Vol. 219
No. 8

Wednesday,
11 December 2012

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Business of Seanad 563
Order of Business 563
Horse and Greyhound Racing Fund Regulations 2012: Referral to Joint Committee. 579
90th Anniversary of Seanad Éireann: Statements 579
Health and Social Care Professionals (Amendment) Bill 2012: Second Stage 589
Credit Union Bill 2012: Committee Stage. 599

SEANAD ÉIREANN

Dé Máirt, 11 Nollaig 2012

Tuesday, 11 December 2012

Chuaigh an Cathaoirleach i gceannas ar 12.00 p.m.

Machnamh agus Paidir.
Reflection and Prayer.

Business of Seanad

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

The need for the Minister for Defence to reconsider the closing down of the Reserve Defence Force base in Clonmel, County Tipperary and to relocate it to the old Kickham Army barracks; and if he will outline the cost of transporting RDF staff to and from Cork several times a week.

I have also received notice from Senator Lorraine Higgins of the following matter:

To ask the Minister for the Environment, Community and Local Government if he will update the House with regard to the registration numbers of the wastewater treatment systems under the Water Services (Amendment) Act 2012; and if he will indicate if he is willing to provide financial support for low income families for remediation works which may be necessary following an inspection under the said Act.

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

To ask the Minister for Education and Skills to address the issue of a ten year old boy (details supplied) who suffers from Down's syndrome, arthritis, Down's arthropathy, sleep apnoea and hearing loss, who is not at school owing to parental concerns and has been refused access to home tuition.

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

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, motion re referral of Horse and Greyhound Racing Fund Regulations 2012 to the Joint Committee on Agriculture, Food

and the Marine, to be taken at the conclusion of the Order of Business, without debate; No. 2, statements on the occasion of the 90th anniversary of Seanad Éireann, to be taken at the conclusion of No. 1 and conclude not later than 1.45 p.m., with the contributions of spokespersons not to exceed five minutes each; No. 3, Health and Social Care Professionals (Amendment) Bill 2012 - Second Stage, to be taken at 1.45 p.m. and conclude not later than 3 p.m., with the contributions of spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each and the Minister to be called on to reply not later than 2.55 p.m.; No. 4. Credit Union Bill - Committee Stage, to be taken at 3 p.m. and conclude not later than 5.30 p.m.; and No. 5, Personal Insolvency Bill 2012 - Report Stage, to be taken at 5.30 p.m. and conclude not later than 8 p.m.

Senator Darragh O'Brien: Last week, I asked the Leader for a debate on perinatal care and I have got a commitment for such a debate. Perhaps it could be scheduled early in the new year. Many Senators across the House have sought this debate to inform us further on that issue.

The Leader has outlined the business for this and next week which is crucially important for the future of the country in the sense that it gives the Oireachtas an opportunity to rectify mistakes made in the budget. They have to be seen as mistakes because I cannot believe the Government would consciously make some of those decisions when one looks at the small print. I mention specifically the cut of €350 per annum, almost 20%, in the respite care grant paid to 75,000 families throughout the country. I do not see how that is fair. Nobody can explain how that is a justified cut. In the social welfare Bill next week we will get an opportunity to vote on each of the measures. Senator Paschal Mooney, the Fianna Fáil spokesperson on social protection, and I will table specific amendments on that issue. Will the Leader explain how it is fair that the back to school allowance is being cut by €50 per child?

Senator Jillian van Turnhout: Again, for the second year.

Senator Darragh O'Brien: Will the Leader or Deputy Leader explain how that is fair? How is it fair that child benefit has been cut across the board, not just by the announced €10 which was hidden in the small print? Neither the Minister for Finance, Deputy Michael Noonan, nor the Minister for Social Protection, Deputy Joan Burton, mentioned that the cut gets worse depending on the number of children, up to a cut of €20 per month? How should people accept those cuts? I do not specifically blame the Labour Party. It has a greater responsibility in this regard but both Government parties have agreed this cut. On the basis of the pre-election commitments given by the Labour Party specifically in the area of child benefit, a vote for the Labour Party was supposed to protect child benefit. Will someone explain to me whether it is like what the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, said at the weekend that they were only election promises and they do not really matter? It appears to be same with the increase in third level fees, which seems to have been forgotten, and the property tax. The Government is not seeking to exempt those with pyrite affected houses but will ram through an anti-urban property tax.

Following the weekend, I understand many Senators and Deputies took the time to lobby the Ministers. Perhaps Senator Bacik can tell the House the progress of that lobbying and if the Labour Party will back a cut in child benefit, the respite care grant and the back to school allowance. Next week, Members will have a better opportunity to vote against those cuts in the House because of the numbers issue. The Government does not have the majority it enjoys in the other House to be able to ram through these disgusting cuts. I ask Members to examine the

cuts carefully this week and I ask Labour Party Senators, in particular, to look at the effect of these cuts that their constituents are telling them about. They will have the opportunity to vote against many of the proposed cuts. I seek clarification from the Leader and deputy Leader as to the success or otherwise of the lobbying to the Minister for Finance and the Minister for Social Protection at the weekend.

An Cathaoirleach: Before I call Senator Bacik, I am sure Members would like to join me in welcoming to the Visitors Gallery Mr. Bob Brolly from the BBC and Mr. Patrick Williamson who is involved with the National Federation of Demolition Contractors. They are both welcome.

Senator David Norris: A happy combination.

Senator Ivana Bacik: As Senator Darragh O'Brien said, we will have an opportunity next week to debate the social welfare Bill and I do not want to pre-empt that discussion. I find it very hard to take lectures from the selective amnesiacs across the House who have conveniently forgotten that they got us into this mess. As they signed us up to a property tax, that was their commitment.

Senator Darragh O'Brien: Can we not deal with the specific points raised? Are they fair?

Senator Ivana Bacik: I believe it is fair that we move to a system-----

Senator Paul Coghlan: We are about fairness.

Senator Ivana Bacik: -----where tax is also imposed on property. I do not have a difficulty with that. We need to ensure it is imposed fairly and we will have an opportunity to debate that issue when it is brought before this House. I will not take lectures from Senator Darragh O'Brien or his colleagues-----

Senator Darragh O'Brien: It is not a lecture. The Senator asked me questions.

Senator Ivana Bacik: ----- about the inequities of a property tax they signed us up to in the first place-----

Senator Darragh O'Brien: What about child benefit and respite care?

Senator Ivana Bacik: ----- and the inequities of a troika programme into which they got the country.

Senator Darragh O'Brien: Child benefit is not mentioned in the memorandum of understanding.

Senator Ivana Bacik: I did not interrupt Senator Darragh O'Brien.

An Cathaoirleach: Senator Bacik to continue, without interruption.

Senator Darragh O'Brien: I apologise, a Chathaoirligh.

Senator Ivana Bacik: On the specific issue the Senator raised, it is no secret that the Labour Party wanted to impose higher taxes on higher earners. That was clear from our manifesto. We were not elected into a majority or single-party government. It is a coalition Government and this budget is, of necessity, a compromise. Many of us are most unhappy with the cuts to

the respite care allowance and the cuts to child benefit. Again, that is no secret. However, we recognise the incredible difficulty in which we find ourselves as a result of the mismanagement of the economy by the Fianna Fáil-led Government over many years. All of us, including the Senators opposite, should welcome the comments about the promissory note the Minister, Deputy Rabbitte, made over the weekend. Something that will really stick in people's throats in March-----

Senator Darragh O'Brien: Really.

Senator Ivana Bacik: -----is if we see more money being paid over in respect of promissory notes, again signed up to by the previous Government in respect of the former Anglo Irish Bank.

Senator Paul Coghlan: Fianna Fáil left a lot of IOUs on our plate.

Senator Ivana Bacik: It certainly did.

Senator Darragh O'Brien: The Senator forgot about the back-to-school allowance. Perhaps she might address that while she is at it.

Senator Diarmuid Wilson: We would be in a bigger mess if we had to listen to Senator Paul Coghlan and his colleagues.

Senator Ivana Bacik: I am sure colleagues on both sides will agree that we should all join in condemning the violence in Northern Ireland which got worse over the weekend. I know other Senators raised the issue last week. In particular, yesterday's appalling attempted murder of a police officer by throwing a petrol bomb into a car brings back dreadful memories of the worst days of the Troubles in Northern Ireland. At a time when it seemed that society in the North was coming back to normality and people were looking forward to the Christmas season there, it is very hard to see that happening again. We might have a debate on Northern Ireland in the new year.

There is also the related issue of the recently released missing chapter of the report of the inquiry into the murder of Pat Finucane, the Belfast solicitor, in 1989. It is clear we need to see fuller facts about the circumstances outlined in that chapter which give rise to serious consideration about collusion. Many of us have always sought more clarity on the circumstances of Mr. Finucane's murder. His family have been to the fore in seeking that and we need more information about it. We should debate that matter if we are debating Northern Ireland.

Together, with Senator Norris and Deputy Conway, I will be hosting a briefing on the expert group report on the judgment in the A, B and C *v.* Ireland case at 4.30 p.m. in the audio-visual room. I urge those who are interested to attend. We have had our debate on the matter in this House, but the debate in the other House is ongoing and the Oireachtas Joint Committee on Health and Children will hold hearings in January. We will hear from Professor Veronica O'Keane and Dr. Peter Boylan, among others.

Senator Jillian van Turnhout: I will save my comments on the budget for next week, but I am very concerned about the cumulative cuts. We cannot just consider this year's budget but must also consider previous budgets and how they affect children and families directly. Our group has tabled a motion for debate tomorrow on the value of youth work. Youth work organisations are being affected by the cuts and I hope we will have our colleagues' support in

that debate.

This morning the Supreme Court has handed down its full judgment, which was unanimous, in its ruling that the Government acted wrongfully by spending €1.1 million on its information campaign in the recent referendum. I call for this House to have a debate on how we hold referendums to ensure we have a fair and balanced debate.

While I know I am beginning to sound like a broken record, last week's budget announced €546 million for the new child and family support agency. The task force report was published in July. Nobody in this House could say what the remit and scope of the new child and family support agency entail, yet we have allocated a budget of €546 million. We urgently need a debate. We cannot wait for the legislation to be placed before us and then fine-tune the legislation. If the Minister for Children and Youth Affairs is not available, I have suggested to the Committee on Procedure and Privileges three individuals of high calibre who could come before this House and discuss the new agency with us. I do not understand the reason for the delay.

I repeat the call I made during the debate on Senator Quinn's excellent Bill on employment permits. We should have a debate on forced labour in Ireland. I asked that the Minister for Justice and Equality publish the International Labour Organization's report on criminalising forced labour in Ireland. This report needs to be published, we need to criminalise this and there needs to be urgency on this issue. I repeat my call for that debate.

Senator Feargal Quinn: I thank Senator van Turnhout for referring to the Employment Permits (Amendment) Bill 2012. I am not sure that the Bill will go any further because the Minister intends to introduce his own Bill next year. I suppose what frustrates me about that is it will take at least eight or nine months to be introduced and enacted whereas the Bill initiated here could have done something much more quickly.

Although it is not really the work of this House, there is something we could do for the family of an Irish citizen who has been jailed, without trial and without even the suggestion of what he has been arrested for, in Sri Lanka since September 2007. Last week family members appeared before the Joint Committee on Foreign Affairs and Trade to make a plea whether anything be done. I believe there is an opportunity during Ireland's Presidency of the European Union for the Taoiseach to make an approach. We could ask the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Gilmore, to come to the House to explain what the Department is doing. I say this not as a criticism of the Minister as I believe he is doing what he can and the Irish ambassadors there over the years have been doing their best, but because here is an Irish citizen, whose wife lives here in Ireland with their three daughters and who has been detained without trial or any explanation of why he was arrested and who has been left in solitary confinement to a large extent. I believe something can be done. The Tánaiste is supportive of what should be done on that basis.

I asked recently for a debate on shale-gas fracking. We should now consider it because there has been a change, announced in the past week, in Britain where they intend to go ahead, with tight controls on fracking. The reason they are doing this is because they recognise that there has been no disadvantage in America over the years. There has been a huge impact on fuel costs in America because, for a number of years, they had been using this technology successfully and Britain does not want to be left behind. We should not be left behind. We should at least be debating this and we have been remiss in not allowing the debate to take place. There are a number of Senators, particularly Senator Mooney, who expressed deep concern. I am pleased

to hear such concern because we should bring this out into the open. In Britain, they have brought it out into the open and they have made a decision to go ahead with shale-gas fracking but under tight controls. We should have the debate in this House.

Senator Eamonn Coghlan: In my opening remarks this time last year, perhaps on this day last year, when I stated "Britton conquered Europe," I was referring not to economic affairs in Europe but to young Fionnuala Britton who happened to win the European Cross Country Championships for Ireland. It would be remiss of me if I did not mention this young lady again today because on Sunday last, she won the European Cross Country Championships and did something no other European lady has ever done, that is, retain the title. Not only did Ms Britton win the championship, but mná na hÉireann came through on the day when they became the first ever Irish women's team to win a major international cross-country event. When I look at these young ladies, who were not expected to win a medal of any colour, let alone gold, it is a reflection on the wonderful volunteers and coaches who they have had from the time they were young children all the way through to being European champions. I commend all the coaching that has taken place in Ireland.

In 2012, there has been much doom and gloom - cost-cutting and budget reductions - but when we reflect on the year, I think we will find that the highlights came from the men and women who represented Ireland in sports around the world, from Ms Katie Taylor to Ms Britton, Ms Annalise Murphy, Mr. Rory McIlroy, even Leinster, and the Donegal team which won the all-Ireland football championship. I welcome that there was only a 2.5% reduction in the budget for sport this year. Despite the cuts affecting all of these athletes, they never complain about them. They get on about their business and do the hard work to see can they represent themselves and Ireland proudly. I want to ask the Leader about the grants which were announced last week where some €26 million went to sports. GAA, soccer and rugby, which are the big three sports, receive the majority of the funding. In future we should consider not giving the money to where it already is, but to start looking at smaller sports which need as much help as possible.

Senator Mary M. White: At the weekend we had a trenchant response from the Minister for Social Protection, Deputy Joan Burton, that she would stand by the cuts in the budget. I hope she was listening to and looking at Archbishop Diarmuid Martin on "The Frontline" last night. With the Cathaoirleach's permission, I would like to draw attention to what he said. He stated the budget is to serve the common good and over a certain period one must be able to look at where there have been positive consequences and unforeseen negative consequences and to have the courage to stand up and state one got it wrong and be big enough to admit it.

Senator Terry Leyden: Good advice.

Senator Mary M. White: The archbishop also stated caring for people in the home, particularly the elderly, is important and is an investment in humanity. Last week, I participated in the protest outside Leinster House against the cut of €325 to the respite care grant. At the protest were people in wheelchairs who are carers. The Minister should go out at 1 p.m. and meet the people and listen to their stories. She has been too long in the bubble in Leinster House.

Senator Terry Leyden: Well done.

Senator Jimmy Harte: I call on the Minister for Finance to come to the House to discuss the situation with Liberty Insurance which was formerly Quinn Insurance. I have been con-

tacted by many people who run small businesses who are insured with Liberty Insurance but the insurance company is refusing to re-insure them and has given them 30 days notice. If they cannot get their businesses insured they will close. I suspected when Liberty Insurance entered the market in this country that it would try to get the clean and risk-free business. The Minister for Finance must ask Liberty Insurance what are its intentions in Ireland. It has already let 200 or 300 employees go. I was contacted by a company with ten employees which will have to let them go if it does not obtain insurance by next week. It will then have to seek insurance in Europe or the UK and will be at the mercy of companies such as Lloyds which can charge any rate. Small businesses must not be allowed close down because they cannot get insurance at reasonable rates in this country. The rates they would receive in Europe would ultimately put them out of business.

Senator David Norris: I support my colleague Senator Quinn in asking that we take notice of the situation regarding the Sri Lankan citizen. I am aware of this case and Members of both Houses have taken this matter on board.

I also watched with interest the Archbishop of Dublin, Dr. Diarmuid Martin. I thought he was in an awkward position and dealt with it reasonably well. I was surprised he repeated something that was said in this House, which was that the judgment of the Supreme Court in the X case was a flawed judgment. It was inappropriate in this House. It is the entitlement of any citizen to make whatever comment he or she feels whether it is judicious, but I ask all those who feel this was a flawed judgment, particularly those in authority, to specify the precise flaws in the judgment to better inform the debate which is taking place. I reiterate what Senator Bacik stated about the information meeting at 4.30 p.m. which will be held in the AV room. I attended such a meeting held by people with whom I do not agree and I found it informative and helpful. I hope that those who attend this afternoon will not all be of the same mind and that some of those with a conscientious difficulty with the position taken up by Senator Bacik and me will also make themselves available.

Senator Jim D'Arcy: I agree with Senator van Turnhout that following the Supreme Court decision on Government spending on referenda, the issue needs to be examined. We should have no further referenda until it is sorted, however long it takes.

As regards cuts in education, while I have great respect for Senator Darragh O'Brien, I remember the Government being re-elected in 2007 partly because of a promise of 2,000 extra teaching jobs. The returning Government was not in a wet day when the pupil-teacher ratio increased. The current Minister for Education and Skills has performed the greatest miracle since water was turned into wine in that he has not increased the pupil-teacher ratio in primary schools.

Senator John Gilroy: A miracle.

Senator Jim D'Arcy: He deserves the utmost credit.

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

Senator Jim D'Arcy: Yes. I welcome the 22 new schools, including an all-Irish school in Dundalk, the Cú Chulainn community college. The legendary Cú Chulainn will have a school named after him in Dundalk.

Senator Terry Leyden: It could have been named after the Senator.

Senator Jim D'Arcy: I ask that the Minister for Education and Skills attend the House to outline his views on the gap analysis of third level institutions' submissions on third level reform.

Senator David Cullinane: I strongly concur with and support the call by Senator van Turnhout for a debate in this House on forced labour and the exploitation of workers, including migrant domestic workers. I recently attended a conference in UCC on this issue. It is an important issue on which we should have a debate.

We should also have a debate on parties' election promises. Election manifestos are put before the people and the people vote for parties on the basis of the promises and commitments made.

Senator Jim D'Arcy: Like the hospital in Omagh.

Senator David Cullinane: When those promises are broken-----

Senator Jim D'Arcy: That was terrible. I agree with the Senator.

Senator David Cullinane: When those promises are broken, people become disillusioned with politics generally. It was suggested that Members might live in a bubble. Many people outside the House are not just disillusioned with politics, but feel betrayed by parties for which they voted in the hope that those parties would protect them. The clear pre-election promises made on child benefit and college fees have been mentioned, but promises were also made on banking debt and many other issues. When Senator Bacik states that the Government is a coalition of two parties and a compromise of policies-----

Senator Ivana Bacik: That is what coalition is about. That is democracy.

An Cathaoirleach: Senator Cullinane to continue, please, without interruption.

Senator David Cullinane: It is a compromise-----

Senator Ivana Bacik: The Senator might not like it.

Senator David Cullinane: I like it, but it is a compromise of broken promises, as both Fine Gael and the Labour Party have broken promises. The Sinn Féin Party will table a motion of no confidence in the Dáil against the Government. The Government has let down the people on the three critical issues that face the State: to have a proper and sustainable deal on the banking debt-----

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

Senator David Cullinane: -----to have a job strategy that will get people back to work - rather than the Minister for Social Protection cutting people's welfare in terms of secondary benefits such as back-to-school grants, footwear and clothing allowances and child benefit, the Government should be trying to get people back to work; and to have a fair budget. This was not a fair budget. I point out to the Leader that we need to have a debate in the House on the election promises and election manifestos which were put before the people of the State and have been torn up since the general election by the parties in government.

Senator Ivana Bacik: Not true.

Senator Jim D'Arcy: We are not flying the Union Jack over Leinster House.

Senator Darragh O'Brien: Absolutely not.

Senator Mary Moran: Every year we have the reaction to the budget. No matter what Government is in office, be it Fianna Fáil or Fine Gael and the Labour Party, the Opposition parties will always attack it. That is the way it is. As regards the respite care grant and other cuts, we may banter over and back depending on what Government is in office, but I am concerned that people are genuinely suffering. I have been deeply touched and am concerned about some of the cuts that have been introduced. We must weigh it up and we all have difficult decisions to make. Rather than bantering over and back, and accusing each other, we should stop to examine the real issues that have arisen as a result of the budget.

Senator Mary M. White: At least the Senator admits the Government got it wrong.

An Cathaoirleach: Senator Moran to continue, without interruption.

Senator Mary Moran: I echo Senator Bacik's concern on the recent escalation of violence in Belfast, particularly the attempted murder last night. I am a member of the Joint Committee on the Implementation of the Good Friday Agreement. I recently attended the opening of the Skainos centre in east Belfast on the Newtownards Road. It was opened by the First Minister, Peter Robinson, and the Deputy First Minister, Martin McGuinness. As someone who lives on the Border yet had never been to east Belfast in my life, I was struck by the symbolism on the day. It was brilliant to see the progress that we have made. Before we went in, there were people outside with drums, while a traditional Irish group was playing inside. It was a real merger of religions and cultures. It was a really good day for both sides of the community, which each side acknowledged. I was extremely proud to be there that day. That is why I would hate to see violent attacks recommencing.

I have been contacted by the Irish Epilepsy Association about the pricing and supply of medical goods Bill. Will the Leader ask the Minister for Health to clarify if anti-epileptic drugs will be excluded from generic substitution, as recommended in the Moran report? As a parent of somebody who suffers from epilepsy I know the value of medication and how important it is to get one's epilim levels correct. We need urgent clarification on that issue.

Senator Terry Leyden: I congratulate Senator Paddy Burke on being Cathaoirleach on the 90th anniversary of Seanad Éireann.

Senator Trevor Ó Clochartaigh: Will there be a 91st?

Senator Terry Leyden: I thank him for arranging the ceremony this morning.

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

Senator Terry Leyden: I hope the Seanad continues because it is a very important institution.

The Leader should ask the Minister for Education and Skills, Deputy Quinn, to attend the House for questions about SUSI. I have to declare an interest in that it concerns a godson of mine, but not a relation. On 19 November, he received a letter from SUSI granting him full fees in Queen's University in Belfast. Yesterday, he received a letter from Queen's University saying:

> In accordance with general regulations of all university courses, I am writing to inform you that you have been suspended from the university. The suspension will apply until the outstanding balance of tuition fees and/or charges have been paid in full. The suspension means that you will not be eligible to enrol or graduate. The university reserves the right to withhold a degree, certificate or transcript from any student who is in debt to the university.

The letter is signed by Ms Orla Russell, income and student finance accounts. This is the legacy and commitment of the Minister. He should sort this problem out with SUSI and the VEC because it is absolutely unacceptable. I have cited this letter to a constituent who is my godson, and he is devastated. One can only imagine what is it like to be suspended from a university. He was doing his course and concentrating on his studies and this should not have happened.

I am not making an issue of this but simply intend to appeal to the Leader through his good offices and, on leaving this Chamber, I will communicate with the Minister immediately. As this letter is only from 10 December, I have not had much opportunity previously. Unfortunately, our jurisdiction-----

Senator Fidelma Healy Eames: Colleges gave assurances that this would not happen.

An Cathaoirleach: Senator Leyden to continue, without interruption.

Senator Terry Leyden: There should be liaison between the Minister for Education and Skills and the First Minister and Deputy First Minister, as well as the Minister for Education in Northern Ireland, to bear in mind the position that has arisen here and to allow for the fact that those students are providing very large fees from this jurisdiction for the Northern jurisdiction.

An Cathaoirleach: The Senator is over time.

Senator Terry Leyden: Surely, in the run-up to Christmas, Queen's University would have the good grace not to impose this suspension on a young student in respect of a situation over which he has no control. I hope this House will be united with me in resolving this issue today.

Senator Paul Coghlan: First, I join the Cathaoirleach in welcoming the two renowned figures in the Visitors Gallery today, namely, Mr. Bob Brolly of the BBC and Mr. Patrick Williamson of the British National Federation of Demolition Contractors. They are in Ireland in connection with the promotion of our major festival to be held next year, The Gathering. I salute and thank them for their efforts and work in disseminating this information through the BBC and reaching all our people and others in Britain who I hope will all come and visit this country next year.

This is not the first time I have mentioned the brutal and savage murder of Patrick Finucane and, as Senator Bacik noted earlier, it is completely unsatisfactory that further information now is forthcoming in dribs and drabs. From a hitherto unseen chapter of the Stevens report, it now is known that one of the guns involved was stolen from the British Army and subsequently was returned to it, courtesy of the RUC. This points very clearly to the collusion that unfortunately was involved. While another report is forthcoming, I salute the Taoiseach as he has been completely consistent on this matter. Moreover, I look forward to his further meeting on this subject with the British Premier, David Cameron, which, please God, will happen shortly.

Senator Labhrás Ó Murchú: First, I take the opportunity to compliment Archbishop Di-

armuid Martin on his contribution on "The Frontline" television programme last night, which I thought was very reasoned and compassionate. This was evident from the atmosphere in the audience and the decorum that existed. I also compliment Pat Kenny on the manner in which he handled it, because there were lessons to be learned from last night's programme. Members also have lessons to learn, which are that it does not matter what diverse views one may have in a debate or whether it takes place in a television studio, this Chamber or anywhere else but it should be possible to conduct any dialogue and debate without heckling and shouting. If one's opinion is genuinely held and strong enough, it should be sufficient simply to be part of whatever discussion is going on.

On another point, the current loyalist violence in the North serves as a reminder to us all of how fragile the peace process can be in certain circumstances. I acknowledge it is not representative of the views which are held throughout Northern Ireland but we have become a little complacent ourselves. A lot of time, goodwill and compromise was invested in the Good Friday Agreement and everyone has seen the fruits that have come therefrom. They have been historic and edifying in so many ways. However, I have formed the impression that there is a gap in the ongoing dialogue between our own part and that part of the country. The same applies when one turns a blind eye to glaring issues, such as the murder of solicitor Pat Finucane, because it always was understood that in time of conflict, anyone involved in the legal profession or anyone involved in the media generally were not regarded as targets in any sense of the word. Members have listened to the pleas of the family of Pat Finucane but have not responded sufficiently. The day Britain did not agree to have a proper public investigation sent the wrong signal. We all believe there was collusion between the security forces and those who murdered Pat Finucane. The murder was condemned throughout the world. There is no doubt whatsoever now about murderous collusion between the security forces and the people who carried out the murder. If we do not strongly and formally, at the highest level, require what the Finucane family now request and deserve, namely, a proper public inquiry, we will always have the type of thing that erupts right in the middle of the peace process. I compliment Senator Paul Coghlan on his comments. I ask the Leader to bring the matter straight to the Taoiseach, who is an honest man and one who is committed on those issues. We cannot let it lie because it will fester and give us more trouble in the future.

Senator Lorraine Higgins: A significant event happened 167 years ago that marked a watershed in the history of this country. Its effects have permanently changed the face of this island's demographic, political and cultural landscape. Its impact and human cost at the time was colossal. Such was its effect that it not only left an indelible mark on the Irish psyche; it also led to 1 million people dying prematurely from starvation and disease and 1 million more emigrating. The event of which I speak is An Gorta Mór, the Famine. Now we are seeking to summon the Irish Diaspora from all around the globe to these shores to celebrate The Gathering in 2013, yet there has been no formal announcement of a date or venue for the national day of commemoration of the Famine. I submit that a decision must be made on the matter as soon as possible in order that those who have worked hard to secure a day for this event can organise festivities and link up with the estimated millions of people of Irish descent living throughout the world who would be interested in coming to the birthplace of their ancestors and as a consequence help give the economy a much needed shot in the arm. I would appreciate it if the Leader would pass on the message.

Senator Trevor Ó Clochartaigh: Ba mhaith liom tagairt don méid a bhí le rá ag an Seanadóir Quinn ar ball. Ceist an-tromchúiseach é cead a thabhairt do fracáil ins an tír seo. I echo

the sentiments of Senator Quinn on fracking. It would be a cause of serious concern even if it is allowed in a limited way. It is something we should debate as a matter of urgency.

I also agree with the sentiments of a number of Senators on the Pat Finucane case. I concur that the Taoiseach must use every opportunity to raise the issue and ensure a full, public inquiry is set up.

On a number of occasions I have asked that the First Minister and the Deputy First Minister in the North would be invited to speak in this Chamber. It would be timely for them to come to the Chamber to talk about what has been achieved through the peace process and the ongoing situation in the North. It would also be pertinent given the number of issues that have been raised concerning the North, ranging from Queen's University, Belfast, the Pat Finucane inquiry, and the ongoing violence there on the raising of the flag over Belfast City Hall. We would all have a chance to ask them various questions on those issues.

I also note that at a meeting of the joint policing committee in County Galway yesterday, the chief superintendent told us that there has been a 44% increase in burglaries in rural County Galway. That is an alarming figure, but it is even more alarming coming after a budgetary announcement that 100 Garda stations will be closed in rural areas - ten of them in County Galway, which is the largest number in any county. I do not see how it all adds up that one would close Garda stations at a time when there is an increasing number of burglaries or that the Minister would contend that is a better way of policing. He was backed up by the local representative, Deputy Seán Kyne, who said he believed it would be a better model and would work better for rural areas. We should have a full, frank and open debate on the issue. I do not consider it a positive step. The Association of Garda Sergeants and Inspectors has said it is a retrograde step. Ordinary gardaí have said they do not feel we should close Garda stations in rural areas. I would like to know where Fine Gael and Labour Party Senators stand on the issue because I have heard many people express worries and fears about the decline of rural areas. The Garda station is an integral part of the rural fabric and Sinn Féin will oppose all station closures. I call on the Minister to come before the House for a full debate. He should set out the reasons he believes this is a better model of policing and his proposals to technically upgrade rural Garda stations to enable gardaí to do their job in the best way possible and reduce the alarming number of burglaries.

Senator Michael Mullins: I join colleagues in condemning the violence in Belfast over the weekend, in particular, the attempted murder of a police officer and appalling attacks on offices belonging to the Alliance Party, which has made a major contribution to the peace process in Northern Ireland. All right-minded people will condemn this recent violence. The business community in Belfast is worried that irreparable damage will be done to their businesses as the Christmas period approaches. It is incumbent on everyone to help reduce tensions.

I support the call for an early debate on the peace process to ascertain how the Seanad could contribute to the good work that has been done in Northern Ireland over the years. I support the call by Senator Ó Clochartaigh to invite the First and Deputy First Ministers to the Seanad. It would be good if Senators could hear at first hand the progress that has been made and discuss the current fragile situation alluded to by Senator Ó Murchú. All politicians, North and South, have a role to play in ensuring the progress made in recent years continues.

While reference has been made to many of the negative aspects of the budget, it also contained many positive features. I ask the Leader to arrange a debate early in the new year on

these positive elements, notably in the area of job creation and initiatives for small and medium sized enterprises, tourism and the agrifood industry. The budget was never going to be easy given the requirement to make adjustments of €3.5 billion. That is the real injustice and reason for the current hardship. However, unless we stimulate the economy and encourage small businesses to increase employment, the economy will never make a full recovery. I ask the Leader to arrange a special session to discuss how industry, small business and tourism can prosper in light of the likely boost The Gathering provide for tourism in 2013.

Senator John Kelly: I support Senator Leyden's comments on third level grants and the operation of Student Universal Support Ireland, SUSI. It is scandalous and outrageous that as Christmas approaches, only 20,000 of 66,000 student grants have been awarded. I am not sure if the moneys have even been paid. I have been contacted by students who are threatening to withdraw from college. It is outrageous that Student Universal Support Ireland, in correspondence with the Minister, has blamed students for the delay by pointing out that it is awaiting further documentation in the case of 25,424 of the 66,000 applications for student grants. Last month, when I contacted my local vocational education committee and the grant section of Roscommon County Council asking how many grants had been paid by that stage in 2011, I was informed that 95% of grants had been awarded by this time last year. How can the new system blame students for the failure to pay out 70% of grants given that more than 95% of awards had been paid out by this time last year? Student Universal Support Ireland is clearly not fit for purpose. At this late stage, some of the files it holds should be sent to the vocational education committees and county councils because a failure to do so will guarantee that some students will still not have received their grants by next June. I refer to those who will be fortunate enough to still be at college.

Senator Catherine Noone: The alcohol strategy planned by the Government has been put off until the new year. This matter is not being handled urgently enough. Recent figures show that the estimated cost of alcohol to the economy is €3.7 billion. I understand that matters related to the budget are very important and need to be sorted out but I must emphasise how urgently this matter needs to dealt with. There are complicated matters in the alcohol strategy that are difficult for us to deal with, for example, sponsorship of certain festivals and sports events. We need to take a measured approach to this because we do not have the funds to enable us to refuse money from commercial enterprises for such festivals and events. It warrants a debate in this House but, more importantly, we need to get sight of the Government strategy on alcohol and our relationship with it.

It is a very important time of the year for the Garda presence on the roads. None of us would disagree with the argument that the Garda needs to be vigilant in respect of drink driving. It is important that gardaí take a relatively measured approach when it comes to the work they must do at this time of the year in respect of burglaries. I heard of a case recently where the gardaí were pitched on the road at 9 a.m. hoping to catch people on their way to work or somewhere else for speeding or drink driving. Various burglaries had been carried out in the same area the night before. It is very important for the gardaí to be vigilant with regard to burglaries, which are becoming more prevalent in the difficult times we are in.

Senator Fidelma Healy Eames: The fact that €3.5 billion will be taken out of people's pockets is hard and sore. It is for this reason that I compliment Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, for saying that the Government will do everything it can not to pay the promissory note due in March.

Senator Darragh O'Brien: He did not say that. He said it would not be paid.

Senator Fidelma Healy Eames: It would not be paid. I do not want to see all the hard work of this budget undone.

Senator Paul Coghlan: We are trying to roll over another of your IOUs.

An Cathaoirleach: Senator Healy Eames to continue, without interruption.

Senator Fidelma Healy Eames: Like many others, I have taken soundings over the weekend. Everybody, including carers, feels that it has been very harsh. I have written to the Minister for Social Protection to see if that can be undone. Farmers, particularly low-income farmers and dry stock farmers in Galway, have not been mentioned much. I have received text after text saying that budget changes will cost the sender €4,000 when he or she adds in the suckler cow cut, which is €40 per head. If one has 35 cows, that comes to €1,400. When one adds that to the cut in child benefit and the property tax, they add to up huge cuts. I am speaking to the Minister for Agriculture, Food and the Marine, Deputy Coveney, who has always been very fair and who does his best to tweak everything. There have been many serious cuts in income for farmers at which we need to look in addition to the cuts that have affected everyone else.

The nation is experiencing a considerable amount of psychological stress because the recession is continuing and the cuts are getting deeper. I know we have done this in terms of job creation and we need to do it again in terms of promoting good projects but I would like a debate on the psychological stress the recession is causing our people in order that we can identify solutions in Departments that need to be promoted.

1 o'clock

Will the Leader consider that issue for early in the new year? What else can we do as legislators? We must do our best to alleviate the stress and help Ministers to devise solutions.

Senator Martin Conway: I speak today for two reasons. First, it was appalling to read reports over the weekend that the Revenue Commissioners are yet again using a big stick against people who find themselves in financial difficulty, this time threatening to remove mortgage interest relief from people who unfortunately find themselves in arrears with their mortgage payments. That is unacceptable, unnecessary and retrograde. It gives people who are down on their knees a further kick. The Minister for Finance should immediately instruct the Revenue Commissioners to issue a clarification statement on their exact approach and to adopt a fair and reasonable approach to people who are trying their best but who are at the end of their tether.

Overall, many elements of the budget, although they are painful, had to be included. Personally, however, I would have favoured an extra 3% in the universal social charge for people earning not only more than €100,000 but on earnings over €80,000. When the Minister for Finance is drafting the Finance Bill perhaps he would consider introducing a 3% increase in the universal social charge for earnings between €80,000 and €120,000 and a 5% increase for earnings over €120,000. It is appropriate that taxes such as the capital acquisitions tax and capital gains tax are being increased from 30% to 33%. I believe they should have been increased to 35%. If people are earning such wealth in this country, they should pay their fair share of taxes. What is the difference between 33% and 35% to somebody who is selling a house at a reasonable profit or somebody who is making a great deal of money from dividends? It is an extra 2% but it would help people at the lower end as it means it would be possible to reduce

the effects on them. Although it might not be agreeable to all members of my party, I believe in taxing wealth. During a recession, in particular, when people are struggling, the wealthy should pay over and above their fair share. They should suffer the same pain. I have no hesitation or qualms about saying that here.

Senator Maurice Cummins: Senator Darragh O'Brien called for a debate on perinatal care. I will try to arrange it in the new year. With regard to the budget and the elements relating to social welfare, we will have ample opportunity to discuss them next week during the debate on the Social Welfare Bill.

Senators Bacik and Moran, among others, raised the escalation of violence in Northern Ireland, especially the attacks on members of the police force and the Alliance Party, which has been the voice of moderation in Northern Ireland for many years. Last week I conveyed our sympathy and support to the leader of the Alliance Party, as was requested by Members of the House. Unfortunately, there has been further violence over the weekend. As has been stated, peace is a very fragile rose and we should do everything possible to ensure that peace reigns, especially over the Christmas period and throughout next year. Everybody should do what they can to support the police force and voices of moderation in Northern Ireland at all times.

Senator van Turnhout asked for a debate on referenda, how they can be conducted and so forth. That is an interesting subject for debate which we will try to pencil in for the new year. The Senator also asked about the child and family support agency. The Minister for Children and Youth Affairs, Deputy Fitzgerald, has agreed to attend the House in late January or early February to discuss a number of the issues that the Senator has raised in recent months. I also noted the request by the Senator and others for a debate on forced labour in Ireland.

Senator Quinn referred to an Irish citizen jailed in Sri Lanka. I suggest that the Senator table an Adjournment matter on the issue in order that he might get the up-to-date position from the Department, which he could relay to the family.

Senator Quinn has also called for a further debate on shale gas and fracking. The Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, attended the House on the issue. In light of the UK proposals, however, this may be an opportune time for a further debate.

Senator Eamonn Coghlan rightly complimented Ms Fionnuala Britton and the Irish ladies' team on their excellent result at the weekend. It was a proud moment for their families, their coaches and the country. It gave us a lift that we all badly needed. Of the 2,300 applications for sports capital grants, only 600 received moneys. I will take the Senator's comments about the non-major sports organisations on board.

Senator White called for a further debate on budget issues and Archbishop Martin's comments yesterday. The archbishop also stated that jobs comprised a key matter. The creation of jobs is one of the main issues that the Government is trying to address. Many aspects of the budget were geared towards job creation and helping small and medium-sized enterprises, SMEs, to prosper. I hope that these efforts will continue into the new year and that we will see a result from the budget initiatives.

Senator Harte mentioned Liberty Insurance, a private company. I am sure that many other insurers will make themselves available to take up the slack for the small businesses in question. It is important that small businesses receive insurance.

Senator Norris referred to a meeting in the AV room today. We all need to inform ourselves, but if people on the other side of the argument decide to attend that meeting, it is a matter for themselves. Pressure should not be placed on any Member to attend meetings. Pressure is not being exerted. I have been inundated with requests to attend meetings on both sides of the argument, but I have replied that I will inform myself on the subject.

Senator Jim D'Arcy referred to the education cuts under Fianna Fáil and called for a debate on the gap analysis report on third level reform. I will try to arrange one.

Senator Cullinane raised the question of the Fine Gael-Labour Party coalition. As I stated last week, we do not share Fianna Fáil's belief in temporary little arrangements. We will work to restore our economic sovereignty.

Senator Moran referred to the importance of fostering good relations with communities in Northern Ireland. I also noted her point on epilepsy drugs. The Minister for Health will attend the House a number of times this week to discuss two health Bills. Perhaps the Senator could raise her issues with him then.

Senators Leyden and Kelly mentioned applications for third level grants. As of close of business on 5 December, from 66,827 student grant applications, there were 32,500, or 49%, complete and awarded, provisionally awarded or refused. Some 25,000, or 38%, are awaiting documentation from students. Some 13,024 people have not provided any documentation to date to support applications. We are still on track to ensure all properly completed applications can be processed by the end of the year. Additional staff have been allocated to SUSI and have made a substantial difference. As I stated previously, this is the first year the scheme has been in operation and I hope the teething problems can be solved before next year's grant applications. I am sure all the properly completed grant applications will be expedited and people will have their grants by Christmas.

Senator Paul Coghlan spoke about the savage murder of Pat Finucane. I assure him and other Members who raised the issue that the Taoiseach is consistent on the matter and fully supportive of the family. I am sure he will make the case to the British Prime Minister in early course on the matter.

Senator Higgins commented on the commemoration of the Famine. I will bring the matter to the attention of the relevant Minister, Deputy Deenihan.

Senator Ó Clochartaigh asked about inviting the First Minister and the Deputy First Minister from the Northern Ireland Executive to the Oireachtas. I have been involved in that process and when we get agreement from both the First Minister and the Deputy First Minister, an invitation will issue. There is no question about that, although a certain protocol must be followed. That is the way business is done. I also note the Senator's points on the closure of Garda stations and perhaps we can have a debate on the policing plan in the new year, which was also requested by Senator Noone.

Senator Mullins outlined the positive aspects of the budget, particularly with regard to small and medium enterprises. He called for a further debate on the issue in the new year.

Senator Noone raised the issue of below-cost selling of alcohol and the country's relationship with alcohol. I am trying to arrange a debate in the new year on the issue.

Senator Healy Eames mentioned the promissory notes. The Government is totally focused on avoiding the next payment of €3.1 billion, on which I am sure we will have news in early course. I note the Senator's points on the farming sector in her area. The issue should and will be brought to the attention of the Minister, Deputy Coveney.

Senator Conway spoke about the Revenue Commissioners, stating that mortgage interest relief cannot be given to people who are not paying their mortgage. It has been clarified that relief will and should be given on a *pro rata* basis to people paying part of their mortgage. With regard to the taxing of wealth, over €500 million will be applied in this budget as wealth taxes, including capital gains tax, capital acquisitions tax and deposit interest retention tax.

Order of Business agreed to.

Horse and Greyhound Racing Fund Regulations 2012: Referral to Joint Committee

Senator Maurice Cummins: I move:

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

Horse and Greyhound Racing Fund Regulations 2012,

a copy of which Order in draft was laid before Seanad Éireann on 6th December 2012, be referred to the Joint Committee on Agriculture, Food and the Marine, in accordance with Standing Order 70A(3), which, not later than 18th December 2012, shall send a message to the Seanad in the manner prescribed in Standing Order 73, and Standing Order 75(2) shall accordingly apply.

Question put and agreed to.

90th Anniversary of Seanad Éireann: Statements

An Cathaoirleach: Today is an important milestone in the history of this Chamber and this Parliament. It marks the 90th anniversary of the establishment of the 1922 Seanad. The first Seanad consisted of a mixture of Members appointed by the President of the Executive Council and Members indirectly elected by the Dáil. The appointments system was designed to provide representation for minorities or interests not adequately represented by the Dáil, in effect giving a voice to Unionist representatives and people of specialist knowledge and experience or with a record of public service. Among those who sat in this Chamber were William Butler Yeats, Oliver St. John Gogarty, Sir Horace Plunkett, Jenny Wyse Power, Douglas Hyde and Alice Stopford Green.

Since its inception, the Seanad recorded a remarkable record of initiating and amending legislation, with notable and inspiring contributions and an impressive level of debate. The modern Seanad Éireann was established by the Constitution of Ireland in 1937. The new Seanad Éireann is comprised of 60 Members, 43 elected by five panels representing vocational interests, namely: culture and education; agriculture; labour; industry and commerce; and public administration. Six Senators are elected by the graduates of two universities, three each from

the National University of Ireland and the University of Dublin, Trinity College. Eleven Senators are nominated by the Taoiseach.

The spirit and intent of the Seanad to represent minorities and provide a platform to those with specialist experience and to contribute to a healthy and robust democracy carried through to the new Seanad. In the past, Taoisigh have used their nominations to appoint respected people from Northern Ireland, such as the late peace campaigner, Gordon Wilson, and Seamus Mallon of the Social Democratic and Labour Party. Benjamin Guinness, Lord Iveagh, sat as a Taoiseach's nominated Senator from 1973 to 1977 while he was also a Member of the House of Lords.

Today, Seanad Éireann is playing a greater and more effective role in our parliamentary democracy. This newly-elected Seanad is determined to modernise its procedures and actively engage with civic society. To begin this process, we have changed Standing Orders to allow persons and representatives of public and civil life to address Seanad Éireann. Among those to address the Seanad under the new rules were: Drew Nelson, grand secretary of the Grand Orange Lodge of Ireland; Mary Robinson, former Senator, President of Ireland and United Nations High Commissioner for Human Rights; and Maurice Manning, president of the Irish Human Rights Commission and chair of the European Group of National Human Rights Institutions.

The Seanad Public Consultation Committee, which was established as part of the new procedures to open access to Seanad Éireann and its work, is to specify and publicise areas related to the legislative powers of the Seanad and issues of public policy and to invite submissions from public interest groups. It provides a powerful opportunity to strengthen dialogue between the Seanad and the public. It is also a very public forum for debate and discussion on a wide range of subjects in the area of public policy. To date, the Seanad Public Consultation Committee has published a report calling for wide-ranging amendments to existing legislation to bolster the rights of older people and has sought submissions from interested groups or individuals on how government and society can respond to the challenge of preventing cancer through healthy diet, physical activity and weight management. These new rules allow for a vibrant and effective Seanad where we can learn about and increase our understanding of the major issues facing the people. The changes will enable us, as parliamentarians, to provide a real and valuable input into initiatives to meet the key challenges and concerns facing our society today.

Senator Maurice Cummins: Today we mark the 90th anniversary of the inaugural meeting of Seanad Éireann which took place on 11 December 1922. That year represented a time when the process of building the State had only just begun. Some 90 years later, the 24th Seanad sits at a time when our nation faces another battle, to retrieve its economic and political sovereignty.

I sincerely hope that as we approach the centenary of the 1916 Easter Rising and the 1922 establishment of the Irish Free State we will have retrieved that sovereignty and reidentified with the values that define us as a people and can on those anniversaries celebrate a true republic. That is what we owe the generations before us who dedicated themselves to the pursuit of Irish independence and created the architecture of the modern Irish State. The right to control our own affairs and to decide our own destiny has been the wish for generations of our ancestors. We owe to them and future generations a better body politic, one that places the national interest before that of any one individual or interest group. In this context, I believe the Members of Seanad Éireann can play a central role.

One of the most outstanding members in the early years of Seanad Éireann was Senator William Butler Yeats. Despite an overwhelmingly Catholic membership, Yeats and his future independent colleagues achieved great things. He chaired the coinage committee that was charged with selecting a set of designs for the first coinage for the Irish Free State. A year after his term in the first Seanad he was to become the first Irishman to be awarded the Nobel Prize in literature. The Nobel committee described Yeats's work as "inspired poetry, which in a highly artistic form gives expression to the spirit of a whole nation." He also contributed to a number of debates, including speaking against the proposed anti-divorce legislation in 1925. Yeats was very much a character that resembles the true value of the Seanad as a Chamber that can give the voiceless a voice, the invisible a presence and the status quo a challenger.

Many other great public representatives and patriots have also served in this Chamber. I recall the late Dr. Garret FitzGerald, a man whose honesty, extraordinary commitment and love for Ireland and its people has remained a benchmark for all public representatives. Other colleagues of ours, including former President Mary Robinson, have championed the cause of minorities when others were not prepared to listen. Those barriers did not stop Mary Robinson's efforts; in fact they encouraged her further to achieve true greatness in the areas of human rights and social issues. Last week, we paid tribute to former Senator Trevor West, who played a vital, if low key, role in the early days of the peace process in Northern Ireland. There are countless other examples of Senators who have gone on to achieve marvellous things both at home and abroad. It is fitting that, on this day, we remember their extraordinary service to the country.

It remains the Government's intention to hold a referendum on the future of Seanad Éireann. Ultimately, the people of Ireland will decide its fate. Regardless of the outcome of this referendum, this Seanad can serve as the most productive and effective one yet but that can only be achieved if we as a group do it ourselves. That requires Members to respect the true purpose of this Parliament, to scrutinise legislation, to represent minorities and to uphold at all times the national interest. It also requires Members to turn up for debates with members of the Government and contribute to them. This is a most challenging time for our country in its 90-year history and the public are looking to both Houses of the Oireachtas for solutions, however daring and bold they may be.

There is much good to be said of the valuable contribution made by the Seanad that is too often forgotten by the commentariat. Initiatives such as the public consultation committee, which strives to strengthen the dialogue between the Seanad and public on a range of policy issues, have been well received. The adoption by Government of a number of Seanad Private Members' Bills and its receptive response to many others shows we can make an effective contribution. Time and time again Ministers and Ministers of State have expressed to me their satisfaction with the quality of debate in the House when discussing legislation and they have demonstrated a willingness take on board relevant legislative amendments where possible.

As part of the Seanad's programme for the Irish Presidency of the EU which takes place during the first half of next year, I have invited all Irish MEPs to address the House throughout the six-month Presidency. I hope this new initiative will bring the work of the Seanad and that of the European Parliament much closer. We have achieved cross-party agreement on a number of motions of interest to members and I hope this is something on which we can build.

The 24th Seanad has led the way on many issues. I want to improve upon that because the House has far more to offer than it is given credit for by some people. I hope the future will bring greater peace, prosperity and success to our great country and the world. The reformed

Seanad can play a role in achieving those ideals in an ever changing Ireland.

Senator Darragh O'Brien: Ar dtús, is mór an onóir dom a bheith anseo mar cheannaire Fhianna Fáil sa Seanad, le labhairt ar an cheiliúradh speisialta seo. As leader of the Fianna Fáil group I am honoured to speak on behalf of my party on the 90th anniversary of the House to mark its contribution to the State. I fear many of our colleagues will mention the same names of some auspicious previous Members. It is important to note their contribution in the House.

