



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Business of Seanad	1
Order of Business	1
Criminal Law (Sexual Offences) (Amendment) Bill 2014: Order for Second Stage	18
Criminal Law (Sexual Offences) (Amendment) Bill 2014: Second Stage	19
State Airports (Shannon Group) Bill 2014: Committee Stage (Resumed)	35
Suspension of Standing Orders: Motion	39
Business of Seanad	40
State Airports (Shannon Group) Bill 2014: Committee Stage (Resumed)	41
Companies Bill 2012: Second Stage	47
Adjournment Matters	70
Road Traffic Offences	70
Garda Recruitment	72
Overseas Development Aid	73

SEANAD ÉIREANN

Dé Máirt, 10 Meitheamh 2014

Tuesday, 10 June 2014

Chuaigh an Cathaoirleach i gceannas ar 14.30 p.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

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

The need for the Minister for Justice and Equality to have notifications of speeding fines sent by registered post to offenders.

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

The need for the Minister for Justice and Equality to allow members of the Garda Reserve who have a minimum of two years service and who wish to become members of An Garda Síochána to proceed to interview level as a matter of course.

I have also received notice from Senator John Crown of the following matter:

The need, recognising the commitment of the Government to providing aid for developing countries, for the Minister of State at the Department of Foreign Affairs and Trade with responsibility for trade and development to outline the Government's commitment and implementation plan in respect of population planning in developing countries.

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

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Criminal Law (Sexual Offences) (Amendment) Bill 2014 - Order for Second Stage and Second Stage, to be taken at 3.45 p.m. and conclude not later than 5.45 p.m.; No. 2, State Airports (Shannon Group) Bill 2014 - Committee Stage (resumed), to be taken at 5.45 p.m. and conclude not later than 7.15 p.m.; and No. 3, Companies Bill 2012 - Second Stage, to be taken at 7.15 p.m. and adjourn not later

than 9.15 p.m., if not previously concluded, with the contributions of group spokespersons not to exceed ten minutes and those of all other Senators not to exceed six minutes.

Senator Thomas Byrne: The Companies Bill 2012 is the longest piece of legislation ever to be proposed by a Government. It is important legislation and my party welcomes that Second Stage will take place today. On Committee Stage, I will look for an assurance that there will not be a guillotine or delay, and perhaps the Leader would look at some way to regulate the debate on Committee Stage. My party does not want to delay Committee Stage but it is important that the Bill, despite its size, is dealt with line by line. It may be possible to implement a suggestion I made some time ago that we allocate a specific amount of time for every section, if necessary, so as to allow full debate but not to allow filibustering. However, that is something the Leader can think about because the Bill will take a long time if we do our job as legislators properly.

The Fianna Fáil Party welcomes the tone and content of the statement of the Minister for Children and Youth Affairs, Deputy Charles Flanagan, on the radio at lunchtime today about the Government decision to set up a commission of inquiry into the mother and baby homes. We will co-operate on a cross-party basis. We do not believe that it is a political issue. We should all work together on it and we will support every effort of the Government in that regard. The Seanad will have a role to play because a commission of investigation can be set up only with the consent of each House. We will have a strong role and I look forward to the Seanad debate in that regard. The Leader can expect nothing other than cross-party co-operation from us.

A couple of issues arise on that matter, including the privacy of the women involved in and the children who survived these institutions. This was mentioned by my colleague, Deputy Troy, on the radio today. I hope that will be a key concern. Some of them have been talking to colleagues and they have concerns. We are also looking for a helpline to be established for the women and surviving children who were in these institutions. That would be useful. We will give our full co-operation in that regard, both in the Dáil and here in the Seanad.

Another issue has arisen in the past couple of days in relation to the industrial wind turbines that are planned across the country by a number of companies. A few weeks before the election, the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, announced that the project to export wind energy was cancelled and would not go ahead. In fact, he expressed his disappointment in that regard. In the past week, one of the companies involved in County Meath lodged a preplanning consultation document with An Bord Pleanála outlining that it proposes to apply for planning permission for 50 wind turbines in County Meath. I suspect that this will happen elsewhere. Given the political ramifications of this, including the international ramifications between Ireland and the United Kingdom and the secrecy of the negotiations that have been going on at all levels, whether commercial or international, I propose an amendment to the Order of Business that the Minister, Deputy Rabbitte, come to the Seanad to explain what is going on in relation to industrial wind turbines in this country.

