

SEANAD ÉIREANN

Déardaoin, 12 Iúil 2012.
Thursday, 12 July 2012.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Machnamh agus Paidir.

Reflection and Prayer.

Business of Seanad

Senator oirleach: I have received notice from Senator Tony Mulcahy that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

To ask the Minister for the Environment, Community and Local Government if he would consider a review of the current grant amount available to group sewerage schemes and, subsequently, if he would consider bringing them in to line with grants available for group water schemes.

I have also received notice from Senator Rónán Mullen of the following matter:

The need for the Minister for Health to confirm that the expert group established to examine the options available to the Government in responding to the European Court of Human Rights decisions in A, B and C are clear, that the judgment does not require Ireland to introduce abortion in either a regulatory or statutory form and, as such, the group is free to recommend options that do not require the performance of abortions in Ireland.

I have also received notice from Senator Susan O’Keeffe of the following matter:

The need for the Minister for Health to ensure continued funding for the early years health promotion project based in Sligo-Leitrim which provides low-cost, well-targeted education and support for healthy eating among children and their families, at a time when obesity among young children is now a national crisis.

I have also received notice from Senator Martin Conway of the following matter:

The need for the Minister for Health to intervene in the medical card application process, details supplied.

I have also received notice from Senator Mary Moran of the following matter:

The need for the Minister for Health to comment on the recent cutbacks to respite, residential and day services announced by St. John of God Brothers in the north east and the impact of this on service-users and their families.

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

[Senator oirleach.]

The need for the Minister for Health to clarify the future of the subsidised patient return bus service from Donegal to hospitals in Dublin.

I have also received notice from Senator Colm Burke of the following matter:

The need for the Minister for Education and Skills to outline if it is proposed to provide sufficient funding to the Life Centre in Winters Hill, Cork.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment. I have selected Senators Mulcahy, Mullen, O’Keeffe and Conway and their matters will be taken at the conclusion of business. The other Senators may give notice on another day of the matters they wish to raise.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, motion re arrangements for the sitting of the House on Friday, 13 July 2012, to be taken without debate on the conclusion of the Order of Business; No. 2, motion re changes in Standing Orders to be taken without debate; No. 3, resolution to establish a constitutional convention to be taken after No. 2 and to conclude not later than 12.45 p.m., with the contributions of group spokespersons not to exceed eight minutes, a contribution by one Sinn Féin Senator not to exceed three minutes and the Minister to be called on to reply to the debate not later than 12.40 p.m.; No. 4, Industrial Relations (Amendment) (No. 3) Bill 2011 — Committee Stage, to be taken at the conclusion of No. 3 and conclude not later than 2.45 p.m.; No. 5, Microenterprise Loan Fund Bill 2012 — Second Stage, to be taken on the conclusion of No. 4, to conclude not later than 4.45 p.m., with the contributions of group spokespersons not to exceed eight minutes, those of all Senators not to exceed five minutes and the Minister to be called on to reply not later than 4.35 p.m.; No. 6, Electoral (Amendment) (No. 2) Bill 2012 — All Stages, to be taken at 4.45 p.m. and to conclude not later than 6 p.m., with the contributions on Second Stage of group spokespersons not to exceed six minutes, those of all Senators not to exceed four minutes and the Minister to be given five minutes to reply to the debate, Committee and Remaining Stages will be taken immediately thereafter.

Senator Darragh O’Brien: I take strong issue with the Leader on the way in which the resolution on the establishment of the constitutional convention is constructed. Only one hour has been allocated in respect of the debate on this motion, while two hours are being allocated to the Committee Stage debate on the Industrial Relations (Amendment) (No. 3) Bill. What is even more worrying is the fact that only group spokespersons will be allowed to contribute.

Senator Maurice Cummins: Senators may share time.

Senator Darragh O’Brien: With respect, one hour is not sufficient. I remind Members that some weeks ago we had a good debate on a motion — which was subsequently passed by the House — seeking that the Taoiseach should include Seanad reform in the constitutional convention. For whatever reason, neither the Labour Party nor Fine Gael allowed their Senators to contribute to that debate. That is fine, particularly as they will have the opportunity later today to contribute to the debate on the motion to which I refer. The Leader is allocating one hour for the debate, with one spokesperson per group being allowed to contribute. The Sinn Féin spokesperson will have less time than other spokespersons in which to make his or her contribution. There are many Senators who wish to contribute to the debate on this matter.

Senator David Norris: Hear, hear.

Senator Darragh O'Brien: Has the Leader structured the debate in this way in order that Senators from the two Government parties will not be allowed to contribute?

Senator Paul Coghlan: We will have a chance to speak.

An Cathaoirleach: Senator Darragh O'Brien, without interruption.

Senator David Norris: Senator Paul Coghlan should speak up if he is going to interrupt.

An Cathaoirleach: Senator Darragh O'Brien, without interruption.

(Interruptions).

Senator Darragh O'Brien: I hope the Cathaoirleach stopped the clock while I was being interrupted. I remind colleagues that the constitutional convention will only be dealing with two matters immediately after its establishment. These are the potential reduction in the voting age from 18 to 16 and a reduction in the term of office of the President from seven to five years. Big deal. Both of these matters could be dealt with in a week. The largest single political reform the Government has proposed is the abolition of the second House of Parliament, namely, the Seanad. It does not propose to allow the constitutional convention to consider the matter of Seanad reform, even though the Members of this House passed a motion in that regard.

Senator Ned O'Sullivan: It is a disgrace.

Senator Paschal Mooney: There is also the reform of the Dáil to consider.

Senator Darragh O'Brien: I ask the Leader to devote at least two hours to the debate on the motion to be put before the House in respect of the establishment of the constitutional convention. The Seanad is sitting tomorrow and there is only one item on its agenda. We have no difficulty facilitating the extension of today's business into tomorrow. People should be allowed speak on the matter to which I refer. One hour is not sufficient for a debate on it. We will oppose the Order of Business if further time is not allocated. I ask the Leader to consider extending the debate. The House is only due to sit until 12.30 p.m. tomorrow and some of today's business could be delayed and taken at that point.

An Cathaoirleach: Is Senator Darragh O'Brien proposing an amendment to the Order of Business?

Senator Darragh O'Brien: I am proposing an amendment to the Order of Business to the effect that a minimum of two hours be allocated in respect of the motion relating to the establishment of the constitutional convention and that all Members who are offering will be allowed to speak. I know I cannot propose an amendment in respect of tomorrow's business. However, I suggest that any business not completed today be resumed tomorrow. That is my proposal.

Yesterday evening——

An Cathaoirleach: The Senator's time is exhausted.

Senator Darragh O'Brien: This is an important matter and I was interrupted.

An Cathaoirleach: The Senator should be brief.

Senator Darragh O'Brien: I accept it is not in my nature but I will be as brief as possible.

An Cathaoirleach: The only difficulty is that the Senator will be taking up the time of other Members.

Senator Darragh O'Brien: Tuigim. Yesterday evening we engaged in a debate on a very good item of legislation, namely, the Access to Cancer Treatment Bill 2012.

Senator John Gilroy: It was poorly drafted.

An Cathaoirleach: Senator Darragh O'Brien, without interruption.

Senator Darragh O'Brien: Senator Gilroy made enough interruptions yesterday.

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

Senator Darragh O'Brien: Yes. It is a very serious question and I will address it to both the Leader and the Cathaoirleach. Those of us elected to this House are all colleagues. I consider us to be professionals. We can engage in robust debates and disagree with each other. We can then walk out of the Chamber and be friendly and cordial to one another outside. We are all trying to do a job in the interests of the State. I have never previously come across a situation where a Minister of State accosted one of my colleagues during a vote——

Senator John Gilroy: Nonsense.

Senator Darragh O'Brien: I accept the Senator may not wish to hear this but I am going to proceed in any event. I wish, on the record of this House, to lodge a formal complaint about the behaviour of the Minister of State yesterday evening. I refer to the fact that a colleague of mine was accosted in the Chamber during a vote on the legislation. If the Minister of State did not like what was being said, that is fine. However, I would have thought the Minister of State would not be so thin-skinned. What occurred yesterday evening showed complete disregard and disrespect for an elected Member of this House who is a colleague of mine. What happened was extremely serious and I would not like to see a recurrence of it. I will not even refer to the contribution that was made and the script — written by God knows who — that was read into the record.

An Cathaoirleach: We cannot revisit yesterday's debate.

Senator Darragh O'Brien: The script in question was extremely offensive.

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

Senator Darragh O'Brien: I ask the Leader and the Cathaoirleach, on the basis of my contribution this morning, to relay our deep dissatisfaction regarding the manner in which the Minister of State to whom I refer, Deputy Shortall, conducted herself yesterday when a vote was called. I want this matter pursued with the Minister of State.

Senator Susan O'Keefe: "Entertained" would be the wrong word to use to describe my reaction to the interest Fianna Fáil shows in the constitutional convention. I cannot quite remember for how many years Fianna Fáil was in government——

Senator Darragh O'Brien: We actually wrote the Constitution.

Senator Susan O’Keeffe: —but during that time the words “constitutional” and “convention” never passed the lips of any of its members. Fianna Fáil never showed any interest whatsoever in establishing a constitutional convention.

Senator Mark Daly: Reducing the voting age.

An Cathaoirleach: Senator O’Keeffe, without interruption.

Senator Susan O’Keeffe: All of a sudden those in Fianna Fáil are expressing shock at the amount of time allocated in respect of the motion relating to the establishment of the convention when their party, in the 50 to 70 years it was in government, never considered setting up such a body.

(Interruptions).

Senator Darragh O’Brien: The late Brian Lenihan Jnr. chaired the All-Party Committee on the Constitution.

An Cathaoirleach: Senator O’Keeffe, without interruption.

Senator David Norris: The Senator should try not to be quite so offensive.

An Cathaoirleach: Senator Norris has indicated a desire to contribute on the Order of Business. He should allow Senator O’Keeffe to continue her contribution, without interruption.

Senator David Norris: The Senator should not be so offensive.

An Cathaoirleach: Senator Norris will have an opportunity to speak. Senator O’Keeffe, without interruption.

Senator Susan O’Keeffe: The truth does sometimes offend. I welcome last night’s statement from the Orange Order. I understand it is seeking a way to ensure that today’s 12 July parade in Ardoyne will be held. I trust the day will pass in peace, especially in light of the historic visit to the Seanad by Mr. Drew Nelson, Grand Secretary of the Grand Orange Order of Ireland, two weeks ago. Mr. Nelson came in peace to this House.

I commend indigenous Irish food companies such as Glanbia, Kerry Group and Dawn Meats, which are all in the top group of exporting businesses in this country. I am sure everyone in the House will agree they have worked extremely hard to fly the flag for both Ireland and for Irish food abroad. This sector is expected to grow by 40% in the next ten years in the context of exports. In light of the challenges presented by the weather at present and concerns with regard to rising prices for feed and fertiliser, I urge the Minister for Agriculture, Food and the Marine to continue to battle to protect farmers. Without the latter, there would be no indigenous Irish food companies and they would not be doing such a good job on our behalf.

I ask the Leader to write to the Minister for Health, Deputy James Reilly, urging him and his officials to reconvene talks with the Irish Thalidomide Association. I am sure Members will agree that the survivors of thalidomide have battled all their lives merely to live those lives. Few of these people expected to survive until the age of 50. I and others do not want to see them being obliged to take legal action against the State in the interests of obtaining a better settlement. The Government in the UK made a settlement of £20 million in 2010 in respect of survivors of thalidomide in that jurisdiction. I fully expect the Irish Government to do likewise. The Leader should write to the Minister with a view to having the talks reconvened rather than having the matter end up in court.

[Senator Susan O’Keeffe.]

I ask the Leader, when the Seanad resumes sitting in the autumn, to set aside a full day for a debate on the increase in the incidence in suicide revealed this morning in statistics compiled by the Central Statistics Office. The number of suicides in 2011 rose to 525. While our thoughts are with the families of those who have died as a result of suicide, it would be good if we could devote an entire day to debating this issue. During such a debate, the various Ministers who have any responsibility in respect of suicide could be brought before the House in order that we might find ways to pool our expertise and knowledge. If we can save one life or build something better for one community, then the House will have done a worthwhile job. We have talked enough about trying to do something about suicide, and now the incidence is rising again. If we were to concentrate our minds for one full day and engage in an exercise of joined-up thinking, perhaps we might be able to produce something that would be of genuine assistance to families whose loved ones have died as a result of suicide and to those struggling with suicidal thoughts.

Senator Sean D. Barrett: Yesterday, Senator Higgins collected signatures from all Members in respect of a petition relating to the suspension of the imposition of bank charges during the current debacle at Ulster Bank. I ask the Leader to take up this issue with the Minister for Finance, Deputy Noonan. The banks intend to abolish chequebooks but in light of the debacle to which I refer, any action in this regard must be postponed. What is happening at present is certainly an instance of where a paper trail is required to discover what is happening in banking. In light of yesterday’s all-party agreement and the fact we do not know what is going on in the banking sector in this country at present, I ask the Leader to bring this matter to the attention of the Minister and the Minister of State, Deputy Brian Hayes, in order that they might impress on the public interest directors in our banks the need to retain chequebooks.

Senator Deirdre Clune: Two weeks ago, severe flooding took place in areas of Cork. In that context, Douglas, Glanmire and Clonakilty were particularly badly affected. We are now dealing with the aftermath of the floods, and reports from Cork City Council and Cork County Council in respect of what occurred are due to be submitted to the Minister for the Environment, Community and Local Government. The Minister of State with responsibility for the Office of Public Works will also be involved. There is already a possibility of companies, businesses and home owners not being offered insurance assistance and not being re-insured. In the cases where they are offered insurance, they will pay a premium in addition to the normal cost of insurance. After the floods in 2009, some businesses were not able to re-insure themselves and in the Bandon area, those who got insurance had to pay a €5,000 excess. I am aware that I am talking about the Cork region, but flooding could concern all Members. Many areas of the country are susceptible to flooding.

I ask the Leader to request either the Minister of State with responsibility for the OPW or the Minister for the Environment, Community and Local Government to come to the House to discuss the issue and explain what negotiations and consultation he is having with the insurance companies on efforts to mitigate against future flooding. The insurance companies need to be in dialogue with the relevant authorities to ensure that infrastructure is put in place to prevent such flooding and to reassure local businesses and home owners that such flooding is being acted on.

Insurance is very important and I am aware the Minister is negotiating with the insurance companies and I would like him to report on it to the House and give us an opportunity to question him on it.

Senator Marc MacSharry: I join with others in seeking a debate on suicide. Last year the number of people who died by suicide was 525, which is effectively the population of a sizeable village. As I said, if this was happening in Syria or another country, we would be sending in UN troops.

The piecemeal approach to suicide in the past number of years is inexcusable. The number of suicides increased last year but spending on suicide prevention was just €9 million compared with the €35 million budget of the Road Safety Authority, which with the appropriate funding has succeeded in reducing the number of deaths on the road from a similar level to just below 200 last year. This shows that Governments have failed consistently to address the issue of suicide. As Senator O’Keeffe rightly said, we need not just debate but joined-up thinking, and appropriate resourcing for a single agency. A sum of €35 million is supposed to have been ringfenced for mental health in 2012, but I would like to see that money specifically dedicated to suicide prevention.

Suicide is a silent crisis. Last year 525 people, the majority of whom were men but some women and many young people, were wiped out by suicide. We must deal with it.

I understand from Senator Darragh O’Brien that the behaviour during last night’s debate was unbecoming. Will the Leader clarify the procedures to be followed when legislation is brought forward? Is it the norm, as the Government side suggested, that the director of the national cancer control programme would draft, proof and approve particular responses?

Senator John Gilroy: It was never suggested that she had.

Senator Darragh O’Brien: That was what Senator Gilroy said last night.

An Cathaoirleach: Senator MacSharry should not go into last night’s debate.

Senator David Norris: It is a matter of principle.

Senator Marc MacSharry: I am not, this is a new issue.

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

Senator Marc MacSharry: Yes. Is it the procedure that the independent director of the national cancer control programme proofs and approves what are highly political draft speeches? If it is confirmed that is the case, I wish to question that person’s capability to continue in that role?

Senator John Gilroy: I will resist the temptation to comment on the uncharacteristic petulance of Senator Darragh O’Brien——

Senator Rónán Mullen: It was very wise of the Senator not to comment on it, well resisted.

Senator Mark Daly: Magnanimous.

Senator John Gilroy: ——in relation to the debate last night, which I will not go over again. There are more important things than offending the sensibilities of the gentle souls on the Fianna Fail benches.

An Cathaoirleach: Senators, please.

Senator John Gilroy: If legislation is badly drafted and is found not to be acceptable——

Senator Darragh O’Brien: This is the temptation to comment on it.

Senator John Gilroy: —by the Government, I think petulance should not be the response.

An Cathaoirleach: Senator Gilroy without interruption.

Senator John Gilroy: Those who draft legislation should take extra care to ensure the next time that legislation is brought before the House——

An Cathaoirleach: We should not go over last night's debate.

Senator John Gilroy: This is not a rehash of last night's debate, it is just a general comment about legislation.

Senator Darragh O'Brien: I thank Senator Gilroy for his advise, it is always more than welcome.

Senator John Gilroy: The next time that legislation is drafted, those doing so should take extra care when doing so.

An Cathaoirleach: Has Senator Gilroy a question on the Order of Business?

Senator John Gilroy: Yes, I have said that there are more important things than the sensitivities of Fianna Fáil.

I want to support Senator Clune's call for joined-up thinking and a strategic response to the flooding in County Cork. I know that in Glanmire there are over 50 homes which are very badly damaged, so that they are temporarily uninhabitable and residents have had to move out of their homes. Disturbing reports from Glanmire are reaching me in the past couple of days about the heavy handed tactics of insurance companies who are putting what I consider to be, undue pressure on and causing undue alarm and anxiety to people who are already distressed. I ask the Leader to facilitate, if he could do so, some sort of communication between this House and the insurance companies, perhaps through the offices of the relevant Minister. The actions of the insurance companies in this regard are particularly heinous, adding further distress to a very distressful situation.

Senator David Norris: I do not agree with motion No. 1. I propose that it be removed from the Order Paper on the basis that there is no Order of Business and no provision for an Adjournment debate. On that basis I will be opposing the Order of Business. It is an extraordinary abrogation of democracy. We have no Order of Business. One of the most significant items of the day is being removed. There are also no debates on the Adjournment. The Labour Party did not even bother to table a motion for Private Members' time and did not hand it over to anybody else.

Senator John Gilroy: When?

Senator David Norris: It appears to me from all that is going on and the nonsense we have about the convention, as if certain elements within this House are quite deliberately collaborating with the Taoiseach in his wish to demean, degrade and finally close down this House. I strongly object to that.

Senator Susan O'Keeffe: That is a preposterous suggestion.

Senator David Norris: One hour——

Senator Ned O'Sullivan: Hear, hear.

Senator David Norris: —and less than one hour when we have the votes, is given to a subject where people are not allowed to speak about the future of their own jobs. I address Senator O’Keeffe through the Chair. She is supposed to be a trade unionist. How can Senator O’Keeffe stand over this muzzling of the rights of workers to express their opinion? It is a disgrace.

Senator Susan O’Keeffe: I object to that.

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

Senator David Norris: I have a question for the Leader. Why are we not having a proper debate on the convention? Why is this House being treated with gross disrespect? Why is the Constitution being flouted? Why are we making a farce of the convention? Why are members being gagged? The Chair has it in his power as Cathaoirleach to ensure this does not happen. Why has the Chair apparently done nothing? Only spokespersons will be allowed to open their mouths on this issue. This is an issue that concerns the future of this House. The establishment of a convention which we were supposed to take seriously is clearly being exposed as nothing other than a gimmick. Every so often additional little bits are tossed into it to get them conveniently out of the way. I am a democrat and I know there are democrats on the other side of the House. That is what the Government is afraid of. It is afraid of an outbreak of democracy on the Government side.

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

Senator David Norris: I am asking plenty of questions and the Leader has plenty of questions to answer.

An Cathaoirleach: The Senator has gone over time.

Senator David Norris: The Leader is a decent man and I have known him for many years and he has conducted himself well in this House but he seems to be have become a creature of this Government.

An Cathaoirleach: Senator Norris.

Senator David Norris: It seems to me that he is under direction from the Taoiseach to do things which I doubt very much he wants to do.

An Cathaoirleach: I call Senator Mullins. Senator Norris is way over time.

Senator David Norris: That is too bad because I am taking the time as I will not be allowed by an undemocratic decision of the House——

An Cathaoirleach: I am asking Senator Norris to resume his seat?

Senator David Norris: ——because I think that people should be allowed to have proper speaking rights on this matter.

An Cathaoirleach: Senator Norris, please.

Senator David Norris: I believe and I have spoken throughout 25 years in this House on behalf of the people I have continually——

Senator Susan O’Keeffe: The Senator talks about procedures but he is breaking them himself.

An Cathaoirleach: Senator Norris, please.

Senator David Norris: I have seen the speaking time reduce from six minutes to four, then three minutes and two minutes.

Senator John Gilroy: Throw him out.

Senator David Norris: The Government is making a farce of this House. At one stage this House was derided as a talking shop, now thanks to the Taoiseach, we are not allowed to talk in it.

Senator Maurice Cummins: He must be put out.

An Cathaoirleach: Will Senator Norris please resume his seat. He is away over time.

Senator David Norris: I do it out of deference to the Chair, and respect for the Cathaoirleach.

I know the House is dear to the Cathaoirleach's heart; I wish the same could be said of other Senators.

Senator Michael Mullins: It will be very difficult to follow that.

Senator David Norris: The Senator should try a bit of democracy. It would be very refreshing and appropriate.

Senator Michael Mullins: I am very surprised at an experienced Member such as Senator David Norris questioning the commitment to democracy of anybody in the House.

An Cathaoirleach: We are on the Order of Business. Does the Senator have a question for the Leader?

Senator Marc MacSharry: Senator Michael Mullins has as much experience and knows from where Senator David Norris was coming.

Senator Darragh O'Brien: The Senator's comments had better be good.

Senator Michael Mullins: Initially I had intended to speak in support of Senator Susan O'Keeffe in her call for a day long debate on the horrific suicide figures published by the CSO in the past 24 hours. It is the biggest crisis facing the country. As previous speakers said, 525 people lost their lives by suicide, of whom 439 were male. We must question why so many males, particularly young men, decide to end their lives by suicide. There are two issues involved — insufficient suicide prevention programmes and insufficient investment in mental health services. In this year's budget €35 million has been ring-fenced for mental health services, but we need to ascertain whether it is being used for that purpose. In 2006 and 2007 moneys allocated for mental health services were spent elsewhere; therefore, there is a deficit to be closed. I strongly support the call for a discussion on this major issue. Twice as many people lose their lives by suicide as are killed on the roads. Significant resources have been made available to tackle the issue of road deaths; we need to show the same urgency, give the same attention and provide the same resources in dealing with the issue of suicide. I hope the Leader will arrange for a debate in the early part of the next session and invite all of the relevant Ministers who can play their part in tackling the crisis once and for all to attend.

Senator David Cullinane: I wish the Cathaoirleach and all other Senators a happy 12th of July. Last week the grand master of the Orange Order addressed the Seanad. It was an historic

occasion. As we all know, Orangemen across the island of Ireland are celebrating their heritage, culture and identity today. While many of us disagree with aspects of the Orange Order, including its sectarian nature, we must engage in dialogue. Last week's event was a first step in that regard. Many events will take place in the North today that will highlight the unpleasant nature of some of the celebrations when the tricolour will be burned on bonfires and a lot of marches will be forced through communities which are not being respected. No dialogue or discussion has taken place with community representatives. I hope, therefore, that we can use last week's engagement, as the grand master said, as a springboard and that it will encourage and open up dialogue between the Orange Order and all political parties and communities.

I second the proposed amendment to the Order of Business. It is an absolute disgrace that we will have only one hour to discuss the formation, composition and logic behind the constitutional convention. It is the biggest missed opportunity for the Government. We could have a very good convention if it was to examine a range of issues, not just some of the minor issues, important though they are, that will be discussed by it. Many other issues have been dropped completely. I want to see the vindication of social and economic rights examined by the convention. I would also like to see the economically disadvantaged, the socially marginalised and other groups being part of the discussions. Let us be clear. The reason we only have one hour to discuss the motion is reference was made to Seanad reform being part of the constitutional convention, as proposed in amendments tabled by a number of Senators. There is a reluctance on the part of the Government to allow its representatives and Members to have an open and frank discussion on the issue in the House. The Tánaiste told us that he would allow his party Members a free vote on the issue. It is absolutely appalling and despicable that only one hour is being allowed to discuss this important motion. The convention is being diminished and diluted by the Government every passing day.

An Cathaoirleach: The Senator is way over time.

Senator Maurice Cummins: He supported the convention.

Senator Darragh O'Brien: He has one hour in which to say all of this.

Senator David Cullinane: Many of us hoped Fine Gael and the Labour Party would lead us to a new republic, the type spoken about when Fine Gael was in opposition. We will not have it within the strict and narrow remit of the constitutional convention.

Senator Susan O'Keeffe: It will only be a missed opportunity if the Senator keeps shouting.

Senator David Cullinane: The Government should stop gagging its Members and allow them to debate the issue in the House. It will not allow a democratic debate. I, therefore, support the proposed amendment to the Order of Business which calls for at least a two hour debate. My party will only have three minutes in which to make a contribution.

An Cathaoirleach: The Senator has already seconded the proposed amendment to the Order of Business.

Senator David Cullinane: Did the Cathaoirleach not read my party's amendment? My party will only have three minutes in which to discuss the constitutional convention, which is not good enough, as the Cathaoirleach and the Leader know.

An Cathaoirleach: I ask the Senator to resume his seat.

Senator Michael D'Arcy: I would like to raise an issue that was brought to my attention over the weekend when a young man collapsed after a match. There were a number of contributory factors, including fatigue and dehydration, but the most crucial was the consumption of a high energy drink prior to the match. There is not sufficient awareness of the dangers on the part of those who sell such high energy drinks and consume them. Thankfully, the young man in question is fine. I am told by people in the know who work in the sports field that in certain circumstances consuming such a drink prior to a match can be very dangerous. I would like the Leader to allocate time for a debate on the issue prior to the end the session next week because there are quite a few matches due to be played. I wish to use this platform to raise awareness of the dangers involved in the hope somebody will not consume one of these dangerous products when he or she is fatigued and dehydrated. I hope we will have some good weather, but potentially that will increase the danger. I ask the Leader to set aside even a short period for a debate on the issue and invite an official from a Department to attend. This would ensure the matter was raised and aired and help to increase awareness on the part of those who sell and consume such products.

Senator Mark Daly: Like other colleagues, I object to the Order of Business because of the limited amount of time allocated for the debate on the constitutional convention. The Government has most certainly turned it into a window dressing exercise in order to distract attention from the real issues.

I also join the many Senators who have called for a debate on suicide, the real issue of this generation. It is not just another issue as the Taoiseach would have us believe and he will still not answer questions on some of the other topics either.

I have previously asked the Leader to organise a debate with the Minister for Foreign Affairs and Trade on the US-Ireland Alliance and the future of the Mitchell scholars programme, the funding for which was cut by the US State Department. The programme is a fitting and appropriate tribute to George Mitchell, the extraordinary man who helped to bring peace to the island. In March the Oireachtas Joint Committee on Foreign Affairs and Trade extended an invitation to the president of the US-Ireland Alliance which was greeted yesterday with a letter stating she could not come before the committee because funding had been cut, about which she had only learned recently. The US State Department cut the funding available on 13 February. Either she was unaware of it — which means possibly she is not up to the job — or she was and is slightly misleading us, which is disturbing in itself. The letter also stated the scholarship was not going ahead in September. That is amazing given there is \$3.8 million, some of which is Irish taxpayers' money, sitting in the US-Ireland Alliance account to run the Mitchell scholars programme. The letter also stated the board regretted it was not possible to meet up at this moment in time, yet when the president came to Dublin in May and would only meet the chairman, not the committee, she brought a barrister, Mr. Brian Barrington.

Senator David Norris: Is this a consistent attack on an individual who is quite clearly identified?

