



# SEANAD ÉIREANN

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*Déardaoin, 8 Nollaig 2011.*  
*Thursday, 8 December 2011.*

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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Paidir.*

*Prayer.*

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## **Business of Seanad**

**An Cathaoirleach:** I have received notice from Senator Martin Conway that he proposes to raise the following matter on the Adjournment:

The need for the Minister for the Environment, Community and Local Government to improve energy efficiency within local authority houses to reduce the heating costs for people on low incomes.

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

## **Order of Business**

**Senator Maurice Cummins:** The Order of Business is No. 10, NAMA Transparency Bill 2011, motion to discharge Order for Second Stage, to be taken without debate; No. 1, motion of referral to the Joint Committee on Communications, Natural Resources and Agriculture on the provision of funding through the Horse and Greyhound Racing Fund, to be taken without debate at the conclusion of No. 10; No. 17, motion 6, calling on the European Commission to clear with immediate effect the application by the Department of Communications, Energy and Natural Resources for onshore wind REFIT 2, to be taken without debate at the conclusion of No. 2; No. 2, Health Insurance (Miscellaneous Provisions) Bill 2011 — all Stages, to be taken at the conclusion of No. 17, motion No. 6, and to conclude no later than 3 p.m., with the contributions of group spokespersons during the debate on Second Stage not to exceed ten minutes and those of all other Senators not to exceed eight minutes, with the Minister to be called on to reply no later than 2 p.m., and with Committee and Remaining Stages to be taken immediately at the conclusion of the debate on Second Stage; No. 3, Criminal Law (Defence and the Dwelling) Bill 2011 — Second Stage, to be taken at 3.30 p.m. and to conclude no later than 5.30 p.m., with the contributions of group spokespersons not to exceed ten minutes and those of all other Senators not to exceed eight minutes, with the Minister to be called on to reply no later than 5.20 p.m.; and No. 4, Local Government (Household Charge) Bill 2011 — Committee Stage, resumed, to be taken at 5.30 p.m. and to conclude no later than 8 p.m., if not previously concluded.

Senators may disregard the motion circulated regarding the ordering of tomorrow's business as there will now be an Order of Business at 10.30 tomorrow because the Remaining Stages of

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the Local Government (Household Charge) Bill 2011 will have to be taken tomorrow. The motion, as circulated, did not account for that.

**Senator Darragh O'Brien:** I thank the Leader for acceding to the request yesterday to resume Committee Stage of the Local Government (Household Charge) Bill 2011 today and to continue considering the legislation tomorrow. There should be adequate time this evening to deal with the remaining amendments. I thank the Leader sincerely for taking on board the views of the House in this regard. He has done so on a couple of occasions this week.

On behalf of Fianna Fáil I wish the Taoiseach and the rest of his delegation well in their negotiations over the next two days. The Government's position in regard to treaty changes is unclear. I get the sense that the Government hopes any agreement reached at the negotiations can be dealt with under the existing treaties so that a referendum can be avoided. However, media reports from the EU indicate that the agreement will be such that the Government will have to put it to the people. Is the Government in favour of what the Taoiseach describes as fiscal consolidation and more stringent oversight? Will that involve fiscal union?

Given that our corporation tax rate is back on the table, I ask the Leader to confirm that the Government's position is to oppose any change to corporation tax. The British Government is looking for a sweetheart deal on financial transactions in the City of London which, if permitted, would have a serious effect on the financial services sector in Ireland. Members will agree that the Irish Financial Services Centre has been a major success for this country. The Taoiseach was circumspect, at best, in his address to the nation and should have spent more time outlining to the people our position on Europe.

This House has debated at length the ECB's interest rate reductions and the Government's efforts to ensure our covered institutions pass them on to their customers. Four weeks ago I suggested that further reductions were on the cards. Are we going to continue dealing with the matter by way of a Mexican stand-off between the Government and the banks, with the regulator standing on the sidelines? I welcome that the ECB will announce a further reduction of 0.25% later today but will the Government make good on its commitment to ensure these cuts are passed on? Bank of Ireland refused to pass on the previous rate cut.

What will happen next week? Will the Taoiseach and the Tánaiste drag the banks into Government Buildings once again to provide nice footage for the television only for the banks to do what they like afterwards? Legislation is required in this area and we are finalising a Bill which will provide certainty for homeowners. Permanent TSB charges a variable rate of 6.1% to many of their mortgage holders even though the ECB base rate will be 1% after today. This cannot be allowed to continue.

**Senator John Whelan:** I praise the courage of three feisty women from County Laois, Maureen Delaney, Bridget O'Neill and Catherine Kelly. These ladies, all of whom are in their 90s, won a great victory in the High Court yesterday after standing up to the HSE.

**Senator Terry Leyden:** And the Government.

**Senator John Whelan:** They carried the moral support from Members across this House into the High Court when they brought a halt to the HSE's plan to close Abbeyleix. This win is the first round of a long battle to save Abbeyleix and other community nursing homes in the midlands. Abbeyleix has become a byword for care in the community and the HSE has given a solemn undertaking before the President of the High Court, Mr. Justice Nicholas Kearns, to engage in meaningful discussions with residents and their families. A precedent has been set that the HSE cannot simply tell people they are going to be turfed out. I look forward to the

Minister for Health visiting Abbeyleix at the earliest opportunity and, without pre-empting the outcome of the review of the decision on the future of Abbeyleix, if some people have their way the community hospital will be around longer than the Seanad.

**Senator Terry Leyden:** We might get those feisty women to help us.

**Senator John Whelan:** I am going to have a chat with Catherine Kelly about that.

People are rightly upset about the proposals on disability payments but I welcome the news that the Taoiseach and the Minister for Social Protection have agreed to review the matter. I believe the decision will be reversed in due course in the interest of those who have profound disabilities. I thank my Fine Gael colleagues for their strong representations to the Taoiseach on the matter. Labour Party Senators Moloney, Moran and Kelly also made robust representations to the Minister, Deputy Burton. She is a listening and caring Minister and she does not dismiss out of hand people who make constructive criticisms.

**Senator Darragh O'Brien:** She just dismisses pay caps.

**An Cathaoirleach:** Senator Whelan without interruption.

**Senator John Whelan:** She does not accuse people who raise legitimate concerns of being whingers who should commit suicide.

**Senator Darragh O'Brien:** Get over it.

**Senator John Whelan:** We do not need anyone on the Opposition benches to teach us about compassion.

**Senator Thomas Byrne:** The fuel allowance, perhaps.

**An Cathaoirleach:** Senator Whelan without interruption.

**Senator Darragh O'Brien:** He is able to take it better than Senator Bacik.

**Senator John Whelan:** Christmas is approaching but while it is the season of goodwill, it is also a stressful time for many families. This is the first Christmas in four years in which I have had a job, albeit a temporary one. I was astounded to find out this morning that people who through no fault of their own were made redundant in May have not yet received their redundancy payments from the Department of Social Protection. That delay is not acceptable because it is forcing people into the hands of money lenders.

**Senator Darragh O'Brien:** Perhaps the Minister, Deputy Burton, will do something about it.

**Senator Jillian van Turnhout:** It was reported in today's *The Irish Times* that the former Secretary General of the Department of Justice and Equality, Seán Aylward, was appointed to the Council of Europe's Committee for the Prevention of Torture. I am flabbergasted by this decision. The committee carries out periodic visits, at any time and without notice, to any place where persons may be deprived of their liberty. Its purpose is to prevent ill-treatment of individuals who are deprived of their liberty in Europe. According to its website, members of the committee are independent and impartial experts from a variety of backgrounds, including lawyers, medical doctors and specialists in prison and police matters. When the Government came into power it made a wise decision to publicly advertise for membership of this committee through the Department of Justice and Equality. The advertisement stated that members of the committee would be chosen from candidates of high moral character who are known for

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their competence in the field of human rights or professional experience in the areas covered by the convention.

**Senator Terry Leyden:** That is not fair.

**Senator Jillian van Turnhout:** After examination of the applications by the Parliamentary Assembly of the Council of Europe, three candidates were put forward by the Department, namely, Seán Aylward, Dr. Mary Rogan and Donncha O'Connell.

**An Cathaoirleach:** We do not mention names on the Order of Business.

**Senator Jillian van Turnhout:** They are on the public record. The names have been reported in the news.

**Senator Rónán Mullen:** On a point of order, there is nothing inappropriate about mentioning names in that context.

**An Cathaoirleach:** It does not matter. They are not here to defend themselves.

**Senator Jillian van Turnhout:** Everything I have said —

**An Cathaoirleach:** The Senator must refrain from mentioning names in the House.

**Senator Jillian van Turnhout:** I will mention no more names. The nominations were considered by the Parliamentary Assembly but the Committee of Ministers, which comprises ambassadors from members states, did not choose the Assembly's preferred candidate. This obsession with finding positions for former Secretaries General has to stop.

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

**Senator Jillian van Turnhout:** It went to four rounds of voting. Ireland's reputation was deeply damaged.

I ask the Leader of the House to invite the Minister for Justice and Equality to the House to inform us of the instructions he gave to the Irish ambassador. Did Ireland disregard the decision of the Parliamentary Assembly of the Council of Europe? This is very unusual. I spoke to many people in the Council of Europe yesterday afternoon about this and was told that normally the first choice goes through on the nod, unless a member state in some way indicates that it wants to contradict that choice. A member state had to intervene. This is deeply distressing for Ireland.

**Senator David Norris:** I pay tribute to the action of the Leader of the House yesterday evening in removing the guillotine from a Bill on Committee Stage and agreeing to continue the discussion this evening. That was a good day for Seanad Éireann. I thank the Leader, on behalf of the Independents, and I am sure other Members will agree.

I compliment Senator Whelan on his sterling work on behalf of the community nursing unit in Abbeyleix. One of the people who is currently happily living there, Richard Phelan, is celebrating his 100th birthday, and Deputy John Paul Phelan, when he was in this House, stood alongside me in a similar situation regarding a nursing home in Carlow. Well done to the Phelans, who are one of the seven septs of Laois.

I request a debate on economic and financial matters, not just in this country but internationally. I am sure some of my colleagues saw the astonishing and very worrying programme on the BBC last night about the role of financial institutions in the United States in precipitat-

ing the appalling global financial crisis. I have been speaking out about this for a number of years. Implicated in this are large institutions such as Goldman Sachs, Merrill Lynch, Lehman Brothers, Bear Stearns and, of course, our friends the ratings agencies, which were criminally complicit in helping to precipitate this difficulty. Bearing in mind the fact that 6 million people have already lost their homes in the US, and that there may be a further 9 million who are in danger of losing their homes — that is a total of 15 million people — it seems that it is getting close to a crime against humanity, because losing one's home seems to be a pretty dreadful prospect for any citizen. Yet nothing whatever has been done about the ratings agencies. They were at the root of this, yet they still appear to be ruling the roost and having an undue influence on the markets, to the detriment of ordinary people in this and other countries.

I would like the House to have an opportunity to consider this situation and see whether we in Ireland, as a member of the European Union, cannot make some concerted attempt to tame these organisations, because they are, after all, just issuing opinions. In the defences they gave, the various people who were filmed before committees of the United States Congress all said that they were not responsible because they merely gave opinions. Every single one of the leading people refused to be interviewed and, having not only destroyed their own companies but also had a deleterious effect on the world economy, some of them walked away with compensation of up to \$400 million. I simply do not think that is acceptable. I would like to have, if we can, a wide-ranging debate on economic matters.

**Senator Michael Mullins:** A couple of weeks ago I welcomed the fact that an independent inquiry was being set up to investigate the RTE programme “Prime Time Investigates: Mission to Prey”. It was my expectation that this would cover all aspects of the programme. However, I was dismayed to read in *The Irish Times* yesterday that only the segment relating to the defamation of Fr. Kevin Reynolds would be investigated. I asked on that occasion, and I am echoing that call today, for the segment dealing with the allegations made against a deceased Christian Brother, Brother Dillon, to be investigated also. The family of the deceased——

**An Cathaoirleach:** The Senator will have to refrain from using names on the Order of Business or in the Chamber.

**Senator Michael Mullins:** A Chathaoirligh, this is in the public domain and in all the news.

**An Cathaoirleach:** It does not matter whether it is in the public domain or not. These people are not here to defend themselves, so we cannot use names. I ask Members of the House to refrain from using names.

**Senator Martin Conway:** He cannot defend himself anywhere.

**An Cathaoirleach:** This man is deceased, so he cannot defend himself at all.

**Senator Michael Mullins:** On behalf of the family, I am calling on the Minister to ensure the segment dealing with the deceased Christian Brother be included in the inquiry. The family are firmly of the belief that the solitary allegation made against him was untrue, and in that three-minute segment his good reputation, built up over 60 years, was severely damaged. They believe he has been defamed, and I have no reason to believe they are incorrect. All I am asking is that this segment of the programme be included in the inquiry. In the interest of natural justice, this must happen. Even though the man is deceased, his family are living throughout this country, and they are entitled to attempt to have his name cleared. In addition, because there will be continuing calls for inquiries about this segment, it would save the State money if it were included in the proposed inquiry. The family members have written to the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, and also to

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the chief executive of the Broadcasting Authority of Ireland. I am asking the Leader to liaise with the Minister and insist that this segment of the programme also be investigated as part of the independent inquiry.

**Senator Terry Leyden:** In response to Senator van Turnhout, I presented the three names at the Council of Europe, and I did so in an unbiased way. I presented the CVs of the three people to the committee. The committee recommended people in order of choice and, as it happens, Seán Aylward was not number one, although he was number one going into the committee until there was an objection to his name. I would like a full investigation. In fact, The Irish Times can check this out and see exactly what happened. The Council of Ministers was quite in order to make the final decision with regard to the excellent qualifications of Seán Aylward, and I congratulate him on his appointment.

**An Cathaoirleach:** I have pointed out to Senators that we cannot be using names.

**Senator Terry Leyden:** I am trying to provide balance.

**An Cathaoirleach:** There is no such thing as balance in this regard.

**Senator Terry Leyden:** I am trying to bring balance.

**An Cathaoirleach:** You cannot use names in this House, as you well know.

**Senator Martin Conway:** They are used everywhere else except here.

**Senator Terry Leyden:** By way of further clarification, I am available to brief the press later in the day to get the facts on the record with regard to this matter. I did not rise to speak about that, however. I wished to ask the Leader of the House about a separate issue, but I did not realise this would be discussed today. I am trying to bring some balance back to the issue because I am well aware of the details. I know the facts of the situation.

**An Cathaoirleach:** Senator, you are running out of time.

**Senator Terry Leyden:** When we return in January I will ask the Leader an innovation and job creation day in the House with the Minister, at which the talents that are in this Seanad can bring up ideas. I will give an example. In the budget there is provision for VAT refunds on wind turbines for farmers, which is very welcome. I would like to see that  
*11 o'clock* extended to businesses — and private homes — that choose to go in this direction.

I also believe there should be a VAT refund scheme for works such as rewiring, roofing and replacement of windows and doors, in a balanced way, which would create jobs. There are great opportunities in those areas.

**An Cathaoirleach:** Is the Senator looking for a debate?

**Senator Terry Leyden:** In conjunction with the day of innovation in this House, I suggest that among the Seanad we should have——

**An Cathaoirleach:** Senator, you are out of time.

**Senator Terry Leyden:** We should have an innovation day in the AV room to allow people to come here from all over the country and put their ideas to Members of this Seanad, who would form a small group to evaluate them. We have a lot to do in the new year, and I ask the Leader of the House to add this to his list.

**Senator Marie Moloney:** I ask the Leader to seek clarification from the Minister for Health, or to ask the Minister to attend the House on the issue of the new GP card that has been extended to those on the long-term illness scheme. It is confusing because under the long-term illness scheme, patients receive free medication for chronic illnesses rather than acute illnesses but under the terms negotiated with the Irish Medical Organisation the GP visit card is for acute care.

Are people on long-term illness entitled to free medication for acute illnesses and general practitioner, GP, care for their chronic illness? Has this been negotiated with the Irish Medical Organisation? I am aware of wealthy people — I will not mention names — who have an illness such as diabetes which is well under control and who can easily afford their GP care.

We should be considering extending GP care. It is the long-term goal of the Government to extend GP care to all citizens but we should start by extending it to those most in need. The medical card should be extended in the first instance to the low and moderately paid people who are struggling to pay mortgages and so forth and, of course, to people on the long-term illness scheme who are also on low and moderate incomes. Will the Leader either invite the Minister to the House to clarify that issue or seek clarification on it from the Minister?

**Senator Rónán Mullen:** I share Senator Mullins's concern about the excessively limited terms of reference of the Broadcasting Authority of Ireland inquiry. Will the Leader agree to hold a debate on standards in the media, which I requested a couple of days ago, and will he endeavour to hold it early in the new year? I believe everybody supports holding such a debate.

Everybody should always be ready to admit that they were wrong. The former Tánaiste and Attorney General, former Deputy Michael McDowell, has spoken in his usual eloquent way about how he now believes he was wrong to once have believed that the Seanad should be abolished. The Taoiseach should take a leaf from his book. I was most dissatisfied by the manner in which the Taoiseach presented his intentions to the people of Ireland last Sunday night.

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

**Senator Rónán Mullen:** It was not a matter of submitting the issue to the Irish people for a decision but a referendum to abolish the Seanad. From the outset this proposal from the Taoiseach has had a shallowness which deserves criticism. There has not been a proper debate in either of the Houses about how our political institutions should function. There are rumours this morning that the Seanad is for the chop in February and that it will happen very quickly and with immediate effect. If that is true, it is not the way to shape the democratic institutions of this State.

**Senator Catherine Noone:** Hear, hear.

**Senator Mary M. White:** Fascism.

**Senator Rónán Mullen:** Can we have a full day's debate, or even longer, about the functioning of all our democratic institutions, especially the Dáil and the Seanad? On a day when it is being reported that people are extremely concerned about the amount of heckling in the Dáil, we need a far more profound reflection on how our political institutions are to be shaped. It is the responsibility of the Government Senators to show some initiative in this regard.

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



**Senator Rónán Mullen:** Being nice and compliant to the Taoiseach will get us nowhere. The people of Ireland want to see whether we have minds of our own and whether we are capable of scrutinising legislation and policy with the distinctiveness that has characterised the Seanad in the past. Let us do that again and make our case to the people but let us start by making the case in this House and by having the debate here.

**Senator Colm Burke:** I wish to raise an issue regarding yesterday's proceedings, although Members might not like me doing so. It reminded me very much of a chocolate manufacturer who decided to have a meeting of all the employees in the morning to have a vote on what chocolate they would manufacture during the day and after spending an hour and 20 minutes deciding what to do, he ended up with the same agenda with which he started. Yesterday, an hour and 20 minutes were wasted——

**Senator Thomas Byrne:** The Senator is wrong.

**Senator Colm Burke:** It was a huge waste of everybody's time and of taxpayers' money.

**Senator Thomas Byrne:** Was it?

**Senator Colm Burke:** We talk about being relevant. Let us at least try to get our house in order. One of the issues the Leader should consider——

**Senator David Cullinane:** I agree that a two hour debate on the budget is not acceptable.

**Senator Colm Burke:** I have no difficulty with somebody proposing an amendment to the Order of Business.

**Senator Darragh O'Brien:** That is very good of the Senator.

**Senator Colm Burke:** However, six amendments from one group was a little silly. It does not show the public that we are able to organise our affairs. I have no difficulty with taking proposals from the other side of the House. One of the things that works in Europe is that everybody has a say in what is done. Everybody has a say in the decision making process on how this country is run. The evidence for that was seen in the last 24 hours when there was a rowing back on the disability benefit as a result of very constructive criticism of the budget decision. We should all have a part to play in the decisions that are made on how this country is run. Regardless of whether it is from Fianna Fáil, Sinn Féin, the Independents or any other group, if it is a constructive proposal we should take it on board. However, please do not waste time when we know well what the final decision will be. Let us be constructive in this House. Will the Leader consider the issue of each group having the right to propose one amendment to the Order of Business on any given day?

**Senator David Cullinane:** One of the problems in this House is that when the budget was announced we were given two hours to debate it. During that debate a number of people who made very short contributions highlighted the harsh cut for people with disabilities. As a result of that and representations from Members of the Lower House, the Government accepted the cut was wrong and is now reviewing the situation.

We should have had more time to discuss the budget and to examine other harsh cuts that were announced, such as the changes to the one-parent family payment. Consider the position of families who are living in consistent poverty and who will be affected by those changes. They will pay an additional €6 per week towards rent supplement and lose €120 per year for fuel costs. Families with three children will lose €228 per year and a family with four children

will lose €432. If they have a child going to primary school, they will lose another €50 and €55 if a child is going to secondary school due to changes in the back-to-school clothing and footwear allowance. The point is that we should have had more time to discuss all those cuts.

I agree with the last speaker that we must be constructive and make constructive contributions. However, we must be given the opportunity to make those constructive contributions. Before the budget this year I asked that we would be given an opportunity to fully proof the budget before it came before the House. We might not be here next year. One of the things we said we would do next year is change the way we do our business and change the way this House and the Lower House frame and discuss the budget. Hopefully, if we are in that position next year and fortunate enough to be able to scrutinise the budget, I appeal to the Leader to arrange that we do so in a comprehensive and constructive way. We are elected to scrutinise but we were not given that opportunity either before or after this budget.

**Senator Jimmy Harte:** I fully agree with Senator Mullen's comments relating to a debate on the Seanad. Members on this side of the House share his views, and I am sure all Members will tell him as much privately as well.

With regard to the call for a debate on mortgage interest rates, Senator O'Brien pointed out that current mortgage interest rates are up to 6% while the European interest rate is 1%, so there is a 5% margin on many mortgages. Over the years mortgage companies always said they could only pay their depositors what they charged their borrowers, which meant that if there is a high mortgage interest rate, at least depositors were getting a high return on their deposits. That is not the case now. Senator O'Brien is correct that we should ask the Minister for Finance what can be done for people with mortgages. Extra relief was provided in the budget for people with distressed mortgages or high borrowings over the last four or five years, but there are many people who borrowed money in the last ten years before the bubble burst. They should also be looked after. The main point is, however, that if Permanent TSB is charging borrowers 6% and it is borrowing the money at 1% there is a 5% margin, which is far too big. It is making a profit and that should be passed back to the borrower. Senator O'Brien is correct to seek a debate on the matter and I support him in that.

**Senator Thomas Byrne:** While I compliment my colleague, Deputy Michael McGrath, on getting the Minister for Finance, Deputy Michael Noonan, to admit on live television that the cuts would be reversed, the fact is that these are not cuts but prospective cuts. We have not succeeded in getting the Government to reverse the cruel, cold cut to the fuel allowance. It will affect the poorest, oldest, sickest and the most marginal in society.

**Senator Martin Conway:** The weather is improving.

**Senator Thomas Byrne:** They are the people who will be down €2 a week. They are the people that Government targeted because it was afraid to do what we did in previous years and what were described in *The Irish Times* today as brave budgets where everybody across society was hit according to what he or she could afford. In this budget specific sectors have been targeted. It thought it would get away with the changes to disabled allowances but enough people had sense to challenge it. Until now it has gotten away with the changes to fuel allowance—

**Senator Marie Moloney:** What about the Christmas bonus?

**Senator Thomas Byrne:** The most important issue facing us is the European situation and it is crucial that we have a full debate on it. The story on the front page of *The Wall Street Journal* today noted the Central Bank was considering printing punts again. We need a debate on

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what is happening, what the Government negotiating position is and whether we have put anything forward.

There is a lot of talk about treaty change and avoiding the need for a referendum, which I do not accept. If the Government does something that is unconstitutional it does not need a treaty to make it unconstitutional. It could decide to do something to give more scrutiny to Europe which would be unconstitutional and unacceptable. It should be put to the people in a referendum regardless of whether the treaty is changed. The most important thing is that the Taoiseach does the best job possible, which is to put a sterling defence of Ireland and Europe's interests, and not just the interests of the biggest states. It is important that the Leader set aside time for a debate on that issue.

**Senator Martin Conway:** I have an issue for the CPP.

**An Cathaoirleach:** The House has made an order that we have only one issue.

**Senator Martin Conway:** This is a procedural issue on which I want clarity. I request the Leader and CPP to review the situation whereby one cannot name people who are regularly named on the public record and are consistently and regularly discussed in the media. To say that we in this House cannot name people during our discussions is ludicrous and puts us into a bubble in which none of us wants to be. The situation needs to be reviewed as a matter of urgency.

I agree with Senator Mullen on the RTE documentary which is the subject of a Broadcasting Commission investigation. When something is rotten to the core the core and not just part of it needs to be investigated. The programme has been demonstrated, through the courts of the land, to be rotten to the core. I call on the Leader to ask the Minister to direct the Broadcasting Authority of Ireland to conduct a full investigation of the entire programme from A to Z, not just a portion of it.

**Senator Sean D. Barrett:** Senators will have noted that one Irish bank pays its executive on the basis of a 13 month year. The sector has difficulties with counting, as we have seen. I ask the Leader to request the Minister for Finance to inform the bank that we have been working on a 12 month year for a couple of millennia now and, more seriously, that none of the €2.4 billion we put into the bankrupt bank is to be used to pay people on such a fictitious basis. The Minister for Finance has a turn of phrase which might make the letter well worth writing to these incompetent people.

**Senator Paul Coghlan:** Senator O'Brien is correct to raise concerns regarding the summit which is about to take place in Brussels. We all wish the Taoiseach and his team well. As has been articulated, the future of the euro and the eurozone could be at stake. We are dealing with speculation. What is out there are the opening positions of the various members, their first choices and some speculation which may or may not be inspired. If there is a treaty change there will have to be a referendum. It seems referenda are becoming popular and we could have a flood of them. If that has to happen it will happen.

On the question of corporation tax, we heard the Minister for Finance, Deputy Noonan, give a very firm undertaking in the other House. This country's position on that and a range of issues is known. We have to have oversight and there must be budgetary rules. I do not think some of the discipline being imposed at European level is necessary for this country but as a good member of course we accept it. I do not see it leading to treaty change and we should not be jumping the gun. In any event, the Leader will schedule a debate next week. We will have the European summit report and deal with facts and not fiction. We should hold our whist.

**Senator Marc MacSharry:** I take the Cathaoirleach's point on raising only one issue I do not like to do disagree with the Chair but the issue of naming people has arisen over the years. Members of the House have privilege. The issue is the abuse of privilege. When names are in the public domain it is incumbent on us not to name people in a particular context. That is not abusing privilege, rather it is using it in the public interest.

I congratulate Senator Whelan on the success of the Abbeyleix nursing home. Clearly his impact on the Minister is a lot more penetrative than Senator O'Keefe who did not manage to deliver the centre of excellence to Sligo. Perhaps the Minister of State, Deputy Perry, who said there would be 100 days for the return of cancer services could also be revisited. Clearly Labour Party politicians in the midlands have a much more penetrative impact on Government policy. There is no better man than Senator Whelan to achieve that for his constituents. I hope it will—

**Senator Marie Moloney:** On a point of order, Senator O'Keefe is not in the House to defend herself and should not be named.

**Senator Marc MacSharry:** I am afraid I will use absolute privilege.

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

**Senator Marc MacSharry:** Perhaps Deputy McLaughlin and the Minister of State, Deputy Perry, may now, given the great example shown by Senator Whelan from the midlands, unite in the interests of the people of the north west to show that the people of Ireland are equal, something which was shown very forcefully and successfully by Senator Whelan. I look forward to them raising the issue of discrimination against the people of the north west in terms of health care and cancer services. I look forward to raising the issue of health insurance is afternoon.

We have had the Taoiseach's proposed abolition of the Seanad, to which he referred on Sunday night, and the suggestion today that there should only be one amendment on the Order of Business per day. Why not pass the enabling Act, burn down Leinster House and abolish the fuel allowance altogether?

**Senator Paul Bradford:** I will attempt to restrain myself on the issue of Seanad reform. I welcome Senator Mullen's contribution and it would be appropriate to have a lengthy and comprehensive debate in the House on political reform. I wish it were as simple as abolishing the Seanad but we all know political reform is about the Dáil, the electoral system, local authorities, our system of government, Dáil questions and no answers, Seanad adjournments and how we practise politics in this country. If it was as simple as abolishing the Seanad it would have been done long ago. Our broken economy and country, which stems from broken politics, needs a response by way of a full and lengthy debate on political reform. At some stage we will have a referendum on the future of the Seanad, not its saving or abolition. We will have to respect the decision of the Irish public.

My other request of the Leader is that he would try to arrange that the Minister for Health would come into the House to discuss setting up an expert group to deal with the ABC ruling of the European Court of Human Rights. We are all aware of the fact that the issue of abortion is politically sensitive and arising from the ruling the Government is obliged to respond by some mechanism. The largest expert group on this subject in the country is the Irish people. People elected to this and the Lower House have a great deal of communication with their constituents on this subject. I would like a political input at this proposed table of expertise. I respect that experts have expertise, but they also have prejudices. There should be a political

[Senator Paul Bradford.]

input to the debate, because it is a matter which concerns elected Members of both Houses. It should be dealt with in the final phase by politics and politicians, not by experts. I hope the Minister will facilitate us by attending a debate in the House, and perhaps in the other House, where he can hear the political thinking on the issue before he establishes an expert group.

**Senator Feargal Quinn:** When the very survival of any organisation is threatened, it tends to focus one's attention. However, this House has not been devoting sufficient attention to its own survival. If the Seanad is abolished and we have done nothing about it, it will be very much our own fault. The way we behaved here on Tuesday night, where we organised ourselves in such a manner that we did not manage to have nearly the impact we should have had, and the reaction yesterday from this side of the House, with ten or 12 votes, are damaging the reputation of the House.

**Senator Catherine Noone:** Hear, hear.

**Senator Feargal Quinn:** In the wake of what happened Tuesday night and yesterday morning, we can blame only ourselves if the argument is being made that the Seanad should be abolished.

I found Michael McDowell's comments of interest in this regard. He argued that if the proposal to abolish the Seanad is primarily a matter of cost, then we in this House should focus our attention on how we might reduce that cost. Nor is it just a question of cost; rather, it is a cost plus a benefit. In this regard, I urge the Leader to allocate time very early in the new year for a comprehensive debate on how we can make a case for ourselves. Such a discussion will place an onus on us to behave in a different way in the coming year.