Some 90 years ago when the Seanad was first established its purpose was to include Upper House representatives from minorities or interests not represented adequately in the Dáil, as the distinguished historian and former Senator, John A. Murphy, put it, this meant not only Protestant or Unionist representatives but people of specialist knowledge and experience or with a record of public service. We can thank the first Seanad on how it enabled the minority communities in what was then the Irish Free State to become part of our political and democratic process here. The importance of what happened by way of allowing the southern Unionist representation, in particular, southern Protestant and Presbyterian and other minorities, such as the Jewish faith, proper representation in the Upper House was crucially important. Many new European countries as they were then, failed in this respect at the first hurdle. The first Seanad which played a crucial role that has not been properly teased out or given the credit due, was forward thinking. I am proud to say that the first Seanad achieved the same. Its membership was made up not only of Roman Catholics but Protestants and Jews and included many Unionists, several peers, a former British army general, artists, writers and republicans. It was as diverse a body as might be imagined in the period after the establishment of the new State. All its members were united by their desire and willingness to serve Ireland.

The list of Members of the Seanad reflects the breadth of talent who took up the challenge. The first Cathaoirleach of the Seanad was Lord Glenavy, former Unionist MP and Lord Chancellor of Ireland, who was overwhelmingly elected as Chair of the House by his fellow Members, an act which set a pattern of bipartisanship, co-operation and collegiality that distinguishes the House to this day, most of the time. We will wait for the Social Welfare Bill next week. His fellow Members included the Nobel laureate, as the Cathaoirleach and the Leader of the House have covered, William Butler Yeats, one of the greatest writers the country has ever produced, Horace Plunkett, pioneer of the co-operative movement in Ireland, Jane Wyse Power, the activist, feminist and business woman, the historian, as the Leader said, Alice Stopford Green, and the surgeon and poet, Oliver St. John Gogarty. Another previous notable Member was Douglas Hyde, the founder of the Gaelic League and first President of Ireland. He deserves a special mention as being a Member of the first Seanad.

Recently we have faced calls for the abolition of the House. While I will not discuss the specifics of the merits of that I draw attention to the fact that these calls are not new. Indeed, the founder of my party, Éamon De Valera, in 1928, called for an end to what he called the costly Seanad for it served no useful function. It would appear that even he recognised the need for an Upper House and proceeded to draw up plans for a new Seanad, the result of which Members see today.

Each and every Seanad since 1937 - we have another commemoration tomorrow in regard to the Constitution - has had its fair share of distinguished Members, including another President of Ireland, as mentioned, Mary Robinson, and former Taoiseach, Garret FitzGerald. As with the first Seanad, it also included people with specialist knowledge. The Hon Lady Valerie Goulding, Noel Browne and Robert Malachy Burke were all Members. Benjamin Guinness,

the third Earl of Iveagh, held the distinction of being a Member of two Upper Houses at the same time - the Seanad and the House of Lords. I single out two current Members, Senators Norris and Quinn, who would rightly form part of that role of honour of Members in the past 90 years.

Another aspect of more recent Seanaid has been the appointment of people involved in the Northern Ireland peace process by successive taoisigh. I think of Members such as Seamus Mallon, Bríd Rogers and Gordon Wilson. Perhaps this is a practice that should be re-established because I have no doubt that we will have future Seanaid and that Seanad Éireann will survive.

The reformed Seanad after 1937, with the same abiding principles as the First Seanad, sought to provide a place for independent voices to discuss and debate, to propose and amend, to support and criticise legislation brought to this House or, as is often the case, legislation originating in this House. It is not reported that more than 30% of all legislation initiated in the Oireachtas has started here in successive Seanaid, mostly in the spirit of bipartisanship, collegiality and co-operation. A former critic of this House, Michael McDowell, stated that these principles and this spirit made the Seanad an institution worth keeping. His experience as Minister for Justice, Equality and Law Reform informed his statement that "the better legislative work by far was done in the Seanad". He went on to state: "I also found that the practice of initiating major reforming legislation in the Seanad and then bringing it to the Dáil frequently had the effect of defusing the adversarial atmosphere in the Dáil because many of the more contentious issues had either been explained or resolved in an amicable way in the Seanad."

I have served in both Houses - I served in the previous Dáil and I am now honoured to serve here on the Seanad's 90th anniversary. Oireachtas reform will not be achieved through abolition. Parliamentary reform should encompass all aspects and all pillars of the Oireachtas, including the Executive, the Dáil, the Seanad and the President. Singling out the Seanad as only area in which reform should happen will not solve that problem. That will be a debate for another day. It is never too late for any Government to look back and see the merit of that argument. If we had a referendum on the Dáil, I have a feeling it would also be abolished.

I commend the Cathaoirleach and the Leader, specifically, with the group leaders and other colleagues, for the many changes that have been initiated in this House in the past 18 or 19 months. They were very important changes, as the Leader, Senator Maurice Hayes, mentioned. There is certainly more we can do-----

Senator Ivana Bacik: A Freudian slip.

Senator Darragh O'Brien: I apologise, I meant Senator Maurice Cummins; I was thinking about a previous Senator. That is for another day and when the Leader starts writing for the *Irish Independent*.

Today is an important commemoration for us at a time when we look back on people who have served their country very well. This democracy would not be best served by not having a Seanad Chamber. We can do more and I know the Leader and Cathaoirleach are very open to doing this. Ireland assuming the Presidency of the European Union represents an opportunity for us to move forward with scrutinising EU legislation in this House. We have the wherewithal, the experience and the breadth of knowledge. More than 90% of the legislation affecting the country originates in Europe. What better place to pick through the positives and negatives of these proposals than Seanad Éireann.

Senator Ivana Bacik: I am delighted and honoured to speak for the Labour Party group on the 90th anniversary of Seanad Éireann, the 90th anniversary of the inaugural meeting of Free State Seanad on 11 December 1922. I am honoured not only as a Labour Party Senator but also as a university Senator, because the university Senators have had a very proud tradition in this House. Many of the Senators, named by colleagues earlier, represented the universities.

As we look back, all of us are also conscious that we also look forward to a likely referendum on the future of the Seanad. However, as we look back over the history of the last 90 years, it is striking that a debate on abolition or retention has been ongoing throughout the lifetime of the Seanad. I am indebted to a colleague, a senior counsel and Fianna Fáil councillor, Jim O'Callaghan, who has done extensive research on the first Seanad and wrote that a form of senate was referred to in all three of the Home Rule Bills dating back to 1886. Before the Free State Seanad was constituted, proposals were in place which varied widely. The first Home Rule Bill provided for 103 representatives in an upper house, of whom 28 would be peers, and who would serve for ten years. The Government of Ireland Act 1920 provided for a slimmed down version of 64 senators designed to ensure representation and protection for Southern Unionists in the new state. The Free State Seanad, which was finally constituted in 1922, was made up of 60 Members under Article 12 of the 1922 Constitution, and 30 of those were nominated by the President of the Executive Council, Mr. W.T. Cosgrave, who appointed what was referred to as a distinguished and talented group representative of all classes, as *The New York Times* remarked at the time.

I am also indebted to Dr. Elaine Byrne who wrote a wonderful article on the 60th anniversary of the current Seanad in July 2008 in which she spoke of the first Seanad as constituting seven peers, a dowager countess, five baronets and several knights, and that the Seanad consisted of 36 Catholics, 20 Protestants, three Quakers and one Jew. Mr. Cosgrave's nominees numbered 16 Southern Unionists. It was a truly diverse group, and yet was youthful and important in the life of the first Government. The 1922 Government, as Dr. Byrne has written, had no practical experience of parliamentary life. The young Ministers relied enormously on the Seanad, along with the Civil Service and the Army, because the Seanad influenced the guiding principles and legislative foundations of the State, representing, as it did, more of an establishment culture.

It is also interesting to note that those first Senators were subject to serious intimidation and threats. In the light of what is happening in Northern Ireland at this time, it is particularly poignant to read that by the end of March 1922, as a result of anti-treaty opposition to the Seanad, 37 Senators' homes had been burnt to the ground and Mr. Cosgrave's home was scorched. There was a good deal of intimidation of the early Seanad.

Fianna Fáil opposed the Seanad in advance proposals in 1932 before it came to power, and it was in its election manifesto for the 1932 general election. As O'Callaghan writes, they promised to abolish the Seanad.

Senator Darragh O'Brien: The Senator never misses an opportunity.

Senator Ivana Bacik: The Seanad abolition Bill was not put to the Dáil until the day after the Seanad had voted down a Government Bill to restrict the wearing of uniforms in light of the Blueshirts threat. There is an interesting history to the first Seanad abolition Bill.

The reason I mention all of this is, in March and April 1934, there was a fascinating series of debates in both Houses on the idea of a bicameral system that also has significant resonance

today. Persons such as the late President Eamon de Valera, were critical of that Seanad or second Chamber, but once the Bill had been passed, the Bill having been supported by the Labour Party, with the late Deputy William Norton referring to that first Seanad as a rubber stamp, and the Seanad abolished, popular opinion changed over the course of the following two years. By 1938, following the enactment of the 1937 Constitution, a new Seanad was set up. This was the current Seanad as we know it, with 60 Senators elected and nominated in the way the Leader described.

This new Seanad was a reformed version of a second House. It is interesting that, during the course of the period of the debates in the Dáil and Seanad in 1934, there was a growing recognition of the need for a bicameral system. This was accepted even by those who were highly critical of the constitution of the first Seanad. The commission that was set up following the 1936 vote agreed that there should be a second House in the new Constitution, that is, the House we have currently. As other Senators have said, it is a House that we need to reform. We have carried out some important reforms internally, but we also must acknowledge the contribution the Seanad has made over many years. Senators have referred to the number of Bills that have been put through. Today, more than 100 amendments are likely to be tabled for Report Stage of the Personal Insolvency Bill. There is a good tradition of commencing Bills and of tabling amendments in this House. There is also a good tradition of introducing Private Members' Bills. We saw one last week on humanist weddings that had started life in this House as a Private Members' Bill.

Over the 90 years of the Seanad's history there has been this ongoing debate on whether to retain the Seanad. This debate will be emphasised further in 2013 as we face into the referendum. It would be worth acknowledging the history and contribution of the Seanad. A practical way of doing this, which Dr. Byrne suggested four years ago, would be to put the Seanad casket and signatures on permanent public display. I believe they are still in the Royal Irish Academy. The casket was on display on the Cathaoirleach's desk in the Chamber from 1924 to 1936. It has a vellum manuscript with fountain pen signatures of the first 60 Senators. I believe I am correct to state it has not yet been moved from the Royal Irish Academy. Perhaps it is something we could consider doing in recognition of the long, lively and far from smooth history of the Seanad. As we face into debates we might do well to remember the Seanad has faced up robustly to these challenges in the past and may well do so in the future.

Senator Jillian van Turnhout: I am honoured to speak on behalf of the Taoiseach's nominees. In preparing for today I spent the past week reflecting and reading through the history of the Seanad, as it appears my colleagues also did, and in particular I looked at its earlier days. My colleagues know I have a keen interest in family history, and through my research on my family I learned the necklace I am wearing today was given by my grandfather to his sister on her wedding day in the 1920s. I wonder what were their thoughts about the newly founded Seanad on that day in County Clare. My family history includes some amazing strong women, and as I wear my great-aunt's necklace, I wonder whether the first women of the Seanad gave her inspiration.

The women nominated to the 1922 to 1937 Free State Seanad were highly gifted and made significant contributions to the political, economic and cultural spheres of Ireland. Notably these women were committed to gender equality during a period in which legislative changes ensured women's rights were further weakened. Jenny Wyse Power had been active in the Ladies' Land League and local government, and also ran various businesses. Ellen Odette Cuffe, Countess of Desart, was a London-based Jewish woman who had founded a woollen mill, a

theatre and a hospital in Kilkenny. She was also a keen supporter of the Irish language. Alice Stopford Green was a noted historian. Eileen Costello was a London-based teacher who moved to Galway and had a keen interest in Irish folklore. Elected in 1928, Kathleen Clarke was a well-known nationalist who opposed the wording of Bunreacht na hÉireann as she believed it placed women in a lower position than the Proclamation of 1916. Kathleen Browne, a member of Cumann na nGaedheal, joined the Seanad through a by-election in 1929.

Despite their political differences, the women mentioned often worked together to promote women's issues. The Civil Service Regulation (Amendment) Bill 1925, which sought to confine State examinations for senior Civil Service posts to men, was strongly opposed by Senators Wyse Power and Costello. Additionally, Senator Wyse Power, who had worked in the republican courts established during the War of Independence, was staunch in her opposition to the Juries Act 1927 which barred women from jury service in the new state. Many of the women Senators supported the Illegitimate Children (Affiliation Orders) Bill 1929, which was introduced to improve the status of unmarried mothers by providing the mother with the right to financial maintenance from the child's father. Senator Clarke opposed a ban on contraceptives in 1934, arguing it would drive the issue of birth control underground. Radically for the time, Senator Clarke also called for solidarity from the trade union movement on the issue of equal pay in 1935.

A number of women elected during the years to the post-1937 Seanad such as Mary Robinson and Gemma Hussey, began their political careers campaigning actively for women's issues. Once elected, they worked hard to ensure women's rights were placed on the agenda of the House. The then Senator Robinson, despite being subject to personal hate mail and high levels of suspicion from a number of colleagues, introduced a Bill in 1973 to make contraceptives legal in the Republic. Meanwhile, Senator Hussey attempted to introduce legislation on rape, sponsoring the Sexual Offences Bill 1980, which lapsed on First Stage. A former Judge of the Supreme Court, Catherine McGuinness, who was first elected to the Seanad in 1979, argued for the rights of the individual throughout her legislative and judicial career. These women, and others, made improving the lives of ordinary women central to their work as Senators, and are just three examples of the high level of female talent which has emerged from the Upper House.

I was interested to note that between 1937 and 2007, no Taoiseach nominated more than four women. This was broken in 2011 when the Taoiseach included seven women among his 11 nominees. This ensured the new Seanad was 30% female, a record high in women's political representation in the Houses of the Oireachtas. As one examines the transcripts and history of the House, it is clear that women Senators have made contributions to the Upper House and to Houses of the Oireachtas well beyond their paltry numbers.

The 90th anniversary has given me an opportunity to reflect on our history and to draw inspiration. I feel very privileged to be a member of Seanad Éireann. As I reflect today, and especially looking at my colleagues in my Independent group and admire the work that they have done outside and inside the House, each one of us has an opportunity to reflect and decide what will be the legacy of our work. Will we be willing to use our voices, role and powers to make a positive difference to the lives of the people of Ireland?

An Cathaoirleach: I call the Leader to propose an amendment to the Order of Business.

Senator Maurice Cummins: I amend the Order of Business to allow this item of business to conclude at 1.55 p.m

An Cathaoirleach: Is that agreed? Agreed.

Senator Sean D. Barrett: I thank the Cathaoirleach and the Leader for their inspiring speeches on the topic. When Lord Midleton, Dr. John Henry Bernard, then provost of Trinity College Dublin, and Mr. Andrew Jameson met Arthur Griffith in London on 16 November 1921 and communicated with the then President of the Dáil, Eamon de Valera, they set in train a remarkable body, and it is fitting that we celebrate its 90th birthday today.

One of the first things the Seanad did was rename an institution that is known everywhere in the country. An amendment was introduced and passed by the Seanad which changed the name of the Civic Guards to An Garda Síochána, which is the title it has been known by ever since. The early relationship between the Government, the Dáil and the Seanad was described by Donal O'Sullivan as imperfect sympathy. By 9 August 1923, Mr. Cosgrave came to the House to express his deep appreciation, and that of his colleagues, for the co-operation and assistance given by the second Chamber to him and for its useful and constructive criticism given on the legislative proposals of the Ministry. I hope that on 9 August 2013, the Taoiseach will come to the House to tell us how much he appreciates what Senators have done. That is the spirit in which we operate and is why we are here.

Mrs. Alice Stopford Green said, when presenting the casket on which Senator Bacik commented:

> We shall learn the ties which did in fact ever bind the dwellers in Ireland together. Whether we are of an ancient Irish descent, or of later Irish birth, we are united in one people, and we are bound by one lofty obligation to complete the building of our common nation.

Of course, as the Leader has said, that includes in the past two years in particular, the necessity to question and seek checks and balances to be created in institutions which have failed the country and which have caused the loss of our economic sovereignty. Let me think of famous names. President Michael D. Higgins was nominated to be a Member of this House by the then Taoiseach, Liam Cosgrave, and he has had a stellar political career ever since.

With regard to the present day, we shall discuss the Personal Insolvency Bill. It was amended 181 times on Committee Stage and the relevant Minister has taken another 155 amendments tabled in this House. Therefore, there are 336 examples of changes made by the House to major legislation that seeks to change insolvency from bankruptcy to a conciliatory process. That is not a unique occurrence in the past year. As many Ministers have referred to, and as the Leader has said, there have been constructive debates in this House. It is a pity sometimes that the advisers to the Ministers, who sit behind them, pass on notes telling them not to accept what we say. I hope that junior people in the Civil Service will be more open to our amendments than some of their seniors. It is a pleasure to see how willing Ministers are to listen to what we say here and that they appreciate the quality of our debates.

What present should the Seanad receive for its 90th birthday? I think the answer is: "Many happy returns."

Senator Trevor Ó Clochartaigh: Mar ionadaí do cheannaire Shinn Féin sa Seanad, is mór an onóir dom cur leis na ráitisí ar comóradh 90 bliain bunú an Teach ársa seo. Táim an-aireach faoi chuid de na taibhsí atá sa Teach ón am sin, agus cuid mhaith acu linn, b'fheidir, leis an gceiliúradh seo a dhéanamh. Tá se iontach tábhachtach go dtabharfaí aitheantas don obair ion-

tach atá déanta sa Teach seo le 90 bliain anuas agus don obair iontach atá fós ar siúl ann.

It is 90 years today since the Seanad, or a version of the Seanad, first sat, and much has changed since. That Chamber was established after a long period of division and conflict. The Seanad was envisioned as a Chamber which could offset the powers of the executive by providing checks and balances. Realistically, however, it has never been like that. The Seanad we know today was not that first one, but the Seanad of de Valera's 1937 Constitution which was ostensibly established on a model of extracting expertise in various fields. This was, however, a corporatist and largely undemocratic approach and the product of a time when long discredited corporatist politics were in vogue. Somehow or other, and despite numerous reports and proposals to vary that, we are still stuck with this model. It is because we are stuck with that model that there are calls for its abolition, not least from the Taoiseach himself.

There have been numerous opportunities to do something about the structure of the Seanad. It is my view - I believe a widely shared one - that the Seanad as currently constituted is undemocratic, unrepresentative and does not have a clear enough purpose. This does not mean there is no function for a second Chamber. It is not right or proper simply to remove one arm of the Houses of the Oireachtas without offering alternatives. Sinn Féin has proposed alternatives.

I commend Senators who put together the "Open it, Don't Close it" report, which has been very valuable. The report usefully highlights that, even without constitutional reform, we can make elections to the Seanad more democratic by expanding the franchise, which is crucial for it to have any validity. The Seanad is clearly an appropriate place to provide representation to Irish citizens in the North and to the Diaspora. These are categories of citizen that have no say in the political life of the State, and that situation must be corrected. We could also very much utilise the Seanad as a forum for scrutiny of European legislation.

On a day as auspicious as this, however, I pay tribute to all those who have passed through the Seanad, including those previously mentioned. I will not go over the names again because they are on the record. While taking into account all the political conflict we may have in the Chamber, it is not in question that people work very hard in here. They are here for the right reasons, including the betterment of the State. I congratulate all those who, in their own way, challenged the prevailing consensus of the time.

If the Seanad is to survive another nine years, however, not to mind 90, it needs to change and become more democratic. I appeal to the Government, especially the Taoiseach, to give us the chance for that to happen. The constitutional convention would probably be an appropriate forum by which to do that.

Mar dhuine a labhrann Gaeilge agus a bhfuil an-suim agam i gcúrsaí Ghaeilge, is fiú luadh go bhfuil úsáid na Gaeilge sa Seand seo ach go h-áirithe ardaithe go mór agus gur iontach an deis í an Seanad leis an nGaeilge a chur chun cinn sa saol poiblí. Molaim chuile dhuine atá tar éis é sin a dhéanamh, agus molaim d'éinne atá ag smaoineamh ar é a dhéanamh, é a dhéanamh chomh luath agus is féidir.

Molaim go h-ard an Chathaoirligh reatha, an Seanadóir Paddy Burke. Tá sé ag déanamh fíor-jab mar Chathaoirleach agus mar dhuine neamhspleách. Molaim chomh maith na ceannairí de na grúpaí éagsúla. Cé go mbíonn muid ag sparáil, mar a déarfá, ó am go chéile, tá an chairdeas fós ann, agus is ar mhaithe le chur chun cinn na díospóireachta a mbíonn muid ag sparáil. Molaim chomh maith an fhoireann ar fad a bhíonn ag obair linn: an Cléireach agus a

cuid cairde sna h-oifigí, agus na h-uiséirí a dhéanann sár-obair ar fad agus a thugann an-cabhair dúinn. Guím breithlá shona ar mo chomh-Sheanadóirí agus tá súil agam go mba fada buan iad agus go mba fada buan an Teach seo.

Health and Social Care Professionals (Amendment) Bill 2012: Second Stage

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

Acting Chairman (Senator Diarmuid Wilson): I welcome the Minister for Health, Deputy Reilly, to the House and invite him to make his contribution.

Minister for Health (Deputy James Reilly): I am pleased to introduce the Health and Social Care Professionals (Amendment) Bill 2012 for the consideration of the House. The Bill is a relatively short technical Bill, with 20 sections in total that was passed by Dáil Éireann without amendment on 29 November last. The Bill proposes to amend the Health and Social Care Professionals Act 2005 to provide for the enhanced and effective functioning of the Health and Social Care Professionals Council and the registration boards established under the Act. It will also amend the Act to better provide for the assessment and recognition in Ireland of qualifications obtained outside the State and to ensure compliance with the relevant EU instrument.

The 2005 Act provides for the establishment of a system of statutory regulation for designated health and social care professions. The regulatory system comprises a registration board for each of 12 designated professions, a Health and Social Care Professionals Council with overall responsibility for the regulatory system and a committee structure to deal with disciplinary matters. These bodies are collectively known informally as CORU. CORU is responsible for protecting the public by regulating health and social care professionals in Ireland. It promotes high standards of professional conduct and professional education, training and competence among the registrants. The Health and Social Care Professionals Council was established in 2007. Its functions include the governance and co-ordination of registration boards and the provision of administrative support and secretarial assistance to registration boards and their committees. Although the annual cost of running the council is being funded by the Exchequer in the main at present, the intention is that the regulatory system will, in time, be fully self-funding through the annual fees payable by registrants, as is the case with all other health professional regulators, such as the Medical Council, An Bord Altranais, etc.

The following 12 health and social care professions are designated under the Act, namely, clinical biochemists, dietitians, medical scientists, occupational therapists, orthoptists, physiotherapists, podiatrists, psychologists, radiographers, social care workers, social workers and speech and language therapists. In addition, the decision of the previous Government to rationalise the Opticians Board into the Health and Social Care Professionals Council will see another two professions, optometrists and dispensing opticians, being regulated under the Act in 2013. Under the Act, I, as Minister for Health, may designate other health and social care professions if I consider that it is in the public interest to do so and if the specified criteria have been met.

2 o'clock

I am aware that some professions, currently not designated, have made a case to be regulated under the Act. While my immediate priority is to proceed with the establishment of the

registration boards for the professions currently designated under the 2005 legislation, I have undertaken to commence the necessary steps to bring counsellors and psychotherapists within the ambit of the Act as a matter of urgency. I have given this commitment following the valuable and thoughtful contributions made during the passage of the Bill through Dáil Éireann.

The lack of regulation in the area of counselling in particular is a matter of concern. There are a number of issues still to be clarified however. These include decisions on whether one or two professions are regulated, on the title or titles of the profession or professions, and on the minimum qualifications to be required of counsellors and psychotherapists. A report from Quality and Qualifications Ireland, QQI, is due next year and will establish standards of knowledge, skills and competence to be acquired by students of counselling and psychotherapy. In addition, an examination will be undertaken on the standard of qualifications currently held by counselling and psychotherapy practitioners seeking regulation. The culmination of this work will be a big milestone towards the regulation of counsellors and psychotherapists.

To date, five registration boards have been established. These registration boards are for the professions of social worker, radiographer, dietitian, occupational therapist and speech and language therapist. It is my intention to proceed to establish a further six registration boards in 2013. The Social Workers Registration Board has established its register, has held elections and has made the necessary by-laws on education and training qualifications. The board has also adopted a code of professional conduct and ethics which was subject to public consultation. When the statutory transitional period ends two years after the establishment of the register next May, the profession of social worker will be fully regulated under the Act. The Radiographers Registration Board will soon be in a position to open its register and commence its two-year transitional period. That will also facilitate the commencement of the fitness to practise provisions of the Act.

The Act provides for grandparenting - a transitional period of two years during which existing practitioners must register on the basis of current specified qualifications. After that, only registrants of a registration board, who will be subject to the Act's regulatory regime, will be entitled to use the relevant designated title.

The Bill has three main purposes. The first is to amend the Act to allow the Minister for Health to continue to appoint professional members to the council until each of the registration boards has been established in respect of the 12 professions designated under the Act, has held elections, and is in a position to nominate one of their elected members. The second is to incorporate the provisions of Directive 2005/3 6/EC on the recognition of professional qualifications into the principal Act and to provide for the assessment and recognition of other non-Irish qualifications which are outside the scope of the directive. Third, and in order to enhance the effective operation of the council and the registration boards, other amendments are proposed which relate to items such as fees payable to members of the council, registration criteria and the updating of fines for offences under the Act.

I wish to briefly explain the technical difficulty that has arisen with the appointment of professional members to the council. The Act provides that the council consists of a chairperson and 24 ordinary members, with each of the 12 registration boards nominating one of their elected members for appointment. As is usual in such cases, for the first term, the Act also empowers the Minister for Health to directly appoint 12 professional representative members since no registration board would have been established. The phased establishment of the 12 registration boards and the resulting lapse of time have meant however that, in the absence

of registration boards which can then nominate council members, professional representative members cannot be appointed to the council to fill the vacancies arising from the completion of the terms of office of the original members.

Currently, 12 professional members are attending council meetings in an observer capacity, with my consent, in order that the perspective of the professionals can be maintained. This is an interim measure only and those attending do not have voting powers and cannot fulfil the requirements for a quorum. The Bill therefore proposes an amendment to the Act to allow the Minister for Health to continue to appoint professional members to the council until such time as the registration boards have been established, have held elections and are in a position to nominate elected members for appointment to the council.

The Bill also takes account of the provisions of Directive 2005/36/EC on the recognition of professional qualifications, which was enacted after the enactment of the Health and Social Care Professionals Act 2005. This directive is an Internal Market measure aimed at facilitating the free movement of persons within the European Economic Area, EEA. While health professionals are the largest single professional category availing of its provisions, the directive applies to any regulated profession. The Department of Education and Skills, in light of its role in qualifications, has overall responsibility for the directive in Ireland.

Senators may be aware that discussions are taking place at European Union level to modernise Directive 2005/36/EC. These are expected to conclude during the Irish Presidency. In the meantime, it is necessary to give effect to certain aspects of the current directive in this Bill. The directive makes it easier for qualified professionals, including certain health and social care professionals, to practise their professions in European countries other than their own, while providing appropriate safeguards to ensure public health and safety and consumer protection. This means that applicants' qualifications and post-qualification work experience are assessed to ensure they meet the qualification entry requirements to the profession in question in Ireland. As qualification recognition is the first step in a statutory registration process, it was always the policy intention that the registration boards would assume responsibility for the qualification recognition function under this directive. The Bill, therefore, provides that each registration board will be designated as competent authority under Directive 2005/36/EC for its designated profession.

The Minister for Health is the competent authority for most of the health professions designated under the Act and qualification recognition is for the purpose of eligibility for recruitment to the publicly-funded health sector. The introduction of statutory registration will mean all persons with non-Irish professional qualifications who seek to exercise their profession in Ireland must have their non-Irish qualification recognised under the directive.

The amendments contained in the Bill will also provide a legal basis for the assessment and recognition of qualifications obtained outside the State which are outside the scope of the directive, namely, the non-EEA qualifications of EEA nationals and the qualifications of non-EEA nationals. The Bill provides that the processes for the assessment of these qualifications are the same as provided for in Directive 2005/36/EC, including the provision of explicit appeal mechanisms.

The main provisions of the Bill can be summarised as follows. Section 1 sets out that the Health and Social Care Professionals Act 2005 is the principal Act and section 2 inserts a number of definitions into the principal Act. Section 3 will allow the Minister for Health to continue

to appoint representatives of the designated professions to the council until such time as all registration boards are established and in a position to nominate elected members. Section 4 will provide a legal basis, when the council is self-funding, for payments to members of the council and its disciplinary - fitness to practise - committees, subject to the approval of the Minister for Health and with the consent of the Minister for Public Expenditure and Reform.

Section 6 will permit each registration board to prescribe certain practice and training requirements for professionals who have not practised for a designated period. Sections 11 and 13 will increase the maximum fines for offences committed under the principal Act. Sections 15 and 16 will provide for some changes in relation to "grandparenting" and in respect of the use of professional titles during the transitional period in which practising professionals may apply for registration. Sections 17 and 18 will allow the Minister to have the power to appoint members of the council and registration boards for a period of up to four years, rather than the current fixed term of four years.

Amendments are also proposed to sections 5 to 10, inclusive, and 14 and 15, of the principal Act to provide for the assessment and recognition in Ireland of qualifications obtained outside the State. Section 5 inserts a new section 27A to provide that when their registers have been established registration boards will be designated as competent authorities under Directive 2005/36/EC, empowered to act as competent authorities for their designated professions under Directive 2005/36/EC and empowered to assess qualifications obtained outside the State which are outside the scope of the directive. This section also provides for necessary transition arrangements for applications under the directive.

Section 6 amends section 31 to provide that a registration board may make by-laws relating to procedures for the assessment of professional qualifications, training, experience, aptitude tests or adaptation periods of applicants for registration whose professional qualifications have been obtained outside the State and are outside the scope of the directive. Section 7 amends section 38 to update and simplify the approved qualifications criteria in section 38(2) so that there are three categories - Irish qualifications, qualifications approved under Directive 2005/36/EC and other qualifications - and to insert new definitions and remove others no longer necessary. Sections 8, 9 and 10 relate to procedures and appeals for non-Irish qualifications. Section 12 relates to the use of title in the provision of services on a temporary and occasional basis. Sections 14 and 15 amend the registration process for existing practitioners to comply with the processes of Directive 2005/36/EC which provide for the assessment of formal professional training and post-qualification professional experience. Section 19 provides a minor clarifying amendment to the list of optional qualifications required by an existing practitioner radiographer in order to register during the transitional period.

The Bill will enable the Health and Social Care Professionals Council to continue to fulfil in a more effective way its object to protect the public by promoting high standards of professional conduct and professional education, training and competence among registrants of the designated professions. I thank the House for its attention and commend the Bill to it.

Senator Marc MacSharry: I apologise for missing most of the Minister's speech. I was on my way to another meeting and was delayed.

I welcome the opportunity to make a few points about this legislation. We could have the Minister in the House all the time. The Minister knows that every day on the Order of Business, we are always looking to have a chat with him about various things. In contrast to the normal

adversarial approach I take, we very much support this Bill. The Minister knows that its origins go back to the current Leader of the Opposition, Deputy Martin, in 2000 in respect of the report entitled, Statutory Registration for

Health and Social Professionals: Proposals for the Way Forward. The 2005 Act came about as a result of that report and we then saw the commitment to introduce statutory registration for health and social care professionals. According to that report, approximately 35 grades in the health service come under the overall term of health and social care. The rationale for the introduction of such registration is that we all require confidence in our health care professionals and to know that if we are seeking therapy or medical help and assistance, we can be confident that the prescribed treatment or therapy does what it says on the tin, for want of a better expression. Various disciplines have voiced concerns during the years about people's qualifications.

The legislation, which the Minister went through piece by piece, is technical in nature. Its main implications are the inclusion of additional professions in the system of statutory regulation in the future and the granting of power to the Minister to do that. For example, the Minister may look at including counselling and psychotherapy after the original 12 areas are included. What are the Minister's intentions with regard to herbalists? There are some very well-qualified people who are offering herbal remedies and treatments and many people have considerable confidence in them. There are varying degrees of expertise among these people. Some have done basic courses while I gather that others have completed degrees and doctorates in this area and so are very well qualified and competent in prescribing various remedies and treatments. We should try to include this area as soon as possible so that we can ensure that those worthy of registration are registered and those who are not worthy of registration are not registered so that the public can have confidence in that area also.

Will the Minister clarify why section 6 of the 2005 Act, relating to fitness to practise complaints, inquiries and the discipline that might be handed down, has not yet commenced? Why is this issue not dealt with in the Bill? Obviously, it is very important in the regulation of health care professionals and is meant to be a key function of the Health and Social Care Professionals Council. Only two of the professions are registered and up and running so far. Will the Minister indicate how quickly the entire 12-----

Deputy James Reilly: I dealt with that issue.

Senator Marc MacSharry: Very good, I will be able to check the record. That is very useful.

The addition of other professions might have been dealt with early in the Minister's speech also, but if it was not, will the Minister indicate some of the additional professions that he intends to bring on board? If members of the public at large feel that a particular area needs to be examined or registered, who do they ask to do that or what is the process in that regard?

We support the Bill. There is the issue surrounding section 6 of the 2005 Act but like the Minister, I commend the legislation to the House. I look forward to hearing further elaboration on some of the points I raised. As far as the public is concerned, the sooner this Bill is passed, the better, in order that we can have more confidence in the professions that are being put forward and prescribing treatments across the various disciplines.

Acting Chairman (Senator Diarmuid Wilson): I apologise to Senator MacSharry for the noise during the initial part of his contribution. There appears to be a difficulty with the

broadcasting camera opposite him.

Senator Colm Burke: I welcome the Minister and this Bill. It is important to have proper registration for people who are offering such services. When the review was carried out in 2000 there were only five professional groups subject to statutory registration - doctors, dentists, nurses, opticians and pharmacists. The 2005 Act expanded that to 12 other groups, including clinical biochemists, dieticians, medical scientists, occupational therapists, physiotherapists, psychologists, radiographers, social care workers, social workers and speech and language therapists.

We are dealing with a very big area. In the health and medical care sector, there are more than 18,000 registered medical practitioners and I understand that more than 4,500 of them are people who did not graduate in Ireland. There is a huge movement of professionals in all areas. An advantage of the EU is that people can move freely within the 27 member states and over the years more people are moving from one state to another. As a large number of professional practitioners have moved to Ireland, it is important that we have a proper procedure in place for registration. I welcome the Bill for that reason.

It is important that the Health and Social Care Professionals Council is fully operational, with all the various sectoral boards registered as well. The Minister said that five are already up and running and another six are due to be established during 2013. This is technical legislation and it is important that it is passed. The registration board is not just about registration but also about ensuring that set standards are reached in respect of education and training and that a set procedure is in place for dealing with complaints, inquiries, discipline and the protection of professional titles.

The EU documentation refers to more than 800 professional qualifications. As more and more people are moving between member states, it is important that we move towards harmonising and recognising qualifications. We are attached to the UK health education system, in that we are more likely to recognise a qualification from a non-European country, for example, India, Pakistan or Nigeria, than we are to recognise qualifications from European countries. Our tendency has been to look towards the UK's education and training process. As we progress further in Europe, there will be greater sharing of information and training and expertise will become more available in Ireland as opposed to the Irish just offering that expertise to other European countries. In this light, it is important that a set of rules apply across the 27 member states.

Not only does the Bill before us deal with the Health and Social Care Professionals Council and the establishment of the registration boards, it also deals with the 2005 directive on same. That directive was a consolidation of 15 other directives and is concerned with the recognition of qualifications. Since it is currently being reviewed, we need to move with the times. I welcome the Minister's work in introducing the Bill and in ensuring that all of the registration boards are set up in a timely manner. Although the legislation has been in place since 2005, we have been slow in putting all of the procedures in place. We need to move faster. I note the Minister's confirmation to the effect that the 12 boards will be up and running within the not too distant future.

Given the work that must be done by the boards and the council, it is important that backup administrative services be in place. The Bill sets out strict timelines for response times to applications and for dealing with appeals and complaints. If the timelines are to work properly,

there must be a proper administrative structure.

I welcome this development overall. It is important that the public has a fair protection mechanism that ensures that the quality of service it receives is of the standard expected and required in Ireland and the other 26 member states. I welcome the Bill and look forward to its passage through the House and its enactment at an early date.

Senator Mary Moran: I welcome the Minister to the House and add my support to the Bill. I welcome the Minister's comments to the effect that his priority is to proceed with the establishment of the registration boards for the professions designated under the 2005 legislation. I will reiterate Senator Burke's comments, in that this work must be done in a timely and efficient manner. I look forward to it.

In particular, I welcome the Minister's statement that he has started taking the steps necessary to include counselling and psychotherapy among the professions to be recognised. It is alarming as we have all heard of cases where people can put a plaque on the door and call themselves a counsellor or psychotherapist and provide counselling in areas like suicide or eating disorders, which are very serious complaints that require proper and effective training. I welcome this change, which is vital, and I urge the Minister to hurry it through as quickly as possible.

Another point related to qualifications. I welcome that freedom will be given for people to have qualifications recognised within the EU. What about qualifications from America or Canada? In the past year I have heard the case of a radiographer who has tried to take up a position having been sought for the job. He had to gain the appropriate qualifications but was left for nine or ten months, which is a major delay in looking at his qualifications. I understand there was a problem with the registration board and waiting for it to meet so as to carry out the official process. If somebody is to relocate or return to this country, there should be procedures where registration can occur in a timely manner.

I add my support to the Minister and particularly to his words today indicating that steps will be put in place for counselling and psychotherapy processes. It is vital that they are included.

Senator Trevor Ó Clochartaigh: Cuirim céad fáilte roimh an Aire. Tá mé cinnte go mbeidh áthas air a chloisint go bhfuil muid i Sinn Féin ag tacú leis an Bille. Is breá an rud go bhfuil muid ag aontú faoi chúrsaí. Cuireann muid failte roimh an reachtaíocht áirithe seo mar síleann muid go bhfuil sé fíor-thábhachtach go mbeadh na daoine atá ag plé leis na cleachtais éagsúla leighis seo cláraithe mar is ceart.

Sinn Féin will support the legislation and the Health and Social Care Professionals (Amendment) Bill is a welcome technical measure. It has a number of key purposes, as the Minister outlined, and we hope it will add to the effective functioning of the Health and Social Care Professionals Council, which represents 12 disciplines, including clinical biochemists, dieticians, medical scientists, occupational therapists, orthoptists, physiotherapists, podiatrists, psychologists, radiographers, social care workers, social workers and speech and language therapists, with optometrists and dispensing opticians to be added in 2013.

The registration boards for each of these professions have yet to be established. One of the purposes of the Bill, as outlined, is to allow the Minister to continue to appoint professional members to the council until each of the registration boards has been established in respect of the 12 professions designated under the Act, elections are to be held and there is the chance

to nominate an elected member. We support this process, which is a reasonable step to ensure various disciplines are represented.

The second key purpose is to incorporate the provisions of Directive 2005/36/EC into Irish law, which relates to the recognition of professional qualifications into the principal Act and to provide for the assessment and recognition of other non-Irish qualifications outside the scope of the directive. This is again perfectly sensible and there is a need to ensure skills are transferable, particularly as there is often a need to bring people with particular skills into this country's health care service.

Although it is vital to ensure there is co-operation, integration and transferability in a European context, we should also consider how to better bring about integration in an all-Ireland context, and it is not just Sinn Féin which sees value in this. As my colleague, Deputy Ó Caoláin, noted in the other House, the North-South feasibility study of cross-Border co-operation in health care provision, carried out by the two Departments in the North and South, made clear the benefits of cross-Border operation. He noted there are significant difficulties, as there are two jurisdictions on this small island, for both sets of authorities in sustaining high quality and specialist services normally only provided in centres servicing large populations.

Steps can be taken to overcome such challenges if a cross-Border approach is taken. The report noted that where patients must leave both jurisdictions for treatment, the impact on individuals and families is significant in terms of patient well-being and accessibility for families in what can sometimes be traumatic circumstances. Combining resources for the provision of such services on a North-South basis makes sense. It is particularly relevant to the legislation that the report notes, "it is recognised that both populations would benefit from flexible working arrangements which would enable staff to work in another jurisdiction. For example, practitioners with scarce clinical skills might reasonably offer a service to both populations".

The report considers that issues such as indemnity for staff working out of jurisdiction and mutual recognition of qualifications between professional bodies in both jurisdictions, as well as registration and pension issues associated with working in both jurisdictions, need to be resolved for the benefits of that to be fully recognised. I agree with these sentiments. I hope the Minister takes them on board and that we will see action in this regard in the coming weeks and months.

The third major purpose of the legislation is to enhance the effective operation of the council and registration boards, including items such as fees payable to members of the council, registration criteria and the updating of fines for offences under the Act. This is largely technical in nature.

The steps taken are positive in improving regulation and so on. They are, however, modest steps with reference to the substantial reform we require. The Minister commits himself to reform on a substantial scale but we need to see more evidence of this progress.

Given the way the HSE and the health care system are structured, too few people are employed in many of these disciplines, despite many being trained in those fields. The most obvious example is that of speech therapists. Many who have qualifications would love to take on that work full-time and plug a gap in service provision that is clearly there. This was borne out in the Dáil contributions by Deputy Ó Caoláin and several others. The recruitment embargo is a blunt instrument that is not working and is hampering the care of patients.

I urge the Minister to bring this issue back to the Cabinet. Nonetheless, we commend the Minister for bringing the Bill forward and we will be supporting it. Táimid ag tacú leis an mBille mar atá leagtha amach.

Senator Deirdre Clune: While the Bill is short and technical, it is important. It is essential that we have registration boards and regulation for professionals. There must be certainty for professionals working in the various disciplines and members of the public who avail of those services must have certainty and trust in standards. A certain level of educational attainment must be established prior to entering a profession and there must be continuing professional development and training throughout a professional working life. In 2000, only five professions were registered. There are now another 12. Twelve years is a long time but some of these things can take a long time. It is important to give certainty.

I am glad to hear the Minister's comments on counsellors and psychotherapists. This area can be difficult. A person can put a plaque on the wall and offer those services. This can happen in other areas but it is particularly true of these areas. Counsellors and psychotherapists deal with vulnerable people who are crying out for help and depending on these professionals to support them and provide the necessary interventions and supports. In many cases they charge a hefty fee of €60, €70, €80 or more per hour for their services. This area has been crying out for regulation for a long time and we have all heard stories of how the trust of the public has been violated by certain individuals. I welcome the Minister's comments that he will work on this area as a matter of priority. He laid out how he intends to move forward. That is a positive move.

As a member state of the European Union, we want to ensure that there is a standard for all professions across the 27 member states. Those standards should be required of any professional coming to work in this country or in any member state. There should be a means of assessment to ensure professionals meet those standards. This is an important and positive step, from everyone's point of view. The registration boards will give certainty and confidence to users of the services of these health professionals. This will also give certainty to the professionals themselves who have committed their lives to working in these fields that their professional standards will be recognised, which is also important.

Senator Marie Moloney: I welcome the Bill. It is important for these professionals to be registered. Many of them were trained via the hospital system while others have gone through the CAO system to acquire their qualifications. I am delighted they can move freely in the EU. What has the registration fee been set at? I presume they only have to pay the fee in one country and can still travel and work in others.

Senator MacSharry referred to the regulation of herbalists. Has the Minister proposals to regulate acupuncturists and reflexologists who also operate freely?

Section 6 permits each registration board "to prescribe certain practices and training requirements for professionals who have not practised for a designated period of time". Will the Minister elaborate on this? How much further training will they have to undergo before being permitted to register? I support the Bill and thank the Minister for coming.

Senator John Kelly: I have two questions. I refer to the registration. It costs public health nurses €90 annually to register with An Bord Altranais but the proposed fee for social workers to register with a board is €295 annually. Who sets the fees? What does someone who registers

get in return for that money?

Section 6 permits each registration board "to prescribe certain practices and training requirements for professionals who have not practised for a designated period of time". It is a requirement that these professionals will have to regularly update their skills and training. Who will cover the cost of the training courses? Will it be down to the professionals or the HSE?

Minister for Health (Deputy James Reilly): I thank Senators for their support for the Bill, their contributions and the questions raised.

Senator MacSharry raised the issue of fitness to practise committees under section 6. We need at least two committees to be in place and these have not commenced yet because the three new registers and the social work register have only recently been added. These committees will commence next year.

A number of Members asked about establishing registers for other health-related fields. They could make submissions to the Department. Many of them mentioned specific areas, some of which I am interested in. For instance, acupuncture is valuable and it works, particularly for pain relief. I would much prefer people to have acupuncture on a weekly basis than to take non-steroidal anti-inflammatories, which can destroy their kidneys and cause gastrointestinal bleeding. Acupuncture is a safe alternative, particularly in older people, but we do not have any university here that has a prescribed course, therefore, one is at the mercy of the person delivering the service. It is an area I would like examined. I would like to see some of the colleges provide a course on which we could rely to produce suitably qualified individuals to provide these services. The same applies to reflexology, not to the same extent, but it certainly can have a role in respect of relaxation.

Senator Marie Moloney asked about registration costs, an issue also raised by Senator John Kelly. The reason it is more expensive for social workers to register is that they number only in the hundreds whereas there are 60,000 nurses. If one has to support the same superstructure with fewer people it will obviously cost more. As to who set the fee, at the behest of the unions I entered a long discussion with them on the fee because I did not want people to have lots of frills in respect of the register that are unnecessary when those who have to register have to pay the bill.

Senator Mary Moran raised the issue of an individual from the United States. The same processes apply. Obviously it is in our interest and I would like to see a minimalisation of red tape in respect of professionals coming to this country as we need them. As the traffic is often in the other direction, it is good to get some coming this way. The time period allowed is four months. That should be the case unless they have not provided the appropriate documentation which can hold up the process. Clear information is provided on the Department's website but that is not to say that individuals do not run into difficulty from time to time. It is an area that must be kept under active review because we should not do anything to obstruct suitably qualified people coming to the country to deliver care.

Senator Ó Clochartaigh mentioned the recruitment embargo. The reality is that the embargo has to stay in place but we said we would be much more flexible around it; we will be and have been in the past and will be more so next year. However, we face a serious challenge - I do not want to get into that discussion - in the health budget next year. There are 3,500 staff who must go. Considering that there are 37,000 plus nurses in the Health Service Executive manpower,

sadly nurses cannot escape, therefore, we have to go back to changing the model of care that I mentioned, that is, ensuring that the right patient is seen by the right person in the right place at the right time. So often, that is not the case in the current system. There are nurses looking after people who health care assistants could look after. There are general practitioners looking after patients who nurses and physiotherapists should be looking after. There are patients being looked after in hospitals who should be looked after in the community. There are consultants looking after patients who others should be looking after. A big job of work is being undertaken through the clinical programmes, the SDU. That is ongoing and we continue to make progress. Obviously we would like if the progress was faster but the reality is that one never gets to where one wants to as quickly as one would wish but that does not mean one should not continue to strive to do so and we certainly will.

The issue of herbalism and herbalists was mentioned. Currently, the product is regulated under the medicines legislation rather than the actual practitioner. One could look at herbalism and traditional medicine. That is a whole area that needs to be explored. Just because I am a doctor does not mean I close my eyes to these issues. My view is very simple, if it works, it works and as long as it can be proved to work and in repeated control trials to be seen to work, why not have it available to one's citizens? There are other jurisdictions we can look to where they have got structured training in these areas and have degrees from universities that ensure that the individual who is practising is competent in the area. We know this can be looked at but the most pressing issue for us, outside of those mentioned, has to be counselling and psychotherapy. Given the high rate of suicide in the country, we have to ensure we have got the professionals suitably qualified to help us deal with the mental health requirements of the people. I thank all the Members for their contributions and support.

Question put and agreed to.

Acting Chairman (Senator Diarmuid Wilson): When is it proposed to take Committee Stage?

Senator Colm Burke: On Tuesday, 18 December.

Committee Stage ordered for Tuesday, 18 December 2012.

Sitting suspended at 2.45 p.m. and resumed at 3 p.m.

Credit Union Bill 2012: Committee Stage

SECTION 1

Acting Chairman (Senator Pat O'Neill): Amendments Nos. 1, 164 to 166, inclusive, and 176 to 180, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 1:

In page 5, subsection (1), line 28, after "Union" to insert "and Co-operation with Overseas Regulators".

Minister of State at the Department of Finance (Deputy Brian Hayes): These amend-

ments and the related Schedules are to provide for measures which will allow the Central Bank of Ireland greater capacity to co-operate with its counterparts in other countries. Specifically, these amendments must be enacted to permit the Central Bank to sign the International Organization of Securities Commissions multilateral memorandum of understanding, or MMOU. This must be done by year end. In light of the pressing end-of-year timeline for signing the MMOU, it has been necessary to effectively make these amendments part of this Bill. The purpose of the MMOU is to allow the Central Bank to co-operate and share information with other regulators, including other securities commissions, around the world in accordance with international best practice.

The provisions being inserted into the Bill are currently part of the Central Bank (Supervision and Enforcement) Bill 2011, which is due to go to Committee Stage in the Dáil in January. The changes envisaged include: enacting section 53 of the Central Bank (Supervision and Enforcement) Bill, so that the Central Bank may use its powers on behalf of overseas regulators; enhancing and consolidating authorised officer provisions; and related provisions for guarding the Central Bank confidentiality regime.

Given that these amendments are not related to credit unions, it is necessary to amend the Short and Long Titles of this Bill to accommodate them. I wish to emphasise that the expeditious passage of the Credit Union Bill through this House is to allow for €250 million to be contributed to the credit union fund by year end, as there is no scope in the 2013 figures for it to be done after that. This money is essential for the restructuring process to get under way. We have already discussed this matter on Second Stage. While the International Organization of Securities Commissions, IOSCO, requirements are urgent, they are not the cause of the accelerated timetable for the Bill. I acknowledge that on Second Stage, Members asked what was the rush and the rush is to get the money in place, because the Government has made provision for it in 2012. The end of 2012 is approaching and it is important that the money be put in place as part of the restructuring process. In respect of this group of amendments, the Government simply is bringing them forward in order that this important aspect of the Central Bank's work also can be part and parcel of the Bill.

Amendment agreed to.

Acting Chairman (Senator Pat O'Neill): Amendments Nos. 2, 3 and 159 are related and may be discussed together.

