



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

Business of Seanad . . . . .	441
Order of Business . . . . .	442
Legal Recognition of Gender Bill 2013: First Stage . . . . .	460
Health Service Executive (Governance) Bill 2012: [Seanad Bill amended by the Dáil] Report and Final Stages . . . . .	460
An Bille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a Chur le Seanad Éireann) 2013: An Dara Céim (Atógáil) . . . . .	465
Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013: Second Stage (Resumed) . . . . .	465
Central Bank (Supervision and Enforcement) Bill 2011: Committee Stage . . . . .	502
Adjournment Matters . . . . .	522
Decentralisation Programme Office Accommodation . . . . .	522
Hospice Services . . . . .	524

## SEANAD ÉIREANN

*Déardaoin, 27 Meitheamh 2013*

*Thursday, 27 June 2013*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

---

*Machnamh agus Paidir.*  
***Reflection and Prayer.***

---

### **Business of Seanad**

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

The need for the Minister for Agriculture, Food and the Marine to outline how advanced his plans are to consolidate the decentralised staff from his Department currently based at multiple rented office accommodation throughout Portlaoise, how many staff this would facilitate and at what potential saving in rent to the Exchequer and taxpayer.

I have also received notice from Senator Paschal Mooney of the following matter:

The need for the Minister for Health to indicate what action he proposes to take regarding the appointment of a public health nurse to child care services in County Leitrim.

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

The need for the Minister for Health, in view of the recent report published by the Irish Hospice Foundation entitled Access to Specialist Palliative Care Services and Place of Death in Ireland, to put in place a comprehensive and co-ordinated plan for the delivery of hospice and palliative care across all areas of the country.

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

The need for the Minister for Health to provide an absolute guarantee on the future of St. Joseph's Community Hospital in Stranorlar, County Donegal, and to allow the Health Service Executive to recruit additional staff at the hospital.

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

The need for the minister for Transport, Tourism and Sport to indicate when funding will be made available from his Department for the construction of a roundabout in County Galway (details supplied) in the interests of health and safety for the people utilising it on

a daily basis.

I have also received notice from Senator Averil Power of the following matter:

The need for the Minister for Children and Youth Affairs to approve the application by Sphere 17 Regional Youth Service in Dublin 17 for a youth services capital grant for a new building for its Priorswood outreach service, given the vital service that Sphere 17 provides for young people in one of the most disadvantaged areas of the country and the complete inadequacy of its current temporary accommodation.

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

The need for the Minister for Transport, Tourism and Sport to set out updated details regarding Slane bypass.

I regard the matters raised by Senators Whelan, Mooney, Burke and Ó Domhnaill as suitable for discussion on the Adjournment and they will be taken at the conclusion of business. I regret that I must rule out of order the matter raised by Senator Byrne, as the Minister has no official responsibility in the matter. Senators Higgins and Power may give notice on another day of the matters they wish to raise.

### **Order of Business**

**An Cathaoirleach:** Before I call the Leader, I am sure that the House will join with me in welcoming guests of Senator Walsh, General Tommy R. Franks (Ret.) and his wife, Mrs. Cathy Franks, Senator Briggs Hopson and his wife, Mrs. Alison Hopson, and Mr. Doug and Ms Amy Polasky, to Leinster House. We hope that they enjoy their stay in Ireland.

**Senator Maurice Cummins:** I welcome back our friend and colleague, Senator Norris. It is great to see him back in the House.

**Senator Maurice Cummins:** I welcome back our friend and colleague, Senator Norris. It is great to see him back in the House.

The Order of Business is No. 1, Health Service Executive (Governance) Bill 2012 - Report Stage, amendments from Dáil Éireann, to be taken on the conclusion of the Order of Business and to conclude no later than 12.45 p.m.; No. 2, Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013 - Second Stage (Resumed), to be taken at 12.45 p.m. and to adjourn no later than 3.30 p.m., with the contribution of each Senator not to exceed ten minutes; and No. 4, Central Bank (Supervision and Enforcement) Bill 2013 - Committee Stage, to be taken at 3.30 p.m.

**Senator Marc MacSharry:** I join with colleagues in welcoming back Senator David Norris. It is good to see him.

I propose an amendment to the Order of Business to ask that the Minister for Finance, Deputy Noonan, or whatever Minister is available, comes to the House today to discuss the new voluntary code of conduct on mortgage arrears announced by the Central Bank of Ireland and the personal debt crisis which is now the burden of so many households throughout the country.

Mr. David Hall of New Beginning has said it is reprehensible that the Central Bank of Ireland has simply rolled over for the banks in this regard. FLAC has also expressed its concern about the new voluntary code of conduct. Some of the toothless measures in the old code of conduct, which at least prevented the banks harassing people by contacting them more than three times a month, will be removed. Now within 30 days the banks can set about repossessing a family home. Some 53,000 people are out of the moratorium period announced this morning. A further 100,000 people are in mortgage arrears and now the banks are in absolute control.

Yesterday I called for a criminal investigation into how the authorities in Anglo Irish Bank managed to force the hand of the Central Bank and demand what they wanted be done, but we now see it happening again. The Central Bank is rolling over in favour of the banks. This week we saw the Minister for Finance celebrate the new bank deal and how the EU will deal with bank failures in the future. More power to him for his efforts on our behalf in Europe but the public can legitimately ask, what is in it for the people? We put forward the Family Home Bill, the Debt Settlement and Mortgage Resolution Office Bill and countless other measures and proposals to give tangible support to people and to the silent crisis with which families throughout the country are struggling.

Today the Government's only act is to allow the Central Bank of Ireland to roll over and capitulate in favour of the banks. What is in it for the people? For that reason, we propose an amendment to the Order of Business because it is time the people got some level of representation and some bone thrown to them by Government and the EU for taking all of the pain in this crisis.

**An Cathaoirleach:** Could I clarify what Senator MacSharry is calling for? Is it a new code of conduct? What are the exact words?

**Senator Marc MacSharry:** My amendment states: "That the Minister for Finance, Deputy Noonan, or whatever Minister is available, comes to the House today to discuss the new voluntary code of conduct on mortgage arrears announced by the Central Bank of Ireland and the personal debt crisis which is now the burden of so many households throughout the country."

**Senator Ivana Bacik:** I join with the Leader in welcoming Senator David Norris back to the House. The Senator was missed yesterday in the debate on the referendum Bill but we look forward to his-----

**Senator Paul Coughlan:** No doubt he will make up for that.

**Senator Ivana Bacik:** No doubt he will make up for his absence. We are delighted to see him back.

I refer to the new Central Bank of Ireland code for those in mortgage arrears. The number of mortgages in arrears by more than 90 days - almost 100,000, or 12.3% of mortgages - is extremely worrying. It is particularly worrying when we see homeowners' mortgages in arrears. It is undoubtedly the case that action needs to be taken and it is welcome to see a code of conduct. We can make very valid criticisms where the code of conduct appears to be too easy on the banks but there are some very welcome measures in it and we need to have a reasoned debate on it in due course. I am not sure rushing into it with slogans and sound-bites today is the answer but we should take-----

**Senator Marc MacSharry:** I have been talking about this since 2009.

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

**Senator Ivana Bacik:** This code has just been published and as I said, there are issues of concern in it, although there are some welcome aspects. I am very glad to see there will be no fast-tracking of home repossessions and no forcing people off tracker mortgages, both of which the banks wanted but did not get. We need a reasoned debate and to look at what measures in the code will help people in distress with mortgage arrears and at where it needs to be strengthened. We should have that debate in due course but I do not think it would be appropriate to have it today.

I welcome the publication yesterday of the scheme for the survivors of Magdalen laundries institutions. We might have a debate on that when we have looked in detail at the terms of that scheme.

Will the Leader arrange a debate in early course on the report of the Oireachtas Joint Committee on Justice, Equality and Defence on a review of legislation on prostitution which it published today? Senators Zappone, Mac Conghail, Conway and I were among those present for the launch of that report. It is a hugely important report which makes radical recommendations for reform of the law on prostitution. The report was conducted at the instigation of the Minister who is actively looking at reform of the law in this area. The Independent nominees to the Seanad initiated this review through their motions in this House, so it has an important ownership of the report. It would be great if we could have a debate on this report in early course. I will ask the Chairman of the committee, Deputy David Stanton, to write formally to the Leader to ask for that debate, as I have asked him to do in respect of the committee's report on penal reform.

Members will be interested to hear that the report on prostitution recommends that we adopt the Swedish approach to legislation where we criminalise only the purchase of sex and not the sale, so effectively we decriminalise those engaged in prostitution but we criminalise the purchasers. It would only be a summary offence, so it would be a minor offence only.

**Senator David Norris:** Disgusting and sanctimonious.

**Senator Ivana Bacik:** Those of us who visited Sweden as part of the committee delegation were hugely impressed by the very compelling evidence in favour of the new model of legislation we saw in operation there. I would really welcome a debate on the report, as I know other colleagues would. I ask the Leader to organise it in early course.

**Senator Katherine Zappone:** I have a question for the Leader which I want to put in context by acknowledging that this is Pride Week, so I wish all of my colleagues a very happy pride. The annual LGBT Pride parade will take place this Saturday in Dublin city centre. With more than 30,000 people participating in the parade, it makes it the second largest parade after the St. Patrick's Day parade. This year Pride is celebrating 30 years in existence and 20 years since the decriminalisation of homosexuality, so it is a particularly great day to welcome Senator David Norris back to the Chamber. It is because of his contribution that I, as a lesbian, and many other gay and lesbian people were able to grow up in this country feeling proud. When I ask myself what am I proud of this week, one of the things is that I am extraordinarily proud to serve in the Seanad with Senator David Norris. I am also proud to serve with Senator Ivana Bacik, who was our junior counsel in our case in regard to these issues, and with every Member because I have felt exceptionally welcomed and embraced for who I am and I thank them

for that today. Pride being one's self is one of the greatest gifts one can have and it leads to an extraordinary sense of well-being and that is the greatest thing for which anybody can wish.

The celebrations we are having in Ireland this week are all the greater because of news which came from the US Supreme Court yesterday that the Defence of Marriage Act, which bars married same sex couples from equal federal benefits, has been declared unconstitutional. It is a landmark court victory for lesbian and gay Americans. The US Supreme Court has ordered the federal government to recognise legally married lesbian and gay couples.

My question for the Leader is in the context of this Irish Pride Week. As a way of making a contribution to Pride, I propose an amendment to the Order of Business that No. 13, Legal Recognition of Gender Bill 2013, be taken before No. 1 today. I will seek leave of the House to introduce the Legal Recognition of Gender Bill 2013, which is kindly co-sponsored by my colleagues, Senators van Turnhout and Mac Conghail. The Bill seeks to fulfil Ireland's obligation under the European Convention on Human Rights in providing a legal mechanism for transgender people to have their preferred gender recognised. It is the result of community effort and with the input of the transgender equality network Ireland, FLAC and others, it is in line with human rights standards. It provides for a gender recognition application process which respects the person's right to self-determine and for his or her dignity to be upheld. I hope it will contribute in particular to young transgender people having a genuine sense of pride for who they are.

**An Cathaoirleach:** I call Senator Norris, whom I welcome back to the Chamber.

**Senator David Norris:** I thank the Cathaoirleach and everyone else for their kind comments. I hope you will all forgive me for getting well. I feel so much better and I am enjoying life so much. It is a pleasure to be here. I hope no one will think it is a fraud perpetrated for the sake of gaining popularity. It is not. I feel great and thank everyone for their good wishes, which are slightly embarrassing.

I have always been a little controversial and want to break the unanimity on the proposals about prostitution, which I find horribly sanctimonious. I do not like them and propose to speak and vote against them. I do not believe a fair hearing was given to all the variety of sex workers. The deliberate blurring of the boundaries between trafficking and sex workers is wrong. Of course, I would not like any of my family to be involved in this area. I have never used the service of prostitutes but I have been in a number of brothels for different reasons and have put that on the record. I have seen how they operate and the conditions therein. I once went to the aid of a woman in a brothel close to where I live. She was working on her own and was happy doing it.

When I was in hospital I heard on a programme about a brave young man who is severely disabled who travelled with some disabled companions to Spain where he visited a brothel. It was perfectly run and was almost like a nursing facility. Had he not done so he would have died without ever experiencing the beauty of sexual release and pleasure. I would not want to deny him that. I do not think it is right to say to a person that just because he or she is ugly or disabled he or she cannot ever have sex.

I give three cheers to Holland which makes this service available on the national health and does not criminalise people who purchase sex. I hope we will listen not only to the Swedish example, which is flawed, but to the example of the various areas in Australia which found this to be a total failure and the voices of some of the most senior venereologists in this country who



have warned of the dangers of it.

Pass the proposal if it must be; this is a democracy. However, listen to all of the arguments and have the courage to take on board the views of the other side. I know what I am saying is unpopular but that does not bother me at all. Also, I fully intend to stand for the next election to Seanad Éireann. I will be around. As unpopular and all as are my views, people like that there is someone around to voice them.

While I welcome what has been done in respect of the Magdalen laundries, what about the Bethany Homes? Can we please have some information about them? I would like also to register my disappointment at the proposal to close An Siopa, through which we have had an interesting relationship with people with disabilities and Rehab. One of the workers in An Siopa, Barry, was always tremendously cheerful. If we cannot give an example of inclusion in the Oireachtas, that would be a terrible shame.

I share the views expressed by others in regard to the bankers and look forward to the debate in that regard. Unusually, I compliment the Irish media, in particular the *Irish Independent*. The research carried out by Paul Williams and Dearbhail McDonald was outstanding. It was, in my opinion, exemplary investigative journalism which was a little tainted by the petulance of one of their colleagues on television the other evening. I commend them on it. It stands as a classic example of wonderful investigative journalism.

**An Cathaoirleach:** The Senator continues to take latitude on the Order of Business.

**Senator David Norris:** For which I am very grateful.

**Senator Martin Conway:** I regret to say that I still do not believe the Government realises the anger among the public at the revelations during the past week in regard to the banks, what went on within them and the cavalier and inappropriate attitude of senior bankers in 2008 and, I suspect, today towards the people and what they have done to rescue the banks. The people will be shocked to learn that the penalty for the most serious form of white collar crime in this country is a fine of €12,000 or six months imprisonment. Irrespective of the banking inquiry, we urgently need to increase these penalties to ensure they act as a deterrent. We need also to introduce as a matter of urgency the offence of reckless trading and banking fraud offences. We need to introduce as a matter of urgency more stringent criteria in respect of accountants who sign off on the books of banks. I call on the Minister for Finance to provide for an urgent review of the accountants who acted as auditors to the reckless banks and who are now acting as auditors to State companies. Immediate action is needed in this area. It is what the people expect.

On a more positive note, I welcome the treaty for visually impaired persons signed and agreed yesterday by 800 to 900 participants with the World Intellectual Property Organisation. This will facilitate the availability of printed material in formatted form, which means people with print disabilities will be able to access a great deal more printed material. Unfortunately, until now, because of the various copyright laws in different jurisdictions, only 5% of the world's printed material was available to blind, visually impaired or people with other print disabilities. Following the successful negotiation of the worldwide treaty yesterday, this will be reversed. I call on the Leader to organise a debate in this House on the ratification of this treaty by the Irish State in due course.

**Senator Fiach Mac Conghail:** I, too, welcome Senator Norris back to the Seanad. He was missed. I am glad he is continuing his curmudgeonly view, in particular in regard to prostitu-

tion. I commend the Joint Committee on Justice, Defence and Equality on its work on the issue and, in particular, I acknowledge the work of Seanad Éireann in pursuing it. The issue has been under consideration for almost two years. It was first highlighted by the Independent Taoiseach nominees group. We achieved something in Seanad Éireann in that we were able to address this horrific scar on our society. With respect, I disagree with Senator Norris. The committee did hear from all sides.

**Senator David Norris:** Eventually. They wrote to me when they were barred.

**An Cathaoirleach:** Senator Mac Conghail, without interruption.

**Senator Fiach Mac Conghail:** There was a substantial amount of debate and discussion across all sides. I urge all members of Seanad Éireann to read the report, which is the result of an issue first highlighted here by me and Senators Zappone, van Turnhout and Mary Ann O'Brien. I support Senator Bacik's request that the Leader consider this report as a matter of urgency. We need to remain focused on this issue because, as we speak, there are women and children being trafficked to this country for prostitution. I call on the Leader to invite the Minister for Justice and Equality, Deputy Shatter, to the House as soon as possible to ensure we keep up the pressure on this issue and ensure Seanad Éireann can contribute to a fairer, more equitable and balanced society. I also acknowledge Senator Conway's contribution.

I second Senator Zappone's amendment to the Order of Business.

**Senator Aileen Hayden:** I also seek a debate on the code of conduct on mortgage arrears. I accept it is asking the impossible of the Leader that he have the Minister for Finance, Deputy Noonan, in the House today. I am not even convinced that is a good idea because I believe we need time to digest what is contained in the code of conduct on mortgage arrears and the responses of other groups to it. The Leader will be aware that I have called for a debate on this issue on a number of occasions. I am disappointed we did not have an opportunity to have an input into the code of conduct on mortgage arrears before its publication. In my opinion, it is akin to closing the stable door after the horse has bolted.

It was stated on publication of the report that the code of conduct was arrived at following engagement with a number of consumer interests. I would like to know the consumer interests with whom there was engagement.

*11 o'clock*

There is evidence that organisations such as FLAC were not engaged with in the context of their concerns. I would like to establish how many distressed mortgage holders were engaged with when conclusions were being reached in respect of the code of conduct relating to mortgage arrears. While I accept that there has been a degree of rowing back on some of the initial proposals, I do not believe this should blind us to the fact that the code of conduct on mortgage arrears is more generous to lending institutions than it is to distressed borrowers. That is the reality of the matter.

**Senator Marc MacSharry:** Hear, hear.

**Senator Aileen Hayden:** In the context of tracker mortgages, for example, Mr. Bernard Sheridan, the director of consumer protection with the Central Bank, has stated, "No doubt the lenders would prefer more options to move people off trackers but to do so they have to offer ...



an alternative which is affordable and sustainable”. One of the difficulties which arises relates to who determines what is affordable and sustainable. Under the code of conduct on mortgage arrears, it will be the banks that will make determinations in this regard.

There is a need to examine the code of conduct from the perspective of those who are the least advantaged, namely, distressed borrowers. In any legal scenario, it should be the *contra proferentem* rule which applies. In other words, the interpretation should be against the stronger party and in favour of the weaker one. I would, therefore, welcome a debate on this matter. There is a real suspicion among distressed borrowers that because the housing market has turned the corner, banks which were previously unwilling to engage with them in order to reach settlement of one form or another are now not only willing but are prepared to do so with an alacrity that would leave a modest virgin blushing.

**Senator Marc MacSharry:** Hear, hear.

**Senator Mark Daly:** I also wish to welcome Senator Norris back to the House. While he does not agree with everyone all of the time, he does tend to agree with some of us some of the time.

I second Senator MacSharry’s amendment to the Order of Business. The new code of conduct to which he referred has been discussed in the House previously. It is a banker’s charter to terrorise those whose mortgages are in arrears. The Minister for Justice and Equality attended the House when it debated the legislation on personal insolvency and he would not reveal to us the conversations he had with the banks. The latter’s representatives engaged in meetings with officials from the Department of Finance and we asked him to provide the minutes taken at those meetings in order that we might discover what was asked of the banks. However, as Senator MacSharry pointed out, the Central Bank has rolled over and given way to the bankers. This will no doubt give rise to people losing their homes. Citizens already feel that they are being forced out by the banks.

I wish to request a debate on the ambulance service throughout the country and in my county, Kerry. The director of the national ambulance service, Mr. Robert Morton, has referred to strategic deployment of ambulances throughout the State. When he visited west Cork, Mr. Morton addressed a meeting and stated that ambulance services would be redeployed and would be repositioned in some areas and withdrawn from others. When it was pointed out to him that the withdrawal of ambulances from towns in west Cork would lead to people dying, he stated that this is the price those who live in the area must pay.

**Senator John Gilroy:** Did Mr. Morton say that? Will the Senator provide a reference for that statement?

**Senator Mark Daly:** An interesting headline relating to this matter appeared in *The Kerryman*, which declared “Cuts are just death by geography” and this is exactly what happens when one lives in a rural area. If Mr. Morton, who lives in a nice suburban home-----

**An Cathaoirleach:** The Senator should refrain from using people’s names on the record of the House.

**Senator Mark Daly:** I thank the Cathaoirleach. If Mr. Morton, who lives in a nice suburban home in Dublin, was obliged to wait an hour and a half for an ambulance to arrive at his front door, I have no doubt that there would be an inquiry. If people in Dublin were obliged to

27 June 2013

wait two hours for the arrival of ambulances, it would be declared a national scandal and RTE would highlight the matter on its news programmes.

**An Cathaoirleach:** The Senator is way over time.

**Senator Mark Daly:** When something of this nature happens in rural areas, nothing is said. According to the director of the national ambulance service, that is the price those who live in such areas must pay.

**Senator Paul Coghlan:** It is good to see Senator Norris back in the House and in his usual good form.

I congratulate Major General Michael Finn on his appointment as head of mission and chief of staff of the United Nations Truce Supervision Organisation. This is not just a great honour for Major General Finn, it is also a great honour for the Defence Forces and the country. I wish him well.

I salute the superb acting talent and ability of Senator MacSharry. I am of the view, however, that he may have over-egged the pudding to some extent regarding the matter he raised. However, and in light of his ability, I accept that this comes naturally to him. I support what Senator Hayden stated. As the Leader will recall, yesterday he acceded to a request to hold a debate on mortgage arrears and the new code of conduct in due course. It is disturbing that almost 90,000 people's mortgage repayments are over 90 days in arrears and that 46,000 or 47,000 others are in trouble. As Senator Hayden stated, we need to digest the details relating to this matter in a proper fashion. I echo the calls for a debate but I do not believe it would be possible to engage in such a debate today. It would not be wise to hold a debate of this nature matter today. There is a need to allow people to absorb all the relevant information before they comment on the matter.

I would advise Senator Daly not to go down the road of referring to the Taoiseach or Ministers engaging in conversations with bankers. I would advise him to desist from making such comments. Those matters are in the past and he should leave them-----

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

**Senator Paul Coghlan:** No, I have said what I have said. I am sure the Leader-----

**An Cathaoirleach:** I call Senator Barrett.

**Senator Mark Daly:** For the information of the Senator, it is on the record of the House and is well known.

**Senator Paul Coghlan:** -----will respond in his own good time.

**An Cathaoirleach:** Senator Paul Coghlan should resume his seat. I call Senator Barrett.

**Senator Mark Daly:** Representatives from the Department of Finance met the bankers-----

**An Cathaoirleach:** Senator Daly should resume his seat.

**Senator Mark Daly:** -----because the latter were seeking changes to the personal insolvency legislation. We are not clear as to whether-----

**An Cathaoirleach:** Senator Daly should resume his seat.

**Senator Paul Coghlan:** It is normal for communications to take place between-----

**An Cathaoirleach:** Senator Paul Coghlan is way over time. I call Senator Barrett.

**Senator Sean D. Barrett:** I thank the Leader for his splendid contribution on the role of the Seanad during yesterday's debate on the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill.

On the points made by Senators Conway and Hayden, the House will be taking Committee Stage of the Central Bank (Supervision and Enforcement) Bill 2013 this afternoon. In that context, I note that some of the fines will be levied at values which will be merely double the amounts that obtained under the 1942 legislation. In real terms, this represents a reduction. In light of the major level of public concern regarding this matter, serious consideration should be given to waiving the unwritten rule to the effect that Members on the Government side cannot table amendments.

Work on the Luas extension will begin on Monday next. That work will take place very close to the Houses. Concern must arise in respect of this matter, particularly when one considers that the project relating to the Tallaght and Sandyford Luas lines - originally estimated to cost €290 million - eventually came in at €750 million. The Secretary General of the Department of Public Expenditure and Reform estimates that at the time there was a €6 subsidy per passenger because the capital had not been costed in properly. In the context of the current project, reassurances must be provided to the effect that proper procedures have been put in place. The Comptroller and Auditor General has warned that on the previous occasion most of the risk involved was borne by the taxpayer rather than the engineers. I would go so far as to say that we must be prepared to bankrupt construction companies which played a role in trying to bankrupt the State. It is important that this project should be brought in on time. It is a useful project and it offers a much more attractive alternative to digging up St. Stephen's Green and connecting the two sides of the city via an underground section. It is a good project but we have had bad experiences in the past with regard to similar projects.

My final point relates to the report on prescription drugs by Paul Gorecki, Aoife Brick and Anne Nolan of the ESRI. The report notes that spending on such drugs in Ireland is now the third highest in the world and that the level of such spending has risen dramatically from 46% of the level in the United States - which, unfortunately, leads the way - in 2000 to 58% in 2005 to 70% in 2010. It also states that notwithstanding the success the Minister for Health, Deputy James Reilly, has had, we must continue to pursue this matter. In particular, it draws attention to the fact that the substitution of generic drugs for patented ones in this country gives rise to reductions of 20% when the level of such reductions should be approximately 90%. The Minister is due to come before the House later today. As guardian of the public purse in respect of engineering projects and the price of pharmaceuticals, the Seanad should always seek to assist Ministers in controlling prices in sectors which have a strong tradition of overcharging.

**Senator John Kelly:** I refer to the revelations relating to Anglo Irish Bank. Apart from the damage that was done to the country financially, we need to take into consideration the number of people who lost their homes, the number of people who committed suicide as a result of financial distress, the number of marriage break-ups and all the social issues caused by the actions of a number of these people. On that basis I believe it is important to call for a proper

banking inquiry.

Senator Mark Daly referred to the ambulance service and I fully agree with him. I have said in the House before that it is a crime in Dublin if there is no ambulance on site within eight minutes, but in rural Ireland one is lucky to get an ambulance within 45 minutes to an hour, on average. To me, this is a HIQA double standard, because the standard is eight minutes in Dublin but it does not really matter outside of Dublin. If there was another service in rural Ireland that was not up to the standard required by HIQA, then, as we have seen in the past, the authority would quickly shut it down. Questions must be answered in respect of the ambulance service. It seems to be Government policy to share services and yet there is a difficulty between the Department of the Environment, Community and Local Government and the Department of Health with regard to co-locating ambulances at fire stations. Apparently, the Department of Health owes the Department of the Environment, Community and Local Government money for the work of the fire services in the past. These are simple things which should be easily resolved within Government in order that we roll out and provide a proper ambulance service nationwide, especially in rural Ireland

**Senator Trevor Ó Clochartaigh:** Ba mhaith liom tacú leis an moladh atá déanta ag mo chomhghleacaí, an Seanadóir Zappone agus dea-ghuá a ghabháil maidir le Seachtain an Bhróid. Táim cinnte go mbeidh an-deireadh seachtaine ag gach duine. I concur with the remarks of Senator Zappone, who offered her best wishes to everyone for pride week. Would that we could be so proud of our bankers it might be a better day. There has been much discussion overnight in Europe regarding an agreement which would see investors and wealthy depositors help to save any failing banks in future. It is important that we are seeing such movement. I make the point in the context of when Sinn Féin put forward the notion of burning bondholders because we were told that it could never happen and that it was totally impossible. There is movement in that area but I also note that we are being told that it will be 2018 before any of that could actually start.