**Senator John Kelly:** Since April I have repeatedly raised the issue of commercial rates. The Minister of State at the Department of Jobs, Enterprise and Innovation, Deputy John Perry, gave a commitment in the House to a full review in this regard, but nothing has happened. A friend recently told me that a ridiculous practice is happening throughout the country where, if a local authority is finding it difficult to extract commercial rate payment from a business, it will employ a team of solicitors to do so on its behalf, to whom it pays 10% of the payment in question. Moreover, the solicitors are employing debt collectors to do the work, with the latter receiving a further 10% of the rate payment. Will the Leader urge the Minister of State to fast-track this issue? If we can afford to do without 20% of commercial rates through the payment of solicitors and debt collectors, surely that 20% could instead be passed on to hard-pressed business owners by way of a rent reduction? I urge the Leader to convey these concerns to the Minister of State, who is slow in dealing with the issue.

**Senator Trevor Ó Clochartaigh:** Given that I seconded the motion proposed yesterday by Senator Fiach Mac Conghail regarding the budgetary changes to the disability allowance, I welcome the Government's decision since then to suspend those changes. It is not clear what the ultimate outcome of this deferral will be. It does not yet constitute a U-turn, but I hope that is what will happen. I hope the proposed debate on the abolition of the Seanad does not take place after its abolition, in the same way that the debate on the budget is happening after the budget.

The urgency that was brought to the issue of the disability allowance and the behind-the-scenes machinations which led to a Government change of heart should also be brought to bear on the issue of the lone parent's allowance. Many single parents have been in contact with me to express their concerns and the relevant organisations are up in arms about the decisions made. As such, I propose an amendment to the Order of Business — it is not a facetious proposal — that the Minister for Social Protection, Deputy Joan Burton, come to the House

today for a debate on the matter, even if it is only for an hour and with limited speaking time for representatives of each grouping. There should be an opportunity to discuss the implications of the proposed budgetary changes before the Social Welfare Bill is brought to the House, with a view to reviewing some of them.

**Senator Cáit Keane:** A group of barristers and solicitors has indicated its intention to go on strike today, with the result that the Criminal Court may be unable to hear any cases. The Minister for Justice and Equality, Deputy Alan Shatter, has described this proposed action as “extraordinary” and has called on those involved to avoid a walk-out. The strike is being organised by the Criminal Law Practitioners Organisation on the basis that a 10% reduction in legal aid fees will see defence lawyers earn less than prosecutors.

We would all agree that the legal aid system is one of the most useful provisions within the legal system, providing services to those who could not otherwise afford them. However, the scheme has been over-subscribed for several years. I understand the overrun this year could be as much as €10 million. As such, something must be done to reform the system. Will the Leader invite the Minister, Deputy Shatter, to the House for a general discussion on the free legal aid system? It is a vital service but, as with all other services, it must be run within its means and in such a way that resources are allocated to the most needy and worthy cases. I call on the solicitors and barristers proposing this action to argue their case rather than strike. They should use their advocacy skills on the Minister to ensure that those who require legal aid will be able to access it, within the budget allocated to the scheme.

**Senator Mark Daly:** Like my colleagues, I look forward to the debate on the forthcoming referendum on the abolition of the Seanad. We must make the case that this House has a role to play. In this regard, I welcome the Leader’s efforts to persuade his colleagues in Government that the Seanad should have a primary role in the scrutiny of EU legislation. As I have pointed out before, 138 pieces of European legislation have been submitted for scrutiny by member states prior to their enactment by the European Parliament. While a total of 428 submissions was made by Parliaments throughout Europe in respect of these legislative proposals, Ireland was responsible for only one of them. Getting rid of nearly 25% of parliamentarians will result in even less scrutiny of EU legislation. The Leader is working to ensure the House will have one sitting per month dedicated to such scrutiny. I would propose that such sittings should take place more often.

I just attended a presentation on the Ballymurphy massacre, an issue which all Members should investigate further. We are all aware of Bloody Sunday, but there is less awareness of the events of 9 and 11 August 1971, when 11 civilians were killed in Ballymurphy by the same British army parachute regiment that was involved in the massacre in Derry. That regiment should be disbanded because its record on this island is nothing short of atrocious. The investigation into what happened in Ballymurphy is being supported by the bishops of the Catholic Church in Derry.

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

**Senator Mark Daly:** Yes. I am calling for a debate on the Ballymurphy massacre. One of the most disturbing aspects of the case was that a priest, Fr. Hugh Mullan, was killed while waving a white cloth, an image familiar to us from photographs of the scenes in Derry on Bloody Sunday.

**An Cathaoirleach:** The Senator’s time is up.

**Senator Mark Daly:** He was accused of being——

**An Cathaoirleach:** Please, Senator. I have called Senator Susan O’Keeffe.

**Senator Catherine Noone:** Senator Daly should show some respect for his colleagues.

**Senator Susan O’Keeffe:** I echo the calls for an improvement in the way Members behave in this House. At a time when we constantly talk about how we look to the world, we are not showing ourselves up in a good light. I ask the Leader not to organise a debate on the future of the Seanad in Seanad time. If we are to have a debate on the future of the Seanad, we should not take up the time of this House to do so and I fervently oppose such a debate. Senator Daly and I have asked for scrutiny of EU legislation in this House. However, given the way the Opposition is behaving at present, I would not ask them to scrutinise a paper bag.

**Senator Thomas Byrne:** Why have your colleagues asked to join the finance scrutiny committee?

**Senator Susan O’Keeffe:** Senator MacSharry appears to have entirely forgotten——

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

**Senator Susan O’Keeffe:** Yes. The question I have asked is that the Leader does not organise a debate on the future of the Seanad.

Senator MacSharry appears to have forgotten that the Government of which he was a party member took cancer services away from Sligo.

**Senator Marc MacSharry:** I supported the centre of excellence for cancer services.

**Senator Mary M. White:** I second the Sinn Féin amendment on lone parents.

Given that the Government brought in such a cruel budget, it is absolutely incredible that the Taoiseach would have the audacity to try to manoeuvre us out of our elected and democratic roles in the Seanad. I find it amazing and I wonder if he is breaking our constitutional rights. He has never come to the Seanad to speak to Members. I wonder what the people would think of the fact that the Taoiseach has not come to the Seanad to discuss the main issues affecting the country. With all due respect to my colleagues who have criticised the behaviour of Seanad Members, watching the behaviour of Deputies in the Dáil during the Budget Statement, the people would willingly get rid of the Dáil before they would get rid of the Seanad.

**An Cathaoirleach:** That is not a matter for this House. Has the Senator a question for the Leader?

**Senator Mary M. White:** It is like a kindergarten.

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

**Senator Mary M. White:** Yes, I have a very important issue for the Leader and for the Minister for Children and Youth Affairs, Deputy Frances Fitzgerald. As many know, we would not have created our Celtic tiger without the contribution of women to the economy. When the country was growing at a fantastic rate, we did not have a sufficient number of people for the jobs that were available. Many women went back into the workforce and kept the Celtic tiger going until the inflow of people from eastern Europe.

**An Cathaoirleach:** The Senator is out of time.

**Senator Mary M. White:** The Cathaoirleach will be very pleased with the issue I am raising. We know that modern fathers wheel buggies and bring their children to the crèche at 7 a.m. or 7.30 a.m. They change nappies and they are sharing in the joys and pain of parenthood. It is a tonic that the British government intends to bring in legislation that fathers can share parental leave.

**Senators:** Hear, hear.

**Senator Mary M. White:** The Fianna Fáil Party delivered free preschool education. I drove that during the last Seanad.

**An Cathaoirleach:** The Senator is out of time.

**Senator Mary M. White:** It should be possible for the 26 weeks that women are on paid maternity leave to be shared with the fathers. The only way the human rights of men can be acknowledged is if this leave can be shared.

**Senator Catherine Noone:** I hope I can show the same restraint as my senior colleague, Senator Bradford, with regard to the Seanad. I agree with what most speakers said and, in a move away from tradition, I agree with Senator White and especially Senator Mullins. If workers in a company were hearing rumours about potential job losses, there would be very bad feelings. As a matter of courtesy, we should be addressed in this House and we should be facilitated. I also agree with the comments that this should be discussed with us but not during Seanad time. I will come in here on a Sunday or at any time to discuss this issue.

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

**Senator Catherine Noone:** I have made requests for some time for a debate on the future of the Seanad at whatever hour is deemed appropriate by whomever the Taoiseach deems qualified to speak to us about it. It is a crude suggestion to cut off one arm of the Legislature when the other arm is completely dysfunctional. We function compared to the Dáil. We all have to get together on this issue and I want a debate on it.

**Senator Michael Comiskey:** I wish to respond very briefly to Senator MacSharry's comments. I would love cancer services restored to what obtained prior to their removal by the Fianna Fáil Party.

**Senator Marc MacSharry:** Get Senator Whelan to lead the charge.

**Senator Michael Comiskey:** I ask the Minister for Health, Deputy James Reilly, to look at the HSE and the way it treats people, particularly those who are waiting for hip operations. I have been contacted in the past number of days by people in Sligo who are waiting for such operations. They are on a public list and therefore must wait between 20 and 24 months. If they were lucky enough to have €20,000, they could get it done within three or four weeks. This is very unfair.

I refer to the weekend television programme about children in need of dental treatment. A young girl with gum disease would have to have her teeth extracted rather than filled because, under the rules, all one is allowed on a medical card is two fillings per year. In the case of serious dental problems, this should be increased and the teeth of young people should be saved.



**An Cathaoirleach:** As we are out of time, I ask Senator O'Donnell to be very brief.

**Senator Marie-Louise O'Donnell:** I congratulate Senator Thomas Byrne. I think he is extraordinary. The members of the Fianna Fáil Party have become psychotherapists, turning around everything the Government got wrong. They did not turn anything. Backbenchers and outsiders turned things.

**Senator Thomas Byrne:** I was watching "Prime Time".

**Senator Marie-Louise O'Donnell:** On the question of the Seanad, it is entirely pointless for Members to be talking in the conditional tense, what could or should have been. We should be talking in the present and future tenses. When I was appointed to the Seanad I said initially that we could be an epilogue or a prologue. It is not up to anybody else to tell us whether we are going to be an epilogue or a prologue. It is entirely up to ourselves to decide that.

**Senator Terry Leyden:** Hear, hear.

**Senator Maurice Cummins:** Senators O'Brien, Byrne, Coghlan and others raised the EU summit that will be taking place over the weekend. My understanding is that a paper was submitted by Mr. van Rompuy which will be discussed. The Government has made a submission on it and there will be a discussion. We will await the result.

As far as the Government is concerned, the rate of corporation tax is not on the table. It has made that perfectly clear and that will remain the situation. Senator Harte agreed with Senator O'Brien on passing on the interest rate cut to mortgage holders. That is the Government's position. Senator O'Brien mentioned that the Fianna Fáil Party has a Bill, which we were promised about six weeks ago.

**Senator Darragh O'Brien:** At least we have it done before the Government.

**Senator Maurice Cummins:** The Government stance is that we urge all the banks to pass on the interest rate cuts to mortgage holders. Senator Whelan raised the issue of Abbeyleigh nursing home. The matter went to the courts. Meaningful discussions should always be held prior to the closure of nursing homes throughout the country. Senator Whelan raised the question also of delays in redundancy payments. I have had representations from people in that regard also. Redundancy payments should be made in a proper timescale. Senators van Turnhout and Leydon asked for a new committee for the prevention of torture and the appointment of a Member to it. The Minister will be in the Chamber most of tomorrow, so there may be an opportunity in some of those exchanges to question him on this issue.

Senator Norris called for a debate on the banking sector, economic matters and the power of rating agencies, in particular, an issue he has addressed on several occasions in the House. Senators Mullen and Mullins referred to the allegations regarding a former Christian Brother, now deceased, and urged that all segments of the RTE programme in question be investigated. I certainly agree with that. It is my understanding that the matter is being investigated by the Oireachtas Committee on Communications, Natural Resources and Agriculture, of which Senator Whelan is a member. The committee has deferred bringing in the director general until the report on that broadcast is published. Likewise, I propose that we defer our debate on standards in the media pending the publication of that report.

Senator Moloney sought clarification in regard to the GP-only medical card. The Senator might consider raising this as an Adjournment matter. In addition, I will seek clarification from

the Minister in this regard. Senator Burke spoke about the workings of the House. Members are entitled to propose as many amendments as they wish to the Order of Business. However, it was a ludicrous situation yesterday, where almost every member of the Cabinet was requested to come into the House. It is absolutely ludicrous that such requests are made. It is difficult enough to get Ministers in here to address legislation at scheduled times; to expect the entire Cabinet to address the Chamber immediately following the Order of Business is utterly ridiculous.

Senator Cullinane raised the question of the budgetary process. We will have early debates on the budget next year. Senator Byrne raised the budget provisions in regard to the fuel allowance, and several Members raised issues relating to social welfare benefits. The fuel allowance will be available for six months. The provision can be examined in the context of the debate on the Social Welfare Bill next week. In mentioning the cutbacks in the fuel allowance, I note that Senator Byrne did not mention the ending of the Christmas welfare bonus by the previous Government.

**Senator Darragh O'Brien:** Has this Government reintroduced it?

**Senator Maurice Cummins:** Senator Conway referred to the Committee on Procedure and Privileges and the issue of naming people in the House, a matter also raised by Senator MacSharry. I will raise that matter with the committee. Senator Barrett pointed out that the chief executive officers of some banks are paid on a 13-month basis. We would all like to be paid that way, but it is certainly ridiculous.

Senator Paul Coghlan called for a debate on the EU situation. I am trying my best to arrange for the Minister of State with responsibility for European affairs, Deputy Lucinda Creighton, to come to the Chamber next week, although I understand she is away for part of it. It is important that we have a debate on the outcome of tomorrow's EU summit.

Senator MacSharry referred to a situation in Sligo. I do not wish to get involved in Sligo politics.

**Senator Marc MacSharry:** National politics.

**Senator Mary M. White:** All politics is local.

**Senator Maurice Cummins:** I would ask the Senator who removed the cancer services from Sligo General Hospital.

**Senator Darragh O'Brien:** Who promised to restore them?

**Senator Maurice Cummins:** Sligo people have clearly been discriminated against for 14 years.

**Senator Marc MacSharry:** Senator Whelan is my man.

**Senator Maurice Cummins:** This Government will try to redress that situation in the coming years.

Senator Bradford and others called for a debate on political reform in general and Seanad reform in particular. We have a difference of opinion on whether that debate should take place here or outside the House. I understand a wonderful debate on the subject took place in Trinity College last night, in which the Deputy Leader, Senator Bacik, participated.

**Senator Darragh O'Brien:** Was she for us or against us?

**Senator Maurice Cummins:** Whether the debate takes place in this House or in an appropriate forum outside the House, that issue will get an airing. I will certainly consider having such a debate in the House, but there is a difference of opinion on whether we should take up the time of the House to discuss its future or if the debate should take place elsewhere. Senator Quinn proposed that there be a cost benefit analysis of the Seanad and its future.

Senators Kelly and Harte called for a commercial rates review. I will raise that matter with the Minister of State at the Department of Jobs, Enterprise and Innovation, Deputy John Perry. However, it should be borne in mind that the collection of commercial rates is a matter for local authorities.

Senator Ó Clochartaigh proposed an amendment to the Order for Business to allow for a debate today with the Minister for Social Protection on the budgetary provisions in respect of the lone parent's allowance. I do not propose to accept that amendment. The Senator will have an opportunity to table amendments to the Social Welfare Bill next week. If they are accepted, that is well and good. However, it is ridiculous to propose an amendment to the Order of Business when we will be discussing the matter in a few days.

Senator Keane referred to the threatened strike by a group of solicitors and barristers in protest at changes to the free legal aid scheme. I hope those involved will come to their senses and that negotiations will take place on the matter. It is of no benefit to anybody to have walk-outs in the Courts Service.

Senator Daly called for a debate on the Ballymurphy massacre and urged that the Seanad have a primary role in the scrutiny of EU legislative proposals. I understand the committees currently deal with EU scrutiny matters, but there is scope for action in this regard, as raised on several occasions by Senator Burke. We are examining scenarios where the Seanad might deal with such proposals, but it will mean additional resources for the House in order to accommodate those debates. We will have to be apprised of the content of the directives and so on prior to discussing them. It is a question of resources in that regard.

Senator White referred to Seanad and Dáil reform. I remind the Senator that the electoral commission remains open to submissions until the end of January. If she wishes, she can propose that the Dáil be abolished or the number of Deputies dramatically reduced.

*(Interruptions).*

**Senator Maurice Cummins:** Senator White also raised the issue of shared parental leave. She will have an opportunity to raise that with the Minister during next week's debate on the Social Welfare Bill.

Senator Comiskey referred to problems with dental treatment services, which I will raise with the Minister for Health. However, the reality is that resources are very scarce and there will have to be cutbacks, as we have already seen in the budget. We must try to live within our means. The Government was elected in order to fix the economic problems with which it was presented. It is doing its best to do so. Unfortunately, that will necessitate cuts in many areas of expenditure.

**An Cathaoirleach:** Senator Trevor Ó Clochartaigh has moved an amendment to the Order of Business: "That a debate on the proposed reduction in the one-parent family allowance be taken today." Is the amendment being pressed?

**Senator Trevor Ó Clochartaigh:** Yes.

Amendment put.

The Seanad divided: Tá, 19; Níl, 30.

Tá

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

O'Donovan, Denis.  
Ó Clochartaigh, Trevor.  
Ó Domhnaill, Brian.  
Ó Murchú, Labhrás.  
Power, Averil.  
Quinn, Feargal.  
Reilly, Kathryn.  
Walsh, Jim.  
White, Mary M.

Níl

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

Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Landy, Denis.  
Moloney, Marie.  
Mulcahy, Tony.  
Mullins, Michael.  
Noone, Catherine.  
O'Donnell, Marie-Louise.  
O'Keeffe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.  
van Turnhout, Jillian.  
Whelan, John.  
Zappone, Katherine.

Tellers: Tá, Senators David Cullinane and Trevor Ó Clochartaigh; Níl, Senators Paul Coghlan and Susan O'Keeffe.

Amendment declared lost.

Order of Business agreed to.

### **NAMA Transparency Bill 2011: Motion to Discharge Order for Second Stage**

**Senator Mark Daly:** I move:

That the order for Second Stage of the NAMA Transparency Bill 2011 be discharged and that the Bill be withdrawn.

Question put and agreed to.

### **Renewable Energy: Motion**

**Senator Michael D'Arcy:** I move:

That Seanad Éireann calls on the European Commission to clear the application by the Department of Communications, Energy and Natural Resources for on shore wind REFIT 2 with immediate effect.

Question put and agreed to.

**Horse and Greyhound Racing Fund Regulations 2011: Motion**

**Senator Maurice Cummins:** I move:

That the proposal that Seanad Éireann approves the following Order in draft:

Horse and Greyhound Racing Fund Regulations 2011,

a copy of which Order in draft was laid before Seanad Éireann on 7th December, 2011, be referred to the Joint Committee on Communications, Natural Resources and Agriculture, in accordance with Standing Order 70A(3), which, not later than 15th December, 2011, shall send a message to the Seanad in the manner prescribed in Standing Order 73, and Standing Order 75(2) shall accordingly apply.

Question put and agreed to.

**Health Insurance (Miscellaneous Provisions) Bill 2011: Second Stage**

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

**Acting Chairman (Senator Terry Leyden):** I welcome the Minister of State at the Department of Health, Deputy Róisín Shortall, to the House.

**Minister of State at the Department of Health and Children (Deputy Róisín Shortall):** I am pleased to address the House on the taking of Second Stage of the Health Insurance (Miscellaneous Provisions) Bill 2011. As Senators will be aware, the Bill passed through all Stages in the Dáil last week without amendments. The main object of the Bill is to continue for a further year in 2012 to ensure the burden of the costs of health services is shared by insured persons. The Bill was supported by all sides in the Dáil.

Senators will be familiar with the commercial aspects of insurance where the risks of adverse events and the associated costs which arise when some of these events occur are pooled or shared among the total number of people participating by way of paying an insurance premium. The commercial aspect is very much in evidence when one considers travel insurance, for which older people pay more than younger people, and motor insurance where the reverse is the case. The variation in pricing is due mainly to the greater frequency and higher cost of claims which insurers must meet for higher risk customers. Therefore, while there remains some element of risk pooling and cost sharing, the contribution of each person to the pool rises with his or her risk profile. This is known as a risk rated model of insurance.

When the risk rating model is applied to health insurance pools the inevitable result is that older and less healthy people have to pay substantially more for the same cover. In recognition of this, successive Governments and the Oireachtas have been committed since 1994 to maintaining the principle of community rating rather than risk rating of health insurance. This mirrors the approach we take on overall funding for health care costs where the young support the old, the healthy support the sick and the better off support the less well off.

Private health insurance has had a long history of contributing to the cost for individuals of health care in this country. As a result, successive Governments have sought to adopt key principles within health insurance, particularly the principles of the young supporting the old and the healthy supporting the sick, and have therefore supported the community rating of health insurance policies. The objective has always been that the price of a policy should reflect the risks and costs of the entire pool of insured persons in the community, rather than the risks and costs on a person-by-person basis. The sharing of risk between younger people and older people — the latter predominantly cost far more in terms of claims — is known as intergener-

ational solidarity, that is, younger people pay more for health insurance than the level of risk they present would demand, while older people pay less as a direct consequence.

The pricing of risk across the community of insured persons clearly requires robust mechanisms to share costs when there are a number of companies in the market. If a mechanism to share risk and attendant costs is not present, an insurer with a less profitable risk profile can quickly find itself in a perilous position financially. The standard transfer mechanism is known as risk equalisation and is a key element of health insurance internationally. Only through the use of risk equalisation can solidarity and cost sharing be effectively implemented between the generations who hold insurance.

The Health Insurance Acts 1994 to 2007 provide the statutory basis for the regulation of the private health insurance market in the interests of the common good. The regulatory system is based on the key principles of community rating, open enrolment, lifetime cover and minimum benefit and aims to ensure that private health insurance does not cost more for those who need it most. The system is unfunded, meaning there is no fund built up over the lifetime of an insured person to cover his or her expected claims cost. Instead, the premium contributed by insured people is expected to cover the cost of claims and expenses in that year.

Under community rating everybody is charged the same premium for a particular health insurance plan, irrespective of age, gender and the current or likely future state of their health. The only exceptions to this rule relate to children under the age of 18 years and students in full time education. Community rating therefore means that the level of risk that a particular consumer poses to an insurer does not directly affect the premium paid. The system requires intergenerational solidarity, with younger people supporting older people. It also requires solidarity between healthy and less healthy people. Younger and healthier people effectively subsidise older and less healthy people on the understanding that these younger people will themselves be subsidised by later generations when they reach old age and-or suffer ill health. In effect, older people who have been paying health insurance premia for many years will have contributed to intergenerational solidarity when they were younger and can reasonably expect to benefit from it now in their older age.

It is worth pointing out that in December 2009 when the three insurers in the open market, Aviva Health, Quinn Healthcare, and VHI, attended the Joint Committee on Health and Children to discuss the health insurance market all three expressed full support for community rating. Where they differed was in regard to how community rating should be supported. I would point out it is recognised internationally that community rating requires a mechanism to discourage or prevent insurers from engaging in the practice of cherry-picking lower risk and therefore more profitable customers.

Other important principles in health insurance are open enrolment and lifetime cover which provide that, except in limited circumstances specified in legislation, health insurers must accept all applicants for health insurance and all consumers are guaranteed the right to renew their policies regardless of their age or health status. An exception to these provisions is that they do not apply to certain restricted membership undertakings. These undertakings mainly provide health insurance to certain vocational groups and their families and account for approximately 4% of the health insurance market. In addition, under the current minimum benefit regulations, all insurance products that provide cover for inpatient hospital treatment must provide a certain minimum level of benefits.

I refer to market statistics. The total premium income for the three insurers for 2010 was €1.9 billion, an increase of €300 million, or 19%, more than the 2008 figure of €1.6 billion. As of end-September 2011, 2.174 million people, or 47.5% of the Irish population, had private health insurance in the form of inpatient plans. These numbers are broken down thus: VHI

[Deputy Róisín Shortall.]

had 1.246 million, or 57 %; Quinn Healthcare had 458,000, or 21%; Aviva Health had 382,000, or 18%. Restricted membership undertakings accounted for 87,000 people, or 4%.

VHI Healthcare's market share has consistently fallen since the market was opened to competition and this trend has accelerated. The fall in market share has mainly been in the younger age groups. Quinn Healthcare and Aviva Health combined currently have 47% market share in the 30-39 age group but only 9% of the over 80 age group. VHI Healthcare continues to have a much greater proportion of members in the older age groups compared to the other insurers but there is some reduction in the difference. Its number of policyholders under the age of 60 years has reduced by 108,000 in the last year, amounting to 10% of its customer based aged under 60 years. In the first six months of 2011 the number of insured persons with Aviva Health aged over 60 years increased from 23,000 to 40,000. In the same period VHI Healthcare had eight times the proportion of members in the over 80 age group than that of Quinn Healthcare and six times the proportion in this age group than that of Aviva Health.

I wish to remind the House of some recent background to the introduction of risk sharing in the Irish private health insurance market. The risk equalisation scheme, which was affirmed by the Oireachtas in 2003 and approved by the European Commission in the same year, provided a mechanism for sharing the costs of providing necessary care among the insurers. Although all political parties and most academics and professional bodies, including the Society of Actuaries, supported the risk equalisation scheme, that scheme and its supporting regulatory regime were challenged in the courts by BUPA Ireland. These challenges were rejected by the European Court of First Instance and the High Court in Ireland. However, they ultimately succeeded when, in July 2008, the Supreme Court found the manner in which the risk equalisation scheme was implemented to be *ultra vires*.

It is important for the House to note that the Supreme Court decision did not strike down the principles of community rating, open enrolment and lifetime cover or, indeed, the principle of having a scheme of risk equalisation in place. The court found the scheme to be *ultra vires* because the legislation did not provide for an explicit link between community rating and the specific mechanism provided in the 2003 regulations. The Chief Justice of the Supreme Court subsequently clarified that the decision which found the 2003 scheme to be *ultra vires* was not an obstacle to the Government bringing forward a new scheme. Following the judgment there was a need for a prompt response to maintain confidence in the market. It was necessary, therefore, to introduce measures in order to support community rating and ensure, as far as possible, that market fragmentation did not become prevalent due to the introduction of plans aimed at younger, healthier lives.

The current interim scheme of age-related tax credits and community rating levy was introduced for the three years from 2009 to 2011 in order to provide direct support to community rating. It achieves this by way of a mechanism which provides for a cost subsidy from the young to the old. This Bill seeks to continue the scheme for a further year in 2012. It is designed to be Exchequer-neutral and ensures that every customer has the benefit of a community rated health insurance premium. Restricted membership undertakings are excluded from the scheme as their insurance products are not available to the general public.

The scheme was approved by the EU Commission for the four-year period 2009-12. In announcing its decision to approve, the Commission referred to the wide margin of discretion enjoyed by member states in the organisation of health services. It acknowledged the important role of private health insurance in the overall health system in Ireland. For this reason, and particularly in view of the special obligations to which it is subject — community rating, open enrolment, lifetime cover and minimum benefit — the Commission concluded that private health insurance qualified as a public service.

The Commission went on to find that although the interim scheme constituted state aid it was compatible with the Single Market because it satisfied the conditions laid down in the EU framework for state aid in the form of public service compensation. These conditions are focused on ensuring the public service, in this case the provision of private health insurance cover, is clearly defined and the basis for the calculation of the compensation provided under the scheme is established in advance in an objective and transparent manner. The conditions also focus on ensuring that arrangements are in place for avoiding overcompensation including provision for repayment in the event of any such overcompensation.

The interim scheme works by allocating tax credits for persons in three age bands and funding this by the collection of an annual levy on health insurance companies based on the number of lives covered by policies underwritten by them. The scheme provides that health insurers receive higher premiums in respect of insuring older people but that older people receive tax credits equal to the amount of the additional premium. This ensures all people continue to pay the same amount for a given health insurance product. In this way, community rating is maintained but insurers receive higher premiums in respect of older people to partly compensate for the higher level of claims.

The scheme is designed so that loss compensation is only applied up to the most popular benefit level in the market which is up to and including a semi-private bed in a private hospital. This means that approximately 20% of benefits are excluded and broadly speaking these are so-called luxury products as well as primary care cover and some other benefits.

Taking this into account, the scheme allows for insurers with additional costs arising from insuring older people, who have a preponderance of claims, to be compensated for up to, but no more than, 65% of these additional costs. The amounts of the tax credits by age group have been chosen such that where an age group gives rise to higher than average claims costs, the system should reduce the excess of claims costs by 65%. The choice of a 65% reduction in average claims costs at older ages is designed to strike a balance between reducing the incentive that exists for insurers to avoid older customers, while also allowing for a competitive market in which individual insurers are not required to share efficiencies in their own claims management with their competitors.

The actuarial evidence available in 2009 indicated it was from the age of 50 upwards that the cost of claims of an insured person increases to above the market average. For 2009 and 2010, the scheme provided for a modest level of support for people in the age bracket 50 to 59 years which amounted to a tax credit of €200 for each year. The Health Insurance Authority, HIA, analysis during 2010 indicated the claims experience of this age group was close enough to the overall market average. This meant that insurers with a higher than average proportion of customers in the 50 to 59 age bracket would not be disadvantaged by having to cover higher than average claims so no tax credit was required in 2011 for that age bracket.

On current estimates, the scheme will transfer some €275 million from younger to older lives, those aged 60 years plus, in 2011. Of course, much of this money will stay in each insurance company's funding base given that younger customers are supporting older customers in the overall company structure. Accordingly, in a perfectly balanced market with each company having the same ratio of younger to older customers, there would be no financial impact, negative or positive, on any insurer. To the extent that any company does, in fact, experience a positive financial impact, this is purely a consequence of having a greater proportion of older customers than its competitors. Insurers for which there is a negative financial impact arising from the scheme are significantly compensated by their much lower claims costs.

A key issue for the Minister for Health and the European Commission is to ensure there is no overcompensation of any insurer under the scheme. The net beneficiary has, of course, been



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VHI since Quinn Healthcare and, especially Aviva, continue to have a significantly younger age profile than the market as a whole. In the case of the VHI, the HIA has determined there was no overcompensation in respect of 2009 and 2010. It also concluded the net impact of the tax credits and levy which were put in place for 2011 would be significantly less than the estimate of the extra cost of providing cover to older people.

Although it is the greatest beneficiary of monetary transfers under the scheme due to the older age profile of its customers, in 2010 VHI made a small loss of €3.1 million. Based on current financial projections, it is not anticipated that this financial position will materially change in respect of VHI's performance for 2011.