Government amendment No. 2:

> In page 5, subsection (2), line 30, to delete "*sections 37* and *48(2)*" and substitute the following:
>
> "*sections 36*, *37*, *48(2)* and *57(2)*, *Part 5* and *Schedules 2* to *5*".

Deputy Brian Hayes: I will speak on amendments Nos. 2, 3 and 159. Given these provisions amend the Central Bank Reform Act 2010, it is also necessary to update the citation of the Central Bank Acts and these amendments provide for this update. I might put some additional information on the record of the House in case there is any question about this. The first of these changes, as set out in amendments Nos. 1 and 180, will amend the Short and Long Titles of this Bill to provide for the inclusion of this package of measures and hence the new Title to the Bill, namely, the Credit Union and Co-operation with Overseas Regulators Bill. The net impact is the name of the Bill is being changed from being the Credit Union Bill to the Credit

Union and Co-operation with Overseas Regulators Bill 2012, which I readily concede is a bit of a mouthful.

The Long Title is likewise amended to specify that the Central Bank will have revised powers in respect of co-operation with other regulators and will from henceforth have consolidated powers in respect of the appointment of authorised officers. The International Organization of Securities Commissions, usually referred to as IOSCO, co-ordinates security regulators across the globe. The great majority of IOSCO members already have acceded to the memorandum but amendments are required to enable the Central Bank of Ireland to sign it. In these amendments, the Government is simply allowing the Central Bank to sign this international amendment in order that the powers that can be given to it are clear for all to see.

The Central Bank (Supervision and Enforcement) Bill 2011 proposes measures which meet all of these requirements and it was intended that the Central Bank of Ireland would be in a position to accede to the memorandum on the enactment of that Bill. However, IOSCO members have agreed that it would issue a watch-list of those countries which had not yet signed the memorandum on 1 January 2013. This change means that the enactment of the relevant legislation provisions now is a matter of some urgency.

As for what the amendments do, the new section 54 of the Central Bank Reform Act is a general provision enabling the Central Bank to exercise its various powers in support of third-country regulators. It is important to note that the proposed power enables the Central Bank to share information with other regulators. In making a decision to share information with other regulators, the Central Bank may take into account a number of factors, including whether the breach of law concerned also would be a breach of Irish law, as well as the seriousness of the issue and the public interest in general. It also should be noted that the Central Bank can expect a financial contribution to defray the cost of the investigation by the bank, if it agrees to a request to investigate a matter on behalf of another regulator, unless European Union-related obligations are concerned.

Amendment No. 164 provides for changes to section 33AK of the Central Bank Act 1942. It removes the obligation on the bank to report information pointing to the commission of an offence to other law enforcement authorities in the State where the information concerned is received from an overseas supervisor. The reason for this is to allow the free flow of information between regulators without fear that the information shared could cause criminal prosecutions to fail as a result of the variations in the methods used to gather information in different jurisdictions. The mandatory passing of information to those charged with prosecuting criminal offences in circumstances in which Irish rules of evidence might mean that any prosecution would be contaminated, clearly is not in the interest of justice for the individual or the integrity of the criminal justice system generally.

The larger part of amendment No. 165 proposes to repeal the existing authorised officer powers under 20 different Acts and statutory instruments and replace them with a single authorised officer regime which the Central Bank may use to obtain information from all regulated financial service providers. The current authorised officer regime varies across each sector, and important powers provided for in some circumstances are absent in others. A key provision will allow for an authorised officer appointed by the Central Bank to require any person who might reasonably have information relevant to the investigation of a financial service issue to provide the information. The substance of the amendments in group 2 is to provide for that and to tidy up the existing legislation by way of a number of consequential changes.

Amendment agreed to.

Government amendment No. 3:

In page 5, between lines 31 and 32, to insert the following subsection:

"(3) The Central Bank Acts 1942 to 2011, *sections 36*, *37*, *48(2)* and *57(2)*, *Part 5* (in so far as it amends any of those Acts), and *Schedules 2* and *3* (in so far as they amend any of those Acts) may be cited together as the *Central Bank Acts 1942 to 2012*.".

Amendment agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

SECTION 4

Acting Chairman (Senator Pat O'Neill): Amendments Nos. 4 and 52 are related and may be discussed together.

Government amendment No. 4:

In page 6, between lines 10 and 11, to insert the following subsections:

"(2) Notwithstanding anything in the rules of a credit union, the board of directors may, by resolution passed during the transitional period, make such amendments of the rules of the credit union as may be consequential on the provisions of this Act.

(3) For the purposes of *subsection (2)*, the transitional period is the period of one year from the commencement of this section.

(4) Notwithstanding anything in section 14(4) of the Principal Act, after the expiry of one year from the commencement of this section, the Bank shall not be required to register any amendment of a credit union's rules unless such consequential amendments of the registered rules as are mentioned in *subsection (2)* either—

(*a*) have been made before the Bank receives the amendment; or

(*b*) are to be effected by the amendment.".

Deputy Brian Hayes: We are dealing with amendments Nos. 4 and 52. These amendments mirror sections 14(6) to 14(8) of the Credit Union Act 1997 and provide for changes to the rules of credit unions that are consequential to the provisions of the Bill. Amendment No. 4 clarifies that during the first year following the commencement of this section, the rules of the credit union may be amended by a resolution of the board of directors rather than by the members of the credit union where such changes are necessary to comply with the provisions of the Bill.

Amendment No. 52 provides for a reduction in the number of board members from 15 to 11 by amendment to the rules of the credit union. This is a saving provision which continues to enforce any regulatory action taken by the Central Bank on or before the commencement of this Act under a provision which is being amended, repealed or revoked by this Act. This section also sets out a definition of regulatory actions for the purpose of this section.

Amendment agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

SECTION 6

Government amendment No. 5:

In page 7, line 31, after "legislation' " to insert the following:

", where applicable to credit unions acting under any authorisation from the Bank provided for by law,".

Deputy Brian Hayes: During Report Stage in Dáil Éireann and Second Stage in this House I indicated that I would table an amendment to clarify that it is only legislation that already applies to credit unions that would be covered by this definition. The amendment outlined provides the clarification sought. The point was raised by Senator Byrne and a number of other Senators on Second Stage in the House.

The amendment provides that the financial services legislation definition only relates to provisions applicable to credit unions acting under any authorisation from the Central Bank as provided for by law. Such authorisation may include acting as an investment intermediary under the Investment Intermediaries Act 1995. The amendment clarifies any misunderstanding that the definition somehow applies - inappropriately - a corpus of so-called banking legislation to credit unions. I again clarify to the House that this definition does not apply financial service provisions to credit unions anew, nor could it be used for that purpose. The perception, that the definition turns on to credit unions a range of new legislative provisions from the wider financial services area, is mistaken.

The point was made that we would table an amendment that would be clearer in terms of what credit unions can and cannot do. A number of Members indicated that credit unions frequently do other things, in particular in terms of intermediaries legislation, which is not clarified in other legislation in terms of a definition. We were asked by colleagues in the Dáil and in this House to bring forward a clearer definition of what exactly applies to credit unions under the section. The amendment provides a better definition and greater clarity in that regard.

Amendment agreed to.

Government amendment No. 6:

In page 8, lines 23 and 24, to delete all words from and including "or" in line 23 down to and including "secretary," in line 24 and substitute the following:

", the secretary or any other member of the board of directors,".

Deputy Brian Hayes: This amendment clarifies that the secretary is a member of the board, unlike, for example, the position of a company secretary. We were asked to make the position clear in the Bill and are pleased to do so.

Amendment agreed to.

Section 6, as amended, agreed to.

NEW SECTIONS

Senator Kathryn Reilly: I move amendment No. 7:

In page 9, before section 7, to insert the following new section:

"7.—The Principal Act is amended by the insertion of the following new subsection after section 6(5):

"(6) Nothing in the foregoing will prevent a credit union from providing certain services, to be prescribed by the Bank, to a credit union or a member of another credit union registered under this Act.".".

I welcome the Minister of State. Our interaction with him and his responses to questions have been positive and I hope the debate will continue in a positive vein today. While progress has been made on the Bill, we are still slightly short of the line.

The amendment has been moved because insufficient movement has been made on the issue of shared services. Amendments Nos. 7 and 8 would allow for member level service sharing among credit unions. This is technologically feasible and there is no reason the sharing of services should not be permitted in the Bill.

On Second Stage, the Minister of State referred to a report on shared branches, which is expected to be released in mid-2013, and indicated the Bill could not provide for shared services. He also noted that the issue of services had not been addressed in the report of the Commission on Credit Unions. That the commission engaged in significant discussion of member level shared services is reflected on pages 87 to 89, inclusive, of its final report.

Amendment No. 7 makes clear that any shared services would only commence with the explicit agreement of the Central Bank and where the credit unions in question have demonstrated a capacity to deliver such services. We have made obtaining the approval of the Central Bank a precondition for commencing shared services because a number of technical issues must first be addressed. The amendment does not propose to allow shared branching. It would, however, allow credit unions to avail of a shared services facility at member level and I urge the Minister of State to accept it.

Senator Darragh O'Brien: Before commenting, I ask the Minister of State to respond to the points made by Senator Reilly.

Deputy Brian Hayes: Amendment No. 7 relates to shared branching, which involves credit unions providing front-of-house services to each others' members. Shared branching is an activity that operates primarily in the credit union system of the United States. It was not considered by the Commission on Credit Unions and does not form part of the commission's final report. Moreover, in the public consultation process shared branching was not a key issue in the submissions received from credit unions or other stakeholders, nor did it emerge from the survey returns from the credit unions.

In simple terms, shared branching would allow one credit union member to use the service of another credit union. For this facility to work securely, it is important that certain procedures are put in place beforehand. First, a settlement system is needed as a person could withdraw his

or her savings several times from different credit unions if safeguards were not in place to prevent such a practice. Second, an underwriting process is needed to establish proper assessment of ability to repay at the credit union issuing the loan on behalf of the member's home credit union. It would also need to be made clear who would be held responsible should a loan go into arrears. Would it be the member's credit union or the credit union which issued the loan? Third, an accompanying prudential framework would be needed to ensure, for example, that proper liquidity management practices are in place to guard against large, unpredictable withdrawals at small credit unions which are connected to larger credit unions. Furthermore, shared branching raises fundamental questions about the common bond, notwithstanding the commission's recommendations that the common bond remain unchanged. The fact that shared branching apparently operates successfully in other jurisdiction indicates that it is certainly worth considering. I consider that it would be premature to enshrine shared branching in legislation in the absence of the supporting infrastructure and prudential framework developed in consultation with all the relevant credit union stakeholders and the Central Bank. The Minister has written to the Credit Union Advisory Committee to ask it to examine this issue and to report back to him by the end of the second quarter of next year. I think I also mentioned this on Second Stage. The committee's report will involve an assessment of the current appetite for shared branching among credit unions and their members, an analysis of the framework requirements to support shared branching, an exploration of various alternatives and approaches drawing on international experience and best practice, and the recommendations of the Credit Union Advisory Committee, including any legislative changes required. The report is to be an open process involving consultation with other credit union stakeholders, including credit union representatives and the Central Bank. We do not propose to accept amendment No. 7, which has also been our position in the other House, but the Minister has asked for this report to be laid before him by the second quarter of next year. If there is an appetite for a wider application of this model, which I know is used in other jurisdictions, we can consider it in due course, but it is not appropriate to do so in the context of the current legislation.

Senator Kathryn Reilly: I do not think credit unions want to be a single bank or branches. This is why I referred to shared services. I know the services detailed in amendment No. 7 cannot be introduced overnight. There are issues with risk management, which the Minister of State mentioned, but it should not preclude the Bill detailing what such services could include. This is why the amendment sets out the difference between branching and shared services because there are many positives that can come out of this and because it would allow credit unions to be as efficient and responsive as possible. This is why I will be pressing amendment No. 7.

Senator Jim D'Arcy: On Second Stage I argued that it is important that credit unions move into the electronic age, which is, effectively, the concern of Senator Reilly's amendment. I heard what the Minister of State said but perhaps there should be some flexibility for credit unions. For somebody not to have the ability to remove cash from his or her credit union account through another credit union ATM seems akin to when one could only remove cash from a bank with a particular card. There is a lack of flexibility. Looking at some of the other services that have been discussed and the organisation of services, it is eminently sensible for it to happen with respect to research and marketing services. Could some of those be considered and could the Minister of State have a look at that?

Senator Darragh O'Brien: I support this amendment, which is very similar to one we produced but which has not been tabled for discussion for technical reasons. However, I intend

to table it on Report Stage. I agree with Senators D'Arcy and Reilly that more flexibility is required, especially when we look at the consolidation of the banking network. I am not saying the credit unions are not in the electronic age but we want to allow developments like electronically enabled payment accounts. It was the understanding of the credit union movement that this was agreed by the commission, but it seems to have been omitted from the Bill. While I accept a large part of the Minister of State's response, there are other issues to get over. It is not sufficient to state that there will be a further report by the second quarter of next year. There is nothing to preclude this from being part of the Act. The Minister of State need not initiate that part but it can be laid down in law.

My colleagues have covered why this is important. We are facing a degree of consolidation within the credit union sector in any case, so credit union customers will require access to accounts, ease of payment and so forth. It is for the future viability of credit unions, when one considers the additional services that are also being offered by the post office network, which is a good thing. We support this amendment and I intend to table a similar amendment on Report Stage if the Minister of State does not accept it.

Senator John Gilroy: We support the general thrust of the amendment but it is probably a little premature in light of what the Minister of State said about the lack of a set up and system. As the amendment appears to mix up the concepts of shared branching and shared services, we cannot support it.

Deputy Brian Hayes: I will clarify this because we appear to be mixing up two things. Shared branching is an internationally recognised term for the way in which credit unions can operate in a joined-up system of prudential risk whereby money can be taken out of one credit union applicable to another or loans can be taken out of one credit union applicable to another. That was not a recommendation from the commission. It recommended an aggressive form of shared services, which is already provided for in the Bill. The Senators are confusing one with the other.

If there is an appetite for shared branching, which is the essence of the co-operative banking system in America and other countries, the Minister, Deputy Noonan, is open to that. However, we must tease out the potential prudential risks and the implications for big and small credit unions and for deposit ratios, which are very clear in terms of what the Central Bank can issue to credit unions.

Senator Reilly spoke about shared services. There is nothing in the Bill to prevent that from happening. However, to take the next step and decide to integrate the entire credit union movement in a way that has hitherto not come before us in legislation or by way of a specific recommendation of the commission is one we cannot take. We are open to examining this and I am not closing down debate on it. The view of the Minister for Finance is that in asking that this matter be brought before him by the end of the first half of next year he demonstrates his intent to both Houses of the Oireachtas to look at this in a constructive way, if there is support for it. However, we need to hear from the credit union and hitherto that has not been its position.

We are confusing both matters. The Government is at one with Senator Reilly with regard to what she wants to do here, but there is nothing in the existing legislation that prevents us from doing what she wants us to do. However, I believe she is mixing this up with shared branching, which is a step too far at this stage. We are open to it if there is support for it in the future.

Amendment put and declared lost.

Senator Kathryn Reilly: I move amendment No. 8:

In page 9, before section 7, to insert the following new section:

"7.—The Principal Act is amended by the insertion of the following new section after section 26:

"26A.—(1) A credit union may, once the approval of the Bank has been secured and the necessary capacity and infrastructure put in place, promote, invest in, loan to, and/or contract with a credit union service organisation approved by the Bank (on such terms as the bank considers appropriate) and engaged in activities and services of the credit union service organisation related to the routine daily operations of credit unions.

(2) Nothing in this section or the following provisions of this Part affects the operation of any enactment which is not contained in this Act and which, in whole or in part, relates to the provision of credit union service organisation activities or services.

(3) Credit union services organisation activities or services may include but are not limited to the following:

(*a*) clerical, professional and management services:

(i) accounting services;

(ii) internal audits for credit unions;

(iii) credit union risk and compliance;

(iv) management and personnel training and support;

(v) marketing services;

(vi) research services;

(vii) procurement related services;

(viii) debt collection services;

(*b*) electronic transaction services:

(i) automated teller machine (ATM) services;

(ii) debit card services;

(iii) electronic fund transfer (EFT) services."."

This amendment follows on from amendment No. 7 and details the type of shared services that could be made available to members when the required capacity and support of the Central Bank has been secured. The Commission on Credit Unions in its report clearly supported a new regime for the provision of additional services. It is clear from that section of the report that the meaning includes both member level and back end shared services. I will not labour

the point we have discussed, but these are some of the services we envisage being shared. I ask the Minister of State to accept the amendment to facilitate the empowerment of credit unions to meet their members' demands.

Senator John Gilroy: Amendment No. 8 is consequential on amendment No. 7. Were we to accept amendment No. 7, we would accept amendment No. 8. Were we to reject amendment No. 7, we would automatically reject amendment No. 8.

The list of services provided by Senator Reilly is thorough but probably not exhaustive. To include so specific a list in legislation at this stage would be against the thrust of the Bill, as it could preclude elements that have not been mentioned.

Senator Darragh O'Brien: It would not preclude other additional services. If Senator Gilroy read the amendment, he would see that it states, "but are not limited to the following".

Senator John Gilroy: In which case, why include it?

Senator Darragh O'Brien: It would not limit the list to these services. I wish to give notice that we will table this amendment again on Report Stage. It was not included for technical reasons, but I intend to submit a similar amendment on Report Stage.

Deputy Brian Hayes: I thank Senator Reilly for amendment No. 8. The commission report notes that services may be shared in a number of ways, including the establishment of central credit unions, corporate credit unions, credit union service organisations - CUSOs, but we will just call them "credit union service organisations" - or local alliances. Shared service arrangements are already in operation in the credit union sector, for example, the Credit Union Services Co-operative Limited or the Irish League of Credit Unions, ILCU's own payment services. The commission recommends that the establishment of such shared service arrangements should be facilitated by legislation, where necessary.

The Government agrees that the sharing of services offers credit unions an opportunity to benefit from economies of scale and allows them to access expertise that they would not normally have the resources to engage. The latter may become increasingly important, given the increasing complexity and running costs expected in a modernised regulatory framework and enhanced service offering. The ILCU has accepted that there is no obstacle to establishing shared service arrangements at credit union level.

Subsection (3)(*a*) of Senator Reilly's amendment No. 8 states:

(*a*) clerical, professional and management services:

(i) accounting services;

(ii) internal audits for credit unions;

It also refers to marketing and research services. I am reliably informed that it is totally possible and legal to bring these services together in a shared way, as is the case in the examples I have cited. As the provision is already in place, there is no need to specify it in the legislation.

We encourage credit unions to use the shared service model. The Government is using it to save significant resources. I see Senator Barrett in the Chamber. In terms of HR, he will be

glad to hear that we will save 26% next year by sharing HR services in central government. If we can do it centrally, there is no reason that groups of credit unions cannot do it locally. There is no need to put it in law, as it is already allowed.

Amendment put and declared lost.

SECTION 7

Acting Chairman (Senator Pat O'Neill): Amendments Nos. 9, 12, 19, 29 and 34 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 9:

In page 9, line 37, to delete "appropriate and".

Deputy Brian Hayes: These are minor technical amendments that insert a test of certainty. Where the bank makes regulations under this section, the bank may only do what is necessary in the circumstances.

Amendment agreed to.

Acting Chairman (Senator Pat O'Neill): Amendments Nos. 10, 11 and 13 to 16, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 10:

In page 9, between lines 40 and 41, to insert the following:

"(2) The conditions imposed by the Bank under subsection (1) may include requiring a credit union--

(*a*) to notify the Bank of any events of such significance that could materially affect the credit union including any change to the strategic plan of the credit union;

(*b*) to operate a more limited business model agreed with the Bank;

(*c*) to cause to be undertaken an independent review of the credit union's business within 12 months in order to ensure that the credit union is complying with all legal and regulatory requirements.".

Deputy Brian Hayes: Amendment No. 10 inserts a new provision into section 7 to identify some of the types of conditions that the bank may impose on the registration of credit unions under subsection (1). These include a condition that the credit union must notify the bank of significant events. There is also a condition to operate a more limited business as agreed with the bank and a condition to undertake a review of the credit union's business within 12 months of registration to ensure it is compliant with all requirements. Conditions such as these must be necessary to protect the savings of credit union members. Conditions may need to be imposed in the formative years of a new credit union, as the union may be required to build up the requirement risk management and compliance controls within the credit union. This amendment also provides that only these conditions that are necessary may be imposed as a condition of registration. Any condition imposed may be applicable by the credit union to the Irish Financial Services Appeals Tribunal. These conditions may only be imposed on new registrations, and there have been very few of these in recent years. Amendments Nos. 11 and 13 to 16, inclusive,

are all consequential on amendment No. 10.

Senator Darragh O'Brien: The Minister of State mentioned new registrations. The Minister of State related a number of requirements when operating a more limited business model but if the Bill is passed, could the Central Bank move with these powers on an existing credit union? Does it only apply to new registrations?

Deputy Brian Hayes: It only applies to newly formed credit unions and as I understand it, there is no application to existing credit unions. It is another layer of security where a new credit union is formed. We have not seen many of these in recent years but that is not to say that in future, this will remain the case. The proposal would only apply to new credit unions.

Amendment agreed to.

Government amendment No. 11:

In page 9, line 41, to delete "(2) Any of the" and substitute "(3) Any of the".

Amendment agreed to.

Government amendment No. 12:

In page 9, line 43, to delete "appropriate and".

Amendment agreed to.

Government amendment No. 13:

In page 10, line 3, to delete "(3) Whenever the Bank" and substitute "(4) Whenever the Bank".

Amendment agreed to.

Government amendment No. 14:

In page 10, line 26, to delete "(4) Before deciding to" and substitute "(5) Before deciding to".

Amendment agreed to.

Government amendment No. 15:

In page 10, line 29, to delete "subsection (3)(*b*)" and substitute "subsection (4)(*b*)".

Amendment agreed to.

Government amendment No. 16:

In page 10, line 43, to delete "and (2)" and substitute "to (3)".

Amendment agreed to.

Section 7, as amended, agreed to.

SECTION 8

Acting Chairman (Senator Pat O'Neill): Amendment No. 17 will be discussed with amendments Nos 23, 26 and 28, which are related, by agreement. Is that agreed? Agreed.

Government amendment No. 17:

In page 11, line 9, to delete "The Bank may" and substitute the following:

"For the adequate protection of the savings of members of credit unions the Bank may".

Deputy Brian Hayes: These amendments set out the principles of this regulation-making power by clarifying that the Central Bank may only make regulations in respect of these sections where they are necessary to protect members' savings. Amendments Nos. 26 and 28 provide that the bank may only make regulations that are necessary in respect of credit union lending practices, reporting loans to the credit union and the holding of provisions for loans or categories of loans.

Amendment agreed to.

Acting Chairman (Senator Pat O'Neill): Amendment No. 18 will be discussed with amendments Nos. 24, 25 and 27, which are related, by agreement. Is that agreed? Agreed.

Government amendment No. 18:

In page 11, line 11, after "savings" to insert the following:

"(expressed as a monetary amount or as a percentage of some monetary amount or

determinable monetary amount)".

Deputy Brian Hayes: These are minor technical amendments which allow regulations to set limits in the form of a monetary amount as well as a percentage. In the context of these minor amendments, the section gives effect to recommendation 10.3.27 of the Report of the Commission on Credit Unions. It repeals section 27 of the principal Act and replaces it with a provision allowing credit unions to raise funds by issuing shares to members or by accepting deposits. The bank may make regulations in relation to savings limits and the amount of savings, or category of savings, a member can hold, the ratio of deposits to shares that credit unions may hold and any other requirements or limits the bank considers appropriate.

Senator Michael D'Arcy: What is the ratio and what are the alterations or changes?

Deputy Brian Hayes: Deposits are limited to €100,000 per saver and savings are limited to a total of €200,000 between shares and deposits or 1% of the total assets of the credit union, whichever is the greater. The deposit guarantee scheme does not apply to credit unions. Members' savings up to €100,000 are protected under this scheme.

Amendment agreed to.

Government amendment No. 19:

In page 11, line 17, to delete "appropriate" and substitute "necessary".

Senator Darragh O'Brien: May I use this opportunity to seek clarification? The Minister of State answered Senator D'Arcy on amendment No. 18, but amendment No. 19 is related to it.

I do not want to delay the debate, but I would like more detail of the savings and share limits the Minister of State mentioned. He said he was replacing an existing subsection with a provision to allow the Central Bank to further restrict any credit union, because there are already restrictions, in relation to the number of deposits and shares held by a member. What is the difference between what is proposed and what is in existence?

Deputy Brian Hayes: My understanding is that they will be set out in regulations. They do not apply to individual credit unions but to classes of savers within credit unions. They will be set out in regulations.

Senator Darragh O'Brien: Have those regulations already been prepared?

Deputy Brian Hayes: It is also my understanding that consultation is taking place. There is provision for that consultation and it will be set out in due course.

Senator Darragh O'Brien: I do not wish to labour the point, but I find it strange that we are looking to amend the section by putting in new limits that will be set in additional regulations that do not form part of the Bill. We are being asked to vote-----

Deputy Brian Hayes: The measures are in existing legislation.

Senator Darragh O'Brien: That is what I want to get to. Am I being asked to agree to something although I do not know what it is going to be?

Deputy Brian Hayes: My understanding is that the 1997 Act has all the details in the primary legislation. If one were to do it one would not do it in this way. It is normal to set it out

by way of regulation.

Senator Darragh O'Brien: Are we proposing any major changes to that?

Deputy Brian Hayes: Not as it stands, no.

Senator Michael D'Arcy: The primary legislation will stand.

Deputy Brian Hayes: Yes.

Acting Chairman (Senator Pat O'Neill): Is the amendment agreed to?

Senator John Gilroy: Could we have more clarification on this amendment? Senator Darragh O'Brien makes a fair point.

Acting Chairman (Senator Pat O'Neill): I have put the amendment, Senator Gilroy, and the Minister of State has clarified it. Senator Darragh O'Brien will have a chance to discuss this issue further on Report Stage.

Senator Darragh O'Brien: We will come back to this on Report Stage, when we may get further clarification. I will not oppose the amendment at this stage.

Deputy Brian Hayes: I can put the clarification note on the record, if the Senator would like that.

Senator Darragh O'Brien: If the Minister of State does not mind.

Deputy Brian Hayes: This clarification refers to savings in amendment No. 18.

The Irish League of Credit Unions raised an issue in relation to alternative forms of funding, for example deferred shares. These types of shares are different from other credit union shares in being transferable but not withdrawable and carrying no right to borrow. These are generally repayable only on winding-up or dissolution of a credit union after all creditors have been repaid. These have recently been introduced for the credit union sector in the United Kingdom. However, alternative forms of funding such as deferred shares were not recommended by the commission in its report. This did not emerge as an issue for credit unions during consultation with the credit union sector nor in the survey of credit unions undertaken by the commission. The Minister is open to further discussions of ideas and consultation about alternative forms of funding. However, the matter is not one to be included in the current Bill.

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9

Acting Chairman (Senator Pat O'Neill): Amendments Nos. 20, 21 and 121 to 123, inclusive, are related and will be discussed together.

Government amendment No. 20:

In page 11, line 26, to delete " "27A.—In addition to" and substitute " "27A.—(1) In addition to".

Deputy Brian Hayes: Amendments Nos. 20 and 21 involve a redraft of the Bill as published. Following further consideration, it was felt that the provisions in section 29, which proposed to insert a new section 84A in the 1997 Act would be more suitable under section 9. The section deals with the policies, procedures and practices that a credit union must have in place to ensure it is in compliance with the requirements imposed on it. For example, the Central Bank may make regulations imposing liquidity requirements on credit unions under section 30. Currently, credit unions have a minimum liquidity requirement of 20%. The amendment allows the Central Bank to make regulations prescribing the operational practices, policies, procedures, etc., to be adopted by credit unions more generally. These may include requiring them to adopt monitoring procedures to ensure the 20% liquidity requirement is complied with. Regulations may also require them to ensure people involved in monitoring liquidity have an understanding of the calculation of liquidity and maturity mismatches. These requirements may also deal with reporting requirements, including arrangements for reporting breaches to the board of directors of the Central Bank.

Amendment agreed to.

Government amendment No. 21:

In page 11, line 33, to delete "legislation.2." and substitute the following:

"legislation.

(2) Without prejudice to the generality of subsection (1), the Bank may make regulations prescribing—

(*a*) certain oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements which the credit union is required to maintain where the Bank considers this is appropriate in the interest of protecting members' savings or otherwise appropriate to ensure compliance with the requirements imposed under financial services legislation;

(*b*) requirements in relation to the oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements required to be maintained under this section.".".

Amendment agreed to.

Section 9, as amended, agreed to.

SECTION 10

Government amendment No. 22:

In page 11, line 36, to delete "A credit union may" and substitute the following:

"For the purpose of its objects as referred to in section 6 a credit union may".

Deputy Brian Hayes: The amendment sets out the basis on which credit unions may borrow money and links it to the purposes of the credit union objects set out in section 8 of the Credit Union Act 1997. These include the creation of sources of credit for mutual benefit of members, the use and control of members' savings for their mutual benefit and the improvement of the well-being and spirt of the members' community.

Amendment agreed to.

Government amendment No. 23:

In page 11, line 38, to delete "The" and substitute the following:

"For the adequate protection of the savings of members of credit unions, the".

Amendment agreed to.

Government amendment No. 24:

In page 11, line 45, after "money" to insert the following:

"(expressed as a monetary amount or as a percentage of some monetary amount or determinable monetary amount)".

Amendment agreed to.

Section 10, as amended, agreed to.

SECTION 11

Government amendment No. 25:

In page 12, line 38, after "amount" to insert the following:

"(whether expressed as a monetary amount or as a percentage of some monetary amount or determinable monetary amount)".

Amendment agreed to.

Government amendment No. 26:

In page 13, line 27, after "relates" to insert the following:

"and for the adequate protection of the savings of members of credit unions".

Amendment agreed to.

Government amendment No. 27:

In page 13, line 32, after "the" where it secondly occurs to insert "total, including percentage,".

Amendment agreed to.

Government amendment No. 28:

In page 13, line 43, to delete "The Bank may" and substitute the following:

"For the adequate protection of the savings of members of credit unions the Bank may".

Amendment agreed to.

Government amendment No. 29:

In page 13, line 44, to delete "appropriate" and substitute "necessary".

Amendment agreed to.

Government amendment No. 30:

In page 14, subsection (2), between lines 28 and 29, to insert the following:

"(*a*) there is a subsisting approval given by the Bank under subsection (2) of section 35 of the Principal Act in respect of the limits set out in that subsection,".

Deputy Brian Hayes: The amendment provides for a transitional arrangement whereby an approval by the Central Bank under section 35(2) of the Credit Union Act 1997 in respect of longer term lending by a credit union would continue to have effect upon commencement of this section. Amendments Nos. 25 and 27 were discussed with amendment No. 18. These are minor technical amendments which allow the regulations to set limits in the form of a monetary amount as well as a percentage amount.

Amendment agreed to.

Section 11, as amended, agreed to.

SECTION 12

Government amendment No. 31:

In page 15, line 13, to delete "subsection (5)" and substitute "subsection (6)".

Deputy Brian Hayes: This amendment is minor and corrects a cross-reference.

Amendment agreed to.

Government amendment No. 32:

In page 15, line 22, after "subsection (2)" to insert the following:

"and having regard to the need to avoid undue risk to members' savings".

Deputy Brian Hayes: This amendment enhances the principles behind the regulation making power of the bank in respect of the investments that a credit union may invest in and links it to the need to avoid undue risk to members' savings.

Amendment agreed to.

Government amendment No. 33:

In page 15, line 25, after "investments" to insert the following:

", including, where appropriate, any investment project of a public nature".

Deputy Brian Hayes: The third amendment, No. 33, follows from the discussion on Committee and Report Stages in the Dáil where the Minister committed to examining this section to allow a credit union to invest in public projects. Members will recall a good discussion on Sec-

ond Stage where a number of colleagues put forward the view that credit unions could invest in public projects. This amendment arises out of a discussion with the Office of the Attorney General on the issue and makes it clear that the power of the Central Bank to make regulations relating to the investments includes scope for making regulations in respect of investments in public projects. The Minister remains open to credit unions coming forward at an early stage to outline their proposals in respect of such investments.

Senator Michael D'Arcy: I welcome the amendment. It is an opportunity for credit unions in their own facility to fund projects, whether it be a PPP with a local authority or somebody else, for which they may not be able to get funding. There is another aspect that I ask the Minister of State to consider. While it may not be a PPP project it is important to remember that credit unions are disallowed from funding limited companies. In regard to PPPs, it would be a good if a credit union from a county town was to fund a project within that town for which potentially the local authority or somebody else may be incapable of getting funding. There are many registered charitable organisations and community groups organised on the basis of a limited company that do superb work. While not a PPP, they are organised in this manner as a limited company. Credit unions are disallowed fund limited companies. The best community organisation in the country may require funding, the merits of which may only be understood by the credit union in the local town, but because of the way the community organisation is organised, formed by guarantee and formed as a limited company, a credit union is disallowed from funding it. I am not talking here about opening up credit unions to massive loans to limited companies. This is an issue that needs to be considered specifically for community organisations that are organised in this manner. It is something that would have a community gain as well as a benefit for the credit union. It would be seen as acting not only in the greater good of the individual but in the greater good via a community organisation.

Senator Darragh O'Brien: It is a sensible Government amendment that follows on from the debate in the other House and Second Stage here and we will certainly support it. Senator Michael D'Arcy has mentioned a couple of points that I would have raised but it is a sensible amendment and, I hope, it will be utilised by credit unions into the future where they are able to invest in State projects.

Deputy Brian Hayes: The Bill refers to "the classes of investments the credit union may invest in;". We are now suggesting "the classes of investments including, where appropriate, any investment project of a public nature may invest in;". That is wide enough to allow for the point made by Senator Michael D'Arcy.

4 o'clock

However, it is predicated on regulations that would follow from the Central Banks. Rather than being too prescriptive in the primary legislation, it makes more sense that this function be given to the Central Bank for the purpose of setting out the rules through which this could occur. The Government was mindful, as outlined in the debate that occurred in the other House and the one that occurred here, that there may well be very useful public projects either through limited companies or public utility companies that could form the basis of investment strategies for the credit unions in future. The purpose of amendment No. 33 is to attempt to meet Members' concerns.

Senator Michael D'Arcy: My concern is that if a credit union is prescribed in legislation as being disallowed to lend to a community organisation that is organised as a limited company,

I do not know whether amendment No. 33 would be sufficient to overrule that prescribed portion that might be in the primary legislation.

Deputy Brian Hayes: The Bill allows Central Bank regulations to set out the classes of investment in which a credit union may engage. This could be used to allow for investments in a company, where appropriate. The Bill will give the bank the power to set out the regulations in terms of the classes of investments that can be made. If the class is clear in the regulations, it is open for everyone to make proposals in which the credit union might want to invest.

Amendment agreed to.

Government amendment No. 34:

In page 15, lines 38 and 39, to delete "appropriate" and substitute "necessary".

Amendment agreed to.

Section 12, as amended, agreed to.

Sections 13 and 14 agreed to.

SECTION 15

Government amendment No. 35:

In page 19, to delete lines 1 to 5 and substitute the following:

"(6) The board of directors of a credit union shall be elected—

(*a*) where the organisation meeting occurs after the commencement of this provision (as amended by *section 15* of the *Credit Union Act 2012*), by secret ballot at the organisation meeting and, subject to subsection (16) and section 57, subsequent vacancies on the board of directors shall be filled by secret ballot at an annual general meeting, and

(*b*) in any other case, by secret ballot at the annual general meeting first occurring after the commencement of this provision (as amended by *section 15* of the *Credit Union Act 2012*) or, if earlier than that annual general meeting, at a special general meeting called for the purpose of such ballot and, subject to subsection (16) and section 57, subsequent vacancies on the board of directors shall be filled by secret ballot at an annual general meeting.".

Deputy Brian Hayes: This amendment makes provision for the election of a board of directors at the first AGM or SGM called after the organisation meeting of a new credit union. This amendment is necessary to ensure consistency between the board oversight and the way boards of directors are elected. The amendment provides a transitional arrangement for the election of the board of directors at the first AGM or SGM following the commencement of this section. This is necessary to give effect to the decrease in the maximum number of directors that may be appointed to the board under the Bill, a reduction from a maximum of 15 to a maximum of 11. There are incorrect cross-references in these amendments and I will introduce amendments on Report Stage to rectify these. These should refer to section 53(15) and not section 53(16).

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 36, 40, 41, 44, 46 to 50, inclusive, 55 to 58, inclusive, 69, 76, 169 and 170 are related and may be discussed together.

Government amendment No. 36:

In page 19, lines 11 and 12, to delete ", (13) and (14)" and substitute "and (12)".

Deputy Brian Hayes: Amendment No. 40 removes subsections (12) and (13) as these were provided for in new fitness and probity requirements which are to be rolled out for credit unions on a phased basis as recommended by the Commission on Credit Unions. Amendments Nos. 36, 41, 44, 46 to 50, inclusive, 69, 169 and 170 amend the cross-references following the deletion of subsections (12) and (13) by amendment No. 40. The majority of these amendments are simply consequential on amendment No. 40.

Amendment No. 55 amends section 17(1)(*f*). This section provides that a person performing management functions in a credit union must have particular knowledge, skills, experience, qualifications, competence, capacity and probity to carry out these duties effectively. This is being deleted, as it will be covered separately under the fitness and probity regime which will be rolled out for credit unions over time. The application of fitness and probity requirements was agreed with the Commission on Credit Unions.

Amendment No. 56 deletes subsection (1)(*p*) as it refers to requirements set out in subsections (12) and (13) of section 53. As these subsections are being deleted, subsection (1)(*p*) is invalid. Amendments Nos. 57 and 58 make the consequential cross-references arising from the deletion of paragraph (*p*).

Amendment No. 76 deletes section 68A(5)(*b*) and (*c*) as inserted by section 21. When appointing a person as a manager, it is necessary to ensure that the person appointed complies with all legal requirements. The list of criteria which a manager must fulfil is being deleted. These are standards which will be set out under the fitness and probity requirements which will apply to credit unions in line with the recommendation of the commission. These measures will be rolled out to credit unions over time and will take account of the nature, scale and complexity of a credit union. This amendment ensures that the person appointed as manager complies with all legal requirements, including requirements prescribed by the Bank.

Amendments Nos. 169 and 170 correct the cross-references arising out of the deletion of sections 53(12) and (13), as inserted by section 15. In plain English, as a consequence of inserting in the probity section, we are amending the other parts of the primary legislation to have regard to that. This will all be tied up in the context of the standard and probity functions for managers, which are to be set out as per the recommendation of the commission.

Amendment agreed to.

An Cathaoirleach: Amendment No. 37 is a Government amendment. Amendments Nos. 37 to 39, inclusive, and 175 are related. Amendment No. 38 is an alternative to amendment No. 37. Therefore, amendments Nos. 37 to 39, inclusive, and 175 may be discussed together by agreement.

Government amendment No. 37:

In page 19, to delete lines 25 to 30 and substitute the following:

"(*a*) an employee or voluntary assistant of the credit union or an employee of any other credit union;

(*b*) a member of the board oversight committee of the credit union;".

Deputy Brian Hayes: These amendments relate to eligibility for membership of the board of directors and have arisen from constructive debates with Members from both Houses of the Oireachtas in recent weeks. This was another issue that Senators Reilly, Byrne, Gilroy and Michael D'Arcy raised in terms of the membership of the board of directors and we are attempting to meet this by way of the amendment.

The effect of these amendments reduces the exclusions that would apply to the membership of the board. These exclusions were in place in the original Bill and, following consultation, the Minister has agreed to change them. Amendment No. 37 allows volunteers of other credit unions as well as a member of the board oversight committee of another credit union to be on the board of the credit union.

Amendment No. 38, from Senators Reilly, Cullinane and Ó Clochartaigh, proposes to delete a voluntary assistant from the list of exclusions from the board of directors. A number of amendments have been made to board exclusions today. However, it is not appropriate to remove volunteers from the list of exclusions on the board of directors. The core change at the centre of the governance provision in the Bill is to separate the role of the board in overseeing the credit union's operations from the day-to-day operations themselves. These exclusions are designed to ensure that persons are not overseeing their own work and answerable to themselves. I do not propose to accept this amendment.

Amendment No. 39 removes the prohibition on family members of volunteers of the credit union becoming directors. This also removes the express exclusion of members who are in arrears greater than 90 days and instead, provides that the credit union rules should apply with the eligibility of such a member.

Amendment No. 175 is a follow-on from amendment No. 39. This amendment provides that the rules of a credit union must set out how the credit union will deal with members of the boards of directors and board oversight committee who are in arrears greater than 90 days, and including suspension and removal of the director.

Senator Kathryn Reilly: The exclusion of volunteers is an issue about which I feel strongly. I am happy to recognise some movement has been made and the prohibition has been narrowed down to voluntary assistants being on the board of their own credit union. However, there is no need for this prohibition to remain in the Bill. It will have a particularly severe impact on smaller credit unions which typically rely to a greater level on voluntary input. It is often viewed exclusively as a problem for small rural credit unions but it is equally an issue in urban areas where there are many small credit unions. The impact of these exclusions will be felt particularly by smaller credit unions as the pool of available volunteers is already quite small, as was detailed by other Senators on Second Stage. These exclusions will shrink the pool further.

Voluntary assistants help reduce the cost burden on credit unions as they provide their services at little or no cost. The use of board members as voluntary assistants provides a link

between the board and the front line. Board members can see first-hand the practical impact of their decisions and can use experience of working on the coal face to generate ideas on how to improve services for members and the credit union generally. This consideration also applies to larger credit unions. The issue needs to be dealt with and it is the final hurdle in the section. The amendment is very important and I ask the Minister of State to support it now or on Report Stage.

Senator Darragh O'Brien: I agree with Senator Reilly and will table the amendment again on Report Stage, if appropriate. It is unnecessarily restrictive with regard to volunteers but I welcome that the Minister of State has extended the eligibility of those who might serve. The preclusions prior to this were too restrictive and it is a way forward. What is the view of the Minister of State on smaller credit unions in rural and urban areas which depend to a large degree on volunteer support? How does the Minister of State see these being affected, particularly when it comes to the restrictions on the terms for which people are able to serve? This will have a further impact. I understand the theory behind it but I am concerned about the practice. Will the Minister of State elaborate further on this before we decide how to proceed?

Deputy Brian Hayes: As the leader of the Opposition stated, we all accept the necessity for a governance structure which is clear and transparent for everyone, and for making a distinction between operations on a day-to-day basis and the governance of the board. It is only appropriate from a prudential basis that we should attempt to put in place this distinction. My understanding is that Senator Reilly will propose an amendment with regard to where a credit union cannot get someone and whether some of these could be over-----

Senator Kathryn Reilly: To be waived by the Central Bank.

Deputy Brian Hayes: We will not accept the amendment but we will put forward our own to express the Senator's position more clearly in the Bill. An argument has been put forward with regard to circumstances in which a credit union cannot get anyone, and we will make provision for it in a later amendment. I will provide the Senator with the reference to it in a moment. The exclusion issue was very hotly debated in both Houses and we have gone as far as we can in terms of reflecting the consensus position of colleagues in both Houses. The reworked section 15 on the board of directors and narrowing the exclusions will be to the benefit of the Bill. I take the point with regard to a credit union not being able to get someone and we have attempted to deal with it to express Senator Reilly's views on it. As we go through Committee Stage the Senator will see this.

Senator Kathryn Reilly: Will the Minister of State read the proposed Government amendment?

Deputy Brian Hayes: It is amendment No. 127. The problem is that as we have not yet reached it, I cannot read it. I am hamstrung by the Cathaoirleach.

An Cathaoirleach: Amendment No. 127 is not before the House.

Senator Darragh O'Brien: No, it is not, but it is relevant.

Deputy Brian Hayes: Amendment No. 127, which I am not allowed to discuss, attempts to argue for exceptional cases on term limits.

Senator Kathryn Reilly: Is that in view of permanence?

Deputy Brian Hayes: Yes.

An Cathaoirleach: To what amendment is the Minister of State referring?

Deputy Brian Hayes: Amendment No. 127.

An Cathaoirleach: I can grant the Minister of State discretion to speak about it, if he wants.

Deputy Brian Hayes: Excellent. Am I allowed to discuss amendment No. 127?

An Cathaoirleach: No, the amendments must be taken in sequence, but the Minister of State can discuss it now, if it is relevant to the group of amendments.

Senator Darragh O'Brien: We will see in a minute if it is relevant.

Deputy Brian Hayes: It is. The purpose of amendment No. 127 is to allow the Central Bank to appoint a director under section 95A, even when that person may have exceeded the term limits set out in section 53(14) and section 76(N)(5). This addresses an issue raised by Deputy Pearse Doherty in the Dáil - the perfect symmetry between the Dáil and the Seanad is often explored and understood, as I know myself having been on the other side of the House - and again by Senator Reilly with amendments Nos. 43 and 115, namely, allowing for term limits not to be applied in exceptional circumstances. The amendment deals with a situation where it is necessary to enhance or improve the expertise of a board, for example, where the term limit meant it was deficient in this respect. This section provides that the bank may require the appointment of an additional director in such circumstances. It is being amended so that where a credit union is unable to source a director to meet the necessary requirements, it may nominate a director who would otherwise be excluded because of the term limits. The provision addresses the point that was raised by Deputy Pearse Doherty in the other House and Senator Reilly in this House without fundamentally compromising the core principle the Minister is looking to provide for in the Bill.

Senator Kathryn Reilly: Is that just in terms of the term limit?

Deputy Brian Hayes: The terms.

Senator Kathryn Reilly: Is it the detail of the terms?

Deputy Brian Hayes: Yes, the details.

Senator Kathryn Reilly: Is it a term limit but restricted to the qualifications?

Deputy Brian Hayes: Yes. For the information of the House, there is also a reference to the nine-year term in section 20 which relates to the nomination committee. This will be amended to refer to the new 12-year term and I shall table an amendment to this effect on Report Stage.

Amendment agreed to.

An Cathaoirleach: Amendment No. 38 cannot be moved.

Amendment No. 38 not moved.

Government amendment No. 39:

In page 20, to delete lines 16 to 28 and substitute the following:

"(*m*) a person who is a spouse or civil partner, parent, sibling or child of a director, board oversight committee member or employee of that credit union.".

Amendment agreed to.

Government amendment No. 40:

In page 20, to delete lines 32 to 49 and in page 21, to delete line 1.

Amendment agreed to.

Government amendment No. 41:

In page 21, line 2, to delete "(14) A member of" and substitute "(12) A member of".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 42 and 45 are related and may be discussed together.

Government amendment No. 42:

In page 21, line 4, to delete "9 years" and substitute "12 years".

Deputy Brian Hayes: These amendments increase the term limits for the membership of the board of directors. During Report Stage in the Dáil, the Minister stated that he intended to bring forward an amendment, following consultation with the Office of the Attorney General, to change the term limit to 12 years in aggregate in a 15-year period. The commitment is now reflected in these amendments and it strikes an appropriate balance between promoting board rotation and protecting the volunteer ethos of credit unions. Amendment No. 43 deals with possible exceptions to term limits.

Senator Darragh O'Brien: I wish to comment on amendment No. 42. The change is welcome and it was also a concern of the credit union movement. How will the Department monitor these changes? Most of the regulation is welcome and the Irish League of Credit Unions has done a good job of engaging with the Government and the Department on issues about which it is concerned. The league understands the day-to-day management of its institutions. I am grateful that the change we called for on Second Stage has been made and that there is general consensus on it. As regards the review of how this will work, however, I do not know if the Department or the Central Bank has information on the existing directors of credit union boards concerning what the impact of this measure will be. I note the Minister of State is bringing forward another amendment that would allow for this to be set aside in exceptional circumstances. Many of the people who have served in credit unions for a long number of years have brought invaluable experience and expertise to this area. I would be greatly concerned, however, that we would lose much of that experience. What fail-safe mechanism does the Minister of State's Department and the Central Bank have in place to ensure that does not happen?

There have been issues with a small minority of credit unions, but that is a credit to the whole movement when one considers that the majority of banks got into difficulty. The vast majority of credit unions have operated extremely well in difficult times, so we should not use a sledge-hammer to crack a nut in this regard. While welcoming the changes the Government has made, I am still concerned that in a few years much of the experience and expertise will be lost. Will we see numerous credit unions applying for exemptions or exceptions with the

Central Bank and, if so, will they become the rule? Does the Minister of State plan to review how this is working? What information does the Central Bank have to hand at this stage on the make-up of credit union boards?

Deputy Brian Hayes: It makes no difference now because the application of this will only emerge when the Bill has been enacted. As I understand it will be another year before the full Bill is operational, there is no retrospection. Given the fact that the 12-year rule on aggregate over 15 years would have to apply, looking forward I suspect we will have a decade to re-examine credit union legislation. It seems to be on the agenda every ten years or so. This legislation does not seek in any way to trample across the number of years people have currently served. I fully accept what the Senator is saying and we must have a common sense approach to this matter. The amendment is an attempt to gain that consensus in both Houses. In fairness to colleagues, this was flagged on all sides and the Minister for Finance is trying to reflect that fact in the amendment before us.

As regards the timeframe, once the Bill is passed it will take another year for the full legislation to have an impact. Therefore it is really-----

Senator Darragh O'Brien: From there on.

Deputy Brian Hayes: -----from, I presume, January 2014 that the 12 years will apply.

The Senator's second question was whether we would see how this is operating within the next five to ten years and I think we will. It has no retrospection because one could have served 50 years.

Senator Darragh O'Brien: Therefore, in 12 years time when the Minister of State is Minister for Finance, he is committed to re-examining this issue.

Deputy Brian Hayes: I suspect that Ireland will be in a much better place without me in 12 years time.

Senator John Gilroy: He will be Taoiseach then.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 43, 115 and 127 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Deputy Brian Hayes: I have answered the Senator on this matter.

Senator Kathryn Reilly: Yes. I do not propose to move amendment No. 43. Based on the Minister of State's response, I will have a look at amendment No. 127 to which he referred. The whole purpose of amendments Nos. 43 and 115 concerns the need for some kind of safety mechanism to be built into the legislation for those cases where credit unions and boards find themselves unable to meet the requirements that are set out in the Bill and need to apply for a waiver in exceptional circumstances. Such a safety mechanism will obviously have to meet with the approval of the registrar of credit unions and the Central Bank. Based on the Minister of State's comments, I do not intend to press these amendments but I will give consideration to his amendment before Report Stage.

