose of the bridge bank will be to hold assets or liabilities transferred pursuant to a transfer order. It is not possible for the Central Bank to provide capital funding to a bridge bank as this is not permissible by virtue of the EU's monetary financing prohibition which is intended to prevent a euro-system Central Bank from providing monetary financing to a national Exchequer. Accordingly, no capital will be provided from the Central Bank's own resources. I made the point earlier that this can only through the Minister and Central Fund.

On the question of financial incentives, this section provides that the Minister may at the request of the Central Bank provide a financial incentive to any person, including a bridge bank, to become a transferee and may enter into transactions of a normal banking nature in connection with or related to the provisions of such an incentive. It is an important feature that helps to ensure that where needed, a successful transfer occurs. As I stated, we can discuss this issue and the relevant sections on Committee Stage.

I believe the debate in the Seanad has been useful in highlighting a number of issues to which we can return on Committee Stage. The Minister and I would welcome any amendments or points of issue for discussion on Committee and Report Stages. Many of the observations that have been made by the troika in relation to our scheme of legislation were addressed in amendment form during the passage of this legislation through the other House. This is not a rabbit from a hat. A fair degree of work and deliberation has gone into this scheme. The view across the financial sector is that the Bill deserves a fair wind in terms of its putting on a permanent footing a system which can under-write the Irish financial system and give us protection so that we are able to cope, in a way we have been unable to cope during the past number of years, with whatever shocks that emerge in the future.

I commend the Bill to the House and seek support for it.

Question put and agreed to.

Acting Chairman (Senator Michael Mullins): When is it proposed to take Committee Stage?

Senator Maurice Cummins: Tomorrow.

Acting Chairman (Senator Michael Mullins): Is that agreed? Agreed. When is it proposed to sit again?

Senator Maurice Cummins: Tomorrow at 10.30 a.m.

Adjournment Matters

Anti-Social Behaviour

Acting Chairman (Senator Michael Mullins): I welcome the Minister of State, Deputy Cannon, to the House.

Senator David Cullinane: I wish to share my time with Senator Cummins. I, too, welcome the Minister of State to the House. This motion relates to a long-standing problem at Templars Hall housing estate in Waterford. The Minister of State may be aware from media coverage

[Senator David Cullinane.]

nationally and locally that residents of Templars Hall housing estate, Waterford have been experiencing problems in their estate over the past seven or eight years.

By way of background, there are 311 houses in the estate, only 40 of which are lived in by home owners, with the vast majority being rented, in particular by students. There have been major problems with students living in this estate. While, to be fair, the Garda Síochána and students union have done their best to deal with anti-social behaviour problems in the estate, the problem has, for some unknown reason, gotten worse. Often, more than 60 students congregate at parties in houses following which there is shouting, drinking on the streets, urination on people's cars and properties, throwing of rubbish and empty bottles in residents houses.

I wish to read into the record the following, which was said by a resident of the estate, a teacher who has been living with her boyfriend in a rented property in the estate for the past four years:

The amount of students here the other night was unreal. I can't sleep and in my job I have to be on top of my game. People say why don't you move out but why should we, we have made this house our home?

A second resident spoke of people screaming, shouting, singing, urinating against walls and smashing bottles. This problem usually starts between 11 p.m. and 12.30 a.m., eases when the students are in the bars and clubs and kicks off again from 2 a.m. to 4 a.m. Not all the students living in the estate are involved in anti-social behaviour. However, there is a major problem in this estate.

I received a handwritten letter from a resident who asked me to pose a number of questions to the Minister of State. In the letter, the woman speaks of the physical and mental health problems being experienced by many residents because of this constant anti-social behaviour in their estate by students. Children who have to attend school cannot sleep at night because of the disturbances. There is no safety for residents. They are now being assisted by a number of councillors from all parties in patrolling the estate, which they have been forced to do by the level of anti-social behaviour. They have received support from councillors, the Garda and the students union. Responsibility lies with the students engaging in anti-social behaviour.

