

SEANAD ÉIREANN

Dé Máirt, 28 Feabhra 2012.
Tuesday, 28 February 2012.

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Paidir.

Prayer.

Business of Seanad

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

The need for the Minister for the Environment, Community and Local Government to request all local authorities, including town, city and county councils, to have on their websites the names of the employees responsible for the management of individual departments and the names of persons responsible for each individual area within each department in order that citizens can identify the relevant person with responsibility for his or her query.

I have also received notice from Senator Fidelma Healy Eames of the following matter:

The need for the Minister for Education and Skills to reclassify Down's syndrome as a low incidence disability in order that children with the syndrome receive teaching and learning resources appropriate to their needs.

I have also received notice from Senator Brian Ó Domhnaill of the following matter:

The need for the Minister for Agriculture, Food and the Marine, in the light of the underspend of €226 million in his Department in 2011, to proceed with an improved AEOS this year.

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

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, the Protection of Employees (Temporary Agency Work) Bill 2011 — Second Stage, to be taken at the conclusion of the Order of Business and conclude not later than 5.45 p.m., with the contributions of group spokespersons not to exceed eight minutes, those of all other Senators not to exceed five minutes and the Minister to be called on to reply to the debate not later than 5.35 p.m.

Senator Darragh O'Brien: I have a follow-up question to one I asked the Leader last week. In the context of the worsening mortgage crisis, I have put on the record of the House on numerous occasions the inaction of the Government in dealing with this matter and the fact

[Senator Darragh O'Brien.]

that the situation is getting worse. Last week I asked the Leader to arrange for the Minister of State at the Department of Finance, Deputy Brian Hayes, to discuss the Government's view on this worsening crisis, especially in light of the failure to fulfil the commitment given to this House in late November last by the Minister of State that the Government would produce a full mortgage arrears implementation strategy in advance of the budget. I ask the Leader to update me and my colleagues on whether we have secured time for the Minister of State to come to the House to attend a very important discussion on this worsening crisis.

I have a more difficult request for the Leader. Has he made any progress in securing the attendance of the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, in the House to discuss the important matter of the sale of State assets? As I said last week and as confirmed by the Minister for Finance, Deputy Michael Noonan, it was not agreed in the first memorandum of understanding. The figure of €2 billion was agreed by the Government in the revised memorandum of understanding in July on the sale of State assets.

I was with the Minister for Public Expenditure and Reform, Deputy Howlin, on Sunday evening. He was in particularly good form then so it might be a good time to ask him to come to the House for a proper structured debate on the sale of State assets in which he could outline which assets are deemed strategic. He could also tell Members when the Government believes it will realise some of the assets. The Government has said it will invest one third of the proceeds from these sales in job creation. It is important for the Leader to confirm in the House today that it is anything over €2 billion, so if the State raises €2.1 billion, €100 million will be invested in job creation. I put it to the Leader that last July's jobs initiative did not have the desired effect. I would welcome a proper and frank debate with all Members, including the Minister, Deputy Howlin.

In light of the fact that the week after next, in what is a good departure in the House and on which I commend the Leader, we will have a full debate on the EU fiscal compact with a briefing the week before, we need clarification before that debate on what the Government's position was and whether, as I mentioned last week, the German Minister for European Affairs was correct in saying that this EU treaty was designed to ensure no referendum would be held in Ireland. Last week, I asked for the Minister of State at the Department of Foreign Affairs and Trade, Deputy Lucinda Creighton, to come to the House because she said something absolutely to the contrary. Therefore, I am moving an amendment to the Order of Business to request that the Minister of State, Deputy Creighton, come to the House today to explain if it is the case that the Government's negotiating position was that the EU fiscal compact would be drafted in such a fashion that the Irish people would not have a say on it in a referendum.

Senator Ivana Bacik: With regard to the last issue raised by Senator Darragh O'Brien, the Tánaiste gave a robust response, as reported in today's newspapers, to the assertion by Michael Link last week. The Tánaiste made it clear that it was not the case and that the fiscal compact was not negotiated in such a way as to avoid the need for a referendum. That is the answer the Senator seeks. He does not need to amend the Order of Business——

Senator Darragh O'Brien: I will call for it if I want it.

Senator Ivana Bacik: ——to get somebody to say the same thing again which they have already said and which the Minister of State, Deputy Creighton, said in this House before.

Senator Mark Daly: If the Government can say it to the media, can it not say it again in the House?

Senator Ivana Bacik: I really do not see the purpose of that amendment.

Senator Darragh O'Brien: That is for me to decide.

Senator Ivana Bacik: I commend the Minister for Social Protection on her excellent performance last night on “The Frontline”. It was a really superb debate about job activation. There was a very good exchange among all the panellists and I thought that many of the issues dealing with the change of culture in the Department of Social Protection and the implementation of job activation measures were going to be discussed. I thought the discussion was really strong. Anybody watching it would have come away with a much better idea of the enormous change that is being brought about from the old passive system of social welfare, as the Minister described it, to a much more active system where community welfare officers would engage one-to-one with people who are on the live register and seeking to find ways off it through training, upskilling and employment.

The Minister for Jobs, Enterprise and Innovation will be in the House next week to debate the jobs plan, and I know that others asked last week for the Minister for Social Protection to come in at some stage to debate the pathways programme. It would be very useful for us to have debates in this House on both the jobs plan and on the job activation measures in the Department of Social Protection.

I welcome the publication of the whistleblowers Bill today. It was promised in the programme for Government and is a long overdue piece of political reform. The Minister for Public Expenditure and Reform has been strongly proactive on this issue, given his own experience in the past in seeking to ensure that inquiries were held into matters of public interest. We should be very grateful to two people who have taken great personal risks in whistleblowing on financial irregularities, and I think it is very important that we now put in place statutory protections for people who blow the whistle in future.

Senator David Norris: It will not protect one of those informants I used in this House on Adjournment debates and in other matters.

Senator Ivana Bacik: I hope it will.

Senator David Norris: It will not.

Senator Rónán Mullen: Notwithstanding the concerns expressed by Senator Norris, I welcome the publication of the Protected Disclosure in the Public Interest Bill 2012. I have no doubt that Senator Norris may well have useful observations to make about the legislation in due course, but I think it is very important that for the first time, we are going to have a piece of overarching whistleblower protection in this country. It is well known that there is a varying degree of protection — this is part of the problem — for whistleblowers in particular categories of some Acts. Transparency International has done great work in keeping this issue to the fore, which has kept the pressure on the Government. That organisation has certainly sought legislation of this kind for a long time.

It is important that we have overarching legislation which guarantees protection from damage to immunity against civil and criminal liability where people make protected disclosures, and that retaliation does not take place against people. It will always be important that there is a clear and identifiable “go to” person for somebody who has to make a declaration of knowledge that amounts to whistleblowing in the public interest. It is important as well that it would be illegal to take any retaliation or reprisals against a person who would make an appropriate disclosure.

There will always be a need for a tweaking of legislation to make sure that this does not open a way to malicious claims. While I would support the anonymity of whistleblowers in

[Senator Rónán Mullen.]

certain circumstances, this must be achieved in a way that does not allow malicious allegations to be made.

A good start has been made with the publication of this Bill. I share Transparency International's view that we are on the right track.

Senator David Norris: Tell that to the journalists in the tabloids.

Senator Rónán Mullen: Having brought forward a motion on this last year along with other Senators, I am glad to see the publication of the Bill. We also mentioned a related issue at the time. Where persons in particular vulnerable categories, for example, immigrants whose stay in the country depends on access to employment, have a disclosure to make that could affect their status, the State needs to protect them, for example, by fast-tracking their visa or work permit applications, given their changed circumstances.

Senator Paul Coghlan: I was slightly amused to hear Senator Darragh O'Brien speak about State assets. There would be no harm in having a debate on the sale of State assets, if the Leader was prepared to grant it, but I am wondering whether the Senator is again trying to rewrite history on the commitments of his party on the sale of State assets. In appointing Mr. Colm McCarthy in June 2010 to draw up his first report five months before the previous Government signed the original memorandum of understanding with the European Union and the IMF the figure his party had in mind, as we discovered on entering office, was €5 billion.

Senator Darragh O'Brien: A figure of €7 billion was included in the election manifestos.

Senator Paul Coghlan: That was the figure included in the McCarthy report.

Senator Darragh O'Brien: I did not say I was against it.

Senator Paul Coghlan: Because of the general election which was imminent, no figure was included in the memorandum of understanding. The Government has renegotiated the figure downwards to €3 billion and €1 billion of the proceeds will go towards job creation. We should not get too excited immediately, however, because, as the House will be aware, there will be no sale this year——

Senator Darragh O'Brien: Not true.

Senator Paul Coghlan: ——not until optimum prices are available. However, I do not see any harm in having a debate if the Leader was willing to grant it.

Senator Darragh O'Brien: Excellent.

Senator Paul Coghlan: It is important to have the record correct.

Senator Terry Leyden: I second the amendment to the Order of Business proposed by the Leader of the Opposition, Senator Darragh O'Brien, concerning the statement made by the German Minister for European Affairs, Mr. Link, that the Government was not anxious to hold a referendum on the fiscal treaty. Perhaps that is what it wanted, but we will see in the next 24 hours whether there will be a referendum held on the issue. A referendum would allow the people to decide whether it was in their best interests to agree to the treaty. Of course, other issues would arise. Let there be no doubt that the Minister for Transport, Tourism and Sport, Deputy Leo Varadkar, is correct that other issues that have arisen since the Government took office less than one year ago would come into the frame in holding a referendum. Let

there be a referendum and let us have a good debate on other issues affecting every constituency, particularly my constituency of Roscommon-South Leitrim in which the commitment to retain services at Roscommon County Hospital has been renegeed on.

In the light of the fact that business is due to be completed at 5.45 p.m., I ask the Leader of the House about the commitment given last week to have Committee Stage of the excellent Bill produced by Senator John Kelly, the Wind Turbines Bill 2012, taken today. A discussion took place at a meeting of Roscommon County Council on the difficulties connected with the proposed construction of a turbine at Dysart and Sliabh Bán. People are delighted with Senator Kelly for bringing forward the Bill. I am more than anxious to have it debated today, as my party supports it. I, therefore, propose that at 5.45 p.m., after the House has completed its other business, Committee Stage of the Wind Turbines Bill 2012 be taken and, probably, completed this evening.

An Cathaoirleach: Is that an amendment to the Order of Business?

Senator Terry Leyden: It is.

Senator John Kelly: I am delighted Senator Terry Leyden is supporting me 100%.

For the past few weeks many Senators have been expressing anger at the way applications for medical cards are being processed by the PCRS in Finglas. However, nothing has improved or changed in that regard. There is another elephant in the room that has not been mentioned by many since I was elected to the Seanad, although I am aware it is a big issue for many Senators, that is, the way the medical profession is deciding on claims to the Department of Social Protection for disability allowance, invalidity allowance and carer's allowance. It is evident that there is a "refuse" mentality, that somewhere along the line somebody has told the medical decision makers to refuse everything and push all claimants towards the appeals process. I am aware of cases in my own area. For instance, the husband of a lady with Parkinson's disease gave up work for two years and claimed carer's benefit in order to look after his wife. At the end of the two year period he applied for carer's allowance but was told his wife did not need to be cared for. The disease is getting progressively worse. I am also aware of a man who suffers from severe depression, is totally incontinent and has limited use of his left leg — a figure of 5% has been mentioned — yet he has been told he does not need a carer.

An Cathaoirleach: Is the Senator calling for a debate on the issue?

Senator John Kelly: I will get to the point. In the good times persons with a slight visual impediment were receiving blind pension. I know one man, a blind pensioner, who buys the *Daily Star* every day.

Senator David Norris: He would have to buy that newspaper.

Senator John Kelly: It has gone over the top in refusing these claims.

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

Senator John Kelly: The point I want to make is that when such decisions are eventually appealed after the people concerned have endured nine months of grief, 50% are overturned. This means 50% of the decisions made by the medical profession are inaccurate. I call on the Minister to come to the House to debate the issue, as it is important we find out if something has changed, unknown to public representatives, in particular.

Senator Terry Leyden: The Senator is sadly missed as a welfare officer. I hope he will second the motion.