Deputy Brian Hayes: As I told the Senator earlier, the Government is introducing its own

amendment No. 127, rather than accepting her amendments Nos. 43 and 115. The Department believes this will deal with the point she and her colleague, Deputy Pearse Doherty, have made both in this House and the Dáil in respect of the exception and makes provision for that in the Bill. The point highlighted in this House by the Senator both on Second Stage and today, as has her colleague in the Dáil, is well worth making. Notwithstanding the approval of the House, which I do not wish to second-guess, the improvement that will come about as a result of amendment No. 127 will greatly enhance the Bill in clearing up an area which the Senator and her colleague have raised. This is the reason the Minister will bring amendment No. 127 before the House later.

Amendment No. 43 not moved.

Government amendment No. 44:

In page 21, line 7, to delete "(15) For directors of" and substitute "(13) For directors of".

Amendment agreed to.

Government amendment No. 45:

In page 21, line 10, to delete "9 year" and substitute "12 year".

Amendment agreed to.

Government amendment No. 46:

In page 21, line 11, to delete "subsection (14)" and substitute "subsection (12)".

Amendment agreed to.

Government amendment No. 47:

In page 21, line 13, to delete "(16) Directors of a" and substitute "(14) Directors of a".

Amendment agreed to.

Government amendment No. 48:

In page 21, line 18, to delete "(17) Subject to the" and substitute "(15) Subject to the".

Amendment agreed to.

Government amendment No. 49:

In page 21, line 23, to delete "(18) A director appointed" and substitute "(16) A director appointed".

Amendment agreed to.

Government amendment No. 50:

In page 21, line 23, to delete "subsection (17)" and substitute "subsection (15)".

Amendment agreed to.

Government amendment No. 51:

In page 21, to delete lines 28 to 31 and substitute the following:

"(17) Where all the directors of a credit union intend to resign on the same date, the secretary shall give written notice of the directors' intention to the Bank and the board oversight committee.".".

Deputy Brian Hayes: This is a minor technical amendment that clarifies that the secretary must inform the Central Bank where all directors intend to resign on the same day.

Amendment agreed to.

Government amendment No. 52:

In page 21, subsection (2), lines 33 and 34, to delete all words from and including "to" where it secondly occurs in line 33 down to and including "*subsection (1)*" in line 34 and substitute the following:

"to a reduction in the number of board of directors in compliance with that Act".

Amendment agreed to.

Section 15, as amended, agreed to.

SECTION 16

Government amendment No. 53:

In page 22, lines 1 and 2, to delete "shall be entitled to attend and".

Deputy Brian Hayes: This amendment removes unnecessary wording, as the secretary is a board member and as such is entitled to attend board meetings.

Amendment agreed to.

Section 16, as amended, agreed to.

SECTION 17

An Cathaoirleach: Amendments Nos. 54, 60 to 64, inclusive, 66, 67, 70 to 75, inclusive, 87, 89, 91 and 92 are related and may be discussed together, by agreement. Is that agreed? Agreed. Government amendment No. 54:

In page 23, line 26, after "manager" to insert ", risk management officer and compliance officer".

Deputy Brian Hayes: Amendment No. 54 is being made to include the appointment of the risk management officer and compliance officer as one of the functions of the board. While the current wording provides these appointments as functions of the manager, such appointments are, however, more appropriate to the board itself. The deletions of subsections (4) and (5) are consequential to this amendment, as these matters now will be provided for in the new section 55(1)(*e*). Amendment No. 55 already has been dealt with under amendment No. 36 in section 15, as was amendment No. 56. This latter amendment deletes the famous new section 55(1)(*p*), as it refers to requirements set out in subsections (12) and (13) of section 53. As these subsections are being deleted, section 55(1)(*p*) is invalid. I believe I have already made this point to the House. Amendments Nos. 60 to 64, inclusive, 66, 67, 70 to 75, inclusive, 87, 89, 91 and 92 are consequential amendments that arise out of the changes being made to the functions of the board of directors by amendment No. 54.

Amendment agreed to.

Government amendment No. 55:

In page 23, to delete lines 29 to 36 and substitute the following:

"(*f*) ensuring that there is an effective management team in place;"

Amendment agreed to.

Government amendment No. 56:

In page 25, to delete lines 16 to 18.

Amendment agreed to.

Government amendment No. 57:

In page 25, line 19, to delete "(*q*) the recommendation to" and substitute "(*p*) the recommendation to".

Amendment agreed to.

Government amendment No. 58:

In page 25, line 21, to delete "(*r*) ensuring the accounts" and substitute "(*q*) ensuring the accounts".

Amendment agreed to.

Government amendment No. 59:

In page 25, to delete lines 23 and 24 and substitute the following:

"(*r*) reporting to the members of the credit union at the annual general meeting, including nominating a member of the board to present the annual accounts at the annual general meeting;

(*s*) reviewing and considering any update of financial statements provided to the board by the manager under section 63A(4)(*c*).".

Deputy Brian Hayes: Amendment No. 59 allows the board to nominate a director to present the accounts to members at the AGM. This role was previously performed by the treasurer. However, as the position of treasurer is being removed, the amendment is being introduced to maintain the reporting roles in a different way. The amendment also provides that it is the role of the board to consider any updated financial statements provided to it by the manager and mirrors the provisions in section 63A(4)(*c*). Other amendments are minor technical amendments that are required to correct cross-references consequential on the amendments proposed.

Amendment agreed to.

Government amendment No. 60:

In page 25, to delete lines 35 to 42.

Amendment agreed to.

Government amendment No. 61:

In page 26, line 1, to delete "(6) The board of" and substitute "(4) The board of".

Amendment agreed to.

Government amendment No. 62:

In page 26, line 5, to delete "(7) The review carried" and substitute "(5) The review carried".

Amendment agreed to.

Government amendment No. 63:

In page 26, line 6, to delete "subsection (6)" and substitute "subsection (4)".

Amendment agreed to.

Government amendment No. 64:

In page 26, line 7, to delete "(8) In respect of" and substitute "(6) In respect of".

Amendment agreed to.

Government amendment No. 65:

In page 26, line 10, to delete "either".

Deputy Brian Hayes: The amendment is straightforward. It proposes to delete the words "either" from the sentence concerned as its inclusion is a typographical error.

Amendment agreed to.

Government amendment No. 66:

In page 26, line 14, to delete "(9) Where the board" and substitute "(7) Where the board".

Amendment agreed to.

Government amendment No. 67:

In page 26, line 17, to delete "(10) The board shall" and substitute "(8) The board shall".

Amendment agreed to.

Section 17, as amended, agreed to.

SECTION 18

Government amendment No. 68:

In page 27, line 26, to delete "3 consecutive terms" and substitute "4 consecutive terms".

Deputy Brian Hayes: Amendment No. 68 increases the maximum consecutive term for

the chair from three years to four. The term of office of the chair is for a period of one year. Currently, a chair is not permitted to serve more than three consecutive terms in the position. The Minister, Deputy Noonan, agreed on Committee Stage in the Dáil to increase the maximum consecutive term for the chair from three years to four. This will ensure continuity on the board. However, it will also be one of the responsibilities of the nomination committee to ensure board continuity. That was also an issue that arose in the select committee in the other House and from some of the contributions made in the Seanad on Second Stage. I am notching up the number of amendments accepted. It is currently six. This is one of the sensible proposals from the Opposition.

Amendment agreed to.

Section 18, as amended, agreed to.

Section 19 agreed to.

SECTION 20

Government amendment No. 69:

In page 30, lines 24 and 25, to delete "in respect of section 53(17)" and substitute "for the purposes of section 53(15)".

Amendment agreed to.

Section 20, as amended, agreed to.

SECTION 21

Government amendment No. 70:

In page 33, to delete lines 26 to 28.

Amendment agreed to.

Government amendment No. 71:

In page 33, line 29, to delete "(*e*) appointing or causing" and substitute "(*d*) appointing or causing".

Amendment agreed to.

Government amendment No. 72:

In page 33, line 34, to delete "(*f*) preparing or causing" and substitute "(*e*) preparing or causing".

Amendment agreed to.

Government amendment No. 73:

In page 33, line 37, to delete "(*g*) implementing the proper" and substitute "(*f*) implementing the proper".

Amendment agreed to.

Government amendment No. 74:

In page 33, line 39, to delete "(*h*) ensure that all" and substitute "(*g*) ensure that all".

Amendment agreed to.

Government amendment No. 75:

In page 33, line 41, to delete "(*i*) such other matters" and substitute "(*h*) such other matters".

Amendment agreed to.

Government amendment No. 76:

In page 33, to delete lines 43 to 48 and in page 34, to delete lines 1 to 14 and substitute the following:

"(5) In appointing a person as manager of a credit union, its board of directors shall ensure that the person complies with all legal requirements (including requirements which the Bank may prescribe) to be appointed.".".

Amendment agreed to.

Section 21, as amended, agreed to.

Section 22 agreed to.

SECTION 23

Government amendment No. 77:

In page 35, to delete lines 8 to 46 and in page 36, to delete lines 1 to 8 and substitute the following:

" "66.—(1) If the board oversight committee of a credit union considers that a member of the board of directors has taken any action or decision which, in the opinion of the committee, given in writing to the director concerned, is not in accordance with the requirements of this Part, then, after consulting the Bank, the committee may either—

(*a*) suspend, with immediate effect, the director by a unanimous vote of all the members of the committee taken at a meeting of the committee called for the purpose of considering the director's suspension, or

(*b*) convene a special general meeting of the credit union to consider whether to remove the director in the light of the action or decision taken by that director,

but no steps shall be taken under this subsection without the director concerned being given an opportunity to be heard by the members of the board oversight committee.

(2) Where a director of a credit union has been suspended by the board oversight committee in accordance with subsection (1), the board oversight committee shall, within 7 days of that suspension, convene a special general meeting—

(*a*) for the purpose of reviewing the suspension, and

(*b*) to consider whether to remove the director having regard to the action or decision taken by that director.

(3) Where the board oversight committee convenes a special general meeting for the purposes of this section the credit union may, by resolution of a majority of the members present and voting at that special general meeting—

(*a*) ratify the suspension of the director concerned and remove that director from office,

(*b*) rescind the suspension of that director, or

(*c*) remove that director from office,

but no director shall be so removed from office without being given an opportunity to be heard by the members present at the meeting.

(4) The secretary of the credit union shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in subsection (3), give written notice of that meeting to the member concerned.

(5) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes in relation to it representations (not exceeding a reasonable length) in writing to the credit union and requests their notification to the members of the credit union then, unless the representations are received by it too late for it to do so, the credit union shall, subject to subsection (7)—

(*a*) in any notice of the resolution given to members of the credit union, state the fact of the representations having been made, and

(*b*) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent.

(6) Subject to subsection (7), and whether or not copies of any representations made by it have been sent as mentioned in subsection (5), the director concerned may require that, without prejudice to his or her right to be heard orally, the representations made by him or her shall be read out at the special general meeting.

(7) Subsections (5) and (6) shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Bank is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by those sections are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.

(8) Where a director of a credit union is removed from office at a special general meeting pursuant to this section, the vacancy caused by the removal shall be filled in such manner as may be determined by the meeting.”.”.

Deputy Brian Hayes: The amendment sets out new provisions concerning the suspension and removal of directors by the board oversight committee. Issues arose in the Dáil on the procedure for the suspension and removal of directors, in particular in terms of the director

concerned being provided with written notification of the board oversight committee's reasons for taking action under the section. The Minister, on Committee and Report Stages in Dáil Éireann, and when the issue was raised on Second Stage in the Seanad, indicated his willingness to re-examine the provisions. This amendment reflects the changes necessary to address the concerns raised in both Houses. It brings the procedure for removing a director at a special general meeting convened under this section into line with the procedure for the removal of a director from office by members of a credit union, as set out in section 56 of the 1997 Act, thereby ensuring greater procedural consistency. Under this section, the board oversight committee can suspend a director where it considers that a member has taken any action or decision which is not in accordance with Part IV of the 1997 Act. The board oversight committee is required to provide written notice to the director, setting out the reasons for its decision before either suspending the director or convening a special general meeting of the credit union to consider whether to remove the director.

Where a director is suspended by the board oversight committee under this section, the suspension takes effect immediately and if the director in question has not resigned within seven days of being suspended, the committee shall convene a special general meeting to review the suspension and consider whether to remove the director. At a special general meeting convened in accordance with this section, the members may ratify or rescind the suspension or remove the director from office. This amendment provides, in a similar manner to section 56 of the 1997 legislation, that a director is entitled to written notice of a special general meeting to be held under this section not less than 21 days in advance of the meeting. The amendment also sets out the procedure for the director in question to make written representations in advance of a special general meeting and that the director has the right to be heard orally at such a meeting.

The Minister is confident that the amendment addresses the concerns raised by Members of both Houses on Second Stage. A further amendment will be tabled on Report Stage to clarify that if the director resigns, the special general meeting must be held within seven days after the 21 day period of notice to be given to members. Under the current wording, the special general meeting must be held within seven days of the decision, even though notification of the meeting must be given at least 21 days in advance.

On the key issue of the suspension or removal of the board oversight committee, the Minister has attempted to create a degree of consistency with section 56 of the original 1997 Act to provide certainty and clarity on the rights of individuals. Where the oversight committee takes this action, written notice will be given and the person in question will have a right to reply. Further, within a timeframe set out in the amendment, a special general meeting will be held at which various options placed before members.

Amendment agreed to.

Section 23, as amended, agreed to.

SECTION 24

Government amendment No. 78:

In page 36, line 43, after "Bank" to insert the following:

"including regulations setting out the form and content of that statement".

This amendment clarifies that the requirements which the bank may prescribe under section 66C(1) relate to the form and content of the compliance statement to be provided to it by credit unions.

Amendment agreed to.

Section 24, as amended, agreed to.

SECTION 25

An Cathaoirleach: Amendments Nos. 79 to 86, inclusive, may be discussed together.

Government amendment No. 79:

In page 37, between lines 43 and 44, to insert the following:

"(ii) where the officer is the secretary, in writing to the board of directors and served on the chair,".

Deputy Brian Hayes: Amendment No. 79 ensures the secretary acts at all times in a manner that is free from conflict. If this was useful in a political party, I suspect it might be useful in a credit union as well. Where a potential conflict is identified between his or her interests and those of the credit union, the secretary must declare in writing to the board the nature of his or her own interests and serve notice of that conflict on the Chair. Other amendments I have tabled are minor technical amendments that correct cross-references that are consequential on the amendment proposed. The substance of amendment No. 79 in terms of conflicts of interest is a pretty standard provision in legislation and is simply being transposed here in the same way it would be in any similar legislation.

Amendment agreed to.

Government amendment No. 80:

In page 37, line 44, to delete "(ii) where that officer" and substitute "(iii) where that officer".

Amendment agreed to.

Government amendment No. 81:

In page 37, line 47, to delete "(iii) where that officer" and substitute "(iv) where that officer".

Amendment agreed to.

Government amendment No. 82:

In page 37, line 48, after "secretary," to insert "or".

Amendment agreed to.

Government amendment No. 83:

In page 38, to delete lines 1 and 2.

Amendment agreed to.

Government amendment No. 84:

In page 38, line 40, to delete "paragraph (i) or (ii)" and substitute "paragraph (i), (ii) or (iii)".

Amendment agreed to.

Government amendment No. 85:

In page 38, line 45, after "or" to insert the following:

"where the director concerned is the secretary, in accordance with paragraph (ii) of that subsection, or".

Amendment agreed to.

Government amendment No. 86:

In page 38, line 47, to delete "paragraph (ii)" and substitute "paragraph (iii)".

Amendment agreed to.

Section 25, as amended, agreed to.

SECTION 26

Government amendment No. 87:

In page 41, lines 15 to 17, to delete all words from and including "The" in line 15 down to and including "union," in line 17 and substitute "The board of directors of a credit union shall".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 88 and 90 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 88:

In page 41, line 19, to delete "authority, resources and experience" and substitute "authority and resources".

Deputy Brian Hayes: Amendments Nos. 88 and 90 reflect the changes in the functions of the board to include the appointment of a risk management officer and a compliance officer. The current wording provides that the manager of the credit union will carry out these functions. However, as these functions are proper to the board, that is why they are being separated. These amendments delete the reference to the risk management officer or compliance officer having the necessary experience to manage the functions of the role. This does not need to be provided for here as these standards will be set out under the fitness and probity regime which will be agreed with the Commission on Credit Unions. These measures will be rolled out in credit unions over time and will take account of the nature, scale and complexity of a credit union.

Amendment agreed to.

Government amendment No. 89:

In page 42, lines 17 to 19, to delete all words from and including "The" in line 17 down to and including ""union," in line 19 and substitute "The board of directors of a credit union shall".

Amendment agreed to.

Government amendment No. 90:

In page 42, line 21, to delete "authority, resources and experience" and substitute "authority and resources".

Amendment agreed to.

Government amendment No. 91:

In page 50, line 27, to delete "section 55(10)" and substitute "section 55(8)".

Amendment agreed to.

Government amendment No. 92:

In page 50, line 39, to delete "section 55(10)" and substitute "section 55(8)".

Amendment agreed to.

Section 26, as amended, agreed to.

SECTION 27

An Cathaoirleach: Amendments Nos. 93, 95 and 118 to 120, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 93:

In page 51, lines 44 and 45, to delete "section 76S(4)" and substitute "section 76R(4)".

Deputy Brian Hayes: Amendment No. 118 deletes section 76Q(1), (2) and (3) as this subsection sets out the skill requirements and training requirements for committee members. However, as noted previously, these standards will be set out separately under the fitness and probity regime. The remaining amendments in this group are minor technical amendments.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 94, 96 and 117 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 94:

In page 52, line 6, after "earlier" to insert "than that annual general meeting".

Deputy Brian Hayes: Amendments Nos. 94, 96 and 117 are also technical in nature and

are consequential on the tabling of other amendments.

Amendment agreed to.

Government amendment No. 95:

In page 52, line 8, to delete "section 76S(4)" and substitute "section 76R(4)".

Amendment agreed to.

Government amendment No. 96:

In page 52, line 20, to delete "subsection (4) or (5)" and substitute "subsection (4), (5) or (6)".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 97 to 113, inclusive, and amendment No. 116 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 97:

In page 52, to delete lines 35 to 38 and substitute the following:

"(*a*) an employee or voluntary assistant of the credit union or an employee of any other credit union;".

Deputy Brian Hayes: This group of amendments refers to the exclusion from the board oversight committee which is contained in section 27. There was much constructive debate in the Dáil and on Second Stage in the Seanad about the eligibility for membership of the board oversight committee. A number of amendments were proposed earlier relating to section 53(10) regarding changes to the exclusion from the board of directors. These amendments are proposed to ensure consistency between the board and the board oversight committee. The effect of these amendments reduces the exclusions that would apply to membership of the board oversight committee.

Amendment No. 97 allows volunteers of other credit unions to be on the board oversight committee of a credit union. The Minister already flagged this amendment. Amendment No. 108 removes the prohibition on family members of volunteers of the credit union becoming board oversight committee members. Amendment No. 98 allows for a director of another credit union to become a board oversight committee member. This is also something the Minister, Deputy Noonan, said he would concede. An amendment to this section will be made on Report Stage to clarify that a member of the oversight committee of the credit union cannot also sit on the board of directors of the same credit unions; this is already provided for under section 15 but I will table an amendment to clarify this on Report Stage. In error, amendment No. 98 provides that a director of the credit union be eligible also for membership of the board oversight committee of the same credit union. I intend to bring forward an amendment on Report Stage to correct this.

Amendment No. 106 makes a change to the exclusion of auditors from the board oversight committee. This exclusion will now include a person employed or engaged by that auditor. This is to guard against any conflicts of interest. Amendment No. 111 deletes section 76N(4)(*q*) in line with the changes for exclusions from board membership. Amendment No. 112 en-

sures that where a committee member falls under any exclusion provisions, that member should resign from the committee.

Amendment agreed to.

Government amendment No. 98:

In page 52, to delete lines 41 and 42.

Amendment agreed to.

Government amendment No. 99:

In page 52, line 43, to delete "(*d*) an employee of" and substitute "(*c*) an employee of".

Amendment agreed to.

Government amendment No. 100:

In page 52, line 48, to delete "(*e*) a public servant" and substitute "(*d*) a public servant".

Amendment agreed to.

Government amendment No. 101:

In page 53, line 3, to delete "(*f*) a member of" and substitute "(*e*) a member of".

Amendment agreed to.

Government amendment No. 102:

In page 53, line 5, to delete "(*g*) an officer (within" and substitute "(*f*) an officer (within".

Amendment agreed to.

Government amendment No. 103:

In page 53, line 10, to delete "(*h*) Financial Services Ombudsman" and substitute "(*g*) Financial Services Ombudsman".

Amendment agreed to.

Government amendment No. 104:

In page 53, line 15, to delete "(*i*) a member of" and substitute "(*h*) a member of".

Amendment agreed to.

Government amendment No. 105:

In page 53, line 18, to delete "(*j*) the chief executive" and substitute "(*i*) the chief executive".

Amendment agreed to.

Government amendment No. 106:

In page 53, to delete line 24 and substitute the following:

"(*j*) the auditor of the credit union or a person employed or engaged by that auditor;".

Amendment agreed to.

Government amendment No. 107:

In page 53, line 25, to delete "(*l*) a solicitor or" and substitute "(*k*) a solicitor or".

Amendment agreed to.

Government amendment No. 108:

In page 53, to delete lines 29 to 36 and substitute the following:

"(*l*) a person who is a spouse or civil partner, cohabitant, parent or child, of a director, board oversight committee member or employee of that credit union;".

Amendment agreed to.

Government amendment No. 109:

In page 53, to delete line 37 and substitute the following:

"(*m*) a body corporate;".

Amendment agreed to.

Government amendment No. 110:

In page 53, to delete line 38 and substitute the following:

"(*n*) a person who is not of full age.".

Amendment agreed to.

Government amendment No. 111:

In page 53, to delete lines 39 to 46.

Amendment agreed to.

Government amendment No. 112:

In page 53, between lines 46 and 47, to insert the following:

"(5) A person shall resign from being a member of the board oversight committee of a credit union if and when he or she becomes a person to whom any of the provisions of subsection (4) relates.".

Amendment agreed to.

Government amendment No. 113:

In page 53, line 47, to delete "(5) A board oversight" and substitute "(6) A board over-

sight".

Amendment agreed to.

Government amendment No. 114:

In page 53, line 50, to delete "9 years" and substitute "12 years".

Deputy Brian Hayes: Following on from discussions in this House and Dáil Éireann and in line with amendments to the term limits of directors, the term limit of committee members is being extended from the proposed nine years out of an aggregate 15 years to 12 out of an aggregate 15 years. Amendment No. 115 deals with possible waivers from term limits and is grouped with amendment No. 43 in section 15. There is an incorrect cross-reference on page 51, line 26, which I will amend on Report Stage. It should refer to section 76N, not 76O.

Amendment agreed to.

Amendment No. 115 not moved.

Government amendment No. 116:

In page 54, line 3, to delete "(6) The board oversight" and substitute "(7) The board oversight ".

Amendment agreed to.

Government amendment No. 117:

In page 54, to delete lines 35 to 41 and substitute the following:

"(6) The board oversight committee may notify the Bank of any concern it has, that the board of directors has not complied with any of the requirements set out in this Part or Part IV, or regulations made thereunder, following a unanimous vote at a meeting of the committee called for the purpose of considering such a notification.".

Amendment agreed to.

Government amendment No. 118:

In page 55, to delete lines 34 to 50 and in page 56, to delete lines 1 to 8.

Amendment agreed to.

Government amendment No. 119:

In page 56, line 9, to delete "76R.—(1) Subject to" and substitute "76Q.—(1) Subject to".

Amendment agreed to.

Government amendment No. 120:

In page 57, line 5, to delete "76S.—(1) A register of" and substitute "76R.—(1) A register of".

Amendment agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

SECTION 29

Government amendment No. 121:

In page 58, to delete lines 22 to 35.

Amendment agreed to.

Government amendment No. 122:

In page 58, line 36, to delete "84B.—(1) In making regulations" and substitute " "84A.—(1) In making regulations".

Amendment agreed to.

Government amendment No. 123:

In page 59, to delete lines 14 to 20, to delete all words from and including "credit" in line 14 down to and including "commenced."." in line 20 and substitute "credit union."."

Amendment agreed to.

Section 29, as amended, agreed to.

NEW SECTION

Senator Kathryn Reilly: I move amendment No. 124:

In page 59, before section 30, to insert the following new section:

"30.--The Principal Act is amended by the insertion of the following new section after section 84A (inserted by this Act):

"84B.--As soon as is practicable, the Bank shall enter into a memorandum of understanding with credit unions the form of which shall be agreed in consultation with credit unions and representatives bodies."."

The issue to which this amendment relates has been raised by Sinn Féin on all Stages and has not been satisfactorily dealt with to date. The proposed memorandum of understanding is being confused with the consultation protocol for credit unions. What this amendment seeks is more akin to a customer charter or service level agreement in order that the parties - the Central Bank and the credit unions - know what is expected of them in their mutual dealings.

The example of lending restrictions has been highlighted. In some cases, credit unions have had restrictions and demands imposed upon them without real explanations or, more importantly, guidelines on how to remedy the situation. Credit unions expect and require clarity concerning what they need to do to have restrictions eased or removed. One credit union had a lending restriction communicated to it in writing. A part of that restriction was a complete ban

on commercial lending, but it was later alleviated verbally. There is a great deal of confusion. This is of little use to the credit union in question and is certainly no way for a professional regulator to conduct business.

Simple issues such as communication, timeframes and so on could be easily addressed by way of a memorandum of understanding, which we are calling for in this amendment. Such a memorandum would be immediately beneficial, in that it would map out the rule book for the parties. We want our facilities to have the highest standards. This amendment would provide clarity and allow for a much better working relationship between the credit unions and the regulator. Will the Minister of State consider accepting it?

Deputy Brian Hayes: I thank the Senator for her amendment, which would provide for a memorandum of understanding between the Central Bank and credit unions. This issue was discussed in some detail on Committee Stage in the Lower House, when the Minister for Finance made it clear that he would be sticking with the Bill's current provisions. The bank has already published a consultation protocol for credit unions, as recommended by the Commission on Credit Unions. It is not appropriate to place the bank under a statutory obligation to enter into a memorandum of understanding.

The commission recommended that a consultation protocol should be in place between the Central Bank and credit unions. This protocol has been developed following consultation between the Central Bank, the Minister, credit union representative bodies and the Credit Union Advisory Committee, CUAC. The protocol was sent to all credit unions earlier last week and is being worked upon by all of the stakeholders, as requested under the commission's recommendation. The protocol sets out how the Central Bank proposes to engage with credit unions in any formal consultation process prior to the introduction of new regulations, which is important. The protocol is in place and is fair in dealing with people. The protocol states that the bank is committed to having clear, open and transparent engagement with stakeholders in fulfilling its financial regulation and supervisory objectives.

The bank commits to engage formally and informally with credit union representative bodies and relevant stakeholders, as well as ensuring it complies with any relevant legal obligations relating to consultation. The bank will consult on new regulations that will have a significant impact on the business of credit unions. As part of the consultation process, the bank will invite credit unions, their representative bodies and other stakeholders to make written submissions on new regulations that will be reviewed and considered before regulations are made.

It has been suggested that a broader memorandum of understanding be agreed between the Central Bank and credit unions. I understand that one of the concerns driving this issue is an idea that the Central Bank should issue written directions. The Bill provides for this, as well as for an appeals mechanism. It is important to state that if people feel there is some unfairness in the way in which directions have been issued, there is an appeals mechanism which one could argue gives significant powers to the credit union sector if it is felt that a measure was being unfairly imposed.

I do not propose to follow the memorandum of understanding amendment and, as I stated, it was not recommended by the commission. If this issue was of significance to the commission in making its recommendations, it would have been flagged. That was not the case. We should be careful not to undermine the independence of the regulator. We have all learned enough from the financial crisis to know that the Central Bank must be able to act within its own powers

when required. As a result, I do not propose to accept the amendment.

Amendment put and declared lost.

SECTION 30

An Cathaoirleach: Amendments Nos. 125 and 126 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 125:

In page 59, to delete lines 24 to 26 and substitute the following:

" 'liquid assets' means the assets held by a credit union to enable it to meet its obligations as they arise;".

Deputy Brian Hayes: Amendment No. 125 provides a more specific definition of "liquid assets", which is always very useful in these types of Bills. Amendment No. 126 ensures that the proportion of liquid assets to be kept by a credit union will take account of the nature, scale and complexity of a credit union, thus ensuring that a one size fits all approach is not taken and that the composition and maturity of the credit union's assets and liabilities would also be taken into consideration. This is in line with the commission's recommendations regarding a tiered regulatory approach. This measure was in the Bill as published but mistakenly removed in the Bill as amended on Committee Stage in the Dáil. A further amendment may be required to clarify the definition of "maturity mismatch" and I intend to bring this about on Report Stage.

Senator Brian Ó Domhnaill: Amendment No. 126 appears to be vague, although I understand the Minister of State will follow up with regulations. Is the wording imprecise? The insertion would state: "The proportion of assets kept in liquid form shall take into account the nature, scale and complexity of the credit union, and the composition and maturity of its assets and liabilities." Will the Central Bank have a role after the legislation is implemented in drawing up a detailed list of obligations with which credit unions must comply?

Deputy Brian Hayes: Section 30(3) indicates:

The Bank may prescribe the minimum liquidity requirements that a credit union is required to maintain as well as conditions on the application of the minimum liquidity requirements. Regulations made by the Bank for the purpose of this section may deal with other matters

5 o'clock

One of the recommendations from the commission was on this idea of a tiered regulatory approach and the objective was that due regard would have to be given to the size of credit unions. As I stated in my reply, a one size fits all approach is not taken on the argument that they are all the same size and all have the same deposit ratios and lending rations because it is not realistic. To have regard to that recommendation from the commission, the power is now being given to the Bank to prescribe the liquidity requirements.

It is important that amendment No. 126 ensures that the proportion of liquid assets to be kept by a credit union will take account of the nature, scale and complexity of a credit union

because it allows the Central Bank to do it in a scaled way having regard to that recommendation made by the commission. This is something that will be useful for credit unions, large and small, because the Central Bank must have regard to the liquidity ratio and principles because of the size and scale of credit unions.

Senator Brian Ó Domhnaill: I thank the Minister of State.

I raised the matter on Second Stage as well when I pointed out that probably the only financial sector that was lending into the economy was the credit union movement, for which it must be applauded. While the banks massage figures to suggest that they are lending, the reality is that they are transferring loans from, perhaps, bridging loans into other types of loan. The banks are only restructuring loans instead of providing new loans.

While I am cognisant of the fact that the credit unions, the directors and the movement must be protected, all credit unions would acknowledge that they do not want to be so restricted that they will not be in a position to lend into the economy. I say that taking full cognisance of what the Minister of State stated on the need to protect the sector as well. A balance must be struck and I ask him to bear that in mind in whatever regulations are to be drawn up.

Deputy Brian Hayes: I am grateful to Senator Ó Domhnaill for raising this matter. It is worth pointing out, as one looks down through section 30 which deals with this question of liquidity and stress-testing, that as we have become aware of the principle of stress-testing within the banking system, the same principle should logically apply within the credit union sector. If that principle had not applied up until now, provision is being made for it now purely on the basis of ensuring that credit union members' deposits and shares are properly held. One cannot have one without the other. Liquidity and stress-testing are two sides of the one coin. The Minister for Finance made it clear in his contributions in the other House that he does not want these provisions to be used as a hammer to crack over the heads of smaller credit unions which, by definition, scope and size, are in a different league to larger ones. One cannot compare apples and oranges. There is an argument of scale here. It is the Minister's view that the imposition of this section, section 30, in terms of liquidity and stress-testing, and amendment No. 126, will make that argument for the existing diversity of credit unions.

Amendment agreed to.

Government amendment No. 126:

In page 59, line 43, after "arise." to insert the following:

"The proportion of assets kept in liquid form shall take into account the nature, scale and complexity of the credit union, and the composition and maturity of its assets and liabilities.".

Amendment agreed to.

Section 30, as amended, agreed to.

SECTION 31

Government amendment No. 127:

In page 61, line 35, to delete "section 53."." and substitute the following:

"section 53.

(5) Any period of appointment under this section shall not be reckoned for the purposes of calculating the number of years that a person has served in aggregate for the purpose of section 53(12) or section 76N(5).".".

Amendment agreed to.

Section 31, as amended, agreed to.

Sections 32 and 33 agreed to.

SECTION 34

Government amendment No. 128:

In page 62, line 34, after "Part IV" to insert "(other than sections 27B, 27G and 27H)".

Deputy Brian Hayes: This amendment clarifies that sections 27B, 27G and 27H of the Central Bank Act 1997 continue to apply to credit unions. These sections relate to the duties of auditors to provide reports for the Central Bank. Section 27B already makes reference to section 122 of the Credit Union Act 1997. It relates to auditor management and statutory duty declarations. I should emphasise that this amendment is not applying any new provision on credit union auditors; it is simply reflecting provisions that already apply but does so in a more precise way.

Amendment agreed to.

Section 34, as amended, agreed to.

Sections 35 to 38, inclusive, agreed to.

SECTION 39

Government amendment No. 129:

In page 63, to delete line 32 and substitute the following:

" "ReBo" means the Credit Union Restructuring Board;

"stabilisation support" has the meaning given by *section 62*.".

Deputy Brian Hayes: This amendment provides for the inclusion of a definition of "stabilisation support" in section 39, referring to the definition of "stabilisation support" which already appears in section 62 of the Bill.

Amendment agreed to.

Section 39, as amended, agreed to.

Sections 40 to 43, inclusive, agreed to.

SECTION 44

An Cathaoirleach: Amendments Nos. 130 and 131 are related and may be discussed to-

gether, by agreement. Is that agreed? Agreed.

Government amendment No. 130:

In page 65, lines 25 to 36, to delete subsection (2) and substitute the following:

"(2) Subject to this Part, ReBo may do anything which it considers necessary or expedient to enable it to perform its functions including making arrangements with any other person or body for the use by it of premises or equipment belonging to that person or other body or for the use by ReBo of the services of officers or servants of that person or other body.".

Deputy Brian Hayes: Amendment No. 130 consolidates the provisions relating to ReBo's power to carry out certain functions. The power to appoint staff is provided for in section 54 and the power to organise meetings is set out in section 50. As a result, unnecessary references in this section to those powers are being removed by this amendment.

Amendment No. 131 deletes section 44(3). Subsection (3) is not required as subsection (2) already provides that ReBo may do anything which it considers necessary to enable it to perform its functions.

Amendment agreed to.

Government amendment No. 131:

In page 65, lines 37 to 45, to delete subsection (3).

Amendment agreed to.

Section 44, as amended, agreed to.

SECTION 45

An Cathaoirleach: Amendments Nos. 132, 148, 153 and 154 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government No. 132:

In page 66, subsection (5)(*a*), line 37, to delete "funding" and substitute "financial support".

Deputy Brian Hayes: Amendments Nos. 132, 148, 153 and 154 are technical amendments which provide for consistency in the references to "financial support" to be provided from the credit union fund under Parts 3 and 4. Financial support may take the form of a payment, a loan, a guarantee, an exchange of assets or any other kind of financial accommodation or assistance. This is consistent with both the Credit Institutions (Financial Support) Act 2008 and the Central Bank and Credit Institutions (Resolution) Act 2011.

Amendment agreed to.

Section 45, as amended, agreed to.

Section 46 agreed to.

SECTION 47

Government amendment No. 133:

In page 67, lines 39 to 41, to delete subsection (4) and substitute the following:

"(4) The ReBo levy received from each credit union shall be paid into the Credit Union Fund.".

Deputy Brian Hayes: This amendment provides that the ReBo levy which is to be paid by credit unions will be paid into the credit union fund rather than paid into or disposed of for the benefit of the Exchequer. The expenses incurred by ReBo will be paid out of the credit union fund and, therefore, it is appropriate that the levy received to recoup those expenses should be paid into the credit union fund.

Amendment agreed to.

Section 47, as amended, agreed to.

Section 48 agreed to.

SECTION 49

Question proposed: "That section 49 be deleted."

Deputy Brian Hayes: As the expenses of the credit union restructuring board, ReBo, are to be paid from the credit union fund, section 49 is no longer required and, therefore, I propose its deletion.

Senator Brian Ó Domhnaill: Does that mean the credit union sector will have to advance in order to set up the fund?

Deputy Brian Hayes: Sorry.

Senator Brian Ó Domhnaill: This concerns advances by the Minister in order to set up the ReBo. Does that mean the sector will have to advance the money?

Deputy Brian Hayes: Some 50% will come from the sector and the other 50% will come from the Exchequer. The expenses will come from the fund.

Question put and agreed to.

Section 50 agreed to.

SECTION 51

Acting Chairman (Senator Michael Mullins): Amendments Nos. 134 and 136 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 134:

In page 69, subsection (1)(*a*), line 25, to delete "the Board of that Board" and substitute "that Board".

Deputy Brian Hayes: Amendment No. 134 removes a typographical error in section 51(1)(*a*) and amendment No. 136 corrects a typographical error in section 51(4).

Amendment agreed to.

Government amendment No. 135:

In page 69, subsection (1)(*f*), line 32, after "of" to insert "an auditor,".

Deputy Brian Hayes: This amendment provides that employees of auditors engaged by ReBo are subject to the non-disclosure of information provisions in this section. This amendment ensures consistency in the application of the non-disclosure provisions which the Bill currently applies to employees of agents, consultants and advisers appointed by ReBo.

Amendment agreed to.

Government amendment No. 136:

In page 70, subsection (4), line 10, to delete "the credit" and substitute "credit".

Amendment agreed to.

Section 51, as amended, agreed to.

Sections 52 and 53 agreed to.

SECTION 54

Acting Chairman (Senator Michael Mullins): Amendments Nos. 137 and 138 are related and will be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 137:

In page 71, subsection (1), lines 32 and 33, to delete all words from and including "given" in line 32 down to and including "Reform" in line 33.

Deputy Brian Hayes: Amendment No. 137 removes the requirement for the Minister for Finance to obtain the consent of the Minister for Public Expenditure and Reform before approving the appointment of staff by ReBo. The staff of ReBo will be paid out of the credit union fund and as a result, the consent of the Minister for Public Expenditure and Reform to their appointment is no longer required. ReBo can, therefore, with the approval of the Minister for Finance, appoint such staff and at such grades as it may determine.

Amendment No. 138 makes the provisions relating to the appointment of the staff of ReBo

consistent with those relating to the appointment of the chief executive of ReBo. Section 54 will now mirror the provisions concerning the appointment of the chief executive set out in section 53. Subsection (2)(*a*) restates section 54(2) as included in the Bill as published following Committee Stage in the Dáil, and provides that the terms of appointment of the staff of ReBo may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform, subject to the Public Service Management (Recruitment and Appointments) Act 2004. Subsection (2)(*b*) as provided for in this amendment sets out an alternative means for determining the terms of appointment of ReBo staff. Those terms may be determined by the board of ReBo, subject to the approval of the Minister with the consent of the Minister for Public Expenditure and Reform.

Senator Darragh O'Brien: My question also relates to the section as it regards remuneration for board members and their status as employees. Will they be public sector workers, for example? The Minister of State has mentioned public sector pay grades. I do not imagine the Minister of State has details of full staffing levels but with the establishment of NAMA by the previous Government, there were issues, as well as matters relating to pay and pension arrangements in the National Treasury Management Agency, NTMA. I am not suggesting that ReBo will be in that sphere.

What will happen with pension arrangements and are the terms and conditions of the staff contracts exactly the same as other workers in the public sector? The NTMA may be a bad example but when it was at one stage effectively a pseudo-State corporation as it was set up with a defined contribution pension arrangement and the board decided to change it to a defined benefit pension arrangement that required no permission from the Minister for Finance of the time. Against the advice of the Committee of Public Accounts and various Members across the Houses, the agency set its own terms and conditions regarding pay and pensions.

I understand if the Minister of State does not have all the detail to hand but I am flagging this as a potential issue. Perhaps he will tell me it is not an issue and the matter is being dealt with. I would appreciate any comment in that regard.

Deputy Brian Hayes: I will read the speaking note relating to the section and return to the specific issues raised by the Senator. This section provides that ReBo may appoint as many members of staff and at such grades as it deems appropriate. The current text provides that ReBo must obtain the approval of the Minister, given with the consent of the Minister for Public Expenditure and Reform, before taking on staff. However, I intend to bring forward an amendment today which will remove the requirement to obtain the consent of the Minister for Public Expenditure and Reform.

The current text also provides that the appointment of staff is to be on such terms as the Minister determines, with the consent of the Minister for Public Expenditure and Reform, and is subject to the Public Service Management (Recruitment and Appointments) Act 2004. I will bring forward an amendment today to provide for additional, alternative terms of appointment for ReBo staff, determined by the board of ReBo and approved by the Minister with the consent of the Minister for Public Expenditure and Reform. This amendment would make this section consistent with section 53 relating to the appointment of the chief executive of ReBo.

Effectively, these people will be part of the wider public service because of the requirements of the 2004 Act. The Minister for Public Expenditure and Reform is effectively being involved as a triple lock to ensure any agreement will be consistent with an appropriate number of staff

and the terms and conditions which go with that. It is fair to say that the establishment of ReBo - we do not yet have anyone and we must have the power to act - is important in operating a new restructured credit union service. We all appreciate the necessity for this restructuring, which must be done on a professional basis. As I understand it, there will be an effective triple lock between the board, the Minister for Finance and the Minister for Public Expenditure and Reform. The terms and conditions will be no different to the terms and conditions pertaining in the Public Service Management (Recruitment and Appointments) Act 2004, which governs recruitment and appointments.

Amendment agreed to.

Government amendment No. 138:

In page 71, lines 38 to 43, to delete subsection (2) and substitute the following:

"(2) An appointment under this section shall either—

(*a*) be on such terms (including terms as to remuneration, duration of term and allowances for expenses) as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine and be subject to the Public Service Management (Recruitment and Appointments) Act 2004, or

(*b*) be on such other terms (including terms as to remuneration, duration of term and allowances for expenses) as may be determined by the Board of ReBo and approved by the Minister with the consent of the Minister for Public Expenditure and Reform.".

Amendment agreed to.

Section 54, as amended, agreed to.

SECTION 55

Government amendment No. 139:

In page 71, subsection (1), line 44, to delete "with the agreement" and substitute "under the direction".

Deputy Brian Hayes: This amendment provides that the board of ReBo may direct the chief executive to undertake certain functions relating to the accounts of ReBo. This amendment reflects the fact that the board of ReBo and not the chief executive is responsible for keeping the accounts of ReBo and submitting those accounts to the Comptroller and Auditor General. Therefore, it is appropriate for the chief executive to act under the direction of the board of ReBo rather than the agreement of the board. It is a standard provision.

Amendment agreed to.

Section 55, as amended, agreed to.

Section 56 agreed to.

SECTION 57

Acting Chairman (Senator Michael Mullins): Amendment No. 140 is a Government amendment. Amendment Nos. 140 and 171 are related and may be discussed together.

Government amendment No. 140:

In page 73, lines 6 to 9, to delete subsection (1) and substitute the following:

"(1) Disclosure by a credit union to ReBo of information or records does not contravene any duty of confidentiality to which the credit union is subject.

(2) A credit union may disclose to ReBo personal data within the meaning of the Data Protection Acts 1988 and 2003.".

Deputy Brian Hayes: Amendment No. 140 splits section 57(1) into two subsections to provide greater clarity regarding the effect of disclosure of information by ReBo on any duty of confidentiality or in any obligation under the Data Protection Acts. The proposed section 57(1) provides that a credit union which discloses information to ReBo does not breach any applicable duty of confidentiality and the new section 57(2) which will be created by this amendment sets out that a credit union may disclose to ReBo personal data within the meaning of the Data Protection Acts. This amendment ensures that there is a legal gateway between credit unions and ReBos for the disclosure of information.

Amendment 171 inserts a new paragraph (*h*) into section 71(2) of the 1997 Act which will allow officers of a credit union to disclose confidential information to the ReBo and facilitates the sharing of information between the credit union and ReBo. ReBo will protect the confidentiality of information shared under section 51 of the Bill.

Amendment agreed to.

Section 57, as amended, agreed to.

SECTION 58

Government amendment No. 141:

In page 73, subsection (2), lines 19 to 21, to delete paragraphs (*a*) and (*b*) and substitute the following:

"(*a*) to provide a source of financial support for the restructuring of credit unions under this Part,

(*b*) to provide stabilisation support in accordance with *Part 4*,

(*c*) to meet the expenses of ReBo in discharging its functions under this Act,

(*d*) to provide for the costs referred to in *section 61(2)*, and

(*e*) to provide for the expenses referred to in *section 69*.".

Deputy Brian Hayes: This amendment adds a number of purposes for the credit union

fund to those listed in section 50(2). This amendment sets out that discharging the expenses of ReBo, the cost of collecting levies due under the Act, and the expenses of the bank in exercising its functions are purposes of the credit union fund. It sets that out in the context of amendment No. 141.

Amendment agreed to.

Acting Chairman (Senator Michael Mullins): Amendment No. 142 is a Government amendment. Amendments Nos. 142, 143 and 145 to 147, inclusive, are related and may be discussed together.

Government amendment No. 142:

In page 73, subsection (5), line 34, to delete "restructuring purposes" and substitute "the purposes of restructuring under this Part".

Deputy Brian Hayes: Amendment No. 142 is a technical amendment to improve the consistency of terminology in this Part of the Bill by removing the references to "restructuring purposes" and replacing it with "for the purposes of restructuring under this Part".

Amendment No. 143 removes the obligation on the Minister to obtain the bank's approval of an amalgamation or transfer of engagement under section 131(6)(*a*) of the 1997 Act before providing financial support for the purposes of restructuring. This amendment sets out that the provision of such support may be conditional on the bank giving its approval under that section rather than requiring the approval before the support is provided. This will permit the bank to consider the conditions proposed to be attached by the Minister to the provision of support, and the bank can decide accordingly whether to grant approval.

Amendment No. 145 is a technical amendment which updates the cross-referencing to other sections of the Bill dealing with the provisions of restructuring and restabilisation support. Amendment No. 146 clarifies that the support referred to in section 58(7) is stabilisation support. Amendment No. 147 clarifies that the conditions referred to in section 48(7) are those attached by the Minister under section 48(6) to the provision of stabilisation support.

Amendment agreed to.

Government amendment No. 143:

In page 73, subsection (5), lines 34 to 36, to delete all words from and including "The" in line 34 down to and including "Act." in line 36 and substitute the following:

"The provision of financial support by the Minister may be conditional on the Bank confirming the amalgamation or transfer under section 131(6)(*a*) of the Principal Act.".

Amendment agreed to.

Acting Chairman (Senator Michael Mullins): Amendment No. 144 is a Government amendment. Amendments Nos. 144 and 163 are related and may be discussed together.

Government amendment No. 144:

In page 73, lines 37 to 40, to delete subsection (6) and substitute the following:

"(6) Where requested by the Bank under *section 66(4)*, the Minister may provide stabilisation support from the Credit Union Fund on such terms and conditions as the Minister considers appropriate. The provision of stabilisation support by the Minister shall be conditional on the Bank approving the provision of stabilisation support under *section 66(5)*.".

Deputy Brian Hayes: Amendment No. 144 provides that the Minister may provide stabilisation support for a credit union from the credit union fund where requested to do so by the bank. The provision for the Minister to attach terms and conditions to any support provided is retained in this amendment. Those conditions are primarily intended to relate to the recoupment of funds provided as financial support under the Act. Amendment No. 163 clarifies that the bank may request the Minister to provide stabilisation support in accordance with section 58(6).

Amendment agreed to.

Government amendment No. 145:

In page 73, subsection (7), line 41, to delete "*subsection (6)*" and substitute "*subsections (5)* and *(6)*".

Amendment agreed to.

Government amendment No. 146:

In page 73, subsection (7), line 43, after "the" where it firstly occurs to insert "stabilisation".

Amendment agreed to.

Government amendment No. 147:

In page 73, subsection (7), line 44, after "but" to insert "conditions under *subsection (6)*".

Amendment agreed to.

Government amendment No. 148:

In page 74, subsection (9), line 4, after "of" to insert "financial".

Amendment agreed to.

Government amendment No. 149:

In page 74, lines 7 to 9, to delete subsection (10).

Deputy Brian Hayes: Amendment No. 149 deletes section 58(10). I am bringing forward an amendment to section 60 which provides the Minister with the power to make regulations prescribing the rate of contribution of credit unions to the credit union fund for the purposes of providing for the provision of stabilisation support under section 58(6). Stabilisation support will be made available out of funds raised through this levy, therefore, the current text in section 58(10) will no longer be required and is deleted by this amendment.

Amendment agreed to.

Section 58, as amended, agreed to.

SECTION 59

Government amendment No. 150:

In page 74, subsection (1)(*a*), line 12, after "accounts" to insert "of receipts and payments".

Amendment agreed to.

Section 59, as amended, agreed to.

SECTION 60

Acting Chairman (Senator Michael Mullins): Amendment No. 151 is a Government amendment. Amendments Nos. 151 and 155 are related and may be discussed together.

Government amendment No. 151:

In page 74, subsection (2), line 40, to delete "support" and substitute "support,".

Deputy Brian Hayes: Amendment No. 151 corrects a typographical error. Amendment No. 155 deletes unnecessary wording relating to section 61. Section 61 is a discretionary provision and, therefore, it is not appropriate to provide for an obligation to comply with that provision.

Amendment agreed to.

Government amendment No. 152:

In page 74, between lines 41 and 42, to insert the following subsection:

"(3) The Minister shall make regulations prescribing the rate of contribution, or a method of calculating the rate of contribution, to the Credit Union Fund by a credit union under this section for the purpose of providing funding for the provision of stabilisation support under *section 58(6)*.".

Deputy Brian Hayes: Amendment No. 152 sets out the Minister's powers to make regulations prescribing the rate of contribution or method of calculating the rate of contribution to the credit union fund by credit unions to provide the credit union fund with sufficient funds for the provision of stabilisation support.