I concur with much of the sentiment on the banking sector. However, among the general public there is little confidence, even at the moment, in the banking sector. There is still a sense that the tail is wagging the dog. The press statements and the revelations about the telephone calls may show that some of the more cavalier people in the banking system were totally over the top, but there is also a sense that the culture was prevalent among the top echelons in most of the banks. Many of these bankers continued in positions of authority and some of them still do.

We need a broader debate on the implications of this potential deal in Europe for Irish citizens. How is it going to take the burden off us? I appreciate that it will not happen today because the Minister is still in Brussels, but it is something we should have soon. Will we see relief for Irish citizens? There was great talk when we assumed the EU Presidency that we would be seeking a deal on the debt burden on Irish citizens, but there is not much talk about it at the moment. I am hopeful that something will come of these negotiations, but 2018 is a long way down the road and Irish citizens are still suffering. It is important to have a debate not only on the mortgage distress situation, but on the culture of banking in Ireland and whether the tail is still wagging the dog.

**Senator Lorraine Higgins:** It is timely that I am making my submission after my Sinn Féin colleague. I welcome the fact that the leader of Sinn Féin, Deputy Gerry Adams, took up my point in the Dáil yesterday when addressing the Taoiseach. I raised this issue in the House last Tuesday, when I called on the Minister for Finance to seek the taped telephone conversa-

tions from all the State bailed-out banks up to and including the point when the banks received a bailout from the State and I reiterate my call in that regard. In light of the Anglo Irish Bank revelations and the possibility of further tapes getting out into the ether, it is important to get the Minister for Justice and Equality into the House. It is important to discuss and debate the possibility of making it a criminal offence to mislead the Government or any State authority on matters of national interest. I would welcome a debate on this at an early point, possibly before the end of term.

**Senator Mary M. White:** Táim an-bhuíoch don Chathaoirleach seans a thabhairt dom labhairt this morning. Yesterday evening at the gate of Leinster House I joined 600 people who were protesting at the cruel cuts in education for children with disabilities and special needs. The group of 600 included children with a wide range of disabilities, parents of children with disabilities and grandparents and grandmothers of children with special disabilities.

While I welcome the reversal of the cruel cuts to resource teaching hours, the Minister is not acknowledging that there will be 2,000 extra children with special needs entering the education system in September and he has not allowed for the allocation of money for special needs assistants.

This is the second time the Minister for Education and Skills has reversed cuts to people who are weaker in society and it shows how out of touch the Minister is with the weaker people in our society. At the protest yesterday, I had the pleasure of meeting Rihanna Dempsey. I have a picture of her before me. She is a child with special needs. Her mother, Lorraine, told me that she would dearly like to speak to the Taoiseach herself about these cruel cuts in the budget for the education of children with special needs.

In the 1916 Proclamation, which everyone in the Chamber buys in to and feels passionately about, the Republic guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens. The Proclamation declares its resolve to pursue the happiness and prosperity of the whole nation and all of its equal parts, cherishing all of the children of the nation equally. This Government and the Labour Party Minister have clearly shown that they do not respect the weaker people in our society by not putting the educational moneys and supports into their developing their full potential, as all of us in the Chamber have been allowed to do.

**Senator John Gilroy:** In light of the ongoing revelations in the media about Anglo Irish Bank I call on the Leader to contact the Minister for Finance with a view to setting up an inquiry into one particular element of the story which is in danger of being overlooked. We know that the revelations are the most blatant and obvious demonstration of the arrogance, hubris and, I contest, criminality that took place in Anglo Irish Bank. However, there is a particular case relating to an Anglo Irish Bank subsidiary in Austria, which, bizarrely and strangely, was sold by Anglo Irish Bank with a loan provided by that same bank to the buyer, Valartis, a Swiss brokerage. The bizarre and strange thing about the sale of this Anglo Irish Bank subsidiary in Austria is that at the time of the sale it had deposits of between €600 million and €1 billion on its books. This was after 6 September 2008, the very time to which these tapes relate and the very time that Anglo Irish Bank was contesting that its problem was a liquidity problem. Yet between €600 million and €1 billion worth of liquidity was available on its books, albeit in an Austrian account. Despite this, the bank saw fit, strangely, to sell the entire subsidiary to a shady Swiss brokerage. I wish to establish the beneficial owners of the deposits in that bank to determine whether there is an Irish connection to the beneficial ownership of the deposits.



**Senator Feargal Quinn:** This morning, Senator Barrett referred to the price of generic drugs as against branded drugs. I have before me an ESRI report which is rather startling. I realise we have taken action on this and moved to have legislation in place. Therefore, I am somewhat unsure where we should go from here, but it seems that if there is a 90% gap between generic and branded goods in other countries but we have only approximately a 10% or 20% gap, then we must do more. Ireland has led the way in so many areas in science. One of which that deserves attention is traceability of meat products that enabled us to identify that there was horsemeat where it should not have been. In a recent development in Australia they have been able to use similar technology to allow customers in McDonalds to trace the origin of their meat right back to the herd of cattle. They can do this on a smartphone app. It is a reminder of how we have been able to lead the way but have not made the best use of our technology. We need to continue to invest in science and such developments, and not leave things on the long finger.

Britain will today announce a big involvement in shale fracking. I believe that investment will go a long way towards solving its energy problems in the future. I know it is a big discussion point as to whether we should do it. However, we seem to put things on the long finger so often and not make decisions. I believe we should have a debate at some stage in the future on science and the need not just to invest in science but to ensure we carry the results of such investment through to a final conclusion.

**Senator Michael Mullins:** As we discuss all our own problems it is very easy to lose sight of problems and difficulties in the world as a whole. I renew my call for a debate before we rise for the summer on the ongoing crisis in Syria and the lack of progress being made in any peace process to help resolve the difficulties there. To date more than 100,000 people have lost their lives, 5 million people are internally displaced and more than 2 million people are in refugee camps in neighbouring countries. Ultimately this will have implications for all EU countries. There is a massive crisis involving rape, war crimes and crimes against humanity. It has the potential to be the major humanitarian crisis of our time. We need to have a discussion with the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Gilmore.

I support the call by Human Rights Watch for the Tánaiste to make contact with the Syrian authorities to call for the release of and dropping of charges against Mazan Darwish and four of his colleagues who are before the courts. Their only crime was exercising their basic right to freedom of expression and assembly. As a country we need to show solidarity. We need clarification on the Government's position on the situation in Syria.

**Senator Brian Ó Domhnaill:** I support Senator MacSharry's amendment to the Order of Business to have the Minister for Finance come to the House to discuss the mortgage issue and the new code of conduct published by the Central Bank. While many people are struggling with mortgage repayments, banks are putting serious pressure on individuals. This week we have heard the Anglo Irish Bank taped telephone conversations and the disgraceful nature in which bankers, particularly those in Anglo Irish Bank, have treated the people. It is disgraceful and disgusting. We need to hear from the Minister as to what the Government will do about it. There has been lip service. It has reacted to those tapes. There have been other tapes - the Lowry tapes - and there has been complete silence from the Government. What will it do? We need to bring the Minister for Finance before the House. I appeal to the Leader to accept Senator MacSharry's amendment in the interests of national importance so that we can hear what will be done with these rogue bankers who destroyed the country and brought about economic collapse. It is absolutely disgusting and disgraceful. We could do the Seanad and the people some service by having a comprehensive debate on the matter today.



**Senator Mary Moran:** I concur with Senator Ó Domhnaill and other speakers throughout the week. Every day the tapes have revealed more and it is vital that this be addressed urgently. The perpetrators need to be brought to justice immediately. Those people addressed a serious situation jokingly but there are crises in many areas. All week I have spoken about the issue of special needs. Last night I spoke people who are not involved in special needs but are under threat of losing their homes and in serious financial difficulties, and yet have to sit and listen to the recordings being drip fed from the media every day.

Yesterday the Irish Hospice Foundation reported on the dreadful lack of hospice beds. Owing to regional inequality in the resource allocation an estimated 2,500 patients are denied access to hospice services every year, which is appalling. It reported that we need 450 hospice beds while only 155 are available. Many areas have no access to hospice beds including my county, Louth, as well as counties in the midlands and the south east. I call for a debate on the area in order to address the situation immediately.

**Senator John Crown:** At the risk of making the Chamber sound like a broken record, I mention issues relating to the banks and attempted to get the Order of Business amended. I am somewhat troubled by the fact that there are two wholly separate things that need to be investigated in the banks. There may or may not have been malfeasance and illegality on the part of bankers and the justice system should investigate that. That is important. Justice needs to be done and needs to be seen to be done. It will not fix the consequences of any actions that may or may not have occurred. The way in which those actions will be addressed will be by trying to restructure and renegotiate the debts we have.

At this point it is not clear to me that we have sufficiently investigated the actions of others and not just those who were working in the banks but those who were working in Government, the Central Bank and in the international agencies. Who knew what and when did they know it? Did any of the well-trained and incredibly experienced professionals in the European Central Bank have any idea of the scope of the debt of the Irish banks? Did they bring any pressure to bear on our Government to give the guarantee? Did they know more than our Government knew on the time? Were they holding back on information?

I do not know that this is the case, but it is a question which needs to be asked. It would certainly give us greatly enhanced moral authority in dealing with ongoing negotiations over things such as the retrospective capitalisation. It would also help to counter some of the incredibly adverse publicity we have had. If, hypothetically, it transpired that major shareholders of the European Central Bank were themselves going to be beneficiaries of the bank guarantee, a net transfer of assets and resources away from Irish people to German and other investors, that is something that needs to be known and widely promulgated. For that reason we should not shy away from having an Oireachtas inquiry. We can be very careful in an Oireachtas inquiry to ensure we do not act in any sense that would be prejudicial to any other criminal investigations which should occur wholly independently and in parallel. We are not really asking the same things. I am reiterating my call that we need an Oireachtas inquiry into the matter.

Regarding the Magdalen laundries redress scheme, while I may be misinformed, I am hearing that the Minister for Justice and Equality, Deputy Shatter, is hoping that the religious orders will make a contribution. This is as yet undecided. As I recall from the McAleese report, with no disrespect to our esteemed former colleague, the forensic accounting component was wholly deficient. Bland statements were made that the laundries operated at a subsistence, loss or small profit level. It appears the accounts which were examined were those supplied by the ac-

countants acting for the laundries. It must be remembered these laundries provided a service to customers. These customers were often the same orders as those which ran the laundries, which ran other institutions which had contracts with the laundry. Were they charged the commercial rate? Were they, in fact, subsidising the activities of other profit centres in the congregations? These questions need to be teased out but have not been.

I echo the call made by my friend, Senator Higgins, for legislation which would make it a crime to mislead the Government. I will propose an amendment when it comes through that it would also be a crime for the Government to mislead the people.

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

**Senator John Crown:** I would also like to recommend that any of those folks who state they cannot get access to the Taoiseach to make very important points to him might consider getting jobs in the tobacco industry.

**Senator Catherine Noone:** Like everyone else I abhor the revelations on the Anglo Irish Bank tapes. Senator Ó Domhnaill has accused the current Ministers of lip service. It will be very interesting to hear what type of lip service was coming from Ministers involved at the time. I welcome the call by the Minister, Deputy Shatter, for voluntary statements from these politicians who were involved at the time because the least the people of the country deserve, is a clear statement as to what went on in terms of communications with the bank. The Minister for Justice and Equality indicated this morning that an Oireachtas inquiry is possible, and while it may not have the teeth it would have had if the referendum had passed, Senator Crown is correct to state we need an inquiry and to ask these questions. It should happen in the very near future.

I also want to mention briefly the ESRI report which indicates attitudes in the country to immigrants are becoming more negative. The study reveals Irish attitudes towards immigrants were very positive between 2002 and 2006 but have become much more negative since then. The 2012 annual monitoring report on integration, which was launched yesterday, has some startling findings. As it may not be possible to have a debate on this before the end of the term, I call for a debate on it in the next term.

**Senator Tom Sheahan:** Will the Leader invite the Minister for Justice and Equality to the House as soon as possible to review our bail laws? Last week I wrote to the Department to seek up-to-date figures for crimes committed by people while on bail. We seem to have a massive problem with burglary, and in 2012 the suspected offenders in 1,585 burglaries were on bail at the time of the crime. The figure in this regard has been relatively static since 2008. This means approximately 1,500 burglaries have been committed each year by people on bail. In 2012 the offenders in 3,795 cases of disorderly conduct were on bail at the time of the crime, 803 cases of criminal damage were committed by offenders out on bail and, of more concern, 11 murders were committed by offenders who were out on bail at the time of the crime. I call for an urgent review of our bail laws to see what we can do to minimise the number of people intent on breaking the law. It is ironic the house of the Minister for Justice and Equality was burgled by a person out on bail who was facing charges of having a firearm and ammunition. This is a very urgent matter and we need to discuss it as soon as possible.

**An Cathaoirleach:** I welcome Councillor Frank McDermott to the Gallery.

**Senator Maurice Cummins:** I certainly disagree with the interpretation of Senator Mac-

Sharry, the Acting Leader of the Opposition, of the proposed code of conduct on mortgage arrears. Today we will debate Committee Stage of the Central Bank (Supervision and Enforcement) Bill, and what better time to raise points on the Central Bank and its code of conduct than when discussing the Bill? There will be ample opportunity for people who will be present and wish to take part in the debate this afternoon. I do not propose to accept the amendment to the Order of Business as proposed by Senator MacSharry.

Senator Bacik raised the report of the Oireachtas Joint Committee on Justice, Defence and Equality on the review of the laws on prostitution. This was also mentioned by Senators Mac Conghail and Norris, who disagreed with the findings. When I receive the request which has been sought by Senator Bacik from the Chairman of the committee perhaps we can have a debate with the Minister in the House.

I note the comments of Senator Zappone on pride week and the celebrations which will take place. I accept her amendment to the Order of Business on No. 13, Legal Recognition of Gender Bill 2013.

We welcome Senator Norris back to the House. He is still quite robust and got much latitude from the Cathaoirleach today. As I stated, he expressed his opposition to the findings of the committee and I am sure we will have a debate. He also raised the issue of the Bethany Homes and we will try to get an update for him on the exact position in this regard. Senator Norris is the leader of the independent group, as he has taken over from Senator Mullen.

**Senator David Norris:** First among equals, not leader.

**Senator Maurice Cummins:** I know they have no leaders.

Senator Conway wondered whether the Government is aware of the anger of the public, and I assure him it is fully aware of it. This was outlined particularly at the parliamentary party meeting at which many members expressed the same sentiments as have been expressed in the House in recent days. I also note Senator Conway's welcome for the treaty on intellectual property which will help those who are visually impaired.

Senator Hayden raised the code of conduct and mortgage arrears and this can be discussed this afternoon.

Senators Daly and Kelly spoke about ambulance services in rural Ireland. I will certainly bring the matter to the attention of the Minister and see what proposals are in place to improve ambulance services.

Senator Coghlan rightly congratulated Major General Finn of the Army, who has been appointed by the UN Secretary General Ban Ki-moon as head of mission and chief of staff of the United Nations Truce Supervision Organisation. This is a wonderful honour for Major General Finn, our Defence Forces, his family and the country. We all wish him well and I am sure he will do an excellent job.

I note the comments of Senator Barrett on the Luas work and his calls for reassurance on the costs of the project and that it will come in on time and on budget. He also spoke about the price of drugs, as did Senator Quinn, in particular the difference between the price of generic drugs in Ireland and several other countries. Progress has been made on this matter and we have had a Bill on the price of drugs. I agree there is much more to be done in this regard.

Senator Kelly was one of a number of Senators who raised the issue of the banking inquiry. A Bill on the inquiries is proceeding at present in the Lower House. I have informed the Taoiseach that we will facilitate the passage of this Bill prior to the summer recess. It is very important that we deal with this significant legislation before the end of July.

Senator Trevor Ó Clochartaigh commented on the culture in the banks and I certainly agree with him in that regard. Senator Higgins and others referred to the taped conversations among bank officials in Anglo Irish Bank. I understand the tapes are with the appropriate body, the Garda Síochána and we hope that people will be brought to justice as quickly as possible. The public anger is palpable. There is a legal maxim, "Justice delayed is justice denied". The sooner all those involved in these activities are brought to justice the better for everybody. If further legislation is required, I am sure the Government will take action on the matters that Senator Higgins raised.

Senator White welcomed the announcement by the Minister for Education and Skills, Deputy Quinn on provisions for special needs pupils. The Minister for Education and Skills met with quite a number of representatives from families with special needs children.

**Senator Mary M. White:** He should not have made that decision in the first place.

**Senator Maurice Cummins:** Senator Gilroy made relevant points relating to the sale of an Anglo Irish Bank subsidiary in Austria which should form part of the banking inquiry - I am sure it will. Senator Quinn raised the issue of generic drugs in addition to the traceability of food and the question of labelling. I understand Senator Quinn proposes to introduce a Bill dealing with that matter soon, possibly next week.

Senator Mullins called for a debate on Syria. I have asked the Tánaiste to come to the House for a debate on the conflict in Syria, with shocking loss of life. I hope the Tánaiste and Minister for Foreign Affairs will facilitate the request to come to the House to discuss this topic and outline the Irish position. Senator Brian Ó Domhnaill requested the Minister for Finance to come to the House to discuss the recent revelations in the banking tapes. We will have an inquiry and I hope that the Ministers who were in place at that point in time will give their storey to that inquiry. He mentioned the recordings and so on. I hope there are plenty of recordings in the Department of the Taoiseach and plenty of notes in both the Departments of the Taoiseach and Finance of the meetings that were conducted between Ministers and bankers at that time.

I agree totally with Senator Moran who raised the need for more hospice respite beds. She mentioned that in her country there are practically no hospice respite beds and it is the same in the south east. That is a scandal and a disgrace. There were plans for extra beds but the hospice movement is now being asked to come up with large sums of money in order to make a contribution to the provision of these beds. I do not think that is proper. Respite beds were provided in other areas of the country but the areas without them are being asked by the Department to come up with practically matching funding. These beds should be supplied.

Senator Crown also raised issues relating to the bankers and asked who knew what and when, be they bankers, Ministers, officials, the ECB and so on. I understand that will form part of the inquiry.

The religious orders should make a contribution to the women who worked in the Magdalen laundries. I believe everybody wishes the religious orders would make a significant contribution to this fund.

Senator Noone referred to the disturbing negative attitude to immigrants at present. The Minister for Justice and Equality has commented strongly on the matter. I hope he will attend the House to have a debate on the question of integration. Senator Sheahon requested a review of the bail laws and supported his call with statistics on the number of crimes committed by people on bail. It is necessary to have a debate on the bail laws and I will ask the Minister for Justice and Equality to debate the matter and if necessary to introduce legislation to deal with these matters.

**Senator Mary M. White:** On a point of order, the Leader misled the House somewhat when he stated the Minister for Education and Skills met the people who were protesting yesterday.

**An Cathaoirleach:** That is not a point of order.

**Senator Maurice Cummins:** I did not say that.

**Senator Mary M. White:** The Leader said the Minister met the people who were protesting yesterday.

**An Cathaoirleach:** That is not a point of order.

**Senator Mary M. White:** The people listening will think the problem is solved.

**An Cathaoirleach:** Will Senator White please resume her seat. She is completely out of order.

Senator MacSharry has proposed an amendment to the Order of Business: “That the Minister for Finance, Deputy Noonan, or whatever Minister is available, comes to the House today to discuss the new voluntary code of conduct on mortgage arrears announced by the Central Bank of Ireland and the personal debt crisis which is now the burden of so many households throughout the country.” Is the amendment being pressed?

**Senator Marc MacSharry:** Yes.

Amendment put:

The Seanad divided: Tá, 11; Níl, 34.	
Tá	Níl
Byrne, Thomas.	Bacik, Ivana.
Crown, John.	Barrett, Sean D.
Daly, Mark.	Bradford, Paul.
MacSharry, Marc.	Brennan, Terry.
Ó Domhnaill, Brian.	Burke, Colm.
Ó Murchú, Labhrás.	Coghlan, Eamonn.
O’Brien, Darragh.	Coghlan, Paul.
O’Sullivan, Ned.	Comiskey, Michael.
Walsh, Jim.	Conway, Martin.
White, Mary M.	D’Arcy, Jim.
Wilson, Diarmuid.	D’Arcy, Michael.

27 June 2013

	Gilroy, John.
	Hayden, Aideen.
	Henry, Imelda.
	Higgins, Lorraine.
	Kelly, John.
	Landy, Denis.
	Mac Conghail, Fiach.
	Moloney, Marie.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Noone, Catherine.
	Norris, David.
	Ó Clochartaigh, Trevor.
	O'Brien, Mary Ann.
	O'Donnell, Marie-Louise.
	O'Neill, Pat.
	Quinn, Feargal.
	Reilly, Kathryn.
	Sheahan, Tom.
	van Turnhout, Jillian.
	Whelan, John.
	Zappone, Katherine.

Tellers: Tá, Senators Ned O'Sullivan and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

**An Cathaoirleach:** Senator Zappone has proposed an amendment to the Order of Business: "That No. 13, Legal Recognition of Gender Bill 2013, be taken before No. 1 today." The Leader has indicated that he is prepared to accept this amendment. Is the amendment agreed? Agreed.

Question, "That the Order of Business, as amended, be agreed to," put and declared carried.

*12 o'clock*



## **Legal Recognition of Gender Bill 2013: First Stage**

**Senator Katherine Zappone:** I move:

That leave be granted to introduce a Bill entitled an Act to give effect to a person's right to have their gender identity recorded and recognised by the State, to establish and provide for the gender recognition register, to provide for certificates of birth that reflect a person's gender identity, to provide for the right to self-determine a person's preferred gender identity and to provide for the dignity of such persons and to provide for related matters.

Question put and agreed to.

**An Cathaoirleach:** When is it proposed to take Second Stage?

**Senator Katherine Zappone:** Next Tuesday, 2 July 2013.

**An Cathaoirleach:** Is that agreed? Agreed. Since this is a Private Members' Bill, Second Stage must, under Standing Orders, be taken in Private Members' time.

**Senator Katherine Zappone:** I move: "That the Bill be taken in Private Members' time."

Question put and agreed to.

## **Health Service Executive (Governance) Bill 2012: [Seanad Bill amended by the Dáil] Report and Final Stages**

**Acting Chairman (Senator Marie Moloney):** I welcome the Minister to the House. This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 118, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question, "That the Bill be received for final consideration", the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For the convenience of Senators, I have arranged for the printing and circulation of the amendments. The Minister will deal separately with the subject matter of each related group of amendments. I have also circulated the proposed groupings to the House. A Senator may contribute only once on each grouping. I remind Senators that the only matters that may be discussed are amendments made by the Dáil.

Question proposed: "That the Bill be received for final consideration."

**Acting Chairman (Senator Marie Moloney):** I call the Minister on the subject matter of amendments Nos. 1, 31 and 32.

**Minister for Health (Deputy James Reilly):** Basically, these are technical and drafting amendments. Amendment No. 1 relates to section 10 of the Health Act 2004, which deals with directions to the HSE from the Minister. The amendment clarifies that directions issued by the Minister can be amended or revoked by the Minister. It brings the drafting position back into line with the position under the Act of 2004.

Amendment No. 31 relates to section 20, which amends section 77 of the Health Act 2004.

27 June 2013

It deals with certificate evidence regarding delegation and sub-delegation of functions within the HSE in legal proceedings. The amendment ensures that the sub-delegation of functions are properly covered under section 77.

Amendment No. 32 relates to section 22, which provides that references in legislation to the board and chief executive of the HSE are to be read as references to the directorate and director general. The purpose of amendment No. 32 is to provide that section 22 encompasses references in statutory instruments and in contracts.

**Acting Chairman (Senator Marie Moloney):** I call on the Minister to speak on the subject matter of group two, which is made up of amendments Nos. 2 to 5, inclusive, and 20.

*(Interruptions).*

**Deputy James Reilly:** These amendments relate to the size and composition of the directorate. The Bill provides that the directorate will be the governing body. I have always made clear my intention for employees in charge of key service areas to be members of the directorate. It is also my intention that the person heading the child and family services division would be a member of the directorate pending the establishment of the new child and family agency. I believe the governing body of the HSE should have the scope to encompass other significant management people in the HSE as well. Accordingly, I introduced an amendment in the Dáil, amendment No. 2, to increase the maximum number of appointed directors from six to eight. This will allow relevant service heads and a small number of other key senior employees, including the chief operations officer and chief financial officer, to form the governing body of the HSE.

I introduced amendment No. 3 to provide that persons eligible to be appointed as directors include not only HSE employees at the grade of national director, but other employees of no less senior grade.

Amendment No. 4 was brought forward to allow for the eventuality whereby an employee may act in the relevant grade on a temporary basis but whose substantive grade is less senior. This situation has already arisen in fact because the interim national director for child and family services in the HSE is in an acting position in the context of the transfer of the child and family services to the new child and family agency.

Amendment No. 5 is consequential on amendment No. 3.

Amendment No. 20 serves to ensure that the Minister can appoint an appointed director's second-in-command to act as a temporary member of the directorate during an extended absence, for example, through illness, of the appointed director. The amendment arises from the need to consider practical situations that might arise and relates to a time when, perhaps through sudden illness or accident, the director would be unable to appoint his deputy himself.

**Senator Colm Burke:** I seek clarification. I note that we are raising the number of directors from six to eight. Perhaps we could get some clarification. I am not against it but I seek clarification about why the increase arises. I understood it was clearly designated originally that the maximum would be six. Are we now adding two further positions? Perhaps the Minister could provide some clarification.

**Deputy James Reilly:** I am happy to clarify that. There was provision for six because there

were six directors. It was felt very appropriate that one should be able to have one's chief operations officer and one's chief financial officer at director level. There are no cost implications on this. It was merely felt it was appropriate to have those people on the directorate.

Amendments Nos. 6 to 17, inclusive, deal with the removal and disqualification from the directorate because of being adjudicated bankrupt or having a composition with creditors. On Committee Stage in the Dáil, my attention was drawn to the provisions in the Bill that disqualified a person from being an appointed director or director general where he or she has made a composition or arrangement with creditors. A query was put as to what exactly this meant and whether it was in keeping with the Government's stated position on how arrangements under the Personal Insolvency Act should not impinge unnecessarily on a person's life or activities. I undertook to give the issue closer examination.

The legal advice I received is that a composition or arrangement with creditors as used in the Bill means something done under legislation. This has traditionally been the Bankruptcy Acts and would now encompass the Personal Insolvency Act. Having consulted the Minister for Justice and Equality, who has responsibility for that legislation, and having considered the matter carefully, particularly in the context of the Government's policy on personal insolvency, I tabled amendments on Report Stage in the Dáil to delete references in the Bill to disqualification from being an appointed director in the HSE or being director general in the HSE where the person involved has been adjudicated bankrupt or has made a composition or arrangement with his or her creditors.

Regarding amendments Nos. 18 and 19, the Bill needs to provide for all absences of the director general or vacancies in the office of the director general. Consequently, I introduced in the Dáil amendment No. 19 to deal with absences or a vacancy of any duration. Another change was to allow the director general rather than the Minister to designate the appointed director to cover absences. This seemed to be the most effective and efficient operational arrangement. However, the designation would require the consent of the Minister. The Minister will also be involved to address those situations where a director general is absent but had not made such a designation and is unable to do so owing to ill health or an accident, as I mentioned earlier.

The situation is different if the office of the director general is vacant. In those circumstances the situation remains that the Minister can designate an appointed director to fill the gap pending the recruitment of a new director general. The Bill makes it clear that the Minister must take steps to fill the vacancy as soon as may be. This is in section 16L. The changes made in the Dáil reflect the reality that with an organisation of national importance, such as the HSE, it is essential there is always someone with clear authority to perform the functions of the director general.