The residents have asked me to put a number of issues to the Minister of State and the Minister for Justice and Equality. First, the Garda points out that it does not have the power to deal with house parties and large congregations of people who are drinking and playing loud music. It can deal with public order offences, but not loud music. Second, the Garda can only work within its budget and resources. The residents in this estate feel as if they are under siege and trapped on those nights when anti-social behaviour occurs. They feel that the State and the Garda are not supporting them. This is not because the Garda does not want to support them, but because it does not have the resources and only possesses limited powers.

I appeal to the Minister of State to examine the media coverage of what is occurring in the estate. He should contact the local gardaí, find out what is going on and determine whether more could be done to support the residents. They are trying to live in peace on their housing estate but this is not possible because of the anti-social behaviour of a small minority of students who seem to believe that they can do what they like and cause major disruption in the lives of the estate's residents, including children.

Senator Maurice Cummins: I thank Senator Cullinane for allowing me time to comment on this serious issue with the Templar's Hall housing estate in Waterford city's ward 3, an area

that I represented for many years. My son, who is a councillor in the area, patrolled it with the students union last year. I compliment the union's members on trying their best to control louts. If their parents knew, they would not allow their children get up to such activities. The conduct of these louts is deplorable. The estate is home to a small number of permanent residents. What they have been forced to put up with for several years is unacceptable. What these so-called students have been up to is indescribable.

I compliment Senator Cullinane on raising this matter. I hope that all necessary resources will be provided to combat this blackguarding and to give some peace to the estate's excellent residents.

Minister of State at the Department of Education and Skills (Deputy Ciarán Cannon): I thank the Senators for raising this matter on the Adjournment. I am speaking on behalf of the Minister for Justice and Equality, who regrets that he is unable to be present due to other business. He shares the Senators' concern about incidents of anti-social behaviour in the Templar's Hall area in Waterford and is conscious of how distressing such incidents are for the local community.

The programme for Government includes a commitment to attach a higher priority to community policing and, within available resources, a higher Garda visibility in the local neighbourhoods worst affected. The Garda Síochána operates a model of community policing that builds upon and enhances good community policing practice. Clear objectives are set, such as high visibility in the community, ease of contact by members of the public and enhanced support for crime prevention strategies such as neighbourhood watch and community alert.

In its policing plan for 2011, the Garda has prioritised actions to achieve the maximum levels of safety for local communities and to provide a community policing service that meets the demands of the public. The plan identifies a range of strategies to be deployed to counter anti-social activities, including targeted operations, high-visibility patrols, deployment of appropriate resources to identified public order hotspots in respect of alcohol and drug-related behaviour and youth crime, and the full utilisation of existing legislation.

The Minister has been informed by the Garda authorities that local Garda management in Waterford is aware of difficulties being experienced by residents relating to public disorder and other anti-social behaviour in the Templar's Hall area. In terms of a front-line policing response, additional resources from within the Waterford Garda district have been deployed in the locality by local Garda management to conduct additional patrols in this area and its environs on days and at times identified as being when such behaviour is more likely to occur. The area continues to receive a high level of priority.

Records indicate that in 2011 to date, there have been 126 public disorder-type incidents reported to the Garda in the area. These have resulted in approximately 21 persons being arrested for offences relating to public disorder, assault, drink driving, possession of drugs for sale or supply and theft-related crimes.

Members of the local community policing unit, working with local residents, the Waterford Institute of Technology authorities and the students union, have developed an action and response plan to combat such behaviour. This approach has resulted in a reduction in anti-social behaviour in the area, as acknowledged by the local residents association. Local Garda management, through the community policing unit, continues to work with all stakeholders in the area to address issues that arise and to respond to complaints by local residents. The Garda advises that anti-social behaviour in the area is not confined to any particular grouping.

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Local Garda management held a productive meeting with local residents on 6 October to discuss their continuing issues of concern. The Garda in Waterford is committed to continuing to work closely with the residents association and the local community. The community policing unit remains in ongoing contact with the residents association, the college authorities and the students union. Local Garda management monitors operational strategies on an ongoing basis in conjunction with trends in crime and anti-social behaviour and the policing needs of communities to ensure optimum use is made of Garda resources and the best possible Garda service is provided to the public. I assure the House that the Minister and the Garda authorities will continue to attach the highest priority to tackling anti-social behaviour wherever it occurs.