Section 60(2) already provides that the Minister may make regulations prescribing the contribution to be made by credit unions to the credit union fund to recoup the cost of financial support provided for the purposes of restructuring. This amendment will provide a similar power in regard to stabilisation support to be provided from the credit union fund. This gives effect to recommendation 8.5.8 of the commission's report which recommended that the necessary financing of the credit union fund for the purpose of stabilisation be sourced from the credit union sector.

Amendment agreed to.

Government amendment No. 153:

In page 74, subsection (3)(*a*), lines 46 and 47, to delete "carrying out restructuring activities" and substitute the following:

"providing financial support for the restructuring of credit unions".

Amendment agreed to.

Government amendment No. 154:

In page 75, subsection (4)(*c*), line 16, to delete "funding" and substitute "financial support".

Amendment agreed to.

Government amendment No. 155:

In page 75, subsection (6), lines 26 and 27, to delete all words from and including "be" in line 26 down to and including "and" in line 27.

Amendment agreed to.

Section 60, as amended, agreed to.

Senator Maurice Cummins: I propose an amendment to the Order of Business, to extend the time to 5.45 p.m. in the hope we can complete the debate on Committee Stage.

Acting Chairman (Senator Michael Mullins): Is that agreed? Agreed.

Section 61 agreed to.

SECTION 62

Government amendment No. 156:

In page 76, to delete lines 2 to 9 and substitute the following:

" "stabilisation support" means financial support provided under this Act by the Minister from the Credit Union Fund to a credit union for the purpose of restoring and facilitating the maintenance of that credit union's reserve requirement, and such support by the Minister may include the provision of technical and financial advice and the provision of financial support to the credit union concerned.".

Deputy Brian Hayes: This amendment changes the definition of "stabilisation support" to clarify that support may include funding unrelated to the reserve requirement. Such funding may be used to update the systems and controls of the credit unions and also may include the provision of financial and technical advice for the credit union. This is a recommendation of the Commission on Credit Unions at paragraph 8.5.6 of the report.

Amendment agreed to.

Section 62, as amended, agreed to.

Sections 63 to 65, inclusive, agreed to.

Acting Chairman (Senator Michael Mullins): Amendments Nos. 157 and 158 are related and will be discussed together.

Government amendment No. 157:

In page 76, lines 37 to 46, to delete subsection (2) and substitute the following:

"(2) Until the commencement of an order under *section 43(1)*, stabilisation support shall not be approved by the Bank for a credit union under *subsection (1)* unless the Credit Union Restructuring Board has recommended that the credit union be considered by the Bank for stabilisation support.".

Deputy Brian Hayes: Amendment No. 157 amends subsection (2) by deleting the existing paragraph (*b*) which states that the bank may only approve stabilisation support if the credit union concerned has a shortfall in reserves caused by a short-term, non-recurring event. Instead, amendment No. 158 sets out when ReBo may recommend to the bank that a credit union should be stabilised. During the period of restructuring a credit union may not be assessed for stabilisation support unless ReBo makes a recommendation to the bank that the credit union should be stabilised. A credit union must not be part of the restructuring proposal or must have reserves greater than 7.5% before ReBo may make this recommendation. This will ensure that the restructuring process and the stabilisation process are aligned. Amendment No. 159 updates the citation of the Central Bank Acts which are amended by Part 5 of this Bill and was already discussed with amendment No. 2 to section 1.

Amendment agreed to.

Government amendment No. 158:

In page 76, after line 46, to insert the following subsection:

"(3) The Credit Union Restructuring Board may only make a recommendation to the Bank in relation to an individual credit union for the purposes of subsection (1) if:

(*a*) the credit union is not party to a restructuring proposal approved or being considered for approval as part of a restructuring plan under *section 45 (5)(a)*, and

(*b*) the credit union satisfies the requirements of *subsection (1)(a)(i)*.".

Amendment agreed to.

Government amendment No. 159:

In page 77, subsection (3)(*a*), lines 8 and 9, to delete "Central Bank Acts 1942 to 2011" and substitute "*Central Bank Acts 1942 to 2012*".

Amendment agreed to.

Acting Chairman (Senator Michael Mullins): Amendments Nos. 160 and 161 are related and will be discussed together.

Government amendment No. 160:

In page 77, subsection (3)(*c*), line 19, to delete "support" and substitute "such stabilisation support".

Deputy Brian Hayes: Amendments Nos. 160 and 161 are minor technical amendments. Amendment No. 160 clarifies that the support referred to in paragraph (*c*) is stabilisation support as opposed to restructuring support. We have already discussed those amendments as part of another group. Amendment No. 161 changes the reference from "this Part" to "this Act" as stabilisation support is to be provided by the Minster under Part 3 rather than Part 4.

Amendment agreed to.

Government amendment No. 161:

In page 77, subsection (3)(*c*), line 20, to delete "this Part;" and substitute "this Act;".

Amendment agreed to.

Government amendment No. 162:

In page 77, subsection (3)(*g*), line 33, to delete "functions." and substitute the following:

"functions;

(*h*) such terms and conditions as the Minister considers appropriate to attach to the stabilisation support.".

Deputy Brian Hayes: Amendment No. 162 clarifies that the bank must have regard to the terms and conditions that the Minister considers appropriate to attach the decision to provide stabilisation support when making a decision on the approval of stabilisation support to a credit union. These terms and conditions will deal with issues such as recoupment which may affect the Central Bank's assessment of viability.

Amendment agreed to.

Government amendment No. 163:

In page 77, subsection (4), line 35, after "may" to insert the following:

"request the provision of stabilisation support by the Minister under *section 58(6)* and may".

Amendment agreed to.

Section 66, as amended, agreed to.

Section 67 deleted.

Sections 68 and 69 agreed to.

NEW SECTIONS

Government amendment No. 164:

In page 80, before the Schedule, to insert the following new section:

"PART 5#

MISCELLANEOUS AMENDMENTS RELATING TO CENTRAL BANK ACTS 1942 TO 2011

70.—(1) Section 33AK of the Central Bank Act 1942 is amended—

(*a*) by substituting "subsection (1A)" for "subsection (1)(b)" in each place, and

(*b*) in subsection (3) by substituting the following for paragraph (b):

(b) Paragraph (a) does not apply—

(i) where the Bank is satisfied that the supervised entity has already reported the information concerned to the relevant body, or

(ii) where the information concerned has come into the possession of, or to the knowledge of the Bank, from an authority, in a jurisdiction other than that of the State, duly authorised to exercise functions similar to any one or more of the statutory functions of the Bank.".

(2) Schedule 2 to the Central Bank Act 1942 is amended in Part 1 by substituting the following for item 38:

"

Amendment agreed to.

Government amendment No. 165:

In page 80, before the Schedule, to insert the following new section:

71.—The Central Bank Reform Act 2010 is amended—

(*a*) in section 3 by inserting the following definitions:

" 'authorised officer' means a person appointed by the Bank under Part 5 to be an authorised officer;

'financial services legislation' means—

(*a*) the designated enactments,

(*b*) the designated statutory instruments, and

(*c*) the Central Bank Acts 1942 to 2012 and statutory instruments made under those Acts;",

and

(*b*) by inserting the following after section 53:

"PART 4

OVERSEAS REGULATORS

54.— (1) In this section 'overseas regulator' means an authority in a jurisdiction other than that of the State duly authorised to perform functions similar to any one or more of the statutory functions of the Bank.

(2) At the request of an overseas regulator to do so in relation to any matter, the Bank may –

(*a*) require information on the matter about which the Bank has required or could require the provision of information or the production of documents under any provision of financial services legislation, or

(*b*) authorise one or more than one authorised officer to exercise any of his or her powers for the purposes of investigating the matter.

(3) In deciding whether or not to exercise any of its powers under subsection (2), the Bank may take into account in particular:

(*a*) whether in the country or territory of the overseas regulator, corresponding assistance would be given to an authority duly authorised in the State to perform functions corresponding to functions exercised by the overseas regulator;

(*b*) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the State or involves the assertion of a jurisdiction not recognised by the State;

(*c*) the seriousness of the case and its importance to persons in the State;

(*d*) whether it is otherwise appropriate in the public interest to give the assistance sought.

(4) The Bank may decide that it will not exercise any of its powers under subsection (2) unless the overseas regulator undertakes to make such contribution towards the cost of such exercise as the Bank considers appropriate.

(5) Subsections (3) and (4) do not apply if the Bank considers that the exercise of its power is necessary to comply with any obligation created or arising by or under the Treaties governing the European Union.

(6) If the Bank authorises an authorised officer for the purposes of subsection (2)(b), the Bank may direct the authorised officer to permit a representative of the overseas regulator to attend, and take part in, any interview conducted for the purposes of the investigation of the matter concerned.

(7) A direction under subsection (6) is not to be given unless the Bank is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to obligations of non-disclosure of information similar to those imposed on the Bank in section 33AK of the Act of 1**942.**

(8) A person shall not be required for the purposes of the exercise of any power under this section to answer any question tending to incriminate the person.

Authorised Officers

55—(1) In this Part –

'agent', in relation to a person to whom this Part applies, includes a past as well as a present agent and includes the person's banker, accountant, solicitor, auditor and financial or other adviser, whether or not a person to whom this Part applies;

'authorisation' means an authorisation, licence or any other permission required to carry on business as a regulated financial service provider granted by the Bank pursuant to any provision of financial services legislation, and includes registration;

'customer', in relation to a regulated financial service provider, means–

(*a*) any person to whom the regulated financial service provider provides or offers financial services, or

(*b*) any person who requests the provision of financial services from the regulated financial service provider,

and includes a potential customer and a former customer;

'person to whom this Part applies' shall be read in accordance with section 56;

'prescribed contravention' has the same meaning as in section 33AN of the Act of 1942;

'premises' includes vessel, aircraft, vehicle and any other means of transport, as well as land and a building and any other fixed or moveable structure;

'regulated market' has the same meaning as in Regulation 3 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No 60 of 2007);

'related undertaking', in relation to a person ('the first-mentioned person'), means—

(*a*) if the first-mentioned person is a company, another company that is related within the meaning of section 140(5) of the Companies Act 1990,

(*b*) a partnership of which the first-mentioned person is a member,

(*c*) if the businesses of the first-mentioned person and another person have been so carried on that the separate business of each of them, or a substantial part thereof, is not readily identifiable, that other person,

(*d*) if the decision as to how and by whom the businesses of the first-mentioned person and another person shall be managed can be made either by the same person or by the same group of persons acting in concert, that other person,

(*e*) a person who performs a specific and limited purpose by or in connection with the business of the first-mentioned person, or

(*f*) if provision is required to be made for the first-mentioned person and another person in any consolidated accounts compiled in accordance with Seventh Council Directive 83/349/EEC of 13 June 1983 OJ L 193, 18.7.1983, p.1, that other person.

(2) References in this Part to a regulated financial service provider, or a related undertaking, shall, unless the context otherwise requires, be read as including a person who was a regulated financial service provider, or a related undertaking, at the relevant time.

56.—(1) The following are persons to whom this Part applies (including persons outside the State):

(*a*) a regulated financial service provider;

(*b*) a person who has applied for an authorisation but whose application has not been determined;

(*c*) a person whom the Bank reasonably believes is or was a regulated financial service provider, or is or was acting as or claiming or holding himself or herself out to be a regulated financial service provider;

(*d*) a person who is or was, or whom the Bank reasonably believes, is or was, without an authorisation, providing a financial service in respect of which an authorisation is required;

(*e*) a related undertaking of any of the persons referred to in paragraph (*a*), (*b*), (*c*) or (*d*);

(*f*) any other person whom the Bank reasonably believes may possess information about a person referred to in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*);

(*g*) any person whom the Bank reasonably believes may possess information about a financial product or investment admitted to trading or which is to be admitted to trading under the rules and systems of a regulated market.

(2) The duty imposed by this Part to produce or provide any information, extends to-

(*a*) a person who is in relation to a person to whom this Part applies –

(i) an administrator within the meaning of section 1(1) of the Insurance (No.2) Act 1983,

(ii) an administrator within the meaning of section 2 of the Investor Compensation Act 1998,

(iii) a person appointed as an administrator of a credit union by virtue of section 137 of the Credit Union Act 1997 or appointed to act as a provisional administrator of a credit union by virtue of section 138 of that Act,

(iv) a special manager appointed pursuant to the Credit Institutions (Stabilisation) Act 2010,

(v) an examiner, liquidator, receiver, official assignee, or

(vii) in respect of a person outside the State, a person corresponding to any of the persons who come within subparagraphs (i) to (v),

and

(*b*) a person who –

(i) is or has been an officer or employee or agent of any person to whom this Part applies, or

(ii) appears to the Bank or the authorised officer to have the information in his or her possession or under his or her control.

57.—(1) For the purposes of obtaining any information necessary for the performance by the Bank of its functions under financial services legislation relating to the proper and effective regulation of financial service providers, the Bank may appoint any of its officers or employees or other suitably qualified persons to be authorised officers and to exercise any of the powers conferred by this Part.

(2) The Bank may revoke any appointment made by it under subsection (1).

(3) An appointment or revocation under this section shall be in writing.

(4) A person's appointment by the Bank as an authorised officer ceases on the earlier of –

(*a*) the revocation by the Bank of the appointment,

(*b*) in a case where the appointment is for a specified period, the expiration of the period,

(*c*) on the person's resignation from the appointment, and

(*d*) in the case where the person is an officer or employee of the Bank –

(i) on the resignation of the person as an officer or employee of the Bank, or

(ii) on the termination of the person's employment with the Bank, or when the person's term of office ceases, for any reason.

(5) In this section 'suitably qualified person' means any person (other than an officer or employee of the Bank) who, in the opinion of the Bank, has the qualifications and experience necessary to exercise the powers conferred on an authorised officer by this Part.

58.—Every authorised officer appointed by the Bank shall be furnished with a warrant of his or her appointment, and when exercising a power conferred by this Part shall produce such warrant or a copy of it, together with a form of personal identification, for inspection if requested to do so by a person affected by the exercise of the power.

59.—(1) Subject to subsection (2), an authorised officer may at all reasonable times enter any premises–

(*a*) which the authorised officer has reasonable grounds to believe are or have been used for, or in relation to, the business of a person to whom this Part applies, or

(*b*) at, on or in which the authorised officer has reasonable grounds to believe that records relating to the business of a person to whom this Part applies are kept.

(2) An authorised officer shall not enter a dwelling, otherwise than –

(*a*) with the consent of the occupier, or

(*b*) pursuant to a warrant under section 61.

60—(1) An authorised officer may do any one or more of the following:

(*a*) search and inspect premises entered under section 59 or pursuant to a warrant under section 61;

(*b)* require any person to whom this Part applies who apparently has control of, or access to, records, to produce the records;

(*c*) inspect records so produced or found in the course of searching and inspecting premises;

(*d*) take copies of or extracts from records so produced or found;

(*e*) subject to subsection (3), take and retain records so produced or found for the period reasonably required for further examination;

(*f*) secure, for later inspection, any records produced or found and any data equipment, including any computer, in which those records may be held;

(*g*) secure, for later inspection, premises entered under section 59or pursuant to a warrant under section 61, or any part of such premises, for such period as may reasonably be necessary for the purposes of the exercise of his or her powers under this Part, but only if the authorised officer considers it necessary to do so in order to preserve for inspection records that he or she reasonably believes may be kept there;

(*h*) require any person to whom this Part applies to answer questions and to make a declaration of the truth of the answers to those questions;

(*i*) require any person to whom this Part applies to provide an explanation of a decision, course of action, system or practice or the nature or content of any records;

(*j*) require a person to whom this Part applies to provide a report on any matter about which the authorised officer reasonably believes the person has relevant information;

(*k*) require that any information given to an authorised officer under this Part is to be certified as accurate and complete by such person or persons and in such manner as the Bank or the authorised officer may require.

(2) Where records are not in legible form, an authorised officer, in the exercise of any of his

or her powers under this Part, may—

(*a*) operate any data equipment, including any computer, at the premises which is being searched or cause any such data equipment or computer to be operated by a person accompanying the authorised officer, and

(*b*) require any person who appears to the authorised officer to be in a position to facilitate access to the records stored in any data equipment or computer or which can be accessed by the use of that data equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it including—

(i) producing the records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,

(ii) giving to the authorised officer any password necessary to make the records concerned legible and comprehensible, or

(iii) otherwise enabling the authorised officer to examine the records in a form in which they are legible and comprehensible.

(3) Where the Bank or an authorised officer proposes to retain, pursuant to this section, any records taken by the authorised officer under subsection (1) for a period longer than 14 days after the date on which the records are taken, the Bank or the authorised officer shall, before the end of that period of 14 days, or such longer period with the consent of the person hereafter mentioned, furnish, on request, a copy of the records to the person who it appears to the Bank or the authorised officer, but for the exercise of the powers under this section, is entitled to possession of it.

(4) A person to whom this Part applies shall give to an authorised officer such assistance as the authorised officer may reasonably require and make available to the authorised officer such reasonable facilities as are necessary for the authorised officer to exercise his or her powers under this Part including such facilities for inspecting and taking copies of any records as the authorised officer reasonably requires.

(5) Subject to any warrant issued section 61, an authorised officer may be accompanied, and assisted in the exercise of the officer's powers under this Part, by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate.

61.—(1) Without prejudice to the powers conferred on an authorised officer by or under any other provision of this Part, if a judge of the District Court is satisfied on the sworn information of the authorised officer that there are reasonable grounds for believing that records are to be found on, at or in any premises, the judge may issue a warrant authorising an authorised officer accompanied by such other authorised officers or members or the Garda Síochána as may be necessary, at any time or times, within the period of validity of the warrant, on production, if so requested, of the warrant—

(*a*) to enter the premises specified in the warrant, if need be by reasonable force, and

(*b*) to exercise the powers conferred on authorised officers by this Part or such of those powers as are specified in the warrant.

(2) The period of validity of a warrant shall be 28 days from its date of issue.

(3) An application for a warrant under this section shall be made to a judge of the District Court in the district court district in which the premises concerned are situate.

62—(1) An authorised officer may attend any meeting relating to the business of a regulated financial service provider if the authorised officer considers that it is necessary to attend in order to assist the Bank in the performance of any of its functions under financial services legislation.

(2) The attendance of an authorised officer pursuant to subsection (1) at a meeting referred to in that subsection does not in any circumstances limit the powers of the authorised officer or of the Bank.

63—Nothing in this Part shall operate to confer any right to production of, or access to, any record subject to legal professional privilege.

64.—(1) The disclosure or production of any record or other information by a person under this Part shall not be treated, for any purpose, as a breach of any restriction under any enactment or rule of law on disclosure or production by the person or any other person on whose behalf the record or other information is disclosed or produced.

(2) Where a person from whom production of a record is required under this Part claims a lien on the record, the production of it shall be without prejudice to the lien.

65.— (1) If any person to whom this Part applies fails or refuses to comply with a requirement under this Part the authorised officer may certify the failure or refusal under his or her hand to the High Court.

(2) When an authorised officer certifies a failure or refusal referred to in subsection (1) to the High Court, the High Court may inquire into the case and may make such order (including interim or interlocutory orders) or direction as the High Court thinks fit, after hearing -

(*a*) any witnesses who may be produced against or on behalf of the person concerned, and

(*b*) any statement which may be offered in defence.

66—(1) A person commits an offence if he or she —

(*a*) obstructs or impedes an authorised officer in the exercise of any of his or her powers under this Part, whether or not by virtue of a warrant issued under section 61.

(*b*) without reasonable excuse, does not comply with a requirement

of an authorised officer in the exercise of any of those powers,

(*c*) in purported compliance with such a requirement, gives information to the authorised officer that the person knows to be false or misleading in a material respect, or

(*d*) falsely represents himself or herself to be an authorised officer.

(2) A person who commits an offence under this section is liable –

(*a*) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person does not commit an offence of failing to comply with a requirement referred to in subsection (1)(*b*) unless, when the requirement was made, the person was warned that a failure to comply is an offence.

(4) If a person refuses to answer a question asked of him or her or to comply with any other requirement made, under this Part, on the grounds that the answer or compliance with the requirement might tend to incriminate the person and the person is informed of his or her obligation to answer the question or to comply with the requirement, the person shall not refuse to answer the question or to comply with the requirement but the answer given or information provided on that occasion shall not be admissible as evidence in criminal proceedings against the person other than proceedings against him or her under this section.".

Amendment agreed to.

Government amendment No. 166:

In page 80, before the Schedule, to insert the following new section:

72.—(1) The Acts specified in *Part 1* of *Schedule 2* are amended to the extent specified in that Part.

(2) The statutory instruments specified in *Part 2* of *Schedule 2* are amended to the extent specified in that Part.

(3) The Central Bank Acts 1942 to 2011 specified in *Parts 1* to *3* of *Schedule 3* are amended to the extent specified in each such Part.

(4) The Acts specified in *Parts 1* to *8* of *Schedule 4* are amended to the extent specified in each such Part.

(5) The statutory instruments specified in *Parts 1* to *7* of *Schedule 5* are amended to the extent specified in each such Part.

(6) A person who was an authorised officer, by whatever name called, appointed under the provisions of any enactment repealed or revoked by this Act immediately before the coming into operation of the repeal or revocation concerned is taken to have been appointed under Part 5 of the Central Bank Reform Act 2010.

(7) Anything done by a person who was an authorised officer, by whatever name called, appointed under the provisions of any enactment repealed or revoked by this Act immediately before the coming into operation of the repeal or revocation concerned shall be treated after the coming into operation of the repeal or revocation as done under Part 5 of the Central Bank Reform Act 2010 by an authorised officer appointed under Part 5 of the Central Bank Reform Act 2010.

(8) Any information gathered, or any other thing done, under the provisions of any enactment repealed or revoked by this Act is to be treated after the coming into operation of the repeal or revocation as if done under any provision of Part 5 of the Central Bank Reform Act 2010 under which it could have been done had the provision been in force at the time in question.".

Amendment agreed to.

SCHEDULE

Acting Chairman (Senator Michael Mullins): Amendments Nos. 167 and 173 are related and will be discussed together.

Government amendment No. 167:

In page 83, item 22, lines 13 and 14, to delete "section 37C" and substitute "sections 37C and 37D".

Deputy Brian Hayes: Amendment No. 167 is a minor amendment and inserts a reference to section 37D of the Credit Union Act 1997 which sets out the information to be included in the credit agreement notice to the credit union member. This item in the schedule is required to ensure there is consistency between the Credit Union Act 1997 and the Consumer Credit Regulations 2010, which apply to credit unions. Amendment No. 173 clarifies that the supervisory authority referred to in item 100 is the Irish Auditing and Accounting Supervisory Authority

Amendment agreed to.

Government amendment No. 168:

In page 84, item 37, to delete lines 22 to 26 and substitute the following:

"(*b*) which are being prescribed for the purposes of this section as being services of a description that appears to the Bank to be of mutual benefit to its members,".

Deputy Brian Hayes: Under the current wording the Central Bank may exempt certain additional services which involve no undue risk to the credit union. This amendment removes the reference to "undue risk" in respect of additional services that the bank may exempt from the application requirements under section 48 of the Credit Union Act 1997. The wording may be too restrictive and limit the instances where the bank can exempt certain services from the additional requirements provided in that section. Instead, the bank may exempt such services which may be for the mutual benefit of its members.

Amendment agreed to.

Government amendment No. 169:

In page 85, item 44, line 19, to delete “section 53(17)” and substitute “section 53(15)”.

Amendment agreed to.

Government amendment No. 170:

In page 85, item 46, line 31, to delete “section 53(19)” and substitute “section 53(17)”.

Amendment agreed to.

Government amendment No. 171:

In page 86, between lines 53 and 54 to insert the following:

59	Section 71(2)	Substitute for paragraph (g)“(g) which is made to the Bank for the purposes of its functions in relation to credit unions; or(h) which is made to the Credit Union Restructuring Board for the purposes of its functions under the Credit Union Act 2012.”.

Amendment agreed to.

Government amendment No. 172:

In page 88, between lines 36 and 37, to insert the following:

“

80	Section 87(2)(c)	Substitute: “(c) that, since the registration of the credit union, the factors taken into account in granting registration have so changed that, if the society were now applying for registration, it would be refused; or(d) that the credit union has failed to comply with any terms and conditions imposed by the Bank under section 66(5) of the Credit Union Act 2012 relating to the provision of stabilisation support under this Act.”

.”.

Deputy Brian Hayes: This amendment inserts a new paragraph (*d*) into section 87(2) of the 1997 Act which allows the Central Bank to impose a regulatory direction on a credit union under section 87 where that credit union fails to comply with the terms and conditions of any stabilisation support given to the credit union under the Bill. If it does not comply with terms and conditions after funding has been provided, this gives the Central Bank the power to act. This is necessary to ensure that conditions imposed in return for financial support to keep the credit union afloat are enforceable. It is a little like the powers of the troika being imposed on us. We are now giving the powers to the Central Bank for the purposes of ensuring that, if it gives out money, the terms and conditions are adhered to. This direction, the credit unions will be glad to hear, will be appealable to the Irish Financial Services Appeals Tribunal under section 52 of the 1997 Act.

Amendment agreed to. Government amendment No. 173:

In page 90, item 100, line 43, to delete "Supervisory Authority" and substitute "Irish Auditing and Accounting Supervisory Authority".

Amendment agreed to. Government amendment No. 174:

In page 93, between lines 16 and 17 to insert the following:

"

134	Section 182(1)(k)	Delete.
135	section 182(1)(m)	Delete.

".

Deputy Brian Hayes: This amendment removes the ministerial regulation-making powers under section 182 of the 1997 Act, as these powers conflict with the bank's regulation-making powers under the Bill and are more appropriate for the Central Bank. These relate to the registration procedures and operations of credit unions.

Amendment agreed to. Government amendment No. 175:

In page 93, between lines 45 and 46, to insert the following:

"

140	First Schedule	Insert after paragraph 13:"14. Provision for dealing with directors and members of the board oversight committee who are more than 90 consecutive days in arrears under a debt obligation to the credit union up to and including the suspension or removal from the board of such directors.".

".

Amendment agreed to.

Schedule, as amended, agreed to.NEW SCHEDULES Government amendment No. 176:

In page 93, after line 49, to insert the following new Schedule:

"SCHEDULE 2

AMENDMENTS TO CERTAIN ACTS AND STATUTORY INSTRUMENTS

PART 1

AMENDMENTS TO CERTAIN ACTS

Item(1)	Number and year(2)	Short title(3)	Extent of repeal(4)
1	No. 24 of 1971	Central Bank Act 1971	Section 17A
2	No. 3 of 1989	Insurance Act 1989	Sections 59 and 60
3	No. 17 of 1989	Building Societies Act 1989	Section 41
4	No. 21 of 1989	Trustee Savings Banks Act 1989	Section 24A
5	No. 24 of 1994	Investment Limited Partnerships Act 1994	Section 25(2)
6	No. 11 of 1995	Investment Intermediaries Act 1995	Sections 9(3), 64 and 65
7	No. 8 of 1997	Central Bank Act 1997	Sections 36G, 36H, 36I, 75 and 76

8	No. 47 of 2001	Asset Covered Securities Act 2001	Section 70

PART 2

AMENDMENTS TO CERTAIN STATUTORY INSTRUMENTS

Item(1)	Number and year(2)	Citation(3)	Extent of revocation(4)
1	S.I. No. 13 of 2005	European Communities (Insurance Mediation) Regulations 2005	Regulations 28, 29, 30 and 31
2	S.I. No. 380 of 2006	European Communities (Reinsurance) Regulations 2006	Regulations 72, 73, 74 and 75
3	S.I. No. 60 of 2007	European Communities (Markets in Financial Instruments) Regulations 2007	Regulations 163, 164 and 165
4	S.I. No. 383 of 2009	European Communities (Payment Services) Regulations 2009	Regulations 99, 100, 101, 102 and 110
5	S.I. No. 183 of 2010	European Communities (Cross Border Payments) Regulations 2010	Regulations 6, 7, 8, 9, 10, 11 and 12
6	S.I. No. 183 of 2011	European Communities (Electronic Money) Regulations 2011	Regulations 62, 63, 64, 65 and 72

".

Amendment agreed to. Government amendment No. 177:

In page 93, after line 49, to insert the following new Schedule:

"SCHEDULE 3

AMENDMENTS OF CENTRAL BANK ACTS

PART 1

AMENDMENTS OF CENTRAL BANK ACT 1971

Item(1)	Provision affected(2)	Amendment(3)
1	Section 2(1)	In paragraph (d) of the definition of "related body" delete "section 17A" and substitute "Part 5 of the Central Bank Reform Act 2010".
2	Section 58(1)	Delete "17A,".

PART 2

AMENDMENTS OF CENTRAL BANK ACT 1997

Item(1)	Provision affected(2)	Amendment(3)
1	Section 28	(a) Substitute the following for the definition of "authorisation":" 'authorisation' means an authorisation under this Part authorising a person to carry on a regulated business;".(b) Delete the definition of "inspector". (c) In the definition of "retail credit firm"—(i) substitute "paragraph (e)" for "paragraph (g)", and(ii) substitute "section 2(1)" for "section 3".
2	Section 32A(5)(b)	After "officer" insert "appointed under "Part 5 of the Central Bank Reform Act 2010".

".

Amendment agreed to. Government amendment No. 178:

In page 93, after line 49, to insert the following new Schedule:

“SCHEDULE 4

AMENDMENTS OF CERTAIN OTHER ACTS

PART 1

AMENDMENTS OF BUILDING SOCIETIES ACT 1989

Item(1)	Provision affected(2)	Amendment(3)
1	Section 119(1)(a)	(a) In subparagraph (v) substitute “section 41A” for “sections 41 or 41A”.(b) Delete subparagraph (vii).

PART 2

AMENDMENT OF TRUSTEE SAVINGS BANKS ACT 1989

Item(1)	Provision affected(2)	Amendment(3)
1	Section 62(1)	Delete “24A,”.

PART 3

AMENDMENT OF INVESTMENT LIMITED PARTNERSHIPS ACT 1994

Item(1)	Provision affected(2)	Amendment(3)
1	Section 25(4)	In paragraph (a) delete the definition of “appropriate person”.

PART 4

AMENDMENTS OF CONSUMER CREDIT ACT 1995

Item(1)	Provision affected(2)	Amendment(3)
1	Section 8G(1)	(a) In the definition of "authorised officer" substitute "8M" for "8L".(b) Delete the definition of "responsible authority".
2	Section 8M	(a) In subsection (1) substitute "The Minister" for "A responsible authority".(b) In subsection (3) substitute "The Minister" for "A responsible authority". (c) In subsection (5)—(i) in paragraph (a) substitute "the Minister" for "the responsible authority concerned", and(ii) in paragraph (c) substitute "the Minister" for "the responsible authority".

PART 5

AMENDMENTS OF INVESTMENT INTERMEDIARIES ACT 1995

Item(1)	Provision affected(2)	Amendment(3)
1	Section 2(1)	Substitute the following for the definition of "authorised officer":" 'authorised officer' means a person appointed to be an authorised officer under Part 5 of the Central Bank Reform Act 2010;".
2	Section 20(6)	Substitute "section 19 of this Act and Part 5 of the Central Bank Reform Act 2010" for "sections 19 and 65 of this Act".
3	Section 79(1)	Substitute "21(10)" for "21(9)".

PART 6

AMENDMENTS OF CREDIT UNION ACT 1997

Item(1)	Provision affected(2)	Amendment(3)
1	Section 90	Substitute the following for section 90:“90.—(1) In this section and section 91 ‘authorised officer’ means an authorised officer appointed under Part 5 of the Central Bank Reform Act 2010.(2) The Bank may appoint an authorised officer to carry out an inspection and to provide a report of the inspection to the Bank.(3) An authorised officer may, for the purposes of carrying out an inspection, exercise any of the powers conferred on an authorised officer under Part 5 of the Central Bank Reform Act 2010.”.

2	Section 91	(a) Substitute the following for sub-sections (1) and (2):“(1) If required to do so by notice in writing served by the Bank at any time—(a) a credit union,(b) any person who is or has been an officer, member, agent or liquidator of a credit union, and(c) any other person who has in his or her possession or power any books or documents relating to a credit union, shall furnish to the Bank such books or documents which relate to the credit union and are in his possession or power and such information relating to the business of the credit union as may be specified in the notice and as may be reasonably required by the Bank in the exercise of its powers under this Act.(2) If required to do so by a notice in writing served on it by the Bank, a credit union shall furnish to the Bank a financial statement or periodic financial statements in such form and containing such information as may be specified in the notice and as may be reasonably required by the Bank in the exercise of the powers of the Bank under this Act.”.(b) Substitute the following for subsection (4):“(4) The Bank may take copies of or extracts from any item produced in compliance with a notice under subsection (1) or (2) and, if so required by the Bank, the person on whom a notice under subsection (1) was served or, in the case of a statement produced in compliance with a notice under subsection (2), a person who is or has been an officer, member, agent or liquidator of the credit union shall provide any explanation which may reasonably be required of an item so produced.”.

PART 7

AMENDMENTS OF INVESTOR COMPENSATION ACT 1998

Item(1)	Provision affected(2)	Amendment(3)
1	Section 9	Substitute the following for section 9:"(1) In this section 'Act of 2010' means the Central Bank Reform Act 2010.(2) Where the supervisory authority forms the view that an insurance intermediary may be unable to repay money belonging to a client of the insurance intermediary, the supervisory authority may appoint an authorised officer under Part 5 of the Act of 2010 to investigate whether the insurance intermediary is unable to repay money or otherwise discharge its obligations towards clients of the insurance intermediary and to make a report to the supervisory authority in respect of the insurance intermediary.(3) In relation to investment firms, an inspector appointed under the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No 60 of 2007) shall, for the purposes of this section, have the powers conferred on an authorised officer appointed under Part 5 of the Act of 2010.(4) In relation to investment firms which are credit institutions, an inspector appointed under section 45 of the Building Societies Act 1989 shall, for the purposes of this section, have the powers conferred on an authorised officer appointed under Part 5 of the Act of 2010.(5) In relation to investment firms which are investment business firms, an inspector appointed under section 66 or 73 of the Investment Intermediaries Act 1995 shall, for the purposes of this section, have the powers conferred on an authorised officer appointed under Part 5 of the Act of 2010.".

2	Section 33(2)	(a) Substitute "Part 5 of the Central Bank Reform Act 2010" for "the Act of 1995 and the European Communities (Markets in Financial Instruments) Regulations 2007".(b) Substitute "Part of that Act" for "Act and those Regulations".

PART 8

AMENDMENT OF ASSET COVERED SECURITIES ACT 2001

Item(1)	Provision affected(2)	Amendment(3)
1	Section 98	In paragraph (a) delete "or any person authorised by it to perform the relevant function on its behalf,".

".

Amendment agreed to. Government amendment No. 179:

In page 93, after line 49, to insert the following new Schedule:

"SCHEDULE 5

AMENDMENTS TO CERTAIN STATUTORY INSTRUMENTS

PART 1

AMENDMENTS OF EUROPEAN COMMUNITIES (DISTANCE MARKETING OF CONSUMER FINANCIAL SERVICES) REGULATIONS 2004

(S.I. No. 853 of 2004)

Item(1)	Provision affected(2)	Amendment(3)
1	Regulation 25	In paragraph (1) substitute "competent authority (other than the Bank)" for "competent authority".

2	Regulation 26	In paragraph (1) substitute "competent authority (other than the Bank)" for "competent authority".

PART 2

AMENDMENT OF EUROPEAN COMMUNITIES (INSURANCE MEDIATION) REGULATIONS 2005

(S.I. No. 13 of 2005)

Item(1)	Provision affected(2)	Amendment(3)
1	Regulation 3(1)	Delete the definition of "authorised officer".

PART 3

AMENDMENT OF EUROPEAN COMMUNITIES (REINSURANCE) REGULATIONS 2006

(S.I. No. 380 of 2006)

Item(1)	Provision affected(2)	Amendment(3)
1	Regulation 3(1)	Delete the definition of "authorised officer".

PART 4

AMENDMENTS OF EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007

(S.I. No. 60 of 2007)

Item(1)	Provision affected(2)	Amendment(3)
1	Regulation 3(1)	Substitute the following for the definition of "authorised officer":" 'authorised officer' means an authorised officer appointed under Part 5 of the Central Bank Reform Act 2010".
2	Regulation 6(7)	Substitute "Part 5 of the Central Bank Reform Act 2010" for "Regulation 164".
3	Regulation 14(1)	In subparagraph (b) insert "appointed under Part 5 of the Central Bank Reform Act 2010" after "authorised officer".
4	Regulation 147(1)(g)(ii)	Substitute "Part 5 of the Central Bank Reform Act 2010" for "Regulation 164".
5	Regulation 174(1)	Delete "an authorised officer or".

PART 5

AMENDMENTS OF EUROPEAN COMMUNITIES (INSURANCE AND REINSURANCE GROUPS SUPPLEMENTARY SUPERVISION) REGULATIONS 2007

(S.I. No. 366 of 2007)

Item(1)	Provision affected(2)	Amendment(3)
1	Regulation 3(1)	Substitute the following for the definition of "authorised officer":" 'authorised officer' means an authorised officer appointed under Part 5 of the Central Bank Reform Act 2010;".

2	Regulation 9	(a) Substitute the following for paragraph (5):“(5) If, in a particular case, the Bank wishes to verify information concerning an insurer or reinsurer located in another Member State and the insurer or reinsurer is an associate of an insurer or reinsurer that both holds an authorisation issued by the Bank and is subject to supplementary supervision, the Bank shall request the competent authority of that other Member State to have that verification carried out by that authority or an officer appointed by it.”.(b) In paragraph (7) insert “under Part 5 of the Central Bank Reform Act 2010” after “authorised officer”.

PART 6

AMENDMENTS OF EUROPEAN COMMUNITIES (CREDIT INSTITUTIONS)(CONSOLIDATED SUPERVISION) REGULATIONS 2009

(S.I. No. 475 of 2009)

Item(1)	Provision affected(2)	Amendment(3)

1	Regulation 20	Substitute the following for Regulation 20:“20. (1) Section 18 of the Central Bank Act 1971 (No. 24 of 1971) applies to and in relation to a credit institution that is subject to consolidated supervision by the Bank as if—(a) references in that section to a holder of a licence under that Act were references to the credit institution, and(b) references in that section to a related body of a holder of such a licence were references to an associated enterprise of the credit institution.(2) Section 41A of the Building Societies Act 1989 (No. 17 of 1989) applies to and in relation to a building society that is subject to consolidated supervision by the Bank as if references in that section to a related body of a building society were references to an associated body of the building society.(3) Section 25 of the Trustee Savings Bank Act 1989 (No. 21 of 1989) applies to and in relation to a credit institution that is subject to consolidated supervision by the Bank as if references in that section to a trustee savings bank were references to the credit institution.”.

PART 7

AMENDMENT OF EUROPEAN COMMUNITIES (CROSS BORDER PAYMENTS) REGULATIONS 2010

(S.I. No. 183 of 2010)

Item(1)	Provision affected(2)	Amendment(3)
1	Regulation 2(1)	Delete the definitions of “relevant records” and “search warrant”.

“.

Amendment agreed to.TITLE Government amendment No. 180:

In page 5, lines 21 to 24, to delete all words from and including "TO" in line 21 down to and including "MATTERS" in line 24 and substitute the following:

"TO PROVIDE FOR MISCELLANEOUS MATTERS RELATING TO CREDIT UNIONS; TO AMEND THE CENTRAL BANK ACTS 1942 TO 2011, TO PROVIDE FOR CO-OPERATION BETWEEN THE CENTRAL BANK OF IRELAND AND OVERSEAS REGULATORS AND TO PROVIDE FOR THE APPOINTMENT OF AUTHORISED OFFICERS BY THE CENTRAL BANK OF IRELAND; AND TO PROVIDE FOR MATTERS RELATED TO THE FOREGOING".

Amendment agreed to.

Bill reported with amendments.

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

Senator Maurice Cummins: On Thursday next.

Report Stage ordered for Thursday, 13 December 2012.

Acting Chairman (Senator Michael Mullins): I welcome visitors from the credit union movement, Mr. Noel Madden, manager of Ballinasloe Credit Union, and Mr. Purcell of the Irish League of Credit Unions.

Sitting suspended at 5.45 p.m. and resumed at 6.10 p.m.

Business of Seanad

Senator Maurice Cummins: I would like to discharge the order in regard to the Credit Union Bill 2012. I had indicated Report Stage would be taken on Thursday but it will now be taken tomorrow instead.

An Cathaoirleach: Is that agreed? Agreed.

Personal Insolvency Bill 2012: Report and Final Stages

An Cathaoirleach: Before we commence, I remind Senators that a Senator may contribute only once on Report Stage, except the proposer of an amendment who may reply to the discussion on the amendment. Each Opposition amendment must be seconded.

Amendments Nos. 1 and 5 are related and will be discussed together.

Government amendment No. 1:

In page 10, line 18, to delete "and apart".

Minister for Justice and Equality (Deputy Alan Shatter): Amendments Nos. 1 and 5 are similar technical drafting amendments required to refine the text of the Bill. I am advised by the Parliamentary Counsel that the words "and apart" are not required in this context and

should be deleted in both instances.

Senator David Cullinane: The Minister has been helpful throughout this process but he should accept that an inordinate number of amendments have been tabled by him and we were only notified late last night. I acknowledge many of them are technical but this is not the best way for legislators to properly scrutinise legislation, as we have not been given sufficient notice. The Law Library could do not justice to these amendments in the timeframe we have been given. I acknowledge, however, that the Minister has been helpful in extending the time to debate the various Stages of the Bill.

Deputy Alan Shatter: I apologise to the Senator. We have a deadline to complete the legislation. Tens of thousands of people see this as important to their lives and it is important that we complete passage of the legislation prior to the Christmas break. Some of the amendments are technical while I was asked by Members to make others and address issues that were raised. Because of the lateness of completion of the debate on Committee Stage, it meant some amendments were not finalised by the Parliamentary Counsel's office until the last minute. I would have preferred to have gone through them myself a little earlier than I did but we have done our best to try to address any technical difficulties and deal with other issues we had to leave over until Report Stage. I hope Senators will appreciate that we have listened carefully to the debate in this House and that some amendments address issues they raised.

Senator Sean D. Barrett: I support Senator Cullinane's comments. During the statements on the 90th anniversary of Seanad Éireann earlier, the conduct of this Bill was mentioned as a beacon of how the House can operate. I agree with Senator Cullinane's comments about the Minister's willingness to take on board points made in the House, which is appreciated.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 2, 21 and 135 are related and will be discussed together.

Government amendment No. 2:

In page 11, between lines 6 and 7, to insert the following:

" "electronic means" includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic means of transmission of data and other forms of related technology by means of which data is transmitted;".

Deputy Alan Shatter: Amendment No. 2 inserts a definition of "electronic means". The definition is required as a result of the proposed new section 23 in amendment No. 21, which provides for the insolvency service to communicate via electronic means. Amendment No. 21 is designed to facilitate the processing of documents by the insolvency service and the Courts Service in regard to applications for the various debt resolution arrangements provided for in the Bill. In developing the necessary systems for the insolvency service to operate the new debt relief notice, DRN, the debt settlement arrangement, DSA, and the personal insolvency arrangement, PIA, there is a significant effectiveness and efficiency requirement for the new processes to operate on a paperless basis to the maximum extent possible. The various elements of each process should operate on an electronic completion and transmission basis. The amendment makes clear that the functions of the insolvency service can be discharged by electronic means.

Amendments No. 135 proposes the insertion of a new section 134, which is consistent with the approach elsewhere in the Bill to allow maximum use of technology in the processes. This new section will allow a court to receive and issue a document by electronic means and this will include a judgment or any order made by this court. This provision will facilitate an efficient deployment of staff and court time. These provisions can be brought into operate by rule of court. It is my intention to bring forward as soon as possible similar provision to facilitate electronic lodgement of documents or information in respect of a broad range of court proceedings. The amendments will ensure the court processes and the connectivity between the insolvency service and the courts are at the front line of technical possibilities with a view to reducing the volume of paper necessary. It is setting up and establishing for the first time the type of system which should ultimately be applied right across the broad range of court procedures.

Amendment agreed to.

An Cathaoirleach: Government amendments Nos. 3 and 127 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 3:

In page 11, between lines 7 and 8, to insert the following:

" "insolvency arrangement" means a Debt Relief Notice, Debt Settlement Arrangement or a Personal Insolvency Arrangement;".

Deputy Alan Shatter: Amendment No. 3 is a technical drafting amendment which inserts the necessary definition of "insolvency arrangement" in the Bill. The proposed definition arises as a consequence of the amendments concerning transactions at undervalue where this terminology is used. Amendment No. 127 arises as a consequence of amendment No. 3. It removes the interpretation provision in section 128(7) regarding insolvency arrangements.

Amendment agreed to.

An Cathaoirleach: Government amendments Nos. 4, 25, 28, 42, 72, 117 and 142*a* are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 4:

In page 11, between lines 34 and 35, to insert the following:

" "relevant pension arrangement" means:

(*a*) a retirement benefits scheme, within the meaning of section 771 of the Taxes Consolidation Act 1997, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of that Act;

(*b*) an annuity contract or a trust scheme or part of a trust scheme for the time being approved by the Revenue Commissioners under section 784 of the Taxes Consolidation Act 1997;

(*c*) a PRSA contract, within the meaning of section 787A of the Taxes Consolidation Act 1997, in respect of a PRSA product, within the meaning of that section;

(*d*) a qualifying overseas pension plan within the meaning of section 787M of the

Taxes Consolidation Act 1997;

(*e*) a public service pension scheme within the meaning of section 1 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004;

(*f*) a statutory scheme, within the meaning of section 770(1) of the Taxes Consolidation Act 1997, other than a public service pension scheme referred to in *paragraph* (*e*);

(*g*) such other pension arrangement as may be prescribed by the Minister, following consultation with the Ministers for Finance, Social Protection and Public Expenditure and Reform;".

Deputy Alan Shatter: These amendments essentially relate to the new provisions in the Bill in regard to the treatment of pensions in the new and reformed insolvency processes. Amendment No. 4 provides for definitions in regard to relevant pension arrangements for the new debt resolution processes in bankruptcy. The definition is a prerequisite in regard to further amendments to the Bill providing that a pension pot will not be counted as an asset in the overall insolvency regime. For example, in the debt relief notice process, a pension pot will not be counted against the asset exemption limit of €400, but payments which the debtor is entitled to receive but has not yet received will be regarded as income. This amendment mirrors an amendment in the similar UK and Northern Ireland debt relief notice process to address a situation whereby small future pension arrangements push debtors over the asset exemption limit and prevent them from accessing this basic debt relief.

Amendments Nos. 25 and 28 are linked. Amendment No. 25 provides for the exemption in regard to a pension pot. However, this is subject to the provisions being inserted by amendment No. 28 which does not exempt income received or entitled to be received in the context of the income test in relation to a debt relief notice application.

Amendment No. 42 sets out how pension arrangements are to be treated in the context of debt settlement arrangements and personal insolvency arrangements. It provides that the DSA and PIA processes cannot require a debtor to hand over his or her pension pot or to draw down a pension early.

Amendment No. 72 inserts a new section in the Bill which will allow a creditor or a personal insolvency practitioner of a debtor in respect of whom a debt settlement arrangement is in force to make an application to the appropriate court for relief in accordance with this section where the creditor or the personal insolvency practitioner concerned considers that a debtor has made excessive contributions to a relevant pension arrangement. The net excessive contributions to the debtor's pension must have been made within the three-year period prior to the issue of the protective certificate. Subsection (3) provides that where the court finds that the debtor's pension contributions were excessive, it can direct such part of the contribution concerned, less any tax required to be deducted, to be paid by the person administering the relevant pension arrangement to the personal insolvency practitioner for distribution among creditors of the debtor. It may make such other orders as the court deems appropriate, including an order as to the costs of the application. Subsection (4) sets out matters that the court should have regard to in the consideration of this matter.

Amendment No. 117 is similar to amendment No. 72. The purpose of the amendment is to allow a creditor challenge a personal insolvency arrangement in a situation where the debtor

may have made excessive pension contributions in the three years prior to the issue of the protective certificate with a view to putting funds out of reach of creditors.

Amendment No. 142*a* provides for the insertion of two new sections, new section 44A and new section 44B, into the Bankruptcy Act 1988. The new section 44A provides that the future entitlement to payment under a relevant pension arrangement, perhaps better and more colloquially described as a pension pot, of a person adjudicated bankrupt will not vest in the official assignee in bankruptcy. The section sets out the various conditions attached and lists the types of relevant pension arrangements accompanied by the section. However, any income from a pension, either in payment or whether there is an entitlement to receive a payment, is not exempt and may be claimed by the official assignee or the trustee in bankruptcy. This is a significant improvement in our bankruptcy law as it recognises the desirability of persons making contributions to provide for the future and not impose an excessive burden on the State. This provision is similar to that in the UK to exempt pension pots from being ceased in a bankruptcy.

Section 44B provides again that in a case where the bankrupt has made excessive contributions to his or her pension within the three years prior to being adjudicated bankrupt, the official assignee or the trustee in bankruptcy can apply to court for an order in relation to the pension for the purpose of ensuring the excessive contributions can be made available for distribution to creditors. This mirrors similar provisions in regard to excessive contributions in the debt settlement arrangement and personal insolvency arrangement processes. This is an important counterbalance to the exemption allowed in the previous section.

Amendment agreed to.

Government amendment No. 5:

In page 12, line 17, to delete "and apart".

Amendment agreed to.

Government amendment No. 6:

In page 12, to delete lines 46 to 48.

Deputy Alan Shatter: This amendment, in regard to section 2(2)(*b*), as currently drafted, refers to section 157 of the Corporation Tax Act 1976 for the interpretation of "control". I am advised by the Parliamentary Counsel that this definition should be deleted.

Amendment agreed to.

An Cathaoirleach: Government amendments Nos. 7, 22, 26, 69 to 71, inclusive, and 114 to 116, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 7:

In page 13, between lines 2 and 3 to insert the following:

"(4) For the purposes of *section 24(2)(g)(i), 84(1)(g)* and *116(1)(g)*, a debtor enters into a transaction with another person at an undervalue if he or she-

(*a*) makes a gift to, or otherwise enters into a transaction with, that other person

on terms that provide for the debtor to receive no consideration or

(*b*) enters into a transaction with that other person, the value of which, in money or money's worth, is significantly greater than the value, in money or money's worth, of the consideration provided by that other person.