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

Senator Maurice Cummins: We had the same last week.

Senator Mark Daly: I ask the Leader to provide time next week for the Tánaiste and Minister for Foreign Affairs and Trade to come to the House to discuss the future of the Mitchell scholars programme and the future of the US-Ireland Alliance in light of the fact we cannot get the president of the US-Ireland Alliance to appear before the Joint Committee on Foreign Affairs and Trade.

Senator Paul Coghlan: That is a matter for the committee.

Senator Cáit Keane: I refer to the issue of a female Minister being accosted by a Member yesterday.

An Cathaoirleach: We are not opening that debate.

Senator Cáit Keane: All I want to say is that the male population is getting very timid if the Minister——

Senator Darragh O'Brien: It is more about the Minister of State's behaviour in the House.

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

Senator Cáit Keane: I do.

Senator Darragh O'Brien: Was the Senator happy with her behaviour? It has nothing to do with gender.

Senator Cáit Keane: How can we suspend Standing Orders when Minister comes into the House and is accosted by an Opposition party which accuses the Minister of more or less being a puppet on a string?

Senator Darragh O'Brien: Who said that? Did the Senator check the record? On a point of order——

An Cathaoirleach: I am not taking a point of order.

Senator Darragh O'Brien: It is a point of order

Senator Cáit Keane: I want to know if we can change Standing Orders.

An Cathaoirleach: Is it on procedure?

Senator Darragh O'Brien: It is on procedure. It is correct on the record. The Minister of State left that chair and crossed the House.

An Cathaoirleach: That is not on procedure. Will the Senator please resume his seat? Does Senator Keane have a question for the Leader on today's Order of Business?

Senator Cáit Keane: Yes. How can we change Standing Orders to provide that a Minister who comes into the House and gives her speech is not accused of reading a script in which she does not believe?

An Cathaoirleach: That is not in Standing Orders. Does the Senator a question for the Leader on today's Order of Business?

Senator Cáit Keane: Yes. It relates to the question I had yesterday on electric cars. I congratulate Senator Ivana Bacik who today has launched——

Senator Darragh O'Brien: Is it electric cars?

Senator Cáit Keane: ——a cycle to work scheme for politicians. I may not take it up myself, but one never knows. Stranger things could happen. Another scheme also being launched today is Hailo, a download and application for taxis. Taxi uptake in the city has fallen by 30%. That

[Senator Cáit Keane.]

may have to do with the stringent economic conditions, but there could be other reasons, such as safety issues. The application being launched today is free to all taxis and free for the person.

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

Senator Cáit Keane: I am getting to it.

An Cathaoirleach: The Senator is over time.

Senator Cáit Keane: This is a safety issue. One can book a taxi in advance, pay by card, know the taxi one got into and contact it later on the web. It is free for people to download this application onto their telephone. A cashless transaction is safer in taxis. As not everybody will use cards, there will have to be some transaction by cash.

Senator Darragh O'Brien: Are these electric taxis?

Senator Cáit Keane: Will the Minister for Transport, Tourism and Sport consider advocating this system?

An Cathaoirleach: The Senator is completely out of order.

Senator Feargal Quinn: I second the amendment proposed by Senator David Norris. He has made an impassioned plea to maintain the standards in the House, one of which is the Order of Business. He is concerned about the removal of the Order of Business, Adjournment Matters and other issues. We have succeeded for many years and have established a code of practice. As the House meets on a Friday and extra days, it would be a shame to drop some of the high standards attained.

Senator Susan O'Keeffe drew attention to the major investment by some of the companies associated with the milk sector, and these were mentioned today and in the past week or two. The reason for the significant investment in the next couple of years is the removal of the milk quota in two years time. This is a reminder that we have not scrutinised well enough the legislation we have allowed to be passed by the EU. I suggest the concept of milk quotas was to protect certain sectors of the community and it may have been to protect farmers in other countries rather than in Ireland. The removal of milk quotas is an opportunity to invest not only in farming but in milk associated food products. Our future does not lie solely in the production of basic agricultural products but in associated added value foods. That is where the jobs, investment and success can be found in the future.

I draw attention to new legislation passed recently in the US, the Entrepreneurs Access to Capital Act, which enables small investors to invest on the Internet with small companies. They do not have to meet them and establish the same stock market quotations. These are people who have got good ideas and seek funding which comes from small investors, but they do it via the Internet. I suggest the Government consider a similar Bill. If not, perhaps we in the Seanad can do it ourselves.

Senator Pat O'Neill: Before I put a question to the Leader, I compliment Sinn Féin on becoming the chameleon party of the country. It depends on what side of the Border one is on. I agree with Senator Cullinane that it is a disgrace that the flag of any nation would be disrespected and burned on bonfires, but I would also hope members of Sinn Féin respect the Union flag and the flag of Ulster today, 12 July.

My question to the Leader is in on the school transport system. I ask the Leader to invite the Minister of State at the Department of Education and Skills, Deputy Ciarán Cannon, to

come to the House and make a statement. The school transport system was set up in 1964 when the catchment areas were decided. We have had 13 censuses of population since then and have had major changes in centres of population and schools. I compliment the Department on changing the rule this year which entitles one to free travel to the nearest school if one has a medical card. It also raises an issue in families that one has what one holds. In other words, if one was entitled last year to a category A ticket and had a medical card, one was entitled to free school transport. However, if one wishes the second child to travel on the same bus but not to the nearest school, one is asked to pay, even if one has a medical card. I ask the Minister of State to make a statement on an appeal system for hardship cases. This system will split families. I ask the Minister of State to make a statement on the new school transport system.

Senator Paschal Mooney: Apropos Senator David Cullinane's remarks about 12 July, I look forward to the Sinn Féin representatives following in the distinguished footsteps of a former Member of the House, Mr. John Robb, who presented a poppy to the Cathaoirleach, on 11 November. I look forward to this in light of his good wishes for 12 July.

I share the concern of distinguished Senators David Norris and Feargal Quinn on the absence of the Order of Business tomorrow. I cannot help but contemplate, and perhaps the Leader will clarify, that it may have something to do with the fact that Friday sittings do not appear to be enthusiastically embraced by members of his party.

Senator Maurice Cummins: And the leaders of the groups.

Senator Paschal Mooney: I do not know why. My understanding is our leader objected when the issue arose, according to what he told me. Irrespective of whether he did, I object with my colleagues. I do not see why a time-honoured tradition should be dropped in the House. The Leader, for whom we have enormous respect in what he does in the House, trumpeted the idea of Friday sittings and of extra sittings, but if he continues to diminish the long-standing traditions of the House, all he is doing is creating a stick with which we can be beaten. I do not see what objection there might be to having an Order of Business. Perhaps the Government side is afraid that it will not have enough bodies if a vote is called. I do not know what other reason there might be. I admit I am speculating. I would like to know the reason for this decision.

The main issue I wish to raise on the Order of Business is highlighted in a report in today's *Irish Independent*:

More than 220 young people with a disability are in limbo as cutbacks have left them with nowhere to go this autumn . . . The crisis comes against a background of cuts of 3.7pc in budgets to organisations providing services for people with a disability.

According to the report in question:

660 school leavers with disabilities need some form of specialist placement this autumn and another 390 should have a training place. However, the Health Service Executive (HSE) confirmed that to date just 414 school leavers and 320 people who had been in training have been given a placement. There are 153 school leavers and 73 people who had been in training who will now be forced to languish on a waiting list. The uncertainty has left many families devastated.

I would like to call on the Minister of State with responsibility for disability services, with whom I have a longstanding friendship and for whom I have great regard, to come to this House to explain and justify the cuts being imposed on these organisations. If we look behind the headlines, we will see that the devastation and trauma being experienced by the families

[Senator Paschal Mooney.]

of children with disabilities is going under the radar. I think it is outrageous. A country is respected internationally for the way in which it treats the most vulnerable in a society.

An Cathaoirleach: The Senator is way over time.

Senator Paschal Mooney: A government gets its mandate from the people on the basis of how it looks after the most vulnerable people in society. How can it be justified that the most vulnerable people and their families are being subjected to this outrageous cut? I would like the Minister of State to come to the House to justify it. The funds that have been withdrawn should be restored as soon as possible.

Senator Catherine Noone: Like previous speakers, I would welcome a debate on suicide. Some 525 people took their own lives last year, which represented an increase of 7% on the previous year. Approximately 85% of those who died through suicide were young men. As Senator Daly said, it is a scourge on this generation. The mental health area is neglected within the health system. Suicide, in particular, needs to be addressed seriously. I would welcome a debate and some action in that regard.

As a new Senator, I do not wish to be disrespectful when I say that the Order of Business in this House is sometimes anything but businesslike. If we are coming in especially on a Friday, is it useful to have an Order of Business, potentially followed by two or three votes, before we get to the business of the day? If the Minister who is due to speak has to wait outside while we spend half an hour voting, we will not be getting our actual business done. I do not mean to be disrespectful to those who have been in this House for a lot longer than I have. Since I was elected to the Seanad, I have noticed that Senators spend a great deal of time——

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

Senator Catherine Noone: I do not have a question on that point. I would like to call again for a debate on suicide.

Senator Ned O'Sullivan: I would like to add my voice to the protests against the arrangements that are being made for the debate on the constitutional conference. It is extraordinary that the debate will last just an hour, with one Senator from each side being allowed to speak. It seems that the future of the Seanad is being totally excluded from the debate. I imagine that my colleagues on the other side of the House are ashamed of what is going on. They are probably not able to articulate it as freely as we can. Some of them expressed their feelings by not voting the last time this issue arose. They disgraced themselves by not participating in the debate that subsequently took place. They are now proposing to disgrace themselves again. Not only are they muzzling themselves, but they are attempting to muzzle us as well. We will not be muzzled on this issue because it is too important. As Senator Norris said, this is an honourable institution. Many eminent people have sat in these seats before us. What is going on is not only a slur on this Seanad, but it is also a slur on previous Seanad. All I have to say is that the Seanad will not go without a fight.

Senator Paul Coghlan: I would like to join others in speaking about suicide. All suicides are tragic. Senator Norris mentioned the groceries order. I should have picked up on it the other day. He was absolutely correct to highlight the disgraceful way in which drink is being promoted by multiple retailers as a loss leader. No action is being taken, however. I was reminded by a professional the other day that alcohol gives action to thoughts. Very dangerous thoughts have often resulted in tragic suicides, unfortunately. I commend Senator Gilroy, who is holding a

series of meetings throughout the country on this issue. He seems to be following in the footsteps of another great man, Deputy Dan Neville.

Senator David Norris: Hear, hear. Deputy Neville is a former Member of the Seanad.

Senator Paul Coghlan: I salute the work that both of them are doing. Perhaps we can come back to the issue Senator Norris mentioned the other day. I would like to conclude by referring to the constitutional convention.

Senator Darragh O'Brien: It is a farce.

Senator Paul Coghlan: That is the Senator's opinion.

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

Senator Paul Coghlan: The convention will deal with many subjects other than the two mentioned by Senator O'Brien.

Senator Darragh O'Brien: We are being given just an hour to debate it.

Senator Paul Coghlan: It will be in existence for some time. It might make its own suggestions. I am sure we will have plenty of time to debate its report in due course. Of course we can debate the matter in the meantime.

Senator Darragh O'Brien: Should we be calm about this?

Senator Paul Coghlan: We can make time available — not today, obviously — for a discussion on this subject.

Senator David Norris: There is nothing at all obvious about the failure to provide for a longer debate today.

Senator Paul Coghlan: It can happen.

Senator David Norris: There is a complete lack of democracy in this House.

Senator Paul Coghlan: I will leave the rest of that to the Leader.

Senator Labhrás Ó Murchú: Certain vested interests have directed a contrived cynicism at Seanad Éireann in recent years. Those who study the record of this House will clearly see that the Seanad has played a significant role in the defence of democracy and the promotion of human rights.

Senator David Norris: Hear, hear.

Senator Labhrás Ó Murchú: It has displayed a legislative vision as well. It is difficult to understand why this House is being given just one hour to comment on the consultative convention on the Constitution. Over the years, people with great personal courage have contributed to debates in this House by proposing ideas. We all hoped that many of these ideas would come together in the constitutional convention. It seems that all the debate will take place outside this House. All kinds of contradictions and misrepresentations will be put forward. People are depending on us to bring their views and their vision to the convention, but we will be unable to do so. We are being given one measly hour to look back on the record of this House. The future of the Seanad is not the only issue that should be considered by the convention. It should reflect the changed Ireland, which has a different status internationally. No one

[Senator Labhrás Ó Murchú.]

can justify the allocation of just one hour for a debate on this matter. Like previous speakers, I admire Senator Cummins. He has been one of the great stalwarts of Seanad Éireann. He is a decent and honest man of integrity. I ask him to change this diktat, regardless of where it is coming from. We should have a full day, rather than two or three hours, to discuss the constitutional convention.

Senator David Norris: Hear, hear.

Senator Labhrás Ó Murchú: That is precisely what we need. If that is not done, we will hang our heads in shame in the future. We will be remembered as the Senators who missed a golden opportunity to do what was right by the citizens of this State and the people of this island.

Senator David Norris: Well said. The Leader has the constitutional power to so order.

An Cathaoirleach: The four remaining speakers — Senators Moran, Conway, Burke and Mullen — have one minute each.

Senator Mary Moran: I would like to echo the sentiments expressed by Senator Mooney when he called for the Minister of State with responsibility for disability services to come to the House. I spoke about the cut in services on the Order of Business yesterday and attempted to raise it on the Adjournment today. As I said yesterday, the families of some children with disabilities will now receive services three days a week, rather than five days a week. It is appalling that people with disabilities are among those most affected by cutbacks. This month, up to 1,000 will take part in the Department of Education and Skills one week Irish language and literacy summer camps. A further 1,500 will attend English literacy camps in August. The camps will take place in 29 schools. The topics of suicide and mental health were raised this morning and these camps are an excellent way of promoting good health and making learning outside the classroom fun. Perhaps they could be developed further in coming years, which would go a long way to helping the mental health of our young teenagers.

Senator Rónán Mullen: I thank those who attended the One Day More briefing yesterday and for their kind comments in the Seanad afterwards. The people who deserve credit are the families who were so generous in telling their stories and sharing the wisdom and insights gathered from their experience of having children with severe disability or fatal foetal abnormality. We were all encouraged by them and some interest has been shown in hearing more from the families. Perhaps in September they will come to Leinster House and meet some of the Oireachtas Members who did not have the chance to attend yesterday. I thank the Leader for signalling his openness to a debate in the autumn about perinatal hospice care in particular.

I echo the importance of a debate on suicide. In that report, Pain and Distress in Rural Ireland, I was struck by the words of a man called Niall who said he did not have the courage to live after his experience, with marital breakdown and alcoholism in the mix of his suffering. I was reminded of the line from the famous Victor Frankl, that the person who has a why to live for can bear with almost any how. It would be a good thing if the Seanad could contribute to the debate on how society can address this issue and help people deal with issues causing unhappiness in their lives and reduce the tragic figures of suicide.

Senator Martin Conway: Suicide has been discussed most eloquently by my colleagues and is an extremely important issue. I commend Senator Gilroy on embarking on a national crusade of help and hope to assist people and put structures in place to help families who have lost loved ones through suicide. One hopes it will help to save lives in the future. Senators should row in behind him because the Seanad should be all about what he is embarking on, finding

answers to difficult questions and identifying ways of assisting families in need of help and people who are at the edge and vulnerable. I commend Senator Gilroy and I commit to helping him in any way I can on this important work.

Senator Colm Burke: Ireland will hold the EU Presidency from 1 January 2013, and it is appropriate to set aside time in early September to consider the programme in which we will be involved. It would be useful to get the views of Senators on what we should focus on during this major opportunity to sell the advantages of Ireland over six months. Some 26 other member states will come here on a regular basis and we should not miss the opportunity. A 27th member state will join during 2013 and it is important to have a debate. I ask for time to be set aside in early September to deal with the programme for the EU Presidency.

Senator Maurice Cummins: We had a considerable amount of talk on the time allocated for the resolution. The Tánaiste will be here for an hour on a matter that was debated for two hours in the other House. I sought further time but the Tánaiste was not available. I hope we can utilise the hour in a proper manner. The Electoral (Amendment) (No. 2) Bill, which is No. 6 on the Order Paper, will be taken for over an hour. It also deals with the constitutional convention. There will be ample opportunity for people to make their points on the resolution. The resolution will be put to the floor after one hour, but people can continue to discuss the constitutional convention next week. I will endeavour to allow sufficient time for it, but we will deal with the resolution today.

12 o'clock

Senator Darragh O'Brien: That is a cod.

Senator David Norris: Closing the door after the horse has bolted.

Senator Darragh O'Brien: After the resolution has been passed, we can discuss it. What is the point?

Senator David Norris: Rubbish. That is an insult.

An Cathaoirleach: The Leader, without interruption.

Senator Maurice Cummins: I have no intention of going back on last night's debate. The exchanges were more than robust on occasion and did very little for the decorum of this House. Senators O'Keeffe and Quinn spoke about the achievements of Glanbia, Kerry Group and Dawn Meats. We all laud the achievements of the companies and outline the opportunities for similar industries, especially with milk quotas being phased out in 2015. Opportunities exist for value added goods after 2015.

Senator Quinn referred to the investors scheme on the Internet. The Microenterprise Loan Fund Bill will be in the House today and the Minister will be present. I hope these valid points will be made to the Minister when discussing the Bill.

Senator O'Keeffe referred to the Irish Thalidomide Association and I will make representations to the Minister for Health on that point.

A number of Senators raised the question of the increase to 525 in the incidence of death by suicide. They called for a debate in this House involving several Ministers. In January, the Minister of State, Deputy Kathleen Lynch, attended the House for an excellent debate on suicide. More time is needed and I will try to arrange such a debate early in the new term. The number of people who die by suicide is a national tragedy. There is a need for joined-up thinking and, if a debate in this House can help, we will arrange it as soon as we come back in the autumn.

[Senator Maurice Cummins.]

Senator Barrett made a brief point about Ulster Bank and the abolition of chequebooks. That would be a retrograde step. I am old-fashioned in that regard and we should retain a paper trail.

Senators Clune and Gilroy referred to flooding in Cork and the problems with insurance companies, with excess being added to insurance policies. Many people in distress are having difficulties with their insurance companies. We will call for a progress report on flooding damage from the Minister of State, Deputy Hayes, and the Minister for the Environment, Community and Local Government, Deputy Hogan. It occurred not only in Cork but also in several other areas.

Senator Norris referred to the Order of Business and it was my understanding that the group leaders had agreed that, when we have a Friday sitting, we will not have an Order of Business. That is my understanding but Senator Norris has difficulty with it. I understand others also have difficulty with it. I have business ordered and Ministers in place for next Friday. I will do something similar next Friday but I would like to get the opinions of Members who feel we should have an Order of Business. If the leaders cannot speak for their groups——

Senator David Norris: The Leader does not speak to them.

Senator Maurice Cummins: I am interested in the views of all Members. Moreover, I am certainly willing to facilitate the taking of an Order of Business on future Friday sittings, if that is what Senators wish. I hope to receive 59 e-mails or telephone calls from Senators in the coming days indicating their preferences for Friday sittings, whether there should be an Order of Business and so on.

Senator Darragh O'Brien: That will work if the Leader allows his own colleagues to make their views known, which he usually does not.

Senator Maurice Cummins: The opportunity is there for Members to correspond with me and I will accede to the majority view.

Senator Darragh O'Brien: They are usually muzzled. We all know that the Leader and Deputy Leader will decide what happens.

(Interruptions).

An Cathaoirleach: The Leader should be allowed to continue without interruption.

Senator Maurice Cummins: Next week's Private Members' time is scheduled to be taken up with a motion by the Independent Senators. I hope that motion will be put through on time for debate next week.

Senator Darragh O'Brien: Why would it not be put through on time? What is the point of that comment?

Senator Maurice Cummins: I have not yet received it.

Senator Darragh O'Brien: What difference does that make?

Senator David Norris: The general terms of my motion were submitted to the office by——

An Cathaoirleach: The Leader, without interruption.

Senator David Norris: —my secretary, who happens to be on leave.

Senator Maurice Cummins: I have not received that document.

Senator David Norris: That is your problem. I will tell the Leader, since he seems to be so interested—

(Interruptions).

An Cathaoirleach: Senator Norris must allow the Leader to continue.

Senator David Norris: The motion relates to the constitutional review of 1998 and, in particular—

An Cathaoirleach: Please, Senator.

Senator Maurice Cummins: Senator Norris is interrupting the proceedings of the House.

(Interruptions).

Senator David Norris: —the acknowledgment that the procedures for the election of—

Senator Maurice Cummins: This is crazy.

An Cathaoirleach: I have asked Senator Norris to allow the Leader to continue.

Senator David Norris: The Leader cannot say that he has not been told what motion will be debated on Private Members' time next Wednesday.

(Interruptions).

An Cathaoirleach: Senator Norris is disrupting the House. I ask him to resume his seat and allow the Leader to conclude. We are on a very tight time schedule.

Senator David Norris: I am at a loss to see, having been strapped down for the past 60 seconds, how I can now resume my seat. Would the Cathaoirleach prefer me to sit on the floor?

An Cathaoirleach: The Leader, without interruption.

Senator Maurice Cummins: Senator David Cullinane referred to the 12 July celebrations taking place today in the North. I hope respect will be shown for all traditions on this and all occasions. I agree it is vital that we have dialogue in regard to contentious parades.

Senator Michael D'Arcy referred to the possible dangers of athletes consuming high-energy drinks prior to participating in physical activity. I will raise that matter with the Minister with a view to having a debate in the House in due course.

Senator Pat O'Neill asked about the appeals system in respect of applications for the school transport scheme. Perhaps the Senator will submit a request for an Adjournment debate on the issue, which would afford an opportunity for the relevant Minister to furnish him with all the information he requires.

Senators Paschal Mooney and Mary Moran asked about services for people with disabilities. The report of the value for money review, under the chairmanship of Mr. Laurence Crowley, will be published shortly. I hope to have a debate on the findings of that report when we return in the autumn. I note Senator Moran's comments in regard to Irish language camps.

[Senator Maurice Cummins.]

Senator Colm Burke referred to the work programme for the European Presidency. I agree that we should select some of the issues included in the programme for debate in the House in the autumn.

An Cathaoirleach: Senator Darragh O'Brien has proposed an amendment to the Order of Business, "That a minimum of two hours be allocated for the debate on No. 3." Is amendment No. 1 being pressed?

Senator Darragh O'Brien: Yes.

Amendment put.

The Seanad divided: Tá, 18; Níl, 30.

Tá

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

O'Sullivan, Ned.
Ó Murchú, Labhrás.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
van Turnhout, Jillian.
Walsh, Jim.
White, Mary M.
Zappone, Katherine.

Níl

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

Healy Eames, Fidelma.
Henry, Imelda.
Higgins, Lorraine.
Keane, Cáit.
Kelly, John.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
Noone, Catherine.
O'Donnell, Marie-Louise.
O'Keeffe, Susan.
O'Neill, Pat.
Sheahan, Tom.
Whelan, John.

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

Amendment declared lost.

An Cathaoirleach: Senator David Norris has moved an amendment to the Order of Business, "That No. 1 be deleted." Is the amendment being pressed?

Senator David Norris: Yes.

Amendment put.

The Seanad divided by electronic means.

Senator David Norris: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Amendment put.

The Seanad divided: Tá, 17; Níl, 32.

Tá

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

O'Brien, Darragh.
O'Sullivan, Ned.
Ó Murchú, Labhrás.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
Walsh, Jim.
White, Mary M.

Níl

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

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

Tellers: Tá, Senators David Norris and Feargal Quinn; Níl, Senators Paul Coghlan and Susan O'Keeffe.

Amendment declared lost.

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

The Seanad divided by electronic means.

Senator Ned O'Sullivan: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

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

The Seanad divided: Tá, 32; Níl, 16.

Tá

Bacik, Ivana.
Bradford, Paul.
Brennan, Terry.
Burke, Colm.
Clune, Deirdre.

Coghlan, Eamonn.
Coghlan, Paul.
Comiskey, Michael.
Conway, Martin.
Cummins, Maurice.

Tá—*continued*

D’Arcy, Jim.
 D’Arcy, Michael.
 Gilroy, John.
 Harte, Jimmy.
 Hayden, Aideen.
 Healy Eames, Fidelma.
 Henry, Imelda.
 Higgins, Lorraine.
 Keane, Cáit.
 Kelly, John.
 Moloney, Marie.

Moran, Mary.
 Mulcahy, Tony.
 Mullins, Michael.
 Noone, Catherine.
 O’Donnell, Marie-Louise.
 O’Keeffe, Susan.
 O’Neill, Pat.
 Sheahan, Tom.
 van Turnhout, Jillian.
 Whelan, John.
 Zappone, Katherine.

Níl

Barrett, Sean D.
 Byrne, Thomas.
 Cullinane, David.
 Daly, Mark.
 Leyden, Terry.
 MacSharry, Marc.
 Mooney, Paschal.
 Mullen, Rónán.

Norris, David.
 O’Brien, Darragh.
 O’Sullivan, Ned.
 Ó Murchú, Labhrás.
 Power, Averil.
 Quinn, Feargal.
 Reilly, Kathryn.
 Walsh, Jim.

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

Question declared carried.

Sittings of Seanad: Motion

Senator Maurice Cummins: I move:

“(1) That, notwithstanding anything in the Standing Orders relative to Public Business, on Friday, 13th July, 2012 the Seanad shall meet at 10 a.m. and the following arrangements shall apply:

(a) Standing Orders 29 and 30 shall stand suspended;

(b) there shall be no Order of Business;

(c) the business to be taken shall be confined to the second stage debate of the Public Service Pensions (Single Scheme and Other Provisions) Bill 2011 which shall conclude no later than 12.30 p.m.; the contribution of a Group Spokesperson shall not exceed 8 minutes and the contribution of every other Senator shall not exceed 5 minutes and the Minister shall be called to reply no later than 12.20 p.m. No other business shall be taken unless the Seanad shall otherwise order on motion made by the Leader of the House or such other Senator as he may authorise in that behalf.”.

Question put.

The Seanad divided by electronic means.

Senator David Norris: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Question put.

The Seanad divided: Tá, 33; Níl, 16.

Tá

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

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

Níl

Barrett, Sean D.
Byrne, Thomas.
Cullinane, David.
Daly, Mark.
Leyden, Terry.
MacSharry, Marc.
Mooney, Paschal.
Norris, David.

O'Brien, Darragh.
O'Sullivan, Ned.
Ó Murchú, Labhrás.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
Walsh, Jim.
White, Mary M.

Tellers: Tá, Senators Paul Coghlan and Susan O'Keefe; Níl, Senators David Norris and Feargal Quinn.

Question declared carried.

Standing Orders: Motion

Senator Maurice Cummins: I move:

That, notwithstanding anything in Standing Orders—

(1) the Order of the Seanad of 16th June, 2011 relating to the Joint Committee on Investigations, Oversight and Petitions, as amended by the Order of the Seanad of 29th September, 2011, is amended—

(a) in paragraph (1) by the deletion of all words from and including “Investigations,” down to and including “2011” and the substitution of “Public Service Oversight and Petitions, to consider the activities specified in Standing Order 103A.”, and

(b) by the deletion of paragraphs (2) and (3) and the substitution of the following:

“(2) Standing Orders 103A to 103E, inclusive, shall apply to the Joint Committee.”,

(2) the report of the Committee on Selection, dated 16 June, 2011 relating to membership of the Joint Committee on Investigations, Oversight and Petitions is amended by the deletion

[Senator Maurice Cummins.]

of “Investigations, Oversight and Petitions” wherever it occurs and the substitution of “Public Service Oversight and Petitions”.

and

(3) until further notice in the 24th Seanad, the Standing Orders of Seanad Éireann relative to Public Business are hereby amended—

(a) by the adoption of the following additional Standing Orders:

103A. (1) There shall stand established at the commencement of every Seanad a Standing Committee, which shall be joined with a similar Committee of the Dáil, to form the Joint Committee on Public Service Oversight and Petitions.