The interim scheme consists of two elements, namely, age-related tax credit granted to individuals who hold private health insurance and a levy charged on private health insurance companies to be used to finance these credits. At 2011 rates, the amounts of the tax credits for persons up to age 59 sees no tax credit is paid; for persons aged between 60 and 69 years, a tax credit of €625 is paid; for persons aged between 70 and 79 years, the tax credit is €1,275 while for those aged 80 years and over it is €1,725.

Each private health insurance company is required to pay an annual levy to the Revenue Commissioners. The levy is remitted to the Exchequer and forms part of overall Exchequer funding. It is charged on all adult insured lives and the rate for 2011 is €205. The rate for insured lives under age 18 is €66. The scheme is designed to be Exchequer neutral — money in equals money paid out. The levy is charged on health insurance companies in respect of each insured life and not on individual subscribers. It is a matter for the companies whether to pass this levy on to their customers. Neither the Minister nor my Department has any role to play in the setting of premia prices by any of the private health insurance companies including the VHI.

The interim scheme for 2012 will be improved by requiring insurers to submit more detailed information returns by product and year of age. The Minister is proposing the use of five-year age bands from 50 years of age and above for tax credits for 2012, as recommended by the HIA in its report on risk equalisation. At present, only ten-year bands are used which is somewhat less precise. The more detailed information returns now being provided for will allow for this refinement.

Despite the existence of the interim scheme, there is significant segmentation of the private health insurance market with an increasing number of plans being designed, marketed and priced to attract lower risk, that is younger, healthier customers only. Competition is effectively confined to this group. This means older and less healthy people have less choice and inevitably face higher premium costs. I have heard it said that a risk equalisation scheme will be proven to be effective when insurers begin to advertise for older customers or customers with a particular chronic disease. In an ideal situation, an insurer will be assured that risk equalisation will provide sufficient compensation for taking on new customers who are suffering from a chronic illness, for example, diabetes, and even allow for making a reasonable profit. In that situation they will seek to provide the best care package at a competitive price and so attract new customers.

That certainly is not the case in Ireland's private health insurance market. While health insurance is one of the most heavily advertised products on television, it is all directed at the low-risk groups. This Bill is one of several important elements of reforming the private health insurance market. The programme for Government contains a commitment to put a permanent scheme of risk equalisation in place. This is a key requirement for the existing PHI market and also in the context of plans to introduce universal health insurance from 2016. The Minister

intends to bring forward proposals shortly with a view to introducing a permanent scheme with effect from January 2013.

I will now turn to the specific provisions in the Bill. These are exclusively technical in nature, providing for a one year extension of the scheme in 2012 with small modifications to allow for a more precise level of support for community rating.

Section 2 amends section 6 of the Health Insurance Acts 1994 to 2009 by substituting a revised definition for “age group” and by inserting a new definition of “type of cover”. These definitions will facilitate the provision of information broken down by each year of age and also by specific health insurance contracts.

Section 3 amends section 7 of the Act to provide for more detailed information returns to be submitted by health insurers to the Health Insurance Authority. The information returns will be broken down further by each year of age as required and also by type of health insurance cover. In addition, regulations made under section 7 may require separate returns in situations where the benefits payable under a type of cover have materially changed.

Section 4 amends section 7 of the Act to provide broader scope to the Health Insurance Authority in terms of using additional relevant information alongside the formal information returns submitted by the health insurers. This will assist the authority and the Minister in performing their respective functions under the Act.

Section 5 amends section 470B of the Taxes Consolidation Act 1997 to make the necessary changes required to extend the age-related tax credit in respect of private health insurance premiums paid by persons aged 50 years and over to include 2012. Section 6 amends section 125A of the Stamp Duties Consolidation Act 1999 to provide for the continuation in 2012 of the collection of an annual levy on health insurance companies based on the number of lives covered by policies underwritten by them.

I will briefly make some points about the vital issue of effective cost control within private health insurance. In 2010, my Department commissioned its actuarial advisers, Milliman, to review the VHI’s handling of claims management and cost control. This was in light of a very significant increase in claims costs over a two year period between 2007 and 2009. The review identified a number of means for the VHI to address its claims costs and to make significant savings in this area.

The Minister is concerned about this issue and has placed significant emphasis on the requirement for this to be addressed. In particular, the Minister is concerned that any inefficiency in the management of claims is addressed before the introduction of universal health insurance. The VHI will play a key role in addressing costs in the market, as due to the age profile and health status of its customer base, it currently pays out about 80% of all claims in the market.

The VHI has made progress on the reduction of its cost base and has highlighted the recent savings it has made through cost containment measures. It has made annual savings of €100 million over the past two years through reductions in fees to private hospitals and consultants and through savings in administrative overheads. It has recently commenced a process of negotiations with private hospitals with a view to seeking further savings in this area. Contracts with consultants are due for renegotiation in mid-2012 and VHI has informed consultants that it will be seeking further savings at that point.

Subject to Government approval, the Minister intends to move quickly in the new year to prepare the necessary legislative changes in order to introduce a permanent scheme of risk equalisation to come into effect from 1 January 2013. I look forward to participating in debates with both Senators and Dáil Deputies when that legislation is going through the Houses. In the meantime the Government is satisfied of the need to provide a mechanism along the lines

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envisaged, that is, a continuation of the interim scheme for a further year in 2012, with the enhancements described earlier.

The scheme has made a significant contribution to community rating since 2009 and is, to date, the only scheme which has succeeded in transferring funds from low-risk to high-risk groups. For that reason, I commend the Bill to the House.

**Senator Marc MacSharry:** I welcome the Minister of State to the House as always and thank her for an extremely comprehensive outline of the Bill, its provisions and its context. Indeed, I do not recall one as long and as informative on an issue such as this in the past, and I thank her for that.

Fianna Fáil will be supporting the legislation. It has its origins with former Minister, Ms Harney. As the Minister of State correctly pointed out, this is an extension of that Act. We look forward to more comprehensive risk equalisation in due course. I am interested to see what way that will play out in terms of the Government's plans for universal health insurance and am interested to hear the position on those plans.

Second Stage provides us with an opportunity to raise a number of other issues. Obviously, Fianna Fáil fully supports the concept of intergenerational solidarity, community rating, etc., as the Minister of State so eloquently outlined over the past number of minutes. As I stated, we will be supporting the legislation.

Today, and, indeed, yesterday, in the media, there have been reports of moneys outstanding. There is some €162 million of unpaid debts to hospitals throughout the country by the private health insurers, according to a report today. Yesterday, in a separate media report, the Minister, Deputy Reilly suggested that some €50 million currently owed by insurers was expected to be collected. How can we preside over a €162 million bill and allow that to take place without it being paid in its entirety? If it were a business, there would be a judgment against me if I did not pay a bill for €200 to whatever service provider. I would be interested to hear the Minister of State's view on this. If there was €162 million owed by VHI, Aviva and by Quinn, then those bills need to be paid quickly. It is a considerable amount of money. Hospitals are having their funding cut throughout the country and in some instances, are being closed. I say "fair play" to Senator Whelan who secured the future of Abbeyleix, for now anyway. I am from the north west and Sligo is my local hospital. They have been trying hard to operate on an ongoing basis with budget cutbacks, etc., and have been doing that reasonably well. How can they now be expected to sustain losses when the Government is suggesting that it would be happy if one third of €162 million — some €50 million or so — will come in? How can we possibly run a service on that?

While measures are being put forward in the budget to bring in an additional €143 million whereby private patients will not be taking up public spaces, that will incentivise hospitals, which are already struggling on budgets and which, by the Minister's admission, will not get paid €162 million that they are due, to stuff the place with private patients because there will be money paid for those, and hence put the public patients at a further disadvantage in keeping them out of hospital beds.

On the wider universal health care approach and the Dutch model about which we have heard so much, I would be interested to hear the Minister's view on a statement yesterday by Mr. Michel Dutrée, the CEO of Nefarma, the Dutch pharmaceutical industry lobby group, who was here for a conference. He had strong views on that model. He stated that the Government here should think twice before introducing the Dutch-style health system because of escalating costs and a lack of choice in that system. He stated that costs of health care there would double

in the next ten to 15 years if nothing was done and that Dutch people would be spending in the region of 25% of their annual income on health care, which is more than in the United States.

Mr. Dutrée also stated that under such a system one hands over one's life to the insurance companies and a public system, executed privately, is very difficult to manage. That seems to be the most up to date version of professional opinion of the Dutch service and, therefore, before we rush to create a similar model we might re-examine the position to see what is best. We are all for equality of services, risk equalisation and access to the same services as quickly, fairly and cheaply as possible but we appear to be having difficulty securing the best way forward in that regard. Naturally, the Government has all our support in its attempts to try to do that, with obvious criticisms if we disagree along the way.

The write-off of €100 million of the sum of €162 million referred to is unacceptable. It would not happen in private industry. People would be prosecuted and face the full rigours of the law to ensure those moneys were paid. The Minister might outline the Government position on that to the House.

Regarding the Health Service Executive and who is in control, I am aware the Minister was in the Dáil for this debate also when my colleague, Deputy Kelleher, would have made similar points. The Minister stated that having reappointed a new interim board of the HSE he was taking full control of the situation. We then had announcements from the HSE about not paying expenses and so on. The Minister has said that while he is not happy about that it was a decision for the HSE.

Who is in charge? I have put it to the Minister when he was in the House previously, and previous Ministers on many occasions, that the entire budget of the HSE must be taken back under departmental control to ensure the people's representatives, that is, the Government and those of us in these Houses, have an input and a say into the spending of the money. I criticised the former Minister, Deputy Harney, many times from the opposite side of the House about the fact that we had effectively sub-contracted the health service to a third party organisation which was answerable to nobody and that we could hide behind the convenient, parrot-like responses we get to all health queries, as I am sure do the Minister's own backbenchers, which state, "Thank you for your letter. Under the 2004 Health Act the HSE is now responsible for that area and I have asked the CEO to respond to you directly". I may have missed a word or two but that is the basic reply and I have received many of them, as I am sure have other Members of the House. Who is in charge? Is it the Minister when it is positive news or a new outlook and the HSE when it is bad news? We need some clarity on that.

Senator Whelan announced this morning that the Government has done a U-turn, on his advice and following other developments, on the closure of Abbeyleix community hospital on which we all congratulated him on the Order of Business. I drew the analogy between his success in attempting to do that and the failure of others in Roscommon, Cork and my own area of Sligo where pre-election promises were made by the Minister's colleagues, the Tánaiste, Deputy Gilmore, the Minister for Education and Science, Deputy Quinn and Senator Susan O'Keeffe all of who confidently submitted to the electorate of the north west that a full centre of excellence would be delivered under the Labour Party in Government. That appears not to be the case.

**Senator John Gilroy:** The Senator cannot resist it.

**Senator Marc MacSharry:** One wonders if Senator Whelan could be consulted to lobby on our behalf. In addition, the Fine Gael colleagues in Government, the Minister of State, Deputy Perry, and Deputy Tony McLoughlin, promised the return of cancer services within 100 days. That did not materialise. If it can be achieved for the people in the midlands regarding the

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community hospital in Abbeyleix one wonders if it can be achieved for the people of the north west.

**Senator John Gilroy:** Fianna Fáil Deputies left the party.

**Senator Marc MacSharry:** On the cancer issue, I am reliably told that there is a problem nationally in regard to theatre space for carrying out surgery on cancer. While clearly there are vacant theatres throughout the country for procedures, would it be an innovative, cost saving and life saving step for HSE West to allocate theatre space within Sligo General Hospital to facilitate the clear pressures for space in terms of undertaking cancer treatment procedures in University College Hospital Galway and here in Dublin?

The struggle for all Governments is to try to find equality of access for services. This Bill deals with that and we support it but as I have said many times in the House, whether it is the HSE, people in Hawkins House, the Minister of the day or whoever, increasingly, an “Animal Farm” situation applies to the health services in that some people are more equal than others. That certainly seems to be the case in the north west.

**Acting Chairman (Senator Terry Leyden):** I thank the Senator for his contribution. He is over time. I am adhering to strict time limits.

**Senator Marc MacSharry:** I thank the Minister for being so comprehensive on this legislation which is supported but he might reflect on some of the points made on Second Stage.

**Senator Colm Burke:** I thank the Minister for giving a comprehensive presentation on the reason for the Bill. It is important that we have in place regulations and legislation which are for the common good. It is also important there is no price increase in health insurance as people get older and may be unfortunate to have an illness. That is one of the things the Bill provides for as was also provided for in 2009.

We are spending more than €13 billion on health care annually. That is a huge budget. While there is much criticism of the health care system many improvements have taken place for which we do not give credit, in respect of hospital care and out-patient care. The number of patients going through the hospital system has increased dramatically and we should give recognition to that. Also there are those who consider that health care is an important issue and take the trouble to take out health insurance. The Minister of State said that more than 47.5% of people have health insurance, which is a high percentage of the population. However, the Minister of State would accept there will probably be a decrease in that area in the next 12 months given that people are coming under more pressures. Therefore, in terms of competition, it is important to ensure we get value for money, whether in the private or public sector.

When the risk equalisation scheme was being dealt with in the courts, everyone had the same idea, that nobody should be penalised in respect of health insurance. While the Supreme Court held in 2008 that the way the mechanism was put in place was *ultra vires* it did not strike down the principles of community rating but the mechanism provided under the 2003 regulations.

The provisions between 2009 and 2011 which allowed for ten year bands are being amended to five year bands. This provides for a more comprehensive overview in respect of credits and benefits for the over 50 age group. That is a welcome development.

While the Minister made a comprehensive presentation of all the issues I wish to refer to the VHI, the private health care sector and the lack of competition. There appears to be a view that what happened for the past 20 years must continue for the next 20 years. I do not agree with that. There are certain issues about which I have concerns. I raised this matter at the Joint

Committee on Health this morning and previously with the Minister. I have taken the trouble to file a formal complaint with the Competition Authority in respect of the decision by the VHI not to give cover for a new hospital in Cork. It cost over €50 million to build and equip four operating theatres with brand new MRI equipment and other state-of-the-art equipment, yet it cannot get VHI cover. The other two insurers have agreed to give cover. It is interesting that the Mater private, which intends moving into that facility, has now written to the VHI stating it is prepared to quote 6% under the quote of the other major health care provider in Cork, which proves the point that competition brings down price and gives better value for money.

The VHI is a State agency in real terms. Why is this happening at a time when we are debating the issue of giving protection to the insurer that has a large proportion of the over-50 age group yet, at the same time, it is not prepared to take on board cost savings? It is a serious question and needs to be dealt with. I know the Competition Authority has met one of the parties although I am not sure if it has met the VHI yet. It is anti-competitive that the major provider of insurance in this country is refusing to give additional cover.

It is interesting that the other major provider, while it is not happy another company is intending to come into its space, has a proposal and full planning permission to build a new 80-bed extension to its facility. This does not make sense when, in the not-too-distant future, I am sure VHI will give cover for that new 80-bed extension to the current occupier of the bulk of the private market in the Cork area. It is definitely an issue we should consider.

A growing issue in health care is the fact over 500,000 Irish people are currently aged over 65. In the next ten to 20 years, that figure will grow dramatically and it is predicted by 2031 over 1 million people will be over the age of 65, which means we will have to ensure adequate health care facilities are available. We need to begin planning carefully for this change, and while we are very restricted in regard to budgets and the money available, this does not prevent us from long-term planning. Whether it is a ten, 15 or 20 year plan, we should consider it now. I know we intend to go forward with the universal health care plan, which is very welcome and is about having everyone on a level playing field so that all have an equal opportunity to access health care services and facilities, which is important. However, we need to do a lot of long-term planning, and now is the time to deal with that so we can achieve cost efficiencies.

In some cases, health insurers will provide cover where the person is admitted to hospital for a procedure whereas many procedures can now be done on an outpatient basis. I am not sure the health insurers have reviewed this issue in recent years. Many cost savings could result from making sure they provide the right cover, given they will not provide cover if the procedure is done on an outpatient basis but they will provide it if the person is admitted to hospital. The Minister of State has outlined the position in regard to admission on the night before a procedure and has sought and achieved some changes in that regard, with resulting savings. It is this type of area we can work on to bring down the costs health insurers have to pay. The insurers themselves have an important part to play in this, and they must be proactive in bringing down costs.

I welcome the proposal and the presentation by the Minister of State. She has my full support and that of my party for putting the legislation in place in the next 12 months.

**Senator Sean D. Barrett:** I welcome the Minister of State. As always, it is a pleasure to debate matters with her. If I may take up some of the points she made in her speech, while she used the phrase “all political parties and most academics” on page 3 of her speech, we have never agreed with this policy and I will explain the reasons for that presently. The Minister of State said: “I have heard it said that a risk equalisation scheme will be proven to be effective when insurers begin to advertise for older customers.” They did. On the 50th anniversary of

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Ronnie Delany's win — the 55th was this week — they advertised along the lines of “If you can remember Ronnie Delany winning, you should buy some health insurance”.

What has happened is that generations of Ministers have accepted the same nonsense from the Department — that is the problem we have. I hope a reforming Government, a reforming Minister and a reforming Seanad will question some of that. The Department in the past never produced a single person who had been denied cover by the other companies. This was the victimless crime. The Department could not show anybody who had been refused cover. The whole edifice is built up to protect the VHI from competition. The stuff about the old is nonsense, and demonstrably so. It is masking a social goal to maintain protectionism.

The recent European court judgment in this regard stated the VHI continues to carry out all its business activities without having received authorisation from the Financial Regulator. The White Paper in 1999 — that far back — stated:

The Government consider that there is a compelling case for change in VHI's corporate status. They consider that maintaining the status quo would only contribute to, or perpetuate, perceived problems in relation to the dual role of the Minister for Health and Children as ‘owner’ of VHI and regulator of the private health insurance market.

An *bord snip nua* also recommended that it transfer to the Financial Regulator. That is the dilemma for the Department. It is protecting the VHI from competition, as was rampantly illustrated in the Supreme Court judgment to which Senator Colm Burke and others have referred.

We were supposed to be abolishing monopolies in this area since 1992. It is now 19 years later and we are still asking whether we can keep it going for another year and looking to find some other backdoor method of subsidising VHI on the unproven basis that the other insurers do not insure old people or sick people, even though we could not produce any witnesses.

We were convicted by the European court in regard to the failure of a member state to fulfil its obligations. Ireland must pay the costs in that case and we must also pay the costs of losing in the Supreme Court — I gather the damages will come up on 31 January next, meaning more costs to enrich the legal profession. As Senator Burke said, there was no dispute about community rating, lifetime cover and open enrolment. The dispute, in the Chief Justice's verdict, arose because the Department usurped the powers of the Oireachtas to implement a draconian regime which required the smaller companies to pay more than their profits across to the VHI. It was founded upon an erroneous interpretation of the Act of 2004 and sought to usurp the function of the Oireachtas. The Chief Justice stated:

It is unconvincing to suggest that the Oireachtas would have left such a different meaning to be somehow detected inferentially from the use of the phrase in a subparagraph of a paragraph of a subsection of a section. In short if the Oireachtas intended a different meaning, with all the implications involved, to be given to community rating in that subparagraph it would have said so.

He continued:

For the Court to determine that community rating had the meaning argued for by the respondents [the Health Insurance Authority, the Minister for Health and Children and the Attorney General] and the notice party simply because such an interpretation is thought necessary from a policy point of view for the effective implementation of a risk equalisation scheme would be to usurp the function of the Oireachtas.

That is what the Chief Justice stated. The document also states, “The issue before this Court is not the intention of the State, or State bodies but the intention of the Oireachtas as the legislature.” We should be pretty annoyed over what occurred and how it came to be. Why can we not have competition and the benefits that Senator Burke mentioned?

There is increasing evidence that the proposals are even misguided actuarially. Three or four studies I have to hand show that, in the last six months of life, one’s health expenditure is considerable. This does not seem to arise in earlier stages. I could quote the figures to the House. The legislation is based on sand in this regard.

The court also notes — this may come up on 31 January — that there are constitutional and competition implications. One gets the results to which Senator Burke referred. I attended some of the hearings. The transcript indicates the officials from the Department of Health said they did not consider the competition implications of the legislation. That makes me feel that, in their words, they were seeking the protection of the VHI. The claim they were looking after old people was always bogus.

What does one get when one protects a monopoly in this way? One gets the abuses referred to in every page of the Milliman report mentioned by the Minister. The report implies utilisation management yields savings regardless of risk profile. It refers to considerable sources of savings and to steps not being taken. It refers to the VHI being unable to provide annual reports identifying the drivers of claim cost increases. It mentions a case, in one of the few tables that is not redacted, in respect of which the VHI would have somebody in hospital for 10.6 days as opposed to 3.7 in what it calls a well-managed system. Protecting this monopoly is increasing the cost of the health service and not benefiting old people, who were never refused cover by the other insurers.

Although half the content of the version of the Milliman report I received has been redacted, or blacked out, virtually every page points to rampant inefficiencies. When one protects a monopoly, the result is a health service with an extremely high cost. Competition was a dynamic but was driven out of the Irish market on legal grounds that were disputed by the Supreme Court and the European Court of Justice. This may cost the Exchequer large amounts of money when the damages are being decided. The position was not soundly based.

I am surprised that there is support for this legislation from the other political parties. I will be tabling amendments later. The legislation does not do what it says on the tin and, therefore, I will be opposing the Minister of State on this issue.

**Senator John Gilroy:** I welcome the Minister of State to the House. It is great to see her.

This is a technical Bill to extend for another year the regime that has been in place for the past three years. Health insurance is based on four principles: community rating; open enrolment; lifetime cover; and minimum benefit. The aim is to ensure private health insurance costs no more than it should for those who need it most. This is only proper. The Bill arises from legal confusion surrounding the mechanism by which risk equalisation was delivered. It is helpful and welcome that the Commission, in 2009, recognised the scheme as a public service. An extension period of four years was approved.

It is very important to bear in mind the social democratic nature of the scheme. While the four principles I outlined are unquestionably ideological in nature and the ideology is clearly social democratic in nature, Senator Barrett’s views are not quite as neutral as he presents them to be. His views are tinted somewhat by neoliberalism, which posits the market as taking care of health care. I would like to debate this further with the Senator, not today but in the context of a general debate on health policy. Perhaps this would make for some interesting exchanges.



[Senator John Gilroy.]

It is unfortunate that Senator MacSharry cannot stay with us. When it became apparent in 2009 that there was something wrong with the scheme, I wondered why the then Government did not place it on a permanent footing. It is strange that it did not even begin preparatory work in this regard to leave us with some foundation such that we would not have to start at the beginning again. The previous Government has left us with many things with which we are not happy.

The current Government is determined to proceed as outlined. Senator MacSharry is mixing up our proposal on universal health care a little with the Dutch model. The model proposed by the Government takes some elements from that but it is different. Our model will form an important element of our policy. We must bring in this legislation and ensure the continuity of the principles I have outlined. It is very important that we support the Bill.

I have some comments on the points made by Senator MacSharry. His colleague and spokesperson on health in the other House made some comments on the radio this morning suggesting his view is that private beds in public hospitals should be subsidised by the taxpayer. I am not sure if that is Fianna Fáil policy or just early-morning ramblings by the Deputy in question. The views expressed were very much contrary to those expressed generally in Ireland about fairness and equity in the health system.

The Minister, at the meeting this morning of the Joint Committee on Health and Children, commented on media reports, seemingly propagated by the Opposition, that private health care costs will increase by approximately 50% due to changes made in the recent budget. The Minister sees no reason at all for increases of this nature to be necessary. He pointed to some cost-saving measures within the industry that would be greatly ameliorative.

Let me outline a case recently brought to my attention by a woman whose son went to the Mater private hospital for a procedure that required two overnight stays. He entered the hospital on Tuesday, had the procedure on Wednesday, stayed over on Wednesday night and was discharged on Thursday. The VHI charged a bill of €16,000 for the two nights, and that was just for the accommodation. Clearly, huge savings can be made in this regard. These savings could offset most of the costs anticipated on foot of recent changes.

I have a lot more to say but want to wait until Committee Stage to do so.

**Senator Deirdre Clune:** I am glad to have an opportunity to speak on this Bill. As was stated, it is just a technical Bill extending for another 12 months the circumstances that have obtained since 2009. As every Senator has been saying, the Minister of State's contribution was very comprehensive. It certainly gives the background to where we are today, and the reasons therefor.

I support many of the comments made on health care and the need to introduce efficiencies and reduce costs. The VHI has been mentioned by many speakers. Senator Burke mentioned the current circumstances in Cork where the VHI is not extending cover in respect of a new hospital proposed to be opened by the Mater. This decision reduces competition. One provider in the Cork region provides about 88% of private health care in the region. In Dublin, no hospital provides more than 25% of the private care available. This suggests a lack of competition in Cork.

I question why a provider in the Cork area could refuse cover regarding a certain hospital. Surely if one buys one's own private health care, the money should follow the patient. A patient, when covered, should be accommodated by the health insurers.

I refer to a situation in my own area when a Dr. Pillay tried and failed to open a private hospital in Cork in the early 1990s and, therefore, people in the Cork and Kerry region do not

have a choice and there is no competition in the market in the area. The Minister, Deputy Reilly, spoke recently about the fat that needs to be cut out of the system. In my experience, the VHI does not seem to be proactive in its dealings with hospitals in order to reduce costs and much more could be done in this regard.

I listened with interest to the Minister's comments regarding private beds in public hospitals. The Minister of State, Deputy Shortall, has previous experience of this issue when she, like me, was a member of the Committee of Public Accounts. The 80%-20% rule applies by which only 20% of beds in a public hospital are available for private cover. As the situation stands, if this figure goes over 20%, the hospitals cannot look to the private health insurer for that cover.

The Minister has proposed changes in the budget. I hope there will not be a temptation on the part of the public hospitals to bring in more private patients. It might suit them to increase the ratio to 30% which would mean taking away public beds. It is a question of who will police this practice and it is open-ended as it stands. Private hospital care is not available in all regions. There is no private hospital in the Limerick region and the public hospitals consistently have more than 20% private beds. This is a concern. I am pleased the Minister has addressed the question of universal health care and its introduction is crucial. The money will always follow the patient and hospitals will find it in their interest to deal with patients who carry insurance. Universal health care is a progressive policy and it will take time to put it in place.

The Minister of State is directly responsible for the primary care system which plays a crucial role in reducing dependence on acute hospitals. The primary care system is being developed slowly across communities. I can quote three centres in my own area which have been developed and they have the support of the local GPs. They are providing a range of health care to the community with the ultimate aim of reducing our dependence on acute hospitals. This Bill is a technical measure to extend the existing provisions. The ultimate aim is to provide efficient health care on an equal basis to all citizens.

**Acting Chairman (Senator Tom Sheahan):** I call Senator Marie Moloney.

**Senator David Cullinane:** I was called three times.

**Senator Marie Moloney:** I have no problem with Senator Cullinane speaking ahead of me.

**Acting Chairman (Senator Tom Sheahan):** We have the time available.

**Senator Marie Moloney:** I need only a minute as I have one brief comment to make. I thank the Minister of State—

**Senator John Gilroy:** Senator Cullinane can have 19 minutes.

**Acting Chairman (Senator Tom Sheahan):** No, Senator Bradford is offering.

**Senator Marie Moloney:** I will not delay. I thank the Minister of State for such a comprehensive report because she has provided us with the answers to many of the questions we intended to ask. I have been a member of the VHI for more than 35 years. I struggled at times to pay my health insurance when my husband was unemployed and when I was unemployed but I dug deep and I was able to pay the premium. The VHI now tells me I am coming to an age when I will be a higher risk. When the VHI had a monopoly on health insurance and all the young and healthy people were paying for health insurance, the VHI was not jumping up and down and saying we were costing money. The VHI was well able to take our money and put it in its pockets—

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

**Senator Marie Moloney:** It is true. A member of my family went to have a minor procedure performed which involved the removal of a small particle from an eye. When the object was removed with a cotton bud, the patient was informed that this procedure was covered by VHI. We supplied the VHI number and we received a statement from the VHI which was three times the amount the patient had been asked to pay if he had been paying for it himself. This is not good enough. We reported this payment amount to the VHI and the VHI did nothing about it. A lady in Kerry told me she wrote to the VHI to inform the company that she was being charged for procedures that were never carried out. She contacted the VHI by telephone and yet the company did nothing about it and the bill was paid. If the VHI is State-owned then we must take upon ourselves to instruct the VHI it must investigate legitimate complaints.

I presume the tax credits are deducted at source because otherwise they are of no benefit to an elderly person who does not pay tax. I ask the Minister of State to confirm this.

**Senator David Cullinane:** There must be something in the water this morning because I find myself in complete agreement with Senator Gilroy and disagreeing with Senator Barrett—

**Senator John Gilroy:** We will have to cancel the debate so.

**Senator David Cullinane:** This is a market system which shows health care as a commodity and not as a fundamental right. We are dealing with an unfair system as regards funding and access to health care. Senator Barrett made a point that there is no proof that people could not access private health insurance from some operators. The issue is not whether people are prevented from obtaining cover but rather that the cost of cover for some of those people is driving up the cost and making it impossible for them to access cover. This is what is being addressed in this Bill and the reason I support it.

I also wish to record my support for one of the measures in the budget to increase the cost of accommodating private patients in public hospitals. The full cost of private patients in public hospitals should be applied as well as ending the practice of consultants carrying out private practices in public hospitals and making a profit on the back of the public system. All these issues need to be addressed.

The health insurance market, given the importance and often precarious nature of the market, requires safeguards and a great deal of care. We cannot allow the elderly and the sick to be exposed to market forces. They need to be buttressed with protections and supports. In particular, we need to ensure that where some providers may choose to cherry-pick their customers by offering attractive plans for the young and healthy, there is an incentive for providers not to cherry-pick and to insure the elderly and the infirm at a reasonable and affordable price. The explanatory memorandum states that the purpose of the Bill is to provide a mechanism to support intergenerational solidarity in the health insurance market. There can be no question but that this is absolutely necessary, and it is something my party fully supports. Indeed, the explanatory memorandum states: “there are incentives for insurers to design products that are attractive only to healthier lives, undermining intergenerational solidarity and the common good protections”, which accords with the point I just made that we cannot allow the market to dictate what is a fair price.