What is happening is a complete contradiction of what the Minister stated three or four weeks ago. It is causing considerable concern in County Meath and I am sure it will cause concern all around the country as these applications are made. The aspect that annoys citizens around the country is the secrecy of these deals. Secret deals are being done on the ground. There are secret arrangements between multinational companies and there seem to be secret arrangements between Governments. The An Bord Pleanála process is completely secret as well because all that has happened is that Element Power has written to An Bord Pleanála notifying it that the preplanning consultation under the Planning and Development (Strategic Infrastruc-

ture) Act 2006 has commenced. I propose that the Order of Business be amended so that the Minister come in today to explain the position.

Senator Ivana Bacik: Like Senator Byrne, I welcome the announcement by the Minister, Deputy Charles Flanagan, and the Government decision on the need for an investigation into the mother and baby homes, the incidence of abuses within them of the women and children, and the manner of death and the high mortality rates in those homes. Given that many of those children who ended up in industrial schools had been born in mother and baby homes, there is a good deal of information already before different commissions. Having in the past represented survivors of abuse in the industrial schools, I am aware of how often these institutions of confinement were interlinked and how, to the shame of all of us, for many decades of the 20th century there was a network of institutions in which women and children were confined. While the church and the church organisations certainly bear a large responsibility, equally so do the State and society more generally. Increasingly, one sees an acknowledgement that many women ended up in mother and baby homes because their families no longer would accommodate them. This is a sad truth on which we also should reflect as we embark on a further investigation, which I very much welcome.

I also congratulate SAFE Ireland on the event it organised today on another issue that again should bring shame on Irish society, namely, the incidence of domestic violence and domestic abuse in Ireland. SAFE Ireland organised an event today in Temple Bar which I was glad to attend in the company of a number of other female colleagues from both Houses. This was the event, entitled “On Just One Day”, in which SAFE Ireland wished to highlight the incidence of domestic violence in Ireland through providing a window, that is, a visual representation of an ordinary day in Ireland, 5 November 2013, on which 467 women and 229 children were accommodated or received support from a SAFE Ireland domestic violence service. Being the national organisation representing front-line domestic violence services, SAFE Ireland is well placed to illustrate to Members the extent of the incidence of domestic violence and how much they must ensure stronger legislative and legal responses to it. While Members have had a number of debates on domestic violence, I ask the Leader for a debate in early course on the report by the Joint Committee on Justice, Defence and Equality, which is in the process of producing a report on domestic violence resulting from a series of hearings the joint committee has held. Its members have heard strong testimony about the need for various legal changes and it would be good to have this debate in the Seanad. While the Minister intends to bring forward legislation on this issue, hopefully later this year, and I hope there will be a move towards ratification of the Istanbul Convention, I note there are a number of specific legal issues regarding the ratification of the convention, notably pertaining to the property rights of perpetrators or alleged perpetrators. Consequently, Members could have a good debate on this issue in this House.

Senator Rónán Mullen: I also welcome the announcement of the commission of inquiry into the story of the mother and baby homes across the country. I have been greatly impressed by the commentary of some figures in this debate and in particular, I single out the local historian, Ms Catherine Corless, both for her great work and for the reasonableness with which she has addressed the issues that have been under debate. Unfortunately, I do not believe we have been so well served by the media, whose coverage on this issue has been mixed and the quality of their coverage has been patchy to say the least. We are not well served by international media, perhaps assisted by ideological elements in the media in Ireland, who wish to promote and perpetuate a particular narrative of Ireland.