Amendment No. 19 is consequential and provides that when the director general is not present or the office is vacant the appointed director designated by the director general for the purpose of his or her absence or, in the case of a vacancy, the appointed director designated by the Minister, if any has been so designated, will, if present, chair the meetings of the directorate.

**Senator Colm Burke:** I have a question about the intervening section. When litigation is issued, the director general is not required to appear before an Oireachtas committee. What would happen if someone makes an allegation and the director general immediately issues a High Court writ, thereby preventing an Oireachtas committee dealing with it? That is dealt with in section 16 of the Bill. I accept the Minister might not be able to give me an answer

at this stage. An easy way to avoid having to appear before an Oireachtas committee would be to issue a High Court writ against the person making the allegation, which would bar the Oireachtas committee from requiring the director general to appear before it. Does that need to be addressed?

**Deputy James Reilly:** I am informed by my ever-helpful legal advice behind me that these are based on precedence and difficult to change in the Bill.

**Senator Colm Burke:** It is an issue that arises and I am concerned about it.

**Deputy James Reilly:** It will be explored further, but I do not believe it will be possible to do it in this Bill.

Amendments Nos. 21 to 23, inclusive, are essentially technical and relate to the service planning process. Under section 31 of the Health Act 2004, the HSE must submit a service plan within 21 days after the Government publishes the Estimates for that financial year or in such other period that the Minister may allow.

The Bill as passed by the Seanad allowed the Minister to direct the director general to prepare and submit a service plan if the HSE has failed to submit a service plan in accordance with various provisions of the section. This is based on similar provisions in the Health Act 2004 regarding the CEO. However, the intention in the 2004 Act was that the CEO, and under this Bill, the director general, would be directed to prepare and submit a service plan only if the HSE had not submitted one in the specified time period and not for other reasons. This is now clarified by amendment No 21. Amendment No. 23 provides that the director general must comply with such a direction.

On amendment No. 22, section 31(8) of the Health Act 2004 provides that, within 21 days after receiving a service plan, the Minister must either approve the plan or issue a direction to amend the plan. As Senators are aware, this Bill amends section 31. Under the Bill, the Minister must, having consulted the Minister for Children and Youth Affairs, take one of the following steps: approve the service plan in the form in which it was submitted; approve the service plan with such amendments as the Minister, having consulted the HSE, may determine; or issue a direction to the HSE to amend the plan. However, no time period was specified within which the Minister must take one of the three steps I have set out. To address that situation, Amendment No. 22 provides that the Minister must act within 21 days of receiving the service plan from the HSE. This time period is in line with current provisions of the 2004 Act.

For completeness, I should add that it is intended that the requirement for the Minister to consult the Minister for Children and Youth Affairs will be repealed in future legislation having regard to the legislation establishing the child and family agency.

Amendments Nos. 24 to No 30, inclusive, relate to provisions for the audit committee for the HSE provided for under this Bill. Amendment No. 24 is concerned with membership of the HSE's audit committee. It takes on board points made by Senator Barrett when the Bill was previously before this House that the audit committee needs to have the right type of membership to enable it to perform its important functions. I recall that Senator Burke also had similar concerns.

It is clearly the case that given the nature and role of the audit committee, a wide range of skills and experience are essential among its membership, including persons with auditing and

accounting skills. As I said at the time, I appreciated the sentiment behind the amendment that was moved by Senator Barrett and seconded by Senator Crown. Consequently, I introduced an amendment in the Dáil to ensure that express reference is made to people with professional qualifications in auditing or accounting. That is the purpose of amendment No. 24 which provides that at least one of the audit committee members must hold a professional qualification in accountancy or auditing.

Amendment No. 25 is designed to give the audit committee a role in advising the directorate on financial matters relating to its functions. This is in addition to the role that the audit committee has in advising the director general. As the provision previously stood in the Bill, the role of the audit committee was focussed exclusively on the director general, who will be the Accounting Officer. However, I believe it is appropriate that the audit committee should also have a role in advising the directorate on financial matters relating to its functions, for example, on the annual financial statements of the HSE. Amendment No. 25 provides for that role.

Amendments Nos. 26 and 28 to 30, inclusive, are technical amendments, renumbering subsections consequential on the widening of the committee's functions by virtue of amendment No. 25. Amendment No. 27 is a technical amendment to correct a reference in section 40I(2) (b) of the Act as introduced by the Bill passed by the Seanad by replacing the reference to "the Executive" with a reference to "the Director General". The section refers to advice on complying with section 22 of the Exchequer and Audit Departments Act 1866 and section 19 of the Comptroller and Auditor General (Amendment) Act 1993. Compliance with these sections relates to Accounting Officers. The amendment was therefore required because it is the director general who is the Accounting Officer under the Bill and who must comply with the legislation in question.

**Senator Sean D. Barrett:** I thank the Minister very much for his thoughts. We know from tapes we have heard this week that the highest standards of accountability in accountancy are essential, and in a major sector like the health service they are even more so. I thank the Minister for considering the amendment proposed when the Bill was going through the House and including it here.

**Senator Colm Burke:** I join in thanking the Minister for taking on board the concerns we had in the House when the Bill was going through. This is a welcome development and I fully support it.

Question put:

The Seanad divided: Tá, 26; Níl, 11.	
Tá	Níl
Bacik, Ivana.	Byrne, Thomas.
Barrett, Sean D.	Daly, Mark.
Bradford, Paul.	MacSharry, Marc.
Burke, Colm.	Ó Clochartaigh, Trevor.
Coghlan, Eamonn.	Ó Murchú, Labhrás.
Coghlan, Paul.	O'Brien, Darragh.
Comiskey, Michael.	O'Sullivan, Ned.
Conway, Martin.	Power, Averil.

27 June 2013

Crown, John.	Reilly, Kathryn.
Cummins, Maurice.	Walsh, Jim.
D'Arcy, Michael.	Wilson, Diarmuid.
Gilroy, John.	
Hayden, Aideen.	
Henry, Imelda.	
Higgins, Lorraine.	
Kelly, John.	
Landy, Denis.	
Moloney, Marie.	
Mulcahy, Tony.	
Mullins, Michael.	
Noone, Catherine.	
Norris, David.	
O'Brien, Mary Ann.	
Quinn, Feargal.	
Sheahan, Tom.	
Whelan, John.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Ned O'Sullivan and Diarmuid Wilson.

Question declared carried.

*Sitting suspended at 12.40 p.m. and resumed at 12.45 p.m.*

**An Bille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a Chur le Seanad Éireann) 2013: An Dara Céim (Atógáil)**

**Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013:  
Second Stage (Resumed)**

Thaig an tairiscint seo ar Dé Céadaoin, 26 Meitheamh 2013:

Go léifear an Bille an Dara hUair anois.



The following motion was moved on Wednesday, 26 Meitheamh 2013:

That the Bill be now read a Second Time.

Atógadh an díospóireacht ar leasú a 1:

Debate resumed on amendment No. 1:

To delete all words after “That” and substitute the following:

“the Bill be read a second time on 17 September 2013, for the following reasons:

(i) to request the Constitutional Convention to consider the constitutional role of the Seanad and to allow time for such consideration;

(ii) to facilitate a consultation process with the Nominating Bodies and the Nominating Universities who have for more than 75 years fulfilled the constitutional role for Seanad General Elections as required by Article 18 of Bunreacht na hÉireann;

(iii) to allow other interested parties to make submissions; and

(iv) to have the views arising from these consultations and discussions available to the people as they prepare to vote in the Referendum.”

(Senator Feargal Quinn).

**Acting Chairman (Senator Marie Moloney):** I welcome the Minister of State to the House. I believe Senator Noone has eight minutes remaining of her time.

**Senator Catherine Noone:** I welcome the Minister of State to the House for this very important debate. As we face into the referendum on the Seanad, it is important to be mindful that it is part of our parliamentary system that has faced an uncertain future on more than one occasion. The first national assembly established in Ireland following the Act of Union was a single-chambered body, Dáil Éireann, which convened in January 1919. It was only in 1922 that our parliamentary system became bicameral or dual-chambered with the establishment of Seanad Éireann. At the time, a jump from being unicameral to bicameral was an unusual move and we were alone in that sense.

However, in many respects, Ireland has always been somewhat different. While many countries enter into war, Ireland embraced neutrality. I do not follow the argument that because a system suits one country, it works for all countries. The world is more complicated instead of there being any single correct answer. Unicameral and bicameral are not one-size-fits-all solutions. Different countries require different systems. In 2013, I am proud of our system while recognising shortfalls and the need for reform. I am proud of the work our system does on a daily basis.

From the outset Dáil Éireann was resistant to efforts by an assertive Seanad to encroach upon what Deputies saw as their territory. Tensions between the two houses intensified after de Valera and Fianna Fail came to power in 1932. The manner in which the Free State Seanad was abolished and the decision to re-establish it, albeit in a different form, in the 1937 Constitution is also interesting in the context of the current debate. When the Free State Senate was abolished in 1936, de Valera clearly indicated that the idea of a second chamber was anathema

to him unless it could be shown that it would be of value. He then established a commission to investigate how it believed a second chamber should function.

The commission recommended that the second chamber should have the power to regulate its own business and elect its chairman; that its members should enjoy the same immunities and privileges as Members of Dáil Éireann; that no Bill should be enacted by Dáil Éireann until it had first been sent to the second house for consideration; that the second house should not have a power of veto; and that the refusal of the second house to pass a Bill would only have the effect of delaying the passage of that Bill by three months. Many of these recommendations would have the effect of declawing the Seanad, effectively sewing the seeds of many of the greatest criticisms that it faces today.

As a Senator here for the first time, two things have become abundantly clear. First, Senators are remarkably committed, dedicated and able and bring a great amount of expertise to the House. Second, the Seanad and its ways are in dire need of reform. Senator Maurice Cummins has been complimented by the Opposition as being an excellent Leader and Senator MacSharry referred to him as the best Leader in all of the time that he has been a member and many other Senators have made similar comments. Senator Mary White would agree.

Yesterday, when the Taoiseach was present, the Leader outlined the many innovative reforms here given the constraints of being constitutionally bound to conduct business in a particular way. There was much comment that the Government would not enjoy a majority because of the Independents and Taoiseach's nominees. However, I shall reiterate an important comment that was made yesterday. The current crop of Independent Senators have been very independent. For the most part, they have voted against the Government on numerous occasions. The Taoiseach made that point but used it in favour of abolition. He has been innovative about it too. The Independent Senators must be recognised for their independence.

The Seanad has played host to many remarkable parliamentarians down through the years and I have alluded to that fact before in the House. The list included Dr. Garret FitzGerald, Mary Robinson, Douglas Hyde and William Butler Yeats. It has given rise to a host of interesting initiatives and amendments in my two years here. The Seanad has shown, even when it has been declawed and has very limited abilities to legislate, that it has had an impact on a daily basis on Irish society. It still can have an impact.

Reform is a big spectrum with many variants. Meaningful reform may not be possible because we may not all be on the same page or find total agreement before the referendum takes place. The Bill shows us the proposed referendum and how the Oireachtas will work in a future without the Seanad. Committees will be appointed using the d'Hondt method and will work to provide the balance that the Seanad is supposed to provide.

There are some other aspects to be considered. For example, I suggest amending Article 27 of the Constitution. As Members will know, the Article gives the Oireachtas the power to seek the views of the people on legislation and states, in Article 27.1, "a proposal of such national importance that the will of the people thereon ought to be ascertained." There were many occasions where the provision could have been used to great effect, for example, the bank guarantee which has been very topical in the past couple of days. The Article could have been used on the bank guarantee legislation to slow things down and would have enabled us to adopt a more considered approach. An amended Article 27 could require that it takes one third of the Dáil and over 50% of the relevant committee to refer a referendum request to the President.

Fire alarms are not abolished because they go unused. Therefore, I cannot see the logic behind completely scrapping Article 27. Circumstances change, the unforeseen can happen and having an emergency mechanism in the Constitution is a sensible provision.

I am putting it mildly when I say that the Bill and its proposed amendments to the Constitution are very significant. They are among the most important and far-reaching that we will see in our lifetime as legislators. Self-preservation can never be a reason to fear the future and I welcome the fact that the referendum will be put to the people. In the words of Thomas Jefferson, “In matters of style, swim with the current; in matters of principle, stand like a rock”. In this instance, the Taoiseach has stood firm on his belief that the people should decide the fate of the Chamber. He has not wavered since he made the proposal in 2009 but many others have flip-flopped on the issue, including many of his parliamentary colleagues. I welcome the referendum and the fact that the people will decide the future of this House.

**Acting Chairman (Senator Marie Moloney):** I call Senator White and she has ten minutes.

**Senator Mary M. White:** In a dramatic move at a Fine Gael dinner in October 2009, Enda Kenny, then in opposition, committed his party to abolishing Seanad Éireann if he became Taoiseach. He said: “I have come to the conclusion that a second house of the Oireachtas can no longer be justified”. As far as I am aware the majority of the Fine Gael Senators were as surprised as I and my Fianna Fáil Seanad colleagues when the Taoiseach made that announcement.

The argument put forward by the Taoiseach to abolish our bicameral state is unjustified and was at the time desperate attempt to court public popularity. He emphasised that the abolition of the Seanad would save the public purse €25 million and would give a good hiding to what is perceived as the political elite in Seanad Éireann. The proposal was received with great excitement in the newspapers at the time. If the guillotine had been in use the public would have cut our heads off immediately.

I must remind everyone that I am honoured to have been elected to the Seanad three times and I have been here for 12 years. I wish to put on record, and I sure that the Minister of State, Deputy Brian Hayes, will agree with me that the Seanad did not cause our current economic crisis. However, there is no point in denying that the inability of the Dáil and the Seanad to hold the Government and the institutions of State accountable has been a weakness. Abolition of the Seanad will weaken rather than enhance accountability by removing the ability of Senators to contribute via Oireachtas committees and their contributions in the Chamber.

During the 12 years that I have been a Member of this House I have held public meetings at my own expense and produced two documents into child care. When Fianna Fáil was in government I helped secure the scheme to provide three years of free child care. I also produced a policy paper on a new approach to aging and ageism and one on suicide in the new Ireland. I have held public meetings at my own expense. For example, I hire halls and electronic printers and I spend thousands of pounds on printing documents.

I wish to put an important issue on the record. The Seanad has existed for 74 years having been established, as we all know, under the 1937 Constitution. Since then an enormous amount of brain power, time and energy has gone into producing 12 reports on the future of the Seanad. The last report was excellent and it was driven and delivered by Mary O’Rourke when she was a Senator and Leader of the Seanad.

27 June 2013

I feel cross about the referendum of 1979 which dealt with the issue of university representation in Seanad Éireann. Along with the 12 reports that I referred to, in July 1979 the people voted in a referendum on the Seanad.

*1 o'clock*

A referendum of the people took place to change how Senators representing the university seats are elected and it is a pity some of the aforementioned Senators are not present today to hear my comments. The purpose of the referendum was to broaden the scope of the franchise beyond Trinity College and NUI, comprising University College Dublin, University College Maynooth, University College Cork and University College Galway, to other institutes of higher education in the State. The seventh amendment to the Constitution was voted on positively by the people and of those who voted, 93% voted for change such that everyone who attended a third level college should be entitled to vote in the elections for the Seanad university seats. Tens of thousands of young Irish people who have graduated since 1979 have been deprived of the ability to vote to elect Members to the Seanad.

The current system to elect six university Senators is open to criticism on the basis that it confers a basic democratic right, namely, the right to vote, on a select group of people based solely on educational achievement. Over the past 30 years, successive Governments of all political hues, including Fianna Fáil and Fine Gael, have failed to implement the seventh amendment to the Constitution to reform university representation and have failed to implement the recommendations in the 12 reports. The current arrangements exclude the vast majority of third level students and over the years, the six elected Senators of NUI and Trinity College, who have represented educational institutions, have shown hypocrisy in their failure to ensure that all other third-level bodies were included. Those who were in this House over that time have failed as they could have introduced it themselves. The people passed the amendment, all Members were obliged to do was to introduce the legislation but they failed to do so. The exclusion of graduates of the University of Limerick and the institutes of technology from voting in the Seanad elections constitutes elitism in its worst form and an apology should be given on behalf of Seanad Éireann to all young graduates who have missed the opportunity to take part in Irish politics at this level.

**Acting Chairman (Senator Jillian van Turnhout):** Senator O'Donnell, on a point of order.

**Senator Marie-Louise O'Donnell:** It is interesting that there are only seven people in the Chamber, all of whom are women.

**Acting Chairman (Senator Jillian van Turnhout):** Is that a point of order or is-----

**Senator Marie Moloney:** There are eight, and if one includes the Acting Chairman, there are nine.

**Senator Marie-Louise O'Donnell:** Yes but the House does not have a quorum and-----

**Acting Chairman (Senator Jillian van Turnhout):** ----- the Senator calling for a quorum?

**Deputy Brian Hayes:** The glass ceiling has been shattered.

**Senator Marie-Louise O'Donnell:** -----I wish to call for a quorum on this most important topic.

*Notice taken that 12 Members were not present; House counted and 12 Members being present,*

**Senator Aideen Hayden:** I welcome the Minister of State to the Chamber on what probably is the most important and significant debate in the life of this House. The Minister of State has taken a particular interest in this House and Members have noted his willingness to attend the House and to be present for debates. In the Seanad, Members generally note who are and who are not their friends.

**Deputy Brian Hayes:** Do Members need friends like this?

**Senator Aideen Hayden:** At the outset, as Whip of the Labour Seanad group I will of course be supporting this Bill and welcome the debate I believe will ensue in the public domain on both the future of the Seanad and the wider political system. I believe that will be inevitable following the passing of this Bill and the media attention that hopefully will follow but which has not tended to follow Seanad activities in the past, which is a pity. The position of the Labour Party in its 2011 manifesto was for the matter of Seanad abolition to be brought to the Constitutional Convention as part of a broader process of reform of governance and Oireachtas structures. The holding of a Constitutional Convention was one of the commitments in the programme for Government, as was the holding of a referendum on Seanad abolition.

However, the programme for Government did not, at least on my first reading of it, exclude the possibility that the convention would discuss the matter of Seanad abolition. Given a major portion of the remit of the convention is to discuss political reform and in particular systems of voting and representation, I believe the convention was weakened by not being able to discuss how we elect those who govern us with the broadest possible remit. This view is supported by the fact that the vote which took place at the convention as to whether the matter of the Seanad should be included in the convention's remit in advance of the referendum was narrowly defeated. It was defeated after - I emphasise "after" - the convention's chair made it clear that the role of the convention was to discuss those matters which the Government requested it to do first, which did not include Seanad abolition or reform, thereby presenting a clear message to the convention's members.

It is important to bear in mind the convention is an important departure in the Irish political scene and was established to consider a number of constitutional matters comprehensively, to report to the Government on those matters and for them to be considered by both Houses of the Oireachtas. These matters include the review of the electoral system; reduction of the presidential term to five years; provision for same-sex marriage; deletion of outdated clauses on women in the home; the removal of blasphemy from the Constitution; and the possible reduction of the voting age. These are important matters in the life and future of the Constitution and as I already have stated, I believe the convention's remit to have been weakened by the failure to include a discussion on the Seanad.

I have been very impressed by the standard of debate at the Constitutional Convention at which every strand of society is represented, including a significant number of people who do not agree with my viewpoints. The debate on political reform which did take place has, from my perspective as a member of the convention, been critical of the current political system. There was a generally expressed view, for example, that the current political system is dominated to too great an extent by the largest political parties. For example, the convention voted, by a majority of 83%, for larger constituencies to ensure a more representative Dáil. Clientelism



was also seen as a distinct feature of Irish politics. Members voted by a majority of 55% that Dáil Éireann should be permitted to appoint people who were not Members of the Oireachtas as Ministers in order to broaden the field of expertise because it was perceived that the expertise among Members of the Oireachtas was insufficient. Members of the convention also expressed the majority view that Ministers, on their appointment, should resign their Dáil seats on the grounds - as expressed in the debate - that it would allow them to get on with the job and not spend their time fixing potholes and, as it were, looking after their constituency. As Members can see, the convention clearly expressed its dissatisfaction with the current process.

Reform of the political system should be taken as a whole, of which the Seanad is a part. While the Government has moved to strengthen other aspects of government, such as local government, which has been cited by An Taoiseach as a reason we can now move forward with the abolition of the Seanad, I do not believe we are there yet, by any manner of means. Meaningful local government will in time make clientelism redundant, at least in the main part, and will lead to more professional central government and more transparent local government. The process of centralising decision making within Departments and away from local authorities took many decades. I have no doubt that meaningful change will also take some time. However, let us not forget that if one looks closer at the reasons successive Governments saw fit to reduce the powers of local government, they included a concern with decisions being made for the wrong reasons and a preoccupation with parish pump politics. Reform, therefore, unless it is meaningful reform with appropriate local accountability and with local resources spent locally, will not greatly improve the democratic process. The jury is therefore out.

As has been said on a number of occasions by previous speakers, countries of a similar size to Ireland that have only one chamber have significantly stronger local and regional governments. In Wales, for example, with a population similar to Ireland, there are four regional local authority areas. They not only collect local charges but also manage local education and policing. Regional and local authorities are significantly stronger than in Ireland. That is also true in northern European countries that were cited by An Taoiseach as examples of unicameral systems.

The Taoiseach has also indicated that to fill the lacuna in legislative scrutiny which he accepts would follow abolition of the Seanad, the legislative process, in particular the committee system, will need to be reformed and reorganised to ensure adequate legislative scrutiny and checks on Government are in place. It has been recognised by a number of persons and it has been cited on a number of occasions that the Irish Parliament is held to be one of the most Executive-dominated parliaments among parliamentary democracies in Europe and among OECD countries. I accept that the Taoiseach did accept reform would be simultaneous with the abolition of the Seanad. However, if there was to have been a meaningful debate on the issue, it should have been done and discussed in the context of the Constitutional Convention in the first instance as part of wider governmental reform. On the basis of the debate I witnessed in the Constitutional Convention, I agree with Senator van Turnhout's initial observation that having also sat on committees, it is difficult to envisage how the Dáil as currently constituted is going to carry out the functions which the Taoiseach has set out for it. It is notoriously true that Deputies have a sufficient amount of onus on them to spend as much time as possible in their constituencies. An Taoiseach will find some resistance in expanding the workload of Deputies within the current clientelist electoral system.

It is interesting to note that this Seanad is probably the strongest one in the history of the modern State. I will not go back as far as the 1920s. The choice of Taoiseach's nominees



has moved away from the traditional party hacks being appointed and shows that it can be an important House. I will not name individuals. Without any disrespect to An Taoiseach's nominees, who have been significantly praised in recent days, for the sake of argument, however, I wish to mention the role of some other Members of the Seanad, for example, Senator Norris, in the work he has done, and my colleague, Senator Ivana Bacik, who championed a number of pieces of legislation, including the Electoral (Amendment) (Political Funding) Act, which was passed into law and will significantly enhance the role of women in politics. She also introduced the Criminal Justice (Female Genital Mutilation) Act. Without looking like a blushing bride, the first Labour Private Members' Bill on mortgage arrears was authored by me. It proposed a number of solutions that were subsequently adopted by the Government and made a positive contribution.

I am aware that I am up against the clock. Having had the experience of sitting in this Chamber, it does a very valuable job that cannot be lightly cast aside. With the confidence in the system as it currently stands, with a lack of a significant local government element and a Dáil that is strongly influenced by local matters and clientelism, there stands a significant danger with the abolition of the Seanad. I would like the Taoiseach to commit that if the referendum does not pass, he will refer the matter to the Constitutional Convention.

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

**Senator Aileen Hayden:** A "No" vote would be a vote for reform. I do not believe anyone stands over the Seanad as it is currently constituted. I urge the Taoiseach to commit to bringing the matter to the Constitutional Convention.

**Senator Marie-Louise O'Donnell:** The decision as to whether the Seanad is to be abolished or retained is not ours to make within this House. We may argue within this Chamber for the Seanad's retention and against its abolition, but no matter which way we argue the decision about the fate of the Seanad is not ours to make. The people will decide that fate in early October. It is only our duty as Senators to allow the people to do just that, without any impasse whatsoever. No one in the Seanad has the right to vote against the validity of holding the referendum in October. None of us has been elected by the general electorate. In fact, I have some cheek standing up here today since I was appointed by the Taoiseach. I will let the people decide what they want to do about that.

One might ask whether we are not therefore to stand up for the Seanad. However, that is not the question. The question is whether the Seanad is able to stand up for itself and if it warrants its own reward. Is the Seanad an example of its own stance or is it an example of its own standard? Is it an example of its own reward and is it an example for its own retention? In other words, are we good enough? If the answer to all of those questions were a resounding "Yes", perhaps we would not be having this conversation and we would not be having the referendum.

What I am arguing and what I am grappling with is not personal and it never could or should be. What I am trying to do is to separate the dancer from the dance within the context of the pending abolition Bill. I wish to argue for an institution as an institution not the individuals as individuals within it because I have profound respect for every Senator, in particular for my fellow Independent Senators with whom I walked through the gate two years ago. My argument is not directed at any particular Member.

In the 35 years I worked in third level education, I knew nothing of what went on in the

Seanad. I did not have a vote. I did not know how people got into the Seanad or what they did when they got in here, and therefore I had very little interest in what happened on the inside. Would the Seanad not have been better served in the past two years, given that we all knew the referendum was coming and it was in the programme for Government of certain political parties, informing the people about itself before making good and great speeches about reform?

What of reform? The Government has given no commitment to reform of the Seanad. The people are being asked to retain or abolish the Seanad. They are not being asked about reform. If they were, do I countenance that it would actually be brought about? We have heard and been introduced to new Bills about reform of the Seanad. Reform is not what the people are being asked to vote on. More arguments have arisen about retaining the Seanad and reform will follow. Who says so? The Government certainly does not and there has been no reform for 60 or 70 years. We have heard other fantasy arguments about votes for the diaspora and everyone in Northern Ireland who carries the relevant passport. These arguments are weak. It is as though someone off the island will make the Seanad alright and connect it, find its centrality and bed down its relevance. This will not happen.

Anyway, this is not the kernel of my point, which brings me right back to my initial question about whether the Seanad warrants its own reward, is an example of its own stance, standard, centrality, function, connection and retention. Have we really been able to do any of that with any great local, regional or national conviction? We must answer that question quickly.

Power grab is the new up-the-ladder phrase. It has been used by many Seanad reformists, and they have a right to use it. It is a Lower House power grab that the Seanad is to be abolished. The question is, what power is the Lower House grabbing? The Seanad does not have power to grab except that of a 90 day delay. The Seanad has power of communication, new Bills, intellect, alteration, addition or subtraction of existing Bills. Certainly the Seanad may look afresh at legislative procedures and unearth difficulties not noticed by the Lower House, and a second opinion is always a good thing; reconsideration is always a good thing. It is a good thing, however, if and only if the second House is not controlled by a Government majority. In the past and in my two years, the Seanad has always been controlled by a Government majority, strangled by the political parties. In my two years, the Seanad has changed some Bills but has it changed ultimate Bills? The new Seanad of 42 never previously elected Senators never sent back one Bill. Some of the Independents tried, some of the Opposition tried and some Labour Party Senator tried. Social welfare legislation, the sale of the lottery, banking, disability cuts and housing legislation - not a single Bill was sent back. We all know why.