(2) The Standing Committee shall consist of five members of Seanad Éireann. The quorum of the Joint Committee shall be six, of whom at least one shall be a member of Seanad Éireann and one a member of Dáil Éireann. The Chairman of the Joint Committee shall be a member of Dáil Éireann.

(3) The Joint Committee shall have oversight of public service delivery generally, with a particular focus on investigating and identifying improvements in the delivery of such services to citizens.

(4) (a) There shall stand established at the commencement of every Seanad a sub-Committee which shall be called the sub-Committee on the Ombudsman, which shall be joined with a similar sub-Committee of the Dáil Committee, to form the Joint sub-Committee on the Ombudsman.

(b) The sub-Committee shall consist of all five members of the Standing Committee. The quorum of the Joint sub-Committee shall be six, of whom at least one shall be a member of Seanad Éireann and one a member of Dáil Éireann. The Chairman of the Joint Committee shall be the Chairman of the Joint sub-Committee.

(5) (a) There shall stand established at the commencement of every Seanad a sub-Committee which shall be called the sub-Committee on Public Petitions, which shall be joined with a similar sub-Committee of the Dáil Committee, to form the Joint sub-Committee on Public Petitions.

(b) The sub-Committee shall consist of all five members of the Standing Committee. The quorum of the Joint sub-Committee shall be six, of whom at least one shall be a member of Seanad Éireann and one a member of Dáil Éireann. The Chairman of the Joint Committee shall be the Chairman of the Joint sub-Committee.

(6) Without prejudice to the generality of paragraph (3),

(a) the Joint sub-Committee on the Ombudsman shall consider—

(i) the reports of the Ombudsman which are laid before the Houses of the Oireachtas under the Ombudsman Acts 1980 to 1984,

(ii) motions pursuant to section 2 of the Ombudsman Act 1980, which shall stand referred to the Joint Committee for consideration and report to the Houses of the Oireachtas thereon, and

(iii) such other matters as may be referred to the Joint sub-Committee by the Houses of the Oireachtas,

(b) the Joint sub-Committee on Public Petitions shall consider—

(i) public petitions addressed to the Houses of the Oireachtas which shall stand referred to the Joint sub-Committee in accordance with Standing Orders 103B to 103E, inclusive, and

(ii) such other matters as may be referred to the Joint sub-Committee by the Houses of the Oireachtas,

(c) the Joint Committee shall consider—

(i) the quality and standards of public service delivery informed by its sub-Committees' consideration of the reports and petitions under paragraphs (a) and (b), including the effectiveness of public service complaints and redress systems,

(ii) such other matters as may be referred to the Joint Committee by the Houses of the Oireachtas, and

(iii) any other related matters.

(7) The Joint Committee and the Joint sub-Committee on Public Petitions shall have the following powers:

(a) the powers defined in Standing Order 71, other than paragraphs (2A), (4A), (4B) and (6A) thereof; and

(b) power to refer any matter which has been considered by it (and which has been concluded to be of sufficient importance to require additional consideration) to the relevant Joint Committee appointed under Standing Order 70A for further consideration and report back to the Committee.

(8) The Joint sub-Committee on the Ombudsman shall have the following powers:

(a) the powers defined in Standing Order 71, other than paragraphs (4A), (4B) and (6A) thereof; and

(b) power to refer any matter which has been considered by it (and which has been concluded to be of sufficient importance to require additional consideration) to the relevant Joint Committee appointed under Standing Order 70A for further consideration and report back to the Committee.

(9) Each Joint sub-Committee shall have the power to report directly to the Seanad.

(10) The provisions of Standing Order 80 shall apply to the Joint Committee and its sub-Committees.

(11) In carrying out their roles under this Standing Order—

(a) the Joint sub-Committee on the Ombudsman—

(i) shall agree guidelines on collaborative working between the Joint sub-Committee and the Ombudsman, including a right of initiative for the Joint sub-Committee in bringing specific matters to the attention of the Ombudsman, and

[Senator Maurice Cummins.]

(ii) may liaise with such other Ombudsmen, regulatory public bodies or bodies established for the purpose of redress, as the Joint sub-Committee considers appropriate,

(b) the Joint sub-Committee on Public Petitions may engage with the Committee on Petitions of the European Parliament including in relation to the European Citizens' Initiative.

(12) It shall be an instruction to the Joint Committee and its sub-Committees that they shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 163 of the Dáil Standing Orders relative to Public Business and/or the Comptroller and Auditor General (Amendment) Act 1993.

(13) The Joint Committee shall prepare an annual work programme and an annual report as outlined in Standing Order 75, which shall be laid before both Houses of the Oireachtas.

(14) The Joint Committee shall review its role generally on an ongoing basis and may make recommendations for change by way of report to the Committees on Procedure and Privileges of both Houses.

103B. (1) A petition may be addressed to the Houses of the Oireachtas on a matter of general public concern or interest in relation to their legislative powers or an issue of public policy.

(2) A petition may be lodged by an individual person, a body corporate or an unincorporated association of persons.

(3) A petition shall clearly indicate—

(a) the name of the petitioner;

(b) an address of the petitioner to which all communications concerning the petition should be sent; and

(c) the name and address of any person supporting the petition.

(4) All petitions addressed to the Houses of the Oireachtas shall stand referred to a Committee or sub-Committee empowered to consider petitions under this Standing Order and Standing Orders 103C, D and E (referred to in this Standing Order and Standing Orders 103C, D and E as “the Committee”).

(5) The Committee shall, from time to time, determine—

(a) the proper form of petitions,

(b) the manner in which petitions are to be lodged with the Houses; and

(c) such other matters in relation to the consideration of petitions as the Committee considers appropriate and which are not otherwise provided for in these Standing Orders.

103C. (1) A petition is admissible unless it—

(a) requests the Seanad to do anything other than the Seanad has power to do;

(b) does not comply with Standing Orders or is otherwise not in proper form;

(c) is sub-judice within the meaning of Standing Order 47;

(d) contains the name or names of individuals;

(e) contains language which is offensive or in the nature of being defamatory;

(f) is the same as, or in substantially similar terms to, a petition brought by or on behalf of the same person, body corporate or unincorporated association during the lifetime of that Seanad and which was closed by agreement of the Committee;

(g) is frivolous, vexatious or otherwise constitutes an abuse of the petitions system;
and

(h) requires the Committee to consider an individual complaint which has been the subject of a decision by the Ombudsman, by another Ombudsman, or by a regulatory public body or a body established for the purpose of redress.

(2) In relation to admissible petitions, where a petition deals with—

(a) local or regional matters; or

(b) matters which are more appropriate to a regulatory public body or a body established for the purpose of redress the Committee shall establish that all available avenues of appeal or redress have been utilised by the petitioner prior to the Committee considering the matter.

(3) The Committee shall consider and decide in a case of dispute whether a petition is admissible and shall notify the petitioner of its decision and of the reasons for that decision.

103D. (1) If a petition is admissible, the Committee shall take such action as it considers appropriate in relation to that petition.

(2) Without prejudice to the generality of paragraph (1), the Committee may—

(a) refer the petition to the Ombudsman, another Ombudsman or a regulatory public body or a body established for the purpose of redress;

(b) refer the petition to any other Committee as it considers appropriate, with a request for further consideration and report back to the Committee; and

(c) report to the Seanad with recommendations, including a request that the report be debated by the Seanad.

(3) The Committee shall notify the petitioner of any action taken under paragraph (2).

103E. (1) The Committee may close a petition at any time.

(2) Where the Committee closes a petition it shall notify the petitioner that the petition is closed and of the reasons for closing it.’

and

(b) by the insertion in Standing Order 70 of the following subparagraph after paragraph (2)(c):

[Senator Maurice Cummins.]

‘(ad) that it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Service Oversight and Petitions in the exercise of its functions under Standing Order 103A.’.

Question put.

The Seanad divided by electronic means.

Senator Ned O’Sullivan: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Question put.

The Seanad divided: Tá, 33; Níl, 16.

Tá

Bacik, Ivana.
Bradford, Paul.
Brennan, Terry.
Burke, Colm.
Clune, Deirdre.
Coghlan, Eamonn.
Coghlan, Paul.
Comiskey, Michael.
Conway, Martin.
Cullinane, David.
D’Arcy, Jim.
D’Arcy, Michael.
Gilroy, John.
Harte, Jimmy.
Hayden, Aideen.
Healy Eames, Fidelma.
Henry, Imelda.

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

Níl

Barrett, Sean D.
Byrne, Thomas.
Cullinane, David.
Daly, Mark.
Leyden, Terry.
MacSharry, Marc.
Mooney, Paschal.
Norris, David.

O’Brien, Darragh.
O’Sullivan, Ned.
Ó Murchú, Labhrás.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
Walsh, Jim.
White, Mary M.

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

Question declared carried.

Business of Seanad

Senator Maurice Cummins: I propose an amendment to the Order of Business, that No. 3, the resolution to establish the constitutional convention, be taken without debate, as the Tánaiste has been waiting since 11.45 a.m. and was prepared to stay until 1.30 p.m.

An Cathaoirleach: Is the amendment to the Order of Business agreed to?

Senator David Norris: The Leader misled the House. He told us the Tánaiste was not able to be present.

An Cathaoirleach: Is the amendment agreed to?

Senator Darragh O'Brien: It most certainly is not. The Tánaiste would not have had to sit out there for an hour if the Leader had played ball initially.

Amendment put.

The Seanad divided by electronic means.

Senator David Cullinane: Under Standing Order 62(3)(b), I call for the division to be taken again other than by electronic means.

An Cathaoirleach: As the Senator is not a Teller, will the Senators supporting his request, please, stand?

More than four Members rose.

An Cathaoirleach: The vote will now proceed.

Amendment put:

The Seanad divided: Tá, 28; Níl, 19.

Tá

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

Hayden, Aideen.
Henry, Imelda.
Higgins, Lorraine.
Keane, Cáit.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
Noone, Catherine.
O'Donnell, Marie-Louise.
O'Keeffe, Susan.
O'Neill, Pat.
Sheahan, Tom.
Whelan, John.

Níl

Barrett, Sean D.
Byrne, Thomas.
Cullinane, David.
Daly, Mark.
Leyden, Terry.
Mooney, Paschal.
MacSharry, Marc.
Mullen, Rónán.
Norris, David.
Ó Murchú, Labhrás.

O'Brien, Darragh.
O'Sullivan, Ned.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
van Turnhout, Jillian.
Walsh, Jim.
White, Mary M.
Zappone, Katherine.

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

Amendment declared carried.

Constitutional Convention: Motion

Senator Maurice Cummins: I move:

That Seanad Éireann:

approves the calling of a Convention on the Constitution to consider the following matters and to make such recommendations as it sees fit and report to the Houses of the Oireachtas:

(i) reducing the Presidential term of office to five years and aligning it with the local and European elections;

(ii) reducing the voting age to 17;

(iii) review of the Dáil electoral system;

(iv) giving citizens resident outside the State the right to vote in Presidential elections at Irish embassies, or otherwise;

(v) provision for same-sex marriage;

(vi) amending the clause on the role of women in the home and encouraging greater participation of women in public life;

(vii) increasing the participation of women in politics;

(viii) removal of the offence of blasphemy from the Constitution; and

(ix) following completion of the above reports, such other relevant constitutional amendments that may be recommended by it; and

notes that:

- membership of the Convention will consist of 100 persons as follows:
- a Chairperson to be appointed by the Government;
- 66 citizens entitled to vote at a referendum, randomly selected so as to be broadly representative of Irish society;
- a member of the Northern Ireland Assembly from each of the political parties in the Assembly which accepts an invitation from the Government; and
- members of the Houses of the Oireachtas, so as to be impartially representative of the Houses;
- substitutes may be appointed subject to the selection criteria above, who will be entitled to contribute to the proceedings and vote in their own name;
- the Convention will agree its own rules of procedure for the effective conduct of its business in as economical manner as possible;
- the Convention will have appropriate regard to the Good Friday Agreement and the St. Andrews Agreement;

- not later than two months from the date of the first public hearing held by the Convention, the Convention will make a report and recommendation to the Houses of the Oireachtas on each of the matters set out at (i) and (ii) above;
- the Convention will report and make recommendations to the Houses of the Oireachtas on each remaining matter as soon as it has completed its deliberations, but in any event not later than one year from the date of the first public hearing;
- the Convention may invite and accept submissions from interested bodies and will seek such expert advice as it considers desirable;
- all matters before the Convention will be determined by a majority of the votes of members present and voting, other than the Chairperson who will have a casting vote in the case of an equality of votes; and

the Government will provide in the Oireachtas a response to each recommendation of the Convention within four months and, if accepting the recommendation, will indicate the timeframe it envisages for the holding of related referendum.”

Amendments Nos. 1 to 13, inclusive, not moved.

Question put.

The Seanad divided: Tá, 29; Níl, 19.

Tá

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

Healy Eames, Fidelma.
Henry, Imelda.
Higgins, Lorraine.
Keane, Cáit.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
Noone, Catherine.
O’Donnell, Marie-Louise.
O’Keeffe, Susan.
O’Neill, Pat.
Sheahan, Tom.
Whelan, John.

Níl

Barrett, Sean D.
Byrne, Thomas.
Cullinane, David.
Daly, Mark.
Leyden, Terry.
MacSharry, Marc.
Mooney, Paschal.
Mullen, Rónán.
Norris, David.
Ó Murchú, Labhrás.

O’Brien, Darragh.
O’Sullivan, Ned.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
van Turnhout, Jillian.
Walsh, Jim.
White, Mary M.
Zappone, Katherine.

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

Question declared carried.

Industrial Relations (Amendment) (No. 3) Bill 2011: Committee Stage

Senator David Norris: I wonder if we could have an explanation, in the interests of democracy, for how the Leader misinformed the House that the Tánaiste and the Minister for Foreign Affairs and Trade, Deputy Eamon Gilmore, would not be available and could not afford time——

An Cathaoirleach: We are on the Industrial Relations (Amendment) (No. 3) Bill 2011.

Senator David Norris: ——and then, suddenly and miraculously, he was able to afford precisely the time for which Members had asked.

An Cathaoirleach: The Senator is out of order.

Senator David Norris: This is a victory for democracy. Today the Seanad has showed it has a few teeth. That is what one gets with the one party mentality that is developing on the Government benches.

Senator Thomas Byrne: The Tánaiste and Minister for Foreign Affairs and Trade has gone into reverse on the Minister, Deputy James Reilly.

Sections 1 to 4, inclusive, agreed to.

SECTION 5

Acting Chairman (Senator Paschal Mooney): Amendments Nos. 1 and 15 are related and will be discussed together.

Senator David Cullinane: I move amendment No. 1:

In page 6, line 4, to delete “the desirability of agreeing and maintaining” and substitute “the agreeing and maintaining of”.

I welcome the Minister to the House and apologise for my absence during the Second Stage debate, during which my party colleague, Senator Kathryn Reilly, expressed Sinn Féin’s concerns about the Bill. She also signalled that we would table amendments to the Bill, as we have done. Amendments Nos. 1 and 15 are similar and refer to the registered employment agreements. Under the section, when considering whether it is appropriate to register an agreement under subsection (3) other than an agreement applying to a single employer, “the Court shall have regard to”, among other factors, “the desirability of agreeing and maintaining fair and sustainable rates of remuneration in the sector in question”. My party has a difficulty with the use of the word “desirability” in this context. On Committee Stage, the Minister indicated it was not necessary to change the wording of this paragraph. Sinn Féin disagrees and proposes to remove the word “desirability” in order that the paragraph reads, “the agreeing and maintaining of fair and sustainable rates of remuneration in the sector in question”. The sentence has lesser legal standing when the word “desirability” is included. When discussing rates of pay and remuneration we must remind ourselves that the people to whom the legislation refers are among the lowest paid workers in the State who are frequently employed in vulnerable sectors of the economy.

It is noteworthy that the National Employment Rights Agency, NERA, published a report last year which showed that 70% of employers in the three largest sectors covered by registered employment agreements were found to be in breach of their obligations. It is vital, therefore, that the legislation is crystal clear as to what entitlements employees should have and the issues

to which the court should have regard when making agreements. The NERA report also found that 53% of workers in the three sectors in question were earning less than the minimum wage, which is an incredible finding, 51% were not in receipt of wage slips, 83% did not have proper contracts and 85% were not paid premiums. We will address the issue of premiums when we discuss the Minister's proposal to abolish them. Forfás estimates that between 170,000 and 300,000 workers were covered by registered employment agreements when the court case was taken.

The amendments were tabled because the word "desirability", as used in the text, is unnecessary. While it is desirable that agreement be reached and fair and sustainable rates of remuneration maintained, the use of the word "desirability" in this context potentially dilutes the impact of the provision and the direction the legislation gives to the court. I look forward to the Minister's response.

Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton): I thank Senator Cullinane for tabling the amendment. As he recognised, there was substantial debate on this issue on Second Stage. I have been around the Houses and back to the Attorney General to evaluate the point being made by the Senator's colleagues in the other House. What is being done is a weighing up of a series of different principles, which will sometimes be in agreement and other times in conflict. The phraseology used in the context of the "desirability" of maintaining competitiveness or sustainable rates of remuneration indicates that a series of matters is to be considered, all of which are desirable in themselves. The adjudication process seeks to weigh up these different principles. The Office of the Attorney General is firmly of the view that the reference to "desirability" should remain, as it gives an indication that these are appropriate principles to which the court and a joint labour committee should have regard and are desirable provisions in themselves. These provisions seek to embody the concept of weighing up different principles which, while desirable in themselves, can be also in conflict. If one leaves out the word "desirability", one moves from one of a range of principles that must be considered to an absolute position and removes the discretion of the Labour Court in evaluating principles which may, at times, be in conflict with other principles it is seeking to pursue.

In addition, if a criterion is inserted in absolute terms, it becomes open to challenge and fetters the freedom of the court. For example, if the court "must" observe the need for competitiveness, a person may challenge whether the court, in making a ruling, honoured this absolute statement. On the other hand, when one uses the qualification of "desirability", one effectively leaves the court unfettered to weigh up the different issues in coming to its conclusion. I assure the Senator that the use of the phrase "desirability" is not in any way designed to devalue the sentiment or importance of the principle. It is simply a reflection of the legal advice from the Office of the Attorney General which indicated to me that this is the appropriate way in which to draft legislation of this nature. Unfortunately, while I understand the reason the amendment has been tabled, I cannot accept it.

Senator David Cullinane: I thank the Minister for his reply, although I cannot accept his reasoning. While I accept he is acting on the advice of the Office of the Attorney General, my party does not have access to this information. Having said that, we are often prescriptive in what we do in putting down legislation. It is not something new that we would not be prescriptive or that we would have to be somewhat loose in regard to what we insert to give some leeway to a court. What we are talking about here is the establishment of registered agreements which deal with people's pay and entitlements. In that context, I do not see any reason that we cannot be prescriptive around ensuring there is an absolute commitment, with which I do not have any difficulty, to ensure the court has regard to agreeing and maintaining fair and sustainable rates of remuneration in the sector in question.

[Senator David Cullinane.]

That is what the agreements are about. It is the core of the agreements to ensure there is a sufficient level of protection for the most vulnerable workers in society. While I accept the Minister's response, appreciate the fact he has had advice from the Attorney General and can see some logic in what the Minister is saying in respect of how the court will use the wording which is contained in the Bill, I simply cannot agree with this. I do not see any harm in being prescriptive. As I said, we are often very prescriptive in terms of laying down exactly what a court should use and determine when making certain decisions. I do not see this as being any different.

We have a genuine concern about the inclusion of that word. The Minister has answered and I do not expect him to come back again. I will press the amendment to a vote if the Minister is not willing to accept it.

Senator Sean D. Barrett: I welcome the Minister. The worrying point made by Senator Cullinane was in regard to people not paying the minimum wage. Do we have any figures in that regard? Perhaps Senator Cullinane might inform me. The IBEC approach to the legislation was that we had a relatively high minimum wage and it had been defended by the Government. When the Minister of State, Deputy Sherlock, was in the House, I complimented the Government for increasing the minimum wage above what the troika had recommended. However, if people are not paying that, the question arises that we need much stronger penalties. We are relying on the minimum wage so much that if Senator Cullinane has found evidence it is not being paid, then the penalties for not paying it should be increased. The approach of IBEC was that, with a high minimum wage and 40 pieces of legislation, this Bill was not necessary. However, if one of the protections is now in doubt, we have to increase the penalties for not paying the minimum wage. If the Minister or Senator Cullinane has the evidence, that would be a serious development.

Senator Mary M. White: The Minister will remember that at the Joint Committee on Jobs, Enterprise and Innovation yesterday his own colleague from Kildare, Deputy Lawlor, spoke about having legislation in wording and language that the layperson can understand. The word "desirability" is unnecessary and dilutes the necessity for the system to maintain fair and reasonable rates. I cannot see anything wrong with changing it, despite what the Attorney General might say, or with deleting "the desirability of agreeing and maintaining" and substituting "the agreeing and maintaining of".

We have an unemployment epidemic in this country, with the latest figures at 14.9%. What is frightening is that more than half of the people unemployed have been unemployed for 12 months or more and information given by Deputy Willie O'Dea in the Dáil suggests that almost one in three has been unemployed for two years or more, which is shocking. Unemployment and the creation of employment is the No. 1 issue. Fianna Fáil supports the amendment.

Deputy Richard Bruton: The section states that "the Court shall have regard to" the following elements, including: "the desirability of maintaining established arrangements for collective bargaining"; "the benefits of consultation between worker and employer"; "the desirability of agreeing and maintaining . . . sustainable rates of remuneration"; and "the desirability of maintaining competitiveness in the sector in question". These are all potentially in conflict and the court must weigh them up. That is the purpose of the word "desirability".

There is not an absolute obligation to maintain competitiveness. Indeed, maintaining competitiveness is an ill-defined concept. One would have to weigh it up in any case and look at it as against the standards of workers for whom one is trying to provide, and as against the various different issues the court was being asked to weigh up. The use of the word "desirability" is

simply to show that the court is being given discretion to weigh up these different elements. None of them is being established as absolute.

If we left out “the desirability of maintaining competitiveness in the sector in question”, someone could then come back and challenge this by stating that while we were obliged to maintain competitiveness in the sector, they did not believe we had done so, and there would be a court challenge. This wording is leaving the Labour Court with the capacity to weigh up these issues, as was intended.

Let us not forget the reason we are here, which is that we did not have adequate policies and principles that underpinned the consideration of these issues. The High Court struck it down and we have to come back with a robust system which shows that different issues are being weighed up in a fair-handed way. That is why the policies and principles are here and why it is being expressed in this way, because there are different things to be done.

The issue of enforcement is the subject we discussed yesterday. I accept there is inadequate enforcement and that awards duly made are often not pursued. Under the separate workplace relations commission, we are introducing better procedures for compliance notices and fixed penalty notices, and, in situations where an employee does not get an award, that employee can go back within six weeks to have that enforced on his or her behalf by the State, with the possibility of criminal offences. We recognise there are breaches and that we need to have a better, more robust and more effective system for enforcement. We recognise there is work to be done in improving the enforcement system. That is a lot of the work we are doing in reforming the employment rights and industrial relations machinery which we discussed in committee yesterday.

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

The Committee divided: Tá, 29; Níl, 12.

Tá

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

Healy Eames, Fidelma.
Henry, Imelda.
Keane, Cáit.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullen, Rónán.
Mullins, Michael.
Noone, Catherine.
O’Keeffe, Susan.
O’Neill, Pat.
Quinn, Feargal.
Sheahan, Tom.
Whelan, John.

Níl

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

O’Brien, Darragh.
O’Sullivan, Ned.
Power, Averil.
Reilly, Kathryn.
Walsh, Jim.
White, Mary M.

Tellers: Tá, Senators Paul Coghlan and Susan O’Keeffe; Níl, Senators David Cullinane and Mary M. White.

Question declared carried.

Amendment declared lost.

Acting Chairman (Senator Paschal Mooney): Amendments Nos. 2 to 7, inclusive, 12, 13 and 17 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator David Cullinane: I move amendment No. 2:

In page 6, lines 31 to 32, to delete all words from and including “and” in line 31 down to and including “so,” in line 32.

These amendments are being taken together because they all deal with removing the ability of the Minister to exercise powers of discretion in a number of areas. Amendments Nos. 2 and 3 remove the discretion to refuse to make an order to confirm the terms of a wage agreement. We are of the view that the integrity and independence of the Labour Court should be protected. We do not believe the Minister should have the power to second guess anything the Labour Court, which is a statutory body, says or does. In that context, a Minister would never be given the power to set aside a decision of the Circuit Court or the District Court. The Bill states that “As soon as practicable after receipt of a copy of the agreement, the Minister shall, where he or she is satisfied that subsections (1) to (5) have been complied with, and where he or she considers it appropriate to do so, by order confirm the terms of the agreement”. It is our opinion that it should not be the responsibility of the Minister to decide whether it is appropriate to confirm the terms of an agreement. It is the responsibility of the Labour Court to make such decisions.

Amendments Nos. 2 and 3 also relate to removing the power of the Minister to set aside a decision of the Labour Court where “he or she considers it appropriate”. As I understand it, the legislation already includes a provision under which the Minister of the day will have the power not to implement the recommendations of the court where the relevant procedures have not been followed. In light of the fact that this power already exists, we are of the view that the formula of words used in particular parts of the Bill in the context of granting to the Minister certain powers of discretion is inappropriate. It is right and proper that the Minister of the day will have the power to refuse to implement recommendations where the relevant procedures have not been followed. Under section 5, however, he or she will have the power to set aside the views of the Labour Court even where a case has been handled correctly and where consideration has been given to the competing rights and views to which the Minister, Deputy Bruton, referred earlier.

We are also of the view that this provision undermines the entire Bill, the purpose of which is to empower the Labour Court to be able to make decisions in respect of matters of this nature. The provision also has the potential to undermine the role of the court itself. There is a concern that the Minister has responded to lobbying on this matter. I am aware that some of the organisations which represent employers have been lobbying him hard in respect of it. Perhaps that is the reason the relevant provisions have been included in the Bill. I am not directing my comments in this regard at the Minister, Deputy Bruton, but if the Bill is passed, a Minister could have the ability to subvert a statutory legal body and its findings. This could set a very dangerous precedent. What is proposed does nothing to add value to the legislation. As already stated, we would not provide another Minister with the power to set aside decisions made by other courts. Why, then, should such a power be granted in this instance?

Amendments Nos. 4 and 5 deal with removing powers of discretion relating to varying the terms of wage agreements. We do not have a difficulty with the Labour Court being able to

vary the terms of such agreements. Obviously, the latter is an important function of the court. However, the Minister should not be given discretionary power to set aside a decision of the court.

Amendment No. 6 deals with removing the discretion to refuse to cancel a wage agreement. That might make sense and we have no difficulty with the Labour Court having the power to remove such an agreement. The latter might, for many different reasons, be the right thing to do. We are of the opinion that responsibility for the making of decisions in this regard should rest with the Labour Court and that the Minister should not be in a position to second guess the court or to reject a recommendation it might make.

Amendment No. 12 also deals with ministerial discretion and relates to the new section 41A which is to be inserted into the 1946 Act and which refers to reviews of JLCs carried out by the Labour Court. Where the court carries out such a review, it will be obliged, under the new section 41A, to refer its recommendations to the Minister who will then make an order in respect of them. Again, the Minister is being given the power to set aside any decision reached or recommendation made by the Labour Court. We are of the view that this would not be appropriate.

Amendment No. 13 is somewhat similar to amendment No. 12, while amendment No. 17 would remove the discretion of the Minister with regard to giving effect to recommendations of the Labour Court in respect of the adoption of the proposals of a JLC. The Labour Court is an adjudicative body and we must protect its independence. If the court makes a recommendation, it is the duty and responsibility of the Minister of the day to honour and implement it. This goes to the core and logic of what the Bill should be about, which is to put in place agreements which protect some of the most vulnerable workers in this State. There is no doubt that a Minister potentially could be open to all sorts of lobbying. If the court makes a recommendation and a group, whether it represents workers or employers, decides to lobby the Minister because of his or her powers of discretion, that would be very unhelpful to the process. It would put the Minister in a very difficult situation. We believe that removing the ministerial powers of discretion would be good for the Minister and would protect the independence and integrity of the Labour Court.