The truth is what should matter and the truth will be very painful for our society to con-

sider. In all that we do, we must not lose sight of the lack of respect for children and the lives of children in our country and abroad as it goes on at present. Let not the truth-telling that is so important in respect of these homes distract us or allow us to be hypocritical in respect of our failure to care for people properly in our society today. I wish to make one particular point in this regard, which is we have not been well served by politicians who have engaged in a degree of profile building on the back of this issue. It was too early to be using words like “manslaughter” or “genocide”, whether in this House or the next. All Members must be extremely careful not to instrumentalise the very tragic stories involved simply to get short-term coverage. While it is a legitimate aim for politicians to try to get attention in the media, please not on the back of these unfortunate people.

I ask that the Minister for the Environment, Community and Local Government come into the House to discuss the issue of the operation of the building control regulations. I have heard from a friend in east Galway who finds himself facing several thousand euro, up to €10,000, in additional costs because of the operation of these building regulations. He told me the money he had put aside to put the windows and doors into the new home he plans to build on his own land will be swallowed up by these costs and he does not know whether he can proceed with the project.

It seems that these regulations make a lot of sense in the context of Priory Hall-type developments, in which large contractors engaged in shoddy practices and used shoddy materials. I also am very much in favour of ensuring high standards. I note there is an online petition by people - small people one might say - who want to build and are concerned about the operation of these regulations and the costs they will impose, particularly where money has already been spent on the planning process. I would like the Minister, who is a countryman himself, to debate this issue further with us.

I welcome the proposed publication of legislation on lobbying. This is long awaited legislation but what it contains is important. It is, for example, important that a required cooling-off period be introduced between the time a Government employee ceases work and subsequently begins employment as a lobbyist. We will also have to give careful consideration to the definition of “lobbying intent” and to distinctions between official and private contacts among lobbyists and public officials. It seems to be that would not be appropriate and I look forward to seeing the legislation.

Senator Hildegarde Naughton: I welcome the announcement by the Minister for Children and Youth Affairs that a statutory commission of investigation will be established to investigate the matters arising in the mother and baby home in Tuam and in other institutions. It has been less than two weeks since I raised this matter in the House. There was no delay by the Government because it is taking the matter extremely seriously. Given the ongoing public interest and the wider issue of apparently significantly higher rates of infant mortality in such homes as compared with the wider population at the time, I am asking the Leader to arrange a debate on the matter in the House this week and to invite the Minister to attend. In the absence of concrete facts on Tuam, and although there is ample material to warrant an inquiry, I suggest that the debate should concentrate on the wide-ranging and comprehensive research on such institutions in general, including allegations of medical trials and forced adoption. I am sure such a debate will assist the Minister when the terms of reference of the inquiry are being drawn up. It frustrates me greatly that we as a society only get to grips with our terrible social history when something comes to light that galvanises the international media. It is time we discussed these matters in a calm manner and, in doing so, leave our prejudices, political and otherwise,

outside the door.

Senator Denis O'Donovan: I second the amendment to the Order of Business proposed by my colleague, Senator Byrne. I ask the Leader to arrange a debate on job creation and sustainable jobs in rural Ireland with the Minister for Jobs, Enterprise and Innovation. I would like the Minister to outline to the House his plans for places like the Leader's county of Waterford, west and north County Cork, County Kerry and County Donegal. These regions have been more intensely affected by emigration than anywhere else in Ireland. We often hear job announcements for Dublin, Galway and Cork city but there are huge areas of rural Ireland which need a similar focus. I ask that the Minister come to the House for a full debate on his plans for creating sustainable jobs in these parts of rural Ireland rather than the community employment schemes, a category into which most people fall. It is critical that we have such a debate and I hope it can be arranged within the next four or five weeks, if at all possible.

I will conclude by referring to a hobby horse of mine. Perhaps before the summer recess we will persuade the Minister for Agriculture, Fisheries and Food to come into the House for a debate on the fishing industry. This has been long promised. He was here several weeks ago to deal with Common Agricultural Policy reform but I have been calling for a debate on the fishing industry in terms of where it is going and the impact of the appalling weather last winter, which forced a considerable number of fishermen to remain idle and caused some of them to lose their gear. As self-employed people, fishermen who are off work for as long as 12 weeks are unable to sign on to get a few bob for their trouble. That debate is long overdue and I hope the Leader will respond favourably to my request.