**Senator David Norris:** Because of Enda.

**Senator Marie-Louise O'Donnell:** After two years I ask myself if I have a single example to show the Irish people outside of Senator Norris of how we make a defined and defining difference. We better as new Senators answer that question very quickly. Where are the great checks and balances on the great Lower House power grabbing political Executive?

It is argued that if we all had a vote to come into the Seanad, all would be well. Not so. We all have a vote in the Lower House and all is not well. It is argued that unicameralism and bicameralism are not evenly spread around the world. There is no clear trend; some countries abolish and some retain. New Zealand, Denmark, Sweden and Iceland have abolished. Poland, Romania, Morocco and the Czech Republic have adopted a second house. Norway has one election and members split into two chambers for the duration of the legislature. Bills shuttle

back and forth so perhaps we might try that.

If the Government cannot be brought down by a second chamber, are the outcomes of our votes really critical? Are they not impotent? If the votes can be overridden by the Lower House, is legislation in this House reduced? Most Members of this House are driven by and dictated to by the party Whip. As a result, is there less of a tendency to scrutinise legislation? Is there less of a tendency to become more expert in specialised topics?

What distinguishes the Seanad in the eyes of the Irish people? It is our composition, not our work, and I am part of that. Our composition is our most visible feature and is always the first target. All of the arguments in favour of retention have concentrated on that, not on our functions. In our case it is difficult to separate our composition from our function.

Do I think it is too late? That is for the Irish people to decide. Is there a general clamour for reform? If there is, where is it? I only hear it from certain quarters. Where was the reform two years ago, five years ago, seven years ago, ten years ago, 14, 17, 20 or 22 years ago? There were reports but reports have nothing to do with reform. Reform is about action and it never lives on shelves. Are we beyond reform? We shall let the Irish people decide.

The Seanad is an ill-understood institution. Neither its best nor its worst features are understood by or communicated to the Irish public. The public is aware of vested interests, of Government parties. They understand the constitutional rigidity and watch our low prestige. They know why the media does not concentrate on us and when it does, it is with negative feelings. In other countries there is desire for reform but it rarely happens. We have a low profile and we are not understood. We demand less media attention and get less attention. We are not directly elected and have little power to challenge Government. The party leaders live in the Lower House, our reports gather dust, there are continual calls for reform, it is full of vested interests, constitutional rigidity, low prestige, negative feelings and unnecessary duplication.

Do the Irish people really engage with the Seanad? I must let the Irish people decide if they do or not. Where is our real urgency as Senators? Where is our real political cut and thrust? Where is our real legitimacy? Do we have any? If Senators think we have legitimacy, they must explain it. They must lay it out for the Irish people. I do not want answers about checks and balances because they are not true. The people will decide in October.

**Senator Imelda Henry:** Most people in the House when they ran for election to the Seanad knew about this referendum and that the Taoiseach was committed to it. I do not see any point in debating about reform because it is long over. There were ten reports and nothing was done. The Taoiseach is putting a straightforward question to the people: do they want to abolish the Seanad, “Yes” or “No”? The people will decide.

We all agree this House cannot continue in its current form. I support and welcome local government reform and would like to see the role of a councillor being enhanced. I would also like to see greater Dáil reform. When a person becomes a national politician, he or she should represent the country and act as a national politician. If local government was better, we could leave national politicians to run the country and councillors to look after local issues.

Like the Leas-Chathaoirleach, I have a difficulty with the Order of Business. I find it very frustrating and I rarely take part in it. We do some good work in the House and a lot of good scrutiny of legislation has taken place. We have had some interesting people in here to address us. We had, however, a farcical outburst by a Senator here two weeks ago that did nothing to

bolster the argument for the reform or retention of the Seanad. It had the opposite effect, and many people have said as much to me since then.

I respect my colleagues in whatever way they came into the House, be there here through the university system, as Taoiseach's nominees or candidates from nominating bodies on the panels. There is one Senator, however, who has a difficulty with me in the House. I got my nomination from the Vintners' Federation of Ireland. My family has been involved in the pub business for almost 50 years and I am continuing in that business. We are not drug dealers as was said on national radio two weeks ago.

**Senator David Norris:** The Senator is a drug dealer. It is a legal drug but alcohol is a significant drug.

**Senator Imelda Henry:** I am very proud to be in this House as representative of the Vintners' Federation of Ireland.

**Senator David Norris:** I know. There is nothing wrong with it, but it is a drug.

**Senator Imelda Henry:** I wanted it put on the record because he has a difficulty with me being in here. I hope we get back to the day where people can drink and will go back to the pubs to drink in a controlled environment. I have worked closely with the Oireachtas Joint Committee on Health and Children, as the Senator knows well, on the problem we have with alcohol abuse.

I am delighted to be a member of Taoiseach Enda Kenny's parliamentary party. I have supported the Taoiseach since the day I joined the party and I intend to continue to support him.

**Senator David Norris:** I shivered when I saw this lamentable Bill in print. There should have been two Bills and it was dishonest for there not to be. This Bill does one thing very specifically and clearly. It is not a Bill to facilitate the holding of a referendum; no decent person could vote against a Bill that facilitated the holding of a referendum. This Bill purports to extinguish the Seanad. For that reason, no decent, self-respecting Senator could ever vote for it.

According to the explanatory memorandum, "the Bill provides that Seanad Éireann is to be abolished and, in consequence of its abolition, amends provisions of the Constitution that confer functions on Seanad Éireann or that are premised on the existence of that House." The word "referendum" is not even mentioned. This is the extinction of the Seanad; it is *force majeure* and a power grab. I am honoured that I was the first person to demonstrate that, through all the subterfuge, the Government is concealing a power grab that will also enable it to impeach the President and Supreme Court. It will get rid of this House at its peril and no emollient speeches from the other side will convince me otherwise.

The Bill is badly drafted, highly technical and deliberately confusing. It is a piece of red meat held out by the Taoiseach to distract the attention of the guard dogs in order that the Irish people can be fooled. We are witnessing the Lisbon treaty all over again. It is the same bloody tactic. People did not even read the Lisbon treaty because it was deliberately worded to confuse people. I have read legislation for the past 26 years. When I first read this Bill I thought it was inaccurate because of the way in which the Irish and English provisions were drafted. I had an expert examine the text and the person in question indicated that was not the case but the text was drafted in such a technical manner that God almighty could not make head nor tail of it. The drafting is completely and utterly deliberate.

I stated no self-respecting Senator could vote for the Bill. How could one do so? I also stated this Bill is not about having a referendum but about extinguishing the Seanad. This is not a case of turkeys voting for Christmas but being invited to slit their own throats and eviscerate and stuff themselves at the instigation of the Taoiseach. Those on the benches opposite who pose as democrats and orators should note that there is not even a suggestion of a vegetarian alternative because the Taoiseach from the west has blood on his fangs and believes the Irish people are as stupid as those who elected his Government on false promises.

We hear blather about reform of the Dáil but I do not believe a word of it. The Taoiseach should show us the colour of his money; out with it and let us see some Dáil reform. There is not a damn bit of it and Irish people would be bloody stupid to allow him to abolish the Seanad. He is pretending that, down the road somewhere, he will make a serious attempt at Dáil reform. Why would he do so when he has mutilated the Oireachtas, carved it up by one third, halved parliamentary representation and grabbed all the powers of committees? Dáil reform is not the direction in which he is moving.

The Taoiseach cites various countries such as “little” Denmark and Finland. That is great but those countries abolished their second chambers in tandem with measures to significantly strengthen local democracy and changed the regulations in parliament to provide for free votes and votes of conscience. I will believe Enda bloody Kenny when he allows a free vote on the abortion Bill. Let us see some consistency and honesty. I do not know what the Taoiseach reads but he appears to have been reading the great essay on simulation and dissimulation by Sir Francis Bacon because there is not one tissue of truth in his rotten little speech.

This is an appalling situation. If one goes down the corridor, one will see on the wall a portrait of a smug looking little politician who would get lost among the crowdeen of cábógs in here who are trying to abolish the Seanad. His name was John Foster and in 1800, no doubt in tones of lovely Augustine Latin, he pronounced the death of the Irish Parliament. He then shoved a silver mace up under his gown and legged it down the street. Foster was a liar and thief and, as far as I am concerned, whoever proposes and votes for this Bill is a liar, thief and traitor to the Irish people. If the Seanad is abolished, the portrait of Foster should be placed in the Chair as a reminder of the shame brought on this House.

We have heard that this House is useless. How useless were Mary Robinson and Owen Sheehy-Skeffington? The Government had the unmitigated cheek to enrol Mary Robinson who would be furious at the denigration of the Seanad. I know Mary Robinson better than any other Member of the House. I was also a friend of Noel Browne for 30 years. Until his death, he signed my nomination papers on each occasion I stood for the Seanad. He would be livid at the idea that some grimy little squirt from the other side had been sent out to abuse his name. While Noel Browne cannot speak for himself, I sure as hell can because I knew him intimately unlike the little bamboozlers who never knew him. Without Seanad Éireann, we would not have had the first debate on AIDS, there would not be a foreign affairs committee and the House would not have debated rendition. I handed the papers I received and work I did on rendition to the then Deputy Michael D. Higgins in the Dáil. While the other House took up the matter, it was first taken up in this House. Without the Seanad, we would not have had the civil partnership legislation, at least not for some years. How many Bills has my colleague, Senator Feargal Quinn, produced, even in this session? The Senator’s Construction Contracts Bill remains stuck in the Lower House while these idiots complain about us.

The Taoiseach had the gall to stand on the plinth and ask what the Seanad had done to stop



the disaster of the Celtic tiger. I will tell him what I did. I stood in this Chamber and argued against it, making a case that was clear, logical and confirmed to be right. Thanks to Deputy Mathews, I showed that certain figures were wrong and produced accurate figures. I voted against benchmarking. I placed on record the names of the bondholders and when I stated they should be burned, the then Cathaoirleach nearly broke his gavel. No one in the Dáil had the balls to do the same, including the then Deputy Kenny. Where was he at that stage? He may be puffed up and brave in challenging the Seanad now but at that time he was in the Lower House supporting the pouring of fuel on the Celtic tiger, engaging in his usual corrupt auction politics and leading his meek little supporters in to the Dáil to vote in favour of the bank guarantee. Despite this, the man has the impertinence to attack the Seanad.

It has been argued the Seanad was not reformed. I agree with Senator Marie-Louise O'Donnell that the establishment did nothing for ten years.

**Senator Marie-Louise O'Donnell:** That was my point.

**Senator David Norris:** Ten reports were published and a previous Government even had a referendum passed, yet successive Governments did sweet bugger all about them for 70 years. Senators elected to the university seats demanded reform and asked what we could do. We cannot take over the Government and force it to act. Every single Government and party corrupted this House but still this brave little ship, with its tattered sails, which was holed without being properly corked and deliberately leaked by those blaggards in their corrupt interests, sailed through the storms and held firm in its own way for the Irish people. I honour it for that.

Other countries from around the globe which have abolished their senates have been brought into the debate. It is no wonder the Taoiseach did not mention Mr. Mugabe. The first thing Mr. Mugabe did in Zimbabwe was abolish the country's senate. Perhaps the Taoiseach sees himself not only in the mould of a little Napoleon but also in another guise.

I note that even today a Bill proposed by Senator Zappone and others was accepted. The Leader started his contribution by referring to Dáil reform. That is rubbish and I do not believe a word of it. He stated 14 Dáil committees will be established. Of course they will because they will provide jobs for the boys. Jobs for the boys, jobs for the boys, jobs for the boys. This is what the Irish people vote for - jobs for the bloody boys. The same boys who dragged us into the ruins of this economy.

It is claimed that the Taoiseach would not bring in a Bill on flimsy grounds or off the top of his head but that is exactly what he did. I was here and I saw it. I saw the face of the Minister, Deputy Frances Fitzgerald. Members should ask the Minister if our wonderful, open-hearted Taoiseach ever let her know what was going on.

**Acting Chairman (Senator Paul Coghlan):** The Chair is loth to intervene ---

**Senator David Norris:** Then he should not do so.

**Acting Chairman (Senator Paul Coghlan):** -----but I must remind Senator Norris that his time is up.

**Senator David Norris:** I cannot believe the unspeakable dishonesty of this speech. He is going to look at the Presidency and reduce the number of Members of the Oireachtas required to nominate a Presidential candidate to 14. Will he listen to the voice of the people, this won-



derful democrat, this absolute democrat who would not recognise democracy if it came up and puked in his face? Despite all the manoeuvring, I got something through the Constitutional Convention which was not even allowed to discuss Seanad Éireann. I got a provision through relating to the Presidency to give the people of Ireland a greater say. That was democracy, with 97% of the people at the convention voting for it. Let us hear a titter out of Taoiseach Enda Kenny about that.

I understand that I am nearly at my limit so I will end by saying that I reiterate my challenge to the Taoiseach to come into this House, or even better, on television or radio, and debate this. I will debate it with him and will peel the layers of dishonesty and populism away from him and show the Irish people what is really being done to them so they will not be fooled another time, until they know what way to vote. They will vote against this Bill, which is a fraud perpetrated on the Irish people as gross as the fraud perpetrated by Wood's ha'pence in the 18th century and which was defeated by the oratory and writing of the great Jonathan Swift. That is where power lies sometimes - in the hands of the weak, in the hands of the people who are being battered and who are having democracy torn from them. If we let the people know what is happening, we can stymie this miserable little act of political vandalism.

**Senator Denis Landy:** I welcome the Minister to the House. I am pleased that this Bill is being given adequate time to be debated in this House. I have listened with interest to the speeches already made on the issue and would like to make a number of points in response. First, I wish to address the speech delivered yesterday by the Taoiseach, which was respectfully, if not warmly, received by Members of this House. The Taoiseach spoke about the need for Government to reform politics and made reference to the fact that nothing was done for 75 years on reforming the Seanad, almost as if that was the fault of the current Seanad. He also referred to the fact that initially vocational panels were set up to ensure that we had expertise in this House and he intimated that this had not worked out very well. However, it is only fair to say, as was pointed out yesterday, that we do have expertise in this House, from Senators Barrett, Quinn and many others, across a wide range of fields in this country.

The Taoiseach also made reference to the fact that several other EU countries have unicameral systems, including Denmark, Finland, Norway, Croatia and Slovakia. However, he failed to deal with the system of government below the national parliaments in those countries. Finland, for example, has 304 local authorities and 10,000 local councillors. Norway has 423 local authorities and 12,000 councillors. This is in stark contrast to what is being proposed in this country under the guise of local government reform, with the number of councillors decreasing from 1,467 to 949 and with the rural parts of Ireland being hardest hit. In Monaghan, for example, the number of councillors will fall from 56 to 18, a decrease of 68%. In Tipperary, the number will fall from 100 to 40, a drop of 60% and in the Taoiseach's own county of Mayo, the number of councillors will drop from 52 to 30, a decrease of 42%. We must compare this to the numbers involved in local government across Europe. In Denmark, there is one local councillor for every 2,245 people while in Norway, there is one for every 423 people. One might ask what is the relevance of this in the context of the debate today. It is relevant because not alone do we intend to strip out the Second House of democracy, we also intend to strip out major tiers of local government. Indeed, the system of local government in this country is as centralised, if not more so, than the British system, from which it devolved. When one looks at regional governance across Europe, one sees that finance is raised locally and service provision is locally based but in this country there are no services at local level worth talking about and there is no intention, as yet, to put any new decentralised services into the local government reform Bill.

In that context, it is very difficult to accept the comparisons that the Taoiseach made yesterday when he spoke of Scandinavian countries and the fact they did not have a second house of parliament and questioned why we should have one. The answer to that question is very clear - those countries have real, working regional government but we have none.

The other issue that the Taoiseach chose not to address in his speech yesterday is that of cost savings. The initial statements from the Government regarding to the abolition of the Seanad suggested that its removal would save the State up to €20 million per annum. The actual figure for the salaries of Senators is €4.2 million per annum. It has now been discovered by the pro-abolitionists that the issue of cost savings should be dropped from their agenda. My own party colleague, the Minister for Public Expenditure and Reform, Deputy Howlin, has said on more than one occasion that no money will be saved by the abolition of the Seanad because the money will be redeployed to Dáil committees. Indeed, Deputy Twomey requested that any money that is saved be redeployed to Dáil committees. The argument on cost savings has now been nullified by the Government itself.

In that context, one must ask why we are proceeding with this. Are we proceeding because a commitment was made at a press conference in October of 2009 or are we proceeding because, as some Senators have suggested, this House is not working properly and is not actually doing the job it was set up to do? No more than many other new Senators in this House, I can only judge from what I have seen in the past two and a half years. Within the limited scope of what this House is allowed to do constitutionally, I believe it is doing a very good job. However, if we want to reform the work of the Seanad, why did we choose to take the road we are on, namely, either abolition or retention? I was asked on local radio recently whether I believed there was an option B. There was apparently no option B to Croke Park II, but when it was rejected, we discovered that there was the Haddington Road agreement. There is always an option B and in this case, that should mean reform. Reform of this House should include an examination of the Whip system that is currently in place. Senators should also be given the opportunity to vote on legislation as they see fit, in accordance with certain criteria.

People say we are removed from the public and democracy and do not represent people. Some 43 Members of the House are directly elected by councillors in county and city councils. On average, each councillor who was elected got 1,500 votes. The number of votes received by successful Senators in the House, on average, is 75. If one does the maths, we represent, albeit once removed, 100,000 people on average. To say we do not represent the public is untrue.

I refer to the role of Senators outside of legislation in representing councillors who are their electorate. I, like most other Senators, receive representations daily from councillors of all parties and none on issues of relevance to them at local and national level. We use our position as Members of the House to raise those issues on the Order of Business or to bring forward the views expressed to us by councillors when legislation is being debated by the House. That is a representative role which is undervalued and unknown by many people in this country.

Most of us do not think up issues to raise on the Order of Business for the good of our health. For example, yesterday I raised the issue of unscrupulous moneylenders in this country and the fact that even those who are licensed are operating outside the law. I did not decide to raise that yesterday. I was contacted by a number of councillors who have faced this issue in their communities. As a Member of the House I took the opportunity to request that the matter be addressed by the Central Bank which is the licensing agency for moneylenders.

We in this House carry out a very important role. We should not run hastily to abolish it. The Minister of State, who was a Member of the House and was also a local authority member for a number of years, knows full well what I am talking about. It was said that the House has not referred legislation back during its two and a half years in existence. I still wonder what the right thing to do is in regard to this Bill. Maybe the debate does need an extra 90 days and perhaps I will reflect on that after the debate today before I press any bell.

**Senator Trevor Ó Clochartaigh:** Cuirim fáilte roimh an Aire Stáit. Ní haon locht air é nuair a deirim gur trua é nach bhfuil an Taoiseach anseo leis an díospóireacht seo a chloisteáil. Nuair a bhí mé ag caint inné, dúirt mé nach bhfuil dabht ar bith ann go mbíonn Taoiseach na tíre gnóthach, ach i ndáiríre tá sé ábalta am a fháil le haghaidh go leor gnóthaí eile. Is trua liom é nach bhfuil sé in ann bheith anseo le haghaidh na díospóireachta tábhachtach seo maidir le todhchaí an tSeanad.

I welcome the Minister of State but I am disappointed the Taoiseach was not here for the full debate. The least he could have done to show respect to all Senators in the House would have been to listen to their views on this issue. I can understand why a Taoiseach would be unable to attend the House every day on every Bill, but as he has championed the cause on this Bill, he could have spent time listening to the points being put forward.

When Giovanni Trapattoni wished to climb Croagh Patrick, he could find a few hours for that. He opened extensions to three schools in Connemara recently, which was fantastic, and was able to spend a full day there. He was able to meet members of the tobacco industry, as Senator Crown pointed out. He is able to go to Davos and swan about with the leaders of the world. It is quite disrespectful that he is not able to come to the House and listen to 60 Senators. Not every Senator may want to contribute, but the least the Taoiseach should have done is come to the House and debate the issue with us.

Senator O'Donnell referred to reform. The Government said we have had ten different reports on reform of the Seanad but nothing has happened. It is its job to implement reform. When it comes to the health service, the Government is always telling us it is putting in place reform. It told us it would reform the VEC sector. It is reforming local government. For some reason, when it comes to the Seanad, reform is an impossibility. I do not see the logic of that and both sides of the argument do not stack up. Reform needs political will to be implemented.

It is true there has never been the political will to implement reform in this House, even with all the different reports. We need to ask why that is the case. Our role is to be here as public representatives. We are here to bring issues forward on behalf of the citizens of the State and those living abroad.

The Seanad will only be as good as the Senators in it. To be quite honest, a lot of Senators work incredibly hard, but there are a number who could probably work harder. That is an issue for their groupings. Senator Landy quite clearly outlined our limited powers. Within them, most Senators use whatever mechanisms we have to raise very valid bona fide issues. We table matters on the Adjournment, we use the Order of Business and will use the platform this stage gives us to raise issues in our communities and to talk to groups who have elected us and want issues raised. We rarely raise issues just because we come in on a whim and feel like talking about something. In general, any issues we raise in the House are brought to our attention by somebody else.

We have to ask whether we represent the full gamut of the citizens of the State, which is the crux of the issue. We do not. Maybe that is why reform has never happened. The House has been a closed shop since its instigation and has looked after vested interests and represented elites. No reform has happened because it did not suit those in power to hand power back to the citizens.

It is a retrograde step that the Taoiseach has been so stubborn on this issue that he would not allow it to be discussed by the Constitutional Convention. Sinn Féin policy, as agreed at our Ard-Fheiseanna, has been abolition of the Seanad in its current form because, as I have outlined, it is elitist and undemocratic. All citizens do not have a universal franchise to elect people to the House. We have called for reform and have asked repeatedly for the issue to be sent before the Constitutional Convention which has shown us it can play a very positive role in these types of issues. The Taoiseach has his own mind on these issues.

Before the Taoiseach made his decision, how much democracy took place in Fine Gael and the Labour Party to debate the issue and come to a group conclusion that they wanted to abolish the Seanad? I would guess very little, if any. It has been confirmed by some of my fellow Senators-----

**Senator Denis Landy:** You have been guessing figures all your lives as a party.

**Senator Trevor Ó Clochartaigh:** Apparently there was no debate. The Taoiseach came up with the idea, it was imposed on the party and it is running with it because the boss said it had to. It does not sound like democracy to me and it is not how we would do democracy in our party. It shows how democratic the Taoiseach is and leads people to become very wary of the real agenda behind the abolition of the Seanad.

There is a genuine fear that local government will be much weakened with a lot less democratic representation at town and county council level. We have a Government which has a massive majority and a Cabinet which is ruled by four males in the Economic Management Council. People see that losing another layer of democracy where there is a certain level of debate is a retrograde step.

*2 o'clock*

We should not shrink the democratic space in that sense.

We have also heard many arguments about required Dáil reform but we have not seen any concrete proposals on the issue. From my limited experience over two and a half years in these Houses, I know that putting forward the argument that the committees will be able to take up slack by the abolition of the Seanad is a total red herring. A number of committees on which I have sat are relatively dysfunctional, and attendance at a few committee meetings has been quite scant, as there is a regime of people clocking in but leaving without making any positive input into the work of the committee. Arguing that the work of Dáil committees will solve the problem is certainly a red herring. As Senator Landy mentioned, where are the detailed costings of the savings to be made by the abolition of the Seanad, as we have not seen them? If what we hear from Senator Landy is correct and if the approximately €4 million is to be subsumed into the work of committees, there will be no saving coming from the democratic deficit.

It is interesting to look around the Chamber when all 60 Senators are here and consider the type of representation we have. There is an imbalance between male and female representa-

tives and where are the representatives of ethnic minorities? From what I can see, everybody here is white Caucasian and there are no members of the Traveller community. There is a bias towards the upper and middle classes, and all this means the House is not representative of our citizens. There are no representatives of the diaspora and immigrants, although we do our best to represent their issues. I am open to correction on that.

There is a politically centralised system and the Government is very much in control. The problem is not the way the Seanad works but the way in which Ministers and the Government treat the House. Ministers come in but they may as well be wearing ear plugs as they sit and smile at us, as the Taoiseach did yesterday, but nothing gets to them. Our contributions go in one ear and out the other. If the political establishment really wants to engage with the Seanad, much work could be done and good work is already done in the proposing of amendments. Such input is generally not taken on board.

The Seanad's structure is also undemocratic, which is illustrated by the fact that Sinn Féin representatives have been completely left out of the Committee on Procedure and Privileges, which makes decisions on how the House runs. We have seen the guillotining of Bills and a refusal to accept amendments. All of this means the Government is not serious about reform of the Dáil and Seanad, and the entire picture must be taken together. We need a reformed political system, with a reformed Seanad part of the overall picture.

There is a disconnect between the Dáil and the Government. Even when we debate issues and legislation coming to the House, we can see Members from Government parties opposing what is proposed but voting in favour of it because of the Whip system. Senator John Kelly, for example, has done much good work with the wind energy Bill, along with Deputy Penrose in the other House, but a Labour Party Minister is refusing to move on the legislation, despite it having passed Second Stage in this House. Enda is the boss and the Cabinet is in control. There are four boys in charge of the club and they are running the show, so nobody else needs to make an input because whatever they say goes. While these people are in power, they will look to keep it. That is not democracy and it is not healthy, so reform is required in that sense. The Minister should return to the Taoiseach and rethink the issue. It should be sent to the Constitutional Convention so we can have a much broader debate and include the reform agenda in that.

**Senator Pat O'Neill:** I welcome the opportunity to debate this Bill in the House and I am thankful for the time allocated. Public disclosure on this matter is of the utmost importance, which is why I am strongly supportive of this referendum being put to the people. It is the purpose of any referendum to change the Constitution in a particular way. In this case, the referendum would seek to make no fewer than 75 changes to the Constitution, and it is only proper that such a radical change should be put to the people in a referendum. The public must ask whether the country would be better off without the Seanad.

It is important to recognise the right of a Government to put this question to the people. Since 2009, the Taoiseach has put on record his desire to abolish the Seanad, such that following the 2011 election, the programme for Government included the forthcoming referendum. That came from the Taoiseach stating his intentions and the contents of the Fine Gael pre-election manifesto. We can safely recognise a mandate for the Government to pose this question but as a legislator and citizen of the country, I will contribute a view regarding the proposed abolition of the Seanad.

Since a Local Authorities Members Association conference almost two years ago, I have



been on record calling for significant reform of this House. In my view, the Seanad in its current state does not function as effectively as it could. Only a fraction of the people get to vote for an institution that makes decisions affecting everybody, with a cost for everyone via taxation. Even in a democracy so limited, the Taoiseach appoints almost a fifth of the House, with some voters getting multiple votes, depending on whether they occupy an Oireachtas position or the number of universities from which they earned degrees. This democratic perversion is not the fault of these voters but rather the fault of all past Governments, which have so far failed to instigate any changes in the operation of this House, let alone implement them.

In asking the people what it wants, this Government is not only fulfilling a pre-election pledge but also engaging in a long overdue process of political reform. This political reform was given pride of place in the Fine Gael pre-election manifesto and in it the party pledged to engage in genuine reform of both Houses, with measures such as the reduction by 20 in the number of Deputies, this referendum on the Seanad's future and the broadest shake-up of Irish local Government in 150 years.