Senator David Norris: Last week we had a very interesting debate on the media in which we heard a limp speech by the Minister. For me, what was most significant was that when I took on the media, I looked around and noticed that some of my colleagues on all sides of the House were applauding, where they could not be seen by the cameras or picked up by the microphones. I call on the Taoiseach to come to the House to explain how it is that he gave such a massive ringing endorsement to *The Sun on Sunday* when it was launched and how it is that he was enjoined in this endorsement by the Tánaiste, Deputy Eamon Gilmore. This is a newspaper which is part of Rupert Murdoch's empire of evil that was described in the Leveson inquiry as being engaged in the systematic corruption of public life, as having a culture of corruption which involved the paying of public figures for information which had been authorised at the highest level. The outcome of these stories was not of public interest; they were just titillating stories.

The much vaunted whistleblowers' legislation will not protect a single journalist subject to bullying. It will not protect any of the individuals who contacted me with the stories I raised on the Adjournment, for example, the people who contacted me because their brother had been attacked, bound, gagged and stabbed, only for a newspaper to state he had been the victim in a bizarre sex ritual that had gone wrong, which his nieces had to read. When I protested about what was being done to me, I was told it was "payback time". No wonder politicians are afraid and gutless.

I want to know if the Taoiseach was paid for writing the article. I want to know what the connection is. It is a shame that the Taoiseach should write a leading article for *The Sun* and, of course, he was praised in the editorial. Again today the coalition Government is all over it and getting support. That is what Tony Blair did. This is how public discourse is corrupted. No doubt I will pay again, but I will go on saying this in the interests of decent, ordinary people who do not have a voice, whose lives have been invaded and privacy violated.

When I asked the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, given the evidence presented to the Leveson inquiry that these practices have been pursued in this country also——

An Cathaoirleach: Is the Senator proposing an amendment to the Order of Business?

Senator David Norris: ——if he would send a representative, he replied, "No." When I asked him if he would initiate an inquiry into ethics and standards in the Irish media, he replied, "No," and when I asked him if he would pass or promote the privacy Bill, he replied, "No." It is not good enough.

An Cathaoirleach: Is the Senator proposing an amendment to the Order of Business?

Senator David Norris: I am proposing an amendment that the Taoiseach come to the House today to answer the questions I have raised, namely, why did he, as the Prime Minister of this independent republic, write a leading article in *The Sun on Sunday* and was he paid for doing so?

Senator Martin Conway: I refer to civil servants working in the Office of the Revenue Commissioners in Ennis, County Clare. There is significant speculation that there will be redeployment from the office which has been open for more than 20 years and was one of the first to be decentralised. The building is owned by the OPW. It would be a retrograde step if there was to be a diminution of services at the office in Ennis in which there are some fine civil

servants working. They need and deserve clarity because it is not healthy that they are working in a vacuum.

Will the Leader allow for a debate on the proposed legislation dealing with whistleblowers, in respect of which the heads of a Bill have just been published? It is legislation that is badly needed. Had we had it sooner, some of our current problems might not be as severe because more people would have blown the whistle a long time ago, particularly in the financial services sector where there was such a serious lack of regulation. I commend the brave whistleblowers who put their necks on the line over the years with no protection from the law whatsoever. I sincerely hope this Bill ensures that when people put their hands up in future and call a spade a spade, they will have the protection of the State.

Senator David Cullinane: I join Senator John Kelly in raising the issue of the delay in the processing of medical card applications. Of the 14 cases I dealt with last week of people waiting for a medical card, ten involved information that had gone missing, including documents, pay-slips and supporting medical documentation. I spent the best part of three hours yesterday faxing information to the central processing office. In one of these cases a woman is awaiting serious surgery on her face, yet every time information is given more is sought.

I cannot understand why so much information is going missing. It simply beggars belief. I have spoken to many public representatives and the story is the same everywhere. Throughout the State, for whatever reason, people are sending their information to the centralised processing facility and it is being lost. The Minister for Health, Deputy James Reilly, has come to the Chamber on more than one occasion and given an undertaking to look into the matter. His claim that the turnaround time is fast simply does not match the reality for people throughout the country. We must get to the bottom of why so much information is going missing. It is not fair that people who have submitted their application must contact the processing facility by telephone — often after waiting hours to get through — only to be told their information is lost and must be resubmitted.

We must have clarity on this. Is it the case that local offices are getting the information but it is not being sent on to the central office? Whatever the problem is, it must be resolved. Will the Leader ask the Minister to get to the bottom of this and to assure us that corrective action will be taken to resolve a situation where people are being left without medical cards through no fault of their own?

Senator John Kelly: On a point of order, I agree with Senator Cullinane's proposal. Last week I photocopied a client's application form, including all of the additional information——

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

Senator John Kelly: ——and resubmitted it. The claim has still not been processed because information has gone missing.

An Cathaoirleach: I have called Senator Colm Burke.

Senator John Kelly: I said last week that it is either gross incompetence or somebody is sabotaging files in Finglas.

An Cathaoirleach: Senator Kelly has already made his contribution. I call Senator Colm Burke.

Senator Colm Burke: I remind the House that a delegation from the Oireachtas Joint Committee on Health and Children will visit the centralised processing centre on Friday. As part

[Senator Colm Burke.]

of the delegation, I am hopeful that some of the issues that were raised in this House will be raised at that meeting and that we will get a resolution. I agree with my colleagues that it is a problem that has been going on for far too long and must be resolved without further delay.

Senator John Kelly raised the issue of the invalidity pension. I dealt with a case recently where a person was deemed to be unable to work for a period of nine months. However, in order to qualify for an invalidity pension, one must be deemed to be unsuitable for or unable to work for a period of 12 months. The matter is now under appeal for more than nine months. I agree with Senator Kelly that this matter must be tackled. If a person is unable to work there is nothing that can be done about it. Drawing a distinction like this is unfair and unjust and must be reviewed. Many people are awaiting decisions for a long time. Will the Leader arrange a debate on this issue at an early date?

On a positive note, I welcome the announcement that Eli Lilly will create more than 500 jobs in Cork, including 300 in the construction area and 200 permanent posts.

They are the announcements we need to hear every week and, hopefully, with the Minister for Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, we will hear them.

Senator Mark Daly: Last week I raised the issue of the democratic deficit and today I understand there will be an announcement in the other House opposing the need for a referendum. During Private Members' business last week we had an interesting debate on windmills. I second Senator Leyden's amendment on the issue. Clearly the Minister's reply was written by the public servants who implied they would legislate and write the guidelines and do what needs to be done when it comes to making laws. That is unacceptable. The House should draw up the legislation whether on windmills, mobile phone masts or any issue. That the reply from the Minister was to the effect that it was okay for the Senators and Deputies to do the talking and they would make the laws is not good enough.

On the issue of the democratic deficit, another German Minister said today that an offer would be made to Greece that it could not refuse to get out of the euro. The Germans are running the show. They already got rid of the Prime Minister of Greece and the Prime Minister of Italy and are telling Greece it will be given a chance and an offer it cannot refuse. Only the Italian mob would make an offer one could not refuse. The German Ministers are telling Greece they will make an offer. We are turning ourselves into a federal Europe but it is not a federal Europe being run by the EU states, it is being run by Germany. I hope the Government gives us the opportunity to have a referendum in order that the people can have their say because the people of Greece and Italy do not have a say. If the Government has its way the people of Ireland will not have their say.

Senator Eamonn Coghlan: Recently the Taoiseach was quoted as saying that when one hears the name, Crumlin, one thinks of one word, that one word is "children". However, when one hears the name, Mater, one thinks of many words, such as chaos, political incompetence, disaster for children's health. Crumlin hospital is the national referral hospital for seriously ill children from all over Ireland cared for there suffering from cancer, leukemia, cystic fibrosis, heart and lung disease, to name a few. Crumlin hospital is a teaching hospital and has a world renowned research centre. It has a brand recognised all over the world, supported by thousands of volunteers who have raised millions of euro to support it beyond Government support. The only problem with Crumlin hospital and its services is the accommodation.

In light of the recent decision by An Bord Pleanála concerning the proposed national paediatric hospital, does the Leader agree it would be unacceptable in the spirit of the Constitution to change legislation merely to overturn that decision? Does he also agree that time, money

and effort would be best spent on determining a new location, configuration and the costs of this important health project, given the rejection of the Mater site? Does he accept that those heretofore involved in the decision making on this project should stand aside and that the Department of children should play a central role?

Senator Feargal Quinn: One of the objectives of the Courts and Court Officers Act 2002 was to make an effort to bring down the costs of legal proceedings, an issue which has been at the height of criticism by the troika and the IMF. Sections 13 and 14 of that Act proposed one way of saving a considerable sum of money by increasing the monetary limit — the jurisdiction — in civil proceedings in the Circuit Court from €38,000 to €100,000, and in the District Court from €6,000 to €20,000. We passed that legislation but we never commenced it. Perhaps there is a reason we have not done so. Will the Leader find out why it has not happened?

One of the great success stories has been the Small Claims Court. It has a limit on claims not exceeding €2,000 but that could be increased to €3,000. It also has an online application facility that is the envy of all of the other courts. There are things that we can do, without further legislation. We already have passed a law but I do not know why we have not commenced it. Perhaps the Leader can find out why. It would go some way to reducing the considerably high costs of legal proceedings in this country.

Senator Michael Mullins: I ask the Leader to arrange, at an early date, for a debate on rail transport following the recent publication of the AECOM Goodbody Strategic Rail Investments Needs Review commissioned by Iarnród Éireann. The report recommends that sections of the rail network, including the Dublin-Cork and Galway-Dublin routes, be electrified, resulting in cheaper running costs, and that a hub station be developed near the M50 in Dublin. The projects would give much needed employment and increase the use of the rail network and make travel more affordable.

The report also states that €150 million per year should be spent maintaining the network and €250 million should be spent reducing journey times for all intercity services by at least 30 minutes, making train travel as competitive as car travel. Additional capacity could be added to the Galway-Dublin route by double tracking the line from Portarlinton to Athlone. Building a link from Athenry to Tuam would also help reduce commuting times into Galway.

Something else which was made known and that we should highlight to the public is that one can significantly reduce the cost of rail travel by booking online. A significant saving can be made of which many people are unaware. If one travels from Ballinasloe to Dublin, a ticket booked online costs €16 but costs close to €30 when bought on the day of travel. We should highlight the online savings better. My most important call is for a debate on rail transport and how to make the service more efficient, cost-effective and user-friendly.

Senator Paschal Mooney: I am sure that the Cathaoirleach and the House will be interested to know that the Taoiseach has announced in the other House, in the past few minutes, that a referendum will be held on the fiscal treaty.

An Cathaoirleach: The Senator is announcing it in this House.

Senator Paschal Mooney: If the Cathaoirleach cares to couch it in such terms, then I am happy to do so.

Senator Maurice Cummins: The Government should have been Senator Mark Daly beforehand.

Senator Paul Coghlan: Did Fianna Fáil send the boy outside?

Senator Colm Burke: I presume Senator Mooney will support it.

An Cathaoirleach: Senator Mooney, without interruption, please.

Senator Paschal Mooney: I will leave it on the record. I am interested in the circumstances to hear the reaction of the Leader. As the Cathaoirleach will know, the issue was raised by all sides in this House and I am glad the uncertainty has now been removed. It is critical to the future of this country and the well-being of all of its citizens that the referendum proceeds and the people have an opportunity to express their opinion. It remains to be seen what that opinion will be. I am interested in hearing the Leader's reaction to the news.

I second Senator Norris's proposal despite, or in spite of, the fact that the Taoiseach has been about important business, as always. I do so in light of the comments made in London yesterday by the Welsh singer, Charlotte Church. They should be required reading for anybody interested in a free and transparent media. She was awarded substantial damages for phone hacking by journalists of the *News of the World*. In her speech, she said she was disgusted — that was the word she used — and sickened by what had happened. Her mother was forced — that was the term used — by journalists of that discredited newspaper to reveal her medical condition. Where was the public interest served in that instance?

I have to go some part of the way with Senator Norris on this. It is a matter for the Taoiseach to write for whoever he wishes, but I would not wish to be associated with the Murdoch empire because I believe that it no longer has the trust of the majority of the people due to the activities in which its journalists have engaged. It is now creating a smokescreen by going back into the market with a Sunday newspaper and resuming what it was doing until now. We will await developments in relation to this newspaper and see whether it is going to reach the highest standards that one expects and one generally gets in this country from journalists in the printed or electronic media. In those circumstances, I second the motion of Senator Norris.