(5) For the purposes of *section 24(2)(g)(ii), 84(1)(h)* and *116(1)(h)*, a debtor gives a preference to another person if-

(*a*) the other person is a creditor of the debtor to whom a debt (other than an excluded debt or an excludable debt) is owed, or is a surety or guarantor for any such debt, and

(*b*) the debtor does any thing (including the granting of security), or suffers any thing to be done, which has the effect of putting that other person into a position which, in the event that the insolvency arrangement concerned is issued or comes into effect, as the case may be, would be better than the position in which that other person would have been if that thing had not been done or suffered to be done.".

Deputy Alan Shatter: Amendment No. 7 provides for definitions in regard to transactions at undervalue or the giving of a preference, such actions being designed to frustrate the legitimate interests of creditors. Amendment No. 22 is designed to refine the provisions in section 24 in regard to the conditions on the debtor applying for debt relief notice concerning any transactions he or she may have entered into in the previous two years designed to frustrate the legitimate rights of creditors. Amendment No. 26 is a drafting amendment. It arises as a consequence of the revised approach to transactions at an undervalue or of fraudulent preference.

Amendment No. 69 is a technical drafting amendment. It arises as a consequence of amendment No. 71 which proposes the deletion of section 84(2) and (3) from the Bill. Amendment No. 70 is a technical drafting amendment to improve the construction of paragraph (*h*) in relation to fraudulent preferences that might be made by the debtor. Amendment No. 71 proposes the deletion of section 84(2). This provision is no longer required following the proposed amendments in relation to transactions at undervalue by the debtor.

Amendment No. 114 is a technical drafting amendment which arises as a consequence of amendment No. 116 which proposes the deletion of section 116(2). Amendment No. 115 is a technical drafting amendment to improve the construction of paragraph (*h*) of section 116(1) in relation to fraudulent preferences that might be made by the debtor. Amendment No. 116 proposes the deletion of section 116(2) and (3). This provision is no longer required following the proposed amendments in relation to transactions at undervalue by the debtor.

Amendment agreed to.

An Cathaoirleach: Government amendments Nos. 8, 154 and 155 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 8:

In page 13, to delete lines 29 to 42 and substitute the following:

"(2) The performance of the functions, and the exercise of the powers and jurisdiction, conferred by this Act on the Circuit Court shall be within the jurisdiction of the

circuit of the Circuit Court in which-

(*a*) the debtor to whom an application under this Act relates is residing at the time of the making of the application or has resided within one year of the time of the making of the application, or

(*b*) the debtor to whom the application relates has a place of business at the time of the making of the application or has had a place of business within one year of the time of the making of the application.

(3) An application to the Circuit Court under this Act may be made

(*a*) in such office of, or attached to, the Circuit Court within the circuit concerned.

(*b*) in such combined court office (within the meaning of section 14 of the Courts and Court Officers Act 2009) within the circuit concerned, or

(*c*) in such office of the Courts Service, within the circuit concerned, designated by the Courts Service for the purpose of this Act,

as may be prescribed by rules of court.".

Deputy Alan Shatter: Amendment No. 8 further refines the existing text inserted by amendment No. 96 on Committee Stage. It proposes to delete the current section 5(2) and (3) and replace them with a minor technical amendment to ensure consistency with other courts Acts. Subsection (3)(*c*) is being added to facilitate the designation of a particular court office within each circuit for the purposes of the Bill. This will result in more efficient use of staff resources and allow staff to develop expertise in dealing with insolvency applications.

Amendment No. 154 proposes to replace the provision inserted on Committee Stage with a new section 153 which will now include a new provision at 19A specifying that a specialist judge shall undertake training as required by the Chief Justice or the President of the Circuit Court. This Bill contains a new area of law and it is desirable that particular training in insolvency and bankruptcy law should be undertaken. In addition, as I mentioned, as this court business would be conducted electronically, some training in the use of the relevant ICT package may also be appropriate and required.

Amendment No. 155 proposes to delete the text inserted on Committee Stage and replace it with an expanded text which includes a new provision at subsection (12) allowing the President of the Circuit Court, after consultation with the specialist judge, to assign work as appropriate between a county registrar and a specialist judge.

Amendment agreed to.

An Cathaoirleach: Government amendments Nos. 9 to 15, inclusive, are related and may be discussed together.

Government amendment No. 9:

In page 14, to delete lines 10 to 17 and substitute the following:

"(2) The Insolvency Service shall be a body corporate with perpetual succession and, without prejudice to the generality of the foregoing, may sue and be sued in its corporate

name.".

Deputy Alan Shatter: Amendment No. 9 arises following further consideration of the organisational approach to the insolvency service. I am advised that the provisions of subsection (2)(*b*) and (*c*) are not necessary for the purposes of the operation of the insolvency service as it will not be owning or holding property in its own name - the OPW will make the necessary office accommodation available - and should be deleted. Amendment No. 10 is intended to make it clear that it should be the director, rather than the insolvency service itself, who authorises a person to enter into contracts on behalf of the insolvency service. Amendment No. 11 replaces that inserted by amendment No. 4 on Committee Stage, and improves and extends the functions of the insolvency service by now including a reference to use of the reasonable expenses guidelines, and to education and training.

Amendment No. 12 provides for the term of office of the director of the insolvency service. Amendment No. 13 addresses the current wording of section 11(3) which may not fully reflect the reporting relationship within the insolvency service in regard to who will be making the policies and decisions of the insolvency service that the director will implement. I am advised that subsection (3)(*a*) is not required in the context of the insolvency service and should be deleted.

Amendment No. 14 amends the text of section 8(11)(*a*) to delete the reference to disqualification which is not appropriate in this particular context. Amendment No. 15 makes it clear that the five-year tenure of the first director of the insolvency service, where he was previously appointed as director designate, commences on the date of appointment under this section. The current draft of the Bill does not adequately deal with this matter.

Amendment agreed to.

Government amendment No. 10:

In page 14, to delete lines 35 to 39 and substitute the following:

"(6) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Insolvency Service by the Director or any person generally or specially authorised by the Director in that behalf.".

Amendment agreed to.

Government amendment No. 11:

In page 2 of the list of amendments made in Committee, to delete the text inserted by amendment no. 4 and substitute the following:

"(*h*) in accordance with *Part 5*—

(i) authorise individuals to carry on practice as personal insolvency practitioners,

(ii) supervise and regulate persons practising as personal insolvency practitioners,

(iii) perform such functions as are assigned to the Insolvency Service under that Part,

(*i*) prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses under *section 23*,

(*j*) arrange for the provision of such education and training, in relation to the performance by them of their functions under this Act, of approved intermediaries, personal insolvency practitioners and other persons, as it thinks fit,".

Amendment agreed to.

Government amendment No. 12:

In page 15, to delete lines 39 to 41 and substitute the following:

"(*b*) Subject to *subsection (13),* the Director shall hold office for such period, not exceeding 5 years from the date of his or her appointment under this section, as may be determined by the Minister.".

Amendment agreed to.

Government amendment No. 13:

In page 16, to delete lines 14 and 15.

Amendment agreed to.

Government amendment No. 14:

In page 17, to delete lines 1 and 2 and substitute the following:

"(*a*) dies, resigns or is removed from office, or".

Amendment agreed to.

Government amendment No. 15:

In page 17, to delete lines 17 to 19 and substitute the following:

"(13) If, immediately before the establishment day, a person stands designated by the Minister under *subsection (12)*—

(*a*) the Minister shall appoint that person to be the first Director, and

(*b*) for the purposes of *subsection (1)(b)*, the date of that person's designation under *subsection (12)* shall be deemed to be the date of his or her appointment under this section.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 16 to 19, inclusive, are related and may be discussed together.

Government amendment No. 16:

In page 19, to delete lines 10 to 45 and in page 20, to delete lines 1 to 21 and substitute the following:

15.—(1) Subject to this section, the Insolvency Service shall, in each year—

(*a*) prepare and adopt a business plan in respect of that year or of such other period as may be determined by the Minister, and

(*b*) submit the plan to the Minister.

(2) A business plan shall—

(*a*) indicate the activities of the Insolvency Service for the period to which the business plan relates,

(*b*) contain estimates of the number of employees of the Insolvency Service for the period and the business to which the plan relates, and

(*c*) accord with policies and objectives of the Minister and the Government as they relate to the functions of the Insolvency Service.

(3) In preparing the business plan, the Insolvency Service shall have regard to the strategic plan in operation at that time approved under *section 14*.

(4) The Insolvency Service shall submit to the Minister with a business plan a statement of its estimate of the income and expenditure relating to the plan that is consistent with the moneys estimated to be available to the Insolvency Service for the period to which the business plan relates.".

Deputy Alan Shatter: Amendment No. 16 seeks to replace the existing section 15 of the Bill with new text. The proposed new text retains the requirement for the insolvency service to submit its business plans to the Minister for approval every year. However, it removes the current requirement in the Bill for the business plans to be laid before the Houses of the Oireachtas. Having reviewed the matter, I believe this onerous requirement is not necessary. The proposed amendment brings the insolvency service more in line with the governance provisions of other similar entities. It does not, however, diminish the accountability provisions of the service to the Houses of the Oireachtas.

Amendment No. 17 is a technical drafting amendment. It makes clear that the report referred to in subsection (6) is the annual report of the insolvency service which is required to be laid before both Houses of the Oireachtas. Amendment No. 18 proposes the insertion of a new subsection (8) and is linked to the previous amendment to subsection (6). The purpose of section 16 is to make provision for the preparation of reports by the insolvency service to the Minister. The provision, as currently drafted, permits the preparation of reports on a number of matters and is not limited to the preparation of annual reports. The current construction would have the effect that every single report prepared by the insolvency service, even on very minor matters, would be required to be laid before the Houses of the Oireachtas. New subsection (8) seeks to improve on the current text by giving the Minister the discretion to decide whether reports prepared by the insolvency service under the provisions of subsection (3) are to be laid before the Houses of the Oireachtas and published.

Amendment No. 19 is a technical drafting amendment required to improve the presentation of the text. It now refers to "a Committee" rather than "the Committee".

Senator Paul Bradford: I ask the Minister to explain the impact of amendment No. 16

relating to the business plan.

Deputy Alan Shatter: This is the provision requiring that the business plan be submitted to the Minister with a statement of its estimate of the income and expenditure relating to the plan that is consistent with the moneys estimated to be available to the service for the period during which the business plan relates. Clearly if there is a business plan is presented, the funding for the insolvency service would be contained in the Estimates of expenditure. For example there is provision in the 2013 Estimates for the insolvency service. There is a general provision in the legislation whereby the insolvency service makes an annual report to the Houses of the Oireachtas. The Oireachtas Joint Committee on Justice, Defence and Equality may invite the director of the service to appear before it, if it wishes. Obviously members of the committee would be able to raise questions about the business plan with the director of the service.

As originally drafted, the director would have been peppering the Houses of the Oireachtas with a range of things to no particular benefit or advantage. We have aligned the position of the insolvency service to that of other similar agencies. It does not diminish accountability of the director to the Oireachtas Joint Committee on Justice, Defence and Equality, nor does it diminish the obligation to present the annual report. There is little purpose that minor issues that are reported to the Minister must also be laid before both Houses of the Oireachtas. That would not happen in any other aspect of the Courts Service or in related agencies. In our anxiety to be transparent, it was imposing an unnecessary bureaucracy on the service.

Senator Martin Conway: That is an utterly sensible approach. Would the director have the power to refuse to appear before the Oireachtas Joint Committee on Justice, Defence and Equality? Is it at his discretion or is he mandatorily required to appear before the committee? Clarity is needed to avoid a potential conflict between the committee and the director.

Deputy Alan Shatter: If the Oireachtas Joint Committee on Justice, Defence and Equality requested the director of the insolvency service to make a presentation on a particular issue or to explain how the service is working, it would be extraordinary if he did not appear and comply with that request. Clearly it would be inappropriate for members of the committee to raise questions on one identified individual's personal circumstances. Therefore, there would be certain issues the committee would not discuss. However, matters such as the implementation of policy, the type of business plan it has, the workings of the agency in oversight of personal insolvency practitioners, its connectivity with the Courts Service, the approach taken by it to approve debt settlement resolutions and I am sure many more that do not immediately come into my head would be the subject of engagement with the Oireachtas Joint Committee on Justice, Defence and Equality.

An Cathaoirleach: I call Senator Daly.

Senator Martin Conway: I have a supplementary question.

An Cathaoirleach: The Senator may only speak once on Report Stage.

Senator Martin Conway: I did not feel it was clarified.

Senator Mark Daly: Do you want to let him in, a Chathaoirligh?

An Cathaoirleach: No. He may only come in once on Report Stage.

Senator Mark Daly: I thank the Minister. My colleague raised an important issue on the

powers of the Oireachtas Joint Committee on Justice, Defence and Equality in the event that the person in charge does not want to appear. Even if he does, in some of our committees we have seen that the answers are less than forthcoming and unclear. In some cases witnesses have been showing disdain for committees. This is a more general problem we have given the defeat of last year's referendum. I thank the Minister for the time he has given in coming to the House himself to deal with the amendments and give explanations on this important legislation.

Deputy Alan Shatter: The legislation clearly provides for the director of the insolvency agency, if requested by the Oireachtas Joint Committee on Justice, Defence and Equality, to come and discuss an issue but not, as I keep stating, an issue relating to a particular individual who may have a personal insolvency arrangement. A member of the committee could not discuss an individual, but could discuss policy and business plan issues and the operation of the agencies. Difficulties being experienced by the agencies could also be discussed, such as whether they are being properly resourced. All of these issues could be appropriately dealt with and the director of the agency, be it the first director to be appointed or a subsequent director, will be very anxious to maintain a relationship with the Oireachtas Joint Committee for Justice, Equality and Defence and ensure the manner in which the agency is conducting its business is fully transparent and understood.

Amendment agreed to.

Government amendment No. 17:

In page 21, lines 4 and 5, to delete "a report under this section," and substitute "an annual report submitted under *subsection (1)*,".

Amendment agreed to.

Government amendment No. 18:

In page 21, between lines 9 and 10, to insert the following:

"(8) The Minister may, if he or she considers it appropriate to do so, cause a copy of a report submitted under *subsection (3)*—

(*a*) to be laid before each House of the Oireachtas, and

(*b*) where *paragraph (a)* has been complied with, published in such form and manner as he or she considers appropriate.".

Amendment agreed to.

Government amendment No. 19:

In page 22, to delete lines 22 to 27 and substitute the following:

"(1) The Director shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Insolvency Service as is required by the Committee and, for that purpose, shall provide the Committee with such information (including documents) as it specifies and as is in the possession of, or is available to, the Director.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 20 and 27 are related and will be discussed together.

Government amendment No. 20:

In page 2 of the list of amendments made in Committee, to delete the text inserted by amendment no. 5 and substitute the following:

23.—(1) The Insolvency Service shall, for the purposes of *sections 24, 60(4)* and *95(4)* and section 85D (as inserted by *section 146*) of the Bankruptcy Act 1988, prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses.

(2) Before issuing guidelines under *subsection (1)*, the Insolvency Service shall consult with the Minister, the Minister for Finance, the Minister for Social Protection and such other persons or bodies as the Insolvency Service considers appropriate or as the Minister may direct.

(3) In preparing guidelines to be issued under *subsection (1)*, the Insolvency Service shall have regard to—

(*a*) such measures and indicators of poverty set out in Government policy publications on poverty and social inclusion as the Insolvency Service considers appropriate,

(*b*) such official statistics (within the meaning of the Statistics Act 1993) and the surveys relating to household income and expenditure published by the Central Statistics Office as the Insolvency Service considers appropriate,

(*c*) the Consumer Price Index (All Items) published by the Central Statistics Office or any equivalent index published from time to time by that Office,

(*d*) such other information as the Insolvency Services considers appropriate for the performance of its functions under this section,

(*e*) differences in the size and composition of households, and the differing needs of persons, having regard to matters such as their age, health and whether they have a physical, sensory, mental health or intellectual disability, and

(*f*) the need to facilitate the social inclusion of debtors and their dependants, and their active participation in economic activity in the State.

(4) Guidelines issued under *subsection (1)* may provide examples of—

(*a*) expenses that may be allowed as reasonable living expenses, and

(*b*) expenses that may not be allowed as reasonable living expenses.

(5) The Insolvency Service shall make guidelines issued under *subsection (1)* available to members of the public on its website.

(6) Subject to *subsection (7)*, the Insolvency Service shall issue guidelines under *subsection (1)* at intervals of such length, not being more than one year, as it considers appropriate.

(7) Failure by the Insolvency Service to comply with *subsection (6)* shall not render invalid for the purposes of this Act the guidelines most recently issued by it under this section.".

Deputy Alan Shatter: Amendment No. 20 is designed to recast and improve the new section 23 inserted by amendment No. 5 on Committee Stage taking account of matters raised by Senators during the course of the debate. The title and text of the section have been expanded to include the term "reasonable standard of living". In her contribution on Committee Stage, Senator Zappone suggested that perhaps the insolvency service should also have regard to other information or research from sources such as academic studies when compiling the guidelines on a reasonable standard of living and reasonable living expenses for debtors. I was happy to take on board her comments and have reflected them in the provisions of subsection (3)(*d*). Subsection (3)(*e*) has also been improved upon and now references a broader range of matters which are required to be taken into consideration with regard to differences in the size and composition of households and the differing needs of persons having regard to matters such as their age, health and whether they have a physical, sensory, mental health or intellectual disability.

Amendment No. 27 arises as a consequence of the changes to the new section 23 concerning guidelines on reasonable living expenses. This is a technical amendment which revises the wording of the new section 24(14) inserted by amendment No. 13 on Committee Stage to reflect the changes made to the section to ensure consistency of approach.

Senator David Cullinane: I thank the Minister for taking on board the views expressed in this House with regard to amendment No. 20, which is very similar to amendments we tabled on Committee Stage. As the Minister put it, we sought to recast the section on reasonable household expenses to which people are entitled and which are necessary to maintain a reasonable standard of living for the debtor and his or her dependents. Our problem previously was that it was not entirely clear what this would constitute. In previous discussions on this the Minister made the point it was up to the intermediary of the dispute resolution mechanism, which would be most likely MABS, to lay down the criteria. Our view is that we, as legislators, should do this as best we can. In examining the detail of amendment No. 20 I certainly think it has met the requirements put forward by me, Senator Zappone and others in this respect. I fully support amendment No. 20 and thank the Minister for agreeing to it.

Amendment agreed to.

Government amendment No. 21:

In page 24, between lines 10 and 11, but in Part 2, to insert the following:

24.—Nothing in this Act shall be construed as preventing the Insolvency Service, in the performance of its functions under this Act, from sending or receiving documents or other information, or otherwise communicating, by electronic means.".

Amendment agreed to.

Government amendment No. 22:

In page 26, to delete lines 25 to 29 and substitute the following:

"(*g*) has not, during the period of 2 years ending on the application date—

(i) entered into a transaction with a person at an undervalue that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue), or

(ii) given a preference to a person that has had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference);".

Amendment agreed to.

An Cathaoirleach: Amendment No. 23 arises out of Committee Stage proceedings. Amendments Nos. 23 and 24 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 23:

In page 27, between lines 31 and 32, to insert the following:

"(ii) one item of personal jewellery to a value not exceeding €750 or such other value as the Minister may prescribe, where the cost of purchase of that item is not included in the qualifying debts of the debtor for the purposes of *subsection (2)(a)*;".

Deputy Alan Shatter: These amendments speak for themselves and I presume the Senators will welcome them. Senators will recall we had much excitement about ceremonial jewellery and other items, and we have provided for an increased value in this matter. We had lengthy discussions in the other Chamber and here on up to what value of motor vehicles should be excluded. I have been persuaded by Deputies and Senators that we should revise the amount, which is now reasonable in the context of what we seek to achieve. I hope Senators welcome these amendments.

Senator David Cullinane: We welcome these amendments with regard to jewellery and increasing the value of the car from €1,200 to €2,000. We sought a figure of €3,000 but we welcome this as a step forward. The Minister has taken a very sensible and pragmatic approach.

We appreciate the fact that the Minister listened to us. We have had a very good debate in the House on the Bill. There are many aspects of the Bill which my party does not support but it is very refreshing to see a Minister come to the House, listen to what people say, take on board their views and come back on Report Stage with amendments which reflect the Committee Stage amendments genuinely tabled by Senators. I commend the Minister for this and support the Government amendments which have been tabled.

Deputy Alan Shatter: Jewellery is a personal item and does not have to have a ceremonial context.

Amendment agreed to.

Government amendment No. 24:

In page 27, line 35, to delete "€1,200 or less" and substitute the following:

"€2,000 or less, or is worth such other amount as the Minister may prescribe, where the cost of purchase of that item is not included in the qualifying debts of the debtor for the purposes of subsection (2)(*a*)".

Amendment agreed to.

Government amendment No. 25:

In page 28, to delete lines 4 to 7 and substitute the following:

"(iv) any interest in or entitlement under a relevant pension arrangement unless *subsection (14)* applies.".

Amendment agreed to.

Government amendment No. 26:

In page 28, to delete lines 29 to 47 and in page 29, to delete lines 1 to 5.

Amendment agreed to.

Government amendment No. 27:

In page 4 of the list of amendments made in Committee, to delete the text inserted by amendment no. 13 and substitute the following:

"(14) In determining what constitutes reasonable living expenses or a reasonable standard of living for the purposes of this section, regard shall be had to guidelines issued under *section 23*.".

Amendment agreed to.

Government amendment No. 28:

In page 30, between lines 11 and 12, to insert the following:

"(14) Where this subsection applies and a debtor has an interest in or entitlement under a relevant pension arrangement which would, if the debtor performed an act or exercised an option, cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(*a*) an income, or

(*b*) an amount of money other than income,

in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that debtor shall be considered as being in receipt of such income or amount of money.

(15) *Subsection (14)* applies where the debtor—

(*a*) is entitled at the date of the making of the application for a Debt Relief Notice,

(*b*) was entitled at any time before the date of the making of the application for a Debt Relief Notice, or

(*c*) will become entitled within 6 months of the date of the making of the application for a Debt Relief Notice,

to perform the act or exercise the option referred to in *subsection (14)*.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 29, 29*a*, 35 to 37, inclusive, 40, 41, 125 and 134 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 29:

In page 5 of the list of amendments made in Committee, to delete the text inserted by amendment no. 15 and substitute the following:

"(9) Where an approved intermediary resigns from the role of approved intermediary as respects a debtor, he or she shall notify the Insolvency Service of that fact, which notification shall be accompanied by a statement of the reasons for his or her resignation.

(10) Where, at any time during the Debt Relief Notice process after the debtor has made the confirmation referred to in *subsection (3)*, the approved intermediary concerned ("original approved intermediary")—

(*a*) dies,

(*b*) becomes incapable, through ill-health or otherwise, of performing the functions of an approved intermediary as respects the debtor,

(*c*) resigns from the role of approved intermediary as respects the debtor, or

(*d*) is no longer entitled to perform the functions of an approved intermediary under this Act,

the debtor shall, as soon as practicable after becoming aware of that fact, appoint another approved intermediary to act as his or her approved intermediary for the purposes of this Chapter.

(11) (*a*) Where *paragraph (a), (b)* or *(c)* of *subsection (10)* applies, the debtor concerned shall, as soon as practicable, inform the Insolvency Service of that fact.

(*b*) Where an approved intermediary has been appointed under *subsection (10)*, the approved intermediary shall, as soon as practicable, inform the Insolvency Service and the creditors concerned of that fact.".

Deputy Alan Shatter: Amendment No. 29 replaces amendment No. 15 made on Committee Stage in response to suggestions by Senators that the various notification and reporting requirements with regard to an approved intermediary dying or becoming otherwise incapacitated should be better clarified. The Parliamentary Counsel has now provided an updated text to do so. Amendment No. 29*a* on the supplemental list is necessary to amend a cross-reference in section 25(11). The amendment is required as a consequence to the amendment to that section regarding the replacement of an approved intermediary.

Amendment No. 35 is a technical amendment. It amends the existing provision to now employer the Insolvency Service to prescribe the criteria for authorisation of persons as authorised intermediaries. The provision states that the service will act under the direction of the Minister and is subject to certain conditions regarding consultation with other persons or bodies. Both amendments Nos. 36 and 37 essentially seek the same outcome that the authorisation of a person to act as an approved intermediary may be withdrawn, as provided for in regulations, when

they no longer meet the criteria. I hope that my proposal satisfies the Senators and they may wish to withdraw their amendment.

Amendment No. 40 replaces the text of section 46(4) to (9), inserted by amendment No. 26 on Committee Stage, to refine the provisions in regard to the notifications at reporting responsibilities on the personal insolvency practitioner in the event of death or incapacity, etc. This amendment is similar to that earlier, being amendment No. 31, in respect of the same requirements on approved intermediaries. Amendments Nos. 41, 125 and 134 are technical drafting amendments simply to further refine the text.

Senator David Cullinane: I commend the Minister for taking on board the views expressed in the Lower House and this House in respect of amendments Nos. 36 and 37. I will withdraw amendment No. 36 because amendment No. 37 does the same thing but is better drafted legislatively. It was tabled to ensure that there was power to remove intermediaries in situations where necessary but the Bill had not provided for same. Again my party commends the Minister for listening to our comments. I withdraw amendment No. 36 and support the Government amendment No. 37.

Amendment agreed to.

Government amendment No. 29*a*:

In page 32, lines 4 and 5, to delete "*subsection (9)*" and substitute "*subsection (10)*#".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 30, 31, 38, 44 to 47, inclusive, 73 and 76 to 79, inclusive, are related and may be discussed together.

Government amendment No. 30:

In page 32, line 31, to delete "*section 25*;" and substitute the following:

"*section 25* and a statutory declaration made by the debtor confirming that the statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;".

Deputy Alan Shatter: Amendment No. 30 is a drafting amendment to extend the reference to section 25 and a statutory declaration to that made by the debtor. Amendment No. 31 replaces the text inserted by amendment No. 17 on Committee Stage and is to correctly refer to a "permitted debt" in subparagraph (iii). It is recommended by Parliamentary Counsel. Amendment No. 38 is essentially a drafting amendment to remove the reference in section 46(l)(*a*)(iv) to guarantees in respect of the debtor's own debts which are not required in this context. The amendment replaces the text inserted by amendment No. 25 on Committee Stage.

Amendment No. 44 is required for the avoidance of doubt. I am advised that while the Bill now contains in section 2, a definition of "excluded debt", a clear provision to the effect that an excluded debt cannot be proposed for consideration in a debt settlement arrangement is still required. Amendment No. 45 inserts a new subsection (3) in section 53 which replicates the requirement in the debt relief notice that the proposal for a debt settlement arrangement should also primarily concern debts which are in default for a period of more than sis months prior to the application.

Amendment No. 46 replaces Amendment No. 27 inserted on Committee Stage. The essential change is in subsection (8) which makes it explicit that a permitted debt refers to an excludable debt where the creditor has consented to include it for consideration in the debt settlement arrangement. The Parliamentary Counsel decided that the replacement of the entire section was the optimum approach. Amendment No. 47 extends the provisions of subparagraphs (i) and (ii) of section 54(2)(*e*) with new text which now provides that the schedule of debts and creditors should also contain any other information that may be prescribed.

Amendment No. 73 is required for the avoidance of doubt. I am advised by the Parliamentary Counsel that while the Bill now contains a definition in section 2 of "excluded debt", clear provisions to the effect that an excluded debt cannot be included in a personal insolvency arrangement are still required. This is similar the amendment made to the debt settlement arrangement. Amendment No. 76 removes the requirement for the debtor to make a statutory declaration in support of his or her application for a personal insolvency arrangement and replaces it with a declaration in writing. Amendment No. 77 inserts a new subsection (5) and replicates in the personal insolvency arrangement the requirement in the debt relief notice and debt settlement arrangement that the proposal should also concern primarily debts which are in default for a period of more than six months prior to application.

Amendment No. 78 is designed to further refine the new provision concerning the requirement for creditor consent for the inclusion of excludable debt in personal insolvency arrangement. On the advice of Parliamentary Counsel, it is more coherent to replace the entire section. Amendment No. 79 replaces subparagraphs (i) and (ii) of section 89(2)(*e*) with new text which now provides that the schedule of debts and creditors should also contain any other information that may be prescribed.

Senator David Cullinane: I wish to speak again about amendment No. 75. We had some discussion on Committee Stage in respect of the amendment. It states: "In page 76, line 47, to delete €3,000,000 and substitute €1,000,000". As the Minister will know, the amendment refers to the criteria for a personal insolvency arrangement. My party believes that the current ceiling is too high and too loose. We want it set at €1 million and not €3 million.

An Cathaoirleach: Is the Senator referring to amendment No. 75?

Senator David Cullinane: Yes.

An Cathaoirleach: I am sorry but the amendment is not included in this group of amendments.

Senator David Cullinane: I apologise for jumping ahead. Is it the next amendment?

Deputy Alan Shatter: I was ahead of myself and overcome with excitement dealing with the jewellery matter and now the Senator is ahead of himself with regard to this amendment.

Senator David Cullinane: I apologise for reading the list of grouped amendments incorrectly. I thought we were dealing with amendments Nos. 73 to 79, inclusive, but it is amendments Nos. 76 to 79, inclusive.

Amendment agreed to.

Government amendment No. 31:

In page 6 of the list of amendments made in Committee, to delete the text inserted by amendment no. 17 and substitute the following:

"(i) the amount of each debt due to that creditor,

(ii) whether the creditor concerned is a secured creditor and, if so, the details of any security held in respect of the debt concerned, and

(iii) where the debt is an excludable debt, whether that debt is a permitted debt within the meaning of *section 26*;".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 32 and 33 are related and may be discussed together.

Government amendment No. 32:

In page 37, line 18, after "debtor," to insert "other than a security agreement,".

Deputy Alan Shatter: Amendments No. 32 and 33 are technical drafting amendments to improve the presentation of the Bill and are recommended by Parliamentary Counsel.

Amendment agreed to.

Government amendment No. 33:

In page 37, lines 22 and 23, to delete ", or a forfeiture of a term,".

Amendment agreed to.

Government amendment No. 34:

In page 7 of the list of amendments made in Committee, to delete the text inserted by amendment no. 21 and substitute the following:

"(3) Subject to *subsections (4)* and *(5)*, a specified debtor whose income increases by €400 or more per month during the supervision period concerned shall surrender to the Insolvency Service 50 per cent of that increase.

(4) The reference in *subsection (3)* to a specified debtor's income is a reference to his or her income as stated in the information provided, or documents submitted by him or her, or on his or her behalf, under *section 26*, less the following deductions (where applicable):

(*a*) income tax;

(*b*) social insurance contributions;

(*c*) payments made by him or her in respect of excluded debts;

(*d*) payments made by him or her in respect of excludable debts that are not permitted debts;

(*e*) such other levies and charges on the specified debtor's income as may be prescribed.".

Deputy Alan Shatter: Amendment No. 34 is a drafting change recommended by Parliamentary Counsel to improve the text of the relevant subsections of section 33 which amendment No. 21 inserted on Committee Stage.

Amendment agreed to.

Government amendment No. 35:

In page 44, line 9, to delete "The Minister may" and substitute the following:

"The Insolvency Service, with the consent of the Minister, may and, if directed by the Minister to do so and in accordance with the terms of the direction, shall, following consultation with any other person or body as the Insolvency Service thinks appropriate or as the Minister directs,".

Amendment agreed to.

Amendment No. 36 not moved.

Government amendment No. 37:

In page 44, between lines 16 and 17, to insert the following:

"(6) Regulations under *subsection (5)* may provide for the withdrawal of an authorisation of a person where he or she no longer meets the criteria for such an authorisation prescribed in those regulations.".

Amendment agreed to.

Government amendment No. 38:

In page 9 of the list of amendments made in Committee, to delete the text inserted by amendment no. 25 and substitute the following:

"46.—(1) A debtor to whom *section 45* applies shall submit to a personal insolvency practitioner a written statement disclosing all of the debtor's financial affairs, which statement shall include—

(*a*) such information as may be prescribed in relation to—

(i) his or her creditors,

(ii) his or her debts and other liabilities,

(iii) his or her assets, and

(iv) guarantees (if any) given by the debtor in respect of a debt of another person, and

(*b*) such other financial information as may be prescribed.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 39 and 43 are related and may be discussed together by agreement.

Government amendment No. 39:

In page 44, line 43, after "arrangement," to insert the following:

"which advice the personal insolvency practitioner shall confirm in writing to the debtor,".

Deputy Alan Shatter: Amendment No. 39 is a technical drafting amendment to further refine the text to include reference to the provision of the advice in writing. The purpose of amendment No. 43 is to make clear that where the advice of a personal insolvency practitioner under section 48(1) is that the debtor should not make a proposal for, or enter into, an arrangement, the personal insolvency practitioner is required to notify the insolvency service of that fact, and the appointment of the personal insolvency practitioner under section 46(3) shall come to an end.

Amendment agreed to.

Government amendment No. 40:

In page 9 of the list of amendments made in Committee, to delete the text inserted by amendment no. 26 and substitute the following:

"(4) On being appointed under *subsection (3)*, the personal insolvency practitioner shall—

(*a*) confirm in writing to the debtor that the personal insolvency practitioner has consented to act in the role of personal insolvency practitioner as respects the debtor, and

(*b*) notify the Insolvency Service of his or her appointment.

(5) Where a personal insolvency practitioner is appointed under *subsection (3)*, he or she shall stand appointed, and the debtor concerned shall not appoint another personal insolvency practitioner under that subsection, until such time as —

(*a*) the debtor concerned requests him or her to resign from the role of personal insolvency practitioner as respects the debtor, or

(*b*) the personal insolvency practitioner resigns from that role, on his or her own initiative.

(6) Where a personal insolvency practitioner resigns from the role of personal insolvency practitioner as respects a debtor, he or she shall notify the Insolvency Service of that fact, which notification shall be accompanied by a statement of the reasons for his or her resignation.

(7) Where a personal insolvency practitioner appointed under *subsection (3)* ("original personal insolvency practitioner")—

(*a*) dies,

(*b*) becomes incapable, through ill-health or otherwise, of performing the functions of a personal insolvency practitioner as respects the debtor,

(*c*) resigns from the role of personal insolvency practitioner as respects the debtor, or

(*d*) is no longer entitled to perform the functions of a personal insolvency practitioner under this Act,

the debtor shall, as soon as practicable after becoming aware of that fact, appoint another personal insolvency practitioner to act as his or her personal insolvency practitioner for the purposes of *Chapter 3* or *4*, as the case may be.

(8) (*a*) Where *paragraph (a)*, *(b)* or *(c)* of *subsection (7)* applies, the debtor concerned shall, as soon as practicable, inform the Insolvency Service of that fact.

(*b*) Where a personal insolvency practitioner has been appointed under *subsection (7)*, the personal insolvency practitioner shall, as soon as practicable, inform the Insolvency Service and the creditors concerned of that fact.".

Amendment agreed to.

Government amendment No. 41:

In page 45, line 41, to delete "*subsection (5)*" and substitute "*subsection (7)*".

Amendment agreed to.

Government amendment No. 42:

In page 46, between lines 20 and 21, to insert the following:

48.—(1) Subject to *subsection (4)*, in relation to Debt Settlement Arrangements and Personal Insolvency Arrangements, where a debtor has an interest in or an entitlement under a relevant pension arrangement, such interest or entitlement of the debtor shall not be treated as an asset of the debtor unless *subsection (2)* applies.

(2) Where this section applies and a debtor has an interest in or entitlement under a relevant pension arrangement which would, if the debtor performed an act or exercised an option, cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(*a*) an income, or

(*b*) an amount of money other than income, in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that debtor shall be considered as being in receipt of such income or amount of money.

(3) *Subsection (2)* applies where the debtor—

(*a*) is entitled at the date of the making of the application for a protective certificate,

(*b*) was entitled at any time before the date of the making of the application for a protective certificate, or

(*c*) will become entitled within 6 years and 6 months of the date of the making of

the application for a protective certificate in relation to a Debt Settlement Arrangement or within 7 years and 6 months of the date of the making of the application for a protective certificate in relation to a Personal Insolvency Arrangement,

to perform the act or exercise the option referred to in *subsection (2)*.

(4) Nothing in *subsections (1)* to *(3)* shall remove the obligation of a debtor making an application for a protective certificate to make disclosure of any interest in or entitlement under a relevant pension arrangement in completing the Prescribed Financial Statement.".

Amendment agreed to.

Government amendment No. 43:

In page 48, between lines 12 and 13, to insert the following:

"(5) Where the advice of a personal insolvency practitioner under *subsection (1)* is that the debtor should not make a proposal for, or enter into, an arrangement, the personal insolvency practitioner shall notify the Insolvency Service of that fact, and the appointment of the personal insolvency practitioner under *section 46(3)* shall come to an end.".

Amendment agreed to.

Government amendment No. 44:

In page 49, between lines 9 and 10, to insert the following:

"(4) (*a*) A Debt Settlement Arrangement shall not contain any terms that would release the debtor from an excluded debt or otherwise affect such a debt.

(*b*) A proposal for a Debt Settlement Arrangement shall not include any terms that, if contained in a Debt Settlement Arrangement that came into effect, would contravene *paragraph (a)*.

(5) Unless otherwise expressly stated, a reference in this Chapter to a debt is a reference to an unsecured debt and a reference to a creditor is a reference to an unsecured creditor.".

Amendment agreed to.

Government amendment No. 45:

In page 50, between lines 21 and 22, to insert the following:

"(3) A debtor shall not be eligible to make a proposal for a Debt Settlement Arrangement where 25 per cent or more of his or her debts (other than excluded debts and secured debts) were incurred during the period of 6 months ending on the date on which an application is made under *section 54* for a protective certificate.".

Amendment agreed to.

Government amendment No. 46:

In page 10 of the list of amendments made in Committee, to delete the text inserted by amendment no. 27 and substitute the following:

54.—(1) An excludable debt shall be included in a proposal for a Debt Settlement Arrangement only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the inclusion of that debt in such a proposal.

(2) Where a personal insolvency practitioner proposes to include an excludable debt in a proposal for a Debt Settlement Arrangement, he or she shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—

(*a*) such information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and

(*b*) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the inclusion of the debt in a Debt Settlement Arrangement.

(3) Subject to *subsection (6)*, a creditor shall comply with a request under *subsection (2)(b)* within 21 days of receipt of the notification under that subsection.

(4) Where a creditor does not comply with *subsection (3)*, the creditor shall be deemed to have consented to the inclusion of that debt in a proposal for a Debt Settlement Arrangement.

(5) Where a creditor consents or is deemed to have consented, in accordance with this section, to the inclusion of an excludable debt in a proposal for a Debt Settlement Arrangement, that creditor shall be entitled to vote at any creditors' meeting called to consider that proposal.

(6) Where the debtor concerned is the subject of a protective certificate, and a creditor to whom this section applies brings an application under *section 58(1)* in respect of that protective certificate, the period referred to in *subsection (3)* shall not commence until the date on which the appropriate court determines the application.

(7) An excludable debt shall not be the subject of a Debt Settlement Arrangement unless it is a permitted debt.

(8) In this Chapter, "permitted debt" means an excludable debt to which *subsection (1)* applies.".

Amendment agreed to.

Government amendment No. 47:

In page 50, to delete lines 39 to 44 and substitute the following:

"(*e*) a schedule of the creditors of the debtor and the debts concerned, stating in relation to each such creditor—

(i) the amount of each debt due to that creditor,

(ii) whether, as respects the debt concerned, the creditor is a secured creditor and, if so, the nature of the security concerned, and

(iii) such other information as may be prescribed;".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 48 to 51, inclusive, 55, 56, 80, 80*a*, 81 to 83, inclusive, 108 and 109 are related and may be discussed together.

Government amendment No. 48:

In page 54, to delete lines 9 to 45 and substitute the following:

"(1) Subject to *subsections (3)*, *(4)*, *(5)* and *(8)*, a creditor to whom notice of the issue of a protective certificate has been given shall not, whilst the protective certificate remains in force, in relation to a specified debt—

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to recover goods in the possession or custody of the debtor, unless title to the goods is vested in the creditor or the creditor holds security over the goods;

(*f*) contact the debtor regarding payment of the specified debt, otherwise than at the request of the debtor;

(*g*) in relation to an agreement with the debtor, other than a security agreement, by reason only that the debtor is insolvent or that the protective certificate has been issued—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(2) Whilst a protective certificate remains in force, no bankruptcy petition relating to the debtor—

(*a*) may be presented by a creditor to whom *subsection (1)* applies in respect of a specified debt,

(*b*) in a case where the petition has been presented by such a creditor in respect of a specified debt, may be proceeded with.

(3) Without prejudice to *subsections (1)* and *(2)*, and subject to *section 63*, whilst a protective certificate remains in force, no other proceedings and no execution or other legal process in respect of a specified debt may be commenced or continued by a creditor

to whom *subsection (1)* applies against the debtor or his or her property, except with the leave of the court and subject to any order the court may make to stay such proceedings, enforcement or execution for such period as the court deems appropriate pending the outcome of attempts to reach a Debt Settlement Arrangement, but this subsection shall not operate to prohibit the commencement or continuation of any criminal proceedings against the debtor.".

Deputy Alan Shatter: Amendment No. 48 replaces the current subsections (1) to (3) of section 57 to better clarify the effect of the issuance of a protective certificate in a debt settlement arrangement. Subsection (1) is now made subject additionally to the provisions of subsections (5) and (8). Amendment No. 49 is linked to the previous amendment and inserts new subsection (8) to the effect that a secured debt is not affected by the protective certificate. Amendment No. 50 is a technical drafting amendment to improve the presentation of the Bill.

Amendment No. 51 is also required to improve on the current construction of section 59(1) to make it consistent with the similar section 94 in relation to the personal insolvency arrangement process. It also includes a new provision at paragraph (*c*) which requires the personal insolvency practitioner to make a proposal for a debt settlement arrangement in addition to inviting submissions from creditors. Amendment No. 52 is a technical amendment to delete the reference to section 78. Amendment No. 55 refines the text in relation to the effect of the protective certificate on creditors. Amendment No. 56 inserts a new subsection which clarifies the position in regard to creditor action against another person who may have guaranteed the specified debts concerned.

7 o'clock

Amendment No. 80 arises from Committee Stage proceedings, where amendments were made to the Bill in regard to the protective certificate process. The purpose of this further amendment is to better set out the effect of the protective certificate. The purpose of amendment No. 80*a* is to delete section 94(2)(viii) which is now redundant, following the Committee Stage amendments regarding exclude and excludable debts. Amendment No. 81 is a technical drafting amendment required for consistency with the terminology used elsewhere in the Bill.

Amendment No. 82 is a technical drafting amendment which is required as a consequence of the insertion of a new paragraph (*c*) in section 94(1). Amendment No. 83 is a technical drafting amendment which is required as a consequence of the insertion of a new paragraph (*c*) in section 94(1). It mirrors the amendment proposed to section 59, the debt settlement arrangement in regard to including a requirement on the personal insolvency practitioner.

Amendment No. 108 refines the text in regard to the effect of the protective certificate on creditors and amendment No 109 inserts a new subsection which clarifies the position in relation to creditor action against another person who may have guaranteed the specified debts concerned.

Amendment agreed to.

Government amendment No. 49:

In page 55, to delete lines 21 and 22 and substitute the following:

"(8) A secured debt shall not be subject to or affected by a protective certificate under

this Chapter.".

Amendment agreed to.

Government amendment No. 50:

In page 55, line 36, to delete "failing to give such direction" and substitute"not making such an order".

Amendment agreed to.

Government amendment No. 51:

In page 56, to delete lines 3 to 19 and substitute the following:

"(1) Where a protective certificate has been issued, the personal insolvency practitioner shall as soon as practicable thereafter—

(*a*) give written notice to the creditors concerned that the personal insolvency practitioner has been appointed by the debtor for the purpose of making a proposal for a Debt Settlement Arrangement and, subject to *section 62(2)*, invite those creditors to make submissions to the personal insolvency practitioner regarding the debts concerned and the manner in which the debts might be dealt with as part of a Debt Settlement Arrangement, and such notice shall be accompanied by the debtor's completed Prescribed Financial Statement,

(*b*) consider any submissions made by creditors in accordance with *paragraph (a)* regarding the debts and the manner in which the debts might be dealt with as part of a Debt Settlement Arrangement, including any submission made by a creditor with respect to previous or existing offers of arrangements made by the creditor to or with the debtor, and

(*c*) make a proposal for a Debt Settlement Arrangement in respect of the debts concerned.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 52, 58*a*, 59, 59*a*, 60, 112*a*, 112*b*, 112*c*, 112*d* are related and may be discussed together.

Government amendment No. 52:

In page 56, line 29, to delete "*section 67*, *77* or *78*" and substitute "*section 67* or *77*".

Deputy Alan Shatter: Amendment No. 52 is consequential on amendment No. 60, which will delete section 78. This section provided for the process of termination of a debt settlement arrangement by a meeting of creditors on foot essentially of a material change in the debtor's circumstances in the opinion of the personal insolvency practitioner or that the debtor participated knowing that he did not fulfil the eligibility criteria. On further reflection with the Office of the Attorney General, the Parliamentary Counsel proposed that the section be deleted on the basis that it is not particularly required in light of the provisions of section 79, which required the involvement of the court. There is no comparable provision in the personal insolvency arrangement.

Amendments Nos. 58*a* and 112*a* are required to ensure consistency between the DSA and PIA provisions of the Bill in regard to the variation of the arrangement. This amendment addresses an inconsistency between section 79 concerning the debtor's consent to a variation of a debt settlement arrangement to the corresponding section 115 concerning consent to the variation of a personal insolvency arrangement.

Amendment No. 59 seeks to deal with an issue raised on Committee Stage. The amendment will remove the discretion previously afforded to the personal insolvency practitioner in regard to the calling of a creditors meeting to consider a possible variation on debt settlement arrangement.

Amendments Nos. 59*a*, 112*b*, 112*c* and 112*d* aim to clarify the procedures for voting by creditors on a proposed variation of a debt settlement arrangement or a personal insolvency arrangement.

Senator David Cullinane: I thank the Minister for accepting our amendment No. 59 and for removing the discretion of the personal insolvency practitioner. The previous wording, at section 77(2) on page 70 stated:

> Where it appears to the personal insolvency practitioner concerned that there has been a material change in the debtor's circumstances which would affect his or her ability to make repayments under the Debt Settlement Arrangement, the personal insolvency practitioner (whether on his or her own initiative or at the request of a creditor) may call a meeting of creditors to be held in accordance with this section.

The amendment calls for the word "may" to be replaced by "shall" and as the Minister said, removes the discretion of the personal insolvency practitioner and ensures that it does happen, which is I think good practice. I commend the Minister for accepting the amendment.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 52*a*, 105*a*, 106*a* are related and may be discussed together.

Government amendment No. 52*a*:

> In page 64, to delete lines 28 to 30 and substitute the following:
>
> "(2) The voting rights exercisable by a creditor at a creditors' meeting shall be proportionate to the amount of the debt due by the debtor to the creditor on the day the protective certificate is issued.".

Deputy Alan Shatter: Amendment No. 52*a* on the supplementary list clarified the voting rights exercisable by a creditor at a meeting of creditors to approve a debt settlement arrangement that they are in proportion to the amount rather than the value of the debt due to the creditor on the day the protective certificate is issued. This is a better expression of the likely situation.

Amendment No. 105*a* replaces and extends the current section 104 so as to set out in a clearer fashion all of the relevant factors in regard to the termination and exercise of voting

rights at creditors meetings in regard to the personal insolvency arrangement. Amendment No. 105*b* replaces the current text of section 106 with regard to the proportion of creditors required to approve a personal insolvency arrangement. The section has been shortened to reflect the key point, that is, the percentage of votes in total in the secured and unsecured classes. Previous parts of the section have been relocated to the revised section 104.

Amendment agreed to.

An Cathaoirleach: Amendment Nos. 53 and 106 are related and may be discussed together.

Government amendment No. 53:

In page 66, to delete lines 23 to 47 and in page 67, to delete lines 1 to 5 and substitute the following:

"(1) Where—

(*a*) no objection is lodged by a creditor with the appropriate court within 14 days of the giving of the notice referred to in *section 70*, or

(*b*) an objection is lodged with the appropriate court and the matter is determined by the court on the basis that the objection should not be allowed, the appropriate court shall proceed to consider, in accordance with this section,whether to approve the coming into effect of the Debt Settlement Arrangement.

(2) For the purposes of its consideration under *subsection (1)*, the appropriate court shall consider the copy of the Debt Settlement Arrangement furnished to it under *section 71(1)* and, subject to *subsection (3)*—

(*a*) shall approve the coming into effect of the Arrangement, if satisfied that the—

(i) eligibility criteria specified in *section 53* have been satisfied,

(ii) mandatory requirements referred to in *section 60(2)* have been complied with,

(iii) Debt Settlement Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or a secured debt or otherwise affect such a debt, and

(iv) requisite percentage of creditors referred to in *section 68(9)* has approved the proposal for a Debt Settlement Arrangement, and

(*b*) if not so satisfied, shall refuse to approve the coming into effect of the Debt Settlement Arrangement.

(3) The appropriate court, where it requires further information or evidence for the purpose of its arriving at a decision under *subsection (2)*, may hold a hearing, which hearing shall be on notice to the Insolvency Service and the personal insolvency practitioner concerned.

(4) A hearing referred to in *subsection (3)*, unless the appropriate court considers it appropriate to hold it in public, shall be held otherwise than in public.

(5) For the purposes of *subsection (2)*, the court may accept—

(*a*) a certificate issued by the Insolvency Service certifying that the eligibility criteria specified in *section 53* have been satisfied as evidence that such eligibility criteria have been satisfied, and

(*b*) the certificate issued by the personal insolvency practitioner concerned pursuant to *section 70(1)* as evidence that the requisite percentage of creditors referred to in *section 68(9)* has approved the proposal for a Debt Settlement Arrangement.

(6) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court—

(*a*) approves or refuses to approve the coming into effect of the Debt Settlement Arrangement under this section, or

(*b*) decides to hold a hearing referred to in *subsection (3)*.

(7) On receipt of a notification under *subsection (6)* of the approval of the coming into effect of the Debt Settlement Arrangement, the Insolvency Service shall register the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements.".

Deputy Alan Shatter: Amendment No. 53 replaces the text of the current section 73 in respect of the consideration by a court in the insolvency service in regard to the eligibility criteria on the coming into effect of a debt settlement arrangement with clearer text to improve the comprehension of the section.