Senator David Cullinane: I thank the Leader and the Minister of State for their contributions. A number of members of the residents association are in the Visitors Gallery and will be grateful for the Minister of State's comments.

The figures speak for themselves. That 126 public disorder-type incidents have been reported to the Garda shows the extent of the problem. Will the Minister of State revert to the Minister on the matter of constant house parties on the estate? On a weekly basis, large gatherings of 60 or more people play loud, banging music and drink on the streets. The law needs to change to enable the Garda to be able to better police communities. The Minister needs to examine the gap in the legislation. While gardaí visit the estates and co-operate with residents, the latter often find that the gardaí do not get out of their cars and what are termed "paddy wagons" and do not confront people. Perhaps this is because they do not have the necessary powers or resources.

I commend all of the people who are trying their best to address the problem. Where there are constant house parties, we cannot hide behind the claim that the same occurs everywhere. It does not occur everywhere three or four days per week for six or seven months of the year, so it should not be allowed to go on in the housing estate in question. The Garda should be allocated increased resources and powers to address these serious issues.

Deputy Ciarán Cannon: I will take the Senator's concerns directly to the Minister. If the legislation contains weaknesses, we will consider how to strengthen it.

Acting Chairman (Senator Michael Mullins): I thank the Minister of State and I welcome the visitors from Waterford.

Ambulance Service

Senator Tom Sheahan: I tabled this matter in light of the reduction in the ambulance service in the Caherciveen area, which covers most of Kerry South from Killorglin to Castlecove, a distance of some 40 miles. It also covers the extensive area from Valentia up to Dromod-Maistir Gaoithe. Ambulance cover for the area is being reduced to the hours from 8 a.m. to 8 p.m. I cannot understand the reason this is being done. Medical doctors are fearful that this decision has been taken behind closed doors without knowing the facts. The man with the ultimate decision on this in the ambulance service is based in Kilkenny. Why would he not protect the ambulance service in his own area? He has probably never visited the south Kerry area and does not know the topography of the area we are speaking about.

To put this in context, the importance of the golden hour in receiving treatment is often spoken about and the area concerned is an hour's travel time from Kerry General Hospital in Tralee. If one were to become ill in this area and an ambulance were to arrive immediately, it

would still take it an hour to get to Kerry General Hospital but if this proposal were to go ahead, it would take an hour for the ambulance to get to the area from Tralee and another hour from it to get back to Kerry General Hospital. It is crazy. The lives of people will be put at risk. I do not believe that the lives of people living in urban areas are any more valuable than those of people living in rural areas. They deserve the same or a similar service to those living in an urban residence. Furthermore, how will the summer influx of holiday-makers to the south Kerry region be covered if there is only one ambulance covering the area from 8 a.m. to 8 p.m? I would like to hear the Minister of State's response to these points.

Deputy Ciarán Cannon: I am replying to this Adjournment matter on behalf of my colleague, the Minister for Health, Deputy James Reilly, and I thank the Senator for raising this matter.

The HSE has confirmed to the Minister, Deputy Reilly, that services are not being diminished. What is happening is that traditional work practices within the National Ambulance Service, NAS, are changing, as stations move to on-duty status and away from on-call. Being on-duty means highly trained paramedic crews will be in the stations to respond to calls rather than having to be called out to the station, which is inevitably slower in responding to emergency calls.

The Labour Court recommended that the HSE abolish on-call for all NAS staff in Cork and Kerry. The ambulance staff has sought the elimination of on-call working. It has already been reduced from 44 hours to 16 hours per week and that it will continue to decrease on a phased basis, as part of the improvement of services and response times in the region. There are ongoing discussions with staff on implementing the proposals, including in Caherciveen. The HSE and unions are committed to this process.