Senator Susan O'Keeffe: I welcome the announcement by the Government of a referendum. We had several heated moments in this House on whether a referendum would occur. The Attorney General has moved in a swift fashion to give the people this decision, and we will look forward to a robust debate in the weeks ahead. No date has been set, from what we can understand from the announcement, but it gives people the chance to support the work that has been happening and to support the progress that has been made by the Government in the year since it was elected. It will provide an opportunity for everybody to have a debate about our place in Europe and the way our relationship has developed and strengthened with Europe, not just in the last year but since we became members of the European Union.

Senator Terry Brennan: Senator Mullins made a call for a debate on transport, and I wish to raise an issue regarding air transport costs. We all have family members in England, and when death or serious illness requires attention, we may have to go to England urgently for funeral arrangements or whatever. I know three families who suffered bereavements in England. One of these families is from your own county, a Chathaoirleach. The couple went to Dublin Airport to take a flight to London and were charged €500. They wanted an open ticket because if somebody dies in England, it can take a while for the body to be released. They were refused an open ticket. I will not mention the airline. On the way back two days later on the same plane, they were charged €650. It is easy for some of these airlines to give free flights. Incidentally, there were people on the same flight who paid €100.

An Cathaoirleach: That matter could be raised on the Adjournment.

Senator Terry Brennan: I understand that, but I want to support the call for the Minister to explain or to see if anything can be done. It is an exploitation of Irish people at sad times in their lives. I support the call for the Minister to come into the House.

Senator Jimmy Harte: I would like to add my comments to those of Senator O’Keeffe on the news that the Taoiseach and Tánaiste have conveyed to the Dáil that a referendum will take place — I presume it will be this year — on the fiscal compact. I hope that the debate will be reasoned and it will not be used by certain individuals for another agenda. It is probably the most important referendum in which this country will ever engage in my lifetime. It is a referendum for my children’s future and for future generations. I would appeal to politicians on all sides, especially those who are stoking up rhetoric and emotion and will use it as an anti-Government referendum rather than a referendum for the future, not particularly of me but of my children and of this country. During the First World War, there was the expression, “For your tomorrow, I will give our today”, and we must look at this referendum in that context.

Senator Paul Bradford: I join with my colleagues in welcoming the decision by the Government to hold a referendum on the EU fiscal treaty. This is a decision by the Government to allow the democratic process to take place fully and to allow the people to vote on our future relationship with the European Union.

Since 1973, as a result of our involvement with the European Union, our country has been transformed. There have been tough times and bad days, but the overall picture is that Ireland has benefited enormously from its involvement in the European Union.

At some stage over the next number of weeks or months, the Irish people have an opportunity to make a firm statement about our involvement with and within the European Union. There must be a positive engaging debate. It is always said about a referendum in this country that people never answer the question asked, but on this occasion there is a duty on all politicians, not only those of us on the Government side of this House but those of all political persuasions, to engage in the debate, explain the issues to the people and allow the democratic process to take place. I am confident the Irish people, once they engage in the debate and listen to the argument, will decide that our future lies strongly and firmly within the European Union and playing a full role, not as a peripheral, second division country on the edge of the European Union. We must be at the heart of the decision-making process in the European Union. It is imperative that we vote in that direction by voting “Yes”, but first I look forward to a strong, engaging debate.

Many of my colleagues in this House, particularly on the other side, sought such a referendum. There is the phrase, “Be careful what you wish for because you might be offered it.” We are now offering the referendum not only to our party but to all parties. It will be a test of our political maturity. This is not a party political referendum. This is a referendum for Ireland, about Ireland and about our place in Europe. I certainly look forward to this House, in particular, playing a leading reflective part in the campaign.

Senator Diarmuid Wilson: First, I welcome the Government’s decision to hold a referendum on the fiscal treaty. This vindicates the Fianna Fáil position in this regard.

Senator John Gilroy: For God’s sake, it has started already.

Senator Diarmuid Wilson: We have always called on the Government to hold a referendum and as a pro-European party——

Senator Paul Coghlan: Would Senator Wilson explain that to Senator Daly?

Senator Ivana Bacik: Some of its members.

Senator Paschal Mooney: Let Senator Wilson speak.

An Cathaoirleach: Senator Wilson, without interruption.

Senator Diarmuid Wilson: —pending the proposed wording for the referendum, Fianna Fáil will be very supportive of this. I join other colleagues in calling for a reasoned and balanced debate in this regard.

I ask the Leader to ask the Minister for Defence to come in to the House to update Members on the progress he has made to date, if any, in the provision of accommodation for the troops who are being forced to leave the four barracks that he outlined before Christmas are to close at the end of March. What progress has been made in the provision of accommodation for these personnel and could he give Members an update on the accommodation that will be provided for the Reserve Defence Force, particularly in Cavan?

Senator Mary Moran: I, too, join my colleagues in welcoming the Taoiseach's and Tánaiste's announcement on the referendum. It is a great day for democracy and a great opportunity for our young people.

I want to mention an issue I have raised previously, namely, the Dignity 4 Patients group. It is approaching the 17th anniversary of the making of the first complaint. This group was set up following abuse that was caused to victims, particularly in the Our Lady of Lourdes Hospital, but also throughout the country.

Before Christmas, Members of the Oireachtas from the Louth-Meath-Monaghan area signed a petition to the Taoiseach and the Minister for Health. To date, we have not heard anything back on this call for a commission of inquiry. I ask the Leader to call on the Minister for Health to come to the House to debate this issue and to give us a date on which a possible inquiry could be established. Three years ago, when he was in opposition, he was one of those who called for a commission of inquiry. I ask him to come to the House to answer these questions.

Senator Marc MacSharry: I welcome the Government's decision to hold a referendum. It is good for politics as it is important we are seen to give a sense of ownership to public policy. This is the deficit consecutive Governments over the past couple of decades have suffered from. It is positive there will be a public debate on this issue and that the people can have their say.

I ask the Leader to arrange at an early stage for a debate on health insurance and the Government's plan for universal health insurance. When we see the figure of some 66,000 families dropping out of paying for health insurance last year and the increase in waiting lists to which this is leading, as well as the fact those who still have insurance are now paying much higher premia, it is a very important issue. It is timely we would have a debate on it.

Senator Pat O'Neill: I welcome the decision by the Taoiseach and the Tánaiste to have a referendum. I am delighted two members of the Fianna Fáil group welcomed it, nearly guaranteeing support. I was very worried, having listened to Senator Daly for the last two sitting days in regard to the need for a referendum and the fact that—

Senator Michael Mullins: Where will he be during the referendum?

Senator Pat O'Neill: That is up to him. This is a pro-Europe referendum, which I feel all parties must support. I ask the Leader that, at the earliest convenience, we have a debate in this House on the referendum. Although I am not suggesting the other House would not do so, this House can give the matter proper debate. We saw how the last two referenda, on the 29th and 30th amendments, got lost among the debate on the presidential election and the by-election in Dublin West and there was not proper debate on them. If other legislation coming through the House is too pressing, I have no problem with the House sitting on a Friday for an all-day debate——

Senator Darragh O'Brien: It is scheduled for the week after next.

Senator Pat O'Neill: We should have a proper debate on this referendum. I hope Senator Daly comes to the House to clarify his position. I am delighted the Fianna Fáil Members——

Senator Paul Coghlan: He might have an each-way bet.

Senator Pat O'Neill: I am delighted the Fianna Fáil Members have said they will support the referendum. I could not believe Senator Daly was claiming that the EU was being run by Germany and I would like him to clarify his position in the House. We should have a full and proper debate on the referendum that gets proper coverage in the press.

A Senator: Fianna Fáil has disowned Senator Daly.

Senator Maurice Cummins: The majority of the Order of Business has been confined to the proposed referendum. I am on the record of the House on numerous occasions in recent weeks indicating that we would have a referendum if it was necessary and if the Attorney General said it was necessary. That is the situation and is what is going to happen, despite the talk, even today. It happened a few minutes too late for Senator Daly to make remarks——

A Senator: He got caught on the hop.

Senator Maurice Cummins: ——such as that there was collusion with the German Government that we would have no referendum, and that we have a democratic deficit, as he has called it for the past number of weeks. Earlier today he was insisting once again that we would have no referendum. However, as we now know, there will in fact be a referendum, by means of which the people of Ireland will make the decision. As Members are aware, we had arranged a debate on this issue prior to the Taoiseach's announcement. It would be preferable if the Bill dealing with the referendum is not introduced prior to that debate, but we will have to wait and see what the timing is. We will try to have the debate before the legislation is brought forward, as per our original plan. Time may overtake us in the meantime, but we will do what we can to rejig the agenda.

Senator O'Brien also raised the issue of mortgage arrears, as he has done on several occasions. There is no question that the Government is taking urgent action on this issue. In particular, the personal insolvency legislation will allow heavily indebted people trapped with unsustainable mortgages a chance to restart their lives. The Government is very aware of the problem of mortgage arrears and the effect it is having on families throughout the State. Unfortunately, we will be living with the effects of the dramatic crash in the property market for years to come. The Government's primary focus in this area is to help those who genuinely cannot pay their mortgages. We have also taken steps in the budget, as the Senator well knows, to help people who purchased their home in the boom years by way of increases in mortgage

[Senator Maurice Cummins.]

interest relief. The Government is not standing idly by on this issue. Rather, it is working actively with all partners and will continue to do so. Several of the recommendations in the Keane report have already been implemented. To suggest that no action has been taken is a fallacy.

On the question of the sale of State assets, I am endeavouring to bring the Minister to the House for a debate on the issue as soon as possible. I hope it will happen next week, but I am not sure whether that will be possible. I agree we should have a debate as soon as possible. Senator O'Brien also repeated the allegation that the job initiative has yielded no jobs. I assure him that 6,500 jobs were created as a result of the programme announced last year. The Government is getting on with its work and will continue to do so in an effort to bring the country back from the brink we inherited last year.

Senators Ivana Bacik, Rónán Mullen and others referred to the legislation on whistleblowers. The heads of the Bill have now been published. I hope that legislation will come before the House in early course so that we all have an opportunity to discuss it. It is important legislation which has been promised for a long time. I look forward to getting on with that business.

Senator Terry Leyden and others raised the issue of the referendum on the fiscal treaty, which I have dealt with. Senator John Kelly and others raised the issue of delays in the processing of medical card applications. As Senator Colm Burke pointed out, a delegation from the Oireachtas Joint Committee on Health and Children will visit the headquarters of the primary care reimbursement service next Friday. We are also informed that the staff of the centre will make a presentation to Oireachtas Members in the near future.

On the question of disability and carer's allowance, I suggest that Senator Kelly take that matter up with the relevant Minister of State. I will certainly bring it to her attention, but he should raise the individual cases to which he referred with her.

Senator Eamonn Coghlan raised the issue of the national children's hospital. The Minister has announced the establishment of a review team, to be chaired by Dr. Frank Dolphin. The review team will examine the planning decision and its impact on the project. It will then report to the Minister and advise on the options now available to ensure earliest possible delivery of the national children's hospital which, I am sure, is what everyone wants. We await completion of that review and what will happen in that regard. I reassert the Government's commitment to the provision of a national children's hospital at the earliest possible time.

Senator Quinn asked why the provisions of the Courts and Courts Officers Act 2002 in regard to driving down costs and the increase in limits recommended by the Circuit Court have not been commenced. I will find out the reason for this from the Department and get back to the Senator on it. Senator Brennan raised the issue of flight tickets. As stated by the Cathaoirleach, the Senator could raise that matter by way of motion on the Adjournment. I take on board his comments in that regard.

Senator Moran referred to the Dignity 4 Patients group and asked that I inquire of the Minister for Health the position in regard to the commission of inquiry into Our Lady of Lourdes Hospital. It is a pity the Senator did not raise that issue with the Minister when he was in the House last week. However, I will endeavour to find out the position in that regard for the Senator.

Senator MacSharry called for a debate on health insurance. I will try to arrange for such a debate to take place as soon as possible.