Senator Aileen Hayden: I congratulate my colleague, Senator Zappone, on the Criminal Law (Sexual Offences) (Amendment) Bill 2014, which we will be debating on Second Stage this afternoon. I was struck by the document that Senator Zappone produced to accompany the Bill, which summarised in everyday language what the legislation contained. I was quite shocked because this has only recently come to my attention.

An Cathaoirleach: These are issues that can be raised during the debate on this matter.

Senator Aileen Hayden: I was about to make the point that it was interesting to see how law that will come before this House can so easily be translated into everyday language. It is striking to see that somebody with an intellectual disability in this country does not have the same right to a relationship as somebody without an intellectual disability. It is wonderful to see this legislation before the House, but we must also realise that fundamental issues of equality in our society still have to be dealt with.

Senator Bacik referred to the report by SAFE Ireland which indicated that almost 700 people, including women and children, were homeless or at imminent risk of homelessness on one day, 5 November 2013. It was more shocking to realise that 70% of cases of physical and verbal violence against women and children are not reported. It has been my experience that one of the main reasons women remain in unsafe situations and are sometimes virtual prisoners in their homes is because they find it difficult to access suitable housing supports. That is because they may happen to be joint owners of a home and, in many cases, those homes are in mortgage arrears and subject to repossession hearings. Although I know we have had a debate on domestic violence in the past, I support the call for a further debate because there is more to be said on the subject. In addition, more can certainly be done about the matter, so I ask the Leader to arrange for such a debate.

Senator Sean D. Barrett: I wish to raise concerns about the recommendation by the Commission for Energy Regulation, published last Friday, that in the next accounting period the public service obligation charge on electricity should be increased by 55% from €210 million to €328 million. This would result in a 47% increase in the levy on domestic consumers, a 66% increase for small commercial consumers and an 81% increase for medium and large commercial consumers. At a time when we are trying to increase the productivity of the economy, I find the rationale for these horrendous increases bizarre, to say the least. To quote from the report, one reason is to compensate for lower wholesale prices, so when the price of electricity goes down, the subsidy goes up. It is meant to be good for a country if electricity prices fall.

A second reason is the lower running of a gas station in Tynagh, County Galway. Because its costs are fixed when it is used less, the subsidy has to go up.

The third reason is something that interests our colleagues on the Government benches, namely, a large subsidy for wind generation, which is to increase to €84 million. Government party Senators, particularly those in the Labour Party, have raised the issue of wind power and Senator Byrne has also raised it. Can we please have transparency? Trying to have an argument with a man who has €84 million of public subsidies in his back pocket promoting wind energy as a cheap form of electricity does not really add up.

I hope we can have a discussion on this report. What are these PSO costs for? They seem to be subsidising the high-cost production of electricity and they are levied on consumers. What is the rationale for the payments? The 4 July deadline is one to which Senators may wish to respond. Given the way they have set the price of electricity, I am concerned that the same energy regulator is now in charge of regulating water. Goodness knows what they will do to the price of water if we allow them to get away with what they proposed last Friday.

Senator Martin Conway: The Health Information and Quality Authority report into the accident and emergency unit at University Hospital Limerick was shocking, to say the least. It stated that the unit was not fit for purpose. The report was so bad that the chief executive of the hospital group was on local radio yesterday and felt it necessary to apologise to the people of Clare and Limerick for the extraordinarily long delays and the serious distress, discomfort and hardship caused to them as a result. While I am pleased a new state-of-the-art facility is being built, it will not be completed until the end of 2016 or possibly 2017.

3 o'clock

This is a serious matter, which requires immediate action by the Minister for Health and Health Service Executive. A smaller type of accident and emergency unit operates in Ennis and Nenagh hospitals from 8 a.m. until 8 p.m. It has been suggested, in response to the current appalling crisis, that these units open for 24 hours per day until such time as the new unit opens in Limerick.