The Minister referred to compliance when discussing previous amendments. We had a discussion yesterday at the Joint Committee on Jobs, Enterprise and Innovation on reforms to the employment rights bodies. We support much of what the Minister is trying to do in the area of streamlining the system and making it easier for people to make complaints. The lack of enforcement right across the board is very real and that is the reason we want to ensure that the Labour Court has the necessary powers and functions. We ask the Minister to go a step further than the recommendations he presented to the committee yesterday. From our understanding of the recommendations that were put to us yesterday, the fixed notices will not be sufficient or robust enough to deter or act as deterrent for employers who are in breach of the employment rights bodies. Yesterday, the Minister made the point that the system was clogged up with cases which have been taken by workers. The reason the system is clogged up is that many workers are being denied basic entitlements. The National Employment Rights Authority, NERA, report comments on people not having a wage slip, not being paid their holiday pay and not being paid the minimum wage. However, if an employer is brought to court, he or she is asked only to pay back what the worker is owed. There might be a small fine. The Minister has spoken about a fixed notice, but that will not act as a deterrent. It is similar to going into a shop and walking out with a basket full of groceries, but when caught offering to give back the groceries. That is what is happening in relation to the employment rights bodies.

[Senator David Cullinane.]

I may be straying from the amendment, but I wanted to raise this important issue for workers. If we are trying to reform the system of JLC or employment rights bodies, the measures must be fair and also reduce the incidence of cases where workers are forced to seek redress through the courts. The reason that many are forced to seek redress through the courts is because some employers disregard employment rights and break the law. The reason they do so is that there are no real penalties or sanctions in place for doing so.

Amendments Nos. 2 to 7, inclusive, and 12, 13 and 17 relate to powers of discretion, which in this instance will be given to the Minister, but this is not personal to the current Minister, and our fear is that this could undermine the independence of the Labour Court.

Deputy Richard Bruton: I thank Senator Cullinane for his contribution. Again we must consider the reason we are in the current situation. These orders were struck down by the High Court on a number of grounds, one was they were not referring to policies and principles when they made orders. Let us not forget, as the court found, that these orders had potential criminal implications for the people who were found to be in breach of them. The second element, is that there was no proper democratic oversight, so effectively a body removed from the Oireachtas was making decisions that created criminal offences and that was beyond the constitutional entitlement. The whole house, so to speak, was struck down. We are reconstructing all of it.

The Senator is mistaken in suggesting to the House that the power being given to the Minister is like second guessing a decision of a court. The Minister in this situation is not second guessing a decision of a court of law.

Senator David Cullinane: Disregard the recommendation. It has the potential.

Deputy Richard Bruton: I ask the Senator to look again at what is happening. The structure being put in place by the new construction is that the JLCs consider an issue and then come forward with a set of recommendations, which then go to the Labour Court for adoption. The Labour Court adopts them. It is the Minister who makes the order. The court made it very clear that when a Minister is making such an order it cannot be just by way of a rubber stamp, there has to be a genuine element of democratic oversight of this process so that the Minister has this unfettered consideration of the proposals as adopted by the Labour Court and can reject them or otherwise and then brings that order to the Houses for adoption. The Oireachtas has the right within 21 days to reject it. The court was very clear in its judgment; it referred to the fact there was neither ministerial nor Oireachtas oversight. We are inserting that necessary ministerial oversight link in the chain to make this robust. It is clear that this cannot just be a question of rubber-stamping, it must be a genuine capacity of the Minister, representing the Government, bringing an order to the Oireachtas which, in turn, has genuine capacity to consider it. That element is important to reconstitute a constitutionally sound system.

I refer to the parallel of the High Court making a judgment and the Minister overturning it. What is happening here is the Labour Court is adopting a set of proposals put together by a joint labour committee and bringing them forward to the Minister, having vetted the way it was done, for the Minister to make an order. I am not setting up all this elaborate machinery to try to pull the mat from under it. That is not my intention but I have very strong legal advice from the Attorney General that to make this robust and prevent it from being pulled apart, we must proceed in this sequence.

The drafting, which I agree on the face of it seems to give the Minister unfettered discretion, is done in this manner because we must reconstitute a proper system of democratic oversight.

I refer the Senator to the High Court judgment in which Mr. Justice Feeney recalled an earlier Supreme Court case where the matter of delegated legislation had been addressed in *Burke v. the Minister for Labour*. He cited the observations made in the Supreme Court by Mr. Justice Henchy in 1979 who identified the absoluteness of the delegation within the 1946 Act.

In his High Court ruling last year, Mr. Justice Feeney contrasted the failure to amend the provisions of the Act of 1946, notwithstanding the concerns raised by Mr. Justice Henchy more than 30 years ago in the Supreme Court about the untrammelled powers given to JLCs, with the provisions that had been incorporated in the National Minimum Wage Act 2000. Under that Act, the Labour Court's role is subject to guidance to the principles and policies that must apply to the determination of the minimum hourly rate. The Act also specifically empowered the Minister to accept, vary or reject the recommendations made by the Labour Court. In varying the power or rejecting any such recommendation by the Labour Court on the fixing of an hourly minimum wage, the Minister must make a statement to the Oireachtas setting out the reasons for same. If I were to reject the work of the Labour Court, I must set out my reasons in writing to the Labour Court.

The judgment referred to above and the rationale used and adopted regarding the national minimum wage necessitate this link in the chain to make the process robust from legal challenge. The purpose here is to ensure these protections for vulnerable workers are not struck down in future; it is not to create any untrammelled power for the Minister. I categorically assure the House there was no question of caving in to any lobby in this respect. This is necessitated by the design of a robust system by the legal adviser to the Government.

Senator David Cullinane: I accept the Minister is well intentioned in terms of what he is trying to achieve but I believe the provision is flawed. In my view, political oversight is where we legislate for the setting of parameters and rules. That is what we should do here for the Labour Court, namely set out rules and conditions to which it must have regard. We had a discussion about those previously. We are not talking about rubber-stamping what some State body recommends the Minister does. We are asking the Minister to make an order or implement a recommendation of a statutory court. That is what this is about. There is a difference between ministerial and political oversight and a Minister having the ability to disregard, if he or so chooses, the recommendation or a determination of a court.

Deputy Richard Bruton: The courts cannot make an order. It is the Minister who makes the order.

Senator David Cullinane: I know that.

Deputy Richard Bruton: I was trying to be of assistance.

Senator David Cullinane: I accept that but the Minister should do so only on the basis of a recommendation which comes from the court because it makes a determination based on what has been laid down by us as legislators. I shall make a comparison for the Minister. I am not sure if he was a councillor but I was and so were a number of Senators.

Deputy Richard Bruton: I was a Senator too.

Senator David Cullinane: Then the Minister will fully understand the point I shall make. I was part of group that developed the housing policy for Waterford City Council. We developed a scheme of letting priorities by setting out the parameters under which people were entitled to housing and the housing officials were then given the power and responsibility to implement the policy. They decided to whom and how people were allocated houses without political

[Senator David Cullinane.]

interference. It was prescriptive and stated what the local authority housing officers needed to abide by. The political oversight is where we would decide policy. That is right and appropriate because there should not be interference in decisions made by a housing officer because then it would become a difficult situation where a person's political priorities came first.

I shall make the same comparison to what is happening here because the provision is similar and I disagree with it. We could have a Minister who is minded and guided by a certain ideology and could disregard a recommendation or not make an order. I accept the point made by the Minister that it is the function of a Minister to make an order. He or she should only do so on foot of a recommendation by a court. I shall quote the Minister when he published the Bill. He said: "I have been determined to strike a balance between protecting vulnerable workers and providing reforms that would make the systems more competitive and more flexible so to allow for the creation of jobs in these sectors." In so doing he is creating a false dichotomy because, on the one hand, the creation of jobs must be done or is in some way in conflict with workers' rights. That is the connotation of what has been said here and that is why many people have a difficulty with a Minister who holds that view and mindset and wants the power to set aside decisions made by the court. That is the reason my party is concerned about the amendment.

I have made one analogy but there are many other analogies such as the planning system. Our local authority members and legislators provide legislation for planning whether it is national planning guidelines, regional planning guidelines or development plans crafted by councils. They draft policy. The planners are the experts and have the devolved authority to implement the guidelines that have already been laid down. That is political oversight and I argue that the same thing should happen here. We are the legislators and my party has set out the parameters contained in the Bill. The Labour Court is the body that can adjudicate on such matters and make a recommendation. The Minister should simply have regard for that system and make the order. He might call it rubber stamping but that is fair enough because that is the process. There should be no political interference or a perception of same.

Senator Mary M. White: The legislation gives any future Minister *carte blanche* to terminate at will a registered employment agreement or, more seriously, an employment regulation order simply because he or she considers it appropriate to do so. This is not what was envisaged when the Duffy-Walsh review group suggested changes to the position obtaining at that time because it was conscious of legal difficulties. It is appropriate and probably necessary to grant a general supervisory power to the Minister to cure the constitutional defect in the legislation. However, for him to include in the legislation an excuse to exercise absolute power to refuse to accept an ERO on a whim is not one but several steps too far. The provision is unacceptable. It removes from workers at the lower end of the payscale who are not unionised or properly represented the entire protection that has been in place since 1946; the entire employment regulation system. It can be terminated at will by a Minister taking a decision not to proceed with an order simply because he or she does not believe that it is appropriate.

Senator Feargal Quinn: I have listened carefully to the points made by Senators Cullinane and White and both made an understandable and strong case. It seems to me that the Minister has won the argument hands down when he talked about the democratic oversight. It is a real reminder. Senator Cullinane, at the end of his contribution, wondered if when choosing between workers' rights and creating jobs would the Minister have the freedom to decide to handle things differently. The Minister made it clear that he does not have that choice. What would I do if I was given the choice or if I had a Minister who was given a choice between workers' rights or creating jobs? Potential employers would be deterred if they came to Ireland

and on examining the legislation found that employment was tightly controlled and workers' rights were strong. We are not talking about that in this case because we have heard what the Minister has said. It seems to me that the question is based on the removal of the term "where he or she considers it appropriate to do so," which Senator Cullinane has proposed. I would like the Minister to have that freedom because it is necessary and essential. He has made a strong case for it and I support the Bill as it stands.

Senator David Cullinane: I wish to clarify a point I made earlier. When I talked about a conflict between workers' rights and job creation I made the point that it was a false dichotomy. I do not believe that there is a conflict. It is important that we have robust protections and enhance employment rights. The Minister seeks to improve some of the employment rights and bodies and to streamline the process which my party supports. Some people have a perception about when they use words like "we need to be more competitive", or "we need to reduce the minimum wage" like the last Government did, "or we need to remove the Sunday premium" which is contained in the Bill but I will deal with that later. There is a false dichotomy that we need to reduce basic rights for some of the most vulnerable workers in the State as a justification for job creation and to create extra jobs.

The independent Duffy-Walsh report was published. Most of it was disregarded by the Government even though the authors found no evidence, and clearly stated that in their report, of a connection between the protection of pay rates which were previously determined by REAs and EROs and employment opportunities or levels. In other words, the authors found no evidence that reducing the basic level of pay for the lowest paid workers in the State would create jobs. Let us remind ourselves that we are talking about people who work in vulnerable sectors. Before joint labour committees were struck down, the average JLC rate per hour was €9.66. That meant that if one worked a 35-hour week in the retail sector under a JLC one earned less than €17,500 a year. An EU labour cost survey carried out in 2008 showed that labour costs in the retail, hotel and restaurant sectors were below the EU average. On the one hand, we should not race to the bottom while or, on the other hand, have a false dichotomy that rows back on basic rights and entitlements in order to make Ireland more competitive. I do not believe that is what the Minister is trying to do and I am simply responding to a point made by Senator Quinn. There is no difference between the two. We, as legislators, should set out the criteria so that it is not open to any sort of undue ministerial influence and I look forward to hearing what the Minister has to say.

Deputy Richard Bruton: While I do not wish to repeat myself, Senator Feargal Quinn is right. We need this freedom, not to give the Minister discretion to strike down decisions that have been reached by the joint labour committees and adopted by the Labour Court but in order to make it constitutionally sound from challenge in the courts. Senator White referred to the Duffy-Walsh report. Duffy-Walsh did not consider this issue as the courts only made their judgment after the report was made. It is the John Grace Fried Chicken case that has raised all of this issue. They have drawn attention to the fact that by creating an indirect body we were, effectively, creating crimes for employers and those decisions exposed employers to criminal prosecution. The courts struck it down, stating such a body did not have the right to create crimes for an individual and that it was unconstitutional. To reconstitute that, a system must be put in place whereby the JLCs consider the issues and make a proposal which is adopted by the Labour Court and where the Minister has the unfettered power to say, "Yae" or "Nay", and the Oireachtas makes the adoption. The Minister, if he exercises that power, must set out in writing to the Labour Court the reason he is doing it. This is not intended to second-guess the work of the JLCs and the Labour Court but to make it clear that this is democratic, it is a Minister making an order, a proposition to the Oireachtas, which the

[Deputy Richard Bruton.]

Oireachtas can reject or allow through. That is the link in the chain that has to be rebuilt. The parallel of letting priorities is simply not valid. Clearly, by making a set of letting priorities one is not creating criminal offences for people. The legal oversight is entirely different where one is setting letting priorities by a council and then other people implement those. It has been found that these regulations create potential criminal offences. One can only make such potentially criminal statements if it has the extra link of the Minister overseeing it, not rubber-stamping it or ensuring they tick various boxes, but with genuine ability and discretion and bringing it to the Oireachtas with parliamentary oversight. The sole motivation is to create a system that is robust from a constitutional challenge in the knowledge that the previous vehicle was demolished by the courts, specifically on the grounds of lack of policy and principles or parliamentary oversight. I do not think we will agree on this issue. I am doing this not to give myself *carte blanche* but to make the system legally robust in order that vulnerable workers are not in the same situation as last year when what they thought was protection was pulled from underneath them.

Senator David Cullinane: The oversight does not end when the Labour Court makes a recommendation to the Minister because there is recourse to superior courts. There are options for people to have redress through the superior courts of the land. In regard to accountability, we should not create an impression that it stops at that level. It does not stop at that level, there are superior courts which could act in an oversight role also.

Deputy Richard Bruton: It is those superior courts that have told us this is the way it has to be implemented.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 3:

In page 6, lines 37 to 39, to delete all words from and including "or" in line 37 down to and including "agreement," in line 39.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Question, "That section 5 stand part of the Bill", put and declared carried.

SECTION 6

Senator David Cullinane: I move amendment No. 4:

In page 9, lines 10 and 11, to delete all words from and including "and" in line 10 down to and including "so" in line 11.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 5:

In page 9, lines 16 to 18, to delete all words from and including “or”, where it firstly occurs, in line 16 down to and including “order,” in line 18.

Question, “That the words proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

Question, “That section 6 stand part of the Bill”, put and declared carried.

SECTION 7

Senator David Cullinane: I move amendment No. 6:

In page 10, lines 27 to 29, to delete all words from and including “and” in line 27 down to and including “so,” in line 29.

Question, “That the words proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 7:

In page 10, lines 35 to 37, to delete all words from and including “or”, where it firstly occurs, in line 35 down to and including “cancellation,” in line 37.

Question, “That the words proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

Question, “That section 7 stand part of the Bill”, put and declared carried.

Section 8 agreed to.

SECTION 9

Acting Chairman (Senator Jillian van Turnhout): Amendments Nos. 8 and 9 are related and may be discussed together. Is that agreed? Agreed.

Senator David Cullinane: I move amendment No. 8:

In page 12, line 12, to delete “24 months” and substitute “12 months”.

The two amendments are linked. The legislation provides for a business to opt out of an agreement for a period of 24 months within a five-year period in certain circumstances. We see the logic of an opt out as many businesses are struggling. While it is desirable that workers protected under JLCs have protection in terms of the levels of pay, we seek to be pragmatic by reducing the time limit from 24 to 12 months. We consider that 24 months is far too long. If a business requires an opt out for 24 months out of a five-year period, essentially 40% of that time, the business has serious viability issues. Clearly, 12 months would allow a business deal with the short-term pressures which led to the opt out in the first place. An opt out of 24 months is too long and the amendment seeks to reduce it to 12 months.

Deputy Richard Bruton: There are two amendments tabled by Sinn Féin that deal with the issue of the maximum duration for a derogation under the inability to pay clause. Section 9 of the Bill inserts a new section 33 in the 1946 Act providing that where an REA so provides, an

[Deputy Richard Bruton.]

employer in financial difficulty may apply to the Labour Court seeking temporary exemption from the requirement to pay the rates of remuneration in the agreement. Section 33A(2) provides that the maximum period of an exemption will be 24 months and must be for a minimum of three months. Section 33A(3)(a) provides that the Labour Court may enable an employer to qualify for up to two consecutive exemptions from the statutory pay terms of an REA where financial difficulties in an enterprise persist after the expiry of a short time limit than the maximum permitted under the legislation. Two consecutive exemptions will, accordingly, be permitted within the overall two year time limit rather than a single one under the Bill as introduced, where this is necessary to safeguard employment. Amendment No. 8, which has been tabled by Sinn Féin, would reduce the maximum exemption to 12 months. Amendment No. 9 would restrict the extension exemption to an overall 12-month limit. The inclusion of a provision to permit an extension to an exemption within the overall two-year limit is a requirement arising from the last review of the programme for financial support agreed with the EU, the IMF and the ECB. The “inability to pay” provisions relating to REAs are substantially the same as those proposed in respect of EROs. However, it is important to stress that an REA “inability to pay” mechanism will only apply if the REA itself permits it to apply. It will be a matter for the Labour Court to determine the appropriate length of an exemption on the basis of its consideration of an application for such an exemption. Accordingly, I cannot accept these amendments. Basically, the 24-month limit is the limit. It will be possible for it to be availed of in two pieces. Previously, it had to be availed of in one piece up to 24 months.

Question, “That the figure and word proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 9:

In page 12, line 24, to delete “24 months” and substitute “12 months”.

Question, “That the figure and word proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 10:

In page 13, line 5, after “business” to insert the following:

“, including information on payments to directors and companies associated with directors over the previous 3 years,”.

This amendment is similar to amendments Nos. 8 and 9 in the sense that it deals with the “inability to pay” exemption. I am disappointed that the Minister’s decision not to accept the previous amendments means the 24-month provision will remain in the Bill. I have tabled this amendment to make it explicit that employers must provide all information to the court, rather than indulging in the sin of omission. There have been umpteen examples of companies or employers failing to pay their workers the entitlements they are due, perhaps by putting a pay freeze in place and pleading inability to pay, while at the same time allowing senior managers and chief executives to give themselves Rolls-Royce salaries, pensions, performance-related payments and bonuses, etc. Such behaviour irks employees, especially those at the bottom of the pay chain whom we are trying to protect in this legislation. We should ensure they are not left high and dry. I appreciate that the court can request information, but I am trying to ensure information is automatically provided. We should not allow companies to engage in creative

accountancy practices in order to avoid paying their workers proper wages and entitlements. Some companies are able to amend their profit and loss levels by making payments to other associated companies and directors. I think this amendment is a reasonable proposition. I believe it would add value to this Bill. We have to make sure we protect the integrity of the existing “inability to pay” clause. It should not be possible for it to be abused or manipulated by some unscrupulous employers. That is why we are emphasising that full disclosure would prevent that from happening by tightening the system up and making it fairer. I await the Minister’s response.

Progress reported; Committee to sit again.

Business of Seanad

Senator Maurice Cummins: I would like to propose an amendment to the Order of Business, that Committee Stage of the Industrial Relations (Amendment) (No. 3) Bill 2011 will conclude at 3 p.m., in order to give us a chance to consider all the amendments on Committee Stage.

Acting Chairman (Senator Jillian van Turnhout): Is the amendment to the Order of Business agreed? Agreed.

Industrial Relations (Amendment) (No. 3) Bill 2011: Committee Stage (Resumed)

Debate resumed on amendment No. 10:

In page 13, line 5, after “business” to insert the following:

“, including information on payments to directors and companies associated with directors over the previous 3 years,”.

—(Senator David Cullinane).

Deputy Richard Bruton: We had a lengthy discussion on a similar amendment in the Dáil. This amendment seeks to add to the absolutely general power of the Labour Court to request any information it may reasonably require. We have been confidently informed that if we specify certain categories of information that the Labour Court should have the power to request, while leaving out other categories of information, we will undermine the ability of the court to request information. A subsequent review of the process might make a judgment on the basis of the fact that a certain type of information was not included in the list of types of information that should be provided. By giving the Labour Court this unfettered power, we are allowing it to request anything it likes. That is the best way of ensuring that when the Labour Court considers an “inability to pay” application, it will have an unfettered power to demand any information it chooses. It will be able to demand information on money being filtered out of a company, even if that is not specified in the legislation. It would be a natural thing for the court to look for. We have been confidently informed that if we start listing what the Labour Court should be have the right to seek, we will reduce the legal robustness of that right. It is better to give the Labour Court an unfettered power to look for whatever it wants. I understand why the Senator has tabled this amendment, but I am advised that it would not actually help the cause he is pursuing.

Senator David Cullinane: This amendment would not preclude the court from seeking any other information. It merely sets out that a specific category of information should be included in the Bill as being capable of being requested. These issues keep arising over and over again. There is no point in crying crocodile tears when workers are not given their entitlements while

[Senator David Cullinane.]

those at the top get bonuses and improper payments. Although there is no conflict between what the Minister is saying and what we are trying to do, I do not agree with the Minister's response.

Amendment put and declared lost.

Section 9 agreed to.

Section 10 agreed to.

SECTION 11

Senator David Cullinane: I move amendment No. 11:

In page 17, between lines 14 and 15, to insert the following:

“(i) maintaining of fair and sustainable rates of remuneration appropriate to the sector in question;”.

The proposed new section 41A sets out the mechanism for the review of an agreement. The list of matters to which the court shall have regard when it conducts a review does not include any reference to “fair and sustainable rates of remuneration”. That is an incredible and serious omission, given that the whole joint labour committee system is supposed to be about ensuring people are paid fairly. The court should be obliged to take fair wages into consideration. The list of matters the court will have to consider, as set out in this legislation, extends from (a) to (i) but does not include a reference to the maintenance of “fair and sustainable rates of remuneration appropriate to the sector in question”, which is what we are proposing for inclusion in amendment No. 11. Surely the meat of the joint labour committee system is ensuring that rates of pay and protections are included in agreements. We would see their omission as a serious matter.

Deputy Richard Bruton: This matter was debated in the other House. One needs to recognise the limited nature of the review we are talking about. The purpose of the review is made clear in the proposed new section 41A(4), which is about the existence of the joint labour committee rather than about the agreement. The proposed section provides that following a review, the Labour Court can decide to maintain the joint labour committee in its current form, or to amalgamate it with another committee if that would be more efficient. If the court finds nothing other than brushes and brooms in the committee — if nobody is being regulated in the sector — it can decide to change the committee's establishment order. This mechanism is not designed to review what is in the order, such as the fairness or otherwise of the wages, but to look at whether a joint labour committee is still relevant to the sector it is purporting to oversee. The list of factors to which the court shall have regard is as it is because it is confined to factors that might test whether the sector in question is still relevant, such as whether people are still working in it. The requirements in question are set out in the proposed section 41A(3). The issue the Senator is raising is about the policies and principles that would underpin an order and that is why all of that is back in where the order is being made. He is importing one of the criteria from the order and putting it into the review of the structure of the committees but it is not relevant to what the court is looking at in this section.

Amendment put and declared lost.

Senator David Cullinane: I move amendment No. 12:

In page 17, lines 44 and 45, to delete all words from and including “and” in line 44 down to and including “so” in line 45.

Question, “That the words proposed to be deleted stand,” put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 13:

In page 17, lines 48 to 50, to delete all words from and including “or” in line 48 down to and including “recommendation” in line 50.

Question, “That the words proposed to be deleted stand,” put and declared carried.

Amendment declared lost.

Question, “That section 11 stand part of the Bill”, put and declared carried.

SECTION 12

Senator David Cullinane: I move amendment No. 14:

In page 19, to delete lines 13 and 14.

Question, “That the words proposed to be deleted stand,” put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 15:

In page 19, lines 45 and 46, to delete “the desirability of agreeing and maintaining” and substitute “the agreeing and maintaining of”.

Question, “That the words proposed to be deleted stand,” put and declared carried.

Amendment declared lost.

Senator David Cullinane: I move amendment No. 16:

In page 20, lines 32 and 33, to delete “but does not include” and substitute “including”.

The provision this amendment deals with is the exclusion of pay or time-off in lieu of public holidays, compensation for Sunday working, payment in lieu of notice and payment referable to redundancy from the definition of remuneration. The effect of this proposed legislation would be to end the Sunday premium rates. I have had a number of discussions with trade unions on this and there is a lot of upset within the movement that Sunday premium rates are now being struck down as part of this Bill. We must remind ourselves that we are talking here about some of the lowest-paid workers in this State. We are privileged to earn very generous salaries in this House but we are dealing here with people who are often on the minimum wage or a little above it. They are on agreed rates but are earning an awful lot less than Members of this House. Many such workers work on Sundays because the extra money they get bumps up their salary to some sort of an acceptable level. In many cases, they do not have a choice but must work on Sunday because of the types of industries they are in, the retail sector being the obvious example.

[Senator David Cullinane.]

The Minister might make the point that because of the Organisation of Working Time Act, there is some level of protection in place with regard to Sunday working time. While there is a provision in that Act, it is not prescriptive. It does not set out what a person is entitled to but merely states that he or she is entitled to some level of compensation, which could be time in lieu, time and a quarter, time and a half, or whatever is agreed. Under the previous system, workers in very vulnerable sectors had double-time for Sunday. That will now be removed. This represents an attack on some of the lowest wage earners in the State.

Every time the Government takes a euro from the pocket of these low-paid workers, it is taking directly from the local economy. We can see the effects of that in the Exchequer returns released recently which showed a flat-lining in our domestic economy. All of that is happening because of decisions being made which result in people with low levels of pay having their pay reduced. A report from the Irish League of Credit Unions showed that many families have had their disposable income reduced drastically and over half had less than €100 per month in disposable income. I ask the Minister to put himself in the shoes of some of those low-paid workers who were availing of Sunday premium time, who will find that the premium is removed and they will have no idea what will be in its place — it may be time in lieu, it may be time and a quarter or they may not get any extra money. They are going to lose what amounts to a significant amount of money. This will create more pressure for their families. It will push more people into poverty and make it more difficult for workers to look after their children and pay their bills. That is why I am at pains to point out that we are not talking about high-paid workers when we are discussing Sunday premium rates. We are talking about some of the lowest-paid workers in this State, which is why we will be pressing this amendment.

We have difficulties with some of the contents of this Bill. A lot of it is sensible, in terms of reforming the JLC system, to bring it into 21st century Ireland and make it fit for purpose. We do not have a difficulty with that. However, we have a major difficulty with the Minister's intention to remove the Sunday premium. There is no doubt whatsoever that this is being done at the behest of some employer organisations, under the guise of making Ireland more competitive. I do not believe that is the case. I mentioned the report of the Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms, known as the Duffy-Walsh report. Most of that report's recommendations were dismissed by Government but the authors were not able to make any connection between removing these kinds of entitlements and new jobs being created. I do not believe that this will create one single new job. It is a sop to some employers and it does not deal with the real problems businesses face. Fine Gael promised it would deal with issues such as rates and upward-only rents. These are the issues the Government should focus on to protect small businesses rather than going after low-income workers, taking money from them, limiting the wages they can earn and providing relief for employers in this way. That is not going to do anything for businesses. It is interesting that the very people whose wages will be cut are the ones business people depend on to shop and make sure their businesses thrive. The whole thing is counter-productive.

I await the Minister's response but we have had this debate for a long time now. This is something which has been signalled by the Minister's party for some time and it is despicable that the Government would again go after some of the lowest-paid workers in this State. It is utterly wrong and for that reason, I will be pressing the amendment.