An Cathaoirleach: Senator Darragh O'Brien has moved the following amendment to the Order of Business, "That a debate with the Minister of State with responsibility for European affairs to clarify the Government's position on the European fiscal compact treaty be taken today." Is the amendment being pressed?

Senator Darragh O'Brien: I am glad the Government has listened to us on this side of the House.

An Cathaoirleach: Is the amendment withdrawn?

Senator Darragh O'Brien: Yes.

Amendment, by leave, withdrawn.

An Cathaoirleach: Senator Terry Leyden has proposed the following amendment to the Order of Business, "That No. 11, Wind Turbines Bill 2012, be taken at the conclusion of No. 1 today." Is the amendment being pressed?

Senator Terry Leyden: Yes.

Amendment put.

The Seanad divided: Tá, 14; Níl, 28.

Tá

Cullinane, David.
Daly, Mark.
Leyden, Terry.
MacSharry, Marc.
Mooney, Paschal.
Mullen, Rónán.
Norris, David.

O'Brien, Darragh.
O'Donovan, Denis.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
Walsh, Jim.
Wilson, Diarmuid.

Níl

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

Heffernan, James.
Henry, Imelda.
Higgins, Lorraine.
Kelly, John.
Landy, Denis.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
O'Keeffe, Susan.
O'Neill, Pat.
van Turnhout, Jillian.
Whelan, John.
Zappone, Katherine.

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

Amendment declared lost.

An Cathaoirleach: Senator Norris has proposed an amendment to the Order of Business: "That a debate with the Taoiseach to clarify why he wrote a leading article for *The Sun on*

[An Cathaoirleach.]

Sunday, and to discover if he received a payment for that article, be taken today.” Is the amendment being pressed?

Senator David Norris: It certainly is being pressed, particularly in light of the performance of the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, who only came alive when seeking to hide behind the words of the former Deputy, Michael McDowell.

Amendment put.

The Seanad divided: Tá, 12; Níl, 28.

Tá

Leyden, Terry.
MacSharry, Marc.
Mooney, Paschal.
Mullen, Rónán.
Norris, David.
O’Brien, Darragh.

Power, Averil.
Quinn, Feargal.
van Turnhout, Jillian.
Walsh, Jim.
Wilson, Diarmuid.
Zappone, Katherine.

Níl

Bacik, Ivana.
Bradford, Paul.
Brennan, Terry.
Burke, Colm.
Clune, Deirdre.
Coghlan, Eamonn.
Coghlan, Paul.
Comiskey, Michael.
Conway, Martin.
Cullinane, David.
Cummins, Maurice.
D’Arcy, Michael.
Gilroy, John.
Harte, Jimmy.

Hayden, Aideen.
Heffernan, James.
Henry, Imelda.
Higgins, Lorraine.
Kelly, John.
Landy, Denis.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
O’Keeffe, Susan.
O’Neill, Pat.
Reilly, Kathryn.
Whelan, John.

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

Amendment declared lost.

Order of Business agreed to.

Protection of Employees (Temporary Agency Work) Bill 2011: Second Stage

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

An Cathaoirleach: I welcome the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton.

Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton): This important legislation is the first Bill I have introduced in the Seanad and I am pleased to have an opportunity to hear Senators’ perspectives on it. The purpose of the Bill is to give effect to a European Commission directive adopted in 2008 on temporary agency work. It provides a legal frame-

work in which agency workers are afforded equal treatment in respect of their basic working and employment conditions as if they were directly recruited by a hirer to the same job. Other entitlements concern the right of access by agency workers to the collective facilities and amenities at the hirer's undertaking, including canteen, crèche and transport facilities, in the same manner as these may be available to direct employees of the undertaking. In addition, agency workers must have access to notifications in respect of job vacancies at hirer undertakings to allow equal opportunity in terms of such employment.

Senators will be aware that it has long been a view that agency workers were being abused in respect of their rights and action was needed to remedy the position. Some unfortunate cases have come to public attention and it is timely that the Government is correcting the matter by ensuring basic rights are protected for agency workers who are on temporary assignment.

The Government is fully committed to decent standards of employment across the spectrum of employment. It is clear that agency workers have, on an incremental basis, been brought within the scope of employment rights legislation over many years, including legislation on health and safety, payment of wages, redundancy payments and unfair dismissals. In terms of minimum standards of pay, temporary agency workers are already covered in legislation governing the national minimum wage. As Senators will be aware, the Government has, true to the commitment given in the pre-election period last year, reversed the reduction in the minimum wage rate. In addition, agency workers can seek to vindicate their rights and pursue grievances under employment law by accessing the same avenues of civil redress as are generally available to directly recruited workers, namely, the rights commissioner service and National Employment Rights Authority.

The Bill builds on existing standards of protection that are conferred on agency workers and reflects the Government's willingness to fully support the principle of fairer treatment for agency workers. Equally, the Government must have regard to other equally valid concerns that have been expressed in terms of the need to create a positive environment for businesses to grow and develop. A fully functioning labour market that contributes to the retention and future growth of jobs is important in these challenging times and we must maintain labour market flexibility in all areas, including the area of agency work, which provides flexibility for both workers and employers alike.

Although established statistical sources in Ireland do not capture data on this type of atypical work, in general estimates based on surveys conducted by private employment agencies suggest that temporary agency workers constitute approximately 2% of the active working population.

4 o'clock This would equate to approximately 35,000 agency workers operating in both the private and public sectors. Agency work is a feature both in the public and private sector, with the preponderance of agency work in the public sector in health. Agency work has a legitimate and valuable role to play in the economy and is the option of choice for some people who benefit from the flexibility, personal freedom and income it provides. It also serves the business needs of employers in that this type of atypical working can be used to assist in managing the peaks and troughs encountered in the normal business cycle.

The Bill does not propose a change to the employment status of agency workers, nor will their entitlements to existing employment rights, including the right to a safe working environment and the right to claim redress for unfair dismissal, be affected.

As is currently the case, the triangular employment relationship between the agency worker, the employment agency and the hirer undertaking will continue under the Bill such that the employment agency that pays the agency worker's wage is the employer. In the case of unfair dismissal however, it will continue, as in the past, that where an agency worker is dismissed by

[Deputy Richard Bruton.]

a user undertaking, he or she may bring a claim under the Unfair Dismissals Acts against the user undertaking which, in that instance, is deemed to be the employer.

The fair treatment that the enactment of this Bill will bring about for agency workers will confer on them a greater level of employment protection than that which currently obtains and provide a harmonised floor of entitlements. Understandably, there are concerns among employers, employer representative groups, user undertakings and employment agencies about the additional costs the legislation will impose in meeting the equal treatment entitlements of agency workers in the same way as applies to direct employees. I acknowledge this is challenging at a time businesses are facing serious challenges endeavouring to maintain and sustain a competitive cost base. It is for this reason I have sought in this Bill to achieve the necessary balance of fairness and equity for agency workers against the legitimate concerns of employment agencies and hirer undertakings. It is imperative that we maintain, to the greatest possible extent, labour market flexibility, which will act as an incentive for employers and user undertakings to continue to avail of the important flexibilities that agency work provides.

Since publication of the Bill in December 2011, and during its passage in the Dáil, I have taken the opportunity to bring forward a number of significant amendments to strengthen its intent in certain aspects to provide greater legal certainty for all stakeholders affected by it. I believe the legislation before this House represents an appropriately balanced approach to meeting fully the directive requirements and the concerns that stakeholders have expressed.

The Bill is divided into four parts and has two Schedules. Part 1 contains standard preliminary provisions. The main Part of the Bill, the protections that are applicable to temporary agency workers under employment law, are set out in Part 2. Part 3 contains a number of amendments to earlier enactments and to certain statutory instruments. Part 4 sets out the means of achieving redress in the event that a claim by an agency worker for breach of equal treatment in terms of basic working and employment conditions or other entitlements is made. The intention is that, on enactment, the Bill will, with the exception of sections 13, 15 and Part 4, have retrospective effect to 5 December 2011.

I refer to the most substantive provisions that I would like to bring to the attention of Senators. The first is the issue of retrospection. The directive has a transposition date of 5 December 2011 and I have obtained strong legal advice to the effect that the legislation should, on enactment, have retrospective effect to 5 December 2011 with the notable exception of the offence creating provisions in sections 13, 15 and Part 4. These latter provisions will come into effect upon enactment of the legislation. My advice in this context is based on the fact that implementation of the directive provisions is necessitated under obligations arising from membership of the European Union which, therefore, enjoy protection under the Constitution.

The intention to make the legislation retrospective to the date on which the directive was due to be transposed has given rise to considerable comment. The predominant reason for late transposition of the directive arises from the last-minute failure by the social partners to reach agreement in November last year on the derogation available under Article 5.4 of the directive to have a qualifying “lead in” period to the provision of equal treatment for agency workers. This, in turn, created uncertainty around collateral amendments to the basic provisions of the Bill that would be necessitated if such an agreement was negotiated.

In the interests of providing the greatest clarity to all parties affected by this legislation, my Department moved quickly, following the breakdown of negotiations with the social partners on 30 November 2011, on the qualifying period, to communicate with the various stakeholders. Advertisements were taken out in the national newspapers and the Department produced a

guidance document and placed it on its website to cover the issues of greatest interest to all parties. My Department had at a much earlier stage engaged in a consultative process on the draft legislation in 2010 and, therefore, since the adoption of the directive in 2008 and the transposition date, there has been significant engagement and discussion on the proposed content of the legislation with stakeholders.

The directive provides also for certain derogations that may be availed of by member states under Article 5.

The first under Article 5.2 is generally referred to as the “Swedish derogation”. This allows member states to exclude from the scope of the equal pay provisions agency workers who are engaged on a permanent basis and paid between assignments. Section 7 invokes this derogation and has, since publication of the Bill, been strengthened to provide for a greater level of protection to guard against potential abuse of the provision. The amendments that I brought forward to the Bill define a permanent contract as a contract of indefinite duration and require that agency workers must, in advance, agree to opt in to this type of contract arrangement with the employment agency. This is in addition to the existing requirement that such workers be paid between assignments at a level of not less than 50% of the pay to which they are entitled in respect of the most recent assignment and which should not, at the least, be less than the national minimum wage. While this model of permanent contract is not well known or used in Ireland, it is the case that if we do not legislate for it now in an appropriate manner as proposed in the Bill, as amended, we will lose the possibility to avail of the derogation for all time.

Article 5.3 of the directive provides the possibility for the social partners to conclude collective agreements that deviate from the basic working and employment conditions. While the system of collective bargaining envisaged under this article is more suited to the well established system of collective bargaining associated with mainland Europe, in the Irish context, it would cover registered employment agreements which are essentially sectoral or workplace agreements. The derogation recognises the national traditions, custom and practice in member states and allows a necessary level of flexibility in the workplace to the mutual benefit of employees and agency workers alike. Use of the derogation is not without limit but must have regard to the need to ensure overall protection for agency workers. Provision for the derogation is contained in section 8 and enables existing collective agreements to be upheld and facilitates the negotiation and conclusion of future such agreements at the level of the user undertaking or at enterprise level. The provisions for oversight and approval by the Labour Court of such collective agreements as set out in the section mirror that already in place in the context of agreements reached under the terms of section 24 of the Organisation of Working Time Act 1997.

The final derogation available under Article 5.4 of the directive recognises the voluntarist nature of industrial relations in the United Kingdom and in Ireland and was designed to meet the needs and flexibilities required in the labour market to accommodate the system in place in both countries. The derogation includes the possibility for a “qualifying period” before the principle of equal treatment would apply to temporary agency workers. In Great Britain and Northern Ireland a qualifying period of 12 weeks applies to temporary agency workers assigned to hirer undertakings. As I mentioned, agreement on this issue has not proved possible between the national social partners and, as a result, the Bill provides for the application of equal treatment to temporary agency workers from day one.

Senator Jim Walsh: Why?

An Leas-Chathaoirleach: Please allow the Minister to continue, without interruption.

Deputy Richard Bruton: Because that is the default position in the directive. It is only possible to derogate if the social partners agree.

Senator Jim Walsh: There are no social partners in other countries.

Deputy Richard Bruton: There are no social partners——

Senator Jim Walsh: There are not.