Amendment No. 106 replaces the current section 111, concerning the coming into effect of a personal insolvency arrangement, with the assistance of Parliamentary Counsel. The text, while not altered substantially, is presented in a more coherent fashion with regard to the satisfaction of the eligibility criteria and the insolvency service and the court.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 54 and 57 are related and may be discussed together.

Government amendment No. 54:

In page 67, lines 19 to 21, to delete all words from and including "concerned," in line 19 down to and including "Arrangement." in line 21 and substitute "concerned.".

Deputy Alan Shatter: These are technical drafting amendments to improve the presentation of the Bill.

Amendment agreed to.

Government amendment No. 55:

In page 67, to delete lines 22 to 43 and substitute the following:

"(3) Where a Debt Settlement Arrangement is in effect, a creditor who is bound by it shall not, in relation to a specified debt—

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to recover goods in the possession or custody of the debtor, unless title to the goods is vested in the creditor or the creditor has security over the goods;

(*f*) contact the debtor regarding payment of the specified debt otherwise than at the request of the debtor;

(*g*) in relation to an agreement with the debtor, other than a security agreement, by reason only that the debtor is insolvent or that a Debt Settlement Arrangement is in effect—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.".

Amendment agreed to.

Government amendment No. 56:

In page 68, between lines 28 and 29, to insert the following:

"(10) Notwithstanding *subsections (3)* and *(4)*, the fact that a Debt Settlement Arrangement is in effect in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (3)* or *(4)* as respects another person who has guaranteed the specified debts concerned.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 57 and 110 are related and may be discussed together.

Government amendment No. 57:

In page 69, line 2, after "has" to insert "defaulted".

Deputy Alan Shatter: Amendments Nos. 57 and 110 are technical drafting amendments to clarify the references to default by the debtor in sections 76 and 130.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 58 and 111 are related and may be discussed together.

Government amendment No. 58:

In page 69, line 32, after "made" to insert the following:

"under this Act and in accordance with the Debt Settlement Arrangement".

Deputy Alan Shatter: These are technical drafting amendments to improve the presenta-

tion of the Bill.

Amendment agreed to.

Government amendment No. 58*a:*

In page 70, between lines 23 and 24, to insert the following:

"(2) The debtor's written consent shall be required to any variation of a Debt Settlement Arrangement provided that any unreasonable refusal by the debtor to consent to a variation shall be subject to challenge in accordance with *section 84*.

(3) A debtor shall be considered to be acting reasonably where the debtor refuses to consent to a variation of a Debt Settlement Arrangement where that variation would require the debtor—

(*a*) to make additional payments in excess of 50 per cent of the increase in his or her income available to him or her after the following deductions (where applicable) are made:

(i) income tax;

(ii) social insurance contributions;

(iii) payments made by him or her in respect of excluded debts;

(iv) payments made by him or her in respect of excludable debts that are not permitted debts;

(v) such other levies and charges on income as may be prescribed,

or

(*b*) to make a payment amounting to more than 50 per cent of the value of any property acquired by the debtor after the coming into effect of the Debt Settlement Arrangement unless receipt of that property had been anticipated by the terms of that arrangement.".

Amendment agreed to.

Government amendment No. 59:

In page 70, line 29, to delete "may" and substitute "shall".

Amendment agreed to.

Government amendment No. 59*a*:

In page 71, to delete lines 1 to 3 and substitute the following:

"(6) For the purposes of *subsection (5)*, the voting rights exercisable by a creditor at a creditors' meeting under this section shall be proportionate to the amount of the debt due by the debtor to the creditor on the date on which the vote takes place.".

Amendment agreed to.

Government amendment No. 60:

In page 71, to delete lines 26 to 45 and in page 72, to delete lines 1 to 20.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 61 to 63, inclusive, 67, 68 and 113 are related and may be discussed together.

Government amendment No. 61:

In page 72, line 21, to delete "A creditor" and substitute "Without prejudice to *section 84*, a creditor".

Deputy Alan Shatter: Amendments Nos. 61 and 67 are technical drafting amendments to insert necessary cross-references to sections 79 and 84.

Amendment No. 62 clarifies the context of the court's consideration for the application of termination of a debt settlement arrangement and at what point in time the eligibility criteria were not met.

Amendment No. 63 is a technical drafting amendment to improve the presentation of the Bill.

Amendments Nos. 68 and 113 are technical drafting amendments to sections 84 and 116 to make it clear that a creditor may only challenge a debt settlement arrangement or a personal insolvency arrangement on the grounds that the debtor has committed an offence, if the offence in question has caused a material detriment to the creditor.

Amendment agreed to.

Government amendment No. 62:

In page 72, to delete lines 29 to 31 and substitute the following:

"(*b*) the debtor, when the Debt Settlement Arrangement was proposed, did not satisfy the eligibility criteria specified in *section 53*;".

Amendment agreed to.

Government amendment No. 63:

In page 72, line 42, before "have" to insert "to".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 64, 118 and 120 are related and may be discussed together.

Government amendment No. 64:

In page 73, to delete lines 9 and 10 and substitute the following:

"(*b*) at no time during that 3 month period were any obligations in respect of those payments discharged.".

Deputy Alan Shatter: Amendments Nos. 64 and 120 provide for a clear expression of what constitutes a period of arrears for the purposes of an application to the court by a creditor or personal insolvency practitioner for termination of a debt settlement arrangement or personal insolvency arrangement on the grounds that the debtor is in arrears with his or her payments for at least three months.

The purpose of amendment No. 120 is to define in section 118 when a six-month arrears default takes place. The new subsection reflects the text of section 80(3) which defines a six-month arrears period for the purposes of a debt settlement arrangement.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 65, 97*a* and 119 are related and may be discussed together.

Government amendment No. 65:

In page 73, line 21, after "Service" to insert "and the debtor".

Deputy Alan Shatter: Amendment No. 65 is a drafting amendment and has been recommended by the Parliamentary Counsel to improve the text. It will ensure that the debtor will also be given notice by the personal insolvency practitioner of the termination of a personal insolvency arrangement due to a six-month arrears default.

The purpose of amendment No. 97a is to improve the clarity of section 101 which outlines the framework for the determination of the value of security in respect of secured debt in a personal insolvency arrangement.

I propose to withdraw amendments Nos. 98 to 105, inclusive, which have been incorporated into the replacement section 101 that is proposed to be inserted by amendment No. 97*a*.

Amendment No. 119 is a drafting amendment recommended by the Parliamentary Counsel to improve the text.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 65*a* and 120*a* are related and may be discussed together.

Government amendment No. 65*a*:

In page 73, line 36, to delete "has been deemed to come to an end, has failed" and substitute "has been deemed to have failed".

Deputy Alan Shatter: These are technical drafting amendments to improve the text of the Bill.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 66, 137 to 142, inclusive, 142*b*, 143 to 148, inclusive, 148*a* and 153 are related and may be discussed together.

Government amendment No. 66:

In page 74, to delete lines 4 to 8.

Deputy Alan Shatter: I am withdrawing Report Stage amendments Nos. 149 to 152, inclusive, already furnished to the Bills Office. Amendment No. 66 proposes the deletion of section 82 which provides that terminated debt settlement arrangements under sections 78, 79 or 80 are to be deemed acts of bankruptcy. These are now listed in amendment No. 135 which inserts them into the appropriate section in the 1988 Bankruptcy Act.

Amendment No. 137 includes, in the relevant section 7 of the Bankruptcy Act 1988, a failed or terminated debt settlement arrangement or personal insolvency arrangement to the list of acts of bankruptcy.

Amendments Nos. 138 and 139 are technical drafting amendments to improve the text of the Bill.

Amendment No. 140 empowers the court to order the attendance of the debtor at the court hearing of the adjudication of the creditor's petition for his or her bankruptcy, and to make a full disclosure of assets and liabilities. This provision corrects a gap in the present legislation.

Amendment No. 141 is a technical drafting amendment to include a reference in section 139 in relation to section 15 of the Bankruptcy Act to add that the requirements of section 11 have been fulfilled.

Amendment No. 142 is a technical drafting amendment to improve the presentation of the Bill.

Amendment No. 142*b* on the supplementary list inserts a saver provision into the Bankruptcy Act to preserve any existing arrangements the bankrupts may have under that Act. Arrangements under the bankruptcy legislation are being ended in favour of the new debt resolution arrangements provided in this Bill.

Amendments Nos. 143 to 148, inclusive, are drafting amendments to improve the text by providing for the issue of a certificate of discharge or annulment in a bankruptcy and to make a necessary reference to a trustee in bankruptcy to the sections of the Bankruptcy Act 1988 concerned.

Amendment No. 148*a* substitutes and improves the current text of section 146, inserting section 85D to the Bankruptcy Act with regard to bankruptcy payment orders that may, if the debtor's circumstances permit, be sought. The court, in deciding on such orders, will have regard to the reasonable living expenses of the bankrupt and his or her dependants.

Amendment No. 153 updates the time period in section 123 of the Bankruptcy Act in regard to potentially fraudulent actions from the present 12 months to the now standard period in this Bill of three years.

Amendment agreed to.

Government amendment No. 67:

In page 74, line 23, after "are" to insert ", without prejudice to *section 79*,".

Amendment agreed to.

Government amendment No. 68:

In page 74, line 42, to delete "Act" and substitute the following:

"Act, which causes a material detriment to the creditor".

Amendment agreed to.

Government amendment No. 69:

In page 74, line 44, to delete "within the meaning of *subsection (2)*".

Amendment agreed to.

Government amendment No. 70:

In page 75, to delete lines 1 to 5 and substitute the following:

"(*h*) the debtor had given a preference to a person within the preceding 3 years that had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference).".

Amendment agreed to.

Government amendment No. 71:

In page 75, to delete lines 6 to 26.

Amendment agreed to.

Government amendment No. 72:

In page 75, between lines 26 and 27, to insert the following:

85.—(1) Where, as respects a debtor who has entered into a Debt Settlement Arrangement which is in force, a creditor or the personal insolvency practitioner concerned considers that a debtor has made excessive contributions to a relevant pension arrangement, the creditor or personal insolvency practitioner may make an application to the appropriate court for relief in accordance with this section.

(2) The reference to the debtor having made contributions to a relevant pension arrangement shall be construed as a reference to contributions made by the debtor at any time within 3 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 54*.

(3) Where the appropriate court considers that having regard in particular to the matters referred to in *subsection (4)* the contributions to a relevant pension arrangement were excessive it may:

(*a*) direct that such part of the contribution concerned (less any tax required to be deducted) be paid by the person administering the relevant pension arrangement to the personal insolvency practitioner for distribution amongst the creditors of the debtor, and

(*b*) make such other order as the court deems appropriate, including an order as to the costs of the application.

(4) The matters referred to in *subsection (3)* as respects the contributions made by the debtor to a relevant pension arrangement are:

(*a*) whether the debtor made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the debtor made the contribution concerned;

(*b*) whether the debtor was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the debtor or a person who as respects the debtor is a connected person could have materially influenced the creation of such obligation;

(*c*) the amount of the contributions paid, including the percentage of total income of the debtor in each tax year concerned which such contributions represent;

(*d*) the amount of the contributions paid, in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 54* including the percentage of total income of the debtor concerned which such contributions represent in each of those years;

(*e*) the age of the debtor at the relevant times;

(*f*) the percentage limits which applied to the debtor in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 54*; and

(*g*) the extent of provision made by the debtor in relation to any relevant pension arrangement prior to the making of the contributions concerned.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 72*a* and 135*a* are related and may be discussed together.

Government amendment No. 72*a*:

In page 75, to delete lines 29 to 39.

Deputy Alan Shatter: Amendment No. 72*a* which proposes the deletion of section 85, is consequential on the new review section inserted by Amendment No. 135*a*.

Amendment No. 135*a* revises the original review provision in regard to the operation of the Bill. That review, which will encompass the three new debt resolution processes in Part 3, will commence no later than three years after commencement and be completed within a year. However, as I said when we discussed this point on Committee Stage, the operation of the Bill will be subject to continuing and ongoing review. I have made it clear that I will swiftly intervene with amending legislation to make additional provision or to correct any error that arises from operational experience.

Amendment agreed to.

Government amendment No. 73:

In page 76, between lines 39 and 40, to insert the following:

"(6) (*a*) A Personal Insolvency Arrangement shall not contain any terms that would release the debtor from an excluded debt or otherwise affect such a debt.

(*b*) A proposal for a Personal Insolvency Arrangement shall not include any terms that, if contained in a Personal Insolvency Arrangement that came into effect, would contravene *paragraph (a)*.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 74, 84 and 84*a* are related and may be discussed together.

Senator David Cullinane: I move amendment No. 74:

In page 76, between lines 39 and 40, to insert the following:

"(6) Once a Personal Insolvency Arrangement comes into effect, all interest on debts, which are the subject matter of the arrangement, shall cease to accrue and the creditor will be prevented from charging interest or the earning of interest during the term of the Personal Insolvency Arrangement.".

We have tabled amendments Nos. 74 and 84 on foot of recommendations which were made by the Credit Union Development Association. I note that CUDA has been in contact with the Department. I would like to set out the logic for them and will then listen to the Minister's response. It does them justice to table the amendments and to elicit the Minister's response.

The repayments that debtors have entered into with their banks, which might be interest only, just serve the purpose of kicking the can down the road. The substantial capital sum still remains to be repaid, which is a serious problem currently facing many individuals and families.

In trying to address this issue, the Credit Union Development Association has proposed an amendment to the Department that once the creditor enters this process all interest on debts, which are the subject matter of the arrangement, shall cease to accrue. In addition, all creditors would be prevented from charging or earning interest.

Under section 98, a personal insolvency practitioner has the option to include in the arrangement, for the benefit of the secured creditor, that a debtor pays interest and only part capital under section 98*a*, or makes interest-only repayments under sections 98*b* and so on.

CUDA is of the view that a mechanism is needed to address the fact that a substantial sum still remains unpaid. While the practitioner has many options to choose from when drawing up a proposed arrangement, as a principle there should not be an option to allow the payment of interest during the arrangement, nor should interest accrue for the duration. That is what both amendments have the effect of doing. CUDA is also concerned that credit unions, as small creditors, will not cope financially with the impact of the proposed legislation. While they agree there is a need for legislation, they believe there is an imbalance between the rights of a large secured creditor and a small unsecured creditor, such as a credit union. They argue that

a situation should not arise whereby the capital of a credit union loan, which in effect is other people's money, that is, other members' money from that credit union, is sacrificed for the payment of interest on a secured debt to a large retail bank. This is the logic or rationale. I note the organisation has been in contact with the Department of Justice and Equality in this regard. While I am not privy to the response it received, I thought I should do it justice by tabling the amendments, listening to the Minister's response and deciding how to deal with the amendments thereafter.

An Cathaoirleach: Is there a seconder for the amendment? No.

Amendment No. 74 lapsed.

Senator David Cullinane: I move amendment No. 75:

In page 76, line 47, to delete "€3,000,000" and substitute "€1,000,000".

I apologise but I was thrown by the other amendments requiring a seconder. As this is the one I dealt with prematurely earlier, I simply await the Minister's response.

An Cathaoirleach: Is there a seconder for amendment No. 75?

Senator Paul Bradford: I will second it for debating purposes.

Deputy Alan Shatter: This is the issue that was dealt with previously, when I explained at some length the purpose of the personal insolvency arrangement. It provides a structure within which a debtor, with the assistance of a personal insolvency practitioner, can seek to enter into arrangements with creditors with regard to outstanding debts in circumstances in which a debtor clearly is unable to meet his or her liabilities. The Senator seeks to exclude any individual from the process whose debts exceed €1 million. I explained this is merely a mechanism to facilitate debt resolution and that there is no great advantage in this. While the perception has been created that this provision helps people who are rich, the reality is that it is a facility whereby if one's debts run to €3 million, one is in far greater financial difficulty than if they run to €1 million. This is a mechanism to ascertain whether arrangements can be entered into between debtors and creditors which, from the creditors' point of view, may, over a period of years, result in them recouping a greater share of the moneys due to them than they otherwise would recoup, were a debtor to go into bankruptcy.

Moreover, from the advantage perspective of the debtor, it creates the possibility that he or she may be allowed to continue to live in, own and occupy the family home of reasonable size, as opposed to a mansion, to use the phrase that suddenly has come into focus. The Senator simply is seeking to exclude the possibility of this mechanism being used by a range of people with a view to pushing them into bankruptcy if they are insolvent, where such a bankruptcy would be to the detriment of both the debtor and creditor and could affect someone who, perhaps through no fault of his or her own, has incurred large business debts, perhaps because others have defaulted on paying him or her. I do not see why such persons, if they are living in a modest home with their families, should be rendered homeless in a bankruptcy process.

I also have made the case previously that where someone is in serious debt and creditors are willing to enter into an arrangement with him or her, as the law currently stands, outside any structured process, that could happen regardless of the level of the debts. There could be

€15 million or €20 million worth of debts and if agreement can be reached between debtors and creditors, they can effectively resolve issues. This provision allows the use of personal insolvency practitioners, the use of the personal insolvency arrangement structure and the possibility of orders being made by the court to copper-fasten or to approve an arrangement already approved by the insolvency service. In the context of an item of progressive legislation designed to assist people in difficulties, I regard the Senator's amendment to be regressive and lacking in understanding of the process. Consequently, for all those reasons, I am opposed to the amendment.

Senator David Cullinane: The Minister is being somewhat disingenuous with regard to the logic of this amendment. As I noted, Sinn Féin believes that the current ceiling is too high and too loose. This amendment is an attempt to avoid the facilitation of recklessness or the rewarding of irresponsible speculation. That is the logic of this amendment and while I acknowledge the Minister has a point with regard to the €3 million ceiling, Sinn Féin's point is this should not be the norm. The norm should be in the region of €1 million, which is the logic and purpose of the amendment. When dealing with these extremely difficult and complex situations, it is important that in so doing, Members do not end up inadvertently rewarding people who are irresponsible or who have acted in an irresponsible fashion. Sinn Féin is attempting, through this amendment, to deal with that issue.

Deputy Alan Shatter: I just do not understand how the Senator thinks there is any reward involved in this process, other than it facilitating debt resolution.

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

Amendment declared lost.

Government amendment No. 76:

In page 77, line 18, to delete "statutory declaration" and substitute "declaration in writing".

Amendment agreed to.

Government amendment No. 77:

In page 78, between lines 33 and 34, to insert the following:

"(5) A debtor shall not be eligible to make a proposal for a Personal Insolvency Arrangement where 25 per cent or more of his or her debts (other than excluded debts) were incurred during the period of 6 months ending on the date on which an application is made under *section 89* for a protective certificate.".

Amendment agreed to.

Government amendment No. 78:

In page 17 of the list of amendments made in Committee, to delete the text inserted by amendment no. 49, and to substitute the following:

89.—(1) An excludable debt shall be included in a proposal for a Personal Insolvency Arrangement only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the inclusion of that debt in such a proposal

(2) Where a personal insolvency practitioner proposes to include an excludable debt in a proposal for a Personal Insolvency Arrangement, he or she shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—

(*a*) such information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and

(*b*) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the inclusion of the debt in a Personal Insolvency Arrangement.

(3) A creditor shall comply with a request under *subsection (2)(b)* within 21 days of receipt of the notification under that subsection.

(4) Where a creditor does not comply with *subsection (3)*, the creditor shall be deemed to have consented to the inclusion of that debt in a proposal for a Personal Insolvency Arrangement.

(5) Where a creditor consents or is deemed to have consented, in accordance with this section, to the inclusion of an excludable debt in a proposal for a Personal Insolvency Arrangement, that creditor shall be entitled to vote at any creditors' meeting called to consider that proposal.

(6) Where the debtor concerned is the subject of a protective certificate, and a creditor to whom this section applies brings an application under *section 93(1)* in respect of that protective certificate, the period referred to in *subsection (3)* shall not commence until the date on which the appropriate court determines the application.

(7) An excludable debt shall not be the subject of a Personal Insolvency Arrangement unless it is a permitted debt.

(8) In this Chapter, "permitted debt" means an excludable debt to which *subsection (1)* applies.".

Amendment agreed to.

Government amendment No. 79:

In page 79, to delete lines 1 to 6 and substitute the following:

"(*e*) a schedule of the creditors of the debtor and the debts concerned, stating in relation to each such creditor—

(i) the amount of each debt due to that creditor,

(ii) whether, as respects the debt concerned, the creditor is a secured creditor and, if so, the nature of the security concerned, and

(iii) such other information as may be prescribed;".

Amendment agreed to.

Government amendment No. 80:

In page 82, to delete lines 19 to 43 and in page 83, to delete lines 1 to 16 and substitute the following:

"(1) Subject to *subsections (3)*, *(4)* and *(5)*, a creditor to whom notice of the issue of a protective certificate has been given shall not, whilst the protective certificate remains in force, in relation to a specified debt—

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to enforce security held by the creditor in connection with the specified debt;

(*f*) take any step to recover goods in the possession or custody of the debtor (whether or not title to the goods is vested in the creditor or the creditor has security over the goods);

(*g*) contact the debtor regarding payment of the specified debt, otherwise than at the request of the debtor;

(*h*) in relation to an agreement with the debtor, including a security agreement, by reason only that the debtor is insolvent or that the protective certificate has been issued—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(2) Whilst a protective certificate remains in force, no bankruptcy petition relating to the debtor—

(*a*) may be presented by a creditor to whom *subsection (1)* applies in respect of a specified debt,

(*b*) in a case where the petition has been presented by such a creditor in respect

of a specified debt, may be proceeded with.

(3) Without prejudice to *subsections (1)* and *(2)*, whilst a protective certificate remains in force, no other proceedings and no execution or other legal process in respect of a specified debt may be commenced or continued by a creditor to whom *subsection (1)* applies against the debtor or his or her property, except with the leave of the court and subject to any order the court may make to stay such proceedings, enforcement or execution for such period as the court deems appropriate pending the outcome of attempts to reach a Personal Insolvency Arrangement, but this subsection shall not operate to prohibit the commencement or continuation of any criminal proceedings against the debtor.".

Amendment agreed to.

Government amendment No. 80*a*:

In page 83, to delete lines 36 and 37.

Amendment agreed to.

Government amendment No. 81:

In page 84, line 1, to delete "failing to give such direction" and substitute "not making such an order".

Amendment agreed to.

Government amendment No. 82:

In page 84, to delete lines 17 to 27 and substitute the following:

"(1) Where a protective certificate has been issued, the personal insolvency practitioner shall as soon as practicable thereafter—

(*a*) give written notice to the creditors concerned that the personal insolvency practitioner has been appointed by the debtor for the purpose of making a proposal for a Personal Insolvency Settlement Arrangement and, subject to *section 97(2)*, invite those creditors to make submissions to the personal insolvency practitioner regarding the debts concerned and the manner in which the debts might be dealt with as part of a Personal Insolvency Arrangement, and such notice shall be accompanied by the debtor's completed Prescribed Financial Statement,".

Amendment agreed to.

Government amendment No. 83:

In page 84, line 36, to delete "*section 98*." and substitute the following:

"*section 98*,

and

(*c*) make a proposal for a Personal Insolvency Arrangement in respect of the debts concerned.".

Amendment agreed to.

Senator David Cullinane: I move amendment No. 84:

In page 89, to delete lines 38 to 49 and in page 90, to delete lines 1 to 29 and substitute the following:

"(6) Without prejudice to the generality of *section 96* or *subsections (1)* to *(3)* and subject to *sections 99* to *101*, and having regard to *section 86(6)*, a Personal Insolvency Arrangement may include one or more of the following terms in relation to the secured debt:

(*a*) that the debtor pay only part of the capital amount of the secured debt to the secured creditor for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(*b*) that the period over which the secured debt was to be paid or the time or times at which the secured debt was to be repaid be extended by a specified period of time;

(*c*) that the secured debt payments due to be made by the debtor be deferred for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(*d*) that the principal sum due on the secured debt be reduced provided that the secured creditor be granted a share in the debtor's equity in the property the subject of the security;

(*e*) that the principal sum due on the secured debt be reduced but subject to a condition that where the property the subject of the security is subsequently sold for an amount greater than the value attributed to that property for the purposes of the Personal Insolvency Arrangement, the secured creditor's security will continue to cover such part of the difference between the attributed value and the amount for which the property is sold as is specified in the terms of the Personal Insolvency Arrangement;

(*f*) that arrears of payments existing at the inception of the Personal Insolvency Arrangement and payments falling due during a specified period thereafter be added to the principal amount due in respect of the secured debt; and

(*g*) that the principal sum due in respect of the secured debt be reduced to a specified amount.".

An Cathaoirleach: Is there a seconder for this amendment? No.

Amendment No. 84 lapsed.

Government amendment No. 84*a*:

In page 90, after line 52, to insert the following:

"(11) Without prejudice to *section 99*, where a Personal Insolvency Arrangement includes terms providing for a reduction of the amount of debt (including principal, interest and arrears) secured by the security as of the date of the issue of the protective certificate to a specified amount, the terms of the Arrangement shall, unless the relevant secured creditor agrees otherwise, also include a term providing that the amount of such reduction shall:

(*a*) rank equally with, and abate in equal proportion to, the unsecured debts covered by the Arrangement; and

(*b*) be discharged with those unsecured debts on completion of the obligations specified in the Arrangement.".

Amendment agreed to.

Government amendment No. 84*b*:

In page 91, to delete lines 1 to 48, and in page 92, to delete lines 1 to 39 and substitute the following:

99.—(1) A Personal Insolvency Arrangement which includes terms providing for the sale or other disposal of the property the subject of the security shall, unless the relevant secured creditor agrees otherwise, include a term providing that the amount to be paid to the secured creditor shall amount at least to—

(*a*) the value of the security determined in accordance with *section 101*; or

(*b*) the amount of the debt (including principal, interest and arrears) secured by the security as of the date of the issue of the protective certificate, whichever is the lesser.

(2) A Personal Insolvency Arrangement which includes terms providing for—

(*a*) retention by a secured creditor of the security held by that secured creditor,

and

(*b*) a reduction of the principal sum due in respect of the secured debt due to that secured creditor to a specified amount, shall not, unless the relevant secured creditor agrees otherwise, specify the amount of the reduced principal sum referred to in *paragraph (b)* at an amount less than the value of the security determined in accordance with *section 101*.

(3) A Personal Insolvency Arrangement which includes terms involving—

(*a*) retention by a secured creditor of the security held by that secured creditor,

and

(*b*) a reduction of the principal sum due in respect of the secured debt due to that secured creditor to a specified amount, shall, unless the relevant secured creditor agrees otherwise, also include terms providing that any such reduction of the principal sum is subject to the condition that, subject to *subsections (4)* to *(13)*, where the property the subject of the security is sold or otherwise disposed of for an amount or at a value greater than the value attributed to the security in accordance with *section 101*, the debtor shall pay to the secured creditor an amount additional to the reduced principal sum calculated in accordance with *subsection (4)* or such greater amount as is provided for under the terms of the Personal Insolvency Arrangement.

(4) Subject to *subsections (5)* to *(13)*, the additional amount referred to in *subsection (3)* shall be the lesser of—

(*a*) the entire of the difference between the value of the property on disposition and the value attributed to the security in accordance with *section 101*, and

(*b*) the amount of the reduction in the principal sum due in respect of the secured debt under the Personal Insolvency Arrangement as referred to in *subsection (3)(b)*.

(5) For the purposes of *subsection (4)*, any portion of the increase in the value of the property attributable to significant improvements made to (or other measures taken which have made a material contribution to the increase in the value of) the property over which the debt is secured which were made subsequent to the valuation of the security for the purposes of the Personal Insolvency Arrangement shall be disregarded in calculating the additional amount payable by the debtor.

(6) *Subsection (5)* shall not apply unless the secured creditor has given his or her consent in writing to the improvements or other measures concerned, which consent shall not be unreasonably withheld.

(7) For the purposes of *subsection (4)*, any payment or transfer of assets to the secured creditor pursuant to the Personal Insolvency Arrangement properly attributable to a reduction of the principal sum due in respect of the secured debt shall be deducted from the additional amount referred to in *subsection (3)*.

(8) For the purposes of *subsection (4)*, the expenses and costs borne by the debtor in connection with the sale or other disposal of the property shall, to the extent that those costs and expenses are of a type and amount normally payable by the vendor of property of that nature, be deducted from the value attributable to the property on such sale or disposal.

(9) The obligation to pay an additional amount arising by virtue of this section shall not apply where the value of the property on its sale or other disposal is less than the amount of the debt secured by the security (other than any additional amount secured by virtue of *subsection (10)*) immediately prior to such sale or other disposition of the property.

(10) Any additional amount payable by virtue of this section shall stand secured in the same manner and with the same priority as the principal sum referred to in *subsec-*

tion (3)(b).

(11) The obligation to pay an additional amount arising by virtue of this section shall cease—

(*a*) on the expiry of the period of 20 years commencing on the date on which the Personal Insolvency Arrangement comes into effect, or

(*b*) on the day on which the debtor is scheduled or permitted to fully discharge the amount secured by the security (or such later date as may be specified for so doing in the Personal Insolvency Arrangement) and does so discharge his or her indebtedness, whichever first occurs.

(12) Unless otherwise provided for under the terms of the Personal Insolvency Arrangement, where a property in respect of which *subsection (3)* applies is the subject of security held by more than one secured creditor—

(*a*) any additional amounts payable by virtue of this section to the secured creditors shall be paid in order of the priority of the security held by each secured creditor, and

(*b*) if the security held by a secured creditor is not ranked first in priority, the obligation to pay an additional amount to that creditor arising by virtue of this section shall apply only if and to the extent that the sum of the additional amounts payable to secured creditors holding security with higher ranking priority than the secured creditor concerned is less than the additional amount calculated in accordance with *subsection (4)*.

(13) For the purposes of *subsection (3)*—

(*a*) without prejudice to the generality of that subsection, a disposal by a debtor of property the subject of security held by a secured creditor shall include the voluntary grant by the debtor of security over that property to any person other than that secured creditor, including any such grant of security in connection with what is commonly known as a refinancing of the existing secured debt, and

(*b*) a debtor shall not be considered to dispose of property the subject of security held by a secured creditor where the debtor leases or licenses the property to any person for a term of less than 20 years.".

Deputy Alan Shatter: This amendment provides for the replacement of the current section 99 with revised text that seeks to simplify the provisions. Section 99 sets out a number of protections for secured creditors in a personal insolvency arrangement. The claw-back mechanism provides that where secured debt has been written down under a personal insolvency arrangement, PIA, and the property that is the subject of the security for that debt is subsequently disposed of by the debtor for an amount or at a value greater than the value attributed to the security for the purpose of the arrangement, the debtor may be obliged to pay an additional amount to the secured creditor. In other words, some or all of the debt forgiveness that the debtor gained originally following a write-down of secured debt under a personal insolvency arrangement could, due to an increase in property values at the time of a future sale within a period not to exceed 20 years from the date of the PIA, be clawed back in favour of the secured creditor.

Subsection (9) is intended to ensure the claw-back only applies where the sale proceeds exceed the outstanding amount of the secured debt. As mentioned earlier, the claw-back is intended to prevent a debtor gaining a windfall at the expense of a secured creditor. However, no such windfall arises for the debtor in the case of what is known as a short sale, that is, where the sale proceeds of the property subject to the security are not sufficient to discharge the outstanding secured debt. The main purpose of the proposed replacement of section 99 with a new text is to improve the clarity of the provisions regarding the claw-back mechanism and to provide for situations where there is more than one secured creditor in respect of the same property.

I propose to withdraw amendments Nos. 85 to 97 which have been incorporated into the replacement section 99 that is proposed to be inserted by amendment No. 84*b*.

Amendment agreed to.

Amendments Nos. 85 to 97, inclusive, not moved.

Government amendment No. 97*a*:

In page 93, to delete lines 45 to 49, to delete page 94 and in page 95, to delete lines 1 to 11 and substitute the following:

101.—(1) Subject to the provisions of this section the value of security in respect of secured debt for the purposes of this Chapter shall be the market value of the security determined by agreement between the personal insolvency practitioner, the debtor and the relevant secured creditor.

(2) Where the personal insolvency practitioner does not accept a secured creditor's estimate of the value, if any, of the security furnished by the secured creditor under *section 98*, the debtor, the personal insolvency practitioner and the secured creditor shall in good faith endeavour to agree the market value for the security having regard to any matter relevant to the valuation of security, including the matters specified in *subsection (5)*.

(3) In the absence of agreement as to the value of the security, the personal insolvency practitioner, the debtor and the relevant secured creditor shall appoint an appropriate independent expert to determine the market value for the security having regard to any matter relevant to the valuation of security, including the matters specified in *subsection (5)*.

(4) Where the personal insolvency practitioner, the debtor and the secured creditor are unable to agree as to the independent expert to be appointed under *subsection (3)* the issue may be referred by any of them to the Insolvency Service which shall appoint such independent expert as it considers appropriate to determine the market value of the security concerned having regard to any matter relevant to the valuation of security, including the matters specified in *subsection (5)*, and the valuation carried out by such expert shall be binding on the personal insolvency practitioner, the debtor and the secured creditor concerned.

(5) The matters referred to in *subsections (2)* to *(4)* as the matters specified in *subsection (5)* are:

(*a*) the type of property the subject of the security;

(*b*) the priority of the security;

(*c*) the costs of disposing of the property the subject of the security;

(*d*) the price at which similar property to that which is the subject of the security has been sold within the 12 months prior to the issue of the protective certificate;

(*e*) the date of the most recent valuation or transaction with respect to the property the subject of the security and the value attributed to the property in respect of that valuation or transaction;

(*f*) the value attributed to the property the subject of the security in the debtor's accounting records (if any);

(*g*) the value attributed to the security in the secured creditor's accounting records (if any);

(*h*) whether the market for the type of property the subject of the security is or has been subject to significant changes in conditions;

(*i*) data made available to the public by the Property Services Regulatory Authority pursuant to Part 12 of the Property Services (Regulation) Act 2011 and which relate to property similar to the property the subject of the security; and

(*j*) any relevant statistical index relating to the valuation of the same or similar types of property as the property the subject of the security.

(6) In this section "market value"—

(*a*) as respects property the subject of security for a secured debt, means the price which that property might reasonably be expected to fetch on a sale in the open market;

(*b*) as respects security for a secured debt, means the amount that might reasonably be expected to be available to discharge that secured debt, in whole or in part, following realisation of the security by the secured creditor concerned and, where permitted by the terms of the security or otherwise, after deducting all relevant costs and expenses in connection with the realisation of the security.

(7) The creditor concerned and the personal insolvency practitioner shall each pay 50 per cent of the costs of carrying out the valuation by the independent expert pursuant to *subsection (3)* or *(4)*.

(8) The amount paid by the personal insolvency practitioner pursuant to *subsection (7)* shall be treated as an outlay for the purposes of the Personal Insolvency Arrangement.

(9) For the purposes of this section, the personal insolvency practitioner, the debtor, the secured creditor concerned and any independent expert shall be entitled to assume, in the absence of any clear evidence to the contrary, that the market value of the security which is a first charge is the lesser of—

(*a*) an amount equal to the market value of the property the subject of the security,

or

(*b*) unless the nature of the security and the property concerned would make it unreasonable to do so, an amount equal to the market value of the property the subject of the security less an adjustment to that value as respects the costs and expenses which would normally be necessarily incurred by a secured creditor in the realisation of a security of a similar kind to that of the security concerned, provided that the adjustment is no greater than 10 per cent of the market value of the property the subject of the security.".

Amendment agreed to.

Amendments Nos. 98 to 105, inclusive, not moved.

Government amendment No. 105*a*:

In page 96, to delete lines 50 and 51 and in page 97, to delete lines 1 to 25 and substitute the following:

104.—(1) A vote held at a creditors' meeting to consider a proposal for a Personal Insolvency Arrangement shall be held in accordance with this section, *section 106* and regulations made under *section 107*.

(2) Subject to *subsection (1)*, the voting rights exercisable by a creditor at a creditors' meeting to consider a proposal for a Personal Insolvency Arrangement shall be proportionate to the amount of the debt due by the debtor to the creditor on the day the protective certificate is issued.

(3) In the case of a secured debt, where:

(*a*) the value of security held by a creditor who is a secured creditor is determined, pursuant to *section 101*, to be less than the amount of the secured debt due to the creditor on the day the protective certificate is issued; and

(*b*) the proposed Personal Insolvency Arrangement provides for all or part ("relevant portion") of that secured debt to:

(i) rank equally with, and abate in equal proportion to, the unsecured debts covered by the Arrangement; and

(ii) be discharged with those unsecured debts on completion of the obligations specified in the Arrangement,

then, the relevant portion of that secured debt shall, for the purposes of this section (other than this subsection), *section 106* and regulations made under *section 107*, be treated as unsecured and the creditor concerned may vote in respect of the relevant portion of that debt as an unsecured creditor.

(4) Where a secured creditor consents in writing to the inclusion of terms in the Personal Insolvency Arrangement providing for the surrender to the debtor of his or her security upon the coming into effect of the Arrangement, that creditor shall be treated as an unsecured creditor for the purposes of this section (other than this subsection), *section 106* and regulations made under *section 107* and shall only be entitled to vote at a

creditors' meeting as an unsecured creditor.

(5) A creditor who is a connected person as respects the debtor may not vote in favour of a proposal for a Personal Insolvency Arrangement at a creditors' meeting but that creditor may vote against the proposal.

(6) Where only one creditor is entitled to vote at the creditors' meeting (whether in respect of one or more debts), the requirement to hold a creditors' meeting shall be satisfied where the creditor concerned notifies the personal insolvency practitioner in writing of that creditor's approval or otherwise of the proposal for a Personal Insolvency Arrangement.

(7) Subject to any regulations made under *section 107*, only the person who appears to the personal insolvency practitioner to be the owner of the debt (or an agent acting on behalf of that person) shall be entitled to receive notices required to be sent to a creditor under this Chapter or to vote at the creditors' meeting.

(8) Where no creditor votes, the proposed Personal Insolvency Arrangement shall be deemed to have been approved under this section.

(9) Where on the taking of a vote at a creditors' meeting held for the purpose of considering a proposal for a Personal Insolvency Arrangement the proposal is not approved in accordance with *subsection (1)*, the Personal Insolvency Arrangement procedure shall terminate and the protective certificate issued under *section 91* shall cease to have effect.".

Amendment agreed to.

Government amendment No. 105*b*:

In page 98, to delete lines 11 to 45 and in page 99, to delete lines 1 to 15 and substitute the following:

106.—(1) Subject to *subsection (2)* a proposed Personal Insolvency Arrangement shall be considered as having been approved by a creditors' meeting held under this Chapter where—

(*a*) a majority of creditors representing not less than 65 per cent of the total amount of the debtor's debts due to the creditors participating in the meeting and voting have voted in favour of the proposal,

(*b*) creditors representing more than 50 per cent of the value of the secured debts due to creditors who are—

(i) entitled to vote, and

(ii) have voted,

at the meeting as secured creditors have voted in favour of the proposal, and

(*c*) creditors representing more than 50 per cent of the amount of the unsecured debts of creditors who—

(i) are entitled to vote, and

(ii) have voted,

at the meeting as unsecured creditors have voted in favour of the proposal.

(2) For the purposes of *subsection (1)(b)* the value of a secured debt shall be—

(*a*) the market value of the security concerned determined in accordance with *section 101*, or

(*b*) the amount of the debt secured by the security on the day the protective certificate is issued, whichever is the lesser.".

Deputy Alan Shatter: The purpose of amendment No. 105*b* is to clarify the operation of this section with regard to the valuation of secured debt for the purposes of the section.

Amendment agreed to.

Government amendment No. 106:

In page 100, to delete lines 28 to 48 and in page 101, to delete lines 1 to 8 and substitute the following:

"(1) Where—

(*a*) no objection is lodged by a creditor with the appropriate court within 14 days of the giving of the notice referred to in *section 108*, or

(*b*) an objection is lodged with the appropriate court and the matter is determined by the court on the basis that the objection should not be allowed,

the appropriate court shall proceed to consider, in accordance with this section, whether to approve the coming into effect of the Personal Insolvency Arrangement.

(2) For the purposes of its consideration under *subsection (1)*, the appropriate court shall consider the copy of the Personal Insolvency Arrangement furnished to it under *section 109(1)* and, subject to *subsection (3)*—

(*a*) shall approve the coming into effect of the Arrangement, if satisfied that the—

(i) eligibility criteria specified in *section 88* have been satisfied,

(ii) mandatory requirements referred to in *section 95(2)* have been complied with,

(iii) Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or otherwise affect such a debt, and

(iv) requisite proportions of creditors have approved the proposal for a Personal Insolvency Arrangement,

and

(*b*) if not so satisfied, shall refuse to approve the coming into effect of the Personal Insolvency Arrangement.

(3) The appropriate court, where it requires further information or evidence for the purpose of its arriving at a decision under *subsection (1)*, may hold a hearing, which hearing shall be on notice to the Insolvency Service and the personal insolvency practitioner concerned.

(4) A hearing referred to in *subsection (3)*, unless the appropriate court considers it appropriate to hold it in public, shall be held otherwise than in public.

(5) For the purposes of *subsection (2)*, the court may accept—

(*a*) a certificate issued by the Insolvency Service certifying that the eligibility criteria specified in *section 88* have been satisfied as evidence that such eligibility criteria have been satisfied, and

(*b*) the certificate issued by the personal insolvency practitioner concerned pursuant to *section 108(1)(a)* as evidence that the requisite proportions of creditors have approved the proposal for a Personal Insolvency Arrangement.

(6) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court—

(*a*) approves or refuses to approve the coming into effect of the Personal Insolvency Arrangement under this section, or

(*b*) decides to hold a hearing referred to in *subsection (3)*.

(7) On receipt of a notification under *subsection (6)* of the approval of the coming into effect of the Personal Insolvency Arrangement, the Insolvency Service shall register the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements.".

Amendment agreed to.

Government amendment No. 107:

In page 101, lines 22 to 24, to delete all words from and including "concerned," in line 22 down to and including "Arrangement." in line 24 and substitute "concerned.".

Amendment agreed to.

Government amendment No. 108:

In page 101, to delete lines 25 to 43 and in page 102, to delete lines 1 to 5 and substitute the following:

"(3) Where a Personal Insolvency Arrangement is in effect, a creditor who is bound by it shall not, in relation to a specified debt—

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to enforce security held by the creditor;

(*f*) take any step to recover goods in the possession or custody of the debtor

(whether or not title to the goods is vested in the creditor or the creditor has security over the goods);

(*g*) contact the debtor regarding payment of the specified debt otherwise than at the request of the debtor;

(*h*) in relation to an agreement with the debtor, including a security agreement, by reason only that the debtor is insolvent or that a Personal Insolvency Arrangement is in effect—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.".

Amendment agreed to.

Government amendment No. 109:

In page 102, between lines 33 and 34, to insert the following:

"(10) Notwithstanding *subsections (3)* and *(4)*, the fact that a Personal Insolvency Arrangement is in effect in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (3)* or *(4)* as respects another person who has guaranteed the specified debts concerned.".

Amendment agreed to.

Government amendment No. 110:

In page 103, line 6, to delete "the debtor has" and substitute "the debtor has defaulted".

Amendment agreed to.

Government amendment No. 111:

In page 103, line 36, after "made" to insert the following:

"under this Act and in accordance with the Personal Insolvency Arrangement".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 112 and 124 are related and may be discussed together.

Government amendment No. 112:

In page 104, line 10, to delete "€1,000" and substitute "€650".

Deputy Alan Shatter: Amendment No. 112 reduces the amount of credit that a debtor may seek without informing the creditor of the fact that he is party to a personal insolvency arrangement to €650. This is the same amount in the debt relief notice and debt settlement arrangement.

The purpose of amendment No. 124 is to bring the offence provision in section 125 into line with the restrictions on obtaining credit above a specified amount that apply to a debtor in respect of a debt relief notice, debt settlement arrangement or personal insolvency arrangement.

Amendment agreed to.

Government amendment No. 112*a:*

In page 22 of the list of amendments made in Committee, to delete the text inserted by amendment no. 64, and substitute the following:

"(*a*) to make additional payments in excess of 50 per cent of the increase in his or her income available to him or her after the following deductions (where applicable) are made:

(i) income tax;

(ii) social insurance contributions;

(iii) payments made by him or her in respect of excluded debts;

(iv) payments made by him or her in respect of excludable debts that are not permitted debts;

(v) such other levies and charges on income as may be prescribed,

or".

Amendment agreed to.

Government amendment No. 112*b*:

In page 104, to delete lines 45 to 50 and in page 105, to delete lines 1 to 10 and substitute the following:

"(4) In order that a variation of a Personal Insolvency Arrangement take effect, in addition to the consent in writing of the debtor referred to in *subsection (2)*, the variation shall be approved at a creditors' meeting where—

(*a*) a majority of creditors representing not less than 65 per cent of the total amount of the debtor's debts remaining due to the creditors participating in the meeting and voting have voted in favour of the proposal,

(*b*) creditors representing more than 50 per cent of the value of the secured debts due to creditors who are—

(i) entitled to vote, and

(ii) have voted,

at the meeting as secured creditors have voted in favour of the proposal, and

(*c*) creditors representing more than 50 per cent of the amount of the unsecured debts of creditors who—

(i) are entitled to vote, and

(ii) have voted,

at the meeting as unsecured creditors have voted in favour of the proposal.".

Amendment agreed to.

Government amendment No. 112*c*:

In page 105, line 17, to delete "*sections 106* to *111*" and substitute "*sections 105* to *111*".

Amendment agreed to.

Government amendment No. 112*d*:

In page 105, to delete lines 38 to 44 and substitute the following:

"(9) For the purposes of *subsection (4)(b)* the value of a secured debt shall be—

(*a*) the market value of the security concerned determined in accordance with *section 101*, or

(*b*) the amount of the debt secured by the security on the day on which the vote takes place,

whichever is the lesser.".

Amendment agreed to.

Government amendment No. 113:

In page 106, line 21, to delete "Act" and substitute "Act, which causes a material detriment to the creditor".

Amendment agreed to.

Government amendment No. 114:

In page 106, line 23, to delete "within the meaning of *subsection (2)*".

Amendment agreed to.

Government amendment No. 115:

In page 106, to delete lines 28 to 32 and substitute the following:

"(*h*) the debtor had given a preference to a person within the preceding 3 years that had the effect of substantially reducing the amount available to the debtor for the pay-

ment of his or her debts (other than a debt due to the person who received the preference).".

Amendment agreed to.

Government amendment No. 116:

In page 106, to delete lines 33 to 49 and in page 107, to delete lines 1 to 4.

Amendment agreed to.

Government amendment No. 117:

In page 107, between lines 4 and 5, to insert the following:

117.—(1) Where, as respects a debtor who has entered into a Personal Insolvency Arrangement which is in force, a creditor or the personal insolvency practitioner concerned considers that a debtor has made excessive contributions to a relevant pension arrangement, the creditor or personal insolvency practitioner may make an application to the appropriate court for relief in accordance with this section.

(2) The reference to the debtor having made contributions to a relevant pension arrangement shall be construed as a reference to contributions made by the debtor at any time within 3 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 89*.

(3) Where the appropriate court considers that having regard in particular to the matters referred to in *subsection (4)* the contributions to a relevant pension arrangement were excessive it may:

(*a*) direct that such part of the contribution concerned (less any tax required to be deducted) be paid by the person administering the relevant pension arrangement to the personal insolvency practitioner for distribution amongst the creditors of the debtor, and

(*b*) make such other order as the court deems appropriate, including an order as to the costs of the application.

(4) The matters referred to in *subsection (3)* as respects the contributions made by the debtor to a relevant pension arrangement are:

(*a*) whether the debtor made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the debtor made the contribution concerned;

(*b*) whether the debtor was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the debtor or a person who as respects the debtor is a connected person could have materially influenced the creation of such obligation;

(*c*) the amount of the contributions paid, including the percentage of total income of the debtor in each tax year concerned which such contributions represent;

(*d*) the amount of the contributions paid, in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 89* including the percentage of total income of the debtor concerned which such contributions represent in each of those years;

(*e*) the age of the debtor at the relevant times;

(*f*) the percentage limits which applied to the debtor in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 89*; and

(*g*) the extent of provision made by the debtor in relation to any relevant pension arrangement prior to the making of the contributions concerned.".

Amendment agreed to.

Government amendment No. 118:

In page 107, to delete lines 38 and 39 and substitute the following:

"(*b*) at no time during that 3 month period were any obligations in respect of those payments discharged.".

Amendment agreed to.

Government amendment No. 119:

In page 108, line 4, after "Service" to insert "and the debtor".

Amendment agreed to.

Government amendment No. 120:

In page 108, between lines 5 and 6, to insert the following:

"(2) For the purposes of *subsection (1)*, a debtor is in arrears with his or her payments for a period of 6 months on a given date if—

(*a*) at the beginning of the 6 month period ending immediately before that date, one or more than one payment in respect of a debt became due and payable by the debtor under the Personal Insolvency Arrangement, and

(*b*) at no time during that 6 month period were any obligations in respect of those payments discharged.".

Senator Paul Bradford: I seek clarification.

An Cathaoirleach: The amendment has already been discussed.

Senator Paul Bradford: The query related to section 118 and the amendment provides some clarification.

Amendment agreed to.

Government amendment No. 120*a*:

In page 108, line 11, to delete "has been deemed to come to an end, has failed" and substitute "has been deemed to have failed".

Amendment agreed to.

An Cathaoirleach: Amendments. Nos. 121, 122, 122*a*, 123 and 126 are related and will be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 121:

In page 109, to delete lines 5 to 13 and substitute the following:

122.—(1) A person who is a specified debtor under *Chapter 1* is guilty of an offence if he or she—

(*a*) intentionally fails to comply with an obligation under *section 33*, or

(*b*) provides information to the Insolvency Service in connection with such an obligation, or otherwise in connection with the performance by the Insolvency Service of its functions under *Chapter 1*, knowing the information to be false or misleading in a material respect.

(2) A person who is party, as a debtor, to a Debt Settlement Arrangement under *Chapter 3* is guilty of an offence if he or she—

(*a*) intentionally fails to comply with an obligation under *section 76(3)* or *76 (6)*, or

(*b*) provides information to the Insolvency Service in connection with such an obligation, or otherwise in connection with the performance by the Insolvency Service of its functions under *Chapter 3*, knowing the information to be false or misleading in a material respect.