Deputy Richard Bruton: The Senator must bear in mind that the Duffy-Walsh review recommended that the JLC system be radically reformed. The authors cited the need to adjust to the

changes in the economy and the pressures that exist. They also openly acknowledged that the rules in respect of Sunday working were unduly burdensome, particularly in sectors in which Sunday is a normal working day.

We must recall that the development of the original JLC machinery pre-dated the introduction of many of the rights that are now in existence. We have the Sunday working provisions in the Organisation of Working Time Act, which provides a set of premia that must be paid or recognition that must be given to working on Sundays. That applies universally.

3 o'clock That legislation was not in place when the JLC system was put in place. The JLC system created some very anomalous situations where, for example, for a person working in a grocery store, there was one way of handling working on Sunday but for another person working in a book store across the road, there was a different set of rules. If an employer was running a pub and decided to make food available on a Sunday, he or she would suddenly have to introduce premia for all of the work force, just to provide a service designed to generate more activity and business.

We have done this to allow the system to be responsive to new opportunities. It is reasonable that we would not have two statutory ways of dealing with Sundays in different codes. That is the background to this. It is a reasonable approach. Under the Organisation of Working Time Act, people have the right to various options. It can be a premium, as was the provision in various orders, or alternatively, a higher rate can apply to everyone working, to take account of the fact that an employee might have to work on a Sunday, even if he or she is not rostered to do so in a particular week.

Many organisations have preferred the flexibility, which often suits workers as well. For example, even if they happen to be scheduled on the Sunday that they would get paid extra but if they do not, they rather the higher rate. This is giving the flexibility of the organisation of working time to deal with Sundays in different ways depending on what is negotiated at local level. That is the background. I know Senator Cullinane does not agree with the measure but it is something we believe is appropriate and I cannot accept the amendment.

Acting Chairman (Senator Jillian van Turnhout): As it is now 3 p.m. I am required to put the following question in accordance with the order of the Seanad of this day: "That amendment No. 16 is hereby negatived, in respect of each of the sections undisposed of, the section is hereby agreed to, the Title is hereby agreed to, and the Bill is hereby reported to the House."

Question put:

The Committee divided: Tá, 29; Níl, 17.

Tá

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

Healy Eames, Fidelma.
Henry, Imelda.
Higgins, Lorraine.
Keane, Cáit.
Moloney, Marie.
Moran, Mary.
Mulcahy, Tony.
Mullins, Michael.
Noone, Catherine.
O'Keefe, Susan.
O'Neill, Pat.
Sheahan, Tom.
van Turnhout, Jillian.
Whelan, John.

Níl

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

O'Sullivan, Ned.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
Power, Averil.
Quinn, Feargal.
Reilly, Kathryn.
Walsh, Jim.
White, Mary M.

Tellers: Tá, Senators Paul Coghlan and Susan O'Keeffe; Níl, Senators David Cullinane and Mary M. White.

Question declared carried.

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

Senator Maurice Cummins: Next Tuesday.

Report Stage ordered for Tuesday, 17 July 2012.

Microenterprise Loan Fund Bill 2012: Second Stage

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

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry):

I welcome the opportunity to present the Microenterprise Loan Fund Bill 2012 to the House. The Bill is one of the key targeted actions in the Government's action plan for jobs 2012 to address the issue of access to credit and support lending for the most vulnerable cohort of the SME sector, namely, microenterprises. It will prove to be a practical way of facilitating additional lending to microenterprises across all industry sectors in both the locally traded and the exporting sectors. A large number of microenterprises are locally-owned businesses that give the owner enough income to support his or her family and contribute to his or her locality. No glamour or particular riches are attached, but this is the true heart and soul of Irish business and it is the Government's firm intention to support such enterprises. The microenterprise sector encompasses everyone from the corner shop newsagent, the mechanic, the solicitor, the accountant and the window cleaner to the coffee shop owner, the hairdresser and small-scale ICT players.

The aim of the Bill is to facilitate lending to microenterprises and in so doing help generate sustainable small businesses to generate jobs and return the economy to the long-term growth path destroyed by irresponsible economic policies in the recent past. Microfinance Ireland is being established to provide loans for sustainable microenterprises in these difficult times. It is being targeted at newly established or growing enterprises across all industry sectors for commercially viable proposals that do not meet the conventional risk criteria applied by commercial banks. It is part of a suite of initiatives being implemented by the Government to get the economy moving again and address the transformation of the country, thereby making it the best small country in the world in which to do business by 2016. It is through such initiatives that the Government will achieve this goal and in so doing address the need to provide sustainable employment for citizens into the future.

First, I will present some background information on the rationale for introducing a microenterprise loan fund. In February the Government launched a range of measures under the action

plan for jobs 2012 to improve the competitiveness of the economy, improve supports for job creating businesses and remove barriers to employment creation across the economy. All Departments and more than 35 agencies and offices of the State are engaged in this regard, with actions to support jobs that will be delivered in this calendar year. The plan is an active engine for change that will be reviewed and revitalised every year. The introduction of the microenterprise loan fund this year is one of the key commitments the Government made that will deliver positive and speedy results for this sector. The objective of the fund is to facilitate additional lending into the economy and create jobs in the microenterprise sector. Action in this area is one of the key demands of the advisory group on small businesses which I chair at the request of the Taoiseach and the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton. The progression of this legislation to finalisation clearly demonstrates that the Government is listening to the real needs of businesses and delivering on its promises.

The formation and growth of microenterprises depend critically on access to credit. Access to credit and finance in the current risk averse lending environment is restricted for all businesses and particularly acute in the microenterprise sector. Even in good economic circumstances, banks decline applications from this sector which do not meet their criteria but which could have proved to be credit worthy had the loan been granted. Some of the factors that have discouraged banks from lending to microenterprises include poorly compiled records and accounts, especially audited accounts; low levels of technical and management skills; high bad debt levels; lack of collateral; the degree of administrative overhead and time investment required in terms of loan assessment, often with high refusal rates; and the relatively small size of lending propositions, with loan sizes averaging €16,000. However, in order to support recovery, we need to find ways to ensure credit worthy borrowers have access to lending.

I must make it patently clear at this early point that Microfinance Ireland is not intended to replace current bank lending. The banks constitute the first port of call and lender of first choice for loan applicants. Applicants will be required to confirm that they have been refused finance by a bank before their application to the fund will be considered. Microenterprises applying for loans under the fund can be in the form of a sole trader, partnership or private limited company with up to ten employees. Loans will be for amounts less than €25,000 and can be used for any business purpose. Loan applications will be made on the standard loan application form, as agreed with the Irish Banking Federation, and must be supported by a viable business plan indicating repayment capacity. Support in developing business plans will be made available through the county enterprise boards and the newly formed local enterprise offices which will further aid small companies to professionalise their engagement with institutions and help them to access much needed finance. This one-stop-shop will be a recognised centre for business in every county.

The fund is targeted at start-up, newly established or growing microenterprises across all industry sectors employing not more than ten people. It will provide loans of up to €25,000, averaging about €16,000, for commercially viable proposals that do not meet conventional risk criteria applied by commercial banks. It will afford entrepreneurs a real opportunity to get started and support the creation of new jobs linked with new fledgling businesses and the expansion of established businesses. It is intended that the fund will provide loans for some 5,500 microenterprises over time and will over a ten year period generate close to 8,000 jobs at a cost of approximately €2,500 per job. This is extremely good value in any man's language, particularly when we factor in the gains to the Exchequer. The backbone of the economy consists of the 200,000 companies employing 700,000 people. The Government respects and will service this critical engine of growth. The mobilisation of small businesses is so important to the future of Ireland.

[Deputy John Perry.]

The Government has chosen the Social Finance Foundation to manage and control the fund on its behalf. For transparency purposes, it shall establish a dedicated subsidiary called Microfinance Ireland to run the loan book attached to the fund. This will minimise overall management costs which have traditionally been high with microfinance. It will also ensure clear financial and accounting structures, enhance the possibility of European Investment Fund guarantee assistance and allow for clear accountability on the costs of running the scheme. Microfinance Ireland will work with other key stakeholders such as the county enterprise boards and the local enterprise offices to deliver a comprehensive microenterprise service to potential clients. The Social Finance Foundation has a track record in the area of microfinance which it will leverage to deliver optimal outcomes for the State in this very important area.

Governance of the new body is critically important to the Department, the Minister and the Government. Many controls, from approving the chairman, the board and the CEO to the application of the Freedom of Information and Ethics in Public Office Acts and an audit by the Comptroller and Auditor General, are being put in place to ensure best practice governance procedures will be implemented from the first day of the new body.

To underline the importance the Government attaches to this initiative, an allocation of €10 million will be made available as seed capital for the fund. In the current climate this is a clear indication of the importance the Government places on this very dynamic sector. When viewed in a macroeconomic context, microfinance is a very cost effective job creation and job protection mechanism, generating a high rate of return. In many cases the potential entrepreneurs come from the ranks of the unemployed and are, therefore, drawing State benefits. Existing employees who choose the entrepreneurial route and set up their own businesses are also likely to create a residual employment opportunity in their previous organisation. The vast majority of microfinance applicants are engaged in locally tradeable services. While many may not have the potential for growth in terms of internationally tradeable businesses, there are significant benefits to be gained from the development of a successful microenterprise sector. They provide a solid enterprise base on which the SMEs and high potential start-ups of the future can develop. There are clear societal and community benefits, in addition to the economic and job creation objectives, as individuals grow in confidence and generate positive internal benefits throughout the community and they can provide much needed competition in the locally traded sector.

In addition to contributing to the economic and social agenda, this initiative will also yield Exchequer gains in terms of employment, sustained and created, savings on welfare payments and increased direct and indirect tax payments, calculated at €23,000 per job per annum. The €10 million allocation, supplemented by €15 million borrowing from other sources in tranches of €5 million in the second, third and fourth year of the life of the fund, will generate €40 million in loan expenditure and create 3,800 jobs over a five year period. This is based on €8.8 million of loan demand and 20% bad debts. The return to the Exchequer over five years is estimated at €46.2 million.

I would now like to turn to the specifics of the Bill. Section 1 provides for the Short Title, the Microenterprise Loan Fund Act 2012, and commencement. Section 2 defines certain commonly used terms in the Bill. Section 3 provides that costs associated with administering the Bill will be subject to sanction from the Minister for Finance, with the consent of the Minister for Public Expenditure and Reform, and met from moneys provided by the Oireachtas. Section 4 provides for the establishment of the microenterprise loan fund. The fund shall consist of all grants made to the subsidiary under section 5 and all gifts and other income. Section 5 confers on the Minister the power to pay to the subsidiary €10 million and provides scope for additional

Exchequer funding, if deemed necessary, subject to an absolute cap of €25 million before further Oireachtas approval is required.

Section 6 provides for the subsidiary to invest money from the fund and to vary or sell investments made. Section 7 enables the subsidiary to lend money to microenterprises using existing moneys and money borrowed from the Social Finance Foundation. Section 8 provides for the Social Finance Foundation to be able to borrow money for the purposes of the Bill. The aggregate at any one time of borrowings under the section shall not exceed €25 million.

Section 9 allows for the Minister, the Social Finance Foundation, SFF, or the subsidiary, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, to accept a gift of moneys, the purpose of which is to benefit the fund, upon such trusts or conditions, if any, as may be specified by the donor.

Section 10 provides for the Minister to make a scheme. The scheme may make provision for various terms and conditions such as purposes for which the loan may be given, terms of the loan agreements, reports and information by the subsidiary to the Minister, audit and examination of accounts of the subsidiary and other matters.

Section 11 enables the SFF to form a subsidiary to be registered under the Companies Acts. Section 12 provides for the name and share capital of the subsidiary of €1 and that share shall be issued by the subsidiary to the SFF. Section 13 provides for the memorandum and articles of association to be consistent with the Act and to be approved by the Minister with the consent of the Minister for Public Expenditure and Reform.

Section 14 provides for a director of the subsidiary to be disqualified for various issues such as bankruptcy, conviction of an offence, and other matters. Section 15 provides for directors to cease to be a director if they are nominated as a Member of Seanad Éireann or elected as a Member of either House of the Oireachtas or the European Parliament. Section 16 provides for the disclosure of interests by directors of the subsidiary. Section 17 provides for the disclosure of interests by members of staff of the subsidiary. Section 18 provides for the non-disclosure of confidential information by any person serving as a director or staff member, adviser or consultant to the subsidiary.

Section 19 provides for the funding of the subsidiary out of moneys in the SFF and allows the Minister to make an arrangement related to the expenditure generally incurred by the subsidiary in the performance of its functions under this Act. Section 20 sets out requirements for accounts to be kept by the subsidiary and provides for auditing by the Comptroller and Auditor General. Section 21 provides for an annual report to be prepared by the subsidiary and to lay the report before both Houses of the Oireachtas.

Section 22 provides for the Minister to conduct a review of the operation of the Act not later than two years after the date of its passing. This is designed to ensure we have introduced a programme of relevance to this business sector that will achieve results and deliver on our key outcome area, namely, jobs.

Backing microenterprise by providing finance to those which struggle to get credit from mainstream lenders is designed to meet a vital need. The development of our microenterprise sector cannot be left to chance. As can be seen from this and other initiatives, it will not be left to chance. We want to reach out to more people who have the ambition and drive to set up their own small business. This initiative has a significant entrepreneurship focus. Entrepreneurship and self-employment is an important opportunity for individuals. It is about turning small acorns into large oaks. It is important for rewards such as self-worth, self-sufficiency, independence, job satisfaction and, of course, for increased income.

[Deputy John Perry.]

Entrepreneurship is also important for the economy as a whole as it leads to new jobs and is a catalyst for new innovations and wealth creation. Entrepreneurship keeps the economy fresh and moving forward. As the Taoiseach has said many times, if 50,000 small companies could create one job each, at little cost to the State, it would lead to a significant change in the economy. The SFF will help turn good ideas into great jobs. Across the country, we have a fantastically talented people with many business ideas. We must encourage entrepreneurs, especially young people, to develop these ideas into business opportunities.

The commercialisation of knowledge is very important. Entrepreneurs are attracted by the prospect of success. They need to be encouraged and supported to make their mark and build a better future for themselves and this country. Entrepreneurs who utilise this fund will also have to make the best possible use of professional advice provided through bodies such as county enterprise boards and the local enterprise offices, which will be a fantastic one-stop shop for business as well as facilitating mentoring supports. Once entrepreneurs develop a track record after borrowing moneys from this fund, they will be able to secure borrowing independently. They will have to build on their skills and this can only heighten the professionalism of the sector. In turn, this will lead to greater demand for professional services, further increasing the benefits to the economy of this fund.

The day of a bank giving money to a business and just standing back is gone. It is about working with the client, going through the monthly management accounts, due diligence, operation of the business and mentoring. I saw Senator Quinn's programme on television last night about assisting small businesses setting up. It is important to encourage start-up companies. Mentoring, support and encouragement is worth more than any money as it gives people confidence. It gives a significant sense of encouragement to a small business to have a mentor with an outside look. I congratulate Senator Quinn on his fantastic television programme.

Ultimately, it will be profitable and competitive businesses which will underpin job creation, prosperity and the broader success of the economy. This fund is another example of how the Government is taking action to ensure the business environment supports this agenda. The needs of small business, identified by the advisory group on small business, are being met. It may not be by means of a big bang but it is in a positive and methodical manner which will deliver real change to the way business is done.

This initiative is another step towards a more sophisticated and accessible financing environment for small and medium-sized enterprises, SMEs. It is just one component in the suite of initiatives aimed at ensuring the flow of credit. It will add value to the measures already taken to address the SME credit supply issue, such as the temporary partial loan guarantee scheme, and represents real value for money to the State. I must commend the civil servants involved in drafting this Bill. They have shown significant commitment and extraordinary dedication to get it drafted, sometimes working 14 hours a day with limited staffing resources.

I am glad the Bill has been introduced to the Seanad before the recess. I hope the scheme will be up and running as soon as possible as I know it will be a success. I commend this Bill to the House.

Senator Mary M. White: Before I discuss the Bill, I welcome the announcement on Tuesday of the establishment by Enterprise Ireland of a €250,000 competitive feasibility fund aimed at stimulating high potential business start-ups by female entrepreneurs. The fund will be open for applications from Tuesday, 17 July 2012 until 4 September 2012. This initiative is part of a drive by Enterprise Ireland to boost the number of innovative, export-oriented businesses being led and set up by female entrepreneurs. I hope there will be many applications. If Ireland had

a similar ratio of female entrepreneurs as Australia does, then it would have an additional 34,000 businesses, an increase of over 15%.

As long as I am in this House, I will never oppose any measure that seeks to relieve the unemployment crisis. Accordingly, I welcome this Bill in principle. That said, I am not sure this measure will have significant impact. I am not saying the measure will not achieve what the Government is setting out. Rather, I am not sure the Government's target is significant. According to the Government, this measure will deliver 7,700 jobs in 5,000 companies over ten years. Some 5,500 of these jobs will be created directly, with the balance of 2,200 being created as an indirect consequence of the scheme. In other words, the fund will deliver one seventh of one job per company per year. What the Minister of States describes as a key part of the action plan for jobs 2012 will deliver one job per company covered by 2019. Does he consider this a satisfactory outcome? Is it not the case that the Microenterprise Loan Fund Bill 2012 is a little too micro in its ambitions?

In the Dáil the Minister stated, "The introduction of the microenterprise loan fund is one of the key commitments that my Department made in order to deliver positive and speedy results for this sector." He actually used the word "speedy". The creation of one job per company in the seven year period to 2019 is his version of speedy. Is he being serious in respect of his estimates in this regard? I would certainly like to be informed of the criteria on which these estimates were based. Was one of them that only a single job would be directly created per company funded? One can only wonder as to whether the Minister is deliberately setting the bar low in order to deflate expectations. In the event that the scheme delivers 1,500 jobs in its first year, will he be claiming that it had succeeded beyond all expectations?

Despite what I have said, the Fianna Fáil Party welcomes the Bill which is long overdue. The document issued when the Government launched it in May 2011 proclaimed:

In line with the commitment in the Programme for Government, a Microfinance Start-Up Fund to provide loans to small businesses is being developed. A workable scheme and optimum delivery mechanisms are now being considered and this work will be brought to fruition for the December Budget.

Six months later the Government announced details of a €100 million microfinance loan fund. It stated the fund would have an impact for 5,000 businesses and be in place in the first quarter of 2012. The scheme should, therefore, have been in operation by the end of March. When the action plan for jobs was launched in February, we were informed that a €100 million microfinance loan scheme would be going live in the immediate future. The summer recess is fast approaching and it is only now that the relevant legislation is being rushed through the Houses.

According to the Small Firms Association, 90% of small businesses are microenterprises. This means that they employ fewer than ten people and implies that there are in the region of 180,000 microenterprises in the country. The Minister and the Government intend, by means of the scheme outlined in the Bill, to assist 5,500, or approximately 3%, of these.

The Bill is rooted in the credit crisis faced by Irish businesses. In order for a company to be eligible for the scheme for which the Bill makes provision, it must, first, have had a request for credit declined by the banks. The Government informs us that, "The Scheme will provide loans . . . for commercially viable proposals that do not meet the conventional risk criteria applied by the banks for various reasons, including the absence of collateral." The House recently dealt with the Credit Guarantee Bill and many of the contributions to the debate on it focused on the need for businesses to obtain credit. It is worth restating just how difficult it is for businesses to do this. The most recent report from Mr. John Trethowan of the Credit Review Office outlines the position in clear terms. He stated:

[Senator Mary M. White.]

I am . . . disappointed that there is not more evidence of support for “enterprise risk taking” on new and increased lending in the banks’ current lending policies. This would suggest that their current risk appetite needs to be reassessed in order to support economic and employment recovery.

It should be borne in mind that many companies will not go to the Credit Review Office for fear that they will be punished by the banks if they dare complain that they are not receiving fair treatment.

The assessment of the position on credit issued in June is even more forthright and makes for worrying reading. ISME claims that the banks are hindering recovery, with 54% of credit applications refused by bailed out banks in the past three months. Its survey indicates that 82% of businesses which applied for funding have outlined that the banks are making it more difficult for them to access finance. The survey also claims that 96% of business owners are of the view that the Government had either a negative or no impact on SME lending. It confirms what so many of us know from our dealings with the SME sector, namely, that the banks are not lending. Two days ago ISME published another survey which shows the level of dissatisfaction among over 700 SMEs at the Government’s performance in the areas of jobs, banking, costs and dealing with the troika. Commenting on the contents of the survey, Mr. Mark Fielding, CEO of ISME, stated:

[W]hile the electorate was willing to allow the government some time to come to grips with the economic situation, after sixteen months more was expected. The time of promises and announcements about announcements without any concrete action was long gone. The disappointing satisfaction ratings from SME business people was a clear reflection of the mood of the sector and a warning to government that much more needs to be done in the struggle to come out of the crisis. The difficult decisions necessary to restore our competitiveness and recovery must be taken.

At a press conference earlier today the representatives from the troika stated “Ireland’s recovery programme remains strong in a challenging environment.” That is good news. However, the country’s budget deficit remains the largest in the European Union.

Deputy John Perry: That is the legacy we inherited.

Senator Mary M. White: I do not agree with the Minister of State on that point.

Senator Deirdre Clune: That is what this is about.

Deputy John Perry: We did not create the deficit.

Senator Mary M. White: The representatives from the troika also stated, “Ireland’s unemployment remains very high, and generating growth and jobs on a sustainable basis remains a critical priority.” The Minister of State cannot deny the findings of the ISME survey to which I refer which shows the level of dissatisfaction among over 700 SMEs and indicates that “Business costs, jobs and banking issues still evoke greatest negative sentiment.” ISME’s members work at the coalface and it is they who are creating employment.

The scheme that will be established under the Bill is the first fund for microenterprises to date. Whatever I may feel about the ambitions for the scheme, I compliment the Minister on bringing it forward. I would just like to point out to the Minister of State that I am complimenting the Minister for Jobs, Enterprise and Innovation on bringing forward the scheme.

Deputy John Perry: I apologise to the Senator. I was just checking something with Senator Deirdre Clune.

Senator Mary M. White: That is fine. The Minister of State is a true gentleman. The Minister, Deputy Richard Bruton, has indicated that in the initial five year phase of the scheme some €10 million in Exchequer funding will be leveraged in order to achieve a total of €40 million in additional lending. I understand this money will come from savings made within the Department of Jobs, Enterprise and Innovation.

Under the Bill a new company, Microfinance Ireland, will be established and granted €10 million to lend to microenterprises. For the purposes of its remit, Microfinance Ireland will classify microenterprises as firms with fewer than ten employees and a turnover or balance sheet total of less than €2 million per annum. It will supplement its initial funding with borrowings and the aim is for it to lend an average of €16,000 per enterprise to 550 enterprises a year.

My party will be supporting the Bill. All new credit is welcome and anything that can boost the SME sector has our support. It is vital that we cultivate a strong indigenous enterprise sector. The success of Enterprise Ireland under the direction of its chief executive, Mr. Frank Ryan, and its client firms shows that we can do it in this country. As the Minister of State indicated, he was very impressed by the operations of some of the very successful companies he visited on his tour around the country in the company of Mr. John Moran. The big increase in exports from the indigenous sector is enormously encouraging. While foreign direct investment will always have a role to play, it is vital that we continue to make progress in providing for a better balance in exports between home grown companies and multinationals.

Ireland imports €5 billion worth of fossil fuels per annum and €5 billion worth of food. Just consider what we might do with that €10 billion if it were not being spent abroad. There is a need to engage in a discussion on that matter.

Deputy John Perry: That is a good point.

Senator Deirdre Clune: I welcome the Minister of State. I also welcome the Bill which paves the way for the introduction of the microfinance loan scheme. The legislation is an important plank in Government policy and I know it is close to the Minister of State's heart. I am delighted that he has been given the opportunity to introduce the Bill in this House. As he indicated, the legislation will, I hope, be enacted before the recess and the Department will then have the opportunity to implement the scheme.

The new microfinance loan scheme is aimed at small and medium enterprises that employ fewer than ten people. This is a very important sector of the economy and the enterprises within it are the backbone of small and large towns. If one drives from Dublin to Sligo, one will pass through many towns and villages in which one will find a host of small and medium enterprises run by individuals, families, etc. They are not creating substantial wealth for themselves but are providing employment and services in their community. They are trading in the community. As the Minister stated, they are the bedrock of our economy.

It has been identified that in a number of cases these individuals cannot access finance. I know it is important that before they look for a loan from this fund, they will have approached the banks and have been refused. We all know of such cases. We know of people with small businesses who cannot get funds from the banks to buy stock coming up to Christmas. That makes zero sense in terms of doing business. I hope the provisions of this Bill, when enacted, will enable them to access funds. This is one of a suite of measures being introduced by the Government in the jobs action plan. The introduction of the credit guarantee scheme is another

[Senator Deirdre Clune.]

important measure that acknowledges that banks are not facilitating all businesses. These Government supports will educate the banks by providing information as to how businesses operate. We know the banks were reliant on property, a sector they could understand, but now they need to come to grips with other types of business and understand the business environment.

The microenterprise loan fund will provide low levels of funding which will be important to many individuals. The Credit Review Office produced its eighth quarterly report in April. It was heartening for many enterprise operators that Mr. Trethowan observed that banks are largely supportive of medium- and low-risk new lending proposals from well-established SMEs — I stress the term “well-established” — that already bank with them. However, he expressed his extreme disappointment that there was no evidence of support for enterprise risk-taking on new and increased lending in the banks. His statement was stronger than his previous statements and gives support to what we are now discussing. It also gives support to the concerns of SMEs and many of us who are concerned about the operation of the banks. Mr. Trethowan acknowledged that the challenge for the banks is to develop approaches that can provide credit for small and medium-sized enterprises. He stated that over the past three months the Credit Review Office had received 44 applications from SMEs that had been refused credit by AIB or Bank of Ireland. Work is ongoing on 31 cases but of the cases completed in the first quarter, 17 refusals were overturned, resulting in the two banks’ releasing €2 million of credit, supporting 140 jobs in the SME sector. That is significant. He said also that since April 2010, which is just over two years ago, 197 appeals had been received. Of the cases completed, 69 of these refusals were overturned, resulting in the banks’ supplying €6.9 million of credit, which supported 683 jobs. The other side of bank lending is that when individual SMEs are refused credit, it diminishes the potential for job creation, which is a very important factor.

Mr. Trethowan issues a quarterly report, which is very welcome and gives us an insight into the difficulties that individuals experience when seeking funding from the banks. I very much appreciate the work he is doing, which offers support to businesses. There is a constant appeal to businesses to prepare themselves. In his speech the Minister stated that those applying for microenterprise funding will be supported in making their loan applications by the local country enterprise boards, soon to become part of the local enterprise office. That is important. We hear that many small businesses are refused credit because they do not have a proper business plan in place and their scrappy applications do not stand up. With a little support, that obstacle can be overcome. The Governor of the Central Bank supported the finding of Mr. Trethowan. It was found that in the Twenty-six Counties, compared to other countries in the eurozone, businesses were between 15% and 18% more likely to have a request for credit rejected by the banks. There is a difficulty in obtaining credit, which must be overcome. We need to work with the banks rather than take a stand-off approach. This is an important Bill because it focuses on individuals who employ fewer than ten people. These small enterprises were left at the wayside during the Celtic tiger era, but they are the bedrock of the community.

I welcome the announcement of the arrival in Ireland of the Silicon Valley Bank, which will support businesses in the fields of technology, life science, clean technology and private equity. SMEs in these fields have had difficulty in getting funding from our traditional banks. Silicon Valley Bank understands such businesses. This is a very welcome development. The Minister has encouraged the arrival of a bank that focuses on a particular type of industry. This is another plank that will help small businesses in this area to move forward. This Bill is a very important step and I welcome it.