Deputy Richard Bruton: The predominant system of negotiation in other countries is through collective agreements and there are two derogations, one through the UK and Irish model in which there is national social partnership and the other through the more common European model in which it is done on a local basis. For us, outside registered employment agreements, the most relevant derogation is at the national social partner level where agreement was not possible.

An Leas-Chathaoirleach: The interruptions and interaction are inappropriate on Second Stage.

Senator Jim Walsh: Social partnership is no more.

An Leas-Chathaoirleach: I ask the Minister to proceed.

Deputy Richard Bruton: I will pick up on the point in the conclusion of the debate.

An Leas-Chathaoirleach: It might be more appropriate to deal with the matter on Committee or Report Stage.

Deputy Richard Bruton: Section 7 is the core provision that outlines the entitlement to basic pay and working conditions for agency workers. It must be read in conjunction with section 3 which sets out the criteria for establishing a “comparable employee”. The requirement in the directive is that agency workers should enjoy at least the same basic working conditions as someone recruited by the hirer to do the same job. As a concept this is rather nebulous but it is for us as legislators to build on the spirit and intent of the directive and provide more concrete solutions in legislation. Thus section 7, read in tandem with section 3, seeks to develop this concept to provide clarity for employment agencies and hirers alike. The relevant terms and conditions applicable to agency workers are those that are included in enactments, collective agreements or other arrangements that are generally applicable in respect of employees. This would include, for example, terms and conditions ordinarily found in contracts of employment of directly recruited employees of the hirer which are binding and generally in force in hirer undertakings.

During the passage of the Bill in the Dáil there was much discussion on this key aspect of the Bill. It is one that generates a great deal of concern. For this reason, I brought forward amendments to the Bill to clarify this aspect to the greatest possible extent in the legislation. I am satisfied that the Bill, as amended, provides this clarity. Section 7 builds on the spirit and intent of the directive and develops a practical solution around the concept of a comparable employee. The section provides for two separate and distinct possibilities.

The first of these in section 7(1)(a) provides for a situation where there is a comparable employee, and close regard must be had also to section 3 that defines the criteria for establishing a comparable employee. The criteria set down are very specific, cumulative and do not allow for a broad interpretation of a comparable employee. They require that the employer of

the agency worker and the employee must be the same, the agency worker and the employee work at the same place and the work undertaken must be the same or similar in nature and carried out under the same or similar conditions that are effectively interchangeable. Finally, where it is a relevant factor also in the recruitment of direct employees, skills, qualifications and length of service are reckonable factors to be taken into account.

Separately, section 7(1)(b) provides for instances where there is no comparable employee, in which case the terms and conditions applicable will be the same as those to which a comparable employee would, if directly employed, be entitled. I am aware there are concerns around the issue of the possible selection of inappropriate comparators, for example, where a company has hired direct recruits on different occasions over a period and the fear that a challenge will be taken that a worker should be placed on more favourable rates that applied at an earlier point in time. As Senators will be aware, we have many instances in the civil and public service where new entrants are taken on under less favourable terms and conditions than those that previously applied and it is difficult to see how a successful challenge could be mounted in favour of the application of previous terms and conditions.

As in the case of section 7(1)(a), this provision also must be read in conjunction with section 3 of the Bill. A further amendment I brought forward in the Bill to assist with legal certainty on this issue is that contained at section 7(3), which provides effectively that in respect of agency workers on assignment prior to 5 December 2011, although the assignment may end after that date, the effective date for the purpose of establishing equal treatment is 5 December 2011.

Apart from the more substantive provisions of the Bill which I have just outlined in some detail, I will now refer to other notable provisions. Section 2 defines pay as basic pay, shift premium, piece rates, overtime premium, unsocial hours premium and Sunday premium. Pay does not extend to other aspects that are provided in recognition of the longer-term relationship between an employer and a permanent employee. There is no intention to include other elements that are not required by the directive such as pensions, sick pay, maternity top-up or benefit-in-kind. The legislation is being viewed in terms of the directive requirements. The latter are discretionary elements that are not, in the words of the directive, binding and generally applicable. Given current economic circumstances, now is not the time to in any way try to gilt edge conditions of employment when the creation of employment on a fair and equitable basis is what is needed.

Section 13 prohibits the charging of work-seeking fees by employment agencies. Section 14 provides that an agency worker is entitled to be treated no less favourably than a comparable employee with regard to access to collective facilities and amenities provided by the hirer to employees. These include canteen, workplace crèche or transport services. It provides that less favourable treatment in terms of access by agency workers to these facilities can only be justified if this is based on objective grounds.

Section 15 outlines the relative responsibilities of the employment agency and the hirer, the obligations of both parties and the necessary flow of information to comply with the Bill. Subsection (2) is designed to allow the employment agency to be compensated in the event that the hirer fails to comply with the terms of subsection (1).

Sections 18 to 20, inclusive, meet the terms of Article 7 of the directive by providing that agency workers should be included in calculating the thresholds above which bodies representing workers are to be formed and in the thresholds for the establishment of representative bodies in the temporary work agency in respect of the information and consultation require-

[Deputy Richard Bruton.]

ments of the various enactments on the issue. Sections 21 to 24, inclusive, include whistleblowing provisions that have been customised to take account of the unique three-way relationship that applies in the case of agency workers.

Section 25 provides for the manner in which complaints in respect of the contravention of provisions included in the legislation will be dealt with and must be read alongside Schedule 2 to the Bill. Schedule 2 contains standard complaints and redress provisions applicable and the procedures to be followed by the various parties where there is a breach of the right to equal treatment. The employment agency will be responsible for dealing with any breach of a right for which it is responsible such as liability in aspects other than access to employment notices, collective facilities and penalisation by the hirer. These aspects fall solely on the hirer as the agency has no role in this regard. The redress provisions in the Schedule are modelled on the provisions in existing employment protection legislation such as in respect of fixed-term work. I commend the Bill to the House.

Senator Terry Leyden: The Minister is welcome. I accept that the Bill is necessary to comply with the terms of the EU directive on agency workers. As drafted, however, it is anti-employer and anti-job creation. Small Irish businesses will be at a competitive disadvantage, given the failure of the Minister to find agreement between trade unions and employers on a derogation for a period from the provisions of the Bill. I fail to understand why this could not have happened before the Bill was introduced. In Britain a derogation for a 12 week period was agreed to, while much longer periods were agreed to in other countries. The Bill could cost up to 10,000 jobs as employers refuse to take on temporary workers. The Minister admitted in September that the lack of a derogation could cost jobs. This comes at a time when the level of unemployment continues to increase. The absence of a derogation will have a highly negative effect on employment creation and we will be at a competitive disadvantage compared to Northern Ireland in which there is a 12 week derogation period. This is one of the most important aspects of the Bill and I fail to understand why the Minister had not provided for a derogation in the Bill. It is vital that an amendment be inserted to allow for it.

The Minister has stated he received strong legal advice that the legislation should, on its enactment, have retrospective effect from 5 December 2011. In most Bills retrospection is not provided for. There are occasions on which we seek to have legislation made retrospective, but such requests are turned down by the Attorney General. Has the Minister received strong legal advice from the Attorney General or some other legal source? This is surprising, given my experience in the Department, because legislation with retrospective effect is always risky and open to challenge in the courts.

I presume the Minister has received many representations on the Bill. We have been lobbied by Mr. Brendan McGinty of IBEC who has sent us a detailed document on the topic. IBEC is concerned about the Bill and has stating Ireland has already been placed at a competitive disadvantage compared to Britain because ICTU has refused to agree to the introduction of a qualifying period for coverage under the Bill. In Britain agency workers must be in place for 12 weeks before they are covered by equal treatment provisions. In Ireland there is coverage from the first day of an assignment. This means employers will not want to take on short-term agency workers because the cost of paperwork and risk of litigation will be too great. I presume the Minister has received a detailed submission from IBEC and that he will consider the points raised by it in this regard on Committee Stage. He will have an opportunity before Committee Stage to consider amendments to allow a derogation. I fail to understand why it has not been provided for in the Bill. My colleague Senator Walsh will probably make this point also. It is

the most essential aspect of the legislation that we not be at an unfair disadvantage compared to our friends and colleagues in Northern Ireland. On one island the legislation should be absolutely equal. I accept the Bill is based on the EU temporary agency workers directive which the Minister believes must be made retrospective; at this stage that aspect will not cause great difficulty.

There are 440,000 people unemployed. I commend the Minister for the announcement of jobs which he will accept were in the pipeline before he took office because such announcements take time to mature.

Senator Martin Conway: That is a good one.

Senator Terry Leyden: The Minister of the day will always accept credit for jobs announced. It is one of the most pleasant aspects of the Department in which I served for four years as Minister of State with responsibility for trade and marketing. At the time our trade figures were soaring. The Taoiseach's office asked whether it could announce the good news, due to the work of the then Department of Industry and Commerce and my contribution as Minister of State. I informed it that if it was accepting that things were very good, it should also accept responsibility for announcing the figures should there be a downturn. That brought that debate to an end. However, I assume the same applies now, although responsibility for that part of the Department's work has probably been transferred to the Department of Foreign Affairs and Trade. The Minister will accept that job creation takes years of negotiation. We must compliment IDA Ireland, Enterprise Ireland and all the staff associated with them, as they are at the top of their game in attracting industry. However, we must ensure the legislation we introduce supports the creation and maintenance of employment, whether temporary or permanent, as every job counts.

The Minister has considered the issue of sectoral agreements. I have received submissions, as he has, from the entertainment industry — particularly the hotel and restaurant industry — on its concerns about the risks to employment owing to the requirement to pay double on a Sunday and so on. I would like the Minister to consider this aspect. I commend him for the work he is doing; he was in the Department before and returns to it with great experience. It is a difficult one. These are the good days; he knows there will be dark days when it comes to trying to maintain employment in various parts of the country when he will be called in to assist.

I commend the Minister for his contacts with NAMA through which he found a solution in terms of a job application. I am taking this from the newspapers. The negotiations were at a critical point and ministerial intervention was absolutely essential. It is also essential that the Government have the power to intervene to secure jobs for the economy. I commend the Minister for whatever action he took in that regard.

Senator Deirdre Clune: This is important legislation, as it is important that agency workers, particularly temporary workers, have protection. When the directive was first mooted, it was about ensuring potentially vulnerable workers across the European Union would be afforded the same rights. It is unfortunate that the Minister was forced to introduce legislation and stipulate 5 December 2011 as the date from which it would be implemented. Unfortunately, there was no agreement on a qualifying period between IBEC and the ICTU because, as mentioned by previous speakers, there is a 12 week derogation period in Northern Ireland and Great Britain which places us at a disadvantage. Nonetheless, it is clear from the directive that there is no provision by which the Oireachtas could introduce such a qualifying period — it has to be agreed by the social partners.

Senator Jim Walsh: We no longer have social partnership. It came to an end four years ago.

Senator Deirdre Clune: We were in a position where the directive had to be implemented as and from 5 December 2011.

Many members received correspondence on the issue when the legislation was going through the other House. That the Bill will apply retrospectively from 5 December is a source of concern, although I heard what the Minister said. I read the transcript of the debate on Committee Stage and the advice of the Attorney General is clear, that the legislation has to have retrospective effect from 5 December 2011. I am sure, however, that the House will have an opportunity to tease out the issue on Committee Stage.

Temporary agency workers are important to employers. Temporary agency work offers individuals an opportunity to gain experience and such workers have become very important in both the private and the public sector. In the public sector the HSE spent more than €40 million last year on hiring such workers. In the private sector they are associated with the provision of secretarial assistance, security work, the IT sector and, particularly, the pharmaceuticals industry, as I am aware from speaking to people in the Cork area. It is important that they are recognised and given employment protection.

Prior to the coming into force of the directive, temporary agency workers had certain rights under the Unfair Dismissals Acts, the Redundancy Payments Act, the Organisation of Working Time Act, the Payment of Wages Act, the Maternity Protection Act and the Employment Equality Act. Nonetheless, the legislation will ensure such workers will have equal treatment with permanent workers and the same basic employment rights as if they had been directly recruited to do the same job. This means they will have the same conditions and entitlements in respect of pay, duration of working time, overtime breaks, rest periods, night work, holidays and public holidays. The principle of equal treatment also applies to rules aimed at the protection of pregnant women and nursing mothers in their basic working and employment conditions in terms of access to canteen, crèche and sports facilities.