This is far from what I would consider the ideal way of running a health care system. I believe, as I said a few minutes ago, that health care is a right which should be available at the point of access and funded through progressive taxation. However, it would surely be a retrograde step not to balance the inequalities created by the sheer will of the market. We are left to enact legislation to try to regulate the distortions and inequalities brought about by the private health insurance market, or at least some in that market. This is, as I said earlier, primarily a market, not a system of funding health care. Therefore, in order to maximise profits,

it tends to discriminate in favour of the healthy and against the old and the sick. The State has a moral obligation to intervene to redress this balance. However, this raises the question of why the Government insists that an insurance-based system is the way forward for health reform in this State. It would be far better if the Government were to move towards a model of universal health care funded by just and progressive taxation and not an insurance-based model.

The programme for Government states: “A system of Universal Health Insurance (UHI) will be introduced by 2016, with the legislative and organisational groundwork for the system complete within this Government’s term of office.” In the Dáil, my colleague Deputy Ó Caoláin tabled a question in which he asked the Minister the timeframe for the publication of the White Paper on reform of the health care system and the health insurance system, and the answer he got from the Minister was: “While universal health insurance is the ultimate destination of this Government’s reform programme, there are a number of important stepping stones along the way and each of these will play a critical role in improving our health service in advance of the introduction of universal health insurance.” He cited the special delivery unit, strengthening primary care and the money-follows-the-patient concept which he has spoken about on many occasions. He also stated that the Government had given approval for an implementation group for universal health insurance, which will have the responsibility of assisting the Department in preparing the White Paper. However, he then went on to say that the White Paper would be published within the Government’s current term of office. Given the commitment in the programme for Government that this would happen early in the Government’s first term, the question must be asked: when will we see these reforms?

The Minister, Deputy Reilly, the Minister of State, Deputy Lynch, and the Minister of State who is here in the House, Deputy Shortall, have strongly and rightly criticised a two-tier health system in the past. Yet that is what is apparently being maintained for the future.

**Senator John Gilroy:** No, it is not.

**Senator David Cullinane:** The Bill arrives in that context and in the context of a declining health insurance market. VHI has said it expects up to 200,000 people to give up private health insurance by the end of 2012 as a result of rising unemployment. The proportion of the population with health insurance declined from 49% in 2007 to 47% in 2010. The numbers qualifying for and receiving medical cards have increased. Some 30% of the population have a medical card, while 23% have neither a medical card nor health insurance and must pay as they go through every part of the health care system. A total of 53% of the population depend entirely on the public health system, from which the other 47% also benefit — for example, through the use of private beds in public hospitals, which I spoke about earlier. Data from the OECD shows that the largest proportion of funding for health care in the State — 80% — comes from the public finances.

In light of these facts, how does our existing structure make sense? This Bill simply addresses one aspect of that structure, which I welcome — the need for what is called societal and intergenerational solidarity in the health insurance sector. It does this by continuing up to the end of 2012 the arrangement whereby the burden of the costs of health services are shared by insured persons through a cost subsidy and age-related tax credit funded by the collection of a levy on all insured lives. There is a need to protect our health system from a predatory approach by health insurers, which would see older people and those with illnesses being forced to pay higher health insurance premiums. This Bill seeks to achieve that for another year. However, it is a stop-gap measure, and I hope many of the changes the Government has promised will be implemented, although I do not accept all of them. I do not like the fact that the response to the health care situation is based on health insurance because I am opposed to health care

[Senator David Cullinane.]

being driven by market forces. I would much prefer if the Minister was to move towards universal health care, because health is a right and it should be provided at the point of access for all and funded through progressive and just taxation.

I support the Bill in what it does. There is a problem in the market at the moment whereby some health care providers are discriminating against older people and others in the market, and the Bill corrects this. That is why I support it.

**Senator Paul Bradford:** Once again we are back on the subject of health insurance. This is a matter that is close to my heart politically because I was involved in the original debates in the other House at the time of the decision by the then Minister for Health, Deputy Michael Noonan, to allow competition into the health insurance business, which we all thought was a major step forward. In latter years I was one of those people who was critical of the concept of risk equalisation as it was then being proposed and was subsequently implemented. I recall that at the time my views were aggressively disputed by VHI, which in my view simply wanted to ensure it would remain king of the market. The risk equalisation debate was concluded and the legislation was introduced and then found to be inappropriate. Now, to use that awful phrase, we are where we are, and this is a necessary Bill to ensure that health insurance cover is available to the vast majority of our citizens.

I support the legislation; there is no alternative at the moment until we find a longer term solution. I want to talk about the longer term solution and about what is very much the elephant in the room, the cost of medical care in this country. It is an absolute disgrace.

**Senator Sean D. Barrett:** Hear, hear.

**Senator Paul Bradford:** The Minister is introducing a system of universal care which everybody supports, including the previous speaker. The phrase the Minister used and that we used, mantra-like, at election time was: “The money follows the patient.” At the moment, the money follows the doctors, the consultants and all the people who are literally making themselves millionaires out of the provision of health services in this country. I resent that, and it needs to be aggressively tackled.

Arising from the Minister’s budget proposals, the word came out that VHI charges would increase dramatically, as would the charges of other companies. We were told about the costs of hospital beds and about changes in the public-private patient ratio. When we hear about hospital beds costing €1,300 or €1,400 per night, we ask how we can pay for it and who foots the bill, but the question we should really be asking is this: how is it that a hospital bed, a doctor, a consultant or any medical intervention costs so much by international standards? We must declare that the day of doctors and medics and professionals being the new elite is over.

**Senator Martin Conway:** Absolutely.

**Senator Paul Bradford:** We have dealt with monopolies in other services, and sometimes, in our desire to solve problems, we can go too far. There was a time when there were not enough solicitors, barristers or accountants in this country. The word “professional” and the phrase “I am a professional” were allowed to be uttered only by a small, privileged minority. We have allowed the medical profession to remain a small, privileged minority, and until such time as we significantly increase the supply of medical expertise, including GPs, consultants and other specialists, we will continue to have appalling health bills, the new BUPAs and the VHI will have to charge more and more, and this endless debate will go on. I wish it were simple but it is not. We must tackle the question of the cost of the health service. It is not justifiable that a

GP can charge between €60 and €80 to sign a prescription for the local chemist who then charges €40 for an antibiotic.

During a debate on similar legislation in the past, I recounted how when in France some years ago I went to a local doctor at the onset of an ear infection who, with some reluctance, took €10 from me. When I went to the chemists with the prescription, the medicine cost me only €4. Why should this be the case in France and not in Ireland? Why should a GP here demand seven times as much as a French doctor? Why should medicines cost so much more? Maybe my argument is too simplistic and I am missing the point. If I am correct, however, this has been going on for a generation. We cannot allow the majority to be unable to pay for the services of a relatively privileged elite profession.

Most fair-minded people in the body politic were pleased with the general tone of the budget, notwithstanding the enormously difficult choices faced by the Government. As a result of the tax and social welfare measures, people are relatively no worse off than they were last week. That is a solid political achievement. If, with a stroke of a pen, the VHI and other health insurance providers increase their charges in January, then all that economic good from the budget is wiped away. Middle Ireland — the working man and woman who have to pay for everything — will be penalised. Many will drop out of private health insurance cover or remove their children from polices. That is bad for both the health of the country and the economy in the long term.

Will the Minister of State, along with her senior Minister, begin an aggressive campaign to make the provision of medical care more affordable and reasonable? When the EU and IMF came to town, we did not cheer them from the rafters. However, if the cost of health care comes under their deep and probing spotlight, I wish they would hang around until the cost of medical care is resolved. Until we sort out the charges for medicines, doctors and consultants, it will be increase after increase in the cost of private health insurance. Property they say is location, location, location. Medicine is now cost, cost, cost.

**Senator John Kelly:** I agree with Senator Bradford on the cost of health care. Last week in the Seanad, I brought up the same issue. It is wrong a GP can charge €50 for stamping a medical card application form. It is wrong a GP can charge €50 to write a letter stating a medical cardholder has backache. It is wrong a GP should charge €30 to take a medical cardholder's blood. It is wrong a GP will take money off old dears who believe that by giving him €50 they will get a better service even though they are entitled to free medical cover.

GPs are milking the private health insurance fund. I know of a person who recently went into a private hospital to have a small procedure done in a day. Two days later, she had to go to her doctor to have the stitches removed, for which the doctor charged €50. Several days later, when the doctor learned she had private health insurance, he claimed a further €230 from the insurance company for a procedure he was willing to do for €50 only two days before. Many people have medical cards as well as private health insurance. Under no circumstances should a GP have a choice between a private health insurance claim and a medical card claim. In the case I just cited, the GP should remove the stitches for free instead of milking money out of private health insurance companies for which we all pay.

**Senator Tom Sheahan:** I thank the Minister for her comprehensive address on this legislation. Two years ago, on a point of principle, I dropped my health insurance because of how it has been abused by health insurers and others. I did not do it lightly as I am married with four children but it was based on two experiences I had with health insurance providers.

My wife required a minor procedure and was in and out of the hospital in 15 minutes. The bill came to €970 but owing to the fact that our insurance would only cover €880, we had to

[Senator Tom Sheahan.]

pay €90. I felt the whole procedure should have cost €90. My wife was charged €550 for the bed she was on for ten minutes. That is wrong and immoral.

When my wife went for her 16-week scan with our last baby, she was given an appointment for another scan two weeks later. Those were the worst two weeks I have experienced because I convinced myself something was wrong with our baby. When my wife returned for the scan, she was told to go to a doctor's private rooms. She refused and stated we had our first three children in the public service which were excellent and it would be the same with our fourth child. My wife was informed the visit to the rooms would cost her nothing as we had VHI cover. How many scans are pregnant women having when they are on private health insurance? To the best of my knowledge, consultants are rarely at the births too.

A couple I know both had their hips done, coincidentally, in different hospitals. The man was kept in hospital for five days after his operation while his wife was kept for 11 days. She is progressing better than he is. The difference in the two hospital bills was €50, however. How can that be?

I agree with Senator Bradford that the pricing structures in health need to be tackled. In any business, a bill is itemised. Health insurers must justify the costs they charge. If one goes to a GP to get some steel out of one's eye, it should cost €50. If, however, one is on health insurance, he will get €300 for it. That is a wrong and immoral abuse of the system. Until it is tackled, we will not have a fair and equitable health insurance system.

**Minister of State at the Department of Health (Deputy Róisín Shortall):** I thank those Senators who contributed to this interesting debate. I am encouraged by the Senators' contributions. We are all at one in identifying abuses in the systems, problems in the services and the need to reform them.

The provisions in the Bill are exclusively technical in nature providing for a one-year extension of the interim scheme of age-related tax credits and community rating levy for 2012. They include small modifications to the scheme to allow for a more precise level of support for community rating.

The broader issues in regard to risk equalisation will be dealt with in the coming year by the Minister for Health. The concept of risk equalisation will be more vital than ever in the context of a universal insurance health system. The programme for Government includes a commitment in this regard.

In addition, the Minister for Health is particularly concerned to ensure claims costs are kept to a minimum to mitigate any requirement to increase premiums. He has approved the commencement of a review of claims costs to address this critical market issue. It will commence presently.

The aim of reform in the health area is to deliver a single-tier health service which will ensure equal access to care, based on a person's need and not on their ability to pay. The programme for Government provides for this in a universal health insurance context. These major reforms will require detailed preparation and intensive work over time. The Government is realistic about the timescale involved and believes it cannot be done in a short time. It is also being ambitious in aiming to introduce full universal health insurance in the early stages of a second term in government, if this Government is lucky enough to be given that opportunity.

However, there are several important stepping stones along the way and each of these will play a critical role in improving our health service in advance of the introduction of universal health insurance. Given the complex nature of what is planned, the Government has approved the establishment of and terms of reference for an implementation group on universal health

service. The details of the group are being finalised and it will commence work shortly. Its work will pave the way for the introduction of universal health insurance in the medium term.

Significant reform of the acute hospital system is planned. The special delivery unit was established in June 2011 to unblock access to acute services by improving the flow of patients through the system and to put in place a systematic approach as a priority to eliminate excessive waiting times in emergency departments. This has been identified as an absolute priority. The special delivery unit is establishing an infrastructure based on information collection and analysis, hospital by hospital, so we can know the situation in real time. New systems have had to be implemented to collect this important data. This will allow us to begin to embed performance management into the system to sustain shorter waiting times. Accurate data systems are integral to assisting in the introduction of such fundamental reform.

The National Treatment Purchase Fund is working to support hospitals in the delivery of a 12-month maximum waiting time for inpatient or day-case surgery by 31 December 2011. The Minister, Deputy James Reilly, has stated on several occasions that he is committed to meeting that objective and every effort is being made to ensure this happens by the end of this month. We expect to be able to move forward to reduce further that waiting time, year by year. A further critical aspect of reform of the acute hospital system is the implementation of a new, more efficient funding system for hospital care which will be a mechanism whereby money follows the patient. This will end the block grant payment to hospitals and the lack of transparency as to what it actually buys. For example, we will have a unit cost for, say, a hip replacement. This will enable a drive-down of costs and achieve better value for the taxpayer. It will include a purchaser and provider split, whereby hospitals will be established as independent, not-for-profit trusts. Various initiatives to facilitate achievement of the money follows the patient funding system are already under way.

The programme for Government provides for a significant strengthening of primary care services with the removal of cost as a barrier to access to general practitioner, GP, services. In line with this commitment, access to GP care without fees will be extended in 2012 to claimants of free drugs under the long-term illness scheme. This week's budget allocated €15 million to start this important and fundamental reform programme. Up to 56,000 people will benefit from this initiative.

Full universal health insurance is a medium-term project which is under way but the reforms promised on opening universal access to GP care are reforms we intend to deliver in this term of government. It is the Government's intention to move the bulk of chronic disease management away from hospitals to the local primary and community care setting. This will be the real game changer and will be responsible for introducing real reform in the health service.

The purpose of the reform provided for in the programme for Government is to have early intervention to encourage people to access care at an early stage and achieve better outcomes, earlier diagnosis and a much more user-friendly health service. People want to receive health services locally and their local health professionals. This also entails having a much more cost effective health service. This is what we intend to achieve in the term of this Government.

I thank Senators for their thought-provoking contributions. Senator MacSharry referred to a figure of €100 million owed by health insurance companies to hospitals. I am not sure how he arrived at this figure.

**Senator Marc MacSharry:** The outstanding moneys actually come to €162 million.

**Deputy Róisín Shortall:** No, the Senator claimed €100 million was to be written off.



**Senator Marc MacSharry:** In yesterday's edition of *The Irish Times*, the Minister for Health said he hoped to get €50 million back from owed moneys. With €162 million owed, that means €112 million will be written off.

**Deputy Róisín Shortall:** Given the enormous pressures on the public finances and, particularly, on the health service, it is a grave concern this money has not been collected. I was made aware of this in the Department six months ago. It is incomprehensible that this amount of money is owed to the health service which so badly needs it. Action has been slow in this area. I have been told it is a priority and that action will be taken. As far as I can see, however, no progress seems to have been made in six months. This is a management issue. I cannot understand how people charged with managing the health service, for which they are paid handsomely, are not capable of bringing in the money owed to the service.

I also cannot understand why consultants, who are also exceptionally well-paid and better off than their counterparts in any other country in Europe, are holding up this process by their failure to sign the necessary paperwork. That matter was brought into sharp relief this week in the context of the threats to the health budget and the cutbacks that must be made in respect of a range of areas across all Government Departments. I will be writing to Mr. Cathal Magee in the coming days because it is entirely unacceptable that this matter cannot be managed in a satisfactory way. The chief executive of the HSE, the Secretary General of the Department of Health and the CEOs of the various hospitals concerned must pull out all the stops in respect of this issue. The least we can expect is that all of these senior personnel will ensure that the money in question will — one way or the other — be brought in before the end of the year.

If our extremely well paid consultants continue to drag their heels in this regard, we will be obliged to move quickly to ensure that penalties are applied in respect of them. Irrespective of what one is paid, there must be some consequences if one fails to carry out one's job. People should do their jobs if they are being paid to do them. If someone fails to do his or her job, then sanctions should be imposed. I am undertaking to pursue this matter because the position is intolerable and there is no excuse for it being allowed to drag on interminably. We need to collect the money in question as soon as possible.

**Senator Martin Conway:** Well said.

**Deputy Róisín Shortall:** The Government is not proposing to introduce the Dutch model here. We are proposing a hybrid model for universal health insurance that will draw from the best models throughout Europe. The details in that regard will be worked out by the implementation group. As stated earlier, the implementation group on universal health insurance is to be established very shortly. It will be charged with designing a system which will apply to existing needs and which will address the particular difficulties that have obtained in the health system for many years. It is important to clarify that said system will be a hybrid and that it will meet Irish needs. I hope the implementation group will produce the White Paper, sooner rather than later, because there is a need to carry out the relevant groundwork in respect of this matter.

Senator Bradford voiced many people's feelings on this subject. I welcome his comments and would concur with many of them. In the context of trying to introduce fundamental reforms to the health system, the Government is attempting to move towards a lower cost model of health care. There are far too many vested interests in the health service. Reference was made to protected professionals and action must be taken in respect of such individuals. We should not have tolerated the existing system for so long. There are those who are extremely well compensated — from both the public and the private purse — for the work they do and in the course of that work they often operate in an extremely uncompetitive way by allowing closed-

shop situations, restrictions on entry to professions and training, etc., to continue to hold sway. That type of carry on is nonsense and it must be brought to an end. We need to move towards a modern democracy in which there is accountability. In that context, we must end the type of anti-competitive practices that have obtained within the professions in particular.

I welcome the requirement placed on us by the troika to open up access to the GMS. It should not have taken an intervention from the troika in order to encourage us to do this. The process of opening up access to the GMS is under way at present. For many political and historical reasons, closed shops have been in operation. I am glad, however, that progress is at least being made in this regard. The Committee Stage debate on the legislation to open up access to the GMS began this morning. I hope the Dáil will conclude its deliberations on that Bill in a short timeframe and that it will then come before this House before being passed into law as quickly as possible. I know of several very well-qualified GPs in whose training we invested a great deal. It is inexcusable that these individuals have not been able to establish practices under the GMS. A number of them are waiting patiently for the legislation to be passed. I hope it will be enacted as quickly as possible in order that the highly qualified people to whom I refer might set up practices and bring their skills into the health service. Their entry to the health service will increase competition and give patients a much greater choice in the context of the type of service they can access.

Overall, there are difficulties with regard to the high cost base that exists within the health service. These difficulties apply in the context of the lack of competition in the primary care sector. They also apply with regard to the lack of competition among and the general lack of numbers of consultants. The latter have managed to carve out a very special role for themselves within the health service. That is an issue which must be addressed.

There are also difficulties regarding the high cost of medicines. Many Senators referred to this matter and I hope we will make real progress on it in the new year. We will be introducing legislation which will allow for reference pricing and generic substitution. I look forward to the support of both Houses in the context of passing that legislation as quickly as possible in order that significant savings might be achieved for the Exchequer and for individual patients. Everyone is aware of the huge differential that exists in the price of medicines here and that which applies in Spain, Portugal or other countries people visit on holiday.

In the context of the model of care, it is the Government's intention to move as much activity as possible out of the acute hospital setting and into community and primary care. This will allow us to achieve a much lower cost model of health care provision. What we are doing in this regard makes better sense from a health point of view because there will be better outcomes. It also makes sense from a cost perspective.

Various points were made in respect of the VHI. I am not sure to whom Senator Barrett was referring when he used the phrases "We were trying to achieve this", "We claimed this", etc. I do not know whether he was referring to the industry or to a group of academics. I take it that he is not opposed to the principle of the common good in the context of health insurance and that he subscribes to community rating, open enrolment, lifetime cover and minimum benefits. There is strong support for these throughout the country. A great deal of people's concern in respect of health insurance relates to the lack of regulation. They are also concerned about the lack of transparency regarding the way in which the various insurance companies operate and the fact that side deals can be done. If, for example, one is prepared to pay cash, one will be quoted a particular price but if one is paying through one's insurance, the price is much higher. There is a need for much greater transparency in respect of the base for the kind of prices insurance companies are paying and on how they reach various agreements with public and private hospitals and, in particular, with consultants. We must move towards a much

[Deputy Róisín Shortall.]

greater level of regulation in this area because I do not believe that consumers are being well served at present.

Senator Clune referred to public beds being used by private patients and the fact that the matter was examined in some detail by the Comptroller and Auditor General before being discussed by the Committee of Public Accounts. There is a considerable loss of income to the

2 o'clock Exchequer as a result of the failure to charge the economic rate for public beds used by private patients. That matter must be addressed. There is general agreement that where money is owed to hospitals it should be paid. I am concerned that what we are discussing in this regard could provide hospitals with a perverse incentive. When this idea was first mooted, I raised that concern. I am aware that work is being done within the Department in the context of putting in place safeguards to prevent that which we are discussing from happening. Given that hospitals are under such pressure in the context of their budgets, I am concerned that there might be an incentive for them to take in more private patients at the expense of their public counterparts.

We must move quickly to ensure that there are safeguards in place for that, and I will be pursuing that within the Department of Health.

Senator Moloney raised a question about older people who are not in the tax net and whether they get the benefit of the tax relief, and the answer is, "They do". That is deducted at source.

Senator Cullinane raised the question of the slow progress of UHI. I have responded to that. It is a very big undertaking and we are doing it in the shortest possible timeframe.

I would also make the point to Senator Barrett that the Mr. Justice McKechnie High Court judgment in the Bupa case stated:

Therefore the creation of a risk equalisation scheme, pursuant to s. 12, is in my view a pressing and substantial need in a free and democratic society.

It is important to point out that unlike the Supreme Court, which did not need to go on and deal with the substantive issues, the High Court judge and the EU court fully endorsed risk equalisation. This High Court judgment is persuasive until any further Supreme Court judgment rules otherwise. It is important to bear that in mind. There was no question of being opposed to the principle of risk equalisation.

Senator Colm Burke raised a question about the Cork Medical Centre. I would point out that the VHI has not approved the Mater Private in Cork and has also refused a proposal from the Bons Secours group for an increase in the size of its existing facility. It is important to point out that the Minister has no role in directing health insurers to enter into agreements with service providers. The Minister has engaged with the VHI on this issue. Even though he has no specific role, he is concerned about it.

**Senator Colm Burke:** They did give cover for 50 beds in Galway for the Bons Secours Hospital.

**Deputy Róisín Shortall:** The Minister is trying to progress this issue with them through persuasion. The VHI has rejected at least eight applications for additional facilities across the country on the grounds that there was already an adequate supply of services in their respective areas.

I picked up on most of the issues raised. I thank everybody who contributed. This important legislation deals with a specific issue and should be considered in the context of the overall

reform agenda to which the Government is fully committed. I am aware the Senators opposite are also committed to introducing these reforms and I very much welcome that support.

Considerable work is under way and I hope that all of the Members of this House will start to see the benefits of the work that is under way from next year on, when we start the roll-out of universal GP care, and, hopefully, closely allied to that, the roll-out of the chronic disease management programmes. For example, I am keen to see the commencement of the diabetes programme next year. It will really bring it home to people that the way we deliver services does not make sense and how we can do it in a way much more responsive to people's needs which achieves far better health results and which is cost effective. I hope all of those benefits will start to materialise in the middle part of next year. I look forward to the support of Members in that regard.

The Government is fully satisfied of the requirement to provide for a risk equalisation mechanism along the proposed lines. The main objective is to ensure the continuation of an interim scheme next year. The scheme already made a significant contribution to community rating since 2009, and has succeeded in transferring funds from low-risk to high-risk groups, which is, essentially, what this is about.

Question put and agreed to.

### **Health Insurance (Miscellaneous Provisions) Bill 2011: Committee and Remaining Stages**

Sections 1 to 3, inclusive, agreed to.

#### SECTION 4

**Acting Chairman (Senator Tom Sheahan):** Amendments Nos. 1 and 2 are related and may be discussed together by agreement.

**Senator Sean D. Barrett:** I move amendment No. 1:

In page 5, to delete line 15, and substitute the following:

“the Central Bank of Ireland, require the Central Bank of Ireland to prepare any report”.

I thank the Minister of State. I dislike the extension for a year and I have discussed it with four or five Ministers, and in a much more heated way than this morning. We have had plenty of notice of when we were to have competition in health insurance and the way we did it drove out a potential competitor.

I will refer to a point of commonality between the Milliman report and the Minister and myself. Milliman looked at commercially available evidence-based medical necessity criteria and in its report, stated:

We believe that a previous attempt to introduce evidence-based criteria was abandoned late in 2009 because of push back from Consultants.

That is a flaw that is built into the system. If there were competing health insurance companies, not turning down the elderly which they did not and not turning down the sick which they did not, but getting a person a better price whether he or she was old or young, this kind of abuse would have been eliminated by competition. That was the mistake that, in addition to its protectionism of VHI, the Department and successive Ministers made. They failed to realise that their programme for change would have been facilitated by competing health insurance

[Senator Sean D. Barrett.]

companies within the criteria that we all support — community rating, open enrolments and life-time cover.

Milliman shows so many examples of where having a monopoly health company increases costs. In the 67 page version I got, there were 32 with redactions. Even ploughing through the rest, one can see all sorts of examples of where having a monopoly health insurance company suits the consultants, the hospital managers and those from whom we all are trying to get costs extracted. There is a phrase that bread does not appear in the shops because a bunch of philanthropists got together; it appears because of competition between different bakers.

I note how Milliman removes many of the foundations on which we believe this policy is based. Its report states that ageing is “not the most important factor” driving cost increases. There is much evidence for that by new epidemiologists latterly.

Milliman states, “we note that VHI has redesigned its products with a view to segmenting the market and in effect quasi risk-rating its products.” VHI is doing what we were asked to bring in legislation to stop other companies doing. It states that utilisation management can reduce bed days by 30%, and that it is “important to understand the drivers of claims costs .... We have not seen any evidence that this is being done”. One makes a monopoly, one protects it. We had it in the past with Aer Lingus, CIE, etc., and VHI is one of those. It is not performing as the Minister of State wishes and I support her in that regard.

Milliman states: “We found little evidence of any attempt by VHI to control hospital utilisation effectively”, and on the same page, a “hospital had been admitting relatively young patients for diagnostic work-ups with no real demonstrated need for acute inpatient hospital care”. By any standards, the VHI monitoring of all of that is what one would expect from a monopolist. It is not monitoring it and it is leading to the problems that the Minister is trying to address with the support of this House. In fact, the report states that VHI is so obsessed with the treatment of the number of old people with which it is lumbered that, effectively, it took its eye off the ball in looking at these kind of cost control issues. By the way, VHI’s average age of membership was found by Milliman to be 38, which was the same as Bupa when it withdrew. I wonder at this edifice, this house of cards, that we built up to prevent competition.

The Department was undoubtedly, to use the Minister for Public Expenditure and Reform, Deputy Howlin’s, words, “captured” by VHI, and so, I believe, was the Health Insurance Authority. That is why I am trying to move this. As the European Court of Justice indicated in its judgment of 29 September, it should be moved to the Financial Regulator. What we have been doing heretofore has increased costs — I support the Minister of State in her efforts to reduce costs — provided a gravy train for one company and, as Senator Colm Burke noted, prevented competition. Instead of having competing insurance companies which sought to reduce hospital stays and develop group GP practices, our health insurance system was so dependent on the incumbent medical profession that it ended up re-financing inefficiency.

It is a pity we did not provide for a fully competitive health insurance market in 1994. Nobody disputed the three criteria but the problems arose when one company was required to subsidise the others. The epistemological basis of the claims about an ageing client profile has been exaggerated. The evidence has to go away from the Health Insurance Authority to an independent regulator capable of adjudicating on these matters. I doubt the State has ever managed to produce witnesses who were refused cover. A study presented by Alastair Gray at an Office of Health Economics conference in November 2002 indicated that age is, in part, a red herring in respect of health expenditure. A paper published in the *Journal of Economic Literature* in September 2008 stated that increases in life expectancy during the 21st century will have a modest effect on health care in the US. The major expenditure occurs in the last

six months of life but this period can be delayed by keeping healthy. The crude model set out in the legislation is wrong in that regard. Another article states that recent health economics literature challenges the conventional wisdom of increasing health expenditures as a function of age distribution of the population. A German study concludes that western societies should not worry about the effects of ageing.

We have no evidence that BUPA refused to recruit old people. I have produced evidence that it was actively recruiting old people until it had to leave the market because the amount by which it was required to subsidise the VHI exceeded its profits. The current system has resulted in considerable inefficiencies. I support the Minister of State in her efforts to address the issues arising but cobbling the system together for another year through a technical Bill will not solve the basic problem. A Government in its first year in office should be radical in introducing the reforms which I am convinced will reduce the cost of medical care in Ireland.

The lack of competition in health insurance is serious and it has resulted from the Department's decision to back its in-house health insurance company. The consumer is not being well served. One of the competing firms had a high consumer rating and won all sorts of prizes at EU level for its employment practices. Protectionism in economics is not part of the EU. It was time to act in this area 17 years ago. The system will continue to present cost problems because that is inevitable among monopolies. I presume that most of the €275 million to which the Minister of State referred goes to the VHI. Senator Cullinane pointed out that other companies were prohibited from discriminating on grounds of age and were required to have life-time enrolment and community rating policies. People could have saved money by dealing with one of the lower cost companies. This was not solely because they were believed by the Department to be cheating by only recruiting young people.

Customers did not change because the VHI always held out the possibility that the Government would intervene. They got the benefit of competition by staying with the monopolist. A survey found that 21% of customers felt it was too much hassle to change, 13% did not see significant cost savings and 13% stayed because they had been with the company for a long time. Approximately 50% of respondents did not want to change but they could have saved substantial amounts of money if they had done so. When BUPA was in the market savings were possible. I did what the policy claimed was impossible by moving from the VHI to one of the new companies, thereby saving money even though I was in the age group which was supposedly being refused cover.

We need competition in this area. The existing regulatory framework has resulted in the State losing cases in the Supreme Court and the European Court of Justice. The question of damages will arise at the end of January. It is time to introduce radical change rather than keep the system going for yet another year.

**Senator Colm Burke:** As this legislation covers the next 12 months, a comprehensive review will be required to ensure we do not repeat previous mistakes. The amendments proposed could be considered over the longer term but we should leave them aside for now.

In regard to moneys owed to hospitals, the problems are not solely caused by medical consultants. My legal practice received a hospital bill for an individual who was my client 12 years ago. That money cannot now be collected but the fact that it was being pursued raises questions about hospitals' accounting systems. Further issues arise in regard to files which cannot be located, which means people are unable to determine what was done 12 months or two years ago. I was recently told about a consultant who was credited by a hospital with procedures that were never carried out because the statistics were being compiled from the information contained in discharge letters to GPs rather than drawn from the entire file.