This change is to ensure that the needs of people in Cork and Kerry continue to be met in an integrated, safe and effective way by a modern service and within available resources. The focus of the HSE's current plans is to deliver a better service from the funds available rather than saving money. It also means that resources can be deployed dynamically based on need and demand patterns, rather than simply by location, giving greater flexibility and responsiveness. For example, an ambulance operating on a 24 hours a day, seven days a week basis in Killarney or Kenmare would be moving between areas to maintain spatially based emergency cover, based on predictive analysis, and then dispatched every time a rapid response vehicle is dispatched. Effectively, this means that the ambulance would be available to transport the patient by the time the paramedic or advanced paramedic has assessed and treated the patient. This will produce better response times for the people in the Cork and Kerry area and a better service.

The National Ambulance Service proposals are phased. In phase 1 stations in east Cork with night time on-call will have crews rostered on-duty 24 hours a day, 365 days a year. The more rural stations of Castletownbere, Kenmare, Bantry, Skibbereen and Caherciveen will be in later phases. The service will be evaluated after each phase.

Caherciveen will, under the new system, move from on-call at night to full 24 hour on-duty cover. Paramedics will be present at all times, with an on-duty ambulance during the day and an on-duty rapid response vehicle, staffed by advanced paramedics, at night. The dynamic delivery model means that an on-duty emergency ambulance will be available from within the region as required.

Current evidence suggests patient outcomes can be improved by better treatment and stabilisation at the scene, followed by ongoing treatment and transport to the most appropriate centre, even if that means longer transport times. On-duty service will enable a modern emer-

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agency response service involving paramedics, advanced paramedics, community first responders and GP out-of-hours services working together to respond to emergency situations. This approach is consistent with international best practice and will ensure compliance with HIQA response times and quality standards.

On-duty rostering is one of several service enhancements. Other developments include improved control and dispatch, practitioner deployment and inter-hospital transfers. All of these will allow the NAS to provide a better, safer, more comprehensive and more efficient emergency ambulance service to the people of Skibbereen and to the Cork and Kerry region as a whole.

Senator Tom Sheahan: I thank the Minister of State for his comprehensive response. I imagine that approximately 90% of all car accidents happen at night. How does one cover an accident involving two cars if one paramedic is sent to the scene of the accident where five people may be injured and there is not an ambulance at the scene? An accident occurred in my constituency last year where the fire brigade crew were the first to arrive at the scene and on arrival they then called for an ambulance but by the time the ambulance arrived, it did not make it on time because the scene of this accident was 22 miles from civilisation. This must be borne in mind.

The area we are talking about is vast with much of it is very remote and the topography would be difficult to travel in the best of times. The people of south Kerry in the Caherciveen area are being let down. They will not take this lying down and that there will be a response from the people of the area.

School Transport

Senator Paul Bradford: I welcome the Minister of State, Deputy Ciarán Cannon, to the House. It is fortuitous that the Minister of State with responsibility for school transport is here to listen to my plea and request and, hopefully, to respond with a degree of compassion and flexibility to bring assistance to the pupils at the Adair national school in Fermoy, County Cork.

We are speaking in Seanad Éireann this afternoon about a matter concerning a minority community mainly of the Church of Ireland tradition. I take this opportunity to cite something the former Senator William Butler Yeats said in this House on 11 June 1925 when speaking about a particular legislative difficulty faced by the minority Church of Ireland people:

We against whom you have done this thing are no petty people. We are one of the great stocks of Europe. We are the people of Burke; we are the people of Grattan; we are the people of Swift, the people of Emmet, the people of Parnell. We have created the most of the modern literature of this country. We have created the best of its political intelligence.

Those comments by the former Senator William Butler Yeats about those whom he termed were no petty people is something upon which we should reflect when we are considering the question of school transport being withdrawn from a minority community and a very small number of pupils.

As the Minister of State may be aware from correspondence submitted to his office, the Adair school in Fermoy, which is under the management of the Church of Ireland, was founded in 1804. It is a very old and established national school that has served its community in a tremendous way for generations.

The Minister of State's Department accepts, from a school transport perspective, that ten pupils in the school meet the distance criteria of the 3.2 km, but the Department has indicated that these ten children do not come from what was termed a distinct locality. On behalf of the pupils, parents, teachers and all people in north Cork concerned about the protection of the rights of a minority group, I advise the Minister of State that the catchment area for this Church of Ireland school in Fermoy is the boundary of the grouping of parishes which makes up the Fermoy union. It is not only a single parish. It is an area covering approximately 400 square miles. That area has been served with school transport for many years.