(3) A person who is party, as a debtor, to a Personal Insolvency Arrangement under *Chapter 4* is guilty of an offence if he or she—

(*a*) intentionally fails to comply with an obligation under *section 114(3)* or *114(6)*, or

(*b*) provides information to the Insolvency Service in connection with such an obligation, or otherwise in connection with the performance by the Insolvency Service of its functions under *Chapter 4*, knowing the information to be false or misleading in a material respect.".

Deputy Alan Shatter: The purpose of amendment No. 121 is to provide that section 122, which deals with breaches of a debtor's obligations under a debt relief notice, will be broadened to also cover breach of obligations under a debt settlement arrangement or a personal insolvency arrangement.

Amendments Nos. 122 and 123 are drafting amendments to sections 123 and 124, first, to correct cross-references to other sections of the Bill and, second, to seek to prevent any possible

erroneous interpretation of those provisions as meaning that a person who commits an offence under those sections can only be prosecuted while the insolvency arrangement remains in effect, and not after it ends or is terminated, even if the wrongdoing only comes to light then.

Amendment No. 122*a* aims to provide more clarity as to what is intended to be prohibited by section 124, which deals with fraudulent disposal of property by a debtor who is applying for a DRN, a DSA or a PIA. Amendment No. 126 proposes to amend section 127 to increase the fine for a summary offence under the Bill to a class A fine, which means a fine not exceeding €5,000.

Amendment agreed to.

Government amendment No. 122:

In page 109, to delete line 41 and in page 110, to delete lines 1 to 10 and substitute the following:

"(3) This section applies to a person—

(*a*) on whose behalf an application under *section 26*, *54* or *89* is made,

(*b*) who is a specified debtor under *Chapter 1*,

(*c*) who is party, as a debtor, to a Debt Settlement Arrangement which is in effect, or

(*d*) who is party, as a debtor, to a Personal Insolvency Arrangement which is in effect.".

Amendment agreed to.

Government amendment No. 122*a*:

In page 110, to delete lines 26 to 28 and substitute the following:

"(2) Subject to *subsection (3)*, a person commits an act referred to in this subsection where he or she—

(*a*) makes or causes to be made a gift of any of his or her property to another person,

(*b*) otherwise makes or causes to be made any transfer of any of his or her property, on terms that provide for him or her to receive no consideration, to another person, or

(*c*) enters into a transaction with another person involving the transfer of any of his or her property to that other person or to a third person (whether or not the third person is a party to the transaction), where the value of the property concerned, in money or money's worth, is significantly greater than the value, in money or money's worth, of the consideration provided by the other person.

(3) *Subsection (2)* does not apply to property of a value of less than €400.".

Amendment agreed to.

Government amendment No. 123:

In page 110, to delete lines 29 to 39 and substitute the following:

"(3) This section applies to a person—

(*a*) on whose behalf an application under *section 26*, *54* or *89* is made,

(*b*) who is a specified debtor under *Chapter 1*,

(*c*) who is party, as a debtor, to a Debt Settlement Arrangement which is in effect, or

(*d*) who is party, as a debtor, to a Personal Insolvency Arrangement which is in effect.".

Amendment agreed to.

Government amendment No. 124:

In page 110, line 42, to delete "€1,000" and substitute "€650".

Amendment agreed to.

Government amendment No. 125:

In page 111, to delete lines 21 to 25 and substitute the following:

126.—(1) A person shall not—

(*a*) act as an approved intermediary,

(*b*) hold himself or herself out as available to act as an approved intermediary, or

(*c*) represent himself or herself by advertisement as available to act as an approved intermediary,

unless that person is authorised to so act by virtue of this Act.

(2) A person who acts in contravention of *subsection (1)* is guilty of an offence.".

Amendment agreed to.

Government amendment No. 126:

In page 111, line 30, to delete "Class C" and substitute "Class A".

Amendment agreed to.

Government amendment No. 127:

In page 112, to delete lines 39 to 41.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 128 to 130, inclusive, are related and may be dis-

cussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 128:

In page 112, line 45, to delete "receiving the notice" and substitute the following:

"receiving the notice or the appropriate court otherwise directs or permits".

Deputy Alan Shatter: Amendments Nos. 128 to 130, inclusive, are drafting amendments designed to allow for service of notices by ordinary prepaid letter rather than by registered prepaid letter as currently required by section 129. This change has been suggested by legal practitioners to address difficulties in using registered post effectively. It is the experience of many solicitors that up to 50% of this post is not delivered. The single largest reason is "not called for". Other reasons include "refused" or "gone away". *Ex parte* applications are expensive and time-consuming to follow up on. In Northern Ireland such service of documents is now conducted via first class post.

Amendment agreed to.

Government amendment No. 129:

In page 113, to delete lines 1 to 4 and substitute the following:

"(*a*) where a person is a natural person—

(i) by giving it to the person personally, or

(ii) by sending it by prepaid post, or otherwise delivering it, in a letter addressed to the person at the person's usual or last known place of residence or business,

or".

Amendment agreed to.

Government amendment No. 130:

In page 113, to delete lines 8 to 13 and substitute the following:

"(ii) by leaving it at the registered office of the body, or

(iii) by sending it by prepaid post in a letter addressed to the body at that registered office.".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 131 to 133, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 131:

In page 113, line 31, to delete "The Minister" and substitute the following:

"The Insolvency Service, with the consent of the Minister".

Deputy Alan Shatter: At present, section 131 requires the Minister for Justice and Equal-

ity to prescribe the form of the prescribed financial statement to be used in applications for the new debt resolution processes provided for in the Bill. For flexibility, amendments Nos. 131 and 132 propose instead that the Insolvency Service should carry out this function. Amendment No. 133 is a technical drafting amendment to improve the presentation of section 131.

Amendment agreed to.

Government amendment No. 132:

In page 113, line 43, to delete "the Minister" and substitute "the Insolvency Service" .

Amendment agreed to.

Government amendment No. 133:

In page 114, line 7, to delete "that information" and substitute "that personal data and information".

Amendment agreed to.

Government amendment No. 134:

In page 114, lines 11 and 12, to delete "authorised intermediary" and substitute "approved intermediary".

Amendment agreed to.

Government amendment No. 134*a*:

In page 114, line 38, to delete "98/26/EC4" and substitute "98/26/EC".

Deputy Alan Shatter: Amendment No. 134*a* is a technical drafting amendment to correct a presentational error in the text of section 133.

Amendment agreed to.

Government amendment No. 135:

In page 114, after line 47, after the proposed section 134 inserted at Committee Stage, to insert the following:

134.—(1) Notwithstanding any other provision of this Act, or any other enactment or rule of law, rules of court may, in relation to any proceedings under this Act

before an appropriate court, make provision for—

(*a*) the lodgement or filing of a document with, and making of an application to, the court by transmitting the document or application by electronic means to the court office,

(*b*) the issue by the court or court office, by transmitting the document concerned by electronic means to an appropriate person, of any of the following:

(i) a summons, civil bill or other originating document,

(ii) a judgment, decree or other order or determination of a court (including any judgment, decree or other order or determination entered in or issuing from a court office), or

(iii) any other document required under this Act to be issued by or on behalf of the court or court office concerned,

or

(*c*) the transmission by the court or court office by electronic means of any other document or information required under this Act to be transmitted by or on behalf of a court or court office.

(2) Where rules of court referred to in *subsection (1)* provide for the transmission of a document by electronic means, such rules may, in addition:

(*a*) provide that such transmission is subject to such conditions and such exceptions as may be specified in the rules,

(*b*) in relation to the transmission of a document referred to in *subsection (1)(a)*, require that—

(i) such a document be authenticated, and

(ii) the identity of the person transmitting such a document be verified, in such manner as may be specified in the rules, and

(*c*) specify, in relation to the transmission of such a document by, or to, the Insolvency Service, whether such transmission is in place of, or is an alternative to, any other method by which such document could be filed, lodged, issued or transmitted, or such application could be made, as the case may be.

(3) Rules of court may provide that, where a document that is required by this Act to be furnished to, or lodged or filed with, the appropriate court, is, in accordance with rules of court referred to in *subsection (1)*, furnished to, or lodged or filed with, that court by electronic means—

(*a*) a copy of that document transmitted by electronic means and displayed in readable form, or

(*b*) a printed version of such a copy, shall be treated as the original of that document.

(4) Rules of court made in accordance with this section may make different provision for the transmission of documents by, and to, the Insolvency Service to the provision made for the transmission of documents by, and to, other persons.

(5) References in this Act to the—

(*a*) furnishing of a document to,

(*b*) lodgement or filing of a document with,

(*c*) making of an application to,

(*d*) transmission of a document to or by, or

(*e*) issue of a document by,

the appropriate court shall be construed as including a reference to the performance of such action by electronic means, where this is provided for in rules of court referred to in *subsection (1)*.

(6) In this section—

"appropriate person", in relation to a document referred to in *subsection (1)(b)*, means—

(*a*) the Insolvency Service, where it applied to the appropriate court for the issue of that document,

(*b*) the person who applied to the appropriate court for the issue of that document,

(*c*) where applicable, the approved intermediary or personal insolvency practitioner of a person referred to in *paragraph (b)*, or

(*d*) where applicable, a solicitor acting on behalf of an approved intermediary or personal insolvency practitioner referred to in *paragraph (c)*;

"court office" means—

(*a*) in relation to an appropriate court, an office of, or attached to, that court and, where the appropriate court is the Circuit Court, means an office referred to in *section 5(3)*, or

(*b*) any office of the Courts Service designated by the Courts Service for the purpose of receiving documents or applications, or issuing documents, by electronic means for the purposes of this Act.".

Amendment agreed to.

Government amendment No. 135*a*:

In page 114, after line 47, to insert the following:

"134.—(1) The Minister shall, in consultation with the Minister for Finance, not later than 3 years after the commencement of this Part, commence a review of its operation.

(2) A review under *subsection (1)* shall be completed not later than one year after its commencement.

(3) Having completed the review the Minister in consultation with the Minister for Finance shall prepare a report setting out the assessment arrived at and the reasons for that assessment.

(4) The Minister shall lay a copy of a report prepared under *subsection (3)* before each House of the Oireachtas as soon as reasonably practicable after it has been completed."

Amendment agreed to

Government amendment No. 136:

In page 115, between lines 10 and 11, to insert the following:

" 'trustee' " means a person appointed as trustee under Part V;"."

Deputy Alan Shatter: This amendment inserts ""trustee" to mean a person appointed as a trustee under Part V" to give greater clarity to the Bill.

Amendment agreed to.

Government amendment No. 137:

In page 115, between lines 10 and 11, to insert the following:

135.—Section 7 of the Bankruptcy Act 1988 is amended in subsection (1) by the insertion after paragraph (*c*) of the following paragraphs:

"(*ca*) the individual has been subject as a debtor to a Debt Settlement Arrangement which has been terminated under *section 79* of the *Personal Insolvency Act 2012*;

(*cb*) the individual has been subject as a debtor to a Debt Settlement Arrangement which under *section 80* of the *Personal Insolvency Act 2012* is deemed to have failed;

(*cc*) the individual has been subject as a debtor to a Personal Insolvency Arrangement which has been terminated under *section 117* of the *Personal Insolvency Act 2012*;

(*cd*) the individual has been subject as a debtor to a Personal Insolvency Arrangement which under *section 118* of the *Personal Insolvency Act 2012* is deemed to have failed;".

Amendment agreed to.

Government amendment No. 138:

In page 116, lines 31 and 32, to delete "value of assets" and substitute "value of the assets".

Amendment agreed to.

Government amendment No. 139:

In page 116, lines 35 and 36, to delete all words from and including "the" where it firstly occurs in line 35 down to and including "Court" in line 36 and substitute the following:

"the contents of any statement of affairs of the debtor filed with the Court".

Amendment agreed to.

Government amendment No. 140:

In page 116, line 47, to delete "in the State" and substitute the following:

"in the State.

(4) For the purposes of subsection (2), the Court may order the bankrupt to attend and make full disclosure of his assets and liabilities to the Court by way of a statement of affairs filed with the Court.".".

Amendment agreed to.

Government amendment No. 141:

In page 117, lines 7 and 8, to delete all words from and including "is" in line 7 down to and including "creditors" in line 8 and substitute the following:

"is unable to meet his engagements with his creditors and that the requirements of *section 11(4)* and *(5)* have been complied with".

Amendment agreed to.

Government amendment No. 142:

In page 117, lines 11 and 12, to delete "value of assets" and substitute "value of the assets".

Amendment agreed to.

Government amendment No. 142*a*:

In page 117, between lines 37 and 38, to insert the following:

141.—The Bankruptcy Act 1988 is amended by the insertion, after section 44, of the following sections:

44A.—(1) Subject to subsection (2), where a person is adjudicated bankrupt, and he or she is, or may become entitled to, payments under a relevant pension arrangement, assets relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt was entitled to receive, under the arrangement) shall not vest in the Official Assignee for the benefit of the creditors of the bankrupt.

(2) Where a bankrupt has an interest in or entitlement under a relevant pension arrangement which would, if the bankrupt performed an act or exercised an option,

cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(*a*) an income, or

(*b*) an amount of money other than income,

in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that bankrupt shall be considered as being in receipt of such income, and such amount of money shall vest in the Official Assignee or the trustee in bankruptcy.

(3) Subsection (2) applies where—

(*a*) the bankrupt is entitled at the date of being adjudicated a bankrupt to perform the act or exercise the option referred to in *subsection (2)*,

(*b*) was entitled at any time before the date of the adjudication, to perform the act or exercise the option referred to in *subsection (2)*, but had not performed the act or exercised the option, or

(*c*) will become entitled within 5 years of the date of the adjudication to perform the act or exercise the option referred to in *subsection (2)*.

(4) Where subsection (2) applies, the Official Assignee or the trustee in bankruptcy may where he or she considers that it would be beneficial to the creditors of the bankrupt to do so, perform an act or exercise an option referred to in *subsection (2)* in place of the bankrupt.

(5) In this section and in sections 44B and 85D a reference to a relevant pension arrangement means:

(*a*) a retirement benefits scheme, within the meaning of *section 771* of the *Taxes Consolidation Act 1997*, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of that Act;

(*b*) an annuity contract or a trust scheme or part of a trust scheme for the time being approved by the Revenue Commissioners under *section 784* of the *Taxes Consolidation Act 1997*;

(*c*) a PRSA contract, within the meaning of *section 787A* of the *Taxes Consolidation Act 1997*, in respect of a PRSA product, within the meaning of that section;

(*d*) a qualifying overseas pension plan within the meaning of *section 787M* of the *Taxes Consolidation Act 1997*;

(*e*) a public service pension scheme within the meaning of *section 1* of the *Public Service Superannuation (Miscellaneous Provisions) Act 2004*;

(*f*) a statutory scheme, within the meaning of *section 770(1)* of the *Taxes Consolidation Act 1997*, other than a public service pension scheme referred to in *paragraph (e)*;

(*g*) such other pension arrangement as may be prescribed by the Minister, following consultation with the Ministers for Finance, Social Protection and Public Expenditure and Reform.

44B.—(1) Where, on application by the Official Assignee or the trustee in bankruptcy, the Court is satisfied that the bankrupt, or a person on his or her behalf, has within the 3 years prior to the adjudication made contributions to a relevant pension arrangement under which the bankrupt is, or may become entitled to, payments and which contributions—

(*a*) were excessive in view of the bankrupt's financial circumstances when

those contributions were made, and

(*b*) had the effect of—

(i) materially contributing to the bankrupt's inability to pay his or her debts, or

(ii) substantially reducing the sum available for distribution to thecreditors,

the Court may make such order in relation to the relevant pension arrangement as it considers appropriate for the purpose of ensuring that the contributions which the Court considers to be excessive or any part of such contributions can be vested in the Official Assignee or the trustee in bankruptcy to be made available for distribution to the creditors.

(2) In considering an application under *subsection (1)* and in determining whether or not the contributions made by the bankrupt to a relevant pension arrangement were excessive the court may have regard to all the financial circumstances of the bankrupt and in particular:

(*a*) whether the bankrupt made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the bankrupt made the contribution concerned;

(*b*) whether the bankrupt was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the bankrupt or a person who as respects the bankrupt is a relative could have materially influenced the creation of such obligation;

(*c*) the amount of the contributions paid, including the percentage of total income of the bankrupt in each tax year concerned which such contributions represent;

(*d*) the amount of the contributions paid, in each of the 6 years prior to the making of the adjudication including the percentage of total income of the bankrupt which such contributions represent in each of those years;

(*e*) the age of the bankrupt at the relevant times;

(*f*) the percentage limits which applied to the bankrupt in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement; in each of the 6 years prior to the adjudication; and

(*g*) the extent of provision made by the bankrupt in relation to any relevant pension arrangement prior to the making of the contributions concerned.

(3) In this section "relative" as respects a person, means a brother, sister, parent, spouse or civil partner of the person or a child of the person or of the spouse or civil partner.".

Amendment agreed to.

Government amendment No. 142*b*:

In page 118, between lines 7 and 8, to insert the following:

145.—The Bankruptcy Act 1988 is amended by the insertion, after section 65, of the following new section:

65A.—An application for an order under *section 65* shall not be made after the coming into operation of this section, but this section shall not operate to prevent an application under *section 65(2)* where an order under *section 65(1)* is in force on the coming into operation of this section.”.”.

Amendment agreed to.

Government amendment No. 143:

In page 118, to delete lines 37 to 39 and substitute the following:

“(5) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy.

(6) In this section and in *sections 85A* to *85D* ‘bankrupt’ includes personal representatives and assigns.”.

Amendment agreed to.

Government amendment No. 144:

In page 118, line 40, to delete “Official Assignee or a creditor” and substitute the following:

“Official Assignee, the trustee in bankruptcy or a creditor”.

Amendment agreed to.

Government amendment No. 145:

In page 118, line 45, to delete “Official Assignee or the creditor” and substitute the following:

“Official Assignee, the trustee in bankruptcy or the creditor”.

Amendment agreed to.

Government amendment No. 146:

In page 119, line 10, to delete “by a creditor” and substitute “by the trustee in bankruptcy or a creditor”.

Amendment agreed to.

Government amendment No. 147:

In page 120, between lines 8 and 9, to insert the following:

"(3) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy.".

Amendment agreed to.

Government amendment No. 148:

In page 120, between lines 22 and 23, to insert the following:

"(3) A person whose bankruptcy has been annulled may apply to the Official Assignee for the issue of a certificate that the bankruptcy has been annulled.".

Amendment agreed to.

Government amendment No. 148*a*:

In page 120, to delete lines 23 to 49 and in page 121, to delete lines 1 to 3 and substitute the following:

85D.—(1) The Court may, on application being made to it by the Official Assignee or the trustee in bankruptcy, make an order requiring a bankrupt to make payments to the Official Assignee or the trustee in bankruptcy from his income or other assets for the benefit of his creditors (a 'bankruptcy payment order').

(2) An application for a bankruptcy payment order may not be made after the bankrupt has been discharged from bankruptcy, but where an application for such an order is made before the discharge of the bankrupt, the Court may make a bankruptcy payment order after the date of discharge as if the bankrupt had not been so discharged.

(3) An order made under *subsection (1)* shall have effect for no longer than 5 years from the date of the order coming into operation, and where, during the order's validity, the court has varied the order under *subsection (5)* such variation shall not cause the order to have effect for a period of more than 5 years, and in any event, any order made under *subsection (1)* or varied under *subsection (5)* shall cease to have effect on the 8th anniversary of the date on which the bankrupt was adjudicated bankrupt.

(4) In making an order under *subsection (1)* the Court shall have regard to the reasonable living expenses of the bankrupt and his or her dependants and the Court may also have regard to any guidelines on reasonable living expenses issued by the Insolvency Service under the *Personal Insolvency Act 2012* or by the Official Assignee.

(5) The Court, on the application of the bankrupt or the Official Assignee or the trustee in bankruptcy, may vary a bankruptcy payment order granted under *subsection (1)* where there has been a material change in the circumstances of the bankrupt.

(6) The court in granting an application under *subsection (1)* may order any person from whom the bankrupt is entitled to receive any salary, income, emolument, pension or other payment to make payments to the Official Assignee or trustee.

(7) For the purposes of this section, where a bankrupt is, or may become entitled to, payments under a relevant pension arrangement, an asset relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt was entitled to receive, under the arrangement) shall not be regarded as an asset.".".

Amendment agreed to.

Amendments Nos. 149 to 152, inclusive, not moved.

Government amendment No. 153:

In page 121, between lines 3 and 4, to insert the following:

147.—Section 123(3)(*b*) of the Bankruptcy Act 1988 is amended by the substitution of "3 years" for "twelve months".

Amendment agreed to.

Government amendment No. 153*a*:

In page 38 of the list of amendments made in Committee, to delete the text inserted by amendment no. 87 and substitute the following:

166.—(1) A person may make a complaint in writing to the Insolvency Service alleging that improper conduct by a personal insolvency practitioner has occurred or is occurring.

(2) Where the Insolvency Service receives a complaint it shall—

(*a*) notify the personal insolvency practitioner concerned in writing of the receipt of the complaint,

(*b*) provide the personal insolvency practitioner with a copy of the complaint and a copy of any documents furnished to the Insolvency Service by the complainant,

(*c*) refer the personal insolvency practitioner to any regulations made under *sections 149* and *161* and to any guidelines or codes of practice issued under *section 132*, and

(*d*) request the personal insolvency practitioner to provide a response in relation to the complaint within a time specified in the notification.

(3) Where the Insolvency Service receives a response to the request referred to in *subsection (2)(d)* it shall consider the response and having considered the response it may, where—

(*a*) it is satisfied that the complaint is not made in good faith,

(*b*) it is satisfied that the complaint is frivolous or vexatious or without substance or foundation, or

(*c*) subject to *subsection (6)*, it is satisfied that the complaint is likely to be resolved by mediation or other informal means between the parties concerned, determine the complaint accordingly and in that case it shall give notice in writing to the complainant and the personal insolvency practitioner to whom the complaint relates of the decision and the reasons for the decision.

(4) Where the Insolvency Service does not receive a response to the request referred to in *subsection (2)(d)*, or having received a response it considers that none of *para-*

graphs (a) to *(c)* of *subsection (3)* apply, it shall cause an investigation of the matter the subject of the complaint to be carried out.

(5) Where a complaint is withdrawn by a complainant before the investigation report which relates to the complaint has been furnished by the inspector concerned pursuant to *section 170(2)*, the Insolvency Service may proceed as if the complaint had not been withdrawn if it is satisfied that there is good and sufficient reason for so doing.

(6) Where, pursuant to *subsection (5)*, the Insolvency Service proceeds as if a complaint had not been withdrawn, the investigation concerned shall thereupon be treated as an investigation initiated by the Insolvency Service, and the other provisions of this Act shall be construed accordingly.

(7) Where a complaint is not resolved by mediation or other informal means referred to in *subsection (3)(c)*, the complainant may, at his or her discretion, make a fresh complaint in respect of the matter the subject of the first-mentioned complaint.".

Deputy Alan Shatter: This amendment corrects cross-references in the section.

Amendment agreed to.

Government amendment No. 154:

In page 53, of the list of amendments made in Committee, to delete the text inserted by amendment no. 101 and substitute the following:

153.—The Courts and Court Officers Act 1995 is amended—

(*a*) in section 12, in the definition of "judicial office", by inserting ", specialist judge of the Circuit Court" after "Circuit Court",

(*b*) in section 16(7) (as amended by *section 8* of the *Courts and Court Officers Act 2002*), by substituting the following paragraph for *paragraph (a)*:

"(*a*) When submitting the name of a person to the Minister under this section, the Board shall indicate whether the person satisfies the requirements of—

(i) *subsection (2)* of *section 5* (as amended by *section 4* of the *Courts and Court Officers Act 2002*) of the Act of 1961 (in the case of an appointment to the office of ordinary judge of the Supreme Court or of ordinary judge of the High Court),

(ii) *subsection (2)* or *(2B)* of *section 17* (as amended by *section 149* of the *Personal Insolvency Act 2012*) of the Act of 1961 (in the case of an appointment to the office of judge of the Circuit Court),

(iii) *subsection (4)* (inserted by *section 149* of the *Personal Insolvency Act 2012*) of *section 17* of the Act of 1961 (in the case of an appointment to the office of specialist judge of the Circuit Court), or

(iv) *subsection (2)* or *(3)* of *section 29* of the Act of 1961 (in the case of an appointment to the office of judge of the District Court), in respect of appointment to the judicial office for which the person wishes to be considered

and the Board shall not recommend a person to the Minister under this section unless the person satisfies those requirements.",

(c) by inserting the following after section 19:

19A.—A specialist judge of the Circuit Court shall take such course or courses of training or education, or both, as may be required by the Chief Justice or the President of the Circuit Court, at such time or times as the Chief Justice or, as the case may be, the President of the Circuit Court may specify."

Amendment agreed to.

Government amendment No. 155:

In page 55 of the list of amendments made in Committee, to delete the text inserted by amendment no.103, and to substitute the following:

155.—Section 10 of the Courts of Justice Act 1947 is amended—

(*a*) in subsection (1), by deleting "by *subsections (2), (3), (4), (5)* and *(6)* of this section" and substituting "by this section",

(*b*) in subsection (2), by deleting *paragraph (e)*, and

(c) by adding the following after *subsection (6)*:

"(8) Subsections (2), (4) and (5) shall not apply to the distribution of the work, or the despatch of the business, of the Circuit Court that is required to be done by or transacted before a specialist judge of the Circuit Court.

(9) The President of the Circuit Court may, from time to time, by order fix, in respect of any circuit the—

(*a*) places therein at which sittings before specialist judges are to be held,

(*b*) times during the year and the hours between which (which may include times and hours other than the times and hours of the sittings of the Circuit Court fixed under *subsection (2)*) such sittings are to be held, and, whenever such an order is in force, such sittings within that circuit shall be held—

(i) at the place fixed by the order and not elsewhere, and

(ii) at the times during the year and between the hours fixed by the order.

(10) The President of the Circuit Court may, before exercising his or her powers under *subsection (9)(a)* in respect of a circuit, consult the specialist judge permanently assigned to that circuit.

(11) Where 2 or more specialist judges are for the time being assigned (whether permanently or temporarily) to a particular circuit, the President of the Circuit Court, after consultation with those specialist judges, may, from time to time, allocate the business of the Circuit Court in that circuit that is required to be transacted before a specialist judge amongst those specialist judges.

(12) Where a specialist judge is for the time being assigned (whether permanently or temporarily) to a particular circuit, the President of the Circuit Court may, after consultation with that specialist judge, in respect of any business of the Circuit Court which may be transacted both before a county registrar for a county, county borough or other area within a circuit and a specialty judge assigned to that circuit, by order—

(*a*) direct that such business is to be transacted before a county registrar and not before a specialist judge, or

(*b*) allocate such business amongst the specialty judges and the county registrars concerned.

(13) Every order made under subsection (2), (9) or (12) shall, as soon as may be after it is made, be published in such manner as the President of the Circuit Court may direct."

Amendment agreed to.

Bill, as amended, received for final consideration.

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

Minister for Justice and Equality (Deputy Alan Shatter): I thank Senators for a very constructive and interesting debate on this Bill as it has moved through all Stages. I thank them for the issues they raised and hope issues of difficulty discussed in this Chamber are now fully addressed in the content of the Bill. Bringing the Bill to a conclusion in the Seanad has been like running a marathon. This is complex legislation and we have taken up a lot of time in the Chamber but it has been time well spent. I must now return to the other House and explain why we did so much constructive business in the House and seek approval in the Dáil for the amendments now included in the Bill.

The Bill is of substantial importance in the current economic climate where so many citizens find themselves in serious financial difficulty, many through no fault of their own. The new debt resolution mechanisms provided for in the Bill give rise to a possibility of people working through their debt issues with real hope for the future. I look forward to and hope the objectives of the Bill will be fulfilled and that it will facilitate individuals who genuinely cannot pay their debts and are in major financial difficulty entering into constructive and appropriate arrangements with creditors, including financial institutions. It is vital that creditors have the fullest information available to them as to individuals' financial resources and income, assets and liabilities, and that they apply a degree of common sense and realism in any discussions that may take place with a view to addressing issues through the non-judicial debt settlement mechanism. Reforms are also being made to bankruptcy which essentially prescribe a three-year period of bankruptcy, a substantial change in our law that creates the possibility for individuals who find themselves bankrupt to rebuild their lives within a reasonable period while extending to creditors the possibility during the period of bankruptcy of recouping what can be recouped by them to meet debts that are legally and appropriately due.

I thank Senators for the substantial work they undertook on the Bill and for the very interesting contributions made in this House. I value the time we have spent dealing with the Bill.

Senator Ivana Bacik: I thank the Minister for his kind words. Today was the 90th anniversary of the first Seanad and it was noted how many amendments have been tabled in this House in that period. This Bill is a case in point, where we have made a couple of hundred amendments in the course of a comprehensive debate. The Bill is of great importance. We hope the debt resolution mechanisms will work to offer people some prospect of hope when they are in desperate straits and that it will help those who face difficulties with repayments on the family home. I have lived with this Bill since it was before the Joint Committee on Justice, Defence and Equality. That model was useful because it was important to discuss the heads of the Bill with interested groups before the Bill itself was published. I thank the Minister for how the Bill was designed as well as for its substance. The images from the debate on ornamentation will live with me for some time.

Senator Paul Bradford: I thank the Minister and his hard working officials for their work in preparing the Bill, bringing it before the committee, the Dáil and the Seanad. It has been a long process and I hope the result of our deliberations will be an Act that will bring a degree of hope, certainty and optimism in cases where there is not at present. The debate in the Seanad showed the House at its best, with matters being thoroughly discussed in a non-partisan fashion with the interest of the people at the top of the agenda. I thank the Minister for his patience and understanding. We look forward to be Bill going back to the other House and being enacted in the near future so citizens can use its provisions allowing for a degree of economic and social progress, which is what we all hope will be the outcome of this legislation.

Senator Labhrás Ó Murchú: I join in complimenting the Minister and his officials on completing this important and comprehensive legislation. This has been a lengthy but worthwhile process and the Minister has been especially helpful on all occasions, listening carefully and responding methodically and meticulously during many hours of debate. The Bill is a timely response to the position in which we find ourselves. It is also clear that it has secured a large degree of consensus. I thank the Minister and his officials.

Senator Sean D. Barrett: I echo everything that has been said by my colleagues. Mr. Joseph Spooner of the Law Reform Commission estimates that between 1995 and 2009 the ratio of household debt to income increased from 48% to 176%. This is significant and necessary social legislation, which will make a contribution towards putting together the pieces and improving the country following a series of financial disasters. It replaces bankruptcy with conciliation and arbitration. I thank the Minister for his patience and compliment him on his erudition. Senators are indebted to him for the tutorials he provided, which have substantially improved my knowledge. I wish him well in the Dáil with the amended Bill.

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Ivana Bacik: Tomorrow at 10.30 a.m.

Adjournment Matters

Barracks Closures

Senator Denis Landy: I apologise to the Minister for arriving late and briefly delaying him. The issue I raise is the proposed closure of the Reserve Defence Force facility in Clonmel. As the Minister will be aware, Kickham Barracks closed on 29 March last, thus ending 350 years of a military presence in Clonmel. The Third Cavalry Battalion of the Reserve Defence Force was attached to the barracks and following its closure, negotiations with the Minister resulted in a Reserve Defence Force headquarters being located in Clonmel. As a result, 55 active members continued their weekly meetings and training at the location.

As a result of the Minister's recent announcement in that the Reserve Defence Force will be consolidated nationwide, the Third Cavalry Battalion will cease to function in Clonmel and move to Cork. This decision has come as a great shock to the 55 members of the battalion who serve in the town. This group, which include individuals from Carrick-on-Suir, where I live, Cahir, Fethard and surrounding areas, will have to travel to Cork for training every week if they wish to continue to serve their country. Making this journey of approximately 70 miles in each direction will require the provision of at least two minibuses. While I am aware of the cost of renting, operating and maintaining the building currently in use in Clonmel, the decision to close the facility and incur weekly transport costs to Cork does not make financial sense. Moreover, the loss to Clonmel of this military unit, of which I was a member for many years, will also result in the loss of a military tradition as Reserve Defence Force will no longer be recruited in south County Tipperary.

Following his recent announcement, the Minister indicated the closed Kickham Barracks will be developed to provide a new Garda barracks and other services. At this late stage, I appeal to him to give a commitment to serving members of the Reserve Defence Force in Clonmel that he will reserve a section of the new facility at the barracks to allow them to return to Clonmel. Such a decision would save money in the long term and allow a 350 year old tradition in the town to continue. It would also facilitate continued recruitment in the local area of young men and women who wish to serve in the Reserve Defence Force. I ask the Minister to consider my proposal and look forward to his response.

Minister for Defence (Deputy Alan Shatter): I thank the Senator for raising this issue. As he will be aware, a value for money review of the Reserve Defence Force, RDF, was recently completed and published. The review was undertaken by a steering committee with an independent chair and had representatives from the Department of Defence, the Defence Forces and the Department of Public Expenditure and Reform. It found that the current effective strength of the Army Reserve and Naval Service Reserve, at 4,500 personnel, was substantially less than half that of the 9,692 personnel for which the organisational structures were designed. In addition, it found that the low uptake of training within the reserve raised serious questions about its current capacity. For example, during 2011 the number of reservists who met paid and unpaid training targets required for the payment of a gratuity was 2,010 personnel.

The steering committee made a series of recommendations which were aimed at ensuring a viable Reserve Defence Force into the future. In this context, a key recommendation was for a major reorganisation of the Reserve, with organisational structures that were sustainable within the current resource envelope. Arising from the reorganisation of the Permanent Defence Force, within a strength level of 9,500 personnel, the number of Permanent Defence Force personnel available to support the Army Reserve in a full-time capacity is being reduced to 48. A cadre of a further nine Permanent Defence Force personnel is assigned to support the Naval Service Reserve.

The steering committee recommended an Army Reserve and Naval Service Reserve based on a total strength ceiling of 4,000 personnel, 3,800 of whom would be Army Reserve and 200 of whom would be Naval Service Reserve personnel. It recommended the retention of a country-wide geographic spread, with units in existing Permanent Defence Force installations and 16 locations outside these installations.

8 o'clock

I accepted these recommendations and directed that proposals for new organisational structures be prepared. The Chief of Staff and Secretary General of my Department submitted a joint report which set out detailed reorganisation proposals, including unit structures and the location of Reserve units. Their recommendation was based on a single force concept which differs from the current model of Reserve organisation. Army units will have Permanent Defence Force and Reserve elements rather than a parallel Reserve structure as at present.

This approach offers significant advantages in terms of accessing equipment and training. Under this organisational model, the only Army Reserve elements outside Permanent Defence Force installations will be Reserve infantry companies. All other Army Reserve combat support and combat service support elements will be co-located with their PDF counterparts in PDF installations. This will be in Cork in the case of 1 Brigade. Accordingly, it is no longer feasible to retain Reserve cavalry or medical elements in Clonmel. The training and support of Reserve elements of Defence Forces units located in PDF installations will be undertaken by the PDF element of those units. The 16 Reserve infantry companies outside PDF installations will have additional support from 16 teams of full-time PDF personnel.

The Senator will appreciate that the consolidation of existing Reserve into a small number of full strength units means it is not possible to retain all existing locations. Clonmel was not selected as a location for one of these 16 infantry companies which are distributed throughout the country. I emphasise that this is not a negative reflection on the quality of participation of the current reservists in Clonmel but reflects the reality that all locations cannot be retained.

All members of the Reserve will be afforded the opportunity to apply for positions within the new organisational structure, having regard to their particular needs. The closest Reserve infantry companies to Clonmel will be based in Waterford, Kilkenny and Templemore. Personnel will be able to avail of retraining should this be required. The overall travel costs of the new Reserve units will not be known for some time but I can confirm that no increase in the overarching Reserve budget is anticipated or planned. I am satisfied that given a reduction in direct expenditure on the reserve of €11 million in 2013, the new Reserve will be significantly more cost-effective than the existing organisation.

I emphasise that the contribution and commitment of each member of the Reserve is valued and appreciated. I sincerely hope all members of the Reserve Defence Force will continue to serve within the new organisation. Unfortunately, I cannot accede to the request made by the Senator that we preserve the Reserve in Clonmel or that Clonmel remain a location for Reserve training.

Senator Denis Landy: The Minister is proposing to provide finance for the development of the old Army barracks into a new Garda unit. When that happens and when the economic situation is better, will he consider returning an element of the Reserve Defence Force to Clonmel? While the Minister has listed the nearest locations, this is a cavalry battalion that is to be

located in Cork. Therefore, the costs, as I have outlined, can be estimated and will certainly outweigh the current costs. I regret that I must raise this issue on the Adjournment and that this seems to be the last chance for the military serving in Clonmel.

Deputy Alan Shatter: The decisions made in this regard were based on the operational assessments and judgements of the Chief of Staff and the Secretary General of my Department looking at the most appropriate locations to ensure we preserve a nationwide representation of the Reserve. In respect of the issue the Senator raised relating to Cork, I emphasise that all reservists will be invited to apply for positions within the new organisational structure. They must decide based on their particular circumstances as to which units best serve their needs. This can and may include transferring from their current corps such as cavalry to an alternative such as infantry. Every effort will be made to facilitate reservists with their choice, however, this may not be feasible if units are over-subscribed. As this process unfolds, there will be a clearer picture as to the locations which reservists wish to relocate to. It is important to state that military authorities have informed that they do not envisage transporting reservists from Clonmel to Cork or other locations.

I hope members of the Reserve Defence Force, particularly active members who are doing the community a service and are committed to and very much enjoy their involvement and engagement in the reserve, will show the flexibility and understanding that is necessary in the circumstances that now pertain. In the context of the reserve, we must ensure that it has a capability, that members of the Reserve participate in the minimum training and that the Reserve readjusts to the very substantial and dramatic changes made in the Permanent Defence Force where we have moved from a three-brigade to a two-brigade structure. I have an obligation in current circumstances as Minister for Defence to ensure the reorganisation of the Permanent Defence Force is reflected in an appropriate reorganisation of the Reserve Defence Force in the context of ensuring the public gets value for money and that we do not unduly waste resources. In addition, the advantage of the new arrangements is that there will be greater connectivity between the Permanent Defence Force and the reserve, as opposed to a reserve operating to a great extent as a separate organisation save for the PDF cadre that was available to assist it in its operations and training.

I hope the reforms will be welcomed by the members of the Reserve in so far as they will have a changing and, I hope, more relevant role and a greater engagement with the PDF in general. I also hope that those members of the Reserve who have been engaged and active will continue to do so. I am also anxious to ensure that, in the context of the Reserve, we have a real strength as opposed to a nominal one. I have concerns that, as I pointed out in 2011, only 2,010 of the 4,500 members of the Reserve fully participated in the minimum seven days training that is prescribed to maintain some degree of capability within the Reserve. I am sure the reservists in Clonmel are disappointed that this location has not been retained. We will over a period of months be working through the implementation of the reforms, which will not be implemented overnight. A consultative process is taking place. I wish all the members in Clonmel well and thank them for their service so far. I hope those members in Clonmel who are committed to and actively participating in the Reserve can readjust to maintain their involvement.

Wastewater Treatment Systems

Senator Lorraine Higgins: I welcome the Minister for the Environment, Community and

Local Government to the House and thank him for taking this matter on the Adjournment. I commend him for moving to implement this legislation as I know it has rested on successive Ministers' desks as a way of avoiding the enactment of it and complying with our EU obligations in this regard.

We all know that clean water is essential not only for our health and well-being but is a prerequisite for multinational companies who want to set up on these shores. Clean water is of paramount importance to the economy and our health. Given the existence of approximately 450,000 septic tanks and wastewater treatment systems, the Department and associated agencies have quite a large number to police. While registration is mandatory, could the Minister provide the House with an update as regards the most recent registration numbers of wastewater treatment systems under the Water Services (Amendment) Act 2012?

It is an unfortunate reality that many householders are struggling. In particular, there is a significant number of rural householders who face the possibility of having to spend thousands of euro upgrading their tanks while city dwellers do not face such charges. Not only is this an inequity, it is financially onerous on people living in rural areas in these recessionary times. I ask the Minister to earnestly consider providing financial support for low-income families for remediation works that may be necessary following an inspection under the Act.

Minister for the Environment, Community and Local Government (Deputy Phil Hogan): I thank the Senator for the opportunity to outline the position with regard to the registration of domestic wastewater treatment systems.

The Water Services (Amendment) Act 2012 provided for the establishment of a new system for the registration and inspection of septic tanks and other domestic wastewater treatment systems. I made regulations in June setting out the procedures for householders to register details of their treatment systems with their water services authorities. The Local Government Management Agency developed an online registration facility, on a shared service basis for the 34 county and city councils, and the agency has also been tasked with managing a central bureau to process written applications accompanied by registration fees. Registration facilities have been available from 26 June 2012. In keeping with a previous commitment, I set the registration fee at €5 for the first three months of the registration period, up to 28 September this year, and the fee payable since that date is €50. The registration fees are intended to cover the costs to the water services authorities of administering the registers and managing the risk-based inspection system which will be implemented in 2013.

As of 10 December 2012, applications in respect of the on-site wastewater treatment systems of 241,000 owners, who have registered online, by post or in person at their local authority offices, have been processed. I understand that approximately a further 50,000 owners have submitted registration applications which have yet to be processed by the bureau operated by the Local Government Management Agency. This means that more than 290,000 owners have registered their systems. This compares with the almost 500,000 houses that are served by septic tanks or other on-site treatment systems that were recorded in Census 2011. Householders who have not yet registered have until 1 February 2013 to register their system. I would encourage each of them to register on time to ensure they are in compliance with the law. Registration can be done online, by post or at local authority offices.

I am very aware of the concerns that have been expressed and raised by the Senator that some householders are concerned they may incur significant expense in repairing or upgrading

their systems if they fail an inspection. I have stated on a number of occasions that I am prepared to consider all possible options to provide financial support to those householders whose wastewater treatment systems are deemed, following inspection under the new legislation, to require substantial remediation or upgrading. The provision of any financial support will have regard to the overall budgetary situation and to the financial position of the individual householders concerned. If we are introducing any financial support at some stage in the future, this support would be targeted as a last resort to people on low incomes who have been unable, due to their means, to facilitate a major improvement of their wastewater treatment system.

I remind the House that this legislation was introduced to ensure compliance with a European Court of Justice ruling against Ireland. It is important the legislation is fully implemented not just to comply with the court ruling but also to protect our very valuable water resources. The Senator is correct to point out the importance of good quality water to householders, the agriculture and food industry and businesses generally.

Senator Lorraine Higgins: I thank the Minister for outlining the situation. I welcome the fact that 290,000 people have registered their septic tank or wastewater treatment system. It is also welcome to hear the Minister not ruling out the possibility of providing financial assistance for those whose tanks might fail a test.

Deputy Phil Hogan: I wish to make it clear that if we are introducing a scheme of financial support, it will be on the basis that, arising from an inspection under the regulations outlined in the legislation or arising from the Water Services (Amendment) Act, the possible solution of a problem that might arise with a wastewater treatment system is to de-sludge. This is the solution that was found in Cavan. In 2004, Cavan County Council quite correctly identified that it had a very serious problem with pollution of its waterways and lakes. Some of it was due to difficulties with groundwater arising from leaks from septic tanks. The regulations that were enforced by Cavan County Council in 2004 showed that approximately 11% of the wastewater treatment systems failed following an inspection. I do not anticipate that there will be as many wastewater treatment systems as in Cavan County Council, but I accept there will be exceptional cases where, through nobody's fault, a substantial sum of money will have to be spent on remediation works. I am particularly conscious of that for low-income families and people on social welfare. The most important matter as far as we are concerned is that people will register by 1 February 2013. If a person does not register, they will certainly not be considered for any grant assistance. Ultimately, I am anxious to ensure the systems are working properly, that groundwater is protected and that it is not a financial burden on anybody.

Special Educational Needs

Senator Mary Moran: I welcome the Minister of State, Deputy John Perry. I would appreciate a comment or response from the Minister for Education and Skills, Deputy Ruairí Quinn, on the case of a young ten year old boy whose parents have withdrawn him from school due to their concerns about him. I sent the details to the Minister for Education and Skills a few weeks ago and I hope he provided them for the Minister of State, Deputy Perry. I understand they are also under investigation by the Garda.

The little boy has multiple and significant special needs. He has been diagnosed with an intellectual disability, Down's syndrome, arthritis, Down's syndrome atrophy, sleep apnoea and hearing loss. He also has a cardiac condition. Unfortunately, this ten year old boy has been out

of school since last April, due to the concerns I outlined to the Minister. Significantly, it must be taken into consideration that the boy is non-verbal, which raises huge communication issues. Nobody knows a child better than the child's mother, and his mother reported that the child had become very withdrawn and unhappy at the school he was attending. Since she removed him his general health and overall mood have greatly improved.

The boy's parents are extremely anxious that he return to full-time education. I have met the little boy and his parents. I concur with them that he needs to be in education. However, they have genuine concerns about the school at which he is currently enrolled. They did not make the decision to remove him lightly. They only did so only after a series of incidents over a two-year period. The boy is on a waiting list for two other special schools but there is no guarantee that a place will become available for him. In the interim, the parents applied for the home tuition grant to ensure he could continue his education. Unfortunately, this has recently been refused and the child has not received formal education for the past eight months. The home tuition grant for a child with special needs is granted only where a child is waiting to be placed in a suitable placement. The reason given for the refusal was that the child still has a place available to him in the school he was attending. The parents believe this is not in the best interests of the child and argue that a placement in a suitable school is not available. They believe there should be a review of this decision.

I ask the Minister to address the situation in order that this young boy can return to formal education as a matter of priority.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry): I thank the Senator for raising this important issue and for giving me the opportunity, on behalf of my colleague, the Minister for Education and Skills, Deputy Ruairí Quinn, who regrets he cannot be present, to outline the current position regarding this case.

The child in question is enrolled in a special school. This school has a staffing of an administrative principal, 14 class teachers and 27 special needs assistants to cater for the 99 pupils enrolled. This is an overall staff to pupil ratio of one staff member per 2.4 pupils in the school. The National Council for Special Education, NCSE, has advised the Department of Education and Skills that it considers this level of staffing sufficient to meet the special educational and care needs of all the pupils enrolled in the school, which includes the child in question.

In October 2012, an application for home tuition for the child was submitted to the Department of Education and Skills under section 2(*b*) of the scheme, that is, children with special educational needs who are awaiting an educational placement. Eligibility for tuition in this regard is determined in consultation with the National Council for Special Education, NCSE, through the local special educational needs organiser, SENO. The SENO in question verified that a placement remained available in the special school in which the child is currently enrolled. Consequently, the application was refused, as funding for home provision arises only where a place is not available.

The Department operates another home tuition scheme where the child does not have a school place, is without the offer of a school place and on whose behalf a school place is being actively sought or a section 29 appeal is being taken. This home tuition scheme is an interim measure pending the offer of a school placement. I understand that an application for home tuition was again refused because a school placement was available.

The National Educational Welfare Board, NEWB, subsequently appealed the Department's decision on home tuition on behalf of this child's parents. The appeal was rejected on the same grounds, namely, that the child remained on the roll of the school in question and a placement was available for him there, as a consequence of which the home tuition scheme could not apply to him.

Regarding the role of the NCSE in these matters, the position is that there is no formal requirement for continued NCSE involvement once a placement is available for a child. In this case, however, the SENO has been advised that the boy's parents might seek assistance regarding an alternative placing and the Department of Education and Skills is happy for the SENO to provide support in respect of any option they are considering.

The NEWB has a particular role in securing a return to school of a child who has been withdrawn regardless of whether there is a special educational need. I understand that the NEWB has been assisting the parents in attempting to secure an alternative school placement for their child.

The Senator referred to parental concerns and I fully respect the fact that this is a sensitive case. I should clarify that, under the provisions of the Education Act 1998, the board of management is the body charged with the direct governance of a school and with employing school staff. Accordingly, whereas the Department of Education and Skills provides funding and policy direction for schools, it does not have any power to instruct schools to follow a particular course of action regarding individual complaints.

If a parent or guardian is still unsatisfied after having brought a complaint to the attention of a school's board of management, he or she may write to the Office of the Ombudsman for Children, which may independently investigate complaints relating to the administrative actions or inactions of a school recognised by the Department of Education and Skills, provided that the parent has fully followed the school's complaints procedures. The key criterion for any intervention by the Ombudsman for Children is that the actions of a school have or may have adversely affected the child.

Senator Mary Moran: The Minister of State, Deputy Perry, always seems to take those Adjournment debates where I am not happy with the response. I am very disappointed in this instance. Where a child has an intellectual disability or, as in this case, special needs, we must consider each case individually.

If the child was attending a normal school, that is, one that was not a special school, his parents could just send him to a different school in the area if that was their preference. Unfortunately, as the child is attending a special school and no other special school is available, he is caught in a terrible loop. His parents are clearly unhappy with his current placement. They have noticed a significant improvement since removing him. Surely, where they send their child to school is a matter of parental choice. He has been out of school since last April, some eight months ago, and priority needs to be given to his case. We owe him the right to an education.

Deputy John Perry: I do not want to repeat anything that has been stated but, in fairness to the Minister, Deputy Quinn, the reply was comprehensive. Meaningful negotiations are under way and the NEWB has been assisting the parents in attempting to secure an alternative school placement for the child.

Senator Mary Moran: They have been given no guarantee of a place in September.

Deputy John Perry: No, but meaningful negotiations are under way. The school has 14 class teachers and 27 special needs assistants, SNAs, to cater for the current enrolment of 99 pupils. The parents are unhappy with the situation in the school but the Minister is doing everything that he can. The school has autonomy, in that the Department can set policy but cannot give exact directions in respect of specific matters.

I am sure the outcome will be satisfactory. The Minister is determined in this regard, although he does not have the power to involve himself directly. Nor would one expect him to. In fairness, the Minister is doing everything that he can and has not been criticised. Meaningful negotiations are being held with the parents and the NEWB to determine how best to rectify the situation. I am certain that, after a calm, cool debate, it will be resolved.

Senator Mary Moran: I hope. I thank the Minister of State.

The Seanad adjourned at 8.25 p.m. until 10.30 a.m. on Wednesday, 12 December 2012.