[Senator Colm Burke.]

In regard to computerisation, everyone in Denmark possesses a patient medication card which allows treatments to be recorded by computer. Everyone who deals with a patient can access his or her file. In private hospitals, staff visit wards on a daily basis to ensure insurance forms have been filled out, whether by the consultant or the patient. This does not appear to happen in the public sector. The Minister for Health referred to one Dublin hospital which was accounting for public and private revenues in the same way because it had developed a mechanism which allowed it to follow up bills immediately rather than four weeks after a patient had been discharged.

Given that the measures will last for a 12 month period, I suggest that the amendments be withdrawn.

**Minister of State at the Department of Health (Deputy Róisín Shortall):** I thank Senator Barrett for engaging on this Bill. The Government cannot accept his two amendments. The Central Bank is the Financial Regulator for prudential and solvency purposes. Typically, insurers must satisfy various prudential requirements that are appropriate to the Central Bank. These are requirements that apply generally to all insurance and financial services companies and relate to matters such as their financial operation and investment policies. Currently, the Central Bank is the Financial Regulator in respect of Aviva Health and Quinn Health Care. The VHI is not currently financially regulated by the Central Bank of Ireland.

As the House was aware, on 29 September last, the European Court of Justice ruled against Ireland in regard to a derogation exempting the VHI from the requirement to be authorised by the Central Bank. It found that the State had failed to apply EU law relating to non-life insurance equally to all insurance undertakings. The effect of this decision is that VHI can no longer benefit from this derogation. The Government is considering the next steps in this regard, and decisions will be made shortly.

The proposal to merge the HIA and the Central Bank has been considered previously. This proposal requires careful examination, particularly in regard to how such a step would fit in with the programme for Government commitment to move to a system of universal health insurance. Under the programme, it is intended to establish a health insurance fund that would have both regulatory functions and payment or funding functions. In this context, it may seem more appropriate to transfer the functions of the HIA to the hospital insurance fund where the regulation of insurers would lie rather than placing it with the Central Bank as Financial Regulator. These matters will be considered by the Government as proposals for universal health insurance are developed.

The judgment to which Senator Barrett referred did not propose moving the HIA to the Central Bank. There is some confusion in this regard. The Senator may be confusing prudential supervision with the risk equalisation scheme, which is very different. If, as Senator Barrett claims, the VHI is so protected, what does he have to say about the super-normal profits that were enjoyed by Bupa and the very significant profits enjoyed recently by Aviva? One should compare their circumstances with those of the VHI. If Bupa's customers had an average age of 38 years, this was very much outweighed by the proportion of older persons in the VHI and their relatively less-healthy profile. The damages case is to come before the court in January. Bupa left the market before it won its case and, it must be stated, after making very substantial profits.

The interim scheme does not nearly cover all additional costs that the VHI incurs in paying for claims of older, less-healthy customers. I pointed that out in my speech earlier. Does the Senator realise that the VHI has 80% of claim costs but less than 60% of the market share and, as a consequence, premium income?

There is much competition in the market but, as I stated, it relates to younger, healthier customers. There is undoubtedly an issue arising at present because of companies cherry-picking. They will continue to do so. This is very much the reason we need to ensure we have a risk equalisation scheme in place to cover us next year. That will allow us the time to develop a more comprehensive scheme thereafter.

**Senator Sean D. Barrett:** I intend to withdraw amendment No. 1. With regard to desired reform, the 12-month period ought to be the outer limit. We need something other than the incumbents determining policy and making assumptions about their potential and actual competitors. Cases have been taken in the courts at a vast cost to the taxpayer. Many of the arguments have not stood up. While people may have been demonised, nobody was produced who was refused cover by one of the other companies. Claiming the contrary is to build the legislation on an unsure foundation. The legislation needs to move away from having the Department of Health protect its own insurance company and to form some kind of arm's length relationship. The producers know about what I describe, and hence the high costs that the Milliman report complains about.

I hope the Milliman report will be circulated to the Senators who attended this debate. It would definitely influence their feelings thereon. To the economist, rising costs are inevitable when one creates a monopoly and protects it so thoroughly, as has happened in the case in question. This is an area in which the Minister's reforming agenda is badly needed. If we had controlled the costs of the 50% of the population who once had health insurance, it would have served as a useful mechanism in trying to control the costs in the public sector, including in respect of medical card patients. The system is a high-cost system because it is protected. Extending the protection for another 12 months should definitely be the last resort.

**An Cathaoirleach:** Is there something the Senator wishes to have circulated in addition to the amendments?

**Senator Sean D. Barrett:** I was suggesting that the Milliman report be circulated to the Senators who debated this point with the Minister of State.

**Senator Martin Conway:** I second that proposal.

Amendment, by leave, withdrawn.

Section 4 agreed to.

Sections 5 to 7, inclusive, agreed to.

#### TITLE

Amendment No. 2 not moved.

Question proposed: "That the Title be the Title to the Bill."

**Senator Sean D. Barrett:** The Long Title was part of the controversy in the Supreme Court on 16 July 2008. It is going too far to say it makes provision for specific matters. That would be to accord a Long Title the unprecedented status of constituting a substantive provision. The Bill does not do what is stated in the Long Title and that is what the Chief Justice pointed out on 16 July 2008.

Question put and agreed to.



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

*Sitting suspended at 2.30 p.m. and resumed at 3.30 p.m.*

### **Criminal Law (Defence and the Dwelling) Bill 2010: Second Stage**

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

**Minister for Justice and Equality (Deputy Alan Shatter):** The Criminal Law (Defence and the Dwelling) Bill 2010 aims to bring clarity to the law on the use of force in defence of the dwelling. It reflects the special status of the home in our common law tradition and in the Constitution and strikes the correct balance between the rights of the occupier and those of an intruder.

I am sure every Member of this House deplores the actions of criminals who prey on householders, particularly the elderly and those in isolated areas. This Bill is a response to the harsh reality of crime and in particular the crime of burglary. It addresses those situations where a person in his or her home has, in an emergency, to use force themselves. It is important to note that this Bill is not the only response to burglary as our laws have many relevant provisions addressing such crime. It is a criminal offence which carries heavy penalties. A person guilty of burglary is liable to a fine or imprisonment for a term not exceeding 14 years or both. Aggravated burglary carries a possible life sentence.

The law has also been reinforced by the Criminal Justice Act 2007 which provides that a court may make a monitoring order for persons convicted of aggravated burglary. Courts may also make a protection of persons order prohibiting the offender from engaging in any behaviour that would be likely to cause the victim of the offence fear, distress or alarm or would be likely to amount to intimidation of any such person.

The first recourse of a householder faced with a burglary should be, where circumstances permit, to the Garda Síochána. The Garda is best placed to deal with violent offenders and to investigate and assist in the prosecution of offences. Better than any investigation or prosecution is, of course, the prevention of crime. The Garda Commissioner informs me that a new burglary crime prevention and reduction strategy is at an advanced stage of development. It will focus on promotion and delivery of burglary prevention advice to the community; identification and targeting of hotspots and other areas prone to, or likely to, suffer incidents of burglary; identification and targeting of burglary offenders, in particular prolific burglary offenders. The Garda “Supporting Safer Community” campaign launched in September focused on burglary prevention and reduction and a targeted Garda response to burglary with regard to locations, times, offenders and victims.

People should feel safe in their homes. No one can disagree with that proposition. Our home is where we raise our children. It is where we spend time in the intimate company of family and friends. It is where we return at the end of the day to rest. It is where we live our private lives in peace, and it is our shelter from the world. An intrusion into the home is an intrusion into that shelter, that private life, that haven for the family. It is an attack on our peace of mind that can destroy a person’s sense of personal security and cause disturbance for many years after it has occurred. That is why the law has always seen an intrusion into the home as a particularly egregious offence. This is borne out by the judgment of Mr. Justice Hardiman in the Court of Criminal Appeal in the leading case on these matters in recent years, *DPP v. Barnes*. Mr. Justice Hardiman noted:

“. . . the special protection afforded to the dwellinghouse dates back to time immemorial. It has been expressed in various ways, none perhaps so well known, even outside legal circles as that in the *Semaynes* case (1604) 5 Co. Rep. 9 la:

He quoted from that judgment the following:

That the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence as for his repose . . .”.

This is the origin of [what is known as] the “castle doctrine”, prominent especially in US law.

The special status of a dwellinghouse has always been linked to the dignity of its occupants, as in the following quotation from [the] Meads and Belts case of 1825:

“. . . the making of an attack upon the dwelling, and especially at night, the law requires as equivalent to an assault on a man’s person; for a man’s house is his castle, and therefore, in the eye of the law, it is equivalent to an assault . . .”.

Those citations, together with the others, both leading and deriving from the constitutional status of the dwellinghouse, are what lead us to conclude that the breaking into of a person’s house by a trespasser with intent to steal or commit any other form of crime is indeed, in and of itself, an act of aggression.

The constitutional provision referred to in that judgment is of course Article 40.5 which states: “The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law”. Any discussion of defence of the dwelling, therefore, connotes, to a greater or lesser extent, defence of the person.

The common law has always provided that people can use force to protect themselves, to protect others and to protect property. The statute law in this area is mainly embodied in the Non-Fatal Offences against the Person Act 1997. Among other matters, the 1997 Act addresses the rights of those who are required to use force in defence against an attack on themselves, others or on property. The Act, in a reflection of the common law tradition, permits the use of reasonable force in defence against attack. The 1997 Act is concerned with attacks irrespective of where such attacks may occur. The Bill before the House today is concerned with attacks in the dwelling and on the curtilage of the dwelling. It does not repeal the 1997 Act, rather it complements it and provides for some technical amendments to it.

The Law Reform Commission report of 2009 was a most helpful contribution to the considerable public discourse on this issue in recent years. This Bill now builds on all of that tradition and debate to clarify the law in an approach which I believe all sides of the House can support.

While respecting the basic principles of legitimate defence identified in the report of the Law Reform Commission, the Bill is structured in a different way from that proposed by the commission. The structure of the commission’s suggested Bill, which dealt with defences in criminal law generally, made it difficult to apply the relevant recommendations to a Bill dealing only with the dwelling and not dealing with general law on defences. The commission’s approach anticipated a wider codification of the criminal law and as that wider issue is still under consideration it would be inappropriate to adopt such an approach in this Bill.

I will now turn to the main provisions of the Bill. Section 1 is the standard provision containing the definitions of terms used in the Bill. Senators should note the definitions of “dwelling” and “curtilage” in subsection (1) and that subsection (2) provides that every reference to the dwelling in the Bill includes a reference to the curtilage of the dwelling. It states: “curtilage in relation to the dwelling means an area immediately surrounding or adjacent to the dwelling and which is used in conjunction with the dwelling, other than any part of that area which is a public place”.

[Deputy Alan Shatter.]

The Bill provides, in section 2(1), that it shall not be an offence for a person who is in their dwelling or a person who is a lawful occupant to use force against another person in the particular circumstances outlined in this section.

Section 2 focuses on the use of force by an occupier against an intruder entering the dwelling with criminal intent. The force used against the intruder must only be such as is reasonable in the circumstances the occupier believes them to be in order to protect himself or herself or others or property. The occupier may be mistaken as to the circumstances, but if their belief is honestly held, they will enjoy the protection of the Bill. It will be a matter for a court or a jury to decide whether the occupier's belief was honestly held, as subsection (4) provides: "It is immaterial whether a belief is justified or not if it is honestly held but in considering whether the person using the force honestly held the belief, the court or jury, as the case may be, shall have regard to the presence or absence of reasonable grounds for so believing and all other relevant circumstances".

Once the circumstances, as honestly believed by the occupier, are established, the force used in response to those circumstances must be reasonable. The force must, therefore, be objectively justified. Simply put, the circumstances are largely a matter for the subjective judgment of the occupier. The force used in response to those circumstances is a matter for the objective judgment of a jury.

Section 2(5) clarifies that: "It is immaterial whether the person using the force had a safe and practicable opportunity to retreat from the dwelling before using the force concerned".

Section 2(7) provides that the use of force shall not exclude the use of force causing death. This is a carefully thought out provision. It does not stand alone. It is in no way an encouragement or licence for unwarranted violence as it is subject to the reasonable force provisions of subsection (1). It acknowledges the reality that a householder's aim should be to protect his home and family and that he is authorised to use reasonable force to do so. Reasonable force, as we know, is that which is necessary and proportionate in the circumstances to that task of protection. What if a householder takes a stick to fend off a knife wielding burglar and what if, in the course of doing so, he injures the attacker who subsequently dies? The householder has not set out to cause death, but the force he has used was necessary and proportionate to the threat of stabbing. I do not believe anyone in the House would see the householder's action as unreasonable in the circumstances. Of direct relevance to this provision in the Bill is the right to life embodied in the Constitution. Article 40.3.1 states: "The State guarantees by its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen." Article 40.3.2 states: "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

Having considered these provisions in his judgment in the Barnes case, Mr. Justice Hardiman stated:

It seems an elementary proposition, in the light of such provisions, that a person cannot lawfully lose his life simply because he trespasses in the dwellinghouse of another with intent to steal. In as much as the State itself will not exact the forfeiture of his life for doing so, it is ridiculous to suggest that a private citizen, however outraged, may deliberately kill him simply for being a burglar.

But this is by no means the end of the matter.

Further on he stated: "The offence of burglary committed in a dwellinghouse is in every instance an act of aggression, an attack on the personal rights of the citizen as well as a public crime and is a violation of him or her".

The right to life of the intruder, therefore, needs to be balanced with the right of a householder to an inviolable dwelling and an inviolable person. This Bill strikes that balance carefully in a manner that reflects the tests outlined by our courts over the years.

When this Bill was debated in the Dail, concern was expressed that subsection (7) in some way authorised the use of lethal force in the defence of mere property as section 2(1)(b)(ii) lists the protection of property as one of the purposes for which force can be used. It is very important when reading a Bill such as this to see it in its entirety. The use of force authorised by this Bill, whether resulting in death or not, must always be in accordance with section 2(1)(b) which requires that the “force used is only such as is reasonable in the circumstances”. The force referred to in this Bill is always in the context of a person in a dwelling. The reference to protection of property, therefore, must always be viewed in the context of the dwelling and subject to the reasonableness requirement. I would like to quote yet again from the judgment in the Barnes case.

Though a dwellinghouse is property and often indeed the most valuable piece of property an individual citizen possesses, it would be quite wrong to equate it with other forms of property such as money or money’s worth or other pieces of personal property. Though these may have a sentimental as well as a cash value, and may in certain circumstances be important or even essential for the individual who owns them, a dwellinghouse is a higher level, legally and constitutionally, than other forms of property. The free and secure occupation of it is a value very deeply embedded in human kind and this free and secure occupation of a dwellinghouse, apart from being a physical necessity, is a necessity for the human dignity and development of the individual and the family.

Also of concern are the provisions of the European Convention on Human Rights, in particular Article 2 of the convention, which states in paragraph 2 that “. . . Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: a. in defence of any person from unlawful violence; . . .”. The Attorney General’s office was asked for specific advice on the compatibility of the Bill with Article 2, in light of concerns raised during the Second Stage debate in the Dáil. I am advised that the Bill is compatible with the convention. It is clear from Irish jurisprudence and the Law Reform Commission report that the test of reasonableness incorporates the concepts of necessity, imminence and proportionality. It is also clear from the case law of the European Court of Human Rights, for example in the Giuliani case, that domestic legislation is not required to use language identical to that of the convention. Rather, what is important is how domestic legislation is interpreted and applied by national courts to give effect to the principles of the convention.

Section 2(8) provides that within the meaning of this Bill, an act is criminal notwithstanding the fact that the act may be one which, if the person was charged in respect of it, he or she would be acquitted on the various grounds set out in the subsection. Subsections (10) and (11) provide for some technical definitions and clarifications necessary to the operation of the Bill.

Although the wisest course of action in some circumstances might be to retreat from the dwelling, section 3 provides that nothing in the Bill shall operate to require a person to retreat from his or her dwelling, or require a lawful occupant in a dwelling to retreat from the dwelling. Section 4 states that nothing shall operate to prejudice any defence recognised by law as a defence to a criminal charge.

Section 5 deals with civil liability and provides that a person who uses force as permitted by section 2, that is, the justifiable use of force, in the circumstances referred to in that section, shall not be liable in tort in respect of any injury, loss or damage arising from the use of such

[Deputy Alan Shatter.]

force. Section 6 amends section 18 of the Non-Fatal Offences against the Person Act 1997 to reflect changes in law on the age of criminal responsibility. Section 7 is a standard provision concerning expenses. Section 8 is a standard provision dealing with the Short Title and commencement provisions.

In conclusion, this Bill is concerned with some of our most fundamental rights; the right to life and the right to peaceful occupation of our homes. The Bill clarifies rights of householders and makes it clear that unlawful intruders can rightly expect to face reasonable defensive force.

The Bill acknowledges the special position of the dwelling in our Constitution and in our traditional understanding of the common law. It accommodates a version of the castle doctrine that has due cognisance of the constitutionally protected right to life. The Bill acknowledges practical realities by extending protection for householders to the curtilage of the dwelling. It makes it very clear that a householder is under no obligation to retreat from an attacker. It ensures that there will be no exposure to civil liability if an intruder is injured as a result of the use of reasonable defensive force. The Bill recognises the realities faced by a householder who may have to take immediate action to defend his or her home against violent attack, and provides for a common sense system to judge those actions in a manner that respects the rights of all concerned.

I commend the Bill to the House and I look forward to hearing the views of all Senators on it.

**Senator Denis O'Donovan:** I welcome the Minister to the House and would like to confirm that Fianna Fáil will be supporting the concept of this Bill. There has been much discussion and research into this Bill over many years. The previous Minister introduced legislation along these lines, while Fine Gael brought in a Private Members' Bill to the Dáil a few years ago along the same lines as what is before us today.

Historically, we can think of the Tony Martin case in England, when a burglar was shot dead. That received huge publicity nationally and internationally, and our legal system is closer to that of the UK than any other legal jurisdiction in the world, along with Commonwealth countries like Australia and Canada. We are also reminded of the Nally case in the west of Ireland, where a farmer shot an intruder who was apparently known to him and who was violent to him in the past. The Court of Criminal Appeal released that man. There has been much jurisprudence on this and presumably following the uproar in 2006, the Law Reform Commission prepared a consultation paper on the issue. In fairness, the Minister and his officials have incorporated the principles outlined in that paper.

The right of a person to defend his home and his property has evolved and developed over the last decade or so, primarily because these two cases acted as a catalyst for discussion on the issue. The Minister has outlined that our Constitution enshrines the protection of life, but it also enshrines the principle to protect one's property. There is no point in saying otherwise, but in most cases where aggravated burglary occurs, these people do not come on the property by chance. My knowledge from the legal side of things is that some of these places are staked out weeks and months in advance by criminals who have nothing good in mind.

There was a doubt in law and in our court system that somebody who tried to defend his home may have to retreat. I am glad that the provision in this Bill has cleared that up. Respecting the use of reasonable force, the Bill acknowledges that one's home is one's castle. Those rights are also enshrined in our Constitution. The notion of legitimate defence and the general rule that a person should retreat where possible is covered in the Bill.

Most people in civil society would welcome the direction of this Bill. It also sends a signal to the courts and to criminals that people can defend their properties from undue attack. There

are very few instances where somebody stumbles on a property by mistake and is met with a shotgun or a bar by somebody trying to defend his home. As I have already clearly stated, the Garda authorities know that some of these people are career criminals.

Some of them can be very vicious. Some rob to feed their drug habits.

The Bill, along with the 2007 Act, acts as a buttress to support the thrust of what the Government is trying to do. One cannot argue it is rushed because a lot of thought has gone into it. I mentioned the Law Reform Commission. There have been a number of cases. The Minister mentioned the case of Barnes in this country. There is also the well highlighted Nally case and the case involving Tony Martin in England, a neighbouring jurisdiction. Some of these cases are seven or eight years old.

In welcoming the Bill I will not add a lot more to what I have said. It is appropriate for the age in which we live. It has been well researched. Some of our householders are in a lot of difficulty for financial reasons and they cannot protect their homes and families. The Bill clearly outlines what curtilage is. It could be somebody breaking into an outside garage or trying to steal a van from a backyard. A person's home could be a caravan, mobile home or boat. Coming from a seaside area I do not know many people who live on boats, but on occasion somebody I know used a boat for many years as his home. He is entitled to protect that.

The Minister has the full support of this side of the House. The Bill should be welcomed and I am glad to be here to lend my cúpla focail in support of this important Bill.

**Senator Paul Bradford:** I will have fewer focail than the last speaker. Unlike the Minister and Senator O'Donovan I do not have a legal background and expertise. Those who have can approach Bills with a great degree of certainty and understand their definitions and limits. My comments in support of the Bill will be from a common sense perspective.

I welcome the Bill and the fact it follows a promise our party gave in advance of the last general election. It may have been Jim O'Keeffe, the previous speaker's constituency colleague, who published a Private Members' Bill some years ago. As a result of that, much other work and a number of high profile cases the Minister has introduced the Bill to the House today.

There has been a lot of debate on victims and prospective victims of crime over the past number of years. There has been a need for a certain rebalancing. There may have been populist hearsay, but it appeared for some time that all of the rights were with a criminal or a prospective criminal and victims and prospective victims appeared to have no rights whatsoever. In that regard the Bill is helpful and it is to be hoped it will send a strong signal to people who may be considering committing a crime against a household to reflect on their actions.

It is not an extreme measure, it is balanced. I am sure the Minister would agree that we do not want something akin to the situation pertaining in many other civilised countries such as the United States, where the issue of the right to bear arms and the right to use them almost at will is a mandatory requirement for somebody wishing to seek elected office or stand for the presidency. The right to bear arms can be taken to extremes but this is a very balanced response. The definitions of what is and what is not allowed, residence and curtilage is very helpful.

This week the Minister said a number of Garda stations across the country will have to be closed. It is unfair for the Government side of the House to say that but we have to discuss such issues. We have to try to ensure that the rate of burglary is kept to an absolute minimum. The Bill will probably apply more to rural and isolated than urban areas. Schemes such as community alert groups and neighbourhood watch need to be supported because they have a role to play in trying to reduce the number of crimes being committed. If we can reduce the

[Senator Paul Bradford.]

number of crimes being committed and contemplated the effect of the Bill will not be required. That is the key point.

The figures I read in the very helpful research we received from the Oireachtas Library on the number of aggravated burglaries in the country showed that while the problem is under control the numbers are too high. Too many crimes are being committed. Prevention is always better than cure. I am not talking about preventing someone from shooting a man who is about to rob a house. Prevention starts at an earlier levels in terms of trying to insure people do not presume a life of crime. Active community gardaí who liaise with citizens and neighbourhood groups will help to keep crime numbers as low as possible.

There was a demand from the public when there were a number of high-profile cases, including the gentleman in Mayo whose case became national front page news, that we would respond to this issue. The Minister is responding in a fair and balanced fashion. The Bill does not give a householder or citizen an absolute right to carry a machine gun and mow down anybody he or she feels is a threat to his or her property. It is putting in place legislation to provide a defence in the few instances — it is to be hoped they remain few — where a householder feels obliged to take very strong action against an intruder, be it male or female, who is robbing his or her house, threatening to do so or attacks his or her property.

The Bill is as good as it can ever be. There will always be anomalies which need to be examined and hard law cases before the courts. It is a reasonable response to problems brought to the attention of the Minister's predecessors over the past decade or so. I am sure it will be passed unanimously by the House. If one stopped a man or a woman on the street and did an opinion poll on common sense it would be the view of the public that householders must have a certain degree of right to protect themselves and their property, and the Bill is responding to that demand.

**Senator David Cullinane:** I welcome the Minister. We seem to have a mania in this country for introducing criminal legislation which is often draconian and seldom, if ever, used. It is usually a response to a public outcry and rarely is a comprehensive solution sought to crime and its causes. I am not making this point to impugn this Bill. While I have concerns about aspects of the legislation, in respect of which I have tabled several amendments which we will deal with on Committee Stage, I intend to support it.

However, there is a broader issue here in that we seem to fixate on introducing legislation rather than finding effective solutions to crime. The Garda is not seeking more legislation. Gardaí are alarmed at the closure of small Garda stations and the merger of others. They are concerned at the shortfall in numbers on account of the recruitment freeze. They are dissatisfied with the amount of resources available to them generally. They want stations to be maintained to an adequate level. They are seeking more gardaí and more resources to enable them to fulfil their role of protecting citizens.

What I have not heard the Garda asking for is additional legislation. This is because the existing powers and provisions in criminal law are sufficient. In recent years we have seen a reduction in the numbers of gardaí on the street, with the recruitment freeze being continued by this Government. We must focus on tackling the resource restrictions which serve to prevent the Garda from performing its function of preventing crime. Government measures such as the pension levy, recruitment embargo and the reversal of the civilianisation programme have all contributed to reducing the number of gardaí on the street, which affects the force's ability to prevent crime and protect people. Introducing legislation and limiting Garda numbers is a perverse approach. We must offer the Garda more support if we are serious about tackling

crime. In particular, we must ensure that gardaí in remote rural areas are well supported and their stations maintained if we want to protect remote home owners who feel at risk.

This Bill does not alter in any substantial way the law as it stands on the issue of self-defence in the context of defence of one's dwelling. It is largely concerned with placing on a statutory footing the existing common law, as enunciated by the Court of Criminal Appeal in the case of *DPP v. Barnes*, to which the Minister referred in his opening statement. The Bill was initially introduced some years ago in the context of public controversy following the Padraig Nally case. Its key focus is defining the level of force a home owner may justifiably use in defence of his or her property and whether there is an obligation on a home owner to make use of an opportunity to retreat. Furthermore, the Bill provides a definition of "dwelling" as well as dealing with the issue of civil liability.

On the issue of the justifiable use of force, the Bill provides that the use of force against a trespasser will be lawful where the occupier honestly believes the trespasser is on the property to commit a crime and that force is necessary in order to protect the occupier, another person or the property. This is similar to what is stated in the Non-Fatal Offences against the State Act 1997. I am concerned at the possibility of lethal force being seen as a proportionate response and the context in which that would apply.

It is worth noting the criticism the Law Reform Commission levelled at the existing standard and, by extension, the new Bill in its 2006 paper. In assessing the justifiable use of force, the commission found that the existing standard was too vague and required clarification. It proposed a four-part test focusing on the following: threshold — whether the threat was sufficient to warrant a response; imminence — whether the threat was close and impending; necessity — whether force was necessary to protect persons or property; and proportionality — whether the force used was proportionate to the threat. This test has not been adopted in the current Bill. As such, I intend to table an amendment to clarify the issue of lethal force and to ensure the test as set in the legislation is adequate.

Section 2(1)(b) of the Bill states that it is legal for a home owner to use force to "protect his or her property or the property of another person from appropriation, destruction or damage caused by a criminal act". Section 2(7) states, "The use of force shall not exclude the use of force causing death". It is clear, therefore, that the Bill allows for the use of lethal force in the defence of private property without the accompanying threat to persons within that property. If it is the Minister's intention to allow the use of lethal force only in defence of private property where that defence forms part of a defence of persons within it, that should be clearly stated in the Bill. I intend to table an amendment to such effect on Committee Stage.

I will also table an amendment regarding the test on the use of force. The two-prong test comprises a subjective element, that is, relating to the perception of the person concerned, and an objective test, that is, what a reasonable person might perceive as justifiable. I am not convinced that the objective test set out in the Bill is sufficiently robust. The lack of reference to necessity and imminence is my key concern in this regard.

On the issue of obligation to retreat, the Bill reaffirms the finding of the court in *DPP v. Barnes* that there is no obligation on the householder to flee or retreat from his or her home and, therefore, a person should not be punished in law for standing his or her ground. It effectively restates common law. I will return to this on Committee Stage.

On the broad issue of crime prevention, we are sadly mistaken if we consider that legislation such as this can solve the crime problems in this country. What is needed, and what my party has called for, is an expedited and far-reaching process of civilianisation to free up fully trained gardaí from administrative and other duties in order to fight crime. Far too many gardaí are carrying out administration work. Action in this regard was promised by the Government



[Senator David Cullinane.]

parties when they were in opposition and I hope they will follow through on their commitment. There must be increased funding for Garda drug units, with enhanced community input into their use and priorities. As a member of the south-east drugs taskforce, I saw the problems caused by the lack of specialised gardaí in the area, a problem I am sure is prevalent throughout the country. We must have independent oversight of informer handling practices in order to prevent situations developing where individuals with a relationship with gardaí are allowed to amass a criminal empire. There must be enhanced Garda visibility and activity, and the use of sniffer dogs, in areas experiencing chronic drug problems.

I have often heard the Minister say that legislation is not the answer to everything. The vast majority of gardaí are not seeking new legislation but additional resources. Introducing legislation such as this while at the same time shutting down rural Garda stations, thus failing to protect people living in rural areas, is a perverse way of dealing with a serious problem in communities throughout the country.

**Senator Ivana Bacik:** I welcome the Minister to the House for the debate on this Bill. It has been a long time in the genesis, as other speakers observed, and it clearly enjoys cross-party support. I echo the words of the Minister and others regarding the terrible fear of burglary endured by many home owners. I have spoken to elderly neighbours in south inner-city Dublin who are terrorised by that fear. Even when they themselves have not been burgled in the past, reports of break-ins in the area are a cause of dread to them. This is a serious issue for many people, particularly elderly people living alone, in both urban and rural areas throughout the State.

However, as somebody who has practised in criminal defence for some years, I do not necessarily agree with Senator Bradford's view that rights in criminal law have always been balanced in favour of the suspect. I would contend that our criminal justice system is reasonably fair overall. In recent years in particular there has been a much greater concern for and recognition of the rights of the victim, which is welcome.

The Bill originated in Private Members' legislation and was finally put to the Dáil in October 2010 before being restored in March this year. It follows on from work by the Law Reform Commission in its consultation paper of November 2006 and its report of 2009. The 2006 consultation paper on legitimate defences was produced in the wake of the Nally case, which have given rise to a great deal of public concern.

I have read and rehearsed this case many times with students and it has always struck me as very sad case because of the human story behind it. This was the case of the Mayo farmer to which other speakers have referred. He shot an individual who was in the course of burgling his property. It painted a very sad picture of rural isolation and of the fear of burglary and of the response to same. It was also a case which had a very different outcome, even in the initial trial before the Central Criminal Court, to the outcome of the Tony Martin case to which others have referred.