While the principle behind reconfiguration is fine, it is unworkable and should not proceed unless the necessary facilities are in place. I ask the Leader to communicate to the Minister for Health my request that he consider the option of opening the accident and emergency units in Ennis and Nenagh hospitals in response to the crisis. Clare county councillors have unanimously called for this measure to be taken. While it may not be practical or possible, the option must be examined to provide an urgent response to the crisis.

Senator Trevor Ó Clochartaigh: Ba mhaith liom fáilte a chur roimh an bhfógra atá déanta

inníu maidir leis na huafáis atá tagtha chun cinn i dtaobh na tithe i dTuaim agus in áiteanna eile ina raibh máithreacha agus leanaí ina gcónaí.

I welcome the announcement by the Government that a full inquiry will be held into cases that have come to light in Tuam and elsewhere. I support the proposal made by Senator Hildegarde Naughten that the House debate this issue this week. I will explain the reason such a debate would be pertinent. My party colleagues in the Dáil have tabled a Private Members' Bill and while it is important that the other House debate this legislation, the Seanad should also be given an opportunity to debate the issue. Our discussion should cover all issues arising out of the recent discovery, including the reason this case is only now coming to light and why action is only now being taken. Senators should also discuss issues such as infant mortality, stories of forced adoption, governance issues, who knew what and when and the conditions in which people were kept. We should also explore what should be the terms of reference for the commission of inquiry as these should be agreed by both Houses. I support Senator Naughten's call to have a debate in the Seanad as Senators have a positive input to make in this regard.

Last week, I pointed out that the Ombudsman had noted that he had received a large number of complaints about the issue of discretionary medical cards. Will the Leader seek clarification from the Minister for Health as to the reason the Ombudsman has been unable to obtain records related to discretionary medical cards? It appears from the Ombudsman's comments that the files associated with cases referred to his office were not centralised when the medical card application process was centralised. Clearly, something went awry in the centralisation process. The Ombudsman stated he cannot adjudicate on cases if he does not have the original case files which formed the basis of decisions to grant discretionary medical cards.

This is an important issue. While the Government trumpeted the decision to centralise the processing of medical cards, the process has turned into a fiasco in many cases. It is not acceptable that the Ombudsman has not been able to locate or secure files when he has sought them. Perhaps the Leader will ascertain from the Minister the reason files have gone missing or are not available.

Senator Michael Mullins: I join colleagues in welcoming the prompt decision to establish a full statutory inquiry into mother and baby homes. I concur with the Minister for Children and Youth Affairs, Deputy Charles Flanagan, that this is a time for showing great sensitivity, rather than sensationalism. The behaviour of some elements of the media in their reporting of the appalling tragedies that occurred was despicable. I hope the inquiry will present the full picture of how women and children were treated not many years ago. The inquiry will be painful for many individuals and organisations, agencies of the State, the church and, in particular, the families involved. Thankfully, we live in a more enlightened time and I hope what happened in the early days of the State will never happen again. There are many people still suffering today as a result of what happened in the past. In order to give these people closure, the inquiry must be established promptly. It might allow people to achieve some peace and get on with the rest of their lives.

I very much welcome the announcement by the Minister for Education and Skills of 6,100 new places on Springboard courses for this year and next. Jobseekers have access to 171 different courses in 38 colleges, free of charge, in areas of study in which there is significant job growth. This is the fourth year of the Springboard scheme. Will the Leader invite the Minister or Minister of State to the House in the coming weeks to review what was achieved in the first three years and how many people have found gainful employment after participating in these

courses?

Senator Marc MacSharry: I propose an amendment to the Order of Business that the Minister of Health come to the House today to provide a briefing on the medical card fiasco. We have heard a great deal of positive commentary on this issue in recent weeks. The Taoiseach has assured us it will be dealt with, and there have been indications of a postponing or ending of the reviews of discretionary cards. We have had news reports featuring various Ministers giving off-the-cuff indications that some, most or all discretionary cards will be returned to recipients. In the meantime, however, we have, in effect, a zombie Minister who seems in line for the chop in the coming Cabinet reshuffle. Further procrastination has arisen as a consequence of the posturing within the Labour Party in advance of its leadership battle, with one-upmanship and attempts to win party members' votes the priority for the competing Minister and Minister of State rather than looking after citizens.