As far as the parents, the teachers and the pupils would be concerned, that is the distinct locality. For pupils from that area, if they wish to receive an education in a school of their choice and of their tradition, their local school is the Fermoy Adair school.

The Minister of State's office, through one of his principal officers or possibly the principal officer at the Department of Transport, Tourism and Sport, was, I believe, asked to clarify what was meant by a distinct locality and wrote that, in regard to a distinct locality, the guidelines of the scheme clearly outline that a service to convey a group of children whose homes are at scattered points in a school district would not be approved. The strong argument made to me by those concerned about the situation in Fermoy is that under those guidelines no child living in a rural area would be eligible to receive bus transport to school because in rural areas all children live in homes that are at scattered points in a school district. The question of the distinct locality must be looked at again.

In the large geographical area of north Cork there are only two national schools offering a choice to children of Church of Ireland or other minority traditions, Mallow and Fermoy. The Fermoy school has not only pupils of Church of Ireland background. In recent years up to 14 different nationalities have attended these schools. The school is diverse and inclusive in that regard. I am advised the enrolment fluctuates between 35 and 45, but the vast majority of those children are attending that school because it reflects the ethos of their parents, their grandparents and their entire tradition in north Cork, and that is something which must be protected.

I am the first to appreciate that the Minister of State, Deputy Cannon, and his colleagues in Government are under grave financial constraint and that he is reviewing the school bus transport system, but in cases where we are talking about a minority religious tradition we must be exceptionally protective and, where possible, not only compassionate but flexible.

There is some sort of appeal process available and this case may well be under that appeal process at present. Given their tradition and their place in the landscape of the area, not only educationally but socially, culturally and historically, it is important that schools such as the Adair school are protected. Unfortunately, if the school transport service is withdrawn, that will be almost a body blow to the school itself.

I appeal to the Minister of State to look sympathetically and compassionately, and, hopefully, favourably, on the pupils at Adair who since September have been without school transport. Without the return of school transport, the future of this school is under threat. From a religious, societal and inclusive perspective, that would be bad. I hope Deputy Cannon can use his undoubted skill to bring progress to this difficult situation.

Deputy Ciarán Cannon: I thank Senator Bradford for raising the matter today as it provides me with an opportunity to clarify the general position regarding the changes in the primary school transport scheme announced in budget 2011 by the previous Fianna Fáil-Green Party Government. These changes derive from recommendations in the value for money review of the school transport scheme and include the introduction of charges, changes to the closed

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school rule and changes to the minimum numbers required to establish or maintain a service. In particular, I wish to outline more fully the changes to the minimum numbers required to establish or maintain a service as it is this change which has affected the bus service to Adair national school.

The change in the minimum numbers required to establish or maintain a service, requires that, from the 2011-12 school year, a minimum of ten eligible pupils, residing in a distinct locality, will be required to retain or establish a school transport service. This brings the minimum numbers required to establish services back to 2002 levels. It is interesting to note that when the change was made in 2002 to establish a minimum number of seven rather than the previously agreed minimum number of ten, the cost of providing school transport went up by €20 million the following year.

On a distinct locality, the guidelines of this scheme clearly outline that a service to convey a group of children whose homes are at scattered points in a school district would not be approved. On the advice of Bus Éireann, which operates the scheme on behalf of the Department, the number of eligible applicants from a distinct locality in this instance is below the required number of ten. While applications have been submitted on behalf of ten children, five of these children reside west, one resides south, one resides south-east, two reside east and one resides north of the school at scattered points.

Commenting on the Senator's earlier observations that, by its nature, a rural school transport involves the collecting of children at scattered points throughout a rural community, that is very much the case, but I am sure the Senator, coming from a rural community as he does, would be aware that, even within a dispersed rural community, normally with school transport services an individual bus would pick up children who reside in a particular locality, usually at a similar distance and at a similar compass point from the school. The analysis carried out by Bus Éireann would seem to suggest that this is not the case with these ten children.