The Bill defines basic pay. Payments in excess of basic pay rates in respect of shift work, overtime, unsocial hours and hours worked on a Sunday are mentioned. However, bonuses, holiday pay, sick pay and maternity pay are not included within the definitions.

A number of questions were raised on the matter of the comparator numbers, and I am sure that the Minister will draw out the issue on Committee Stage. For example, if a person is employed today as a temporary agency worker and their pay and conditions are to be compared with an equivalent worker, if pay rates have been reduced in many agencies and employment areas in the past six months, with whom do we compare these agency workers? The legislation is clear. Section 7(1) states that the conditions of agency workers will be the same as those “to which either a comparable employee is entitled, or ... where there is no comparable employee employed” the same as those “to which a comparable employee would (if ... so employed) be entitled”. The term “if so employed” will allow the hirer to use the going rate at the time of recruitment, and it is important to say that. Legislation cannot be specific in all cases. The Bill’s provisions will give the hirer some comfort should a question arise over the pay and conditions afforded to a temporary agency worker.

I welcome the Bill. It is important that we have similar provisions for temporary agency workers across the EU, particularly in light of our membership of the European Union. These workers are important to employers. They provide flexibility, particularly for seasonal work, and provide cover for maternity or extended sick leave. It is an important provision in the

workplace and I welcome the fact that these workers are afforded additional protection in the legislation.

Senator Feargal Quinn: I welcome the Minister. The Bill is worthy of attention and I congratulate him on what he is doing. I have been with him in Drogheda and at the city of science launch recently so I know what he is doing.

The aim of the Bill is worthy but we must ensure it achieves what it sets out to achieve. The Minister has told Members that there are estimated to be 35,000 agency workers. Many of them, or probably all of them, work in businesses that depend on agency workers only at certain times but employ far more people than the 35,000. We want to ensure those businesses succeed and that we do not hinder them in any way. There are some areas to which the Minister referred that I would like to touch on because I have concerns.

First, I propose that if two or more direct recruits meet the definition of a “comparable employee” contained in the Bill, then the hirer company should be able to identify one such comparator — a lovely new word that I had not heard until recently — to be the comparator for the purposes of the Bill. At present there is a danger that where there are a number of different potential comparators in respect of an agency worker, the hirer company might pick one and the agency worker might pick another and the parties would end up going to court to find out which terms and conditions would apply to the agency worker. We want to overcome that and I do not think we have done so. We must ensure we avoid such cases going to court.

Second, the Bill should contain greater clarity so that where an employer has changed his or her pay scales since hiring the comparable direct recruits, a newly assigned agency worker would be entitled to what I call the new hire rate, not the old rate. This has happened quite a lot recently. People were paid far more three to five years ago but the new rates are a lot lower in many cases, yet we are going to have a dispute in this situation unless it is cleared up. It is fundamental to the viability of many jobs because many employers have introduced new pay scales as a way of maintaining employment levels during the current crisis.

Third, the Bill should allow reasonable defences for employers, including allowing employers to demonstrate that if there are grounds, other than a person’s status as an agency worker, which justify a difference in basic working and employment conditions, that does not amount to a form of discrimination. This idea comes from the Employment Equality Acts, which make clear that where a difference in treatment has nothing to do with gender, it is not discrimination. Similarly, where an agency worker and a comparable direct recruit have different rates of pay, but the differences have nothing to do with the agency status of the agency worker, there should be no claim against the employer. That is a very good example.

I was with the Minister at the launch of the city of science which will take place in the summer. If a business is relying on a scientist or, to use Senator Leyden’s example, if a hotel is relying on a chef, and the scientist or chef is out sick and have to be replaced, the replacements might not have the same talent, qualifications or ability. If there is a doubt about how much they are to be paid, a clash will occur.

We must do everything to remain competitive. We have brought down costs significantly and we must continue to do this. While the Minister says the Bill will keep costs on employment to a minimum, I am not sure this will be the case. The delay in introducing the Bill may have a detrimental effect on businesses and perhaps the Government could have introduced the Bill with a lead-in or changeover period of 12 to 18 months to give businesses an opportunity to adapt to the new provisions. The UK adopted the legislation two years ago. It is also strange that the directive is considered to apply to the private sector. Legal experts state that it is an

[Senator Feargal Quinn.]

unprecedented move to transpose the directive while national legislation has not been introduced in the area to transpose the directive. That the legislation was applicable to the private sector from 5 December, and not from the date when the legislation is passed, could leave it open to legal challenge. Will the Minister comment on that? My mind has not been put at rest in this area.

IBEC argues that up to 6,000 temporary agency workers could lose their jobs in the coming months because of the implementation of the legislation. That is not the aim. The aim is the opposite, but I am worried that the Bill will mean less flexibility for businesses. That flexibility is extremely important to businesses to hire extra help as is needed. In the UK, estimates by employer organisations put the cost at up to €2,000 to €3,000 extra for small businesses, increasing to more than €80,000 for large firms. What estimates has the Minister come up for Irish businesses? One must also consider that flexibility of the workforce has attracted a lot of foreign direct investment. If we get rid of this, it will make us less attractive. Certain companies need temporary agency workers at increased production times. Every business has peaks and valleys. We should always undertake a measurement of how new legislation will affect businesses and their ability to compete.

It is interesting to note how this legislation is being viewed in other countries. Although Norway, as a non-EU state, does not have to implement the legislation, it is expected generally to go along with most EU directives. The legislation is dividing the three-party coalition government there. Critics are concerned that the legislation will lead to increased use of temporary workers, at the expense of more secure, permanent jobs. Norway is not a country in economic difficulty, but the legislation is still controversial. Thus, I believe the view there is very interesting.

The aim of the Bill is to harmonise Europe-wide legislation on temporary workers; it varies considerably between countries. We have existing legislation which is strong in this area, but the position is somewhat different in Germany, the Netherlands and Spain. For instance, there is a ban on the use of agency workers in the public sector in Spain, and in the construction sector in Germany.

This transposition into law of the directive will increase the unit cost of agency staffing for the HSE. In 2011, the HSE negotiated new agency contracts that involved lower unit costs. At a time in which costs are being cut should we be looking for an exemption from the European Union? The United Kingdom and other member states were successful in gaining a derogation in having a 12 week qualifying period. This is an island; why, therefore, are we going down a different route from the one taken in the North, as has been mentioned on two or three occasions? Did any meetings take place to seek co-ordination on this issue about which I have concerns?

I am supportive of the legislation and what the Minister is trying to achieve. However, the Bill needs to be tweaked. We must make some changes to it, as we want a Bill that is good for Ireland and temporary workers, but which is also good for other workers in those businesses which employ so many.

Senator Jimmy Harte: The Minister is welcome. I congratulate him on his work in attracting high-end jobs to the country which sends a signal to the rest of Europe and the world that Ireland is definitely open for business. It is heartening to hear job announcements in Dundalk and Cork. I hope in the next week or month an announcement will be made in Donegal by the Minister and IDA Ireland.

Senator David Cullinane: Or Waterford.

Senator Jimmy Harte: It is a long way from Donegal, but I wish Waterford well.

I support the Bill. As an employer for over 25 years, I would seize a definite advantage and have used temporary workers on occasion. In my experience, the profile of the temporary or agency worker in the private and the public sector is different. Obviously, because of the moratorium on recruitment the HSE uses many temporary or agency workers. Small business employers such as myself must use temporary workers on occasion to cover for those on sick leave or holidays, or merely to provide extra help during busy periods. I have always found such workers to be more than willing to learn.

It is only now that I realise this legislation is probably too late, but nonetheless it is still welcome. During the years I thought temporary workers might have been compromised because they knew they could be let go at any time by their employer. Most of the agencies with which I have dealt are exceptionally good and have provided good temporary workers. The labour market has changed so much. I am aware of many young people who prefer to be temporary workers or who are only allowed to be temporary because they only have expertise in one field. However, they are quite happy to work for a few months in one part of a business. They see this as being their future until they reach their mid-30s or 40s. Many of them work as hard as permanent employees and bring much to a business and they should be looked after. This is common sense. It shows that as a community and country we look after all workers. However, there should be a distinction. There are certain young people in temporary employment who are a little afraid and, at times, put under pressure by their employer and who cannot see the future clearly without this legislation being in place. Many of them will welcome it because it will give them stability.

I am aware that there are submissions from employers' groups stating the Bill may lead to a loss of competitiveness or cost businesses extra money. That is something we must factor in because each worker should be treated equally. This shows maturity on our part, as I think employers will accept. However, I understand from where they are coming. Chambers Ireland, IBEC and other groups consider it will be a cost to business. From my own experience, it does not cost a businesses to show temporary workers more respect. In many cases, it leads to an increase in work rate and helps a temporary worker to progress and mature in his or her job. I am an employer so it could be my son or daughter that is in this position. Employers should look at this from the point of view that it is not just about the business they run but about the business someone else runs that might give a member of their family an opportunity and give them equal status.

It is a complicated directive given Northern Ireland and the UK are treated slightly differently, which is an issue we have to live with. If the Government is producing jobs, young people are taking up employment and the economy starts up again, this issue will not be a game winner or game loser, but it is something that will help everyone. While it was suggested it might cost the HSE more given its use of temporary and agency workers, we have to accept this is how we must treat workers. We cannot simply say it is a cost to the Exchequer because, in the long term, the Bill is working towards helping people find employment and giving them equal status. It is helping the country to move to the next phase of employment and labour, which, as I said earlier, is an area that has changed greatly. Many young workers in their twenties and thirties are happy with temporary work and we must reflect this.

I support the Bill. Senator Quinn would have more experience in this area and some of the issues he raised are worth considering. In an overall context, the directive should be embraced.

Senator Jim Walsh: Yesterday morning, all of the Oireachtas Members in Wexford attended the local radio station to talk about the major challenge and the greatest crisis facing our country, which is undoubtedly the unemployment situation. Without covering all of the ground covered there, several items arose during the programme, including the issue of the VAT increase of 2%. We saw the effect of this during the January retail sales, where there was a 3.7% reduction, and this will obviously result in a commensurate shedding of jobs in the retail sector. We discussed redundancy costs being heaped onto companies by the rebate being reduced, the proposal to heap sick pay back on small businesses when it had been taken up by the State, which will have a consequent adverse affect on jobs, and the reinstatement of the JLCs, in which the Minister was involved and which imposes on employers unsustainable salary and wage levels that the Minister knows give support to maintaining if not increasing the unemployment level. We also raised the issue of the minimum wage, which is undoubtedly one of the highest in Europe and is adding to our uncompetitiveness. These are all important issues.

It strikes me that a Government which has three times announced 100,000 jobs as being its target up to 2016 would at least have instituted a policy whereby all policies, legislation and decisions were job-proofed and that any Minister of any Department coming forward with proposals that might adversely affect jobs, or, conversely, help create jobs, would carry out an evaluation. That has not happened.

This directive came about in 2008. We would all agree that the first part of 2008 was an entirely different economic era to the current situation in Ireland. Jobs and economic recovery must be a priority, and I, my party and the Opposition in general will support any constructive measures in that regard. However, when the Government is going in the opposite direction, it is not alone our right to raise the issue but it is required that we would strongly challenge and oppose this.

With regard to the competitiveness of our country, for many organisations the employment of agency workers was to get over the fact the JLCs had set wage levels on an uncompetitive basis. This was often with the connivance of unions, which had an easy life because they were operating nationally and were not involved in local collective bargaining, where greater work is involved. In my opinion, we should have moved on this more than a decade ago and I raised these points at that time within my own party, at conferences and in this House. We should have moved in this direction sooner and abandoned social partnership.

To the best of my recollection, the unions withdrew from social partnership some three years ago. The Minister has observed that because those involved could not reach agreement social partnership is the reason we now have in place a system which is unfavourable to employers, even when compared with counterparts in the North. The directive allows the hiring company to choose the comparator and provides that the comparable rate which may be paid to the agency worker is the rate the hirer company would offer to a new recruit it was hiring today. As I interpret it, the Bill does not seem to reflect this and that change may be significant. It has been put to me, as I am sure it has been put to the Minister, that where a company has historic pay scales which may not have been used for five or six years or more and where it moves to an agency service in order to maintain its presence in Ireland, it will be disadvantaged in that it may have to offer these scales. There is also the issue of the two pay scales the Minister mentioned.