Senator Feargal Quinn: I thank the Minister for his kind words during his contribution. I have found that “Feargal Quinn’s Retail Therapy” has been a real education for me, whatever about educating and helping some of the others who were involved. Some of the businesses that were involved in that television show — we are doing our third series at present — are generations old, while others are just start-ups. The programme to which the Minister referred was about a young woman in Ennis, County Clare, who had started her business only six months earlier and was facing challenges which to a very large extent were the result of her way of life. She had a ten-year-old daughter, yet she was having to get up outrageously early to turn on the ovens to bake cakes and bread. What she needed was to realise that if anything went wrong with her life she would lose the business, as she did not have any backup. She had not gone to the banks because she felt she had no chance of getting money. One of the messages I have sent out is that a number of banks will lend money and are able to lend money, but we must show people how to make the case for a loan. That young woman, Carrie, went to the bank and explained what she wanted, showed them the figures and told them what she was going to do, and she got the money she needed. She is doing very well now. I should not speak of one individual in particular, but the same things apply in other cases. In another case, a husband and wife team needed about €10,000 to do what I thought needed to be done. Her response to me was that if she had €10,000 she would not spend it on my suggestion but buy new stock to sell. However, she did spend it on building a window and suddenly discovered that people walking past could see the product she had and the change in the way of life she had. I mention these examples because some of the changes do not just depend on money. Enthusiasm, which practically all entrepreneurs have, plays a large part in business.

The other thing to understand is that one is going along to a funder, somebody who is going to fund an entrepreneur. It does not have to be a bank or credit union. One must put oneself in the lender’s shoes and realise that they are not likely to give money unless a strong case is made and their mind is put at rest because they know that they will get paid back.

I welcome and congratulate the Government on the initiative. It is exactly what is needed. We should do more to encourage entrepreneurs. One way we could let them know is to introduce a safety net for self-employed people to allow them to contribute PRSI and enjoy the same entitlements as employees.

In terms of funding for SMEs and set the conditions for start-ups to flourish, the Government should also focus on developing crowd funding, an issue I have raised previously. Crowd funding, which is an American term, is now worth \$2 billion a year to the United States. We could establish a national website to harness the power of online investors who pledge investments in new businesses. The scheme has been successful in the United States. Think of the potential. The Irish diaspora could sign up to a national website to pledge funds for promising home-grown ideas. I would love to hear the Minister of State’s view on it and to see if we can do something like it. We need a regulatory framework for crowd funding because the sector is a grey area. Who governs such online pledges? What are the legalities for non-residents? What about online impostors or the disclosure of certain information to investors? We need legislation in order for the market to grow, to control it and to make it safer for investors to crowd fund Irish businesses, including microenterprises.

Let me explain crowd funding. The United States has made moves to plug gaps by introducing legislation called the Entrepreneur Access to Capital Act. It will create a regulatory framework to allow private business use crowd funding to access hundreds of millions of dollars. In simple terms it allows small commercial enterprises, such as individuals with ideas or small businesses, to utilise crowd funding over the Internet by selling non-public securities to the public through social media. It asks for money over the Internet in exchange for some promise or return at a later date. It will allow small enterprises to raise up to \$2 million annually from

[Senator Feargal Quinn.]

investors pledging no more than \$10,000 or 10% of their annual income. Online microfinance was previously limited to charities and non-profit organisations. Now that the Bill has been passed in the United States, SMEs will soon be able to secure investment. Will the Minister of State be able to do anything in the sector? One can invest as little as \$250, which is about €200, and as much as \$10,000 in a small start-up business that has managed to sell its wares on the Internet. This is worthwhile and, on that basis, it can help.

The Irish Credit Bureau gives information to lenders in help them decide whether to give credit to a business or an individual. The bureau also compiles positive information, for instance if loan repayments have been made on time. It does not compile information from retailers, trade creditors, utility companies or financial institutions. Others, including the World Bank, have highlighted the fact as a deficiency in the Irish system. A fuller picture must be provided when a business or individual applies for credit, and the ICB must take account of all of the information to allow businesses to access vital credit. For instance, if a supplier or trade creditor has paid off his or her bills on time for the past five years but has missed some mortgage repayments due to recent difficulties in recent months, they may not be able to access credit. That is unfair. All of the information must be taken into account. Some countries have introduced suitable legislation in the past year, including Lithuania and Spain. We could do the same here and it would benefit SMEs.

I know that the Minister of State is anxious to cut red tape, and we can. Part of the solution would be to get rid of systems we needed some years ago. A few years ago when I purchased my airline ticket, I was told I no longer needed a ticket, and I could not believe it. Air travel is now ticketless, one can imagine the savings that have been made. Ryanair was the first airline I discovered operated a ticketless system, but now no one needs tickets anywhere. Who thought of it? The concept cut red tape.

There are new ways to give credit to microenterprise. The Shawbrook Bank specialises in lending to small firms in the United Kingdom, and it will lend £250 million to SMEs this year. It is just one bank, but there are many others. It would be worthwhile for the Minister of State to examine the scheme.

The Minister of State deserves great credit. I am delighted he gave credit to the people accompanying him who worked on the legislation because I know such work does not happen by accident. The Bill is worthy of support and I am sure it will be as enthusiastically supported in this House as it was in the other House.

Senator Jimmy Harte: I thank the Minister of State for outlining the Bill and I thank him and his officials for putting it together. It is important legislation and has the potential to create many jobs. I come from a small business background and know how difficult it is to start and maintain a business. The fact the Bill focuses on the employment of fewer than ten people is important. We in this country have always been traders and the ability stems from cattle dealing and trading various goods in times past. We still have the ability to make money locally through trading locally and that is where our future lies. Many families have traded for years but they find it difficult to borrow even small amounts of money in the current economic climate.

I would like to Minister of State to clarify a few points for me. People want to access the new scheme but are there exclusions? Can they use it to clear off debt that is holding back their company? A company may be owed money by a supplier or someone who has gone out of business. If the debt was cleared, a company could move on and progress, and I am sure there are many people in the position through no fault of their own. Businesses can be viable but they may need an injection of cash to clear their name with suppliers and get their heads above water. Can the fund be used for renting? Are there exclusions? Is it only for capital or

training purposes? I have not read anything it disallows. Perhaps the legislation is broad enough to allow more uses.

I shall make a suggestion that could help small businesses in the future. A lot of small businesses start with good ideas but as many as 50% of them will fail in the first year, and some of that is due to inexperience. When I set up my business, I never encountered the Revenue Commissioners or the social welfare until I needed them or either organisation had a reason to call. Perhaps a visit from officials from the Revenue office and the Department of Social Protection in the first year of business would help small businesses by contacting them directly. Many people meet Revenue officials for the first time when they are in bother and there may be a difficulty by that stage. Any time I dealt with Revenue, I found its officials to be very efficient and good communicators. Many small start-up businesses do not have that knowledge but they do not generally go to enterprise boards. They may wish to set up a clothes shop, a hairdresser or supply goods or services and they do not feel the need to go to the enterprise board. In many cases people start off with a great idea and premises and go straight into business because the knowledge has been passed down through the family. It would be of great advantage if someone from Revenue called by, introduced themselves, outlined what a new business needs to do and gave a direct contact number in case of any difficulties. Sometimes accountants do that, but in many cases they are more concerned about getting the books prepared at the end of the year and getting the returns in. That could be an issue for consideration in the future.

Many small companies do not have large borrowings, but the loan fund could give a company an opportunity to take on another employee or make a purchase as it cannot dip into its cashflow to do it. This reminds me of a local man, Mr. Hugh Green from Raphoe, who is now in New Zealand, who was named a Donegal person of the year and on whom a documentary was done recently. He left Raphoe more than 60 years ago and is one of the richest people in New Zealand. He started off selling cattle as a 12 year old. He knew who would buy from him and who would pay him. He had no formal education but is one of the biggest contractors and farmers in New Zealand. He said that because he ran his business by his own intuition, he never had to borrow money and has given money to local charities in Donegal and throughout the country. He is more than 80 years of age and returns to Donegal each year. He is an example of the Irish spirit, how we can trade and do things well, but many businesses need start-up capital to get off the ground.

I hope the loan fund will be successful. The small and medium-sized businesses will bring the country through the recession. All towns are experiencing a downturn. The European, Chinese and world economies are experiencing difficulties, but we in Ireland can trade through those difficulties. The Microenterprise Loan Fund Bill is an example of a hands-on approach to it, but I hope it does not get bogged down in red tape. The experience with banks has been that they will say something is a great idea, but there is always a “however” after that. That is the bottom line. With the Bill I hope there will be more leniency. Banks are discouraged from lending because of poor records and low technical management skills. Perhaps the Department could arrange for the local enterprise boards, when set up, to have a person from Revenue with them to provide a contact. In the event of an issue with Revenue, it would be much easier if people knew the name of a person rather than Revenue and the sheriffs calling when people are in arrears.

I congratulate the Minister of State on the work he has done in this area and look forward to the results in 2016.

Senator Kathryn Reilly: Like previous Members, I welcome the Minister of State. Sinn Féin broadly welcomes the Bill and its goals and will support it. The banks, even those owned by

[Senator Kathryn Reilly.]

the people, unfortunately, are not lending as they should and are not being compelled to do so. As stated, microenterprises and SMEs account for the majority of employment in the State but are the least likely to get the loans necessary to continue to expand and get through the difficult period or to get a start. This is at a time when the Government can find up to €1 billion to pump into the ESM which in all likelihood will be used to prop up failed banks, but it can only struggle to cough up €10 million for the microenterprise sector. This is the context in which the Bill is coming to us and that must be acknowledged in the debate.

There are some flaws in the legislation that have to be addressed if the microenterprises are to benefit from the legislation and the fund in the way they should. The programme for Government provided that the Government would construct a €100 million microfinance start-up fund that would provide start-up loans and equity and would draw its funding from the National Pensions Reserve Fund and private institutional funds. Despite this, more than a year later we are presented with a Bill that puts only €10 million on the table. That is major betrayal of microenterprises by the Government. I will table amendments to provide for an increase in the amount of the fund, but whether they are accepted or ruled out of order is another issue.

A matter of great importance is the governance of the fund and the issue of democratic control and effective administration of the fund. Another injustice inherent in these economic times is encapsulated in the fact that these same banks which are refusing to lend to the real economy can access finance from the ECB at a rate of only 1%, yet microenterprises are expected to pay full market prices. The Oireachtas should be empowered to ratify each scheme rather than for us simply to give a *carte blanche* to the fund and for it never to be democratically scrutinised again. How related to this is the role of the Social Finance Foundation in the running of the fund? The legislation as framed effectively makes the Social Finance Foundation a direct deliverer of credit rather than its current role as a wholesaler of credit. What qualifies the Social Finance Foundation to take on this role? I will consider tabling amendments to clarify the division of duties in this regard and put in place a more efficient, speedy and accessible system in order that the Bill will be worthwhile.

The entire process, from the beginning to completion, of applying for funding should be straightforward and as simple as possible. Enterprise Ireland should have a clear role as a single point of contact providing feedback to the applicant and agreeing a development map and appropriate supports.

Sinn Féin will support the Bill as a step forward. While it should have been better, I hope the Government will approach my amendments with an open mind. The Bill attempts to plug a hole in the market caused by the unwillingness of banks to do their job and the Government to make them do it. It must be got right and it must have financial muscle behind it. I hope the Minister will take on board our amendments on Committee Stage. I look forward to debating them.

Senator Imelda Henry: I welcome the Minister of State. In the past year he has travelled the country visiting small businesses, and his determination and hard work is a great help to those businesses. Time and again, when the economy is in trouble, small and medium-sized businesses suffer but, against all the odds, they come back and provide employment and stimulate cash-flow. We need to give them all possible help. Cashflow is the lifeblood of businesses and every business needs credit or loans. It is clear that businesses have significant difficulties in getting loans or credit from the bank. Many business people say that even with a good credit rating and substantial collateral, they have trouble getting credit. We are always delighted to hear about foreign investment in Ireland and multinationals creating jobs, but I heard recently Patricia Callan of the Small Firms Association say that at a time when jobs are in short supply,

every citizen should be actively encouraged to create a job for themselves. The Bill will help them to do that.

The Government has made a commitment in the programme for Government to ease the problem for SMEs, and the Bill should greatly help the position. When the Minister, Deputy Richard Bruton, introduced the Bill, he said a large number of microenterprises are locally owned businesses that give their owners enough income to support their families and contribute to their locality. No glamour or particular riches are attached but they are the true heart and soul of Irish businesses and the Government firmly intends to support them. I wholeheartedly agree and welcome the Minister's sentiments and his commitment to do all he can to help the sector survive and thrive. We have many bright and intelligent young people with ideas and initiative. We have older people with skills, experience and determination. Microfinance Ireland will be a welcome addition to the supports and grants already available. Each of us has an important part to play. We must try to spend locally and buy Irish whenever possible.

Senator Rónán Mullen: I welcome the Minister of State. The debate on the Bill is taking place in the context of CSO figures which show a continuing decline in the domestic economy and, thus far, the economy has contracted by 1.1% in the first three months of the year. The CSO has attributed the contraction to a drop in exports and personal consumption for the first quarter. This ongoing negative outlook with declining or flatline growth pushes down spending and consumer activity with the knock-on difficulties this presents for the small and medium enterprise sector.

The idea behind the scheme is not; microfinance provision has proved useful in various developing countries, where the poor cannot access credit from banks owing to the lack of collateral. The modern use of the expression "microfinancing" has roots in organisations such as Grameen Bank of Bangladesh in which the microfinance pioneer and Nobel Peace Prize winner Muhammad Yunus reintroduced the concept with much success. In Bangladesh one of the difficulties for small rural farmers and business co-operatives was that there was no banking infrastructure to serve their needs. We have a banking industry, one on which we have lavished large amounts of cash to keep it afloat. Despite the work of the Credit Review Office, it seems, however, that banks are not lending to businesses. Up and down the country I am sure the Minister of State has heard from struggling businesses that have been totally starved of access to credit. I have heard from business people who are completely exasperated as they meet a stone wall every time they try to deal with their bank. However, the problem is deeper than an inability to lend on the part of the banks; the real issue is that the banks have forgotten the business acumen to lend to enterprise. During the Celtic tiger era all they did was pump money in during a property boom, which was nice and simple. My fear is that they are now in uncharted territory when it comes to evaluating and lending to businesses, which is a skill they must relearn. In the absence of a functioning banking system which is scandalous considering the recapitalisation undertaken by the taxpayer, the State must step in with initiatives such as the microenterprise loan fund.

While I welcome the scheme, it ignores the underlying difficulties facing the SME sector, for which access to credit is a major issue. There are other issues which are equally pressing such as the cost of doing business and local authority rates, an issue I will discuss. Without a co-ordinated strategy to address all factors impacting on the SME sector, we will continue to have a moribund domestic economy. I do not want to be pessimistic or overly critical, however, as I welcome much of the good work the Department is doing. At €650 million, Enterprise Ireland's seed capital fund is the biggest managed seed fund anywhere in Europe. The Silicon Valley alliance, announced by the Minister for Finance during the week, is another fund of €100 million. I appreciate, therefore, that the Government is stepping forward to allow access

[Senator Rónán Mullen.]

to finance. The Minister, Deputy Richard Bruton, has pointed out that it is not standing back and allowing the problems of access to finance to fester. I also welcome his commitment in the Dáil that in every one of the schemes the Government will seek to have private sector money to complement what the State is able to provide, in addition to exploiting the European Investment Fund. I trust that this latest scheme will be advertised to the business people who actually need it. In many cases we hear about initiatives such as the Credit Review Office and then some time later learn that there has been a disappointing take-up by the sector targeted owing to lack of knowledge.

Having welcomed the scheme, I temper my remarks by adverting to the difficulties confronting businesses that are not addressed. The overall issue is that in an era of declining domestic demand we are pushing many SME businesses to export, which is obviously not an option for every business. We know that 55% of jobs in Ireland are created in the SME sector; we can contrast this figure with that in the United Kingdom where it is approximately 60% and Germany where it is approximately 70%. The focus of the Government is often on foreign direct investment. On that front IDA Ireland is a world leader, but we cannot have a functioning economy based on exports alone, in particular where most SME companies are geared towards supplying the domestic economy.

The famous Mittelstand companies in Germany were referred to by the Minister in the Dáil. It was an interesting reference, as German SME companies have traditionally enjoyed a strong banking sector and pro-business policies from the government. The backbone of German industry which has been such a success in recent years has been built with the assistance of a banking model that has been well suited to the smaller scale companies on which we need to focus. It allows companies to grow and export. We have not had such a system and lack the right policies in other areas.

Local authority rates for retailers continue to be a major issue. While there is a need to have a well funded local government system, as the Government pulls away central funding and councils still need to provide services, the burden will fall on ratepayers. We need to examine the rationalisation of local authorities in that context, with energy prices, transport and waste disposal. A debate on another day could focus on taxes and debt forgiveness where debt is unsustainable, as recommended by Moody's ratings agency earlier this week. Unless we see a more co-ordinated approach embracing reductions in costs for businesses, in addition to certainty on personal taxes and the issue of debt forgiveness, we will not see Irish people spending again any time soon. That is a critical issue.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry):

I thank Senators Mary White, Deirdre Clune, Feargal Quinn, Jimmy Harte, Kathryn Reilly, Imelda Henry and Rónán Mullen for their contributions to the debate. The issue under discussion is one of the most important for small business in Ireland and has been identified as mission-critical by the advisory group on small business. The Bill reflects the fact that the Government is listening to businesses and willing to act in a positive and supportive way, even in difficult and restrictive economic and financial conditions.

On Senator Mary White's point, this is a start-up fund which will be reviewed. The Senator welcomes the establishment of the fund for entrepreneurial women involved in business. It is not just about giving money but also about mentoring, skills development and management. It will be closely evaluated by officials in the Department.

The Bill has taken time to reach the floor of the House and as such, I acknowledge the frustration of many at the delay in processing it. However, this is a completely new policy area for my Department and it has taken time to overcome the issue.

On the administrative structures to be used, the legal concerns and the point made by Senator Deirdre Clune about the role of the Credit Review Office and Mr. John Trethowan, the banks have ring-fenced a sum of up to €7 billion for businesses. Senator Feargal Quinn has made the point that people should make applications because there is a new, simplified bank application form that will be common to Bank of Ireland, Ulster Bank and AIB. People can also appeal credit decisions, even though many do not, within their bank and to the Credit Review Office. We should engage with Mr. Trethowan who has overturned one in two decisions. Senator Deirdre Clune welcomed the Silicon Valley alliance and made the point that the Credit Review Office should be used effectively.

The Bill is targeted legislation to address the needs of the most vulnerable elements of the SME sector, microenterprises. It will ensure additional lending to businesses in the locally traded and export sectors and deliver real outcomes in terms of job creation. The fund will help firms with the potential to generate growth to realise it and meet some of the unmet demand for microfinance. It will have a greater risk appetite than banks could possibly ever have, which is important. It will also be able to fund microenterprises that cannot satisfy conventional bank criteria.

On Senator Jimmy Harte's point, loans will not be bounded to any degree. The applications must be backed up by a business plan showing the purpose and sustainability of the enterprise. I listened actively to what the Senator said and a one-stop-shop will ensure it is about more than just providing money; it involves staying and working with applicants and mentoring. Previously, the banks just gave out money and when there was a problem, they came looking for it.

Many successful business people whom I know would love to give something back to Ireland. This is a real opportunity, when the local enterprise offices are established, to make a call on people who are semi-retired and have business experience. We can tap into their expertise. We are eager to work with applicants who have viable proposals. There will be huge merit in a system of independent evaluations. As I said, there are successful professionals, including legal professionals, who are very well off and want to give something back. I am very much aware of the generosity of Irish business people.

Senator Feargal Quinn made reference to crowd financing. That is a fantastic idea and I would be keen to obtain more information from the Senator in this regard. I understand it has proved very successful in the United States in terms of facilitating credit flow to small companies. The Department is examining how it can improve access to finance for all businesses, including a review of all aspects of seed and venture capital schemes. The United States experience in regard to crowd financing offers a useful model in terms of encouraging people to invest and take a risk in new businesses. It is a very interesting concept.

In regard to the PRSI contribution, the Minister, Deputy Burton, is examining proposals whereby self-employed persons whose businesses fail would have some entitlement to benefit. That is under active consideration by the Department.

The loan fund is not designed to replace current bank lending but to aid economic recovery by facilitating creditworthy borrowers to deliver jobs across the economy. The aim is to assist enterprises in their endeavours with a view to generating approximately 8,000 jobs. Many small business owners are telling us that they have no confidence in approaching the banks for finance. Some feel their application will be refused even before it is made. The measures contained in the Bill will encourage greater confidence in the banking network. The banks have committed to lend €7 billion this year and €8 billion next year. If these measures help to generate 8,000 jobs per year in the coming decade, that will be a huge achievement. We intend to monitor progress closely and to ensure the targets are kept clearly in focus. What is proposed

[Deputy John Perry.]

in this legislation represents an effective use of State funding, with the cost per job working out at the lowest end of the scale.

The Bill provides for the establishment of the microenterprise fund and the formation of a private company to lend to businesses and manage the fund. We are confident this will stimulate activity in the economy by providing the necessary support to sustainable microenterprises. The targeted nature of the initiative will see loans of up to €25,000 provided for commercially viable enterprises which do not meet the commercial banks' conventional credit criteria. We expect the average loan to be sizeable, probably in the region of €16,000. That will have an immediate impact. The main aim of the fund is to ensure the microenterprise sector remains vibrant by helping to nurture the entrepreneurs of the future who will go on to create jobs in the economy. Senator Imelda Henry, who has a great deal of business experience, emphasised the importance of recognition, support and encouragement for small businesses. That is what we are about. This Bill is one of a suite of initiatives to encourage and support people who are willing to take the risks necessary to build and grow something worthwhile for themselves and others.

I agree with Senator Rónán Mullen that it is very much about confidence and credit. We must create confidence in the domestic economy so that people are willing to spend locally. We are doing fantastically well in terms of foreign direct investment and exports are thriving. The recent report by IDA Ireland shows the extraordinary results in this area. Indigenous companies are also doing exceptionally well but we recognise the need to support them. In a €90 billion economy, €11 billion is being saved. It is about restoring confidence in the future so that people will begin spending once again in the domestic economy. This Bill will certainly help to restore confidence and credit. I agree that both are equally important.

Some have expressed the view that this initiative is too little and too late for the SME sector. On the contrary, the measures contained in the Bill represent a timely response to the real needs of businesses. We could all sit back and list ten reasons that something cannot be done. We are interested in taking effective action. There is a well known saying that if there is no problem, there is no business. This initiative will not solve all the problems facing the indigenous business sector or create all the jobs we need, but it will create an environment in which small enterprises are supported to grow and create employment. As I said, the Bill represents one component in a suite of measures introduced by Government to facilitate the flow of credit to small business. It is one of several steps that will help us out of the morass into which the actions of others have condemned us. It should be considered in combination with the temporary partial loan guarantee scheme and all of the measures contained in the action plans for jobs. All of these initiatives are a clear indication of the Government's desire to address our problems in a manner which represents real value for taxpayers' hard-earned money. Moreover, we will listen to any proposals that might meet that objective, and my door is very much open to any Senator who wishes to make a submission. We are seeking ideas that will make a real difference. Business people want straight talk, effective action and tangible results. This Bill represents an important step in helping people to secure the necessary financing to build and expand their businesses.

I thank Senators Mary White, Deirdre Clune, Feargal Quinn, Jimmy Harte, Kathryn Reilly, Imelda Henry and Rónán Mullen for their contributions. I have listened carefully to their proposals and am more than willing to consider any feasible suggestions. I look forward to the debate on Committee Stage next week. Enacting this Bill will allow us to get on with the business of lending to this critical sector of the economy.

Acting Chairman (Senator Michael Mullins): I thank the Minister of State for his comprehensive response to Members' contributions.

Question put and agreed to.

Committee Stage ordered for Tuesday, 17 July 2012.

Sitting suspended at 4.40 p.m. and resumed at 4.45 p.m.

Electoral (Amendment) (No. 2) Bill 2012: Second Stage

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

Minister for the Environment, Community and Local Government (Deputy Phil Hogan): The Electoral (Amendment) (No. 2) Bill is a short but important Bill to enable the electoral register to be used for selecting citizens for the constitutional convention. When consideration was being given to the establishment of the convention, the Government decided there should be 100 members, of which 66 would be ordinary citizens. As set out in the resolution made in the House earlier today, membership of the convention will consist of 66 citizens entitled to vote at a referendum, randomly selected so as to be broadly representative of Irish society.

Section 13A of the Electoral Act 1992, inserted by section 4 of the Electoral (Amendment) Act 2001, provides that it is an offence to use information in the register of electors other than for electoral or other statutory purposes. Such a statutory purpose is provided, for example, in the Juries Act, for the selection of members of juries. An edited register is in place, which may be used for any purpose. That register includes approximately 300,000 voters who have opted to have their names included on it. However, that is a relatively small percentage of the total electorate, which stood at 3.144 million for the referendum last May. Clearly, therefore, the edited register would not be adequate for this purpose.

The constitutional convention is not established by statute and it is necessary, therefore, to provide in the electoral acts for the use of information in the register in the selection of citizen members of the convention. A polling company will be engaged to select the 66 people, who are on the electoral register and are representative of the population generally, in terms of gender, age, social class and region. The selection process will be overseen by the independent chairperson of the convention.

Section 1 of the Bill amends section 13A of the Electoral Act 1992 by inserting a new subsection. This will provide that information in the electoral register may be used for the purpose of selecting citizens of Ireland to participate in the constitutional convention. Section 2 of the Bill contains standard provisions dealing with the Title, citation and construction of the Bill.

As I said earlier, the sole purpose of the Bill is to provide in statute for the use of the electoral register for the first time in selecting people for the purpose of the convention. It is a Bill to facilitate an important operational aspect of establishing the convention and I commend the Bill to the House.

Senator Sean D. Barrett: I welcome the Minister and thank him for his presence. In many ways, this is an inspired Bill. What we are doing is getting to the person in Belmullet, the high unemployment zones in Limerick that we discussed with the Minister for Finance last week, or even in Knocktopher in the constituency of the Minister. Getting directly to the citizen through the electoral register is important because one of the reasons we are in difficulty is policy making is dominated by pressure groups, interest groups and lobbyists. One might say we have an insider-outsider model and the Bill gives the outsiders a chance to receive a letter from the Taoiseach, the Tánaiste or the Minister for the Environment, Community and Local Government asking them what they would like to see done in the country on their behalf. That would

[Senator Sean D. Barrett.]

have an inspiring effect on people finally asked to contribute. It is a very good idea to base it on the electoral register as it will reach everyone who votes. That is the right way to proceed as it gives equal opportunity to all citizens within a culture in which the democratic voice is bypassed through interest and lobby groups. The ones who were in Government Buildings on 29 and 30 September 2008, in particular, have a lot to answer for.

We have in the Central Statistics Office, for which the Chief Whip, the Minister of State, Deputy Paul Kehoe, has responsibility, the skills to undertake the sampling. The CSO does it for the household budget survey and it might reduce the burden rather than have the work done outside by expensive consultants. One concern is that if the lists are known, the lobby groups I am trying to keep out will go to the man at the end of a peninsula near Belmullet and tell him that he should say this and that. We want to get people's own views. I have an open mind as to whether the list of people chosen should be kept secret from lobby groups. This is a fantastic day for democracy as it goes right to where the people are to ask them to help the Government to get the country back to where it was before the bank rescue in 2008 and the IMF rescue in 2010. Governance in this country did not work and we must change it. The Minister proposes to involve citizens directly for the first time. In order to do this he must amend legislation dating back to the foundation of the State. This is a great step forward and I welcome it wholeheartedly.

Senator Cáit Keane: I welcome the Minister who is a busy one. The Bill is most welcome. Democracy is about the people and our political system must listen to the views of the electorate — ordinary people — on the reality of their lives. Many believe there is a disconnection between politics and the ordinary citizen. In this context, the constitutional convention can go a significant way towards resolving the issue of the democratic deficit. I welcome the methodology to be used to choose 60 members from the electoral register. The Bill is enabling legislation to provide such a facility. The programme for Government contained a commitment to better equip the Constitution to meet the challenges of the 21st century and the Bill will allow the methodology to be chosen to fulfil the commitment given.

This is an important and exciting initiative that represents an innovative approach to examining constitutional reform. As we have read, the constitutional convention will be asked to consider a range of matters in the next year or so. It is proposed that it will also review the Dáil electoral system and giving citizens resident outside the State a part to play. It is welcome that women will be encouraged to participate more in public life. The removal of blasphemy from the Constitution is another matter that will be considered and ordinary people will have a say in all of these matters. They will also have an opportunity to pick one or more issues they consider necessary for discussion. They might consider the Seanad in that respect, although I do not know if that is possible. I hope it will be.