It points out the difference between our law and the divergence in our legal system from English law. Senator O'Donovan has rightly referred to the very close relationship between the two but in the Dwyer case in the 1970s, our Supreme Court had departed significantly from English law on self-defence in finding that an accused person who killed in self-defence but using more than reasonable force would not be guilty of murder if in fact he or she honestly believed the force was no more than necessary in the circumstances. Such a person could only be convicted of manslaughter. Whereas, in England, Tony Martin, in relatively similar circumstances, was guilty of murder, Pádraig Nally in the first trial was found guilty of manslaughter and of course, subsequently acquitted following the judgment of the Court of Crimi-

nal Appeal. These cases point out the difference and any changes to our law on legitimate defence have to be read in light of the Dwyer case.

The Law Reform Commission pointed out in 2006 that the matter of legitimate defence in the dwelling was something that was still uncertain in Irish law. It has been accepted that lethal defensive force may not be used to defend personal property but the commission says this matter needs to be clarified. This paper was produced before the Barnes judgment to which the Minister and others have referred, the judgment of the Court of Criminal Appeal in the Anthony Barnes case which was a different case concerning a killing in the course of a burglary by the person engaged in carrying out the burglary in which he had killed an elderly householder, Mr. Richard Forrestal. This was another very tragic case. In the Barnes case, the law was very clearly stated by Mr. Justice Hardiman on the use of defence in the dwelling, that a burglar does not have the same rights as a householder. If a burglar kills, he or she is always guilty of manslaughter at the very least if he or she kills in the course of a burglary whereas a householder may kill a burglar lawfully in self-defence and the issue then is the level of force used.

We debated this also in the Joint Committee on Justice, Equality, Defence and Women's Rights in January 2010 so the matters have been very well rehearsed over a number of years. At that meeting we heard from a number of different groups including the Irish Council for Civil Liberties and Irish Rural Link, who made presentations which, interestingly, had a very similar focus, even though these groups do not always see eye to eye. There was a general support for legislation of this sort, which was very welcome. The common theme was that legislation is only part of the way in which we need to deal with isolated householders concerned about limits of their protection in law. Other colleagues, including notably, Senator Bradford, have made reference to the issues around rural policing and this is an issue which will naturally concern people. The closure of rural Garda stations and the curtailment of opening hours will have a bearing on people's perception of their own safety and security.

If I may diverge for a moment and speak about the budget, since others have spoken about it, I was concerned to note the cut to the budget of the National Women's Council of 35% and I suggest that is an unfortunate and a disproportionate cut for an organisation that has done very well in securing philanthropic funding for projects but which will now see its core funding significantly cut. I suggest if this could be phased over a period of years rather than all at once.

Senator Cullinane has referred also to the issue of the non-legislative measures to deal with issues around isolation and insecurity and burglary. I believe we all are in agreement, as is the ICCL and the Irish Rural Link. Clearly, that policing is a key matter when dealing with burglary and it is not just a matter of legislation. It is very welcome to hear the Minister say there will be a new burglary crime prevention and reduction strategy and it is very welcome to hear of the Garda initiatives and we are all aware of Neighbourhood Watch and the other initiatives already in operation around the country to try to generate a better sense of security in communities. This must all go into the mix.

I note the momentum behind this legislation and behind the creation of greater clarity in the law on the use of legitimate force in the dwelling. We can debate Senator Cullinane's amendments on Committee Stage but it is clear that this is not just about defence of property but also about defence of the dwelling and, as Judge Hardiman said in the Barnes case in his usual eloquent way, this is a very different type of property when discussing the use of force within the dwelling to defend oneself. It is also important to set out in statute the fact there is no obligation to retreat. While many of the provisions in the Bill are not new in the sense they are already in the Barnes judgment, the law has been much more clearly stated in the Barnes judgment than it was ever set out previously. Yet, there is still a need for greater clarity which

[Senator Ivana Bacik.]

is the reason this Bill is so welcome as regards the household, the curtilage, the definition of “dwelling” and the statement that there is no obligation to retreat.

Two or three other points might be teased out at this stage which have been discussed on Committee Stage in the Dáil. First is how this legislation sits with the Dwyer decision and how it sits with section 18 of the 1997 Act, the current statutory statement of the use of legitimate force defence. How, in practice, will this work if a householder is charged with unlawful killing within the dwelling? Presumably, this legislation will provide a defence that supersedes the section 18 defence. We all hope there will not be many cases in which this Act will become relevant. The Minister has given an example of a householder who takes a stick to fend off a knife-wielding burglar but when discussing the technical issues of the use of this defence, usually the examples we would give are the examples of the householder who uses a gun to fend off a burglar with a knife or a stick and this is where the difficult questions of proportionality and judgement arise.

We have found in practice that juries are very reasonable and rational in applying tests that have this dual subjective-objective element and we are now well used to it as it is in the 1997 Act and it also arose in the Dwyer decision. Juries will have no difficulty in applying the test set out here in judging the difficult questions around the use of force and the level of force used in response to an attack.

We welcome the Bill and we accept, as does everyone, that legislation alone is not a solution to the difficulties surrounding burglary and the real fears of people but this is welcome legislation in that it clarifies existing legal provisions around the role of a householder who uses force in defence of his or her dwellinghouse.

**Acting Chairman (Senator Paul Coghlan):** Is Senator Norris offering?

**Senator David Norris:** I may speak later. I was attending a briefing so I do not think I am completely up to speed on the matter. I would prefer to listen to my colleagues and read the Minister’s speech.

**Senator Michael Mullins:** We would all be much happier if it was not necessary to discuss this legislation. I welcome the Minister and to compliment him on bringing forward very sensible legislation. The Bill defines the terms, “curtilage” and “dwelling”. As the Minister said, people have to be free to regard their home as a place of safety and security, where they can rear their family in peace, where they can relax and rest in the evenings and where their possessions are safe and secure. The law has to support the right of the person to protect his or her home.

I am pleased the Minister has dealt with the issue of civil liability. If an intruder enters a home and in the course of committing a crime receives an injury, the homeowner is liable and may have to pay compensation to the intruder. That is an unbelievable position. I disagree to some extent with Senator Bacik. I am more inclined to agree with my colleague, Senator Bradford, that there is a perception that the law is tilted in favour of the criminal and against the law-abiding home owner. The legislation will tilt the balance back in favour of the homeowner who wants to live in peace and safety.

The issue of reasonable force will exercise the minds of many as it is a difficult concept to define, for example, in a case where an intruder is carrying a weapon or implement or there is more than one intruder and the occupant of the house fears for his or her life. Unfortunately, my home was burgled on this day four years ago. My wife arrived home only minutes after it had been burgled, pretty severely, and I am grateful she was delayed *en route*. I do not know what would have happened if she had arrived home in the course of the burglary. When one

experiences an incident such as this it colours one's judgment. I do not know what I would have done during the burglary and gained access to a weapon. Would I have exercised reasonable force or strayed beyond what is deemed to be reasonable? One does not know the answer to that question until one has been in that specific situation.

Criminals must face deterrents and we must ensure elderly people, whether living in a rural area or city, feel safe in their homes. The law must be seen to be on their side and serious crime must be tackled. A new band of ruthless criminals is at work. I refer to individuals who are involved in drug dealing, robbery to feed a drug habit and all sorts of scams to rob and con elderly people.

I agree with colleagues who referred to the need for the Garda to be properly resourced. I am not especially worried where gardaí are located or how many Garda stations we have, provided sufficient numbers of them are available and they are in a position to mount adequate patrols. It is irrelevant whether they come from a centralised location or a local Garda station. What is important is that we have an adequate number of boots on the street and gardaí on the beat in patrol vehicles.

Criminals and thugs must be taken out of circulation. The House discussed prison places and the availability of prison space. The Minister is particularly anxious that people who are convicted of relatively minor crimes are directed towards community service, which is an objective I strongly support. Prison spaces must be available for hardened criminals and people who carry out acts of violence against elderly and defenceless people in their homes.

I commend the excellent work being done by community alert and community watch organisations and committees. My home town of Ballinasloe has a number of highly active community watch groups which receive excellent back-up and support from local gardaí. This approach should be extended and continued and greater resources directed towards this area. There is nothing as effective in tackling crime in the community than having as many people as possible watching out for unusual activity and suspicious movements.

On the question as to whether the Minister should consider increasing resources to the Garda Reserve, there are innovative ways of adding to the reserve numbers. Many of the schemes aimed at moving people from the live register into training and so forth could be developed to help in the fight against crime.

I strongly support the objective the Minister is setting out to achieve. The Bill has been a long time in gestation. As previous speakers noted, there have been many high profile cases which demonstrate the need to implement this sensible legislation. In welcoming the Bill I am pleased that, thus far, all speakers and parties have indicated their support for it. We must also keep an eye on resources and support all agencies that can assist in the fight against crime in order that people living in rural areas and cities such as Dublin and Galway feel safer in their homes. If we cannot protect the elderly and ensure the home is the safest place in our community, we do not deserve the title of civilised society.

I compliment the Minister and his predecessors on the work they have done to bring the Bill before the House. I also commend the Law Reform Commission on its efforts in this regard and the Member who introduced a Private Members' Bill on this issue in the other House some years ago. I am pleased to support the Bill.

**Senator David Norris:** I welcome the Minister to the House. I regret I was not present to hear the speeches of all my colleagues. I was attending another briefing which was significant politically. I would have especially liked to have heard what Senator Bacik had to say given that the previous speaker, who is also on the Government side, disagreed with her.

**Senator Ivana Bacik:** Only in a small way.

**Senator David Norris:** Yes, it was a small point but I imagine I would have found myself in more agreement with her. I have had the opportunity to read the Minister's speech and I note there is a great deal of sense in it. There is clearly also a public mood that people are entitled to be allowed to defend themselves in their own home. The Minister's speech is balanced as he indicates that people can use force to protect themselves in their homes, provided they do so in a reasonable manner. I wonder how the word "reasonable" is defined or if there is a definition. I presume the matter would have to be determined by a court.

It is necessary to have balance because, as I am sure the Minister will recall, a number of recent cases created a certain amount of controversy. In one such case one of the principal participants was a member of the travelling community. Without in any sense going into the rights or wrongs of the particular case — there is always a balance to be struck — it was used for very unpleasant attacks on the entire travelling community, which was wrong. I do not believe for one second that the Minister would in any sense stand over that kind of prejudice.

As the Minister noted, the legislation addresses an emergency. If one is in one's home and an attempt is made to intrude violently, that is an emergency. Senator Mullins pointed out that today is the anniversary of a burglary on his home, which is, I suppose, serendipitous. Like many people, I have had exactly the same experience. I am not sure I behaved legally on one occasion when I found somebody in my house and chased him out to the back garden. Enraged as I was, I acquired additional strength and, picking up a stone dial I told the burglar, whom I had cornered in the garden, that I would get the police, to which he replied, "Get them, for God's sake". He was an unreliable burglar, however, and he nipped over the wall while I was telephoning the police. I trapped him next door, however, and the garda who arrived told me I was very brave but completely mad because the man in question was a well known and extremely violent criminal who had tried to burn down Store Street Garda station the previous year. He was also a heroin addict with full-blown AIDS and, according to the garda, I was very lucky he did not have a syringe with him. It merely shows that the ordinary average citizen — I believe, despite evidence to the contrary, that I qualify as such——

**Senator Ivana Bacik:** Senator Norris is more than that.

**Senator David Norris:** ——can be outraged by this kind of intrusion, in particular, the perusal of personal material. He was going through my wallet and was fingering a picture of my aunt to whom I was devoted. This incensed me completely.

The Minister stated the first recourse should be to the Garda Síochána. That is the ideal situation, but there is the reduction in Garda numbers and the closure of police stations. My local station, Fitzgibbon Street, has been closed recently. It was done initially, we were told, for purposes of redecoration, but that is complete rubbish. We now know that it has simply been closed.

Within the past week there was an attack on my house. I believe it was inspired by the fact that extremely unpleasant and obnoxious leaflets were distributed around the area. I will not even go into the nature of the leaflets — they were too revolting. There was an attempt made to kick in my front door at approximately 9.30 p.m. or 10 o'clock. I rang Fitzgibbon Street and got no reply. I rang Mountjoy Garda station immediately and I have to say they were around straightaway. I went out armed with a well-crafted 19th century shillelagh, which — let nobody think that this is the kind of thing one buys in a souvenir shop — is, indeed, a lethal weapon and inspires fear. It has worked for me on similar occasions in the past.

I understand thoroughly what people feel about the defence of their home and the entitlement to defend it and to protect themselves in anticipation of the fact that the person who has violently or nefariously entered their home may be armed with something that could do them considerable damage or may be stronger, or there may be vulnerable persons, including spouses or children, in the house who may be held hostage, etc. There is a natural human instinct to support this Bill but, as I stated, a balance must be struck.

The Minister stated our home is where we raise our children. That is so for some, but that is not a definition of a home. I certainly am not raising any children, as far as I am aware, in my home but it does not mean that it is not my home. It is my home and I feel just as proprietorial about it as if I did have the pleasure, or difficulty, whichever it is, of rearing children.

However, the Minister is quite correct where he states that it is where we spend time in the intimate company of family and friends and where we live our private lives in peace, and we should be allowed to do that. The Constitution, in fact, guarantees us this right. Anything that reinforces that constitutional guarantee and protection is significant.

Reference was made to the decision in the DPP v. Barnes. An Englishman's home is his castle was, I think, the original phrase James Joyce transmuted in *Finnegan's Wake* into "the Irishman's home is his coffin". Presumably, this legislation is intended to ensure that in as far as possible it does not become a coffin and that somebody attacked in his or her home should not be the recipient of unlimited violence.

The approach in the United States is extreme. Anybody who has visited Los Angeles, as I have on a number of occasions as it is a city I rather like, will have been intimidated by the notices on so many front lawns that the property is subject to armed protection and intruders may be shot on sight. Personally, I think that is going rather too far. I assume that is the kind of caveat that Senator Bacik has addressed.

It is also useful that the Bill contains definitions of "curtilage" so that we get the limitations under which a certain reasonable and legitimate degree of force may be used to repel attack.

Also, the Minister, in defining home on the question of property, makes a good point, that it is not quite the same as jewellery or even treasured memorabilia. There is something that, universally, through cultures, has been regarded as sacred about the home. It is, of course, irritating to lose possessions, but the dwelling house is, in fact, much more than a property. It is something to which people have very considerable attachment and in which they should, indeed, be allowed to feel safe.

Whereas, as I stated, I have read the Minister's speech with great interest, I regret that I was not in a position to hear all the arguments of my colleagues because I was detained at another meeting. I look forward to the future discussion of the Bill and to see whether amendments tabled.

On one of the new aspects on which I am prepared to be corrected by my various legal colleagues, including the Minister, there was previously a requirement that one should be shown to have retreated and have shown oneself to be, if not exactly acquiescent, not behaving inappropriately and that one was giving the perpetrator some kind of reasonable chance. That is a sophisticated argument that needs to be looked at and I welcome the fact that, in section 3, the obligation to retreat from the dwelling, which, as I understand it, previously existed in law, has now been nullified by the Bill. There should be no such requirement on somebody who is living in their own home. I do not see why they should be forced to retreat by law. If this Bill successfully addresses that issue, then it will, indeed, have been a good day's work.

**Senator Terry Brennan:** I, too, welcome the Minister to the House.

[Senator Terry Brennan.]

I believe, and my view is that a large percentage of the wider population also believes, if we were to hold a referendum, that the law of this country favours the criminal and the persistent burglar who has burgled 20, 30 or 40 times and is caught on the 45th occasion. That is the law as it stands.

Not long ago I spoke to a young man who was attacked on O'Connell Street in Dublin — the capital city. At 9 p.m., he and his girlfriend were standing, waiting for a bus outside Clery's on O'Connell Street to go home to his apartment. He saw five or six guys coming up the street and passed no heed to them whatsoever. He and his girlfriend, and three or four others who were also waiting for the bus, were knocked to the ground. He gathered himself up, looked around him and counted to ten. There was no gun or knife. He told me that within ten seconds, if one stands up to them, a gun or a knife will appear. This young man did not care whether 25 of them attacked them. It is a good story, but my point is that from 5 o'clock that same Friday evening, those same five guys had attacked different individuals in the centre of the city.

The man involved was due to emigrate to the United States two or three days later. He saw the gardaí, who came fairly quickly. He did not know what to do — his girlfriend was crying and he was half-crying. He was worried that he was not going to be allowed to go to the United States, but gardaí had been looking for these guys since 5 o'clock and they did not get them. They told him to hop on the next bus. They did not even take his name. It is a success story where common sense was used, but I often wonder what would have been the position if he had used unreasonable force. That is one of the issues I have. What and when does one use reasonable force? If an individual breaks into one's home and one catches him leaving the sitting-room with one's television, does one open the front door, let him go and then ring the Garda? Alternatively, does one apprehend him in one's home. The thinking is so vague. What does one do in the circumstances? I know what I would do. If I did so, I would have to justify my use of reasonable force to the courts. If a burglar approached one with a gun and he accidentally shot himself as one tried to take it off him, who would be to blame? The home owner would have to go through the court system to demonstrate that he used reasonable force.

As with previous speakers, I commend those involved with Community Alert on what they have been doing. My area is to lose a Garda station and patrol car. Any time I stay in Dublin, my wife stays with my daughter because she is afraid in her own home. There is, therefore, something radically wrong.

Somebody mentioned the stalking of locations by locals to facilitate others in the commission of crimes. There is no doubt this is happening. The keys of my car were stolen approximately three months ago. I was lucky enough to have my mobile phone number written on them. I received a telephone call at 8 a.m. on a Monday and noted the caller was trying to find out my identity. I recognised the caller's voice when I succeeded in talking to him. When I put it to him that he had rung me at 8.10 a.m., he denied it. He was trying to find out who owned the car keys and the house keys. Six burglaries took place within half a mile of the home of the individual. This was too much of a coincidence. It will take a lot to prove the man had a part to play. If he did not carry out the burglaries, he directed others to do so. Locals tell others when certain individuals are working, away overnight, or at church on Sunday. It is local people who are encouraging these burglaries and robberies.

This Bill is a step in the right direction. Perhaps it is not stiff enough for a fellow such as myself who has suffered from burglaries and attacks.

**Senator Martin Conway:** I welcome this Bill. Part of me would say it does not go far enough. The legislation is progressive. A person's home is effectively his palace, as Senator Norris

indicated. One's home is one's sanctuary and where one ought to feel safe. It is where the State should ensure one feels safe.

Senator Brennan stated his wife stays with his daughter when he is in Dublin to be in the Seanad. I have a similar experience. My family owns a cash business and my wife does not stay at home when I am in the Seanad for fear of burglary. Although we have a very elaborate security system, probably as elaborate as they come, there is still fear because of what has happened in this country. In the past, if one protected one's home, one was not safe from prosecution.

As a new, competent and capable Minister — probably one of the best we will have — Deputy Shatter needs to re-examine the concept of community policing. He needs to incentivise members of An Garda to live within the areas in which they work. If this means a financial incentive, so be it. Some 20, 30 or 40 years ago, gardaí who lived within the community were able to gather intelligence much more easily than they could have done had they been working away from where they lived. The Cathaoirleach, as a rural Senator like myself, will be well aware of this. Gardaí were involved in the community and built up the trust and respect thereof. They established a rapport with the community, public representatives and businessmen. They knew the good and the bad.

Over the past ten years, 15 superintendents have been stationed where I come from in County Clare. One lasted three weeks and was then moved on. Another lasted approximately eight weeks and was then transferred. Another was promoted to a job in Dublin after approximately four months. There was absolutely no continuity. Over the course of approximately two years, there were six superintendents in the district of Ennistymon. As far as I am concerned, this does not represent good policing, be it community policing or otherwise. It demonstrates a lack of leadership and it is demoralising for the gardaí based in the district. It is totally inappropriate if there is to be adequate leadership.

The Minister needs to re-examine the concepts of community policing and policing within communities. Of the approximately 30 gardaí in my local station, only two are living in the community. The rest are living outside it, and that is simply not good enough. The best way to deal with crime is to have gardaí working in the area in which they live.

I am glad the Bill is receiving unanimous support. While there are always provisions that we would like to see improved, the Bill is certainly a positive step. People should feel safe in their homes. If there is an intrusion into one's personal space, one needs to be able to defend it with reasonable force. This is not too much to ask in a civilised democratic society.

The Minister has introduced this Bill within nine months of entering Government. It shows the type of Ministry he is leading. It ought to be welcomed. I look forward to what the Minister has to say about community policing.

**Senator Maurice Cummins:** I commend the Minister on bringing this legislation before us. As he stated, the Law Reform Commission's report of 2009 was certainly a most helpful paper in addressing the circumstances that arise. The violation of one's home is a very traumatic event, irrespective of whether it is the home of an able-bodied person or an elderly person. People never forget it if their home is broken into.

I am glad this legislation is before us because it clarifies and updates definitions such as that of "curtilage". It clarifies the position on the ludicrous circumstances to the effect that, if a burglar got injured while burgling one's house, he could claim against one. I am glad the provision in this regard is to be clarified and amended.

Regarding the concept of retreating, if somebody broke into my house, retreating would be the last thing on my mind. Others, however, might not think similarly.



[Senator Maurice Cummins.]

It is the last thing I would have on my mind but others would not be of the same opinion. I am glad this has been clarified and updated by the Minister. In the best traditions of my party over the years, I am a strong advocate of law and order. This Bill is absolutely necessary to clarify the situation because the fear exists not only in rural Ireland, which was mentioned by several speakers in the context of isolation, but in the heart of all our cities. Elderly people have also been murdered in Waterford. The safety of one's home should be of paramount importance to all law makers. I welcome this Bill and acknowledge the support shown to it by all sides of the House. We must be at one in dealing with burglars in this regard.

5 o'clock

Debate adjourned.

### **Business of Seanad**

**Senator Maurice Cummins:** I propose to amend the Order of Business. I move:

That on conclusion of Second Stage the Criminal Law (Defence of the Dwelling) Bill 2011, the Seanad will immediately begin Committee Stage of the Local Government (Household Charge) Bill 2011, to conclude no later than 7.45 p.m.

Question put and agreed to.

### **Criminal Law (Defence and the Dwelling) Bill 2010: Second Stage (Resumed)**

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

**Minister for Justice and Equality (Deputy Alan Shatter):** I thank everyone who contributed to the debate. I thank Members of the Seanad for the support they have given to the Bill. It is an important measure, which has had a long gestation period. Colleagues from my party produced two Private Members' Bills to address the issue earlier this decade and, as was rightly noted by Senator O'Donovan, we then had the Bill produced by a former Minister for Justice, Equality and Law Reform. I am pleased that we are getting to a point where there is a reasonable possibility that the Bill will be enacted before Christmas.

It is a particularly important measure because there has been some uncertainty around this area of the law. It has given rise to court cases in this jurisdiction, as has been mentioned, and our neighbouring jurisdiction. It is important that the exact position with regard to the law is clearly set out and that the rights of a householder when faced with an attack by an intruder in the home are clearly understood.

The fact that the Bill deals with this issue only and no others is a recognition of the importance of the unique status of the dwelling house, as enshrined in the Constitution, but also the unique status of a home and a dwelling house in the minds of all of us who are fortunate enough to have a home. People want to feel safe and secure in their homes and they do not want to feel they are under threat. If they wake up late at night to find a burglar in the home, they want to feel they can take reasonable steps to defend themselves. There are very few people who have not had that experience. I had that experience in my home many years ago when my son was very young. I think it was my wife's scream that terrorised the burglar, who was about to climb to the top of the stairs. He was so scared by my wife's reaction that he ran out the door before I could do anything. Too many people have experienced this. If the message goes out to those who want to trespass into other's homes and cause fear that people are entitled to use reasonable force, it might act as a deterrent to some.

As Minister for Justice and Equality, there is a clear point to be made. I listened to certain Senators who were clear about how they might react should they find an intruder in their homes. Senator Norris never ceases to be a cause of interest. We now know he has taken the guise of a “have a go Joe” on a number of occasions when people have attempted to burglarise his home. There is a reality, of course, when burglaries take place. Many of the people who burglarise enter the homes of people who are a great deal older and less agile than they and, as Minister, I do not want to encourage people to put themselves in harm’s way. It is absolutely right that people should not be required to retreat from their homes. People should be entitled to use reasonable force in the context of the circumstances as they perceive them. Nevertheless, wisdom dictates that if a burglar is in one’s home, one does not unnecessarily engage in confrontation. On some occasions one wisely retreats and telephones the Garda Síochána at the earliest opportunity. That is a safe piece of advice for many people.

Senators raised a number of issues in regard to the legislation. I want to touch on some of these issues, although we will perhaps deal with them in more detail on Committee Stage. Senators Cullinane and Brennan raised issues pertaining to the concept of reasonableness and what it means. I think reasonableness is a fairly well known and understood concept in legislative interpretations. I remind Senators that the test of reasonableness incorporates elements of necessity, imminence and proportionality, while also allowing for a rounded consideration of the facts in each case. Ultimately, in the circumstances encompassed by this Bill, it will be a matter for a court or jury to decide on a case by case basis should the issue arise. It is a question of how an individual perceives the circumstances as they arise when a burglar is in his or her home based on the level of force required according to the imminence of the threat, the necessity to resort to force and the proportionality of the force used. Each case will be judged on its individual circumstances should a prosecution arise in the context of the actions of the victim as opposed to the burglar. We must remember those who engage in burglary commit an unlawful act that warrants a prosecution. They are intruding on other people’s privacy and are posing a threat to them in their homes. They should be aware of the fact that they may face consequences should they enter an individual’s home. I am sure we will tease out further aspects of the matter on Committee Stage.

Senator Cullinane stated that the Bill is not a solution to all issues of criminality nor is it a solution to burglary. Nobody is suggesting it offers such a solution. A broad range of steps need to be taken in the area of crime prevention, some of which are under way, to ensure people’s homes are not burglarised. A variety of issues arise in the context of the type of people who engage in burglaries. All of us who view criminal statistics will be aware that a substantial number of individuals in our prisons come from deprived backgrounds. There are many people from deprived backgrounds who do not engage in criminality or burglarise homes. Some people simply choose burglary as a professional occupation and a source of income. They act in a considered and pragmatic way with no thought for the impact their conduct will have on individuals. I already outlined some of the actions being pursued by the Garda to target those who engage in burglaries, communities that are vulnerable to burglaries and times of the day and night when burglaries are likely to occur. The statistics indicate that the Garda has been successful in this approach during the course of the year.

Senator Cullinane pointed out that we need more gardaí. It is always refreshing when somebody from Sinn Féin speaks out to call for more gardaí and expresses support for the force. It is an important indicator of how we have developed politically on this island. I welcome that; I do not want Senator Cullinane to view the remark as sarcastic. There was a time when Sinn Féin appeared to be a genetic opposition to anything relating to the Garda Síochána, but the world has changed and it is a very good thing.

[Deputy Alan Shatter.]

In the context of Garda numbers, however, to use the refrain I have had to repeat on a variety of occasions since my appointment as Minister, the numbers in the Garda will decline. There is an obligation to meet our financial commitments under the EU-IMF agreement. A plan has been set out for a reduction in Garda numbers over a period of years and that remains the position. There will be a reduction in the number of gardaí through natural retirements. The objective of the EU-IMF agreement and the plan to implement it was set by the previous Government. It provided that Garda numbers would be reduced to 13,500 by 31 December this year. When that agreement was signed we had approximately 14,500 gardaí. It might be of interest to Senators that the numbers will certainly not go down to 13,500 this year. On 31 October last, the total personnel strength of the force was 14,099.

The issue of community gardaí is close to the hearts of many Senators and express reference was made to it during the debate by one of my colleagues in the House. There are 1,128 community gardaí at present, which is more than 8% of the force. The number has increased by 689 from the end of 2005, when there was a total of 439 community gardaí. Of course, all gardaí have a role to play in community policing. The Garda Síochána Inspectorate in its third report expressed the view that community policing is a fundamental policing philosophy that is based on strong foundations in Ireland.

I agree that, where possible, it is desirable that gardaí live within the communities they are policing. However, we cannot compel members of the Garda to live within particular communities and, unfortunately, in the current financial situation we cannot provide new incentives for them to do so. Certainly, there is a substantial benefit in gardaí knowing their communities, participating in community events, living within their communities and, indeed, having information available to them about communities. The Garda Síochána national model of community policing is about renewing, reinvigorating and restructuring the community policing function within the Garda to deliver a number of objectives, namely, a consistent national structure to the community policing function; more co-ordinated and efficient Garda service to the community; and the spread of good practice and quality service in community policing on a national basis. This is something I will encourage, as Minister. These are essentially operational matters for the Garda Commissioner but they are matters of considerable importance.

Reference was made to the closing of Garda stations. There is an extraordinary number of Garda stations in this country. Before we announced closures, none of which has yet been implemented, there were 703 Garda stations. At the height of the Troubles in Northern Ireland there were 140 police stations there, if memory serves. Today it has 83 police stations, whereas we have 703. Northern Ireland is now reviewing its policing structure with the possibility of eliminating at least another 30 police stations. We have too many Garda stations. They are there for historical reasons. They have been in place since before all the modern developments in the areas of transport, technology and the new systems that are available, such as PULSE, which provide substantial assistance to gardaí in carrying out their duties.

My concern is to have the maximum number of gardaí available for operational duty. We must maximise that number as the numbers of gardaí reduce, as unfortunately they must in the coming years. What we do not need is members of the force sitting behind desks engaged in administrative functions that are not required. We also do not need a force that is spread out. As regards the closure of 31 stations that was announced, four of them are in Dublin and the rest are rural Garda stations which are, by and large, staffed by a single member of the Garda force. Some of these stations are open for only two or three hours per day and some of them do not even open every day. The operational assessment of the Garda Commissioner was that these stations were of no operational benefit, members of the force were being tied down to desk duties that were not required and would be better deployed in policing in the interests of

the communities they serve and that the single officer station did not offer anything of major value to the patrolling of local communities.

We need a more modernised structure and a force that uses all the modern technology in a manner that ensures maximum community policing and maximum efficiency in responding to calls when emergencies arise. In fact, when there are emergencies in a community it is the emergency call number that is generally utilised rather than a telephone call to the local station. By and large, when gardaí come to people's assistance they are deployed from the larger stations unless it is an event that occurs practically next door to the single person station.

There is a need to consolidate Garda stations. Eight of the stations we officially declared closed, which brings the total number to 39, had been surreptitiously closed over the years, allegedly for refurbishment but never to re-open. The greatest curiosity is that one of them has been unofficially closed since 1986, but nobody ever announced its closure although everybody in the local community knew it was closed. Some stations that had also been closed for "refurbishment" during the 1990s are included in the eight I mentioned. We were very careful not to announce we were closing 39 stations for fear somebody would say one of the stations had been closed for 20 years.