I understand last September the Minister wrote to the unions on the issue of a derogation. He has mentioned that without the benefit of leeway in transposing the directive in the shape of a framework agreement, Ireland will be at a significant competitive disadvantage *vis-à-vis* our European trading partners. This will be particularly significant, given that our immediate

and major trading partner, Britain, has already secured agreement for a waiting period of 12 weeks, an arrangement which I understand also extends to Northern Ireland. In the current climate in which we face significant challenges on the road to economic recovery we must avail of the flexibilities afforded by the directive. I understand Hungary has been granted a waiting period of six months and Slovakia a period of three months. I am sure the Minister can give other examples.

If we are serious about the maintenance of jobs which surely must be our first step before we look to creating jobs, we must ensure we are not haemorrhaging existing jobs. Unfortunately, I am concerned that this is precisely the effect the Bill will have, and the Minister has acknowledged as much in his letters to the unions. The economist Jim Power has predicted that it could cost in the region of 10,000 jobs. There is no point in having a plan to create 100,000 jobs in the next five years if we are endorsing legislation which will have the opposite effect.

The Minister is a person for whom I have some respect. He has his own difficulties within the Cabinet with colleagues who have different philosophies and ideologies.

Deputy Richard Bruton: I remind the Senator that the directive was not negotiated in my day.

Senator Jim Walsh: Our ultimate objective must be to find a solution for the people who are suffering day in and day out. Many of the generation experiencing the brunt of unemployment were never out of work before the downturn. For them, the social and psychological effects of the inability to secure employment are horrendous, before one even considers the economic impact. The least we can do is to ensure we do not put obstacles in the way of recovery and securing and maintaining existing jobs. I, therefore, appeal to the Minister at this late stage to introduce whatever amendments are necessary in order that we will have a Bill with a less negative impact.

Senator Michael Mullins: I welcome the Minister and compliment him on his tremendous efforts in the recent jobs initiative. He has made a great start. He is well aware of the major challenge he faces as Minister for Jobs, Enterprise and Innovation and the great difficulties facing the country generally. I also welcome this important Bill which transposes into Irish law the EU directive on temporary agency work. I remind Senator Jim Walsh that the Minister inherited this legislation and that responsibility for the transposition of the directive into Irish law has fallen to him when the matter should have been dealt with much sooner. However, I agree with the Senator that it is unfortunate, despite the Minister's best efforts, that agreement on a 12 week UK-style qualifying period could not be reached with the social partners. This puts us at a disadvantage with the United Kingdom.

There is much scaremongering on the number of jobs likely to be at risk, with figures ranging from 6,000 to 10,000 being mentioned by different sources. However, this is unlikely to happen. It is welcome that the Minister made a significant number of amendments to the Bill during its passage through the Dáil and it is to be hoped there is room for further tweaking on some of the issues raised today.

The comparator issue raised by Senator Feargal Quinn requires serious consideration. I hope the Minister will take on board some of the issues raised by the Senator.

On section 7, two issues of concern have been brought to my attention, one of which is likely to impact on approximately 650 jobs in my county of Galway and County Kildare. The company concerned employs direct recruits on historic pay scales. However, because of the economic crisis it has not hired new employees on these scales since 2007. While production had been scheduled to be relocated to Asia and eastern Europe, the company decided instead to hire

[Senator Michael Mullins.]

new agency workers on lower but good pay scales well above the minimum wage and to retain existing employees on the higher scales. In this situation there are live comparators, namely, the direct recruits on pre-2008 pay scales. Under section 7(1)(a), agency workers will be entitled to be paid the same rates, even though they were not hired at these rates. This will significantly increase production costs and threaten jobs.

The second issue relates to a situation where there is more than one comparator. Where there are two comparable direct recruits on different rates of pay, should the agency worker be paid at the higher or lower rate? He or she will obviously ask for the higher rate and the employer will want to pay the lower rate. The Bill does not clarify which of the two rates should apply. I am told that the hirer can select the comparator, but the courts may decide differently.

These issues need to be addressed during the passage of the Bill through the House to ensure agency workers will continue to enjoy good working conditions and rates of pay and that employers will be in a position to maintain current levels of employment. Every move we make as a country in the years ahead must ensure the maintenance and creation of as many jobs as possible. If we are ever to dig ourselves out of our current economic difficulties, it will be on the basis of massive job creation.

I commend the work the Minister is doing and ask him to iron out the creases in the legislation, as drafted.

Senator David Cullinane: The Minister is welcome. In giving the Bill a cautious and qualified welcome I will express some of my concerns about some of its aspects. I have also been inundated with opinions from organisations and individuals on the Bill. Senator Terry Leyden mentioned IBEC, to which I will return, but I have also received representations from trade unions and people who were agency workers and exploited in the past. They suffered exploitation because of the lack of protection for such workers because agency workers were not on a par with other workers in the State. I was among those who supported the campaigns conducted by SIPTU and the Irish Congress of Trade Unions to ensure the provision of proper safeguards for workers.

5 o'clock
I genuinely believe workers should be treated equally and that the State has a responsibility to ensure employment rights for them. It has a responsibility to put safeguards in place and ensure workers are not exploited. This is a core, fundamental aspect of the work of any Minister. It is fair to state the Minister may have preferred a derogation, as may have others in his party. Moreover, as he stated to Senator Terry Leyden, the directive was not negotiated in his day. I accept that had he then been in office, it would not have been. He is, therefore, bringing forward this legislation begrudgingly, which I welcome, in so far as it goes.

As for the position adopted by IBEC to which Senator Terry Leyden referred, I also received the correspondence. When I encounter employers' organisations using phrases such as "competitive disadvantage" as reasons not to put safeguards and rights in place for workers, I wonder from where they are coming. This appears to stem from a desire to maximise profits and the interests of business and employers, not a wish to have due regard for the interests of workers. It beggars belief that such organisations do not accept that those who work for a living should have proper and equal rights.

A clear gap appears in the Bill with regard to a category of agency workers who are identified as permanent agency workers. As the Minister mentioned, the legislation provides for what is known as the Swedish derogation which excludes from equal pay entitlements those agency staff retained on half pay by an agency between assignments. Section 7(2) reads, "*Subsection*

(I) shall not, in so far ... as it relates to pay, apply to an agency worker employed by an employment agency under a permanent contract of employment”, after which the provision outlines the relevance to an agency worker or workers. I read through the Minister’s speeches in the Dáil, as well as the transcripts of some extracts, and he stated in the Dáil that the Bill represented an important step forward for agency workers by guaranteeing equal treatment in pay and basic working conditions with directly recruited workers, unless, of course, one happens to be one of the aforementioned permanent agency workers, which is part of the problem. I cannot help but wonder why the Government is excluding such workers and what is the motivation in this regard. I consider the maintenance of this loophole to be a cynical action that panders to some of those I mentioned previously who seek to undermine workers’ rights and drive down wages for the low-paid. The Government appears happy to allow for the loophole and perhaps even to benefit from it. I am aware that my colleague, Deputy Peadar Tóibín, has queried the number of agency workers being employed by the State. All Members have experience in their constituencies of agency workers being employed in the health service, local authorities and right across the board. The HSE spent €48.6 million on agency staff in the first quarter of 2011, which is more than was spent in the previous year. Moreover, in excess of €14.5 million was spent on agency doctors, €21 million on agency nurses and a further €13 million on agency care services. It is evident that many people are employed by the State as agency workers and that if they are permanent, I hope they will be perceived to be on a par with any other worker in the State.

I also note this category of worker is excluded from entitlements such as sick pay, occupational pension schemes, benefits-in-kind, financial participation payments and bonus payments and ask the Minister to include them. In addition, how many workers with equal length of service and doing the same job with approximately the same skills have different sick pay entitlements? I revert to the fundamental principle I hold, that all workers should be treated equally.

There appears to be a drift or move towards employing agency staff. Some of the profits then go to the agencies and the workers who often are low paid are the victims of exploitation in which regard there is a responsibility on the State. As I stated, one of the Government’s primary responsibilities is to protect the rights of citizens and workers. In this context, a number of Members mentioned the United Kingdom. I would prefer to see in place a harmonised system in which there was movement towards a position where the rights of agency workers were also safeguarded in the United Kingdom, rather than one in which people here used what was happening there as justification for not doing the right thing.

While I reserve the right to table a number of amendments to deal with some of the concerns I have raised, I offer a cautious and guarded welcome to some of what the Minister is attempting to do. Nevertheless, I have concerns about some of the exemptions to which I have referred.

Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton): I thank all Senators for their contributions. In starting with the last contribution first, while Senator Jim Walsh was highly critical of the manner in which social partnership was dealt with in the directive, I simply was pointing out to him that the negotiations in this regard took place in 2008. If terms were improperly used, I must deal with the directive as presented, which is an important point. The Senator is probably trying to use the legislation to establish new rights for agency workers, rather than applying basic conditions to ensure the provision of basic rights. This measure is about protecting from exploitation persons in temporary agency positions and making sure

[Deputy Richard Bruton.]

they receive the basic entitlements that prevail elsewhere. It does not pertain to suggesting, for example, that sick pay or pension schemes which essentially form part of longer term working conditions be applied to temporary agency workers.

Senator David Cullinane: I was talking about permanent agency workers.

Deputy Richard Bruton: That pertains to the Swedish derogation. Permanent agency workers are permanent with the agency, not with the hirer. As far as I am aware, the Swedish derogation is not used in Ireland, but the idea behind it is that it suits some employees and employers for the former to be paid a retainer when they are not employed. Some employees might see this as an attraction. They are on-call, work certain hours and receive a retention payment. This is an act into which they must freely enter and they must be informed that they are opting out of agreements that otherwise would apply. They must also be permanent; consequently, it cannot be used as a ploy by an agency to take on someone for a period and then terminate the arrangement. I am providing for this arrangement to be available, but protections are built in. For many employers, committing to paying at least the minimum wage during the period the person is not working constitutes a large commitment. This is an unusual arrangement for which I am making provision to allow it to happen. The Department certainly will monitor the position to establish whether such a system is being abused. However, it is a derogation that applies in other member states which offer similar protections to those the Government is offering and one should not stop it from happening in cases in which it suits both sides and they knowingly enter into the arrangement.

To revert to Senator Terry Leyden's points, it is disappointing that there is not a derogation to allow a longer qualifying period. However, I wish to make it clear that the directive is crystal clear in this regard. The Government has no role in introducing amendments to provide for such a qualifying period; it must be negotiated between the social partners.

Senator Walsh stated that there is no social partnership. While there may not be a social partnership agreement at national level, there are still social partners.

Senator Jim Walsh: In the public sector only.

Deputy Richard Bruton: IBEC and ICTU are social partners. They provide collective representation for employers, on one hand, and workers, on the other, and they are recognised nationally. My officials and I engaged in discussions with the social partners to discover whether agreement could be reached in this area. The directive explicitly provides that if, at national level, social partners can agree to its terms, a qualifying period can be put in place. Other European countries have workplace and sectoral partnerships and the directive also provides for derogations in respect of these. As a result, there is a series of national, sectoral, regional and other derogations. The derogations which apply to Ireland are those relating to registered employment agreements, REAs, which are a form of sectoral agreement, and to national social partnership.

The Attorney General provided advice on the issue of retrospection. When a European directive is transposed into domestic law it then applies and we respect that fact.

Reference was made to 10,000 jobs being at risk on the basis of similar predictions in respect of the UK. Legislation is already in place in the UK and, to date, the adverse impact on agency workers there which some feared has not materialised. I am hopeful there will also not be an adverse impact here. None the less, most of us here would be happier if the same qualifying

period which will apply here also obtained in Northern Ireland. However, there is no avenue open to us in this regard.

Senator Clune highlighted the fact that there are certain sectors in which this pattern of work has developed. It is used in the pharmaceutical sector at peak periods and some other sectors use it more as a baseline. Senator Mullins pointed out that some parts of the food industry use it on quite a systematic basis. As Senator Clune also indicated, the going rate is that which applies at the time of employment.