Section 1 which inserts a new subsection (3A) in section 13A of the Electoral Act 1992, as inserted by the Electoral (Amendment) Act 2001, states a person may use information in the register prepared under section 13. I will skip that part as the Minister has referred to the issue.

According to the way the Bill is set out, the measure will be broadly representative of society, according to gender, age, regional balance and social balance. How the latter is handled will be important to ensure all sectors of society will be represented. Provision has also been made for a budget, which is important, and training will be provided for the members selected. That is an important aspect and it is done in other countries.

The Minister is responsible for the electoral register. We did not have an opportunity to debate the issue with the Tánaiste and I do not expect the Minister to answer the questions that would have been raised with him. The manner we left the Tánaiste sitting outside the Chamber for more than an hour was disgraceful when we could have availed of his presence to obtain information in the House.

Senator Sean Barrett mentioned interest groups, many of which have expressed an interest. I hope everyone — interest groups, individuals and whoever else has an idea — will have an input into the methodology to be used. It was said there would be a dedicated website for the purpose. That avenue could be made available to ordinary people not selected from the electoral register to have an input into the process. I do not think the names of those chosen should be made available as they could be inundated with personal emails. The Minister must consider whether the names should be published. It would be useful if the individuals chosen were provided with a website to access all information received from the public.

It was indicated that the JobBridge programme might be considered in making information available on the Internet. The Minister stated the provision of an IT facility would not be rocket science and that it could be done in-house. It is important to get this right. As we know from the Ulster Bank fiasco, serious problems can occur with information technology and we would not like anything of that nature to occur with the electoral register because it is such a serious document. I hope it will be ensured whoever is chosen is competent to do the job.

An important aspect of the constitutional convention is that the Government has publicly committed to responding to each of its recommendations within four months. I am sure this commitment will be honoured. Today we are providing for the participation of citizens in the convention by means of the Bill which addresses one of the main criticisms of previous attempts to initiate constitutional reform. There was a previous attempt 20 years ago and much excellent work was done, but only two referendums followed, in spite of numerous recommendations being made. I am confident that that will not be the case this time because of the commitment given and the methodology chosen which will ensure transparency in the selection of citizens from the electoral register.

The success of the constitutional convention will also hinge to a great extent on the level of engagement with the public. As I said, the provision of a website is important and I hope other methodologies for the receipt of submissions will be found. It is a terrific opportunity for members of the public to become involved in this important innovation in public life. I hope those approached to participate in the convention will take the opportunity to contribute to this exciting development in politics, for which I commend the Minister.

I cannot conclude without mentioning the group, We the Citizens. Many of its recommendations, under the chairmanship of Senator Fiach Mac Conghail, have been incorporated into the Bill.

Senator Paschal Mooney: Cuirim fáilte roimh an Aire. As is his right and obligation, the Minister has stuck rigidly to the strict interpretation of what is contained in this short Bill. I must confess I do not share the enthusiasm conveyed by the previous speaker in this regard. An all-party constitutional committee was in place as long as two Administrations ago and while I am unsure whether the present Minister was a member of it, his party and all others certainly contributed to it. Its members laboured long and hard over a number of years and produced recommendations which, in common with previously made recommendations, were studiously ignored by the then Administration. The programme for Government now contains a commitment to have a constitutional convention. As the candles were burning during the negotiations between the two parties, I am unsure when someone came up with this not terribly original idea. Thereafter, having created a mighty roar, they produced a mouse because essentially, the proposals are minimal.

I wish to ask the Minister a couple of questions in this regard. I acknowledge Members have been presented with a *fait accompli*, in that this will happen anyway. However, does the Minister have an opinion on the fact that one of the items to be discussed is the review of the Dáil electoral system? In my opinion, with all due respect to the public, the best people to debate and come up with proposals on the electoral system are those who are themselves practising

[Senator Paschal Mooney.]

politicians. I am curious to ascertain whether the Government intends to provide guidance to the great and good among our citizens, who will be selected at random, as to how they are to go about their business. For example, will they be given guidelines on what is the Government's thinking on Dáil reform? Are there specific areas of Dáil reform in which the Government has a particular interest and which it thinks the constitutional convention should examine? Alternatively, will the convention simply start with a blank sheet of paper? It has been stated the Government must come up with it within 12 months but I am sure it will not take that long.

I welcome the Minister's request that the convention report within two months on two of the issues to be discussed, namely, the reduction of the presidential term and the reduction in the voting age. I reckon that process should take approximately two days because one either is in favour of a reduction in the voting age or one is not and similarly, one

5 o'clock

either is in favour of a reduction in the presidential term of office or one is not.

Consequently, I am unsure why this will take two months. Moreover, I question whether deciding on whether to reduce the voting age from 18 to 17 can be counted as one of the most important elements of constitutional reform. Some weeks ago, I mentioned in this Chamber that the Army recently raised the minimum age for recruits to 18 years. In other words, one arm of the State is going in one direction while another is going in a different direction. While it is just my opinion, I am uncertain whether there is great merit in reducing the voting age to 17 years.

As for the manner in which the Minister intends to select members of the convention, I am disappointed there will not be any representation from the Irish diaspora. Surely there was a need for this discussion to include those who have been lobbying long and hard and with whom, as a former emigrant, I have been aligned. I welcome the fact that this matter will come under active consideration and hopefully there will be a resolution that will come down in favour of extending the franchise for presidential elections to those of our diaspora who are spread across five continents. Obviously, certain term limits would be introduced in respect of eligibility, the process of registration and all the factors that already are in play in other countries that have extended the franchise for elections to their own diasporas. The Minister may wish to comment on whether there is any way in which the diaspora can have an input. For example, will submissions be accepted from the public or will there be a narrow focus on those who will be members of the convention to decide on such issues? As Members already have indicated, a range of civic groups are screaming and baying at the door, asking why they were not involved. Under the terms of reference that will be given to the convention, will there be an opportunity to take outside submissions in this regard?

It is interesting that all the issues, with the exception of Dáil reform, are effectively straight "Yes" or "No" questions. I refer to issues including reducing the presidential term, provision for same-sex marriage, amending the clause on women in the home and encouraging greater participation of women in public life, removing blasphemy from the Constitution and, possibly, reducing the voting age. The only subject that is not a "Yes" or "No" issue concerns other relevant constitutional amendments that may be recommended by the convention.

I am glad Senator Cáit Keane referred to the Seanad but — the Minister may clarify this point — the Taoiseach already has made it clear that he will not allow any discussion on the future of the Seanad in the constitutional convention, despite the fact that one of its main purposes is to deal with Dáil reform. I believe the latter to be an area that will be critical and will be open to much wider debate based on the criteria laid down here and the terms of reference. I believe the major issue to confront the convention will be that of the Dáil and the electoral system that elects Deputies to it, yet the Seanad will not be part of its scope. In other words, one arm of parliamentary democracy will be discussed in great detail while the other arm will be studiously ignored. This is one reason many Members on this side of the House

have been so uptight about this issue and have been animated to the point to which they have frustrated their colleagues on the other side of the House, who cannot understand the reason they are becoming so animated. It is not just about the Seanad's survival or Members talking about their own future; it is a matter of common sense, as there surely should have been an opportunity to discuss the future of the Seanad in the context of the constitutional convention.

I have two brief final questions. The fact there is a full register and an edited register came as something of a surprise to me as, for whatever reason, I was not aware there were two registers. Perhaps, at the time of registration, members of the public might be made more aware that they have the option to opt in or out. If they opt in to the edited register, that register is then sold on to commercial companies which in turn can contact voters when selling their goods. Does the Minister agree there could be a publicity campaign of some kind on this practice in order that citizens would be generally aware of it? My final point is about the key issue of how the sample will be taken. I compliment the Oireachtas Library and Research Service on its preparation of a valuable document in this regard. In everything I have read in respect of the questions raised on this particular proposal, the key question concerned how the sample would be taken. Any clarification in this regard from the Minister would be welcome.

Senator Jimmy Harte: I again thank the Minister. This is an important Bill that will give legal effect to the polling system. I have a couple of questions. I do not know how the polling criteria for the 66 members were decided upon; they might simply have come from the polling companies themselves. However, I fear that certain counties — perhaps counties such as Leitrim and Donegal — might have no representatives among the convention's membership, which would send out the wrong message.

Deputy Phil Hogan: Regional criteria will be applied.

Senator Jimmy Harte: Yes, but if it is done on a regional basis, County Leitrim or County Donegal may still be left out. I hope County Donegal will be included. I want to put that on the record.

Deputy Phil Hogan: Senator Barrett was anxious about Belmullet.

Senator Jimmy Harte: I am sure he is. However, were no Oireachtas Members from such counties to be included, it would be possible for one county to be left out. It could be Donegal, Leitrim, Laois or Kilkenny. I wish to ensure this does not happen and that all counties will be represented.

I agree with Senator Mooney in respect of the diaspora. Perhaps one person selected will be found to have emigrated in recent years despite still being on the register. In other words, the presence of a diaspora member may happen by default. However, I agree the diaspora is such an important part of our culture that it is a shame that members of the diaspora will not be included, because my understanding is that it will be based on the register of electors. In the context of electoral reform, Senator Mooney suggested the only people who should be talking about it are politicians. However, that is somewhat akin to suggesting the best people to advise on lovemaking are gynaecologists. The wider public sometimes might have more wisdom than do politicians when it comes to electoral reform. Even though they know the ins and outs of the whole range of politics, politicians may need advice from the ordinary man on the street, who is sometimes much more practical and can see things from a distance, rather than from inside the glass bowl in which we politicians live.

The idea of a convention was proposed by the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Eamon Gilmore, at a Labour Party conference two years ago in an aspect of his speech that he strongly emphasised. It is important for the country as a whole, as the 1937 Constitution has moved on. Moreover, over the past 20 or 30 years, the country has moved on,

[Senator Jimmy Harte.]

both culturally and socially, particularly from the perspective of people of foreign nationality who live in the country. It may not reflect the country as it stands and I think we must broaden it out. There may even be no changes to the Constitution, but giving the people an opportunity through a regional selection based on age, gender, social status and so on will bring out ideas. Sometimes the ideas that come from the ordinary person are the best ideas. They are not tied up in the restricted thinking that we sometimes have. I hope that the 66 members chosen will reflect the views of the nation, and that one of them at least is from Donegal.

Senator Jillian van Turnhout: I welcome the Minister to the House and I welcome the Bill. I was very disappointed this morning that we did not get an opportunity to debate the resolution to establish the constitutional convention. I was extremely frustrated, but I have issued a statement to outline what I would have said on that occasion. I do not have a difficulty with us using this method to select 66 members. In fact, I would have no difficulty with us selecting all 100 members. I am not convinced about the role of Oireachtas Members on the constitutional convention, because we have a platform and we will be able to look at the recommendations of the convention.

I understand the motivation behind Senator Barrett's comments on privacy, but it is about the practicalities. Perhaps the convention needs to devise some working methods about direct and unsolicited communication with members, even if it is a standard code of practice. Senator Mooney has said that many of the questions are "Yes" or "No" questions, but I think they will be much more than that. I would like to see the convention reduce the voting age to 16. The voting age was 21 until 1973, when we reduced it by three years.

Senator Paschal Mooney: We did not need a convention to do it.

Senator Jillian van Turnhout: I do not know if a convention is needed, but the fact that it is on the convention is important. Part of the UN Convention on the Rights of the Child is about the evolving responsibility of children and their voices. The example given about the Army is not comparing like with like. It is about ensuring that children have a voice.

I would encourage that as much of the convention's business as possible is done in the public eye to allow members of the public who are not members of the convention to follow the journey, the discussion and the awareness raising of the convention. I tracked the work of the constitutional committee on the amendment on children's rights. The committee did very good work, but I felt that too much of the work was in private session, which did not allow other people to come on the journey. Equally, they did not bring in people who did not necessarily support strengthening the rights of children. We should have heard those voices and given them a view. I hope this convention will give everybody a viewpoint.

We missed an opportunity to correct some of the flaws in the wording of the convention resolution this morning. The resolution referred to a provision for same-sex marriage, when it should refer to provision for marriage for same sex couples. The resolution we voted on this morning was flawed, but that is the democracy of this House, or possibly it is not democracy, depending on which side of the House we were.

I welcome the Bill. It is good that we are using the electoral register. It is important that we get as wide a membership as possible. I would have had no difficulty if the 100 members all came from the public. Sometimes we should listen to other people. We have plenty of opportunities to have our voices heard. I would like to have seen a wider convention.

Senator Paul Bradford: I welcome the Minister to the House, but I will take the road less travelled on the legislation and the constitutional convention. There is no point in saying something that is completely contradictory to what I have been saying over the past few months. I have a difficulty with the concept of a constitutional convention. I concede that it is the electoral

register side of the convention that we are now discussing, and sadly we did not have the opportunity to have a substantial debate on the constitutional convention.

We have 60 Members in this House. There are 166 Members in the other House. We have approximately 15 or 20 Oireachtas committees. We have more than enough politics and more than enough politicians to raise every question and to engage with every single idea, but we have failed to do so. The fact that we had one hour in this House to talk about a constitutional convention which is deemed to be a huge departure and the fact that there apparently was a two-hour debate in the other House shows that the problem is within the political system itself. I would like to see the different Oireachtas committees working as mini conventions in their own right. Each of those committees should be engaging much more directly with the public. By saying that we, the politicians, cannot lead but must somehow follow means that we are making ourselves redundant. By saying that without a constitutional convention, none of these departures is possible, we are actually saying that we have an inability to lead, to think, to debate and to put choices before the public. I have a worry about that.

The Minister is a bigger student of politics than I am. When the Fine Gael and Labour Party Government was facing enormous economic challenges in the 1980s, we had a constitutional crusade. I hope it is not just ironic that in a new era of economic challenge, a similar Government will be bogged down in a constitutional convention like our friends 30 years ago were bogged down in a constitutional crusade. We have all the structures necessary in the House and within its committees to pose the big questions. I am disappointed that we seem unwilling to do so.

The electoral system for Dáil Éireann is on the list for early consideration. That is something on which the public expressed strong views. Many politicians have expressed strong views as well. The commission report on the revision of constituencies will be passed into law at some stage in the next few months. However, the constitutional convention could decide that a new electoral system and a much smaller Dáil would be required. These are serious issues but I do not think we need the structure proposed to be put in place in order to ask those questions or to answer them. However, on the basis that this Bill is going to become law, I have one or two questions for the Minister. Can the Minister provide the timeframe for the membership of the convention? How long will members serve on the constitutional convention? Some people expressed the view that once a particular question is asked and answered, a new list of members will be selected.

I am pleased that as a result of this Bill, the members of the public will be selected at random. However, if the members of the public are elected at random, then it is absolutely imperative that the Members of the Oireachtas are selected at random, if this constitutional convention is to mean anything.

Senator Paschal Mooney: God help the Senator's innocence.

Senator Paul Bradford: If it is decided that party whips are obliged to select their team, many of the questions will already be answered. If random is good enough for the public, random must be good enough for the politicians. I know that is not the Minister's decision, but I would like the idea to go back that if the public membership of the convention must be selected at random, then Oireachtas Members should be selected in the same fashion.

Senator Feargal Quinn: I will try to avoid covering any part of the constitutional convention other than what is on this Bill. I could listen to Senator Bradford all day on that topic. I love the concept of random selection of politicians, but I had better not get into that right now. I am not an enthusiast for a constitutional convention. We have a democracy that has worked very well for us over 90 years, and it seems to me that we can make that work. If this will improve it, well and good. Similar processes have been established elsewhere, such as in Hun-

[Senator Feargal Quinn.]

gary and Switzerland. The reason I refer to these countries is to ensure we do not make mistakes and learn from others.

I am impressed by the debate material provided by the Oireachtas Library. I have some experience of public opinion polls from a commercial point of view in using them to understand what products people want, where they want to shop and so forth. I know there are professionals in this field who will organise the selection very well. We must ensure we employ them to make sure it works and we get it right. To achieve this we need balances in areas such as gender, income, social status and age.

Senator Mooney stated any discussions on reforming the electoral system for the Dáil should be done by politicians. I believe to exclude the voters from that discussion would be wrong. If we are going to have a constitutional convention, we must ensure we get it right. The steps we have taken so far are in the right direction and I believe the Bill is worthy of being passed.

Senator Fidelma Healy Eames: I welcome this useful Bill. Contrary to what others believe, I like to see the public engaged in discussions on electoral reform and that a random panel of 66 citizens will participate in the constitutional convention. It is a historic development, as well as a good one for Irish democracy. I respect we have a parliamentary democracy, but given the fact parliamentary representatives will be on the convention, it is useful to have a public panel too.

I also endorse Senator Bradford's earlier comments that if we are to be truly transparent and ensure this is a new departure, then the Oireachtas Members should be selected at random too. Although the people usually decide on constitutional change through a referendum, this has taken that process to a new and historic level by giving a representative group of the people a high level of input into constitutional reform. It is important when the ESRI draws up its random sample that it is based on gender, age, social class and geography to ensure it is truly representative of the wider population. We become systemised, whether we like it, once we are elected to the Oireachtas. We become political animals. That is why I am happy to see a random sample of the public.

I have some questions about this initiative. Will there be oversight of those chosen for the convention? Will some members of the convention be in authority over others? Will any training or introductory courses be provided for the selected group in advance? Without such, it will be rubbish. It is critical this exercise is not mere window dressing. Unless, there are training and introductory courses for the random sample, they will come in, comparatively speaking, at a lower order of thinking than a Member who has been in these Houses for a while. The fact the Bill does not contain an opt-out clause for members of the public selected is also a problem. Can this be changed? If a person is unable or unwilling to take part, they should be able to opt out. Is there a mechanism in the convention to allow people to opt out? For example, in the past, teachers were trained to be relationships and sexuality education counsellors. Some were totally unsuitable for this and could never or did not want to teach it. People should not be asked to participate in something in which they do not genuinely want to be involved. In this case, such people will not serve the convention's purpose or democracy well.

The convention is examining serious issues such as the place of women in public life, the reduction of the presidential term, the reduction of the voting age and whether we should have same-sex marriages. The changes listed, however, do not represent comprehensive constitutional reform. It is wrong the issue of the continued existence of the Seanad, for example, is left out of the programme. The convention is the ideal place for a debate on the role of the Seanad. I have no difficulty with a referendum on the future of the Seanad. However, a debate just before the holding of the referendum does not provide adequate time. If we are to consider whether this House has a place in the democratic process, we must find a model such as the

convention to give people real engagement on whether the Seanad should be retained. The Seanad is propped up by 33 constitutional articles, so there is much to consider.

The terms of reference of the convention are too tight. Wider terms of reference are needed to take into account general rights to housing, for example, and to health care. In addition, whether a referendum is needed for ratifying EU treaties should also be on the agenda. The convention is the ideal place to ask the people whether a referendum is needed to pass an EU treaty, as such a process involves significant amounts of time and money. We will see several EU treaties coming down the pipeline in the next few years. I believe international treaties as complex as the Lisbon treaty need not always be put to the people.

The Taoiseach has indicated wider terms of reference are possible. Will the Minister consider whether the existence of the Seanad will be studied in the convention or a similar forum? Will he also consider whether the convention should discuss whether a referendum is needed for each EU treaty?

Senator Kathryn Reilly: I am not as positive as other Members about this Bill, as they will be aware from how Sinn Féin voted on it in the Dáil. It is a measure of the innately conservative aspect of this charade in political reform that the electoral register has been chosen as a means of selecting delegates from the public to participate in the forthcoming constitutional convention. Of course, we cannot be too surprised at this as the promise of real political reform has been transformed into an exercise of political theatre. This convention will not bring about the new real republic as envisaged in 1916.

As a Member and a citizen, I question how the so-called constitutional convention cannot, for example, discuss even the constitutional benefits and disadvantages of a second House. Earlier, we heard about the ordinary citizen, how this legislation will allow us have access to them and for them to be part of this convention. The problem with using the electoral register to choose them is that it is not representative either of the people who live in this country, of Irish citizens on this island or of Irish citizens abroad.

There are several conditions for one to be on the electoral register. First, one has to be over 18 years of age. This means nobody under that age will have any say on the political reform under which they themselves will live for the coming decades. Second, one has to be a resident of the Twenty-six Counties which obviously disenfranchises Irish citizens living in the Six Counties. Moreover, it disenfranchises all Irish people and citizens living outside the State. It seems to be an insider's way of doing things with those most likely to seek political change not allowed into the process.

We must question whether this is an accident. It is a well-established fact that working classes and poor people are less likely to be on the electoral register. How can a homeless person be registered which would allow them to participate in this process? It is a phenomenon successive Governments have happily tolerated. In effect, it disempowers and disenfranchises the weaker elements of our society who are more likely to be excluded under this method of selection. Alongside these discriminations, the selection process specifically disallows the participation of residents in this country who are not Irish citizens, namely, the hundreds of thousands from abroad who have made Ireland their home. These people will most likely have children who are going to grow up as citizens of this country but they will not be allowed entry to the process.

In my opinion, the legislation is not going to facilitate us in reaching out to the ordinary citizens of the State. It will allow us access to a select group or to a particular demographic only. I have serious reservations about this legislation and that is why I cannot support it. Sinn Féin would like to propose an alternative whereby the CSO would be used to determine the demographic sets. The CSO is a trusted agency and it has in its possession the most detailed information on the people who live in this country. I urge the Minister to consider our proposal in this regard.

Senator Paul Coghlan: I welcome the Minister and the Bill. I profoundly disagree with one of the points put forward by my colleague, Senator Healy Eames. There is absolutely no way I would accept citizens of this democratic Republic being either trained or programmed. We must respect the individuality of our citizens. They are intelligent and have their own ways of behaving and thinking. I fully accept the fact that people will be selected at random but I respect the individual intelligence of every citizen. I do not know what will be the terms of reference but I look forward to examining them when they are published.

Individual citizens should have the choice to opt out if they do not want to participate. I do not know for how long these people will be incarcerated.

(Interruptions).

Senator Paul Coghlan: Where is the convention going to hold its meetings?

Senator Paul Bradford: Muckross House.

Senator Paul Coghlan: The 100 people who will serve on it could certainly be housed in Killarney. Will the convention have access to the services of a secretariat?

I do not accept the idea of selecting Deputies and Senators at random. I am of the view that they will have to be selected on a *pro rata* basis in accordance with the public's wishes as expressed in the most recent election. How many Senators are going to serve on the convention? It is stated that 66 citizens will be randomly chosen to serve. Perhaps the Minister will outline how it is envisaged to proceed in this regard.

For how long will the convention be in existence and how much time will it be given to compile and submit its report? Will the convention have any leeway to consider any subject matter which does not come exactly within its terms of reference? I look forward to hearing the Minister's views on the points I have raised.

An Cathaoirleach: Before I call Senator Walsh, I wish to welcome to the Visitors Gallery former MEP Ms Bernie Malone.

Senator Jim Walsh: Cuirim fáilte roimh an Aire chun an ábhar tábhachtach seo — the matter of the constitutional convention — a phlé sa Teach inniu. In my opinion, what happened this morning amounted to a complete disregard for democracy in this House. I refer to the motion we were supposed to discuss in respect of the establishment of the constitutional convention. While I would welcome the establishment of a convention which would allow citizens to have an input into important matters of policy, in many ways what happened this morning undermines any bona fides the Government might have had in that regard.

An Cathaoirleach: We are not discussing that happened this morning. We are dealing with the Bill, which is separate from that.

Senator Jim Walsh: I am aware of that fact. However, both the motion and the Bill relate to the same matter and, in that context, we are on Second Stage. If Government Ministers are taking a cavalier approach to and displaying a total disregard for the institutions of the State, then serious questions must be asked with regard to the purpose the constitutional convention is going to serve. Those who are elected by and have a mandate from the people should have ultimate responsibility for considering, debating and adjudicating on these matters. I have no doubt that the matters to which I refer will be debated again in the House when the convention completes its deliberations.

I welcome the provision in the Bill in respect of random selection. When the range of issues relating to the Constitution are discussed, it is extremely important that the views put forward are representative of all shades of opinion across society. It must be acknowledged that

Bunreacht na hÉireann, which was endorsed by the people in 1937 and which has subsequently been amended on many occasions, has really stood the test of time. When we set about incorporating or adopting the EU Convention on Human Rights and the declaration relating thereto into Irish law, it was acknowledged by Members of this House and the then Minister for Justice, Equality and Law Reform, Mr. Michael McDowell, that practically all of the human rights outlined in the convention were already well covered within the terms of the 1937 Constitution. There is no doubt that our Constitution not only reflects the period in which it was drafted but also that the vision relating to it was a sustainable one. It is important to acknowledge that point. Any amendments to the Constitution will hopefully enhance it rather than remove any of its existing provisions. In my opinion those provisions have proven to be in the best interests of civil society in this country.

From what previous speakers have indicated — I am sure the Minister will confirm whether this is the case — I gather that the purpose of the random selection process outlined in the Bill is to ensure that the views of those who will serve on the convention will be fair, balanced and representative. There is a corollary in this regard. If we do not apply the same criteria in respect of the selection of the Members of these Houses who will participate on the convention, we will undermine the aspirations relating to it. If, as other Senators stated, it will be left to the whips or the leaders of the various parties to decide who will serve, then obviously the outcome relating to the convention will be extremely skewed. In other words, it will be driven by an agenda. I would like to believe that the Minister will be in a position to confirm to the House that the selection of those Members who, along with 66 randomly selected citizens, will participate on the convention will be done on a random basis. This will ensure that all shades of opinion across both Houses will be reflected in the outcome of the convention's consideration of the various issues that will come within its remit.

Senator Paul Coghlan: A *pro rata* selection process would reflect the strength of the various groups in the Houses.

An Cathaoirleach: Senator Walsh, without interruption.

Senator Jim Walsh: Perhaps that would be the case. As long as it is random in nature, I would not have a difficulty with it reflecting the proportionate arrangements relating to the parties and the groupings in the Houses.

As a result of the nature of the process of random selection, the people who will serve on the convention will have varying degrees of expertise with regard to the complex issues they will be obliged to consider. Many Senators have referred to gay marriage as being an issue of equality. I am on the record as stating that I do not see any connection between gay marriage and equality. It is up to those who articulate the point of view to which I refer to support their arguments in favour of the matter being one of equality. I am sure everyone in the House would recognise that once marriage is redefined as an adult-centred institution as opposed to its current, historical and traditional status as a child-centred one, there will be implications for children and for society in general. I ask the Minister to ensure that where the convention considers complex issues which have serious implications for society, proper, independent, impartial and socio-scientific research that would inform the members of the convention in their deliberations be carried out in the first instance. Will the Minister let us know whether the convention will be empowered to arrange its own independent scientific research on complex issues?

Senator Susan O'Keeffe: I welcome the Minister to the House. I welcome this Bill which will allow people chosen on a random basis from the electoral register to participate in the constitutional convention. I appreciate Senator Reilly's comment that the electoral register is not a complete picture of the people who live in the country, but it is a good place to start. If it had

[Senator Susan O’Keeffe.]

been proposed that people would be chosen otherwise there would be greater outrage. It is sensible to start with the electoral register. Much of the argument about the constitutional convention has been based on the idea that it does not do all manner of things. That is true as it cannot be all things to all men, women and children. Anybody who has ever tried to propose a piece of work knows that unless one sets out a programme of work that is doable and achievable, nothing is achieved because one is overwhelmed by the mass of work to be done.

It makes sense to start with matters that people who have never sat down and been part of a constitutional convention will be relatively capable of dealing with. Issues such as the voting age and the length of tenure of the President are a good place to start.

The constitutional convention is a much more open way of government and it will give the people an opportunity to be involved in making decisions. Ultimately it will make sense if there is collaboration and co-operation. It is a far cry from the cronyism that marked the 14 years of government prior to the last election.

While the constitutional convention is flawed, and the way people are chosen will not be perfect, let us accept it and see it as a work in progress. Issues such as same-sex marriage and increasing the participation of women in politics will engage many people and will provide opportunities for good debate. The constitutional convention may provide an opportunity for people to raise other relevant constitutional amendments and recommend that action be taken.