While all of the positive rhetoric has been welcomed - I welcome it myself - it must be followed up with tangible action, which has not happened to date. I have seen a newspaper advertisement seeking people's views on whether discretionary cards should be returned to recipients, but that is all I have seen. On the other hand, we heard this morning that a discretionary card has been taken from a lung transplant patient. A person whose discretionary medical card is currently under review came to my clinic yesterday and outlined how, having queried whether this review was now halted, the response was that it was not. When this individual pointed to reports in the media that such reviews were, in fact, halted, the response was that this was the case for some people. In other words, the situation remains as it was before all the positive rhetoric from the Taoiseach and others and the preoccupation of the prospective leaders of the Labour Party with the battle hustings. A type of *Animal Farm* equality continues; all people are equal, but some are more equal than others. If there is a discretionary system of medical card provision in place, surely a lung transplant patient must be high on the list of likely candidates?

The people, frankly, do not care whether the Government continues with a zombie Minister for Health or who wins the forthcoming Labour Party leadership battle. They are concerned with the tangible facts surrounding discretionary medical cards. Are the reviews ongoing, as seems to be the case for the person who came to my clinic? Will transplant patients continue to lose their cards? What are the Government's plans on this issue?

Senator Colm Burke: I support Senator Naughton's call for a debate with the Minister for Children and Youth Affairs, Deputy Charles Flanagan, on the Tuam issue. It is important to acknowledge where we have come from and how attitudes have changed in more recent times in terms of what is and is not acceptable. Of course, the practices we are discussing were happening not so long ago. It is less than 30 years, for example, since the status of illegitimacy was abolished in Irish law, a campaign in which I was involved. We expected it to take up to ten years to achieve our objective. In fact, from the date we launched our campaign, it took seven years to achieve the change in law. There was a different type of thinking on the issue at the time. I well remember the opposition to having the law changed in regard to children who were born outside marriage. They did not have the same rights as children born within marriage. Let us not forget where we have come from and the attitudes that existed at the time. I would welcome a debate in this House on an issue which has now come into the public domain.

I want to raise the important issue - it is not the first time I have raised it - of the lack of progress that has been made on the recruitment of junior doctors in the past three years. We are facing a changeover again within the next month. Many junior doctors will go abroad because

we have not put in place a comprehensive structure to retain them in this country. There is the major question of why taxpayers are paying out €90 million per annum for medical education and a huge portion of that is disappearing within 12 months of people graduating from college. We need to have a debate in this House with the Minister for Health and the Minister for Education and Skills on how we deal with this issue. More than 60% of junior doctors are gone within 12 months of that €90 million being spent. It is time we had a serious debate on restructuring how we employ junior doctors, the training that we are offering them and their prospects of remaining in this country. It is sad that, in an area where there are jobs, Irish graduates are not finding them sufficiently attractive to encourage them to stay in this country.

Senator Feargal Quinn: I support the call by Senator Mullins for a debate on Springboard. I attended the launch of Springboard yesterday. It is something in which I have been involved for a while. It is a great success and a wonderful story. It is aimed at people who have degrees but who are not able to use them. It may be somebody connected with the construction industry, for example, an architect, an engineer or a quantity surveyor. Springboard arranges for them a dual course of one or two years to give them a higher degree in an area where a job is going. It has been a huge success, and some of the stories I heard yesterday are well worth hearing.

In the North of Ireland, there have been vaccination programmes against shingles for the past year. We can do that now, but we are not doing it. I gather that an information campaign is being started. The condition generally applies to older people and a huge effort is needed in this area. A number of places on the Continent have developed the vaccination. They have been able to do it in the North for more than a year. I understand it is only for people who are over 60 or 70, and I gather that half the population over 80 will get it. We now have a vaccination that will enable us to overcome shingles. It is worth drawing to the Minister's attention that if this can be done in the North, we should do it as well.