Some claim that the Seanad cannot be helped and it is simply a doomed cause. However, our nearest neighbours under former British Prime Minister, Tony Blair, in the late 1990s took on the reform of the pinnacle of elitist institutions, the House of Lords, by removing vast swathes of hereditary accession to it. In doing so, Mr. Blair opened Britain's Upper House, and we can do the same in Ireland. At the same time we must recognise the benefits of bicameral governance, with a Parliament consisting of two Houses. The primary benefit is that one House keeps tabs on the other, and a Bill that the Dáil might guillotine can be analysed better and picked apart by this House, and it can act as a filter. The Seanad has often failed in such work in the past but that does not mean it would not succeed in future following sufficient reform.

One can use the building boom and banking crisis as an example. Could the Seanad have prevented the collapse that the Dáil-based governance of the day facilitated? If proper systems had been in place, it could have done so. The Seanad could have stepped in when tax breaks for builders were passed or stopped the bank guarantee in September 2008, but it could not achieve this without reform. To reform the Seanad would give it the ability and impetus to take such action, if necessary, in future, but to abolish the House would pave the way for a lack of accountability and reprimand, which could bring about similar catastrophes. Some 529 amendments have been proposed in this House in this term. For example, we debated the Animal Health and Welfare Bill for 14 hours in the House, with 85 amendments tabled that were later debated in committees and the Dáil. The Seanad exists to provide such a filtering mechanism on a regular basis.

To take a more statistical perspective, we can consider the differences between unicameral and bicameral parliaments. For example, *The Economist* ranks the top ten democracies in the world, half have one parliament, the other half have two. When expanded to the top 20 economic countries, 12 have two houses of parliament. That statistic stands and demonstrates in the clearest possible terms the democratic boost that a second house provides.

One argument for abolishing the Seanad is to save money. This should not be used as one of the arguments or as a means for the public to punish politicians. On the subject of costs, the Seanad costs €8.8 million per annum for Senators' salaries, expenses and staff salaries. That is a mere €1.70 per person per year. As a replacement measure it has been suggested that a series of 14 committees would take over the work of the abolished Seanad. Furthermore, these committees would widely consist of outside experts. Who would appoint these people? How much



would these committees cost? Would the positions be full time? Moreover, in the event of a member being unable to take part at a meeting, can he or she be quickly replaced and substituted with full voting rights being restored upon the appointee?

The Bill proposes the deletion of Article 27 of the Constitution which provides for the efficient resolution of a legislative conflict between the Houses. Why does it make sense to remove this article if the Seanad is abolished since no conflict could occur in the future? What provision is made for aforementioned conflicts between these committees and Ministers? What procedure will be put in place if two of these committees disagree on legislation? These are serious and legitimate questions which have not yet been answered but which need to be answered in order that we can have a more complete and more comprehensive picture in advance of the referendum. I ask that the cost of the new committee system be put before the House and the people and if outside experts are to be appointed, will it be on a full-time basis and, if so, who will appoint them?

Abolition of the Seanad is a permanent solution to a temporary problem. Like a large oak tree it will take years to grow but one reckless chainsaw can abolish this tree, when maybe a tree surgeon could have pruned and reformed the tree. If we cut the tree down we may suddenly realise that we have made a mistake and may also realise the length of time it will take to grow this tree again.

Abolition of the Seanad will lose any leash the Lower House may have had on it. It scuppers any possibility of a more inclusive and comprehensive Irish democracy that Seanad reform would promise. Instead, a programme of reform led by the will of the Irish people, as ascertained by the referendum,

should be pursued not only in the Seanad but in the Oireachtas as a whole.

**Senator Paschal Mooney:** I welcome the Minister of State to the House. One of the more salutary experiences of the debate is that there is as much opposition on the Government side as on this side. It is one of the more extraordinary aspects of the debate which would seem to focus on the Taoiseach alone as being on a solo run. The man who is leading the Government and to whom I would give that respect to the high office that he holds, seems to think he can treat the Constitution in a cavalier manner throwing out ideas like snuff at a wake, except in this instance it was over prawn cocktails at a Fine Gael dinner that he made the decision in a rush of blood to the head, without any consultation with anybody.

When one looks for the background to that particular decision one can find no context. The only context one can find is that for some months prior to that, the Fine Gael Parliamentary Party and the party in the country had been discussing reform proposals. The Taoiseach attended one of the summer schools some months prior to his extraordinary announcement to say that he was fully in favour of reform. I would like to know what happened in the interim. Unlike Anglo Irish Bank, we do not have any recorded conversations between the then Leader of the Opposition and his party cohorts as to what changed his mind. To me, it is a Damascus-type conversion, only it must have happened on the road to Mayo rather than the road to Damascus.

I am glad Senator Pat O'Neill referred to the cost of the Seanad. I want to say this to the media because I know they listen to us although they may not always report us. While they are not physically present in the Chamber, they have monitors in their rooms the same as us and they follow the debate. Yet again, a journalist in today's *Irish Independent*, whose name I will

not mention out of deference to him, referred to a figure of €20 million as being the cost of the Seanad. He paralleled that in the context of a story he was writing about the winner of the €94 million in the lottery. I say to that journalist and any other journalist who is listening, that the Seanad does not cost €20 million but, as Senator Pat O'Neill said, €8 million. Any suggestion that there would be savings of any significance in respect of the abolition of this House is spurious and it is time he stopped reporting on the cost of this House because it has no bearing on this debate. To suggest to the people that a financial saving of €8 million can be made out of the €55 billion which the Minister of State regularly tells the people on the national airwaves that it costs to run the country, makes it an even more spurious argument.

In case we are saying this because we want to say it, I have a copy of the most reliable figures provided by the Secretary General of the Houses of the Oireachtas, Mr. Kieran Coughlan, on 12 January 2012. He informed the Committee of Public Accounts that direct savings of €9.2 million, which covers Senators' salaries, allowances and staff salaries, would be made immediately if the Seanad was abolished. He went on to say that any of the other costs would be absorbed into the wider Houses of the Oireachtas. He was questioned on this point by a former Member of this House, Deputy Shane Ross, who said that one of the arguments in favour of the abolition of the Upper House is that it is very expensive to run. In his reply Mr. Kieran Coughlan said there had been quite a variable in the figures when they originally appeared. He said that the indirect costs relate to the apportionment of the support costs for the Seanad. The Houses of the Oireachtas operates on a joint staff basis and it is necessary to apportion some of the existing staff into that. That is what gives rise to the figure that emerges at €20 million.

When I was growing up, for me one of the most treasonable acts that was ever perpetrated on the Irish people was the infamous Act of Union. I have a copy of the speech made by one of the most distinguished of our Irish ancestors in the political context, Henry Grattan, Esq. I never thought I would be standing in this House referring to a debate on the Act of Union on that most disgraceful political chicanery when the rotten boroughs came into their own, the speech of Henry Grattan on the subject of a legislative union with Great Britain and resolutions against same by the Roman Catholics of the city of Dublin, the Guild of Merchants, the Free-men and Freeholders of the City of Dublin, the celebrated speech delivered on that occasion by John Philpot Curran, Esq., and the resolutions of the County of Dublin. At that time there was widespread opposition to the abolition of the Irish Parliament in much the same way as there is growing widespread opposition among civic society to the abolition of this House. Let us make no mistake about it, we are seeing a rerun of history, the outcome of which will be much more beneficial to the Irish people than this dastardly Act was at the time. I will quote one point that he makes. At the beginning of his speech he talks about the Minister of the day, the Minister from Great Britain who presided over the abolition of the Irish Parliament. He said:

The Minister has come forward in two celebrated productions; he declares his intolerance of the Parliamentary Constitution of Ireland, that Constitution [.....] he now declares to be a miserable imperfection; concurring with the men whom he executed in thinking the Irish Parliament a grievance.

I could paraphrase that and remove the part about the executions and I could say that the Taoiseach sees this House as a grievance.

**Senator Mary M. White:** Well done.

**Senator Paschal Mooney:** Let us talk about political reform. We are the only people

who are talking about political reform. The Taoiseach does not talk about political reform but about putting a “Yes”, “No” question to the people. Does he want this House to be kept or to go? What choice is that? As Senator Norris said so bravely and courageously in his contribution earlier - I applaud him for it and for the passion he brought to it - when speaking about the same points being made in relation to reform, he asked, what reform? I can remember when the then Minister for the Environment, Noel Dempsey, brought forward proposals to the Fianna Fáil Parliamentary Party about abolishing the dual mandate that would prevent Members of the Oireachtas from being members of a local authority, which I and most colleagues at that time vehemently opposed. Here was another Minister that went off on a solo run, and we saw what happened to him - a salutary lesson for the Taoiseach in seeking so-called institutional reform.

When the then Minister brought this proposal forward, a Fianna Fail Deputy put a pertinent question asking him to outline this brave new world of reform in which Deputies would now find themselves, and if he could outline what extra and added responsibilities they would have. The Deputy was given a vague answer. We are asking the same question today and will be given an equally vague answer as to what will happen in the event of this House being abolished. Why? There are no plans. The Government and its predecessors operate in one of the most centralised democracies in western Europe. Before the collapse of the Soviet empire, I would have compared the manner in which they conducted their affairs at government level to how we did things and said our centralised systems were akin. We remained centralised and we are centralised in the reality that the Executive, the Government, makes the proposals, puts them before the Lower House and because of its numerical majority, the proposals pass.

The question to be put to the people in October needs to be put in the context of the reality of an unprecedented Government majority in the Lower House, where over 40 Members can be commanded at any one time to come in and take down any legislative proposals made by the Opposition. This Government has guillotined legislation on a variety of occasions, not just in this House but more so in the other House because it can do so. Why can it get away with it? It is because it can do it. It does it because it can and it will continue to operate that same system. The people should make no mistake that if the Upper House is abolished they will continue to have one of the most centralised democracies in western Europe.

Spurious arguments have been put forward, apart from the alleged cost of the Seanad and the arguments put forward by the Taoiseach and his tiny band of supporters who I think have been pulled kicking and screaming into the “support Enda camp” rather than coming in voluntarily. The other spurious argument that they raised was that like-sized countries were operating unicameral systems. Denmark was referred to. I wonder if research was done into the Danish system of democracy. They have three tiers of government in Denmark: the national Government, an effective and strong regional government and an equally strong and effective local council. They have more local councils operating in Denmark than we ever had in this country for its size. Unlike this country they are in control of health, education and a range of spending initiatives that are absent here. What are we doing? We are doing it in reverse, we are getting rid of the town council and there will be no elections to *Údarás na Gaeltachta*. We are emasculating local authorities by reducing their numbers. What is the next step? Abolish this House, lop off another arm of democracy in the country. We must ask the reason that this is being done. I cannot find an answer. I do not understand the motives behind it. If there were a logic to the proposal that is being put before this House, I would be the first to concede it.

The appeal goes out of here to the general public, it reminds them to think long and hard about how they will vote when the referendum is announced. It might be interesting if the

Minister would give some indication of that date. To paraphrase a commercial that is currently running on radio and television, “When it is gone it is gone and it cannot come back”.

**Acting Chairman (Senator Paul Coghlan):** Senator John Kelly has ten minutes.

**Senator John Kelly:** I welcome the Minister of State, Deputy Brian Hayes, to the House. He has always been very accommodating of Members. I do not wish to personalise the debate on the abolition of the Seanad. I believe the Taoiseach has made this very personal. He has made it very personal to all of us because we are all hard-working Senators and take our role very seriously.

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

**Senator John Kelly:** He has also made it personal to people in this House with certain expertise, something that one could not buy. The standard of debate and contributions by Members with expertise in this House has been excellent. If people listened to them they might realise it would be worthwhile to reform this House rather than abolish it.

I also think the Taoiseach has made it very personal to his 11 nominees. When the Taoiseach announced his nominees and appointed them to this House, they were absolutely overwhelmed. I think they believed the Taoiseach valued their independent views and expertise. Within a few short months of appointing them he devalued them before they got into their stride. I think that is shameful.

**Senator Michael Comiskey:** Hear, hear.

**Senator John Kelly:** The Taoiseach was in Glenties before the last election and he made it quite clear and gave categorical support for the retention and reform of Seanad Éireann. That is what we want. At the time, my party leader was riding high in the personality poles so the Taoiseach decided to go with this populist nonsense and advocate the abolition of the Seanad. That is not democracy. If that is not the reason the Taoiseach did that at that time, then what was the reason? Why did he change his view in a few short months from wanting to retain Seanad Éireann to wanting to abolish it. I would like to know the reason, but unfortunately the Taoiseach is not here today to answer that question.

During the debate in the Dáil on the abolition of the Seanad, I had to laugh as I watched party colleagues from both parties in government advocate the abolition of the Seanad when most of them, like the Minister of State who is present in this Chamber, are former Members of the Seanad. I wonder if during their term in the House they called for reform of the Seanad or abolition of the Seanad. I believe at no stage did they do so. However, they acknowledge that the Dáil needs oversight. What they are now looking for is for Deputies to have more power and resources to fund more powerful committees. Let me ask how much will be needed in additional resources. On the recent “Prime Time Investigates” programme, an expert said that the savings from the abolition of the Seanad will be €4.2 million and no doubt the plan that Deputies have will be to get €4.2 million of extra resources for themselves. We will end up with no savings. In the past we have been critical of the gardaí investigating other gardaí, but the Taoiseach and the elite four who are running this country want Deputies to be overseeing other Deputies. That is not proper accountability.

I am seeking a pledge from the Minister of State and many other Members of the Lower House who are advocating the abolition of the Seanad, that if the people see through this pro-

posál, which I expect they will and vote to retain Seanad Éireann, those Deputies promise me and everybody else in this Chamber that they will not seek a seat in Seanad Éireann, as they consider it a useless place to work. I am not trying to save Seanad Éireann for myself because I honestly believe there will be enough casualties after the next election that I will be well down the ladder for consideration, but I believe in proper accountability.

I was also intrigued as to why the Taoiseach blamed the Seanad for doing nothing about the excesses of the Celtic tiger. I tried to analyse the wording used when he said that. The only thing he can be suggesting is that Fianna Fáil Senators of the day should have voted against the Fianna Fáil Government of the day. That is the only thing I can assume he was suggesting. That is the ideal scenario we would all like to be in, when we would have a free vote, in accordance with conscience particularly in the Protection of Life During Pregnancy Bill 2013, but that is not the way it works. What he said was nonsense. I want to put on record that I was not a Member of this House during the previous term of government but the Fine Gael Party were represented in this House and it voted for the bank guarantee in this House. My party, the Labour Party, did not vote for it. Should we be looking for the abolition of the Fine Gael Party because of what it did and not the abolition of the Seanad?

**Deputy Brian Hayes:** It would be a lot easier to achieve, I suspect.

**Senator John Kelly:** I also want to point out, as Senator Ó Clochartaigh stated, that I introduced a Bill in Private Members' time and brought the very important Bill Wind Turbines Bill 2012 through the Second Stage reading. It was meant to restore people's human right not to be forced to live beside massive wind turbines.

**Senator Martin Conway:** An excellent Bill.

**Senator John Kelly:** I thank the Senator. At a wind energy conference some time later, the Taoiseach declared to that large lobby group that he did not support my Bill. One man decided that he would not support it and that was the end of it. If this is how democracy works, I am at a loss. It is obvious that four people are running the country and that Deputies and Senators do not have a say.

**Senator Mary M. White:** Hear, hear. There is not one woman in that group.

**Senator John Kelly:** This nonsense about the abolition of the Seanad is a diversionary tactic to distract from the real issues. It fools people into believing that if we save €4.2 million, we will somehow rectify our economy. I am looking for that amount for a project in my town. The real issue is that we put €64 billion into the banks, which is 15,238 times the cost of running the Seanad. What the Taoiseach is trying to achieve pales into complete insignificance.

From speaking to Senators, this nonsense two years into a five-year term is affecting our ability to do our work properly.

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

**Senator John Kelly:** If the Taoiseach thought anything of us, he should have considered holding this referendum four and a half years into our term. We are trying to do the best we can. Let the people decide after they have seen more of our work.

Seanad reform is necessary and the Whip system that is applied in the House must be lifted. I will support putting the referendum before the people, but I will strongly campaign against



the abolition of the Seanad. I compliment Senator Landy on his analysis of local government, democracy, etc. The lone town council in my county has been abolished and the 26 county councillors have been reduced to 18. Now, the Taoiseach wants to get rid of our Senators has well. We will be left with three Deputies.

When I spoke to one of the Minister of State's colleagues some months ago, he told me that he would support the retention of Seanad Éireann. He made the point that, were it not for the Seanad during the debate on the smoking ban, elderly people living in nursing homes would have needed to be wheeled out the back doors to smoke cigarettes. The Seanad picked up on a small factor that was important for elderly and sick people. It was not noticed by the Dáil because Deputies do not have the time. They even admit that. We allow time for every matter that is laid before us.

The people will see through this referendum and be fearful of a single House with a significant majority, given the related powers and dangers and the dictatorial nature of the result. I will put my trust in the people to make the right decision.

**Senator Martin Conway:** Roscommon says "No".

**Senator Katherine Zappone:** I welcome the Minister of State to this historic Chamber. Sadly, this debate is an inauspicious occasion. The Taoiseach appointed me to Seanad Éireann, aware that I would be an independent voice. My views on the future of Seanad Éireann have been formed with an effort to be free, constructive and critical. I am grateful to the Taoiseach for the opportunity to do so. I imagine he expects nothing less.

The Taoiseach's proposal to abolish the Seanad is ill-conceived and will not only damage our democracy, but also this country's prospect of economic recovery and social sustainability.

**Senator Sean D. Barrett:** And the Taoiseach.

**Senator Katherine Zappone:** This proposal will profoundly impact on our Parliament, our politics and the people. Even those with the most sketchy knowledge of Irish history know that a second Chamber was previously abolished for a short period in the mid-1930s, but that Seanad Éireann was reconstituted in the 1937 Constitution because of genuine democratic concerns and because bicameralism was, and remains, the best way to ensure proper scrutiny of legislation in an Irish context.

In 1935, when de Valera brought legislation before the Dáil to abolish the Seanad, James Dillon stated:

Let us in the Dáil resent the inclination to abolish the Seanad just as we would resent the inclination of the Seanad to abolish this House. Let both Houses realise that both are necessary for the liberties of the country and let us join together to improve the efficiency of both Houses rather than joining in a trial of strength between the two Houses, aimed at the destruction of one.

The insights of James Dillon, Fine Gael's former leader, are as relevant today as they were more than 75 years ago. Ireland needs a reformed Seanad that can play a constructive role in guarding our liberties, rebuilding our economy and society and ensuring all voices are heard in our democratic life.

Instead, Seanad abolition will mean losing independent and minority voices. A unicameral



system would necessarily mean a greater dominance by party politics and less room for the independent and expert voices for which the Seanad has been known throughout its history. This independence was largely guaranteed by the six seats reserved for university Senators. With a reformed and democratically elected Seanad, as constructively imagined through two practical proposals by three Independent Senators, there would be more room for Independents and for those who could represent the various minority groups within the diverse Ireland of the 21st century.

Surely this country has learned the lessons of the past about the severe damage that can be done by cultural closure, insular debate, intolerance and a refusal to listen to voices bar those of the majority opinion. If the Seanad is shut down, we will have a national Parliament that is fully controlled by the Whip system and the guillotine. Writing in one of the national newspapers, the Minister for Transport, Tourism and Sport, Deputy Varadkar, propounded that freeing parliamentarians of the Whip system would increase the influence of the loudest and best organised lobby groups. Could this really be the case? Are the people to believe that Governments, including this one, have successfully withstood the influence of lobbyists? Those with the greatest resources, particularly our banks, have always had the best organised lobby groups. Where has that landed the people?

As pointed out last week by the Independent Deputies in the Dáil and some of our own Senators this week, nearly 60% of all Bills have been guillotined during the Government's short tenure. This means that the time to scrutinise bills by the Opposition, independent voices and the Government's own backbenchers is curtailed. Amendments put forward are not taken. Respectfully, how are the people to believe the Government's reform promises of more Dáil time to scrutinise legislation once the Seanad is abolished if its own track record for openness to opposing and independent views is so poor? If the Seanad is abolished, we will have a national Parliament that is rooted in the straitjacket of party politics with no space for individual principled commitment and experts who are not fearful of saying things to upset the Government.

The Taoiseach claims that the Seanad's vocational system is a relic of the past and is not fit for 21st century Irish politics. In contrast to his proposal to pull down a pillar of our parliamentary democracy, Senator Quinn and I tabled cogent proposals that have been commended by all shades of political opinion in this House in mid-May. Our radical vision of reform is that every citizen will vote for a Seanad candidate, not to represent geography, but to represent expertise and practical knowledge in farming, education, industry, equality, human rights, labour, literature, engineering or culture. If the Seanad nominations and electorate are no longer controlled by party politics, we could unleash the power of elected expert lawmakers. Contrast this with the Taoiseach's proposals to form unelected expert panels to assist Dáil committees. This sounds like more highly paid advisers for the Government. Do the people need less politicians and more Government-appointed advisers? I think not. This will not only cost us money, it will also cost us our democracy.

Some of the main issues that Ireland must confront concern figuring out how we care for our children and the elderly and how this is balanced in a compassionate way with the real demands of markets and business.

I make no apologies for saying we need more women active in our democratic life to solve these kinds of problems. Our radical vision for reform - 50% women and 50% men in the Seanad — would make us a world leader in inclusive politics. Dáil reform only guarantees 30% women candidates for the next election. If we were had equal women and men and extensive

and genuine expertise then the law making activities of the Seanad would revolutionise the way our politics checks and balances Dáil power, Cabinet power, the four men at the centre of Cabinet power and the whipping of parliamentarians to vote not only against their conscience at times, but also to vote against their practical knowledge and experience. I fail to understand why the Government is not giving these reforms a chance and giving the people the option of reform.

The Taoiseach has told the Dáil, and now this House, that it is the most democratic act to give the choice of the future of the Seanad to the people. The right to consult the sovereign people is one of the great democratic freedoms in our Constitution. In this instance, the Government is being totally disingenuous. The referendum Bill ensures that the people are being given only a restricted choice - abolition or the *status quo*. Why is the Government not giving the people the option of a reformed Seanad? Why did it not let the constitutional convention address the matter? When will the Taoiseach answer my questions?

The Government has tried to tie the question of Seanad abolition to the very pertinent issue of reform of a dysfunctional Dáil. Why is Dáil reform being predicated on the abolition of the Seanad? The people deserve substantial and tested solutions for Dáil reform. What kind of political reform did the Government offer? It offered three or four Opposition Deputies to chair 14 Oireachtas committees. How much difference do Members think that will make? It has offered us a number of other committees to shadow Departments. That is what the committees are already supposed to be doing. It also offered to bring heads of Bills to committees prior to developing a full blown Bill. Why did the Government not bring the heads of a Bill on Seanad abolition to a committee? I must respectfully ask a question. Is the Government saying one thing and doing another? I challenge anyone on the Government side to give a rational explanation for why it has not proceeding immediately with Dáil reform. Such reform should and could happen in the morning if the Government was truly committed to a reform agenda.

I want to address one final misnomer that has been peddled by the Government and other colleagues. The claim that its support for Seanad abolition is linked to its wish to cut the cost of politics. We all have heard the Taoiseach claim that it will save the Irish people €20 million per year. Senator Mooney and the Clerk of the Dáil said that the cost was under €10 million. Recently a finance officer at the Houses of the Oireachtas has stated: “It is not possible at this stage to estimate the amount of net actual savings that would arise if the Seanad was abolished.” What is the true cost of abolishing the Seanad? What is the true cost of preventing the possibility of radical Seanad reform, as outlined in the Seanad Bill 2013 proposed by Senators Quinn and I. What is the true cost of inadequate, untested and delayed Dáil reform? We will continue to have a broken system of government, resulting in unemployment, home repossession, banks still with inordinate power, lack of indigenous industrial growth, with little left to build a society where we all look after each other. This will be the cost to our people. I am confident that the Irish people will say no to this immense cost.

**Acting Chairman (Senator Paul Coghlan):** I call Senator Comiskey and he has ten minutes.

**Senator Michael Comiskey:** I welcome the Minister of State to the House.

We often hear the word “democracy” and phrases like “democratic principles” and “democratic ideals”. They are easy to say but difficult to establish and even more difficult to maintain. Democratic principles establish a rule of law, respect human rights and promote active politics.

It should be an unwritten commitment of every public representative to uphold and foster these principles. Unfortunately, I fear, the proposed thirty-second amendment of the Constitution, if passed, will diminish these principles.

I have listened to the debate on the amendment over the past few weeks. I have listened to the positives and the negatives on the bicameral and unicameral systems and I admit that I remain unconvinced by the superiority of the unicameral system. It is a system where the equality of legislation, the oversight of the Executive and the representation of each individual in the State would rest solely in one House of representatives. It is not a sufficient safeguard for these precious ideals on which the State was founded.

During my time in the Seanad I have been privileged to have played a part in two pieces of reforming legislation which highlights that benefits of the bicameral system, the Welfare of Greyhounds Act and the Animal Health and Welfare Act. When the latter was introduced the Minister recalled his prior visits to the Seanad and cited the quality of previous debates as a reason for initiating the legislation in the Seanad. The progression of the Bill highlighted the value of the two chamber system and the legislation received considered and constructive debate in the Seanad. Legislative errors are costly and can be avoided by careful debate across the broadest spectrum possible. The presence of the Seanad contributed greatly to ensuring that the final Bill was as comprehensive as possible.

Many speakers have spoken of the fact that there has been a debate on Seanad reform for 75 years. Debate is essential but it must be acted upon. Many of these reports were published as part of the debate process and contained excellent contributions and submissions on Seanad reform by members of the public. Now all of those submissions have been deemed irrelevant and today's Bill has been promoted as offering a choice to the people. Choice usually involves a judgment decision on the merits of the multiple options. We are limiting the choices available to the people by not offering reform and a disservice is being done to the people and the democratic principles on which the State was founded.

Yesterday, the Taoiseach spoke in this House. He stated that he believed that genuine reform of the Seanad would almost be impossible to achieve. In response I have a question for him. Is Dáil reform achievable? Should we examine the matter before we embark on what the Taoiseach has called "a major change in the structure of our Oireachtas"? Do we not have an obligation to attempt reform and to ensure that proper safeguards are in place? Do we simply abolish because change is perceived as being too difficult? Is that progressive reforming politics? What kind of Government will we have in five or ten year's time or who will be in charge? We must reflect on these matters.

In recent years Transparency International Ireland has cited the excessive discretion in which the Executive has a number of democratic functions, especially the legislative agenda proposing a barrier to the ongoing development and reform of Ireland's system and institution framework. The abolition of the Seanad means that the legislative agenda and the scope of legislation is in danger of becoming even more constrained. The Seanad Chamber allows far more than Dáil Éireann when it comes to the contribution of diverse and independent voices and represents interests not usually represented in the Dáil. The Oireachtas website states that "Seanad Éireann can debate these issues with greater freedom." Will there be a platform for these voices after the abolition of the Seanad? People already feel a disconnect between politics and their everyday lives. Many have spoken of the 75 years of debate on Seanad reform. What about the 75 year tradition of representing people's interests?

27 June 2013

Earlier a comment was made about elitism. I do not come from an elite sector. No family member of mine has ever been involved in politics. In my two and half years here I am the only Oireachtas Government representative that hails from County Leitrim and I set up an office in Manorhamilton to look after the needs of the people of Leitrim. Since the 2007 election until my colleague, Senator Paschal Mooney was elected in 2010, there was no Oireachtas representative from County Leitrim. I know that Leitrim was unique at that time but we would not like to see the same happen in the future.