Senator Norris raised the matter of Fitzgibbon Street Garda station. I assure him it has not been closed by stealth. I am advised that it has been closed for refurbishment and the gardaí at that station have been redeployed to Mountjoy. The Office of Public Works, OPW, has responsibility for carrying out refurbishment works. Those works are planned but I do not have an exact date for when they will occur. However, in view of Senator Norris's description of his gung-ho activities, it might be in the national interest that we get the work done in that Garda station with some speed to ensure there are gardaí in close proximity to the Senator's home not only to protect him from burglars but also on occasion to protect him from his own enthusiasm.

Senator Bacik might be surprised to discover that her reference to the National Women's Council was not completely alien to this debate. She probably slipped that reference in expecting the Cathaoirleach to call her to order. However, there is an interesting relevance to this. Senators should be aware of the fact that there is less in the financial envelopes available to Departments in 2012. The Department of Justice and Equality is not immune to that. There has been a reduction of approximately €100 million in the funding available to the Department of Justice and Equality for 2012 compared with 2011.

We have had to provide funding across a broad range of areas. A large element of this is Garda payroll. Some 90% of the funding in the justice sector that applies to the Garda is simply payroll funding and 10% is what I would describe as discretionary funding that can be used by the Garda for the services it delivers. That is funding that has to be fully provided.

The Criminal Assets Bureau, which performs a very important function, has had to be protected in terms of funding. It has received a very slight increase in 2012 over and above what was available for 2011 because of the very comprehensive work in which it has engaged in targeting gains which have benefited the criminal fraternity and trying to ensure that they are recovered from them by the State.

When we come to other areas which related to crime, the level of funding available to me for grants to a broad range of organisations is also reduced. Within that area we are dealing with not just the National Women's Council, we are dealing with groups like Women's Aid which provides protection for women who have been the victims of domestic violence. We are also dealing with groups like Advic and other victims organisations which provide direct counselling to the victims of crime and direct assistance to the victims of crime when accompanying them to court proceedings.

[Deputy Alan Shatter.]

There are a variety of other very important groups in the youth justice area. There is a whole range of diversion programmes to keep young people engaged in criminality out of the courts system and places of detention where it is deemed in the interests of the community and themselves. We can send them into diversion programmes where they are engaged by professional groups, who are non-governmental but funded through the Department of Justice and Equality and whose work is supervised. This is done in the hope that these young people will not turn to a life of crime, where their difficulties are addressed at an early stage and their activity focus turns away from the type of activities which got them into trouble.

As Minister for Justice and Equality I took a very principled decision. Instead of evenly reducing the financial allocations across the board regardless of what function any group or organisation engaged in, I took the decision that we would give preference when it came to funding to groups that provided services as opposed to groups that engaged in advocacy and research. I recognise the importance of advocacy and research.

I also recognise the work of the National Women's Council over the years which continues to do very important work. I was a male supporter for many years of much of the work it did. A lot of the work it does is advocacy and research. Albeit important, at a time of huge financial difficulty it would be quite bizarre for me to provide less money to Women's Aid to provide protection for women who are the victims of violence or the Rape Crisis Centre which provides a service, and provide more money to the National Women's Council which could then use the money to criticise us for not providing the money required to the Rape Crisis Centre and Women's Aid.

**Senator Maurice Cummins:** We are not discussing the Criminal Law (Defence and the Dwelling) Bill now.

**Senator Ivana Bacik:** I may have provoked that.

**Deputy Alan Shatter:** Organisations such as Women's Aid, Advic and the Rape Crisis Centre are all engaged in providing assistance to individuals, many of whom are women, who are the victims of crime. Domestic violence does not only give someone an entitlement to seek a domestic protection order in the courts, be it a barring order or safety order, it is an assault. It is a criminal offence to physically assault a woman. Clearly if someone is the victim of rape it is a criminal offence.

These organisations provide very crucial services to victims and when it comes to the very difficult financial circumstances in which we find ourselves and having to make really difficult choices, the choice we have made is to give preferential treatment to organisations providing services as opposed to those who are primarily engaged in advocacy and research. Unfortunately that will remain the position for some time.

I want to conclude by again thanking Senators for their contribution to the debate. I hope those who have contributed will forgive me if I have omitted some issue they have raised with me or I have not made express reference to them. I very much welcome the substantial support for this measure. I welcome and thank Senators for their co-operation in making it possible for us not only to take Second Stage today but to take the Remaining Stages, I hope, of the Bill before the Christmas vacation. It is in the public interest that it becomes law as soon as possible. The Bill has been too long delayed in the gestation phase and I will conclude on that note.

Question put and agreed to.

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

**Senator Maurice Cummins:** Tomorrow.

**Local Government (Household Charge) Bill 2011: Committee Stage (Resumed)**

SECTION 4

Debate resumed on amendment No. 10.

In page 7, after line 43, to insert the following subsections:

“(3) Residents of a building vested in a Minister of the Government, a housing authority (within the meaning of the Act of 1992) or the Health Service Executive shall not be liable for the household charge.

(4) Recipients of Unemployment Benefit, Unemployment Allowance, and Single Parent Allowance, shall not be liable for the household charge.”.

(Senator Trevor Ó Clochartaigh)

**An Cathaoirleach:** Is the amendment being pressed?

**Senator David Cullinane:** On behalf of the Sinn Féin Party I would like to withdraw the amendment. We want to support amendment No. 12 tabled by the Fianna Fáil Party. It is a more substantive amendment.

**An Cathaoirleach:** We are dealing with amendments individually.

Amendment, by leave, withdrawn.

**Senator David Cullinane:** I move amendment No. 11:

In page 8, subsection (4)(b), line 15, to delete “the year 2012 and the year 2013” and substitute “the years from 2012 to 2015”.

I will not speak too long on the amendment because it is simple and practical. I welcome the inclusion in the list of those exempt from the charge of people who live in unfinished housing estates. I assume the logic is that all services may not have been provided. It is also unfair that people living in such estates would have to pay a property charge or tax. The timeframe should be extended to 2015. Most of the unfinished housing estates will not have services provided in the timeframe prescribed, namely, 2012 to 2013. We accept and support what the Minister of State and the Government are attempting to do, which is to support people living in unfinished housing estates.

**Senator Denis O’Donovan:** I support the amendment and agree with Senator Cullinane.

**Senator Cáit Keane:** I would ask that the definition of “unfinished” would be spelled out in the regulations. There could be a case taken if an estate was not taken in charge that it would be deemed unfinished, even though there would be only small pieces of work to be carried out and perhaps the money was in a bond or such like. It would be important to define “unfinished”.

**Deputy Fergus O’Dowd:** I thank the Senator for tabling the amendment. The Minister recognises that introducing this waiver could have the unintended effect of households in less problematic unfinished estates seeking to have their estate classified as category 3 or 4. This would potentially impact on the Government’s priority target of reducing the number of such estates.

[Deputy Fergus O'Dowd.]

In addition, there may also be pressure to extend such a waiver to estates which have not yet been taken in charge by local authorities. The Government's priority is to address the needs of these estates as quickly as possible.

In addition, the household charge is an interim measure while the legislation is in preparation and the assessment being made in the context of the property tax which will be introduced. It will be replaced in the short term by a full property tax. This is expected to take place in advance of the 2015 date proposed by the Senator.

In these circumstances I cannot accept the amendment but I thank the Senator for it. I agree with Senator Keane on the point that the definition she is seeking would be clear to everyone.

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

The Committee divided: Tá, 21; Níl, 9.

Tá

Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D'Arcy, Jim.  
Hayden, Aideen.  
Keane, Cáit.

Kelly, John.  
Landy, Denis.  
Moloney, Marie.  
Mulcahy, Tony.  
Mullins, Michael.  
Noone, Catherine.  
O'Keeffe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.  
Whelan, John.

Níl

Byrne, Thomas.  
Cullinane, David.  
Daly, Mark.  
Leyden, Terry.  
Mullen, Rónán.

Norris, David.  
Ó Domhnaill, Brian.  
O'Sullivan, Ned.  
Reilly, Kathryn.

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

Question declared carried.

**Senator Brian Ó Domhnaill:** I move amendment No. 12:

In page 8, subsection (4)(b), line 17, after "estate" to insert the following:

“, or

(c) the year in which the liability falls if, on that date, he or she is the holder of a medical card issued by the Health Service Executive, or

(d) the year in which the liability falls if, on that date, he or she is in receipt of any of the following payments from the Department of Social Protection:

(i) jobseekers allowance, or

(ii) jobseekers benefit, or

(iii) supplementary welfare allowance, or

(iv) family income supplement, or

(v) farm assist, or

(vi) old age non-contributory pension, provided the recipient is not also in receipt of an occupational pension, or

(vi) disability allowance, or

(vii) disablement benefit, or

(viii) blind pension,

or

(e) the year 2012 and the year 2013 if, on that date, he or she is able to satisfy the relevant local authority that the residential property in which he or she resides is a mortgaged property in respect of which he or she has not been able to pay more than 75 per cent of his or her mortgage repayments in the preceding year, or

(f) the year 2012 and the year 2013 if, on that date, he or she is able to satisfy the relevant local authority that the residential property in which he or she resides is a mortgaged property that is currently valued at less than 75 per cent of the price at which the owner purchased the property.

(5) A person shall only be entitled to seek the waiver provided for in *subsection (4)(e)* if—

(a) the owner provides the relevant local authority with a certificate from the financial institution that provided the mortgage to the effect that the owner has failed to pay more than 75 per cent of his or her mortgage repayments in the preceding year, and

(b) the financial institution certifies to the local authority that the owner has not fundamentally breached the terms and conditions of the mortgage agreement other than in respect of the non-payment of mortgage arrears.

(6) A person shall only be entitled to seek the waiver provided for in *subsection (4)(f)* if—

(a) the owner provides the relevant local authority with a valuation from a registered member of the Institute of Professional Auctioneers and Valuers to the effect that the residential property in which he or she resides is a mortgaged property that is currently valued at less than 75 per cent of the price at which the owner purchased the property, and

(b) the owner provides the local authority with a copy of the deed of conveyance or contract of purchase of the residential property identifying the price and date of purchase of the residential property”.

**An Cathaoirleach:** Amendment No. 12 was discussed with amendment No. 10. Is amendment No. 12 being pressed?

**Senator Brian Ó Domhnaill:** The amendment has not been discussed.



**An Cathaoirleach:** Yes, it has.

**Senator Brian Ó Domhnaill:** It was grouped with Sinn Féin's amendment No. 10. However, that amendment was withdrawn in favour of this one.

**An Cathaoirleach:** Amendments Nos. 10 and 12 were discussed together. Is the amendment being pressed?

**Senator Brian Ó Domhnaill:** I have no choice but to do so.

**Senator David Norris:** I propose that we withdraw the amendment so that we may resubmit it on Report Stage.

**Senator Brian Ó Domhnaill:** Yes, we will withdraw the amendment.

Amendment, by leave, withdrawn.

**An Cathaoirleach:** Amendments Nos. 13, 22 and 26a are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 13:

In page 8, subsection (5)(f), line 34, to delete "it pertains" and substitute "they pertain".

**Deputy Fergus O'Dowd:** Amendments Nos. 13, 22 and 26a are required to effect technical and drafting modifications in the Bill. They do not in any way impact on the policy or intent of the legislation. Their objective is to enhance the clarity of the text for the reader.

Amendment agreed to.

Question proposed: "That section 4, as amended, stand part of the Bill."

**Senator Thomas Byrne:** The section deals with exemptions and waivers from the obligation to pay the household charge. However, it does not go far enough. A whole swathe of people have been told that basic social welfare rates are being protected, but at the same time, charges such as this are being imposed on them. Our amendment No. 12 proposed that persons in receipt of jobseeker's allowance, jobseeker's benefit, supplementary welfare allowance, family income supplement, farm assist — for which the means test has been changed — old age non-contributory pension, disability allowance, disablement benefit, blind pension and so on should not be obliged to pay the charge. These people are not eligible for a waiver under the section as it stands. It is a serious deficiency in the Bill that we are applying a tax which will impose the same obligation on millionaires as on social welfare recipients. The waivers and exemptions simply do not go far enough.

**Senator Brian Ó Domhnaill:** I am fundamentally opposed to the section as it stands. I appeal to the Minister of State to look with reason at the amendments we have withdrawn and which we propose to resubmit on Report Stage. The household tax will be imposed on every house in the country. As we discussed yesterday, this is not a fair means of taxation. A charge of €100 is being imposed on a large high-value house as well as on a smaller house with a lower value, the home of an elderly person or a person in receipt of social welfare or a medical card. We want exemptions for all medical card-holders. Approximately 400,000 people are in receipt of medical cards and this probably equates to approximately 150,000 households. The jobseeker's benefit was affected in the budget because the six day-period of payment has been reduced to five days. This will have a knock-on effect. Even Sunday working is now brought into the

mix as part of the earnings and this will affect the social welfare entitlement of a person on jobseeker's benefit.

I refer to a person in receipt of jobseeker's benefit for three days a week who contacted me by phone. He is working three days a week, he has a large family and he is struggling to cope. He will lose substantially as a result of the changes from six days to five days. He also has a part-time Sunday job.

The supplementary welfare allowance is paid when an individual is awaiting the outcome of a social welfare appeal. Such people should be exempted from payment of the household charge. Approximately 35,000 individuals are currently appealing the refusal of a social welfare benefit and in some instances such individuals are not entitled to supplementary welfare allowance. These individuals should be exempt from payment of the household charge. The farm assist scheme was also reduced in the budget. This scheme is very important to small farmers. The assessment of means for self-employment, including farming, is being raised from 70% to 85%. The deductions from income for children are being halved to €127 per year for each of the first two dependent children and €190 per year for each subsequent child. Poor farmers will find it more difficult to access the €188 per week of farm assist payment. The farm family income supplement supports families and recipients should be exempted from payment of the household charge.

Recipients of non-contributory pension, in particular, elderly people who do not have an occupational pension, have been affected negatively in the budget because they have lost approximately €120 from the fuel allowance scheme. If such people also have to pay the household charge, the net loss to those families will be €220 per year. It would be a step too far to include such pensioners. I welcome the fact that the budget did not impose cuts on weekly payments but on investigation it is clear that cuts will affect everyone in receipt of social welfare payments. There is no need to speak about the disability allowance because we all know what has happened. The Minister for Social Protection, Deputy Burton, outlined on Second Stage of the Social Welfare Bill in the Dáil that she will remove the provisions in the Bill to reduce the disability allowance for those aged between 16 and 24 years. This was the right action to take but she should have had the social conscience to know the effect of such a provision. I refer to the front page of the *Irish Examiner* this morning which reports on a disabled individual whose payment would have been reduced from €188 to €100 and this person was born without limbs.

**An Leas-Chathaoirleach:** We are not dealing with the Social Welfare Bill and I ask the Senator to confine his remarks to the Bill under consideration.

**Senator Brian Ó Domhnaill:** It is connected to the question of who should be exempted from payment of the household charge such as those in receipt of disability benefit, blind person's allowance and lone parent's allowance. Mortgage-holders in difficulty who are unable to meet mortgage repayments should also be exempted and also people in negative equity and those who bought property during the boom from 2004 to 2011 or thereabouts. Those people paid substantial stamp duties. The budget announced a reduction in stamp duty to provide an incentive for property purchase. The budget provided significant tax incentives which have received scant coverage and these incentives will support all NAMA and commercial properties. These incentives include the writing-off of capital gains for commercial properties if purchased before the end of 2013 and if the property is retained for seven years. This will benefit investors and owners of commercial property and also NAMA.

**An Leas-Chathaoirleach:** The Senator is straying again.

**Senator Brian Ó Domhnaill:** I apologise——

**Senator Cáit Keane:** He has met himself coming back at this stage.

**An Leas-Chathaoirleach:** The Senator will soon end up in Gweedore if he keeps going that way.

**Senator Brian Ó Domhnaill:** My comments are about the effects of the budget. If I go to Gweedore I could meet myself in Kerry, given the fact that the budget is impacting on everyone across the country, from Gweedore to Kerry, in many negative ways.

**Senator David Norris:** It was the route chosen by certain parliamentarians to visit Leinster House from different sections of the country.

**An Leas-Chathaoirleach:** Senator Ó Domhnaill, without interruption.

**Senator Brian Ó Domhnaill:** The reason for our opposition to section 4 of the Bill is the question of exemptions. The Minister has stated he is willing to take into consideration individuals in receipt of mortgage interest supplement and this is to be welcomed as there are 18,000 people in receipt of mortgage interest supplement payments. However, this gesture is not sufficient. Already, 70,000 people are in mortgage arrears and they should be included in the exemption as the mortgage interest supplement does not take into account most of those people who find themselves in very difficult and significant financial difficulties.

I hope when our amendment is dealt with on Report Stage there may be some good news from the Minister when he has studied some of the proposals which we believe are valid.

The Department of Finance is budgeting for the household charge to produce a revenue of €160 million in 2012. However, the internal documentation supplied by the Department of the Environment, Community and Local Government to the Department of Finance prior to the budget calculated that the net income to the State will only yield a net income next year of €100 million.

Why is there a discrepancy? The reason is that the Department has calculated its €100 million figure on the basis that many people will not be able to pay the charge, whereas inability to pay has not been taken into account in the budgetary figures presented by the Minister for Finance. A difference of €60 million has emerged between the calculation provided by the Department of the Environment, Community and Local Government, which is sponsoring the legislation, and the Department of Finance, which presented the figures in the budget. I am not sure where the anomaly arises but I ask the Minister to cast some light on the matter.

**Senator David Cullinane:** I will not rehearse the arguments made on previous sections as I appreciate we have many amendments to discuss. I accept much of what the Minister of State said yesterday when he outlined many of the exemptions that are in place, for example, for tenants of local authority housing and people who are in receipt of mortgage interest supplement and rent supplement. While a number of categories of people will be exempt from paying the household charge, there is a long list of people who are in receipt of social welfare benefits, which include jobseeker's allowance, jobseeker's benefit, supplementary welfare allowance, family income supplement, farm assist, old age pension, disability allowance, disability benefit, blind pension, invalidity pension and carer's allowance. It is important to ensure anyone who is in receipt of any form of welfare payment is exempt from the €100 household charge.

As I pointed out, Sinn Féin's position is one of outright opposition to the household charge. Notwithstanding that, the Government must ensure, when it is considering exemptions and waivers, that all those in receipt of welfare payments are exempt from the charge. The reason people are in receipt of welfare payments, including those who receive the family income supplement, is that they are in low income households and could be at risk of poverty. I echo the request of previous speakers that the Government take on board the thrust of the amendments which have been withdrawn for resubmission on Report Stage. I hope the Minister of State will reflect on the categories of people who may fall through the cracks in respect of the protections set out in the Bill. Anyone in receipt of a social welfare payment should be exempt from the household charge.

**Senator Cáit Keane:** It is worth repeating that not one Member of the Oireachtas considers the household charge to be an ideal way of introducing a property tax. Equally, however, not one of the Members opposite has produced an alternative methodology.

**Senator Thomas Byrne:** The manifestos of both Government parties included alternatives.

**Senator Brian Ó Domhnaill:** That was before the election.

**An Leas-Chathaoirleach:** Please allow Senator Keane to continue without interruption.

**Senator Cáit Keane:** When county councils are drawing up their budgets councillors who recommend the removal of one item must——

**Senator David Cullinane:** With respect, that is not how legislation is drafted or amendments accepted.

**Senator Cáit Keane:** While I will listen to reasonable argument, I wish to make a point.

**Senator David Cullinane:** I will drop a copy of our pre-budget submission into the Senator's pigeon hole.

**Senator Cáit Keane:** I would listen carefully to any suggestion on how to balance the budget. We are where we are and we all know why. We also know who is responsible and all of us need to act responsibly.

**Senator Thomas Byrne:** The Progressive Democrats, of which the Senator was a member, was also responsible.

**Senator Cáit Keane:** We all know who is responsible. If a member of the Opposition produces a suggestion on where he or she will get the money, I will accept the need for further waivers. However, Senators are asking for every old age pensioner to be given a waiver. We would all love to give everyone a waiver but there are——

**Senator Brian Ó Domhnaill:** On a point of order, we are calling for a waiver for all old age pensioners who are in receipt of a non-contributory pension.

**Senator Cáit Keane:** As I indicated, if one does not tax property but taxes other goods and services, one can distort expenditure and investment decisions. This approach takes such decisions out of people's hands in that it encourages expenditure on and investment in property at the expense of spending on other goods and services. In other words, the absence of a household charge has meant that other taxed goods and services have been adversely affected. For this reason, it is good to broaden the tax base. While the proposed charge is not the ideal way to do this, as the Minister of State pointed out yesterday, it is an interim measure.

[Senator Cáit Keane.]

On the figure of €160 million versus a figure of €100 million, one would need a glass ball. There is no differentiation between the facts and figures supplied by the Department of the Environment, Community and Local Government and the statement made by the Minister for Finance. Both the Department and Minister provided figures of €160 million. The difference of €60 million referred to by Senator Ó Domhnaill reflects the fact that allowances may have been made for the non-collection of €60 million. While none of us would advocate non-payment, this may explain the difference in the figures. In the current climate we should all encourage people to pay the charge for the good of the country. People would then have more money in their pockets at their own discretion to decide to spend on goods, shops and services, thereby increasing retail sales and employment. We must get the money from somewhere and while the proposed charge is not ideal, it is an interim measure.

**Senator David Norris:** In general I support the amendment because it deals with the weakest people in society. A certain point has been made about the disability allowance and so forth. A challenge was made by my distinguished colleague, Senator Keane, who stated we all know who is responsible. That is rather simplistic. I agree there was a clear implication that various Governments played a significant role in it but let us not forget that the collapse of the world economy started in the United States of America with the involvement of Enron and the ratings agencies. We should not take all the blame.

**Senator Cáit Keane:** Yes, but we are to blame for the property collapse.

**Senator David Norris:** When we say we all know who is responsible there is no question or doubt that there is clear responsibility on the part of certain Governments. However, the problem is wider than that as the catastrophe we are facing did not originate in this country. It was facilitated by foolish Governments but responsibility rests with the entire rotten system which is on the point of collapse.

**Senator Cáit Keane:** A certain amount of free will was involved as well.

**Senator David Norris:** Senator Keane made a reasonable point that the Government may be more inclined to address this issue if alternative sources of funding could be found. I have a proposal in this regard. I suggest an end to the automatic entitlements to an increment in the public service. As people have not yet been given their increment, withdrawing it would not take money out of their pockets and would not breach the Croke Park agreement. I am not attacking the public service but when challenged to produce an alternative source of revenue, my proposal would at least match the proposal before us. I have given one answer that this side can legitimately provide.

Finally, and I should have said this first, we all appreciate very much the courtesy the Minister of State has shown in accepting that the Bill should proceed this evening and taking time out of what is, I have no doubt, an extremely busy schedule to make himself available for this debate. All sides appreciate what he has done.

**Senator Thomas Byrne:** While I do not wish to delay proceedings, I will raise an important issue. This section appears to have been dropped into a template Bill that was provided by the legislation on the non-principal private residency charge. With all due respect to those responsible, this is not a particularly well drafted section. Why are certain people not liable to pay the charge while others are entitled to a waiver? Is it intended to make a distinction or difference in respect of waivers? As the Minister of State will recall from his old days when he served with

my father on Drogheda Borough Council, a waiver for bin charges was always a reduction and never a full exemption. I do not know what is the exact definition of the term.

**Senator David Norris:** It is a kind of grace and favour.

**Senator Thomas Byrne:** That is the point because some people are entitled to the waiver whereas others are not liable to the charge. Will the Minister of State explain the difference being made between the two groups in the legislation? Is it intended? From a drafting point of view the section is difficult to read. Subsection (5) states: “The Minister shall not prescribe a list for the purposes of this section”. The list is for the purposes of subsection (4)(b) which refers to unfinished housing estates. Therefore, the list the Minister would prescribe under subsection (5) is not for the section and the section does not oblige the Minister to prescribe a list. The section also features a number of definitions, including the term “unfinished housing estate”. The wording appears to be all over the place. In the interests of plain English and to enable everyone, including Members, to comprehend the section, the definitions in the section should be inserted in the definitions section at the start of the Bill. The list that the Minister will complete is not a list for the purposes of the section but for the purposes of a definition.

My other point of concern is the extent to which political influence will be involved in the drafting of the list. Can one lobby the Minister to say, “This is a really bad estate that should be put on the list”? The local Fine Gael or Labour Party Deputy would get great kudos because 20 residents do not have to pay the €100. I do not know if that is how it will work, I hope not. Taxation should not work like that, whatever about other matters of Government expenditure such as grants for sports, schools, etc.

**Deputy Fergus O’Dowd:** This is a good debate. We would be happy to respond to the resubmitted amendments on Report Stage. Notwithstanding the points made by the Senator, many of the issues are technical. I appreciate the short notice given of the Bill. I could address these issues if I can——

**Senator Thomas Byrne:** Perhaps the officials could look at it.

**Deputy Fergus O’Dowd:** We will be looking at this tomorrow. As I understand it, the document regarding the €100 million was submitted by the Department long before the legislation was published. The recently published Estimates Volume shows that the household charge is estimated to yield €160 million to the local government fund in 2012. That has been the clear intention of the Government and is clearly outlined in the Estimates. It is our intention to raise that money under this legislation.

Question put.

Question put: “That section 4, as amended, stand part of the Bill.”

The Committee divided: Tá, 23; Níl, 9.

Tá

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

Gilroy, John.  
Hayden, Aideen.  
Heffernan, James.  
Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Landy, Denis.  
Moloney, Marie.  
Mulcahy, Tony.

Tá—*continued*

Mullins, Michael.  
Noone, Catherine.  
O’Keeffe, Susan.

Sheahan, Tom.  
Whelan, John.

Níl

Byrne, Thomas.  
Cullinane, David.  
Daly, Mark.  
Leyden, Terry.  
Mullen, Rónán.

Norris, David.  
O’Sullivan, Ned.  
Ó Domhnaill, Brian.  
Reilly, Kathryn.

Tellers: Tá, Senators Paul Coghlan and Susan O’Keeffe; Níl, Senators Ned O’Sullivan and Brian Ó Domhnaill.

Question declared carried.

## SECTION 5

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

In page 9, between lines 7 and 8, to insert the following subsection:

“5.—(1) It shall be the responsibility of the Local Government Management Agency in the first instance to inform the relevant person of his or her liability for this charge.”.

This amendment addresses the question of informing the public of their responsibilities in the matter. It seems to be a situation where fines can be imposed and a quasi-criminal penalty exacted upon the citizen. The least the central authorities can do is to alert them to the requirement that they should pay this charge.

It has been said that newspaper advertisements will be taken out, but not everybody reads newspapers. I know quite a number of people who have cancelled newspaper subscriptions recently. A number of people now find it an additional expense to buy newspapers and they do not always read those sections that contain Government notices, which are not the most fascinating items in the newspapers. The same is true of radio or television broadcasts. It is therefore quite possible for people innocently to miss this information, unless they are given proper notice.

If the Local Government Management Agency is capable of issuing receipts, I do not see any reason it should not also be capable of issuing notices. It would be quite appropriate for that agency to be required to let people know that they should pay this fee and are obliged to do so. I imagine there should be centralised records of all premises that fall under this particular regulation. I do not think it is too much to expect of the Local Government Management Agency, if it is to live up to its title, that it should inform citizens of this charge, at least in the first instance.

There is a growing indolence within the bureaucracy which increasingly places responsibility on the citizen, but I think this is wrong. The same applies to the national car test, for which one used to get prior notice. One also used to get a reminder to renew a driving licence, but one is unlikely to remember the renewal date for a ten-year licence. I honestly do not think it is too much to expect that citizens should, at least in the first instance, be given notice of the fact that they are required to pay this charge, particularly when there is a penalty for failing to do so, and the possibility of a conviction.

I ask the Minister of State to accept the amendment, which states that “It shall be the responsibility of the Local Government Management Agency in the first instance to inform the relevant person of his or her liability for this charge”. It seems to be a simple question of efficiency and I hope the Minister of State will be disposed to accept it.

**Senator Brian Ó Domhnaill:** I agree with my colleague, Senator Norris, and it is a very sensible proposal. I remember when the holiday home charge was introduced I heard from a lady who lives in Scotland but who had an inherited home in west Donegal. She approached me after some two years of the charge being existence. Not only was she liable for the €200 in the first and second year but she was also liable for the €20 increments each month, and she did not know she had to pay the charge. At the time the non-principal private residence, NPPR, charge was advertised by local authorities in the national media and in the local and regional press. That exposure did not go far enough and Senator Norris is hitting the nail on the head as those liable for the charge should be written to by the local authority or local authority organisations so that at least they would know about their liability. I am not sure if it is the intention of the Department to advertise in a similar fashion to the NPPR publicity. I heard many local concerns about how that advertisement campaign was handled. It meant well but it may be more efficient to contact every individual by letter to outline how the charge is applicable from 1 January and it must be paid by a particular date. Those who are exempt should also be listed. I agree with Senator Norris and his sensible approach.

**Senator Denis Landy:** There is much merit in what has been said by the last two speakers. I ask that the Minister examine the amount of money intended to be spent on a publicity campaign. If that amount is similar to the cost of the suggestions made to contact each house with a specific letter, the latter approach might be more effective. There would be direct contact with each household and nobody could say there was no information on the charge. As politicians know, despite all the best efforts of the media to get a message across it does not always work; it may work for some but not for all of us.

**Senator David Norris:** Perhaps we could use a card.

**Senator Denis Landy:** It is a good suggestion worthy of consideration. I ask the Minister to examine it and support it if possible.

**Senator Michael Mullins:** It still would not get around the difficulty raised by Senator Ó Domhnaill. A letter may go to the home in Donegal but the person mentioned by the Senator lived in Scotland. It may be difficult to get a register of every house but perhaps An Post could put a leaflet in every house in every county. An Post has a good rate for delivering such notices. Perhaps it might be considered. The local media, including radio and newspapers, will catch the majority of people but it would be better if physical media went to each house. It would be a big administrative job to write to every house in the country, so a leaflet delivered by An Post would be another suggestion.