I emphasise that the school transport scheme continues to have regard for language and ethos. In this instance, the families for whom this is the nearest school under Protestant management and who reside more than 3.2 km from the school will be eligible for a grant towards the cost of making private transport arrangements. This grant ranges from some €200 per school year to over €900 per school year depending on the distance involved.

This minimum number requirement is being applied nationally and in all, some 100 primary routes, out of a total of 6,000 routes which operated in the last school year, will not operate this year because there are insufficient eligible children qualifying for transport in order to warrant a service.

I remind the Senator that these changes are taking place against the backdrop of the severe financial difficulties that the country is in. Under the four-year national recovery plan, there is a requirement to deliver savings of €17 million on the school transport budget and the measures announced in budget 2011 are an integral part of this.

I again thank the Senator for raising this matter.

Senator Paul Bradford: Could the Minister of State advise on this appeal process? What is the format of it and its timescale? Will he acknowledge that this school is currently in the process of having its case appealed?

Deputy Ciarán Cannon: As Senator Bradford points out, the decision to withdraw the bus service is currently being appealed to an independent appeals board which is made up of

experts in school transport and logistics in general. Neither I nor any official in the Department has any influence over the decision of that board. It is completely independent, as it should be. I understand that the board is due to adjudicate on this case within the next week or so.

Local Authority Housing

Senator Mark Daly: I welcome the Minister of State, Deputy Cannon, to the House.

This is a short query on the family income supplement, which is currently being included as assessable for consideration when persons are being considered for housing applications. I would ask the Minister, in light of the current situation, that it would not be assessable for consideration when people's household means are being assessed when they seek to get housing from the State. I would ask the Minister to ensure people who are in difficult situations would not be caught in this trap where if they are in receipt of the family income supplement, they are deemed to have too much income and find themselves in a difficult situation when they go looking for housing.

Deputy Ciarán Cannon: I thank Senator Daly for raising this important issue which I am taking on behalf of the Minister of State, Deputy Willie Penrose.

On 1 April 2011, a new standard procedure for assessing applicants for social housing was introduced in every housing authority. The ultimate aim of the new system is to create a fairer, more consistent and transparent approach to eligibility for social housing support. The system includes maximum net income limits, in different bands according to the area, with income being assessed according to a standard household means policy.

Prior to the new system there was considerable inconsistency on income criteria in the various local authorities. This meant that applicants for support who were on similar incomes could be treated very differently because of where they happened to live. This was neither equitable nor efficient. The Minister of State with responsibility for housing and planning will take note of the points raised by Senator Daly regarding the policy of including family income supplement and assessable income. However, he has asked me to point out that one of his first acts was to revise the income thresholds set by his predecessor, to increase all the bands by €5,000. Therefore, while income from family income supplement is assessable under the Department of the Environment Community and Local Government's household means policy, the Minister believes the revised thresholds are sufficiently generous to enable a broad range of households to access social housing. The income threshold for a family with two adults and two children in the band 2 area, which includes County Kerry, is €33,000 net income, which equates to a gross income of at least €40,000. This income should be sufficient to cover the cost of accommodation in the private rented sector in that area.

The calculation of net income is gross household income less income tax, PRSI and the universal social charge. While child benefit and some other income types are disregarded, most other payments received from the Department of Social Protection are assessable. As family income supplement is usually paid for 52 weeks and the supplement can be re-applied for after this period, it was considered appropriate to include it as assessable income. Given the cost to the State of providing social housing, the Minister of State, Deputy Penrose considers it is prudent and fair to direct resources to those most in need of social housing support and who are unable to provide for their accommodation needs from their own resources. He is confident that the current income eligibility requirements achieve this and that the new assessment criteria ensure we have a more equitable and transparent assessment process for housing. He proposes to review the 2011 social housing assessment regulations with a view to making any

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adjustments required in light of experience. This review will include an examination of the income thresholds themselves and also the policy applied to determine assessable means.

Senator Mark Daly: I thank the Minister of State for his reply and I look forward to the outcome of the review.

The Seanad adjourned at 6.15 p.m. until 10.30 a.m. on Wednesday, 19 October 2011.