Senator Quinn inquired as to who will choose the comparator. He advocated that employer should do so. The directive is quite clear: the comparator is what would happen if a person were employed on a particular date on a permanent basis. The comparator will apply on the date on which a person is employed, for example, 5 December 2011. It is the employer who, *de facto*, chooses the comparator and also what will be the rate of pay. Of course, this may be challenged with the rights commissioner. Senators Quinn and Mullins cited examples where the going rate now would be much lower than that which obtained when existing employees were taken on. The rate which applies in such cases is that which obtains on the day on which a person is taken into employment. Where an employer cannot show that he or she took on another permanent employee on that date, he or she must be able to support his or her argument. If an employer states that the going rate has dropped by €5 per hour since those employees were taken on, he or she must be able to support this with evidence. The legislation also assists in underpinning the position in this regard by making explicit reference, in section 3, to the fact that an employer can recognise that a person who has experience or existing skills is obviously a more valuable employee.

An employer must be in a position to show that the choice of comparable wage is legitimate and based on experience in the relevant sector. He or she must be able to prove that what he or she has done is reasonable. In that context, we are implementing the terms of the directive. We cannot go beyond that and state that employers can opt out of the obligation which exists in this regard. That is the obligation we are seeking to transpose. We cannot give employers the right to make certain choices in the way the Senators suggest because in such circumstances we would not be transposing the directive as it is currently formed.

The position is the same in respect of the Senator's argument with regard to reasonable grounds of defence. If an employer is challenged before the rights commissioner, the reasonable grounds of defence which he or she will have will be to show that the selection of the going wage rate was on fair grounds. We have tried to provide something which is reasonable and which is faithful to the directive.

Senator Quinn inquired as to whether the legislation could be subject to legal challenge. I do not know but I am aware that anything can be open to such challenge. We are of the view that the Bill is robust and we have taken legal advice in respect of it. We believe it represents the correct way to implement and transpose the directive. As already stated, meetings took place in respect of the qualifying period.

Senator Harte rightly made the point that in a time of recovery such as this, temporary workers have an important role to play. Employers should not see them as merely a cost to be avoided. Some people see temporary work as a legitimate career path. That is an important point and it is vital that groups of people should not be arbitrarily discriminated against. In a recovery period, employers may not be certain that their order books are sustainable and they will want to take people on an a temporary basis until their businesses establish a level of

[Deputy Richard Bruton.]

permanency. The recognition of the role of agency workers and their fair treatment under legislation is an important principle to establish.

Senator Walsh complained about reforms being introduced in respect of JLCs. The programme for Government contains a commitment in respect of bringing forward such reforms to make the JLCs more job-friendly and flexible. That is what we are doing.

Senator Jim Walsh: Why not allow people negotiate at local level? I know individuals who were prepared to work for a particular employer — there was agreement between both parties — but they could not do so because the rate agreed between IBEC and the unions——

An Cathaoirleach: The Minister, without interruption.

Senator Jim Walsh: Those people are on the dole now. They would be working if this difficulty had not arisen.

Deputy Richard Bruton: The point I am making is that we are introducing changes which will affect both JLCs and REAs and which will make it possible for them to respond to altered economic conditions. Under the current model, it is extremely difficult for them to respond to such conditions. It is necessary to encourage both sides to agree. One cannot expect unions to agree to a unilateral reduction in respect of rates which they negotiated three or four years ago. They are not doing that.

Senator Jim Walsh: Just abandon the national agreements and allow them to——

An Cathaoirleach: The Minister, without interruption.

Deputy Richard Bruton: There have been some examples of rates being negotiated downward. However, we are introducing a much more flexible mechanism whereby the Labour Court will be involved. If there is deadlock and there is not an agreement to reduce a rate to facilitate new employment, the Labour Court will be in a position to intervene and advocate a rate that would be fair in all circumstances. We are introducing a flexibility which has not previously existed.

Senator Jim Walsh: We are forcing people onto the dole.

An Cathaoirleach: The Minister, without interruption.

Senator Jim Walsh: That is the effect of what is being done.

Deputy Richard Bruton: The Senator cannot have it both ways. He cannot pretend that we are not making the system more flexible.

Senator Jim Walsh: I accept that.

Deputy Richard Bruton: We are making it more flexible.

Senator Jim Walsh: I acknowledge that.

Deputy Richard Bruton: The Senator's party was in government for a long period and did not choose to take action on this matter.

Senator Jim Walsh: I accept that we should have done something.

Deputy Richard Bruton: We are introducing a mechanism which allows for flexibility but I accept that it will not suit everyone. Everything in the area of industrial relations involves balancing the views of different people. I am of the opinion that what we have put forward is a fair system in the context of achieving such a balance. The Labour Court has a long record in being fair to both sides and it will be pivotal to the change we are bring about.

We are also introducing flexibilities in respect of the JLC system. Previously, inflexibilities existed in the context of the way in which Sunday work was dealt with. Instead of having an absolute and rigorous criminal law in respect of how provision is made for Sunday work, we will be applying to grocery shops and restaurants the same general provision that obtains in respect of Sunday work in bookshops and bars. That is reasonable and we are introducing a flexibility which is not unfair but which is balanced.

Senator Jim Walsh: As the Minister is aware, they were introduced as a result of anti-competitive practices.

An Cathaoirleach: Senator Walsh should cease interrupting. These points can be raised on Committee Stage.

Deputy Richard Bruton: Exactly. As already stated, Senator Mullins referred to the comparator and highlighted the position of people who were recruited in 2007 versus that of agency workers who were taken on afterward. The issue which arises is what is the fair rate on 5 December. The issue is not the rate used in 2007. The employer in question must show that in selecting a fair rate to set on 5 December, it has acted in a reasonable fashion. The employer should have looked at comparable prevailing rates and if a person was employed at a going rate, that would be relevant. A case must be presented for what is being done and an employer cannot pluck a figure from the air without it being able to stand up. In the case outlined by the Senator, the employer must show that circumstances are now different from those pertaining to the 2007 rate. There must be fairness.

I thank Senators for their contribution as legislation in this area is always difficult and there is a constant attempt to balance the needs of both sides and create sufficient flexibility to facilitate employment. There is also a need to protect those employees open to abuse because they are poorly organised or similarly vulnerable. There have been some very notable cases of abuse of agency workers and we are trying to balance the issue. The piece of legislation that has been produced is a fair way of implementing the directive and will bring security to people who could otherwise be exploited. It has sufficient flexibility where employers are seeking to cope with difficult conditions, and they can use agency workers in a flexible way. We are striking a balance and I look forward to the Committee Stage debate, when we can go through the sections in more detail.

Question put and declared carried.

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

Senator Deirdre Clune: Next Thursday.

An Cathaoirleach: Is that agreed? Agreed.

Committee of Selection

Senator Denis O'Donovan: The Committee of Selection reports that it has discharged Senator Darragh O'Brien from membership of the Seanad Public Consultation Committee at his own request and has appointed Senator Mark Daly in substitution for him.

An Cathaoirleach: When is it proposed to sit again?

Senator Deirdre Clune: At 10.30 a.m. tomorrow morning.

Adjournment Matters

Local Authority Staff

Senator Colm Burke: I welcome the Minister of State and thank him for returning to the House. He is here almost on a weekly basis at this stage. This matter relates to accountability and the giving of information to the public, particularly as it applies to local authorities. I have raised the issue directly with the Minister and on the Order of Business.

We can consider the websites of those people working in the European Commission. I looked at the website of the director general of agriculture and rural development to find an entire page, with 89 departments within that section of the Commission, setting out the names of 89 people, who is responsible for a particular area and how these people can be contacted. I also looked at other areas, including the section dealing with energy, and it is interesting that with three officials there is a note of responsibilities and how they can be contacted but also an indication of them being placed at the disposal of the Greek task force. Not only do we know their department and how they can be contacted but also any additional responsibilities that can be given.

It is time we moved on with local authorities in Ireland, as there have been big complaints from the general public. Some local councillors might not like this proposal because it might give more information to the general public and reduce their role. We must open the information on local authorities to the public, particularly who is responsible for particular areas. The big complaint of the general public when contacting local authorities is finding a particular person is unavailable or a person listed as a contact is not the right person to deal with the issue.

We are talking about cutting red tape and each local authority in the country should put on its website who is in charge of particular departments, or who is responsible, for example, for housing matters. In Cork city that issue is divided into different parts of the city and somebody would also be in charge of maintenance. There would also be a person with responsibility for dealing with urgent matters. We are looking to provide clear information to the general public while making local authorities more efficient. We should also ensure information is passed to the right person or official within a reasonable period, and the general public should not have to make a number of phone calls to find out about a particular issue.

I ask that this matter be addressed on a nationwide basis. It is not a major request in a time when we talk about making information more widely available. We should do this at the earliest possible date.

Minister of State at the Department of Education and Skills (Deputy Ciarán Cannon): I am taking this matter on behalf of my colleague, the Minister for the Environment, Community

and Local Government. I thank Senator Burke for raising this matter on the Adjournment as it affords me the opportunity to outline the current position regarding customer services in local authorities. I have certain sympathy with the comments made in respect of local authorities providing full contact details on their websites. For local government to be effective, efficient and focused locally, however, it must be allowed to have a wide level of operational discretion. It is important that all citizens should be able to get assistance in services in their area. It is also important that local authority management ensure that elected members have access to the information they need to discharge their responsibilities effectively. If councillors, in particular, are dissatisfied with the level of contact information available to members of the public on a local authority website, I would urge them, as elected members, to bring the matter to the attention of the relevant council.

A local authority's corporate policy group would be the appropriate forum in which to discuss such issues, particularly if elected members are of the view that corporate action plans, customer service charters or citizens' charters require review or indeed the provision of full contact information on council websites. It is a matter in the first instance for each local authority to keep under review its systems and procedures with a view to improving standards of service to the general public and addressing any deficiencies which may come to light at local level.

In this regard, I am advised that a number of local authorities are currently reviewing their customer service charters and actions plans. In reviewing customer service charters and actions plans, local authorities must take into account the resources available to them and information systems put in place must be current, accurate and responsive to local conditions in order to provide effective and efficient services to citizens. The Government is committed to establishing a web-based system to allow residents to report non-emergency problems in their area, with a guaranteed turnaround of two days for a response to be posted on the website. As part of delivering this commitment, South Dublin County Council piloted the FixYourStreet website during the second half of 2011. Members of the public can report problems with street lighting, drainage, graffiti, waste collection and road and path maintenance in their neighbourhoods. I am pleased to report that in excess of 1,700 reports were uploaded to the website during the pilot phase. The average response time of South Dublin County Council to the queries raised was 1.6 days, less than the two working days deadline. This is a creditable performance and illustrates the benefit of flexibility of setting specific standards for specific circumstances. This initiative will be rolled out to other local authorities during 2012 and I expect them to be able to meet the response standards as part of the delivery of better and more efficient services through FixYourStreet.

Efficient and effective service to the public is one of the guiding principles informing the local government reform project and local government efficiency review. The local government efficiency review group, in its report of July 2010, acknowledged the commitment of local authorities to quality customer services.

Senator Colm Burke: I thank the Minister of State for his comprehensive reply. While I acknowledge that some progress has been made in the past 12 months and local authorities have websites in place, they still appear to be reluctant to identify officials and their responsibilities. Progress is required in this area. As I have noted on a number of occasions, I contacted the Revenue Commissioners when I started working in the legal profession many years ago and found that getting answers on any issues was a nightmare. I now consider the Revenue to be the best Government agency to contact because if the person on the line does not have responsibility for the area in question, one is informed of the name of the persons who have

[Senator Colm Burke.]

responsibility and issued with a comprehensive response within a short period. Given the high demand for local government services, I hope progress will soon be made in this regard. In light of the introduction of the household charge and other charges, it is vital that members of the public obtain value for money within a short timeframe.

Deputy Ciarán Cannon: I will pass on Senator Burke's concerns and suggestions to the Minister, Deputy Hogan. Some local authorities are doing exceptional work in maintaining an excellent service to the public. An examination of their work should establish the reasons they are doing exceptionally well. Having established these reasons, there is no reason we should not be able to roll out similar operational changes across the entire local authority system.

The Seanad adjourned at 5.35 p.m. until 10.30 a.m. on Wednesday, 29 February 2012.