**Senator David Norris:** I thank my colleagues from various sides of the House who suggested there is merit in the idea, although my amendment may not be perfect. I am not suggesting it is but I hope the Minister of State will consider it. We will never be able to deal with cases like the lady living in Scotland and it is unrealistic to expect the Government to contact people living abroad. On the other hand, there are a number of people of foreign extraction who take up residence in the city centre in particular. I know a number in my area, for example, who would not read the Irish newspapers and I doubt they listen to RTE or other radio stations. They occupy apartments, bedsits and other types of flats and are quite likely to be unaware of this charge. They might be caught. The suggestions made by my colleagues of a leaflet drop or



[Senator David Norris.]

mass mailing would be appropriate. I would be very happy if the Minister of State would consider it. If the Minister of State gives an undertaking that he will consider the amendment and revert tomorrow, he might do so in my absence. I have accepted an invitation from an elevated personage to attend him in the Phoenix Park, so I will not be here.

**Senator Denis Landy:** We will send the Senator a leaflet.

**Senator Marie Moloney:** Watch this vice president.

**Deputy Fergus O'Dowd:** I thank Senator Norris for his amendment and the other speakers for their contribution. It is envisaged that under section 13 some functions of the local authority will be delegated to the local authority management agency. The agency will provide services related to the household charge on a shared services basis on behalf of all local authorities, including the operation of on-line payment systems etc. There is at present no comprehensive database of residential property ownership within the State on which to assess our base liability for the household charge. Therefore, a database that could be used to issue invoices to homeowners who may have a liability for the household charge does not currently exist. For that reason the Government has decided that the household charge will operate on a self-assessment basis, and it will be a matter for owners of properties to assess if they are liable. In these circumstances, we cannot impose a requirement on the local authority or the local government management agency to issue bills.

The Senator will be heartened to know that the Bill provides in section 6 for the making and provision of statements by persons liable for the household charge, to contain such information relating to residential property for the purpose of enabling the Minister to prepare and maintain a database of residential properties. This database will in due course contain a listing of residential properties which will be of use for the purpose of determining liability for the full property tax to be introduced in due course.

In addition, the Department of the Environment, Community and Local Government and local authorities will undertake a national information campaign to advise people of the household charge and their responsibilities in that regard. In the context of the charge on non-principal private residences, nationwide advertising has taken place in each year since its introduction to ensure general awareness of the charge and liability dates. Significant efforts have been made to ensure property owners are aware of the charge and liability dates. Similar to the household charge, the non-principal private residence charge is based on self-assessment principles and it is a matter for persons with a liability to pay the charge by the due date.

Residential property owners in the State will be made aware of the household charge through this campaign and general media coverage. Through the media persons will have ample notification of the household charge and I am fully confident they will be fully aware of the liability. I have listened to the points from all sides of the House and I understand discussions between the Minister and An Post or other relevant agencies in position to deliver a leaflet to each home in the State are under serious and active consideration. We expect that to happen.

There is another point. We work from databases when letters are sent to people; at least 10% of the people in the database would not be at the address listed. It can be very difficult to keep track of people. In addition, people who live in homes do not necessarily own them. The issue is complex but the Senator's point is wholly understood and will be acted on. There will be a leaflet going to every home in the State to advise people of the charge.

**Senator David Norris:** I thank the Minister of State. That covers the point. The leaflet could say that a person might be liable for that charge and that conditions apply.

Amendment, by leave, withdrawn.

**An Leas-Chathaoirleach:** Amendments Nos. 15 and 16 are related and may be discussed together by agreement.

**Senator Brian Ó Domhnaill:** I move amendment No. 15:

In page 9, subsection (3)(a), to delete lines 27 and 28 and substitute the following:

“(a) (i) a single payment made on or before 6 months after the liability date.”.

The point we are trying to make is that the date where the liability falls due is 1 January in any year. Individuals have to the end of March to pay, with a €10, €20 or €30 charge thereafter. We are asking that the three-month window be extended to the end of June in each year to give people more opportunity to gather the money and pay, if they wish, in one instalment or in four instalments of €25 as outlined in the Bill.

We believe that people should have the opportunity to pay monthly. That may not happen but at least they should be given six months to pay instead of three months. I accept it is three months for the non-principal private residence, NPPR, charge. Perhaps that payment should be treated differently to this one given that it deals with every house in the State. They are the reasons we proposed the amendment. If the Minister is agreeable and wants to redraft the proposal we would be happy to accept that.

**Deputy Fergus O’Dowd:** The advice I have been given is that we will proceed as proposed in the legislation but we could address the issue again tomorrow. Senator Byrne made the point that household bills can normally be paid on a monthly basis but the cost of collection in that context might be prohibitive. We intend to proceed in the manner outlined in the Bill so I cannot accept the amendment.

**Senator Brian Ó Domhnaill:** On the basis of what the Minister of State has said; that he is willing to consider the matter again on Report Stage——

**Deputy Fergus O’Dowd:** I cannot give any commitment.

**Senator Brian Ó Domhnaill:** I appreciate that.

**An Leas-Chathaoirleach:** Is the amendment being pressed?

**Senator Brian Ó Domhnaill:** We can resubmit the amendment on Report Stage if necessary.

Amendment, by leave, withdrawn.

Amendment No. 16 not moved.

Question proposed: “That section 5 stand part of the Bill.”

**Senator Thomas Byrne:** It seems to be entirely retrograde that we are again introducing criminal sanctions into ordinary legislation. Senator Norris is listening to me. He can tell the President he will have a very unhappy Christmas because there is an earlier signature motion next Friday for the Water Services (Amendment) Bill. For what it is worth, my view is that the creation of a criminal offence in that Bill of adversely affecting the countryside may be unconstitutional. Perhaps Senator Norris might like to bring that up during the dinner table chat.

**An Leas-Chathaoirleach:** Senator Byrne should confine himself to discussion of the section.

**Senator Thomas Byrne:** It is entirely retrograde that we are creating criminal offences, yet again, for the small person. Is it not possible to have an administrative sanction? Senator Ó Domhnaill will speak further about possible ways of incentivising people to pay and I will not steal his thunder. There are ways of incentivising people to pay but yet again, it is the ordinary person who will be criminalised and hauled into court. I accept it is a class C fine and a person will not be sent to prison unless he or she fails to pay it but the reality is that we are criminalising people who do not pay. A person who does not pay €100 is one who cannot afford to pay. It will not be a criminal whom society requires to be fined or charged with a criminal offence. The consequence of such a charge is quite serious. It is not a criminal offence for one not to pay one's ESB bill or telephone bill. One can be sued in the civil courts for it and a judgment can be obtained against one.

**Senator Michael Mullins:** One could be cut off.

**Senator Thomas Byrne:** Yes, one could get cut off but the Government introduced measures to try to prevent that. It is a civil matter and the companies concerned could take one to court, sue one and seek a judgment. One could introduce a civil procedure in this case, even if it is speeded up or is a less costly system rather than to have a criminal summary conviction. It might be a class C fine and a summary conviction but that still involves the District Court and a criminal offence. That is wrong and we should not do it at a time when the public anger is so inflamed against bankers and others who got away with terrible wrongs in the past year. Many crimes may have been committed already. We do not have to create crimes, yet we are creating a crime for the ordinary person. There are other ways of dealing with the matter.

**Senator Brian Ó Domhnaill:** I agree with Senator Byrne. The septic tank charge was a fundamental element we discussed when the Water Services (Amendment) Bill was before the House. In that case the fines were class A while class C fines are proposed in the Bill. Nonetheless, fines are fines and they will lead to offences and, in effect, the criminalisation of people. In the event that a person does not pay the charge or the fine, he or she will be convicted in court and if he or she cannot pay the fine he or she could potentially face the prospect of going to prison. Without sensationalising it, we should consider introducing an incentive for people to pay the charge rather than creating offences or criminalising them if they do not.

I propose a carrot and stick approach. In Donegal County Council in the late 1980s and early 1990s when the council had great difficulty in collecting domestic water charges, people were incentivised to pay them in the sense that when an individual paid the water charge on time the person was entered into a super draw. Some of the prizes were cars, tickets to football matches and many other prizes. I have some experience of the incentive that was involved as my late father, who paid on time, won a car in 1992.

**Senator Denis Landy:** Is Senator Ó Domhnaill still driving the car?

**Senator Brian Ó Domhnaill:** He never drove it. He gave it away for half the price to an old lady up the road. It was a small car but I am sure it is still going. That was almost 20 years ago. The point is that the initiative was incentive-led rather than an offence-led one. The incentive meant that the individual was paying the required charge but was also being entered into a draw. The council was getting more money and there was an incentive for the individual to pay the money and to get an added bonus of getting the water service in that instance, while in this case a person is not getting a service other than the services provided by the local

authority. At least something additional was being provided. The introduction of such a scheme should be examined and the offences should be removed.

I can guarantee the Minister that according to anecdotal evidence people would be more interested in paying for an incentive-led household charge rather than one involving offences. If the class C fines in the Bill and the class A fines in the Water Services (Amendment) Bill were removed then people might be quicker to comply. We should consider such an approach in all schemes where one expects the taxpayer to pay for a service he or she cannot see.

It is regrettable that the local government fund no longer exists and that we now depend on the revenue from the household charge to fund local government. If the money is not collected then councils will be affected in that they will not have money to fix roads, streets, lights and potholes. It was wrong to do away with the local government fund without knowing what would be the return on the household charge. People would pay faster if there was an added bonus.

**An Leas-Chathaoirleach:** Senator Ó Domhnaill should put the little car back on the straight and narrow.

**Deputy Fergus O'Dowd:** There is an incentive to pay in order to avoid further charges. If one does not pay for two years it is clear in the Bill that with the late fee and the penalty, instead of paying €200, one would be liable for a bill of €280. I accept what Senator Ó Domhnaill said but that is the way matters must proceed. Therefore, we oppose the amendment.

The issues are exactly the same as apply in the case of the non-principal private residence charge. The follow-through is the same in terms of non-payment.

Question put: "That section 5 stand part of the Bill."

The Committee divided: Tá, 24; Níl, 10.

Tá

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

Higgins, Lorraine.  
Keane, Cáit.  
Kelly, John.  
Landy, Denis.  
Moloney, Marie.  
Mulcahy, Tony.  
Mullins, Michael.  
Noone, Catherine.  
O'Keeffe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.  
Whelan, John.

Níl

Barrett, Sean D.  
Byrne, Thomas.  
Cullinane, David.  
Leyden, Terry.  
Mullen, Rónán.

Norris, David.  
O'Sullivan, Ned.  
Ó Clochartaigh, Trevor.  
Ó Domhnaill, Brian.  
Reilly, Kathryn.

Tellers: Tá, Senators Paul Coghlan and Susan O'Keeffe; Níl, Senators Ned O'Sullivan and Brian Ó Domhnaill.

Question declared carried.

**An Cathaoirleach:** I wish to inform the House that, arising out of an omission to vote by Senators Barrett and Norris, who were present in the Chamber, the result of the division as shown on the display board has been amended, with the agreement of the tellers on both sides. The amended result which I shall announce will appear in the journal of proceedings. Tá, 24; Níl. 10. The question is carried.

Section 6 agreed to.

## SECTION 7

**An Cathaoirleach:** Amendment No. 17 is alternate to amendments Nos. 18 and 19. Amendments Nos. 20 and 26 are also related. Therefore, amendments Nos. 17 to 20, inclusive, and amendment No. 26 may be discussed together, by agreement. Is that agreed? Agreed.

**Senator Brian Ó Domhnaill:** I move amendment No. 17:

In page 11, lines 6 to 35, to delete subsections (3) to (7) and substitute the following:

“(3) At the date of death of any person who is the sole owner of a residential property any household charge, late payment fee, late payment interest or any part of such charge, fee or interest shall cease to exist.”.

Where there are household charges, late payment fees and charges on a property and in the event that the registered owner of the property dies and the property is inherited, particularly by a close family member, we feel that the household charge, fees and penalties should not follow the property and should not be passed on to the new owner.

It is unlikely that a charge would remain unpaid, in any event. It would most likely have been paid by the deceased person. The situation would most likely apply where an old and modest house, owned by an elderly person, is inherited. Given the changes announced in the budget, a person inheriting such a house would have to pay additional capital gains tax in any event. The State will derive enough revenue without also collecting the household charge, late fees and penalties.

The amendment attempts to have this section amended to exclude family members who might inherit a property.

**Senator Trevor Ó Clochartaigh:** Luaigh Seanadóirí Shinn Féin an pointe seo cheana agus táimid ag tacú leis an leasu seo. Bhéadh sé ciallmhar agus macánta le déanamh mar rud, nár cheart go mbéadh piónós den chineál seo ag leanúint, go háirithe i gcomhthéacs an cháis go bhfuil duine tar éis bháis, díreach ó thaobh meas ar an duine agus meas ar na daoine a thagann ina dhiaidh.

**Senator Denis Landy:** The amendment, as set out, is too open. I have a certain sympathy for what Senator Ó Dómhnaill said, but if one were to take his argument to the extreme, a millionaire who for a couple of years before he died — and not knowing he was going to die — decided not to pay the charge could leave his full estate to a son or daughter who would be exempt from the charge. That would not stand up. It is not right to have this exemption so open. It could be narrowed down.

Senator Ó Dómhnaill made reference to the fact that capital gains tax has increased, but I understand it will not be increased on modest homes.

If the Senator were to return to this matter on Report Stage and fine-tune the amendment he might get some sympathy for it. It is too open as it stands whereby anyone who dies does not have to pay. We are all going to die, and someone will have to pay. I suggest that the

Senator fine-tune the amendment and bring it back, with a more concise wording, on Report Stage. It could be looked at more favourably then.

**Senator Brian Ó Domhnaill:** I know Senator Landy is trying to be constructive. He makes a point about a property valued at €1 million compared with one valued at €200,000. The capital gains tax thresholds were reduced from €330,000 to €250,000. A person who inherits a property valued at €1 million, depending on the closeness of his family relationship to the deceased person, will pay a massive capital gains tax in any event. There would be a massive capital gains liability on such an individual who would have to pay capital gains tax before he or she could take full ownership of the property.

It often happens that a small modest residence is left to a grandson, niece or nephew and is in need of major refurbishment. Such a person might not be liable for capital gains tax if the property is valued under €250,000 or if he or she qualifies for the allowances.

I would feel more comfortable leaving the amendment in the general context, although I appreciate what Senator Landy is saying. Let us wait and see what the Minister of State has to say on the point. I am open to suggestions.

**Senator Denis Landy:** I had hoped Senator Ó Domhnaill would come some way to meet what I was suggesting. There is some scope for his amendment. On the basis of what he says, however, I could not support it.

**Deputy Fergus O'Dowd:** I thank Senator Ó Domhnaill for his amendment.

Subsection 7(3) provides that where a person who is the sole owner of a residential property dies and at the time of his or her death household charges, late payment fees and interest are due, no further household charges and related fees or interest shall be payable during the period from the death of the person to the issue of the grant of representation of the estate of the deceased.

Subsection 7(4) further provides that the personal representative of a deceased person shall be liable to pay the household charges and related late payment fees or interest due in respect of that property up to the date of death of the deceased and after the date of the issue of the grant of representation of the estate of the deceased.

Subsection 7(5) provides that if the amount owing under subsection (4) is paid in full within three months of the date of issue of a grant of representation of the estate of the deceased, no further liability will arise.

Subsection 7(6) provides that if the amount owing under subsection (4) is not paid in full within three months of the date of issue of a grant of representation of the estate of the deceased, late payment fees and interest will continue to apply to the personal representative of the deceased from the date of issue of the grant of representation of the estate of the deceased.

The provisions of these subsections are important in that they seek to clarify that it will fall to the estate of a deceased person to discharge any unpaid liability for a household charge, late payment fee or late payment interest up to the death of the person concerned. It would be unfair to others who discharge their liability for the household charge to provide for a situation where a person who did not fulfil their obligations while alive had those obligations waived, as proposed in the amendment, upon death. The provisions of the section provide for a reasonable solution to the matter, in that the penalties and interest which had been accruing up to the point of death cease and no further penalties are applied, provided that the personal representative of the deceased discharges the full amount of the household charge, late payment fees and interest up to the date of death within three months of the date of the grant of representation to the estate of the deceased. Where the payment is not made within three months, late payment fees and interest will be applied from

7 o'clock

[Deputy Fergus O'Dowd.]

the date of the grant of representation. To accede to the amendment proposed could potentially create an unintended incentive for persons to avoid or attempt to evade payment of the household charge, as the liability for the charge would cease upon the residential property owner's death.

Amendments Nos. 18 and 19 are also part of this group. The amendments we are initiating are required to effect technical and drafting modifications to the Bill and do not in any way impact upon the policy or intent of the legislation, but assist in the clarity of the text. I thank Fianna Fáil Senators for their amendment. I believe I have addressed this matter as best we can in the context of what I have said. Therefore, I cannot accept the amendment.

**An Cathaoirleach:** Is the amendment being pressed?

**Senator Brian Ó Domhnaill:** Unfortunately, yes.

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

Amendment declared lost.

Government amendment No. 18:

In page 11, subsection (4), line 19, after "interest" to insert the following:

“, which said full amount is, in this section, referred to as the “full amount” “.

Amendment agreed to.

Government amendment No. 19:

In page 11, subsection (6), lines 31 and 32, to delete “charge, fee or interest” and substitute “full amount”.

Amendment agreed to.

Section 7, as amended, agreed to.

## SECTION 8

**An Cathaoirleach:** Amendment No. 20 has already been discussed with amendment No. 17.

**Senator Brian Ó Domhnaill:** I move amendment No. 20:

In page 11, subsection (1), line 39, after “relates” to insert “unless the property has been sold or inherited”.

Amendment put.

The Committee divided: Tá, 9; Níl, 22.

Tá

Barrett, Sean D.  
Cullinane, David.  
Leyden, Terry.  
Mullen, Rónán.  
Norris, David.

O'Sullivan, Ned.  
Ó Clochartaigh, Trevor.  
Ó Domhnaill, Brian.  
Reilly, Kathryn.

Nil

Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Comiskey, Michael.  
Conway, Martin.  
Cummins, Maurice.  
D'Arcy, Jim.  
Gilroy, John.  
Hayden, Aideen.

Heffernan, James.  
Higgins, Lorraine.  
Keane, Cáit.  
Landy, Denis.  
Moloney, Marie.  
Mulcahy, Tony.  
Mullins, Michael.  
Noone, Catherine.  
O'Keeffe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.

Tellers: Tá, Senators Ned O'Sullivan and Brian Ó Domhnaill; Níl, Senators Paul Coghlan and Susan O'Keeffe.

Amendment declared lost.

Question, "That section 8 stand part of the Bill", put and agreed to.

#### SECTION 9

**Senator Brian Ó Domhnaill:** I move amendment No. 21:

In page 12, subsection (4), lines 27 to 31, to delete paragraph (b) and substitute the following:

“(b) if it is not so satisfied, refuse the application, give the applicant a statement in writing of the reason for the refusal and inform the applicant in writing of his or her entitlement to appeal the refusal to the Department of the Environment, Community and Local Government in 30 days in accordance with this section.”.

This relates to subsection (4). If an individual is dissatisfied that the local authority has not classified him or her under the exemptions or the waivers, the only recourse available to him or her under the legislation is to appeal to the District Court. That is crazy. Potentially, the person would have to employ the services of a legal practitioner and appeal to a District Court. It creates unnecessary red tape for the legal profession and unnecessary income for the legal profession.

We are willing to work with the Minister of State on Report Stage if there an independent appeals mechanism or an appeals mechanism whereby if the individual is not satisfied with the response of the local authority or the Department of the Environment, Community and Local Government, he or she could appeal to a different section of the Department or to some other independent appeals process in writing rather than force him or her into the courts.

What will happen is that people will appeal for the sake of it, although people will also make genuine appeals. There will be hundreds of thousands of appeals clogging up the District Courts. It does not make sense because, effectively, one is left with the same appeals mechanism for people who are dissatisfied with the inspection reports carried on septic tanks. It is the same principle. I appreciate the Department is following the same principle but it is not correct because it will jam up the courts, although I am sure the legal profession would be glad of the additional work.

I do not think it is fair to ask people who feel they should be exempt and who may find it financially difficult to appeal to the District Court to do so. It is a reasonable amendment which I hope the Minister of State will accept.



**Senator David Norris:** I sympathise with Senator Ó Domhnaill but I wonder how many people will appeal because if they seek legal advice, it is likely to be more expensive than paying the charge. Perhaps I have a peculiar mind but that is what strikes me.

**Deputy Fergus O'Dowd:** I thank the Fianna Fáil Senators for tabling this amendment. An owner of a residential property is required under section 10 to provide such certificates to a purchaser as evidence that such owner was not liable to a household charge relating to the period for which the certificates were given by the relevant local authority.

Subsection (1) establishes the existence of a certificate of exemption for the purpose of the household charge. It provides that an owner of a property may apply to a local authority for a certificate of exemption which will state the reasons no household charge is payable in respect of it for a particular year or years.

Subsection (2) establishes the existence of a certificate of waiver. It provides that an owner of a property may apply to a local authority for a certificate of waiver which will state in respect of the property that it received a declaration from the owner that he or she was entitled to a waiver or that the owner was so entitled to a waiver.

Subsection (3) provides that an applicant for a certificate of exemption or a certificate of waiver must provide the relevant local authority with all such information that it requires for the purpose of making the decision.

Subsection (4) provides that where a relevant local authority is satisfied that the issuance of a certificate of exemption or a certificate of waiver is appropriate, it shall do so to the applicant concerned within 14 days. Where it is not satisfied to issue a certificate, it shall refuse same within 14 days setting out the grounds for the refusal and informing the applicant of his or her right to appeal to the court. Section 9(5) provides that where a person is dissatisfied with a local authority's decision, the applicant may appeal the decision to the courts. Section 9(6) provides that a District Court on hearing an appeal, may allow the appeal and direct the local authority to issue a certificate of exemption, a waiver or affirm the refusal. Section 9(7) provides that an appeal is to be made to a judge of the District Court in the district in which the residential property concerned is located.

Certificates of exemption and waiver are important documents. Section 10 provides that the certificates shall discharge the property from any liability for the charge, late payment fees or late payment interest for a particular year or years, subject to the property having been purchased for its full agreed price and without any notice being given to the purchaser of any charge still due on the property.

It had become apparent in dealing with operating the charge on non-principal private residences that some owners were seeking to transfer unpaid prior-year liabilities for the charge to subsequent purchasers through clauses containing contracts for sale. The provisions surrounding sections 9 and 10 seek to ensure this practice is curtailed and the persons liable for the charge pay it prior to sale or transfer.

The appeal under section 9 deals with a local authority believing it is appropriate to issue the certificate. Before a local authority may issue such a certificate, it must be satisfied it has received all information necessary to issue the certificate for the liability date due. If it is not satisfied, it must give a reason to the applicant. As such this is an appeal against a decision of a local authority not to issue a certificate rather than an appeal concerning liability for the charge itself.

Under the Bill's provisions, the Minister for the Environment, Community and Local Government or his Department does not have a role in the day-to-day operation of the household charge. It would be inappropriate to assign a quasi-judicial role to the Minister. My Department, in conjunction with the Office of the Attorney General, considered this matter when drafting the legislation. On balance, the approach set out in the Bill was considered to

be the most appropriate and consistent. It is also consistent with the separation of powers between the Executive and the Judiciary under the Constitution. In the context of a full property tax to replace the interim household charge, the issue of an appeals mechanism would fall to the expert interdepartmental group to consider and report back to the Minister.

Accordingly, I do not propose to accept the amendment.

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

Amendment declared lost.

Question, “That section 9 stand part of the Bill”, put and declared carried.

Sections 10 to 13, inclusive, agreed to.

#### SECTION 14

Government amendment No. 22:

In page 16, subsection (1)(c), line 36, to delete “said”.

Amendment agreed to.

Section 14, as amended, agreed to.

Sections 15 to 18, inclusive agreed to.

#### SECTION 19

Government amendment No. 23:

In page 22, subsection (1)(c), to delete lines 32 and 33 and substitute the following:

“(c) in section 3—

(i) by substituting the following subsections for subsections (5) and (6):”.

Amendment agreed to.

Government amendment No. 24:

In page 23, line 6, to delete “under *subsection (3)*” and substitute “under subsection (5)”.

Amendment agreed to.

Government amendment No. 25:

In page 23, to delete lines 13 to 15 and substitute the following:

“expressed as a percentage of the first-mentioned number.”,

and

(ii) by inserting the following subsection after subsection (7):

“(8) In this section ‘prescribe’ means prescribe by order.”.

Amendment agreed to.

Government amendment No. 26:

In page 25, line 35, to delete “late payment fee.” and substitute the following:

“late payment fee, which said full amount is, in this section, referred to as the ‘full amount’.”.

Amendment agreed to.

Government amendment No. 26a:

In page 32, line 13, to delete “said”.

Amendment agreed to.

Government amendment No. 27:

In page 32, to delete line 26 and substitute the following:

“(2) The Minister shall not prescribe a person for the purposes of paragraph (c) of subsection (1) unless he or she is satisfied that the provision by a local authority of information obtained by the local authority pursuant to this Act to such person will assist the person in discharging a function conferred on, or delegated to, him or her by or under any enactment.

(3) In this section—”.

**Deputy Fergus O’Dowd:** This is a technical amendment.

Amendment agreed to.

Government amendment No. 28:

In page 33, subsection (1), lines 20 and 21, to delete paragraph (m) and substitute the following:

“(m) in section 12—

(i) in subsection (3), by substituting “the relevant local authority forms the opinion that there exists sufficient evidence to justify the institution of proceedings for the offence concerned,” for “evidence sufficient to justify the institution of proceedings for the offence concerned comes to the knowledge of the relevant local authority for the residential property to which the offence relates,”,

(ii) in subsection (4), by deleting “or to be attributable to any neglect on the part of”, and

(iii) by inserting the following subsection after subsection (6):

“(7) Where a person is convicted of an offence under either subsection (5) or subsection (7) (in so far as either subsection relates to paragraph (c) of subsection (2)) of section 5, the court may, in determining the amount of the fine to impose on the person in respect of that offence, take account of any late payment fee or late payment interest, or both, paid by the person in connection with the failure to pay the household charge to which the offence relates.”.

**Deputy Fergus O’Dowd:** This is a technical amendment.

Amendment agreed to.

Amendment No. 29 not moved.

Section 19, as amended, agreed to.

Section 20 agreed to.

Title agreed to.

Bill reported with amendments.

**An Cathaoirleach:** When is it proposed to take Report Stage?

**Senator Cáit Keane:** Tomorrow.

Report Stage ordered for Friday, 9 December 2011.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Cáit Keane:** Tomorrow morning at 10.30 a.m.

### **Adjournment Matters**

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#### **Local Authority Housing**

**Senator Martin Conway:** Several people in my area are in local authority accommodation but paying significantly high fuel bills. As such, there is an onus on the Government to ensure these bills are reduced. While I appreciate significant work has been done in making local authority houses more energy efficient, there are still many housing schemes badly in need of retrofitting. Funding should be made available to local authorities to embark on such renovation works. If there was an estate in a local authority area with 40 or 50 houses, it would do a full job in terms of retrofitting and bringing them up to standard. Effectively, that is the nature of this Adjournment matter.

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Fergus O'Dowd):** I thank Senator Conway for raising this matter. It affords me the opportunity to confirm the Government's commitment to the important issue of improving the standard and overall level of energy efficiency of local authority housing stock and, at the same time, addressing energy affordability for tenants.

Despite the challenging financial climate, the Government is committed to the delivery of high quality social housing to those most in need. A key element of our approach to meeting this objective is to ensure that the stock of 130,000 local authority owned housing is of the highest standard possible and, perhaps more importantly, that the energy efficiency of these homes is improved. In line with overall national policy, the enhancement of energy efficiency standards remains a priority within my Department's overall strategy for the improvement of local authority housing. Improving the energy efficiency of homes offers significant advantages to households, both in terms of thermal comfort and savings on energy costs.

My Department has, for a number of years, supported an ambitious retrofitting programme that has already seen the energy efficiency of some 3,000 houses improved over the past three years. This year, my Department allocated a further €31 million across all local authorities to undertake the necessary works aimed at improving the energy efficiency of older apartments and houses by reducing heat loss through the fabric of the building and the installation of high-efficiency condensing boilers. Simple measures such as insulating walls and ceilings as well as draught-proofing windows and doors can achieve significant energy savings, not to mention the improvement in comfort levels.

However, it is a matter for local authorities to select the properties to be upgraded and to determine the nature and the scale of the works to be undertaken in each case. That said, I

[Deputy Fergus O'Dowd.]

would expect that older properties which were built before minimum energy standards were prescribed in the regulations would be a primary target.

The social housing retrofitting programme offers housing authorities a practical means of improving the quality of their housing stock. The programme brings immediate as well as long-term benefits for the broader community in terms of improved living conditions, job creation and delivering a greener Ireland for the future.

I share the Senator's concerns. I recognise the difficulty caused by the rising cost of fuel. My Department is working closely with colleagues in other Departments and agencies to develop a whole-of-Government approach to addressing the real issue of energy affordability. My colleague, the Minister, Deputy Rabbitte, recently published a comprehensive energy affordability strategy entitled *Warmer Homes: A Strategy for Affordable Energy in Ireland*. This strategy sets out a vision for improving the affordability of energy for low-income households, ensuring that people can live in a warm and comfortable home that enhances the quality of their lives. My Department will assist to the fullest possible extent in extending the benefits of the strategy to all local authorities.

My Department will continue to support local authority programmes for improving the social housing stock. We will continue the focus on improving the energy efficiency of older stock under the 2012 social housing improvement works programme.

**An Cathaoirleach:** A brief question, Senator Conway.

**Senator Martin Conway:** The Cathaoirleach need not worry, I will not delay him.

Gabhaim buíochas leis an Aire Stáit for a comprehensive reply. I suppose €31 million is a significant sum, but what I would be looking for is merely a once-off much more significant sum to deal with the amount of people who are in local authority housing for a long time. I understand that most of the €31 million is channelled into houses that become vacant as a result of tenants either dying or moving on. In the case of those in houses who are suffering from significantly high heating bills, the quadrupling of the figure for one year would not only reduce energy use and meet the State's carbon commitments, but would also ensure a certain level of job creation. It would be a win, win all round. Times are tight and budgets are difficult. However, of that type of investment, a significant amount of it would come back in terms of job creation, taxes, etc.

**Deputy Fergus O'Dowd:** I agree with the sentiment Senator Conway expressed and I will bring his comments to the attention of the Minister. Given the budgetary position, that is a key issue, but the principles the Senator enunciates are important.

The Seanad adjourned at 7.45 p.m. until 10.30 a.m. on Friday, 9 December 2011.