I, like my colleagues, will not oppose the Bill and object to the decision being put to the people. However, I am disappointed that the people have been given a false choice, the consequence of which may be irreversible. As the saying goes, "Change for change sake is a recipe for failure".

**Senator Sean D. Barrett:** I welcome the Minister of State. I wish to dispute the statement by Lord Edward Fitzgerald that Leinster House does not inspire the greatest ideas - it most certainly does. He lived in Carton House where the Minister of State and I celebrated the long service of our local Deputy. I pass Carton House every day but I find Leinster House a most interesting, refreshing and stimulating place. If the Taoiseach came into this House more often, he might actually feel the same way.

It is said it is just a talking shop. Let me quote from Isaac Butt at the College Historical Society in TCD, which was the first debating society in the world. He stated said that:

From this Society great things will be produced; we will draw around us the youthful talent of our country, and train them in that power which may enable them to benefit her. The glory of days gone shall return with more than pristine splendour....I do believe that the time will come when faction shall flee away and dissension shall be forgotten; when Ireland's orators and Ireland's statesmen shall seek only their country's good; when laws shall be respected and yet liberty maintained.

It is good we discuss things here. It is a brilliant debating Chamber with the best Order of Business in town, which I am sorry the Minister of State is not able to attend. We have brought forward Bills, two of which we are discussing with the Minister of State's Department. Yesterday another Minister sent me a draft Bill seeking my views on it. The Taoiseach said we should sit on one of his committee's. For years I sat on the National Economic and Social Council where I tried to raise issues such as banking, the collapse in the public finances and so on, and I will give the Minister of State the correspondence in that regard. In this House, the Leader and the Cathaoirleach listen and we get to debate issues. Relying on the committee system is no substitute. Deputy John O'Mahony is the Chairman of the committee on which I sit. One State company said it did not feel like turning up and asked for another four weeks while another asked if we could send it the list of questions in advance so that it could prepare. That is not democracy.

Part of the problem is referred to in a press release today from one of our committees. The press release stated: "Oireachtas and Northern Ireland Assembly committees resolve to tackle inadvertent roaming charges." This is inadvertent roaming by the Taoiseach. He does not know what he is doing and he has not thought it out properly. The kindest thing I can say about him is that he is guilty of inadvertent roaming.

The Taoiseach did not refer to the universities or to Northern Ireland yesterday. I am the

71st person to represent Trinity College in Parliament since 1603. We have served under 124 Lord High Treasurers, which I gather were before Prime Ministers, 58 British Prime Ministers and 12 Taoisigh but only one of them has tried to get rid of us. All the Trinity College voters will be voting against the Government on this. We have served in Parliaments in College Green, Westminster and here splendidly, and I include former Senator Mary Robinson, Senator David Norris and former Senator, the late Trevor West.

When I was in Enniskillen recently, the dean in the cathedral there told me that the Sunday after the Remembrance Sunday bombing - there had been funerals all week in Fermanagh - when he went into the cathedral, the late Senator Trevor West and the late Gerry Fitt, a Member of the House of Lords, were in the front row. He said that did so much to bind up the wounds. We have been doing that all the time in our constituency. This inadvertently roaming Taoiseach deprives my constituents in Finaghy, Belfast, Portstewart, Cullyhanna, Lurgan, Cultra, Ballyclare, Lisburn, Castlerock, Maghera and Rathfriland of votes because the Taoiseach is intervening to stop Northern Ireland people voting in the TCD constituency. They do not have a vote in the referendum to abolish their voting rights.

Did the Taoiseach think of Northern Ireland? Why did he not mention it yesterday? I am proud of the connections between TCD and our northern voters. A man called "Mervyn" walks on 12 July but is proud of his Irish passport and of his vote here. We invited the Orange Order to the House. I thought we were making progress. Why is the Taoiseach depriving northerners of a vote in my constituency? It is a disgrace. I will campaign throughout Northern Ireland with the Unionist parties and Sinn Féin, which have done a splendid job promoting democracy. Here is a man demolishing a House of Parliament but Sinn Féin and the Unionist parties have erected one. It is splendid that they have done so and I commend them warmly for so doing.

Grattan's Parliament was mentioned earlier. I think bribes of £40,000 were paid. It was sold to the bank for £50,000 and Dublin Castle made a profit. This time we are demolishing a House of Parliament to pay bank debts of €64 billion. History is repeating itself and I stand by Henry Grattan, to whom Senator Mooney referred.

It was said this proposal is in Fine Gael's election manifesto but I will tell the Minister of State what is in the programme for Government. It states: "We will reduce the size of the Department of An Taoiseach, transforming it in the equivalent of a Cabinet office that oversees the delivery of a new Programme for Government." When the Taoiseach came into office, there were 187 people in his Department but there are now 200 - nearly three times the number of Senators - whose average pay is in excess of that of a Senator. In addition to visiting this House the odd time, the Taoiseach should run his Department and account for it. Why has he allowed a contradiction?

The programme for Government committed to reducing the size of the Department of An Taoiseach to a small Cabinet office. When the Constitution was framed in 1937, there were 21 people in that Department but he has increased it to 200. Very wisely, the Constitution limited the number of Senators to 60. We did not account for the vast explosion in public expenditure but the Taoiseach's Department did. It is now ten times bigger than when the late Éamon de Valera was in it. What were the people in the Department doing then? They were keeping Ireland out of World War II, writing a Constitution, which I admire greatly, and getting the treaty ports back. The Taoiseach should explain why he has recruited more people at higher pay than Senators in direct contradiction to the programme for Government. It is not credible to me to say he is implementing his programme for Government.



27 June 2013

I refer to the €65,621 paid to Senators. The average pay in the Taoiseach's Department is approximately 7% higher, at €65,950. This bloated Department, which had 20 people when the Constitution was written, now has people earning €65,950. The number of Members in the Seanad, which the Taoiseach is trying to abolish, has stayed at 60, each earning €65,621.

I refer to the Book of Estimates, which the Minister of State brings to the House and, in particular, to the quango section. Fine Gael promised to abolish quangos but it never happened. The average pay in the Irish Film Board is €96,800. The average pay in the Citizens Information Board - work which Senators do - is €72,100. The average pay in the Food Safety Authority of Ireland, which we will discuss next week, is €69,700. The average pay in the Family Support Agency, around which Senators do much work, is €73,500. We should compare these rates of pay to the €65,621 paid to Senators.

The Taoiseach is impressed by New Zealand, Denmark and Sweden. On average, it is between 45 and 50 years since their second chambers were abolished. This is sort of unicameralism for slow learners. When I go to New Zealand, I see very impressive rugby and a most impressive agriculture sector. If I go to Sweden and Denmark, I see very impressive people who read the small print about the euro and did not join. It is a pity we did not do that. The Taoiseach is impressed by the wrong things in Denmark, Sweden and New Zealand when he becomes an advocate of unicameralism. Our briefing states that of 161 public submissions to the Sub-Committee on Seanad Reform in 2004, none recommended the abolition of the Seanad. This is the real definition of a solo run if ever there was one.

Between 1997 to 2000 the number of senior civil servants grew by 82% while the number of civil servants, as a whole, grew by 27%. There was a managerial growth in spending which the Government has not tackled but the number of Senators has stayed at 60. That is a very useful protection.

The antagonism towards Northern Ireland contrasts with what Mr. Blair's Government did in 2003. He renewed the free transfer of every book published in the United Kingdom to the library in Trinity College Dublin so that the citizens of this country could avail of it. Many other universities in the United Kingdom wanted that concession. Mr. Blair's friendliness towards this country must be contrasted most unfavourably with the hostility of the Taoiseach towards my constituents in Northern Ireland.

*3 o'clock*

Those who sit on the other side should oppose this Bill. We have already spent €2.1 million in preparing the Bill according to the Book of Estimates, and it will cost another €21 million to have a referendum according to the Minister for Finance. The pay of Senators comes to €3.9 million per year. I do not know if anyone else will be fired, other people will be doing the work, so about half that money comes back in tax. Even as a purely economic proposition, this is silly.

On the abolition of university seats, if we are not wanted here, we will find plenty of things to do. That contrasts with what the Wright report found on the Department of Finance, that 39 out of 542 staff had qualifications in economics at masters level or above. That is 7%. My university rates eighth in Europe in terms of research and 49th in the world, so it is fine if we are not wanted. Perhaps the Taoiseach, Deputy Enda Kenny is right and all the other Prime Ministers in Britain and previous Taoisigh were wrong but we have served this country splendidly.

I ask those opposite not to be Jesuitical and say that the Bill should pass so the people can



decide; we have already committed €23 million which could be used for any other purpose. Do not indulge the Taoiseach. The statues of two people stand outside the front gates of Trinity College. One of them, Oliver Goldsmith, said parliaments do not intervene, rich men make the laws. Rich men are certainly advocating this one. The other, Edmund Burke, said for tyranny to prevail, all we need is for good men to do nothing. Those on the opposite side of the House should not do nothing, they should state their opposition. I commend Deputies Joanna Tuffy, Bernard Durkan, Arthur Spring and all the wonderful Deputies who support us. The Government side should put its opposition where it counts and not let this run. I came into this Seanad at a time when the country was bankrupt to help as best I could. I fear this is a case where the might of the Government and all its PR machine will prevail over democracy.

There is a crisis here similar to that when John Kells Ingram wrote about 1798:

They rose in dark and evil days

To right their native land;

They kindled here a living blaze

That nothing shall withstand.

Alas! that might can vanquish Right -

They fell and passed away; But true men, like you men,

Are plenty here today.

Do not let might conquer right on this one ladies and gentlemen. We must oppose this Bill.

**Senator Colm Burke:** I welcome the Minister of State to the House. A number of years ago, I promised him a No. 2 vote in a Seanad election, which at the time was as good as a No. 1 vote. I made it clear who I was giving my No. 1 vote and why giving the Minister of State a No. 2 vote would be as good as giving him a No. 1 vote. Little did I think when I was marking that ballot paper that I would be in here speaking about the abolition of the Seanad and the Minister of State would be dealing with it on behalf of the Taoiseach. He is very welcome here. As he knows it is very difficult for some from Cork to vote for someone from Dublin but we made an exception on that occasion.

We are discussing the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill. I am in favour of the Bill because I contested the general election and signed the party pledge. Part of policy then and now is that there would be a referendum. That does not mean I am in favour of the abolition of the Seanad. I have already been misquoted in one newspaper where a quote I gave was taken out of context. I have clearly said there is an urgent need for reform if we want to retain the Seanad. Even a simple thing like how the Seanad is elected shows a disconnect between the ordinary person in the street, who feels he has no part in Seanad elections. As a result he believes he has no influence over the make-up of the second House of the Oireachtas.

There is a need for major reform of how we do business. As someone who served for a brief period in the European Parliament, I was on the committee that drafted a directive that entitles people to travel to another member state if there is an undue delay in getting health care in his own country or if that health care is not available. Each member of the committee had a

substantial say on the contents of that directive. On Committee Stage, 400 amendments were tabled. Everyone played their part and it was not a case that because one party said one thing, the other party would say the opposite. We all sat down to decide what was best for Europe and the health care of European citizens. That directive was subsequently passed and came into effect in 2011. It is unfortunate that we have 30 months to implement it, which brings us to October of this year, yet I have not yet seen any discussion or legislation on it.

That emphasises how an institution with Members from 27 member states has a huge influence regarding the contents of the final document. It is very different here. If an idea does not come from a Department, it is put on the shelf. I have been involved in the drafting of two Bills, one of which, the Health (Amendment) Bill 2012, follows on from a Bill published by the current Minister for Health when he was in opposition in 2009. At present, the Minister of State cannot drive a car without insurance and I cannot practice as a solicitor without insurance but there is no law requiring a local GP to have insurance. In 2009, the then Minister promised that by January 2010 the Department would deal with the issue and there would be legislation in place. Three and a half years later there is no sign of that legislation. I published a Bill in December 2012. It was debated here and there was a lot of consultation but if it does not come directly from the Department it must be parked. The ordinary members of the public are the losers in that process.

The second Bill followed on from a report of the Law Reform Commission and relates to missing persons. If someone drowns and the body is not found, no death certificate can be issued, even if everyone knows that person is dead. I published a draft Bill to address that and I believe that there should be movement on the issue. That is how Senators can play a constructive role in the legislative process. For too long we have had a policy of parking issues raised by Private Members' Bills, which is totally different from my experience at European level. There is even a reluctance to take amendments on board. There has been some improvement in the last two years but much more could be done. No matter what area of life people are from, everyone has some expertise to contribute to a debate and to legislation. We are too resistant to taking people's concerns on board. We must review how we do that. We urgently need to take on board the concerns of all Members in the Seanad.

I will give another example I have focused on over the last two years. We are offering six month contracts to more than 50% of junior doctors employed in the health service and we wonder then why so many junior doctors leave the country. We still have made little or no progress in that area. Every contribution I have made has been constructive in trying to find the solution to an existing problem. It costs €75 million each year for the 600 medical students who graduate from our universities. Within 12 months of qualifying 50% of that investment in medical graduates has left the country. Let me put it this way: if the IDA built a factory in the morning costing €75 million which was demolished within 12 months there would be uproar. We are not taking the issues I have raised on board, because if a directive does not come from the Department, the problem must be parked.

The issue of the cost of the Seanad has been raised. The cost of the Seanad is €2 per annum per person living in the country. It is less than the cost of two cans of coke or a half glass of beer. That is a very cheap price for democracy in real terms - €2 per annum per person. I have been to countries which have a government, but no democracy. We have a democracy and we should support and improve it. The Seanad can play a far more constructive part in dealing with this.

I attended the Committee on Health and Children this morning in which an EU Directive on health care was coming through. Even if we had a concern about the issue, the date by which to make our concerns known had passed.

On my first day in the Seanad I said the Seanad could play a role in regard to European Union legislation and directives. I suggested that two days per month would be set aside for dealing with these issues. The European Commission publishes its agenda for the following year in November of every year. Last year some 129 new proposals were included in the European Commission programme for 2013. Have they been discussed in this House or in the Lower House? The answer is “No”. We do not know about it because something that starts this year will take two to three years to come through the system. The Treaty of Lisbon provides an eight week gap in which to make observations, but we are not using that eight week period because there is no procedure for doing it.

Another issue I raised in respect of the health committee, was the directive on medical devices. We were being asked to give a stamp of approval to this directive. I asked a simple question, namely, if anyone had consulted with the medical devices companies in this country before we signed off on it. It turned out there was no consultation. I refused to allow it to go through the committee. As a result, in fairness the committee administrative staff wrote to the representatives from the industry and found they did have concerns with the directive. The Seanad could play an important role in ensuring the checks and balances are considered in EU legislation. We need to set aside specific time every month to look at those issues. That is the background to my position on the referendum.

It is part of Government policy to put the question on the abolition of the Seanad to a referendum of the people but we must look to see if there is a third option, to put a question on the reform of the Seanad. That should be taken on board.

**Senator Mark Daly:** With the permission of the Chair, I wish to share time with my colleague, Senator Walsh.

**Acting Chairman (Senator Diarmuid Wilson):** Is it agreed that each Senator has five minutes? Agreed.

**Senator Mark Daly:** Article 2 of Bunreacht na hÉireann states:

It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.

The most fundamental right of any citizen is the entitlement to vote, yet Ireland did not allow Mary McAleese to vote for herself in the presidential election in which she was elected President. Those living in the North and overseas, referred to in Article 2 of the Constitution, are refused the right to vote, the very entitlement of any citizen of any nation. Some 1.8 million people in the North are entitled to be Irish citizens, yet they are not entitled to vote. Some 800,000 Irish passport holders living overseas are entitled to be Irish citizens but they are not entitled to vote. The Irish diaspora of 70 million people are not given a say either. They are referred to in Article 2 of the Constitution but we do not give them a vote. We deny 800,000 Irish passport holders living overseas the right to vote because the establishment would not al-

low such a significant number of people to hold the balance of power in the Dáil and to decide who would be in government. We will not give people in the North a vote in the Dáil. The 800,000 Irish passport holders living outside the State is the equivalent of the population in the cities of Dublin, Cork, Galway, Limerick and Waterford combined. Can one imagine excluding those citizens from voting in the Irish State? Of the 33 countries in the Council of Europe, only four countries, like Ireland, do not give its citizens overseas the vote. The Seanad is the Chamber in which they could be given a say and the political establishment might allow them to have a voice within the system of Government and yet, the Government is saying “No” and has suggested it has a better solution. In fact, it has no solution. We will continue to deny Irish citizens the right to have a say.

We have appointed great people from the North to the Seanad. Their names have been mentioned already, people such as Séamus Mallon, Gordon Wilson and others from both traditions. Is this not the place that those people will have a say? I believe this is the House in which they could have a say. That is a significant national democratic deficit. It is a disgrace. Other colleagues have pointed an even greater and equally worrying democratic deficit, when one considers our treatment of EU legislation. This is nothing short of scandalous, a deficit unparalleled. Let us just imagine that the first piece of organ transplantation legislation in the history of the State was signed by a Minister on 28 August last year, without reference to the Dáil, the Seanad or the Committee, despite being asked to do so. If one speaks to Mark Murphy, the chief executive of the Irish Kidney Association, he will say that if the legislation had been better, lives would have been saved. That is how important the scrutiny of legislation is. It is an example of how important EU directives are.

Let us consider how badly we do legislation. In one year there was 1,291 EU regulations introduced, 594 statutory instruments, without any scrutiny by any legislator and 164 EU directives brought in a similar manner as the organ transplantation legislation was brought into this country. That is a total of 2,049 laws, regulations, directives. How many laws were the Oireachtas responsible for in a year? Just 47 Bills were enacted by the Oireachtas, amounting in terms of quantity to just 2% of the EU legislation. Were we allowed to scrutinize the EU directives? No, we were not. The Ministers did that themselves without scrutiny by anybody. A former Taoiseach said that the number of officials in Departments who look at EU regulations is very small. Who is looking at the 164 EU directives? They are simply being plucked and transposed straight into Irish law without anyone really looking at them.

The Government knows this is a problem. Let us consider what Deputy Paul Keogh, now the Chief Whip, said when in Opposition. Even in respect of those statutory instruments which are laid before the House I believe that Members do not ever read them. There were 594 statutory instruments. Have we a national democratic deficit? Is the way we treat legislation in this country broken in the same way as our economy and bank are broken? It is. Yet, we are certainly not fixing it, we are making a bad situation worse. We have no proposal to fix our national democratic deficit or to give citizens in the North or those overseas a vote in the Parliament. Let us consider how hard Daniel O’Connell had to struggle to give Catholics the vote, how hard women struggled to get the vote and how those in the North struggled so hard to get the vote. They achieved that over time, and yet as a nation we deny votes to 1.8 million people in the North and 800,000 Irish passport holders overseas. One in every three persons entitled to be an Irish citizen is denied a vote and the Government’s solution to the problem is to make the problem worse.

**Senator Jim Walsh:** I thank Senator Daly for sharing time. In 2008, at the start of our eco-

conomic difficulties, I recall one Senator saying that the first casualty of an economic crisis is democracy. Last week, I visited the Yad Vashem Holocaust Museum in Jerusalem. Its first depiction was of the national socialists coming to power in Germany in 1932 where they dismantled the Reichstag, which had disastrous consequences. There is a similarity in that the economic turmoil in Germany at that time was such that people did not have money and were dying of hunger as they were unable to access food. There are similarities here with the downturn in the economy. I am concerned that we are moving in that direction. Some have made the analogy between, say, the final solution and the Protection of Life During Pregnancy Bill 2013 which is before the Houses. I have been struck and I have made the comment in the House during the past 12 months or more on the totalitarian tendencies that I have seen from the Government. It has manifested itself almost weekly in the Dáil and also in the Seanad where important Bills which have a significant impact on people's lives are guillotined as a matter of routine. I can understand that a Government which has a 60 seat majority can use it to bulldoze whatever it wishes through the Houses. However, I do not think that dismantling the second Chamber, one of the institutions of the State, is in the interests of the public or in the interests of holding the Government to account. Governments, when held to account, invariably perform much better than they do if not held to account. While certain Ministers are reluctant to come to this House, the same was true when Fianna Fáil was in power. On the guillotining of Bills, the property tax legislation was guillotined in this House at section 5, yet it had 57 sections. Subsequent to that, issues came to light in the media which should have been highlighted and debated in this House. That did not happen.

It is not just the guillotining of Bills. The control of business and speaking times are other issues. The rigid Whip system is applied in all circumstances, even in issues of conscience. We have a situation at present where Members in Government in the Lower House are concerned about the pressure being brought to bear on them, which in some instances is tantamount to bullying, when those at the head of their parties try to whip them into line to ensure they vote in a certain way. Seeking for people to abrogate their conscience flies in the face of democracy but it is also not in the interests of the public. What these Houses must do is hear contrarian views and debate them in a strong and robust manner in these Houses. That is the essence of democracy. We dismantle democracy at our peril.

What is needed is reform of both Houses and probably of all three Houses, as it were. The Presidency should also be looked at as part of this reform. Of all the Houses, the Lower House is in urgent need of reform. A system has evolved where 15 members in Cabinet prescribe the business of the House, the time to be allocated for it, which is done through the Whips, and what is on the agenda. That has proven not to be in the interests of our people. In fact the groupthink which took place throughout the last decade whereby both Government and Opposition parties all wanted to spend more and wanted to reduce taxes has, in a significant way, contributed to the current difficulties which every citizen is experiencing.

There is also the dismantling of local government and particularly town councils. The Minister was in New Ross last Saturday and witnessed the improvements the town council has made to the town. I spent 30 years on New Ross Town Council and 25 years on Wexford County Council. While Wexford County Council has more resources, I can honestly say that the input of members of the town council was far more constructive and had a much better influence on the lives of people than Wexford County Council. In the Houses, we see what influence we really have, given that those 15 people prescribe the business of the House. We had a situation last year where four Cabinet Ministers complained three or four days prior to



the budget that they had no idea what was in it because the Economic Management Council, made up of three former schoolteachers and one former trade union official, were dictating the way the economy would go, backed up by people in the public service who never worked in the private sector. The issue of EU scrutiny has been mentioned.

This House has a proud record of making contributions to debates. It has many independent voices which have spoken and enhanced not just the legislation and the debate but have had an influence on the lives of people in various ways. I would like to think we would move from a position of abolition to reforming all the Houses in the interests of the people, because that is why we are here. We are not here to serve ourselves. We are not here for greater devolution of powers on to ourselves or on to the small and elite. This is a democracy. We dismantle it at our peril.

**Senator Eamonn Coghlan:** I welcome the Minister of State to the House. It was a great honour for me to have been nominated by the Taoiseach to the Seanad in May 2011. It was perhaps the greatest honour bestowed on me, more so than any other sporting achievements I have received during my 30 years involvement in athletics. In GAA terms, I got in through the back door. I did not have to go through what the university panel Senators had to go through and, unlike the other Senators, I did not have to go through the county councils in order to sit in this House, which is a privilege when one considers all the great Senators who sat here in the past.

I was never involved in politics. Coming here from a world of sports and business, I knew it would be a daunting task. I did not know how many Senators were in the House. I did not know how Senators were elected and, as a matter of fact, I did not know the real function of the Seanad. The majority of people I have met in social circles ever since my arrival in the Seanad probably do not know the above either. Yes, the Government wants to radically reform the public service, the health system, the legal system, the courts, local government, child protection, etc. The Government is planning to deliver the biggest reform in politics and the public sector in the history of the State. I am in favour of the Bill being put to a referendum for the people to decide whether the Seanad should remain or be abolished. I cannot necessarily say that I will vote “Yes” in the ballot box.

I agree that Ireland has too many politicians for its size and that there is far too much bureaucracy in the way of completing what should be the simplest of tasks. Abolishing the Seanad to reduce the number of politicians serving our country is not necessarily the way to go. While the Scandinavian countries abolished their second houses and New Zealand, on the other hand, has shown that it is perfectly possible to establish the checks and balances with a single chamber, I have identified that a number of emerging democracies are introducing bicameral systems. At the same time I wonder where the notion of abolishing the Seanad came from. Was it over a cup of coffee? Was it over a pint? Did it come from an individual, perhaps in the Civil Service who had some influence over the Taoiseach and he decided to go off on a whim with it?

Having been a Member for two years, I fear the abolition of the Seanad. I would like to see a reformed Seanad, capable of independently scrutinising legislation, effecting change and holding the Government of the day to account. I would not like to see another proposed committee system. The proposed abolition of the Seanad completely alters our Constitution and how the various powers vested in the Oireachtas work. The abolition of the Seanad would involve a comprehensive restructuring and rewriting of our Constitution. I do not believe the public really understands this.

I have to admit that since arriving here in 2011, I have been confused and somewhat frustrated by the way things are achieved in the Seanad, the Dáil and the Civil Service. There are roadblocks and hurdles in the way of achieving goals and success. One spends half of one's time ducking and diving. Most of the time a good idea is shot down for the sake of disagreement. Every day I come in here I question the function of the Seanad. Sometimes I think it is a joke, but most times I clearly see through the debate, the scrutiny of legislation, the intellect within it and the powers of force that are truly represented here for the people of Ireland.

There is no doubt that a lot of time is wasted in the Seanad, in particular during the Order of Business with free-for-all questions to the Leader and the opportunity for Senators to be heard. I wonder what it achieves. An average of 33 questions are asked each day on the Order of Business, or about 100 questions a month, yet I still fail to see what action is derived from them. The Order of Business should be used for matters of national importance and not for comments on news items in the media or local issues.

I welcome the Government taking the issue of abolishing the Seanad to the people of Ireland. It should be based not on cost and efficiency, but rather who is best to provide the proper checks and balances when it comes to representing the people of Ireland. That is best done in the Seanad.

Cuireadh an díospóireacht ar athló.

Debate adjourned.

## **Central Bank (Supervision and Enforcement) Bill 2011: Committee Stage**

### **SECTION 1**

**Acting Chairman (Senator Diarmuid Wilson):** I welcome the Minister to the House. Amendments Nos. 1, 27 and 29 are related and may be discussed together by agreement of the House. Is that agreed? Agreed.

Government amendment No. 1:

In page 9, subsection (2), line 25, to delete “91” and substitute “93”.

**Minister for Finance (Deputy Michael Noonan):** I wish to read something into the record to enable Report Stage amendments to be taken later on. The Minister of States, Deputy Brian Hayes, on Second Stage flagged the fact I would table an amendment to the Central Bank Act 1971 to provide an authorisation regime for branches of third country banks. These branches would be subject to the same standards of regulation as those branches currently passporting into Ireland from within the European Union. My Department is currently finalising the amendment with the Office of the Attorney General and I expect to bring it forward on Report Stage.

Amendment Nos. 1, 27 and 29 are technical in nature. Amendment No. 1 corrects a reference in section 1. Amendment No. 27 is a technical amendment to section 6 of the Irish Bank Resolution Corporation Act 2013 and relates to the Bankers' Books Evidence Act 1879. It pro-

27 June 2013

vides for the procedural admissibility of evidence rule. This is one of the permitted exceptions to the hearsay evidence rule and facilitates the admissibility of bankers' books into evidence in all legal proceedings. This amendment mirrors a similar provision in section 191 of the NAMA Act 2009. Amendment No. 29 corrects a reference in the Second Schedule.

Amendment agreed to.

Section 1, as amended, agreed to.

Section 2 agreed to.

### SECTION 3

**Acting Chairman (Senator Paschal Mooney):** Amendments Nos. 2 to 13, inclusive, and 18 are related and may be discussed together by agreement.