We in the Oireachtas say that the people in partnership with the politicians will make the decisions to renew the Constitution. We all recognise that such a renewal is necessary and relevant.

Senator Michael Mullins: I welcome the Minister. I agree that we need a comprehensive debate on the constitutional convention. We lost an opportunity this morning to make a good start. We lost one hour in which Members could have made significant contributions to this debate. I know the Leader indicated that he would provide additional time after the motion had been passed to flesh out the issue. We damaged the credibility of the House by wasting 90 minutes in an unproductive manner and I hope we do not repeat it. We gave those who wish to see the Seanad abolished further ammunition to show that sometimes we do not take our work as seriously as we should.

The most important sentence in the programme for Government is that the convention is free to consider other relevant constitutional amendments that may be recommended by it. Obviously the Government has indicated that the convention should first deal with the topics listed in the programme for Government. The fact that sentence is included in the programme for Government will ensure that many more issues of interest to the people can be addressed. The 1937 Constitution is robust, but in 2012 we need to consider many other issues. This convention presents an opportunity to do that. I agree that this is a work in progress and we can build on it very significantly.

I welcome the fact that the register of electors will be used to select the 66 citizens. I am very concerned that many will be unrepresented by virtue of the inaccuracy of the register. I was appalled outside my own polling station at the recent referendum to find that people who had voted in the general election less than 18 months previously were no longer on the register. These elderly people had never moved house, had voted in all previous elections and had done so for up to 40 years, and then discovered they were not on the register of electors. The local authorities are responsible for the compilation of the register.

An Cathaoirleach: That is not relevant.

Senator Michael Mullins: It is because the register of electors will be used to select the 66 citizens. The register of electors must be looked at in the future. I suggest the Minister must

ensure that we have a better way of compiling the register. Citizens who are entitled to be on register, but are not on it have a justifiable grievance that they cannot be considered for selection as one of the 66 citizens to be chosen. That is an issue. Every citizen in this country has a PPS number and we should use that information for the compilation of the register and look at other ways of checking that it is accurate. The current system is not working.

Minister for the Environment, Community and Local Government (Deputy Phil Hogan): I thank the Senators for their contributions. This is a short Bill with the sole purpose of providing in statute for the use of the electoral register in the selection of members of the public for the work of the constitutional convention. It is a Bill to facilitate the operational aspects of implementing this proposal to allow ordinary citizens to participate in the constitutional convention.

I will not be able to answer many of the questions that were asked because the constitutional convention is not my direct responsibility. I am sure Members would have got more answers if there has been more time this morning but I understand there were difficulties.

Senator Jim Walsh: I do not think we would get too many answers from the Tánaiste.

Deputy Phil Hogan: I will not go into that point now.

I have tried to get information to address the information deficit. An expert advisory group will be established to assist the convention in its work and give specialist guidance on a variety of issues. Back-up support will be available for the people from Belmullet or from Stoneybatter to be able to understand the issues that are before them, to give them guidance and advice that is not driving them in a particular direction but giving them the information for the people to make up their minds on the issues before them. This support will come from academics, perhaps from Trinity College, but also from the political scientists in UCD, from people who are in a position to give the necessary information that people will ask for.

The convention will last for one year after the first meeting and will report to the Houses of the Oireachtas. The Members of the Houses of the Oireachtas will have plenty of opportunities to debate the recommendations and to express their views on them.

The convention will draw up more work that will have to be done regarding other issues the constitutional convention must consider. The same members will apply. Senator Bradford asked whether there will be a change in membership and a number of Senators asked the same question. The same people will remain for the 12 months. That is from the date of the first meeting and they will remain for the duration of the entire convention.

Members of the public will be selected at random. In general they will be, as far as possible, representative of society as regards age, gender, region and social class. I hope that Donegal will not be left out but I cannot deliver for Senator Jimmy Harte.

Senator Jimmy Harte: Give us an extra guarantee.

Senator Paul Coghlan: There might be a safer bet.

Deputy Phil Hogan: Members will, in the first instance, be identified using professional polling techniques by an independent polling company. The electoral register will then be used to verify them and they will have an option to decline the offer because it does not suit everyone to get involved in this work. They will have an opportunity to decline if they wish and I agree with Senator Bradford on that. It is not like jury service. One can decline this historic opportunity if one wishes.

The procedure to select the public members will be overseen by an independent chair and he or she will be from outside the political realm. Senators Mooney and Walsh have no need to worry about people being guided in a particular direction.

Senator Jim Walsh: Who picks the Chair?

Senator Paschal Mooney: I was not even thinking about that. Not for one moment did I think that the Minister would be capable of thinking that.

Deputy Phil Hogan: Senator Walsh fixed a good bit in his time but I will not go into that historical pattern.

Senator Jim Walsh: I asked who “picks” the Chair.

Deputy Phil Hogan: The Government is keen to have the diaspora involved. I understand that the embassies and the community groups abroad shall be briefed with as much information as possible to allow them to do so. A website will be provided to accept submissions and to give as much information as possible to people across the world.

We have tried to comply with what we presented the people with in the programme for Government. As Minister for the Environment, Community and Local Government, I am committed to working with my colleagues to implement some change in the political system. As Members will know, the political funding Bill and legislation dealing with the issue of gender quotas and the female gender participation in politics are before the Houses. The Electoral (Amendment) (No. 2) Bill will limit and substantially reduce corporate donations. We are also reducing the number of Deputies. The Taoiseach has said quite openly that he is not including issues related to the Seanad in the convention. People will disagree, and have disagreed, with him in the House over that. I respect their views but I cannot come here and change it because the Taoiseach and the Government took that decision. Later this year an electoral (amendment) referendum spending Bill will be introduced and it will make spending at referendum time more transparent.

Who knows what will emerge from the deliberations at the constitutional convention? Who knows what issues it will throw up? If there are any then the Government will consider them. The Electoral (Amendment) (No. 2) Bill is a great opportunity. For the first time, as it was done in the Netherlands and Canada, members of the public from across the country and every region will have an opportunity to participate in the people’s constitutional convention and in the people’s Constitution. We hope that recommendations will emerge that, as we head towards 2016, we will be proud of in terms of a new republic that we will all participate in. We hope that all of us will aspire to make the necessary changes needed to modernise our Constitution.

Senator Michael Mullins and many other Senators made points about the electoral register. I agree, wholeheartedly, that the manner in which the electoral register is drawn up at the moment is less than satisfactory. Certain local authorities have a haphazard approach to drawing up an accurate electoral register. I am examining proposals to see how we can make it a lot more certain. Citizens have got the fright of their lives at polling stations when they discovered that they had been knocked off the electoral register through no fault of their own. From the point of view of participation in the electoral process this is unacceptable.

Senators: Hear, hear.

Deputy Phil Hogan: If it happened in Ballinasloe then it has happened in a lot of other places. It is unacceptable. We are examining ways to give certainty, including the one that was mentioned, to assist the process by using data that is available from other sources. I thank Senators for their contributions.

Question put and agreed to.

An Cathaoirleach: When is it proposed to take the next Stage?

Senators: Now.

An Cathaoirleach: Is that agreed? Agreed.

Electoral (Amendment) (No. 2) Bill 2012: Committee and Remaining Stages

SECTION 1

Question proposed: "That section 1 stand part of the Bill."

Senator Jim Walsh: Given what the Minister has said I have a few questions. How will the expert advisory group be selected and constituted? I noted what the Minister has put on the record and that it will be non-instructive. It will be advisory by providing information for the members to deliberate on rather than steer them in a particular direction. That was a concern of mine. Will votes be recorded? Will all of the debates be in public session? Will votes at the convention be recorded? Groups can make submissions and the convention can accept submissions. Will groups be entitled to request oral hearings? I also ask the Minister to give us some information on the random selection of Oireachtas Members.

Senator Paschal Mooney: I am grateful to the Minister for referring to the Irish diaspora. He also mentioned that the embassies will be involved and that there will be a website. Can he elaborate and indicate whether the diaspora will be involved? Is it a general approach? Will the diaspora, like any group or individual, have the right of submission?

Minister for the Environment, Community and Local Government (Deputy Phil Hogan): Obviously when the chair of the convention is elected he or she will have an input into how these matters are organised, based on previous experience in other jurisdictions. The advisory group will be drawn from whatever sectors are required such as political science, constitutional law and others. Obviously dealing with a Constitution means we will need legal advice. The group will be in a position to assess but there will be no such thing as steering people in a particular direction.

Senator Jim Walsh: Can the group decide which experts to access?

Deputy Phil Hogan: Yes. It will be in a position to decide. I envisage that it will be like past forum with oral presentations and public sessions and that all matters will be noted and recorded in the normal way in the event that a vote takes place. The logistical preparations have not been finalised by the Government because it wants to engage with the people that will steer the convention and its independently selected chair. I have not seen a precedent for a random selection of Oireachtas Members but this might be a year of precedence. However, I do not envisage it.

Senator Jim Walsh: That skews the outcome.

Deputy Phil Hogan: If the Senator was on it, yes.

Senator Jim Walsh: That is out of order.

Deputy Phil Hogan: That is what the Senator has said.

Senator Jim Walsh: I was just making a point.

Deputy Phil Hogan: No, that is what the Senator has said.

Senator Jim Walsh: On a point of order. I have treated the Minister with a great deal of respect and expect it in return.

Deputy Phil Hogan: I withdraw my remark and am glad to have resolved the matter.

Senator Jim Walsh: There are some sensitive issues.

An Cathaoirleach: The Minister has withdrawn his remark.

Deputy Phil Hogan: The Senator has suggested that the outcome of the convention will be largely determined by whom the political parties appoint from the Oireachtas. It will also consist of 66 members of the public and I respect them and their views. It will not be politically driven. The politicians present may have strong views but the members of the public will also be present and they are entitled to their say. They may dilute the excessive arguments that may arise on either sides when debating sensitive issues.

I hope for the widest possible participation from the diaspora. There will be arrangements made for their involvement via a website, through the embassies and the community groups who will be alerted about the constitutional convention. If Senator Mooney wishes to make representations on their behalf he can do so via the Tánaiste.

Senator Sean D. Barrett: I agree with the Minister. As Senator van Turnhout has said, citizenship is a vital part of the Bill. The experts have been in the media. They have written books and newspaper articles and have access to Deputies and Senators. It is the citizens that we want to target. The experts can help but the citizens, the sovereign people, are the kings and queens of the process. An important role for the chairperson will be to ensure we hear what those people think. I hope the citizens dilute the experts.

Senator Jim Walsh: I accept what the Minister has said. Obviously the 66 citizens will be in the majority but in practical terms some may have a good deal of experience at debating by being involved in other organisations but many may not. The random selection will include people who would not normally be involved in public debating, whereas Oireachtas members, whose job it is to articulate and argue and debate and have more experience, tend to have greater influence. Given the efforts by many of the political parties to go down the liberal route I am concerned that could distort the outcome of some of the deliberations. Therefore, there is a strong argument to be made for random selection of Oireachtas Members on a party proportional basis as Senator Paul Coghlan pointed out. I am not seeking to change the representational order of the House and if there is only one viewpoint from Members it may have a disproportionate effect on influencing the outcome. That is my concern. The exercise is good if we can maintain the integrity of the system. If we looked to NGOs and various organisations rather than a random selection, obviously the outcome would be a reflection of their viewpoint, whereas what we are seeking is a random sample which should reflect public opinion as a whole.

Deputy Phil Hogan: It appears the Senator is afraid of the public in terms of the 66 people who will participate.

Senator Jim Walsh: No.

Deputy Phil Hogan: He should have no fear about it.

Senator Jim Walsh: It is the political parties I fear.

Deputy Phil Hogan: I can understand that too. We have a lot of history in that regard. He should not be afraid of any view from any quarter. The purpose of a people's convention is to have everybody involved and respecting each other's point of view with advice and guidance available, if required, in order that they can make an informed view before arriving at a decision or voting on it. I do not share the Senator's view. He should not be afraid of the notion of public participation in the process.

Senator Jim Walsh: Yes, but the Government will have an agenda.

Deputy Phil Hogan: Everyone has an agenda so far as the Senator is concerned.

Senator Jim Walsh: No.

Deputy Phil Hogan: I respect the fact that people should be able to congregate and participate and have a vote and that everybody's point of view is heard and respected, irrespective of the subject matter in the Constitution. I agree with Senator Barrett that this is a people's convention. The Senator and I will have plenty opportunities to debate the outcome in the House and elsewhere as will experts. I agree that politicians can lead but I hope the political parties that put forward representatives for the convention will allow the public the lion's share of the time to articulate their concerns and aspirations for the constitutional change needed, if that is the outcome. Let us await its recommendations.

6 o'clock

Senator Jim Walsh: I agree with the sentiment. To carry that through, why not have 100 citizens and no Oireachtas members on the convention? There is no need for Members if the point which the Minister made, to which I fully subscribe, would lead to a citizenry produced recommendation on all these issues.

Deputy Phil Hogan: I am pleased that such a historic precedent is being created for future reference.

Question put and agreed to.

Section 2 agreed to.

Title agreed to.

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

An Cathaoirleach: When is it proposed to sit again?

Senator Paul Coghlan: Ag 10 a.m. maidin amárach.

Adjournment Matters

Water and Sewerage Schemes

Senator Tony Mulcahy: Will the Minister consider increasing the grant for group sewerage schemes from €2,200 to a more realistic amount, say, €4,000 or €5,000, which would be nearer the grant of €6,000 for group water schemes. In the current climate there may not be many more group water schemes but there will be many more group sewerage schemes, given the issue of septic tanks. A substantially increased grant would incentivise many communities to connect, particularly in urban areas, where the mains system is within a couple of hundred metres.

Recently I attended a meeting of the Woodlawn Estate residents association, Loughville, Ennis, County Clare. There are 37 septic tanks in an area of about 600 m away from the mains. This is a sensitive area, being part of the Drumcliffe water catchment area. I have no doubt this area will be one of the first to be inspected. If a reasonably substantial grant structure was in place there would be a quicker buy in to connect to the mains systems and this would deal with the concentration of septic tanks in many areas.

[Senator Tony Mulcahy.]

In many rural areas there are groups of ten, 12 and 15 septic tanks in the open countryside. A more substantial grant system would encourage many people to put in place a larger group system.

Minister for the Environment, Community and Local Government (Deputy Phil Hogan): I thank the Senator for raising the matter.

I am impressed with the work I have seen across the country which has been advanced by the group water sector with the support of the Department, local authorities and the National Federation of Group Water Schemes, in improving water supplies in rural areas. Some €750 million has been spent in the past decade or so by the Exchequer in supporting the sector, particularly to address deficiencies in supplies which were highlighted in a case against Ireland taken to the European Court of Justice.

With the priority attached to the group water sector in recent years, only limited funding has been available for group sewerage schemes and the take-up has also been limited. I am interested in the degree to which group sewerage schemes can make a meaningful contribution to the improvement of the water environment in rural areas in the period ahead. The consideration of this issue has to take account of technical and operational issues as different issues arise in the progression of group sewerage schemes compared with group water schemes.

The National Rural Water Services Committee, which has a role in advising my Department on rural water policy, has examined this issue in preparing the investment strategy for the rural water sector for 2012 and recommended that the rate of grant be reviewed for group sewerage schemes. The rate of grant available for group sewerage schemes is €2,031.58 per house or 75% of the cost of the scheme, whichever is the lesser. The examination of this issue will take into account the results of a pilot programme funded by the Department to test a range of small-scale wastewater collection and treatment systems under Irish conditions.

The pilot programme was implemented by local authorities to test a range of new, small-scale wastewater collection and treatment systems. Twelve villages in six counties were selected as locations for the pilot programme under which appointed contractors design, build and operate the infrastructure over a 20 year period. The experience of the pilot programme will inform guidance being developed by my Department for the roll-out of future group sewerage schemes. I hope the issues associated with reviewing the grant level will come to a conclusion shortly to facilitate the progression of a number of group sewerage schemes later this year and to take account of the results of the pilot programme in which we have been engaged over the past six months.

By the end of the year, depending on the resources and savings we make in the rural water sector, I hope we will be in a position to examine, along the lines mentioned by Senator Mulcahy, how we can improve areas where there is ribbon development on the edges of towns and villages so that they can be included in a way that is more financially viable for householders while meeting the groundwater conditions to which we aspire.

European Court Judgment

Senator Rónán Mullen: I welcome the Minister to the House. This Adjournment matter concerns the question of whether the expert group established to examine the options available to the Government in responding to the European Court of Human Rights decision in *A, B and C v. Ireland* case is clear that the judgment does not require Ireland to introduce abortion in either a regulatory or statutory form and that the group knows it is free to recommend options that do not require the performance of abortions in Ireland.

I raise this matter because legitimate concerns have been raised about the attitude the Minister for Health appears to have taken in recent debates. Prior to the last election, Fine Gael

gave commitments that everyone would support. According to a recent Millward Brown Lansdowne opinion poll, 80% of respondents agreed with the proposition. The Fine Gael commitment was that it would ensure all necessary medical treatment for women in pregnancy, while the duty of care to preserve the life of the baby would always be upheld. It is an attractive proposition because it guarantees the best medical care for women in pregnancy but also the duty of care to the unborn.

The Minister for Health appears to be under the impression the judgment requires Ireland to introduce abortion into Ireland either via regulation or statute. Why do I say that? It is obvious from the Minister's response to citizens' queries on the issue and from his statements in the Dáil during the debate on Deputy Clare Daly's Medical Treatment (Termination of Pregnancy in Case of Risk to Life of Pregnant Woman) Bill. We need to be clear on the point that nowhere does the *A, B and C v. Ireland* judgment mention or require Ireland to introduce abortion. In that instance and in many others, the court has said there is no such thing as a right to abortion under the European Convention on Human Rights. If the expert group or the Minister were to ignore this basic legal fact, it would be both a damning indictment of their attitude to unborn human life and would misrepresent the law with the effect of heralding abortion in Ireland. The court has required that our constitutional position is reflected in what would then happen. It remains open to Ireland to determine its precise constitutional position.

More worryingly, in his correspondence and in his Dáil speech on the Medical Treatment (Termination of Pregnancy in Case of Risk to Life of Pregnant Woman) Bill, the Minister seems to be pre-empting the expert group's presentation of options. Everything he said on the matter seemed to indicate his intention to bring abortion into Ireland in some form. He has not on any occasion mentioned the right to life of unborn children or the duty of care to which I referred. He seems to assume that introducing abortion in line with the notorious X case would require a very limited abortion regime when the opposite is the case. The Supreme Court decision in the X case in 1992 did not stipulate any time limits and did not hear from any psychiatrists. The endorsement of a threat of suicide as a ground for abortion is medically highly questionable but paves the way for the practice of abortion on demand in Ireland.

The Minister said he must introduce regulation or legislation in line with the X case. He failed to reflect on the fact that, if anything, in the knowledge we have gleaned since the decision in 1992, nowhere is there evidence that abortion is in anyway therapeutic on mental health grounds. The question people are asking is in what precise circumstances does abortion act as a causative factor with adverse mental health sequelae in women. This is an important issue that must be explored.

We find ourselves with a judgment from the European Court of Human Rights but we have experience in Ireland and we have learned an awful lot in the past 20 years. Were we to legislate for the constitutional position, we could not but introduce abortion, in effect, on demand on the basis of the threat of suicide as grounds. The concern that many people have, including myself, is the perception that the expert group, in light of what the Minister said, may come back with a narrow list of options, all leading to abortion when there are many different options. What must be explored with the European Court of Human Rights is whether Ireland would be better off not introducing legislation rather than legislating in line with the Supreme Court decision that is highly problematic, especially in light of what we know about abortion and issues of mental health. Another important principle is that, whatever we come up with, the Irish people must be asked to sign off on what is proposed. This is a basic democratic principle, particularly on an issue so sensitive.

During a previous coalition Government, the former Fine Gael Party leader and former Taoiseach, John Bruton, was asked whether he would legislate in line with the 1992 decision of the Supreme Court he said that he would not. When asked why by the journalist on "Six-One", he said that it would have the effect of bringing abortion into Ireland. We need to keep

[Senator Rónán Mullen.]

our best traditions. We do not have a medical problem but a legal problem. We have the best medical care for women in the world in terms of maternal mortality but we need to make sure the expert group does not come back with a narrow series of options, all of which point in the direction of legislating for a flawed Supreme Court decision.

Deputy Phil Hogan: I thank Senator Mullen for raising this matter. I apologise that the Minister for Health cannot be here. Abortion in Ireland is prohibited except where it is established, as a matter of probability, that there is a real and substantial risk to the life of the mother and that this risk can be averted only by the termination of her pregnancy. Following the ruling in the X case, this risk to the life of the mother includes the risk of suicide. In 2009, the European Court of Human Rights heard an application by three women that it is a breach of their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms for the Irish State not to provide abortion in certain circumstances. This is the A, B and C *v.* Ireland case to which Senator Mullen referred.

The court found no violation of the convention in regard to the first and second applicant — Ms A and Ms B. However, the court determined that the rights of Ms C had been violated under Article 8 of the convention. The judgment of the court confirmed that Article 40.3.3° of the Constitution is in conformity with the European Convention on Human Rights. Article 40.3.3°, as interpreted by the Supreme Court in the X case, means it is lawful to terminate a pregnancy in Ireland if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by a termination of the pregnancy. The court did, however, rule, that “no criteria or procedures have been . . . laid down in Irish law . . . by which that risk is to be measured or determined, leading to uncertainty” and held that further legal clarity was required. Ireland has signed and ratified the European Convention on Human Rights and Article 46 of it states that signatories agree to abide by any judgment of the court in any case to which they are parties. Ireland is, therefore, under a legal obligation to implement the judgment of the European Court of Human Rights in A, B and C *v.* Ireland.

In January, the Government established an expert group to recommend a series of options on how to implement the A, B, and C *v.* Ireland judgment. The terms of reference of the expert group, as approved by Government, are to examine the A, B and C *v.* Ireland judgment of the European Court of Human Rights, to elucidate its implications for the provision of health care services to pregnant women in Ireland, and to recommend a series of options on how to implement the judgment taking into account the constitutional, legal, medical and ethical considerations involved in the formulation of public policy in this area and the overriding need for speedy action. I assure the Senator that the expert group is fully aware of its remit. The Minister for Health, Deputy Reilly, is confident the group will fulfil its task efficiently.

Senator Rónán Mullen: I thank the Minister for his response, which is legally flawless. I contrast the response of the Minister, Deputy Hogan, with what was said in the Dáil, to the effect that Ireland must introduce legislation in line with the Supreme Court decision. The Minister has not so erred and I take it as reassurance that his contribution is more legally clear and correct than what was said in the debate in the Dáil on the legislation to which I referred.

Deputy Phil Hogan: The Senator should be assured that it is legally proofed and legally clear.

Childhood Obesity

Senator Susan O’Keeffe: I welcome the Minister of State, Deputy Joe Costello. Some years ago the county child care committee in Sligo established the Early Years health promotion project which is now co-sponsored by Sligo and Leitrim child care committees in collaboration with the counties’ sports partnerships, a community dietician and community workers from the

Health Service Executive. What is being done under the scheme is simple but practical, namely, targeting young children up to six years of age to encourage healthy eating, physical activity, oral health, sun safety, gardening and outdoor play. This is the type of project to which we routinely point when it is done in one of the Scandinavian countries and we wonder why we cannot have something similar in this country. As we are all agreed, if we are to safeguard the nation's health, we must begin to work with children and their parents at the earliest possible stage of development.

The number of children involved in the scheme in counties Sligo and Leitrim has grown steadily from the 500 earmarked five years ago to more than 1,500 today. The cost of running the scheme is calculated at 58 cent per child per week. It includes working with children with special needs, parent and toddler groups, children from the Traveller community and private and community services. As well as directly benefiting the children concerned, the initiative is also building a nucleus of knowledge and good practice in the community in regard to healthy eating and living. The benefits for the wider community are clear to see after only five years and will undoubtedly build over time. There should be something similar in every community in the country. The statistics clearly show that more and more children are suffering from obesity, with all the evidence suggesting the problem will get worse in the next decade without effective intervention. The Seanad Public Consultation Committee, of which I am a member, recently heard that some 30% of common cancers were preventable entirely through lifestyle changes, that is, what we eat and drink and the amount of physical activity in which we engage. The Government must take action to ensure children receive a good grounding in healthy living which they can carry into adulthood and pass on thereafter to their own children.

I am seeking a guarantee that funding for the Early Years project in Sligo-Leitrim will continue once the current allocation runs out in September. The Government has indicated its desire to roll out a national programme of this type, but there has been no concrete action in this regard. I understand the Health Service Executive is examining the strengths and weaknesses of the programme, perhaps with a view to using it as a model. Those running the Early Years scheme support and advocate a national project and will do everything they can to assist in its roll-out. At this juncture, however, they are uncertain of the future of their own project. Their expertise and good work should be supported and taken on board in seeking to introduce a nationwide scheme. For that to happen, sufficient funding must be provided.

Minister of State at the Department of Foreign Affairs and Trade (Deputy Joe Costello): I am taking this Adjournment matter on behalf of my colleague, the Minister for Health, Deputy James Reilly, who is speaking in the other House. The Minister established the special action group on obesity to advise him on priority actions to tackle overweight and obesity. In the light of the growing problem of obesity among children, the group has identified the necessity of targeting childhood obesity as one of a range of action measures. We know from the ongoing Growing Up in Ireland study, carried out by the Department of Children and Youth Affairs, that one in four children as young as three years of age is overweight or obese. It is well accepted that childhood obesity can track into adulthood and is linked with a range of chronic diseases, including type 2 diabetes and heart disease.

The Health Service Executive is represented on the special action group on obesity and has updated it on successful initiatives for young children, including the Early Years health promotion programme in Sligo-Leitrim. I understand the programme is a partnership between the local family resource centre and the HSE and funded through the executive's Border counties child care committees via the local region. The HSE has provided funds of €15,000 for the Early Years health promotion programme for training and resources in 2012. The training is intensive and while it produces excellent results, the cost per beneficiary is high.

It is in this context that the HSE approached the Department of Children and Youth Affairs and arranged a meeting to discuss the long-term future of the programme. The Department of

[Deputy Joe Costello.]

Children and Youth Affairs, in turn, facilitated a joint meeting with the Department of Education and Skills to discuss national training possibilities. The outcome of this meeting is that discussion is under way with officials to ensure all voluntary education centres throughout the country include the Early Years health promotion programme as part of their training agenda. This will allow for everyone working in the area of child care to do this course as part of their training. In other words, the Early Years health promotion programme will not only continue to be provided in the Sligo-Leitrim area but will, as the Senator proposed, be mainstreamed for the entire country in order that all child care workers can benefit from the training. The good news story that is the health promotion programme initiated in Sligo-Leitrim is being expanded in order that children who are overweight or obese can obtain consistent advice on healthy eating and being physically active.

Senator Susan O’Keeffe: In regard to cost, the Minister of State’s indication that the cost per beneficiary is high is completely at odds with what the managers of the Early Years scheme have told me. Second, while I understand talks have taken place with voluntary education centres with a view to rolling out the scheme across the State, that process of engagement has apparently stalled. As such, the people running the scheme in Sligo-Leitrim have been left in limbo. If the project is not, after all, going to be delivered on a nationwide basis, what will happen to it when its funding runs out in September? I appreciate that the Minister of State may not have this information to hand.

Deputy Joe Costello: I have given the most up-to-date information from the Minister. Given his indication that the project will be mainstreamed, I assume that whatever difficulties have arisen are being addressed and that the matter will be resolved. We can take it in the round that this is now part and parcel of the way forward. In conjunction with the Minister for Children and Youth Affairs, the Minister for Education and Skills and the Health Service Executive, the decision was made that because it was such a good programme, it should be rolled out across the State.

Senator Susan O’Keeffe: I thank the Minister of State.

An Cathaoirleach: As Senator Martin Conway is not in the Chamber to raise the matter he has tabled for debate, the House now stands adjourned.

The Seanad adjourned at 6.30 p.m. until 10 a.m. on Friday, 13 July 2012.