**Senator Sean D. Barrett:** I move amendment No. 2:

In page 10, subsection (1), line 28, to delete "regulated".

I do not know what the Minister's travel schedule must look like these days but he is very welcome. My amendments aim to strengthen and support the Minister. They are suggestions.

The Minister knows from direct experience, much more than anybody else in the country, the requirement that we should regulate financial institutions as strictly as possible given the amount of damage that was done to the country. He has had to bear that burden ever since he came to office.

The purpose of the first suggested deletion is that we do not want people saying X is not regulated. I would be interested in hearing the Minister's view. Given the costs, every area of financial services should be regulated. There are separate rules for moneylenders and pawnbrokers. This is an area where we have bitter experience as a country and we are all in support of the Minister. In fact, the reason most of us got involved in the debate was to ensure that the financial sector would never again behave as it did when it imposed such costs upon the country.

I do not wish the word "regulated" to be used as an opt-out for people seeking to avoid scrutiny. If it is understood that everything is regulated then such an opt-out is not necessary. I have tabled a later amendment on the matter. We did put the point to the Governor of the Central Bank, Professor Honohan, when he came to see us. We asked whether he should not take on more responsibility given the difficulties that exist in the area and his response was what size Central Bank we want to have given our request for it to take on extra functions. I would like to have no doubt that the Central Bank is regulating the industry on behalf of the Minister and this country. There should be no more opt-outs or loopholes in the law.

We have seen what emerged in recent days. We have had enough from the sector. That is the purpose of the amendments tabled. The Minister must consider whether his hand is strengthened if the word "regulated" is removed. That is what I want. There is no such thing as regulated financial services and other financial services. They are all in the same bag and they will all face the scrutiny of the Minister and his officials in the Department and the Central Bank.

What went on heretofore has done such damage to the country. That is the general spirit

in which I am interested in discussing the change with the Minister. If it helps him he might consider such a change on Report Stage. There is nothing involved other than to strengthen the hand of the Minister and Parliament in dealing with the sector, which is held in the utmost public odium, in particular since the tapes emerged in recent days.

**Senator Feargal Quinn:** The Minister is very welcome. I did not expect to see him today. The saints have the ability of bilocation or multi-location and the Minister seems to be able to do the same thing himself as well.

I add my voice of support to Senator Barrett. When I first saw the amendment I did not understand the rationale behind it. I know he is committed to making sure that we have a very strong financial sector and I thought he was removing regulation, but in fact what he is saying is that by insisting the Minister includes regulation every time, if it is not done on one or other occasion it might appear to be an exception. The wording would then read “a financial service provider”, meaning that it must be regulated, and on the assumption that it is automatically regulated. I support Senator Barrett’s position.

**Deputy Michael Noonan:** The effect of amendment No. 7 would be to include the following within the definitions of financial service provider and related undertaking: Auditors, accountants, pension fund trustees, building societies, debt collection agencies, moneylenders and other financial services as determined by the bank.

The remaining amendments in this group delete a number of references to the word “regulated” such that the relevant provisions of sections 3, 8, 21 and 48 would relate to the Senator’s broader definition of a financial service provider, which I just described, rather than those regulated financial service providers currently regulated by the Central Bank.

In general terms, the effect of this group of amendments would be to broaden the remit of the Central Bank into a number of new areas. I should first clarify that both building societies and moneylenders are already within the remit of the Central Bank and a Central Bank authorisation is required to operate as either of these. It is an offence to carry on business as a building society or moneylender without an authorisation from the Central Bank.

The Irish Auditing and Accounting Supervisory Authority, IAASA, was established under the Companies (Auditing and Accounting) Act 2003 and holds responsibility for the supervision of the auditing and accountancy professions in accordance with national and EU requirements. Given that these professions have a role beyond financial services and across the corporate sector, it is appropriate that they are regulated under company law. In general, these professions are not subject to regulation by the Central Bank for the provision of, for example, financial advice, provided that the advice is incidental to their main role as auditor or accountant.

However, the analysis of the financial crisis highlighted the role of auditors and the Bill includes a number of provisions to respond to failures identified, for example, in the Nyberg report and by the Comptroller and Auditor General. Part 4 now provides for a statutory auditor assurance regime as recommended by the Comptroller and Auditor General, and section 58 provides for a limitation of liability to support open and frank dialogue between auditors, accountants and the Central Bank, as recommended by the Nyberg report.

In terms of pension fund trustees, the Government recently established a group to examine the amalgamation of the regulatory functions of the Pensions Board with those of the Central Bank. The group’s report was published in April this year and, following careful consider-

ation, it recommended against such amalgamation. As such, the regulation of pension issues rests with the Pensions Board, which is to be restructured and reformed in accordance with the group's recommendations. In respect of trustees specifically, the current role of the Pensions Board is to provide guidance for trustees on their duties and responsibilities in relation to scheme administration and to issue codes of practice on specific aspects of trustees' duties.

As Minister for Finance, I have no responsibility for the regulation of debt collectors and debt collecting firms. Debt collection services apply across a significantly wider range of activities than the recovery of money for financial products, for example in the case of utilities, rents, other consumer debts and also debts between businesses. My colleague, the Minister for Justice and Equality, is responsible for the relevant legislation in respect of debt collection, which is the Non-Fatal Offences against the Person Act 1997. This applies to all debt collectors that operate across any or all sectors of the economy, including private individuals and debt collecting firms.

In the case of financial institutions which use debt collection firms, the Central Bank has imposed requirements that offer protection to consumers under its revised consumer protection code. The code obliges the regulated entities that it covers to ensure that any outsourced activity, such as debt collection, complies with the requirements of the code. This means that outsourced activity should uphold the principles in the code.

The Senator's amendments also propose that the Central Bank would be able to determine what falls within the definition of financial service provider. Given the broad range of serious powers which are afforded to the Central Bank by the Oireachtas, it would not be appropriate to provide such a blanket ability for the Central Bank to determine the entities it regulates. Such decisions are properly the responsibility of the Oireachtas through setting the statutory remit of the Central Bank. On that basis I do not propose to accept the Senators amendments in this group.

**Senator Sean D. Barrett:** I thank the Minister, as always, for his response. The Minister mentioned section 4. For clarification, the version I have has a miniscule section 4 dealing with repeals and revocations? Does the Minister refer to section 4 of today's Bill? Perhaps he might advise me in that regard.

**Deputy Michael Noonan:** It is Part 4 not section 4.

**Senator Sean D. Barrett:** I thank the Minister, I misheard him previously. I have taken a note of that. That is important. I welcome that also.

I am concerned about the broad remit of financial services that trustees of pension funds seem to be boasting that they are hundreds of millions in debt. Some of them think the Minister will bail them out, which is most worrying as well. I also am greatly concerned about the auditing issue and note the Minister mentioned the Irish Auditing and Accounting Supervisory Authority. I consulted the website of one such body, namely, the Chartered Accountants Regulatory Board, which seemingly deals with matters like someone doing the books for a small cattle market down the country and so on. However - this is applicable to all the matters under discussion - the "Big Four" audit firms appear to have prepared accounts for Irish banks on which the State bought into those banks and yet nothing happens. Again, I am thinking of the popular expression of these matters. I accept the Minister's remarks and the changes he has noted but there is a wish for stricter regulation of the activities of these industries and a perception that we have been too slow in addressing it.



On the debt collection agencies, I again greatly welcome the Minister's comments. Concerns were expressed in the House that what one might call "heavies" or criminal elements were being used to collect debts by the Irish banks and I am delighted to hear from the Minister that the Central Bank wishes to control such activities. The other activity I had in mind in framing these amendments was a scheme - in south Dublin I believe - whereby one paid in money and the organisation concerned undertook to pay one's bills. This activity did not seem to be regulated although many people would regard it as a service and it caused great distress to those who entrusted their money to those persons.

While I appreciate the improvements the Minister has mentioned, I am surprised that pensions were not included but I accept this is what the expert report indicated. It is of concern to everyone in the House that serious pension problems exist in respect of building societies. They operated under a loose regime of regulation from the Department of the Environment, Community and Local Government and none now remain. That is the penalty of running their affairs so badly and one could have done with better regulation in that regard. I have mentioned the pension funds but I still have concerns about the auditors and accountants, in that it seems like light-touch regulation to me or, in the case of the "Big Four" with regard to bank accounts, no-touch regulation.

As for the last sentence, what I had in mind was a scenario in which someone invents new financial services into which people put their money only to subsequently lose it and that service was not within the definition. The case I had for the broad definition was that the Central Bank should be able to intervene before people's money is lost. However, I am pleased by and welcome the Minister's comments on the positive side and will not press the amendments. This Bill now before the House started off in 2011 and were one writing it in the past week, one might have more stricter and more stern thoughts, given the damage to the political and business scene as a result of the tapes. However, I thank the Minister and look forward to Report Stage. I will not press the amendments at this Stage but I am grateful to the Minister, as always, for his enlightenment on these issues.

**Deputy Michael Noonan:** I agree with the sentiments expressed by the Senator. The days of light-touch regulation are long since behind us and it was a mistake that they ever were brought in. The former Minister for Justice, Equality and Law Reform, Michael McDowell, chaired the particular committee which gave rise to the recommendations. One had this movement stating that because bankers were members of such a noble profession, were the principles of regulation to which they would adhere set down, one then could allow them to apply the principles themselves. That was the basis of light-touch regulation and it was a pretty serious mistake. Consequently, there is quite rigorous hands-on regulation now and the Central Bank has almost doubled the staff involved. Moreover, the regulatory function is rolled in as one of the principal functions of the Central Bank. There is no reluctance on behalf of the Government to give it all the powers it requires either now or in the future.

Where I differ from the Senator is that I do not think the Central Bank can do everything. In other areas of financial activity, there are other regulatory bodies that are empowered to carry out the regulatory function and I went through those in my initial remarks. The question of bill payment services is covered in Part 10 of the Bill. As everyone is aware, there were a couple of serious scandals in which people who could not afford the losses had losses imposed on them when some of the aforementioned bill payment companies became insolvent. Consequently, after examining the situation it is the intention of the Central Bank to bring them within the ambit of its regulation. Part 10 of the Bill covers that matter, which of course will be discussed

27 June 2013

again on Report Stage. Moreover, when debating the group comprising amendments Nos. 15 and 19, we will go over much the same ground.

**Senator Sean D. Barrett:** I again thank the Minister for his comments on the aforementioned debt payment agencies and am obliged to him.

Amendment, by leave, withdrawn.

Amendments Nos. 3 to 7, inclusive, not moved.

Section 3 agreed to.

Sections 4 to 7, inclusive, agreed to.

Amendments Nos. 8 and 9 not moved.

Section 8 agreed to.

Sections 9 to 20, inclusive, agreed to.

Amendments Nos. 10 to 13, inclusive, not moved.

Section 21 agreed to.

Section 22 agreed to.

## SECTION 23

**Senator Sean D. Barrett:** I move amendment No. 14:

In page 19, subsection (1), line 1, after “records” to insert “, computer records, tapes and other recordings”.

This amendment is to be inserted after the line in section 23(1) stating “The Bank may require that information, records or other documents”. I do not know whether I am being tedious on the Minister’s time but the object was to ascertain whether tapes were documents and to give the Central Bank this power. Given what has emerged in the last few days, I certainly would be delighted if it assisted the Minister to get access both to paper records and to computer records, tapes and other recordings. If there is any other definition that is more comprehensive to get to grips with this particular problem, I would be delighted to support that as well. I tabled this amendment to be of assistance to the Minister. While tabling amendments, I did not quite know what would arise but if it is timely, it is entirely accidental.

**Senator Michael D’Arcy:** On section 23 and referring back to section 22(1), Senator Barrett has referred to what Members are hearing each morning on “Morning Ireland” regarding the Anglo tapes. However, those tapes are a number of years old and I have been raising an issue with which I am dealing currently regarding people in financial institutions.

*4 o’clock*

Financial institutions are not adhering to what was then the code of conduct for mortgage arrears, and the mortgage arrears resolution process, MARP, is not being put in front of people who may not know about it. I raised this matter on Second Stage. The Minister of State with responsibility for trade and development, Deputy Costello, replied that if MARP is not being

progressed through the code of conduct via the Central Bank, which financial institutions are obliged to do, the person who works for the bank can be removed from their role. My view is that this sanction is not sufficiently strong and that if a lending institution does not give somebody the correct MARP in line with the code of conduct, the individual responsible should be fired because it involves somebody's life savings and the largest investment they are ever likely to have, and the individual working for the lending institution is not adhering to an obligation they are obliged to meet. I would like to hear the Minister's view on that. If that information can be provided and it is shown that a person in the employment of the bank knows they are acting incorrectly, they should be sacked.

**Deputy Michael Noonan:** Amendment No. 14 in the name of Senator Barrett seeks to include computer records, tapes and other recordings in the definition of "record". Section 2 of the Central Bank Act 1942 defines "record" as follows:

'record' means any record of information, however compiled, recorded or stored, and includes—

(a) any book, a register and any other document containing information, and

(b) any disc, tape or other article from which information is capable of being produced in any form capable of being reproduced visually or aurally

As the definition in the Central Bank 1942 applies throughout the Central Bank Acts, this definition applies in this Bill also. Therefore, the Senator's amendment is not required. In respect of Senator Michael D'Arcy's point, the Central Bank, as a matter of course, will be reviewing the records of this debate and I draw the Governor's attention to the views expressed by Senator Michael D'Arcy because it is within the bank's remit to take the kind of action he proposes.

**Senator Sean D. Barrett:** We should probably pay tribute to the framers of the Central Bank Act 1942 because they had a remarkable ability to predict what kind of technology would exist in 2013. I thank the Minister and will not push the amendment.

Amendment, by leave, withdrawn.

Section 23 agreed to.

Sections 24 to 34, inclusive, agreed to.

## SECTION 35

**Acting Chairman (Senator Paschal Mooney):** Amendments Nos. 15 and 19 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Senator Sean D. Barrett:** I move amendment No. 15:

In page 27, line 19, after "auditing." to insert the following:

"The Bank shall conduct and publish research on standards for assurance and auditing and shall be the authority for stipulating and regulating such standards."

Section 27BA(9) as inserted by section 35 of the Bill states: "In specifying under subsection (2)(b) the standards in accordance with an examination is to be conducted, the Bank shall have

regard to internationally recognised standards for assurance and auditing.” My fear is that this is the problem. The Minister has just come from attempting to deal with it in Brussels. With regard to generally accepted international standards, do we need higher standards in Ireland? Many of the international companies in this area have done damage not just to Ireland but to Greece and all the other countries with which the Minister was discussing matters in recent days. Should we set the standards for people to operate here given what has happened internationally? I will leave it at that. I know there is a view that this will happen at European level. Does the Irish customer need protection and would we wish to do that ourselves? Due to public concern, would this strengthen the Minister’s hand?

**Deputy Michael Noonan:** The Bill already moves into the space where the Senator indicates it should go while, at the same time, allowing the Irish Auditing and Accounting Supervisory Authority to be the primary regulator of auditors and accountants. Amendments Nos. 15 and 19 seek to make the Central Bank responsible for setting standards for auditors or financial service providers. As I stated in response to an earlier group of amendments from the Senator, the Irish Auditing and Accounting Supervisory Authority was established under the Companies (Auditing and Accounting) Act 2003 and holds responsibility for the supervision of the auditing and accountancy professions in accordance with national and EU requirements. Given that these professions have a role beyond financial services and across the corporate sector, it is appropriate that they are regulated under company law.

As I mentioned, the Bill includes provisions under Part 4 and section 58 in respect of auditor assurance and sharing of information with the Central Bank. Amendment No. 15 relates to section 35 in auditor assurance. While it would not be appropriate for the Central Bank to set standards for auditors generally, it is being made responsible for setting the standards of assurance expected of auditors under Part 4. Amendment No. 19 seeks to extend the role of the Central Bank to making regulations for auditors under section 48. The regulations in this section relate to the responsibilities of regulated financial service providers regarding auditing arrangements. The standards that apply to auditors themselves are set in accordance with Irish and international standards, including IFRS and GAAP under Irish and European company law. Therefore, I do not propose to accept these amendments.

**Senator Sean D. Barrett:** I thank the Minister. I accept what he says but as a Member of the House, I think the citizens might like to hear the odd noise out of the Irish Auditing and Accounting Supervisory Authority. It seemed to be remarkably silent at a period when such damage had been done to the country. That was the purpose of the amendment. If the authority is lax or slow in discharging its duties, we might need to look at giving responsibility to the Central Bank which dealt with banking, insurance and credit unions. I see one regulatory authority implementing the kind of energy and reforms the Minister and I like and nothing from the other one. I accept the Minister’s point but if somebody could send the authority the present of an alarm clock, it would be helpful. Many small accountants throughout the country also wonder what it does. The so-called big four prepared accounts which turned out to be fictional and no one said anything. It is akin to what the Minister is dealing with in respect of bankers regarding who is on the board and what they were doing. They were remarkably silent and the same vow of silence seemed to apply to this body. If it has anything to say, I would love to read it in the newspaper tomorrow or the next day. I accept the Minister’s statement and his bona fides but I am beginning to doubt whether this authority even exists at this stage.

Amendment, by leave, withdrawn.

Section 35 agreed to.

Sections 36 to 41, inclusive, agreed to.

## SECTION 42

**Senator Sean D. Barrett:** I move amendment No. 16:

In page 33, between lines 9 and 10, to insert the following subsection:

“(4) The Bank shall publish in its Annual Report a statement of the employment status of persons reporting breaches and a statement of the reforms undertaken by the body in respect of which the report of breaches was made.”.

This is a very welcome provision for which I commend the Minister. I am in agreement with him all the way with regard to the protection of employees from penalisation for making a protected disclosure.

I spoke to Dr. Estelle Feldman in the TCD law school about how whistleblowers are treated. She has two concerns, which I will outline to the House. First is that the victims do, in fact, suffer and second is that the organisation complained of will quite frequently continue as it has anyway.

The Minister's intentions are excellent and I support them. I suggest the Minister might consider introducing an amendment on Report Stage to provide for a check as to whether the complainant was victimised by moving down the promotion list etc., and what the bank did about it. While I know that the Minister present and the Minister for Public Expenditure and Reform, Deputy Howlin, are considering advancing legislation, Dr. Feldman's fear is that today the victim remains a victim and the people who carried out the malpractices can more or less shrug their shoulders and continue on.

I believe AIB got into trouble buying an insurance company in London in 1987 and it has not stopped much since. That is the real moral hazard. If nothing happens to reward the individual who brings such matters to the authorities' attention and nothing happens to the organisation, it will keep on doing it. That was a suggestion made from a practitioner in the field. She would share the Minister's goals that we need to protect whistleblowers and ensure that what they say is taken on board. That is the purpose of the amendment.

**Senator John Gilroy:** I have a specific question on this section. There was a peculiar case in 2007 where a whistleblower in UniCredit Bank in the IFSC allegedly reported alleged breaches of liquidity ratios. However, when he pursued it, it was discovered that, as the person responsible for ensuring the liquidity ratios were as they were, he, himself, faced criminal sanction. Will this section remove such a paradox in the legal system?

**Deputy Michael Noonan:** Amendment No. 16 seeks to require the Central Bank to publish in its annual report a statement of the employment status of persons reporting breaches and a statement of the reforms undertaken by the body in respect of which the report of breaches was made.

It is important that the identity of those reporting breaches is protected to the greatest extent possible. For that reason the Bill includes a protection for the identity of whistleblowers, except where disclosure is necessary for effective investigation or other action arising from



the disclosure. On that basis I would not support publication of the employment status of the whistleblower, lest it lead to speculation about or victimisation of the whistleblower or other persons. For example, if the whistleblower were identified as the risk officer, chief financial officer or compliance officer, it might lead to an individual being identified or others with the same title being victimised.

That said I have some sympathy with the core point being made by the Senator about the need for action on foot of disclosures. I made an amendment in the Dáil to respond to this issue when raised by the Opposition. To address the point I have inserted a new section 38(4) requiring the governor to prepare a report for the Central Bank commission on the disclosures and action taken. Given the sensitivity of the issues likely to be involved and the need to avoid identifying whistleblowers or hindering subsequent investigations, I would not be in favour of publication of details in the annual report.

Given that this provision is being introduced for the first time in the financial services sector, I expect it is an element of the Act that will need to be reviewed after a time to assess its effectiveness in light of real world experience. However, for the reasons outlined, I do not propose to accept the Senator's amendment.

If a person has broken the law his or her protection will not apply which I believe addresses Senator Gilroy's point. Section 40 sets out the protections from civil liability for those who make protected disclosures. This is a key section as it allows for whistleblowers' protection to apply beyond the employer-employee relationship, for example in the case of disclosures by customers or auditors. Subsections (1) to (4), inclusive, provide that a person shall not be liable in damages or any other form of relief in respect of making a protected disclosure unless it is known by the person to be false or misleading. This protection is in addition to and not in substitution for any other form of protection to which the person may already be entitled for making a disclosure, whether to an appropriate person or otherwise.

Subsection (5) provides for the protection of the identity of the person making the disclosure, except with his or her consent or where divulging the identity of the person is necessary for an investigation of the matter to which the disclosure relates. Investigation is meant here in its broader sense to include an examination of the matter or any proceedings which may follow. The section specifically lists a number of situations under financial services legislation where such a disclosure may be required, including an administrative sanction inquiry, an appeal before the Irish Financial Services Appeals Tribunal or a fitness and probity hearing.

A person acting in accordance with law has the full protection the Senator requires. However, protection does not extend to somebody who breaks the law.

**Senator Sean D. Barrett:** Is there a role for the Ombudsman in this? I believe corporate Ireland will penalise the whistleblower regardless of the protections we insert here. That is the human rights part of it. The record is that the whistleblower's career would take a different path if he or she stays quiet. As the song goes, "Whatever you say, say nothing", and we need this to happen.

What about the organisation complained of? With the ICI affair and the offshore deposits affair, it seems that there are a load of serial offenders here and some record somewhere that these were reported, involving the name of the institution and corrective measures. I am concerned that the Minister's successors and successors in the Seanad - as I am sure there will be

- will be investigating the same kinds of things because there is a record of this from 1987 to today. We need to know what was done about it. If the whistleblower is right we will try to protect him or her - I would like a bit more protection. However, did they do anything? The purpose is to get the reforms. My confidence in the Irish banks is as low as the public's and I am afraid that they will not carry out the reforms and that was the purpose.

What is not recorded does not get done I suppose. If we have an index indicating that a particular bank has done this for the 89th time, perhaps some kind of shame - Lord between us and all harm - might enter the sector and they might do something. These are people who treated their own shareholders with contempt. In theory the shareholders could have voted out the board and one man started to throw eggs and so on. The normal checks and balances do not seem to operate here. We need to send a very strong message from the Oireachtas that we want abuses corrected with far more alacrity than we have had up to now. I am not so sure that the corporate culture in Irish banking has changed at all and several Senators have said so on the Order of Business.

Perhaps the Minister could consider introducing a Report Stage amendment to provide for a scorecard. This sector has been a disaster for the country and we want to see evidence of much better performance, including by people who in many cases for patriotic motivation want to help this country. It is a pity they were not around ten years ago to give the authorities assistance. I would like to think of it having an impact, but I begin to despair that it ever does. I will not press the amendment but perhaps the Minister might come back to the issue on Report Stage. If there are a lot of black marks against somebody in banking, what is to be done about it? I will reflect on it and see if it can be framed another way. I believe the protection for the person doing the whistleblowing is stronger and perhaps a link to the Ombudsman, to vindicate their human rights, may be worthwhile. Whether the people complain or take any notice of anyone these days is a concern.

**Deputy Michael Noonan:** I look forward to discussing this again on Report Stage if the Senator frames an amendment. The Minister for Public Expenditure and Reform is introducing comprehensive legislation in the area of whistleblowing. The protections in this Bill may need to be examined in respect of that Bill because we need to align procedures between the two Bills. I will examine it in context of the Bill of the Minister for Public Expenditure and Reform and I look forward to discussing it on Report Stage.

Amendment, by leave, withdrawn.

Question proposed: "That section 42 stand part of the Bill."

**Senator John Gilroy:** Like my colleague Senator Barrett, I would like longer to reflect on the section and to return on Report Stage. The complexity of the management structures of some of the financial institutions and the sheer dishonesty of the attitudes in them requires us to give this matter more deep thought in the House. When Senator Barrett returns with an amendment on Report Stage, I may be inclined to support it.

Question put and agreed to.

## SECTION 43

**Senator Sean D. Barrett:** I move amendment No. 17:

In page 33, subsection (3), line 36, after “exceed” to insert “triple”.

Section 43(3) reads: “In *subsection (1)* “appropriate redress” means such monetary or other redress as is specified in the direction and (in the case of redress for pecuniary loss) as does not exceed the amount of the loss suffered or anticipated to be suffered”. My amendment proposes to insert “triple”. Other countries have triple damages for this kind of malpractice. The mere amount has not worked and it might help in bringing these people to their senses if they face stricter penalties. There are triple damages systems in the US. Given the trouble we have had and the money diverted from things we want to spend money on, the penalty could be made harsher.

**Deputy Michael Noonan:** Amendment No. 17 seeks to provide for redress of up to three times the amount of the loss incurred by persons affected. The purpose of redress is not to punish the financial service provider but to ensure that the person affected is put back to the position he or she would have been in had the incident not occurred. That is not to say that a financial service provider could not be the subject of an administrative sanction procedure, offence or other financial penalty in addition to redress, where the financial service provider is found to have breached a requirement. Furthermore, the Bill also provides for restitution provisions to ensure that firms or individuals cannot benefit from breaches of their requirements, as illegitimate gains can be retrieved through the courts and redistributed to those affected. This is separate to any sanction or redress procedure. On that basis, I do not propose to accept the amendment.

Amendment, by leave, withdrawn.

Section 43 agreed to.

Sections 44 to 47, inclusive, agreed to.

Amendments Nos. 18 and 19 not moved.

Section 48 agreed to.

## SECTION 49

**Senator Sean D. Barrett:** I move amendment No. 20:

In page 44, subsection (1), between lines 4 and 5, to insert the following:

“(c) in the case of the so-called pillar banks shall consult with the Competition Authority and the National Competitiveness Council on the impact of the proposed regulations on the non-banking economy,”.

The section in the Bill provides that the Central Bank “may consult with such other persons as the Bank considers appropriate to consult in the circumstances” before making regulations. I am worried about the pillar bank situation. It could turn into a duopoly and there is a danger that Ulster Bank is in such dire straits that it may withdraw. We have seen reports that Mr. Cameron could make that decision. There is an offer to take it over, which I would recommend against. When the Central Bank is having these discussions, we want to ensure that we discuss competition issues and competitiveness. I am worried that sectors seem to be able to opt out of competition law that applies to other people.

People have serious worries about the banks. We need extra protections for consumers against the activities of the pillar banks and the extent to which they may collude. Bank charges are always a hotly discussed topic. Providing for the views from the Competition Authority on whether the sector is competitive and how it affects the overall competitiveness of the economy may be a belt and braces approach but, given the sector's track record, the more we take the belt and braces approach, the better. It is having a serious impact on the non-banking economy. Using the American terminology for the Irish case, Wall Street is completely dominating Main Street and is making life miserable for people on Main Street. I would like that protection to be considered.

**Deputy Michael Noonan:** The amendment seeks to require the Central Bank to consult with the Competition Authority and the National Competitiveness Council on the impact of the proposed regulations affecting the pillar banks on the non-banking economy. Section 49 already allows for the Central Bank to consult any entity it considers appropriate so the consultation envisaged by the Senator is already allowed for in the Bill. On that basis, I do not propose to accept the amendment.

On the broader issue of the pillar banks, in the medium to longer term, having more active banks engaged in lending and other banking activity would be desirable but in the current environment there is little that can be done about the reluctance of foreign banks to expand their business in Ireland at this time. Stabilising the economy and growing employment is the best way to encourage banks to reactivate their interest in this country.

**Senator Sean D. Barrett:** Is there a possibility the phrase "any other body" is too vague? As consumers, we want to have specified bodies referred to. Referring to "any other body" allows for discretion when society wants better value from Irish banks. I am sure the Governor and his very able staff will consult the bodies I have mentioned. Should it be discretionary? How will we enforce it? They may say that they do not have to bother with it and that they consulted the Irish Rugby Football Union. Should it not be more specific? I will not press the amendment but, in the interest of the consumer, I question whether the phrase is strong enough.

**Deputy Michael Noonan:** A valid point is raised by the Senator in respect of the lack of competition in the Irish financial services industry, particularly in respect of the domestic economy. There is a danger of a duopoly being controlled by two banks. One approach is to get the economy growing and make it worthwhile for foreign banks to have offices here. The amendment I will table on Report Stage is to enable non-EU banks to open offices and branches here. We can discuss that on Report Stage when the Attorney General signs off on that amendment.

There is a wider issue. Consider how the US funds its economy. Approximately 75% is non-bank finance, whereas the situation is reversed in Ireland, in that it is nearly all bank-financed. When the banks are impaired or inhibited from lending, there is a liquidity problem in the economy. This is what is happening.

We are moving strongly to encourage non-bank lending. For example, before our EU Presidency commenced, we brought senior people from treasuries across Europe to Dublin and the Secretary General of my Department held a seminar on non-bank lending. This discussion was carried through to the informal Council in Dublin where the Commission tabled a Green Paper on non-bank lending. Arising from the discussion on the Green Paper, a pan-EU group with Ireland as its co-chair has been established.

27 June 2013

In terms of practical help on the ground, the European Investment Bank, EIB, is far more involved in Ireland than it was and is providing greater amounts of funding. Since it was voted €10 billion in extra capital last year, it has the capacity to leverage that amount to provide a further €180 billion of lending across the Union. This is significant. The EIB will be a player in Ireland, particularly as a co-partner in public-private partnerships on infrastructure, school bundles, health centres, etc. This work has already commenced.

Smaller banks, such as the Silicon Valley Bank, are providing venture capital to small to medium-sized enterprises, SMEs, in Ireland. It has a fund of approximately \$100 million. We are identifying other sources of non-traditional bank financing so that the economy can have the funds required to grow the new model economy that this country badly needs.

When the amendment is tabled on Report Stage, we can re-examine the issues that the Senator has raised.

**Senator Sean D. Barrett:** I thank the Minister. We developed a banking system that was based solely on property. Bankers played golf with builders and built up house prices. The expertise for SMEs to which the Minister referred will be welcome. He will get strong support from these benches.

Amendment, by leave, withdrawn.

Section 49 agreed to.

Sections 50 to 58, inclusive, agreed to.

## SECTION 59

**An Cathaoirleach:** Amendments Nos. 21 and 22 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Senator Kathryn Reilly:** I move amendment No. 21:

In page 49, between lines 39 and 40, to insert the following:

“ ‘debt collector’ means a person who for remuneration collects or seeks to collect consumer credit debt;”.

This matter was debated in the Dáil on Report Stage, but it was shifted to the justice portfolio. However, there are wider issues. The amendment is specifically worded to limit debt collection as a financial service. Therefore, it is eligible for inclusion in the Bill.

Under the amendment’s definition, debt collectors provide a financial service and should be regulated as such. Unfortunately, a greater number of people must turn to such providers. After the revision of the code of conduct on mortgage arrears, more people will move in this direction. The gap in this otherwise fine legislation should be remedied. The matter should not be kicked to another Minister’s office. There is no reason that we cannot empower the Central Bank to regulate those who collect consumer credit. Will the Minister consider supporting these amendments or examining them in advance of Report Stage?

**Senator Michael D’Arcy:** I welcome the opportunity to contribute on this matter. I raised it previously in respect of lending institutions that hire unsavoury agents with shady backgrounds to collect debts. It is not tolerable that people can break into someone’s property, pose



as debt collectors and effectively use criminality and scare tactics. Whether collecting debt that way is theft is debatable.

Perhaps the Minister will consider inserting a section on Report Stage whereby an agent hired by a financial institution will be licensed by the Central Bank or some other authority. A financial institution may wash its hands Pontius Pilate-like by claiming that it has hired a reputable agent, but that agent hires sub-agents and on goes the chain of disassociation. Under the proposed licensing section, responsibility for the actions of agents or sub-agents should fall on whoever has hired the debt collection service in the first place. I would appreciate it if the Minister could consider this proposal.

**Deputy Michael Noonan:** Amendments Nos. 21 and 22 seek to make provision for debt collectors and debt collection services. As the Minister for Finance, I have no responsibility for the regulation of debt collectors and debt collecting firms. Debt collection services apply across a significantly wider range of activities than the recovery of money for financial products, for example, in the case of utilities, rents, other consumer debts and debts between businesses. The Minister for Justice and Equality is responsible for legislation in this regard, namely, the Non-Fatal Offences against the Person Act 1997, which applies to all debt collectors that operate across any or all sectors of the economy, including private individuals and debt collecting firms. Under section 11 of that Act, it is an offence to demand payment of a debt in a way that is designed to cause alarm, distress or humiliation. A person found guilty of offences under the Act is subject to large fines and up to 14 years imprisonment.

In the case of financial institutions that use debt collection firms, which is the point addressed by Senator Michael D'Arcy, the Central Bank has imposed requirements that offer protection to consumers under its revised consumer protection code. The code obliges the regulated entities that it covers to ensure that any outsourced activity, such as debt collection, complies with the requirements of the code. This means that outsourced activity should uphold principles in the code, such as the requirement for institutions not to exert undue pressure or undue influence on a customer, to act honestly, fairly and professionally in the best interests of customers, to act with due skill, care and diligence in the best interest of its customers, and to prohibit personal visits or oral communications except in specified circumstances.

Similarly, there are provisions in the Central Bank's consumer protection code that provide protections for consumers in respect of the debt collection activities of licensed moneylenders, including where they outsource this function to a third party. For the reasons that I have outlined, I do not propose to take on board the amendments proposed by Senator Reilly. However, I will communicate her views and those of Senator Michael D'Arcy, particularly the suggestion regarding further strictures on third parties hired to collect debt by financial institutions. Everyone in public life knows that there is concern about this issue and that the law, while strong, is not always upheld. Nor are the sanctions that follow always imposed. I will ask the Central Bank to re-examine the matter.

**Senator Michael D'Arcy:** I thank the Minister. Having researched this matter, there seems to be a differentiation between consumer protection and the protection of someone who is acting in business. This creates a difficulty, as it means that there is a different structure in place for many financial transactions in business and agriculture, for example, the purchase of an agricultural machine. I ask that the Minister examine the issue.

I shall not pretend that I was incapable of putting together the changes required because they

27 June 2013

would, effectively, have rewritten much of the Consumer Credit Protection Act.

**Deputy Michael Noonan:** I will draw the Central Bank's attention to this short debate on this set of amendments today. I shall ask it to look at the views expressed by Senators Michael D'Arcy and Reilly to see if, in its opinion, any further action is necessary.

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

**Senator Kathryn Reilly:** No, based on what the Minister has just said. I shall read his comments later.

Amendment, by leave, withdrawn.

Amendment No. 22 not moved.

Section 59 agreed to.

Sections 60 to 67, inclusive, agreed to.

## SECTION 68

**An Cathaoirleach:** Amendments Nos. 23 and 24 are related and may be discussed together.

**Senator Sean D. Barrett:** I move amendment No. 23:

In page 55, line 38, to delete "€10,000,000" and substitute "€50,000,000".

As I understand it, the penalties under the 1942 Act are doubled but inflation has increased far more. I would hate to think that the penalties were being reduced in real terms. It is okay if we fine them the index linked euro equivalent of the 1942 fine. I ask the Minister to consider the matter. What have these guys done to deserve a massive reduction in fines? I mentioned a certain number but it is probably still short. At least my amount brings the 1942 fine more up to date with 2013 prices.

**Deputy Michael Noonan:** These amendments seek to increase the maximum penalty under the administrative sanction regime tenfold, from €500,000 to €5 million for an individual and from €5 million to €50 million for a body corporate. It is important that the fines are of sufficient scale to act as a deterrent to those who seek to profit from breaching their requirements.

The Bill already proposes significant increases in fines. For example, there is a proposal to double the individual maximum from €500,000 to €1 million. There is a second proposal to increase the maximum fine for firms from €5 million to €10 million, or 10% of turnover, whichever is the greater. This links the size of the fine to the size of the company.

In addition, the Bill provides for redress where customers who suffer a loss because of poor practice by financial service providers and restitution which will ensure that firms or individuals who make illegitimate gains from breaching requirements do not get to keep these gains. Restitution is particularly important for firms or individuals who have the financial ability to pay fines without difficulty.

Overall, these changes provide for a serious level of sanction, redress and restitution where the circumstances warrant it. However, in acknowledging the need for credible sanctions we

should never forget that the primary purpose of regulation is to ensure that the standards in place are supervised, respected and abided by with appropriate early intervention by the Central Bank to address the problems.

On the basis that the fines are being substantially increased in the Bill, I do not propose to accept these amendments.

**Senator Sean D. Barrett:** I thank the Minister. As always, I sought harsher fines. If we were trying to do the reverse I do not think that any Member of the House would be happy to take a doubling of his or her 1942 salary and expect to live on that sum. It would be a reduction in real terms.

I appreciate that the Minister wants an early warning system. I will not press my amendment. Reducing the imposition of fines by a number of decades will not get the undivided attention of some of these characters. I share his goal to get them early so that we do not have to worry about fines. At least if they are caught then maintaining 1942 values might be a good idea. I shall not press my amendment and I thank the Minister.

**Deputy Michael Noonan:** I wish to make a point for the sake of the record. The base legislation is the 1942 Act but I believe that the penalties have been updated more than once in the meantime.

Amendment, by leave, withdrawn.

Amendment No. 24 not moved.

Section 68 agreed to.

Sections 69 to 71, inclusive, agreed to.

## SECTION 72

**Senator Sean D. Barrett:** I move amendment No. 25:

In page 59, between lines 12 and 13, to insert the following:

“(d) the responses of the financial service provider to complaints made under this section.”.

My amendment deals with the ombudsman’s report and its content. The section contains excellent material such as the trading name of the financial services provider, the identity of any group that the regulated financial service provider is a member of and the number of complaints found to be substantiated, or partially substantiated, in respect of the regulated financial service provider in the preceding financial year. My amendment merely suggests a reporting addition to improve things and states: “(d) the responses of the financial service provider to complaints made under this section.”

I shall return to our discussion on the role of the ombudsman. What did these people do in response to complaints? All of the other information is recorded and I say well done. Should we insert my amendment? What did they say back? Would the provision help to improve consumer confidence and vindicate consumer rights?

27 June 2013

**Deputy Michael Noonan:** The amendment seeks to require the Financial Services Ombudsman to include in its report the responses of the financial services provider to complaints made and reported by the Financial Services Ombudsman. However, I am satisfied that the naming provisions provided for in the Bill are sufficiently robust to provide consumers with information to assist them in making decisions about availing of the services of particular financial service providers.

I am of the view that providing a further requirement for a response by the financial service providers is not required to strengthen this provision. The requirement would be unduly burdensome with little added value. It should also be noted that when investigating any complaint against a financial service provider, the ombudsman would require a response from the provider before making a decision on whether to uphold a complaint or not. Accordingly, I do not propose to take on board the amendment tabled by Senator Barrett.

**Senator Sean D. Barrett:** We have serial offenders and I would impose harsher fines on them. However, I will not press my amendment and thank the Minister for his response.

Amendment, by leave, withdrawn.

Section 72 agreed to.

Sections 73 to 80, inclusive, agreed to.

#### SECTION 81

Government amendment No. 26:

In page 67, lines 32 and 33, to delete subsection (7) and substitute the following:

“(7) Section 47 of the Act of 2011 is amended by substituting “If a liability to repay arises under section 46(5)” for “If a liability to repay the Fund or the Minister arises under section 46(4)”.”.

**Deputy Michael Noonan:** This is a technical amendment. The amendment involves an amendment to section 47 of the Central Bank and Credit Institutions (Resolution) Act 2011. It is a drafting amendment and is consequential on changes made to section 46 of the 2011 Act on Report Stage in the Dáil.

Amendment agreed to.

Section 81, as amended, agreed to.

Sections 82 to 92, inclusive, agreed to.

#### NEW SECTION

Government amendment No. 27:

In page 71, after line 11, to insert the following new section:

93.—Section 6 of the Irish Bank Resolution Corporation Act 2013 is amended by inserting the following subsection after subsection (6):

“(7) (a) In this subsection ‘Act of 1879’ means the Bankers’ Books Evidence Act 1879.

(b) Where—

(i) a copy of an entry in a bankers’ book (within the meaning of section 9(2) of the Act of 1879) falls to be produced in evidence,

(ii) the book is in the custody or under the control of a special liquidator or IBRC, and

(iii) the special liquidator or an officer or employee of, or other person duly authorised in that behalf by, the special liquidator or an officer or employee of IBRC gives evidence (orally or by affidavit) that—

(I) he or she truly believes that the book or record was kept in the ordinary course of the bank’s business, and

(II) the book is in the custody or under the control of the special liquidator or IBRC,

then the requirement for proof in section 4 of the Act of 1879 shall be taken to have been satisfied.

(c) The Act of 1879 has effect in relation to the books and records of IBRC as if—

(i) references in that Act to bank or banker were to—

(I) a special liquidator, or

(II) IBRC,

(ii) references in that Act to bankers’ books were to the ordinary books and records of a special liquidator or IBRC, as the case may be, or the ordinary books and records of IBRC in the custody or under the control of a special liquidator, and

(iii) references in that Act to an officer of a bank were to a special liquidator or an officer or employee of, or other person duly authorised in that behalf by, a special liquidator or to an officer or employee of IBRC.”.

Amendment agreed to.

Schedule 1 agreed to.

## SCHEDULE 2

Government amendment No. 28:

In page 75, between lines 11 and 12, to insert the following:



“

7	Section 33AK(5)	Substitute “2010, or” for “2010.” in paragraph (ao) and insert the following after that paragraph:“(ap) for any purpose connected with the functions of the Bank, the Minister, the Governor or the Head of Financial Regulation or a special manager under the Central Bank and Credit Institutions (Resolution) Act 2011.”.
---	-----------------	---

“.

**Deputy Michael Noonan:** This amendment is technical in nature and is designed to remedy an incorrect reference in the Central Bank and Credit Institutions (Resolution) Act 2011. The objective of this amendment is to ensure the Central Bank is legally able to share confidential information to facilitate the Central Bank, the Minister, the Governor, the head of financial regulation or a special manager appointed under the resolution Act in the performance of their functions under the Act. This should remove any obstacles to the necessary information exchange.

**Senator Darragh O’Brien:** It is interesting we are inserting new sections and making amendments. The irony is not lost on me that this is being done in the Seanad. Given the proposed abolition of the Seanad, perhaps the Minister will mention it to the Taoiseach that these mistakes were made in Dáil Éireann or that are things which were not included there. How would this proceed if there were no Seanad after the next general election? It is just an observation in that regard.

Amendment agreed to.

Government amendment No. 29:

In page 75, line 37, to delete “91” and substitute “93”.

Amendment agreed to.

Schedule 2, as amended, agreed to.

Schedules 3 to 5, inclusive, agreed to.

Title agreed to.

**Deputy Michael Noonan:** I thank Senators for the expeditious handling of this important legislation on Committee Stage. In particular, I thank Senator Barrett who did most of the heavy lifting today.

**Senator Sean D. Barrett:** I thank the Minister and wish him well.

Bill reported with amendments.

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

**Senator Michael D’Arcy:** Next Tuesday.

Report Stage ordered for Tuesday, 2 July 2013.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Michael D’Arcy:** At 2.30 p.m. on Tuesday, 2 July 2013.

## **Adjournment Matters**

### **Decentralisation Programme Office Accommodation**

**An Cathaoirleach:** I welcome Minister of State at the Department of Agriculture, Food and the Marine, Deputy Tom Hayes, and wish him well in his appointment.

**Senator John Whelan:** It is a great pleasure to welcome the Minister of State in his new role at the Department of Agriculture, Food and the Marine and I wish him luck with his endeavours. He is well placed to serve in that office as he is very familiar with the issues. I am sure he is very familiar with the matter I wish to raise, namely, the decentralisation of the Department of Agriculture, Food and the Marine offices to Portlaoise.

Decentralisation was a good concept but was appallingly thought out. Its implementation and roll-out was even poorer and, in some cases, it ended up being a fiasco in that much of what was promised when it was first announced by the then Minister never came to fruition. However, I am glad to say Portlaoise has been one of the success stories. It is a suitable and central location for the Department of Agriculture, Food and the Marine offices but it is a victim of its own success in some respects. While many people work in the base in Portlaoise, the Department’s offices are no longer just in the purpose-built office accommodation on the Old Abbey-leix Road in the town centre but are dispersed in six different rented office spaces throughout the town. That does not make for effective and efficient use of the offices and the personnel and it is not appropriate for the agricultural community which seeks to use the Department’s services.

One office is over a pub and a fish and chip shop and is remote from the central office. I do not know why that is the case and it should not continue. I understand that as of November last, the Department is spending tens of thousands of euro on office accommodation in these dispersed locations. I am sure the Minister of State will agree that it would be far more efficient and effective if all the staff were housed in a purpose-built or a central unit in which they could all work together for the effective administration of the Department’s business. This would save the taxpayer money and it would mean all the staff were housed in the one complex.

**Minister of State at the Department of Agriculture, Food and the Marine (Deputy Tom Hayes):** I thank Senator Whelan for raising this issue and for his good wishes. I also

thank the Cathaoirleach for his good wishes. I started off in this House many years ago and I am delighted to be back. I never dreamt I would be back answering queries as a Minister in the Department of Agriculture, Food and the Marine.

Some 470 Department of Agriculture, Food and the Marine staff are housed between several different locations in Portlaoise. This situation, which is a legacy of the decentralisation project, presents many operational difficulties and is making it more challenging for the Department to carry out its functions in Portlaoise. Moreover, the fragmentation of staff and facilities is sub-optimal from the point of view of efficiencies and cost-effectiveness.

The temporary location of staff in small numbers in different locations - initially done to facilitate the decentralisation of the Department to Portlaoise - was undertaken on the basis that, in a relatively short period, all would be located in a new purpose-built headquarters. The different locations of offices which results in the spreading of single functions over several locations seriously impairs opportunities to gain operational efficiencies.

In this context, the Department has been working for some time with the Office of Public Works in reviewing its accommodation needs with a view to rationalising its property footprint in Portlaoise. From the Department's perspective, the principal priority in this consolidation is the redeployment of staff to reintegrate business areas split between different locations and, as far as possible, the co-location of different business areas that have cross-over functions or can exploit any existing operational synergies from such co-location.

Following on from this review, the Department and the Office of Public Works are examining the possibility of the construction of an extension to Government offices on Old Abbeyleix Road. These offices are State-owned. The extension, when taken together with the existing space, which would also be reconfigured, would result in all of the Department's staff being accommodated at that one location.

#### *5 o'clock*

The extension when taken together with the existing space, which would also be reconfigured, would result in all of the Department's staff being accommodated at that one location. At least two years would be required to deliver the new building. Savings would commence upon completion as leases that currently cost over €1 million per annum could then be surrendered. Subject to a tendering process, full payback would be realised within a relatively short period of time after completion and occupation. A detailed proposal is being finalised by the Department and the Commissioners for Public Works and this will shortly be submitted to the Department of Public Expenditure and Reform for its consideration.

The consolidation of Department staff will derive many benefits both to the Exchequer and to the Department itself. As previously stated, the cost of providing temporary accommodation for staff in Portlaoise is in excess of €1 million per annum. Value enhancements will also be derived by the Department in terms of improved utilisation of resources and operational effectiveness and efficiency.

The public service reform plan provides that the Government will deliver greater value for money through efficient management of the Government estate owing to a smaller physical footprint meeting the needs of a reformed public service. The situation in Portlaoise represents a unique opportunity in terms of delivering on this commitment. It could be argued that the current situation in the location represents a microcosm of the issues that the reform of property

asset management in the wider public service will attempt to address.

A recent review of the State's property asset management portfolio states that the cost of office accommodation, after salaries, represents the largest portion of central government's administrative overheads. In this context, economies must be found by Departments in their use of office space to contribute to the budgetary consolidation that must be found in the area of public service property. The review includes several key potential strategies to assist in exploiting savings and efficiencies in property. There is to be a reduction in expenditure on rent within the leasehold portfolio through lease surrenders. Existing accommodation must be consolidated through more intensive utilisation of space by way of standardisation of space allocation, space norms and accommodation fit out. Investing in the modernisation of owned buildings to realise efficiencies benefits over the longer term. The proposals outlined for rationalisation of the Department of Agriculture, Food and the Marine accommodation in Portlaoise ticks all those boxes. Rationalisation will lead to surrendered leases, consolidation of existing space and modernising of owned property will ultimately contribute considerably to budgetary consolidation in the medium to long-term. The Portlaoise project, if brought to fruition, has the potential to be exemplary for property rationalisation and set the benchmark for future projects of a similar nature. From dealings I have with those in Portlaoise, I know they are excellent staff and they need what will be delivered to them in the future.

**Senator John Whelan:** That was a comprehensive, constructive and positive answer. The Minister of State is right, the staff in Portlaoise are exemplary in carrying out their duties. It is unfortunate and not best practice that they are dispersed all over the place. There are 500 staff so it is an important employer in the region. I welcome the Department's commitment to the base in Portlaoise that it plans to draw up plans to construct an extended office that would be owned by the State with the advantage to the taxpayer of saving on expensive rental properties. If the saving of €1 million a year in rent that is being paid was rolled out and replicated around the country, there would be considerable savings with the added benefit that it would not impact on staff or services. That is how to make savings in the public service.

### **Hospice Services**

**Senator Colm Burke:** I welcome the Minister of State to the House. My Adjournment matter follows a presentation yesterday and the publication of a report by the Irish Hospice Foundation entitled, Access to Specialist Palliative Care Services in the Place of Death in Ireland. The figures in the report reflect the need for action to be taken. I am not blaming the Minister or the Department because this is a policy that was developed over 12 years ago. Unfortunately, when times were good, not a lot of progress was made, and we must now look at that plan in 2001 and what we can do now taking into account that there are far greater financial restrictions. There is also an issue of demands.

It was striking that more than 2,500 patients are denied access to hospice inpatient care every year. There are 155 hospice beds in the country, with another 44 beds ready, 20 of them in Cork, along with an extra 36 staff. The number in Marymount will increase from 24 to 44. The figures, however, that frighten me are those stating that by 2016, around 12,500 will require hospice care of some degree during the year.

The report also highlighted that only 7% of home care patients in the better resourced hospice services in the mid-west die in acute hospitals in contrast with 32% in the north east.

Where there is hospice care and support services in place, there is less need for acute hospital attendance, which leads to a huge saving. Now we have this detailed research available, how can we work towards planning for the future?

**Minister of State at the Department of Health (Deputy Alex White):** On behalf of the Minister of State, Deputy Kathleen Lynch, I thank the Senator for raising this issue as it gives us an opportunity to outline the current position.

Palliative care in Ireland is being developed on the basis of the following national strategic documents: Report of the National Advisory Committee on Palliative Care, published by the Department of Health and Children in 2001; Palliative Care Services - Medium Term Development Framework, published by the HSE in 2009; and Palliative Care For Children With Life-Limiting Conditions In Ireland - A National Policy, published by the Department of Health and Children in 2010.

The HSE acknowledges that the cost containments within the health sector over the last five years have meant that the implementation of the HSE medium-term framework has been substantially delayed.

Notwithstanding current budgetary difficulties, in 2012, approximately 35,738 people received specialist home care palliative services and 4,274 people received specialist inpatient care. There are currently 157 specialist inpatient palliative care beds in ten locations across the country. In 2012, there were 2,808 admissions to this service, a 4.4% improvement on 2011 figures.

That said, it is acknowledged that there is a wide regional and intra-regional variation in the availability of care and three geographic areas have no specialist inpatient units, namely, Wexford-Wicklow, the midlands and Cavan-Louth-Monaghan. All HSE areas have community specialist palliative home care teams in operation. Last year, 2,978 people accessed these services each month, which was a 4% improvement on 2011.

There are 38 acute hospital specialist palliative care teams. Again there is variability in service availability and composition of these multidisciplinary teams. Specialist palliative day care is provided in seven locations and an average of 330 patients used the service per month in 2012. Some 817 new patients attended the service in 2012, which equates to an increase of 7.5% on 2011. There are over 170 palliative care support beds across approximately 80 locations. In 2012 the average number of patients per month in receipt of care was 150.

The 2013 HSE national service plan budget allocation for palliative care is €72 million, which does not include spending on palliative care provided in acute hospitals, approximately 170 palliative care support beds or home care packages. Furthermore, regional services continue to be developed. In HSE South, an additional 20 beds will be opened in 2013 in Marymount Hospice, to which the Senator referred. In Dublin-mid-Leinster, collaboration with primary care teams is being progressed to improve access to out-of-hours services and a plan for the provision of specialist inpatient beds for the midlands is being developed. The HSE has also met stakeholders to develop a specialist service in Wicklow. In HSE west, the HSE is engaging with Galway Hospice to discuss the expansion of capacity and is exploring the development of inpatient beds in counties Mayo and Roscommon. An additional consultant in palliative care medicine is also being appointed. In Dublin north-east, a business case and implementation plan are being developed for a 12 bed specialist inpatient unit at Our Lady of Lourdes Hospital



in Drogheda. Meetings have also been held with St. Francis Hospice on the opening of beds in the unit at Blanchardstown.

While we are facing significant challenges overall in the health budget, the Minister is satisfied that every effort is being made to retain and improve palliative care services.

**Senator Colm Burke:** I thank the Minister of State for his very detailed reply. In view of the projected figures given for 2016 and the fact that when people are being cared for and supported under the hospice care and home care packages, significant savings are made, in real terms, in hospital services, is it time to look at the plan in view of the changes that have taken place to see how we can further improve it? I wonder if that could be done.

**Deputy Alex White:** I will certainly relay those insights and comments to the Minister of State, Deputy Kathleen Lynch. The Senator referred to a presentation which I understood would be made this week, but I now know that it took place yesterday. I am sure the Minister of State would welcome an opportunity to consider it, as I am sure she has seen it and will have an opportunity to study it. I am sure it will be of assistance to her.

I have outlined for Members the outcome of a survey across the county, which is useful. Even in the present context, it shows that a good effort is being made. Some progress also is being made, notwithstanding the difficulties encountered.

I will pass on to the Minister of State the Senator's point on savings made elsewhere in the system as a result of having well developed palliative care services. I thank him again for raising the matter.

The Seanad adjourned at 5.15 p.m. until 2.30 p.m. on Tuesday, 2 July 2013.