There is a lovely little shop on Lincoln Place called Sweny's. It is mentioned in James Joyce's *Ulysses*. Leopold Bloom visited it at 11 a.m. on Bloomsday 110 years ago next Tuesday. It was a pharmacy, but it closed in 2009 and has since been taken over by a group of volunteers who meet there to study Joyce and to talk and read. It is a glorious story. They pay for the rent, the heat and everything else but, even though they are a charity, they now have to pay rates. I do not know whether an exception can be made for them but, if nothing else, we should all at least drop in and support them.

Senator Mary M. White: Hear, hear.

Senator Jim D'Arcy: I, too, welcome the decision of the Minister for Children and Youth Affairs, Deputy Flanagan, to hold a public inquiry into the mother and baby homes. That was a dark period. Everyone talks about the good old Ireland of the past but that was not always the case, as the recent controversy shows. We have to learn from that and be a better country today. We can judge the past, but we can bring a real benefit to those mothers and children by giving them closure and by making our country a better place.

Like my colleague, Senator Mullins, I welcome the launch by the Minister, Deputy Quinn, of the fourth year of Springboard, which will offer 6,100 new places and include 25 ICT courses. One of my friends who was at a low ebb benefited personally from one of those courses and is now set up again and ready to roll. In that regard, we must acknowledge bad news. Newspapers love bad news, and why not? Some 1,000 jobs are being created in this country every week. When I was talking to a builder in Dundalk yesterday, I was told there is a three-week

waiting list for an electrician and one cannot get a plumber for love nor money. I accept that this is anecdotal, but it is certainly very good news. I would like to say that there is a pick-up. I went into Sexton's for my lunch yesterday with my colleague, Jim Lennon, who is a former councillor. He got the last roast beef dinner on the menu. I had to make do with a hamburger, which was very lovely.

An Cathaoirleach: We are not discussing menus on the Order of Business.

Senator Jim D'Arcy: There is a big pick-up now. There are green shoots.

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

Senator Jim D'Arcy: Yes, I have. I agree with what has been said about Springboard. I would like the Minister to come to the House to outline all the good initiatives that are happening on the jobs front so we can get a bit of good news into the newspapers.

An Cathaoirleach: I would like to welcome Councillor Ian McGarvey to the Visitors Gallery. He is very welcome.

Senator Averil Power: I welcome the announcement that a commission of investigation is to be established to report on the mother and baby homes. I note the assurance that the commission will have full statutory powers. I understand that a cross-departmental group will report to the Government by 30 June to advise on the terms of reference. I join other Senators in calling for an early debate this week ahead of that work so that Members of this House, as Members of the Oireachtas, can feed into that process and make suggestions regarding the terms of reference of the investigation. It is essential for the commission to have a broad remit and to consider all the issues involved, including the conditions in the homes, the mortality rates, the issues of forced and illegal adoptions, the vaccine trials and the medical research. It should have powers of compellability.

It is essential for the Government to act now to seize and centralise all records in relation to adoption, including illegal adoption, and make them available to families. Many people who have sought to find out about their birth parents and many mothers who have tried to find their children who were lost through illegal adoption have found themselves completely abandoned by the State, which has shirked all responsibility for this issue. The State has said it is a private matter that has nothing to do with it. All over this country, there are records in State offices of passports that were issued to facilitate adoptions to other countries. There are records in GP offices. A nurses' file with the original birth names of 1,000 babies, as well as the names of their birth mothers and their adoptive families, was found ten years ago. If the Government is serious about this issue, it is incumbent on it to act to centralise all of those files. It should seize all of the adoption files that are held on the records of agencies around this country, particularly the illegal adoption files.

The experience depicted in the movie *Philomena* is not uncommon. Many agencies have gone out of their way to be deliberately evasive when people have looked for information. They have not provided those records. I do not think they can be trusted to do so. The State should seize all of that information. The HSE has some information in respect of agencies that have closed but not in respect of the other agencies. It should seize all of it. It is long past time for us to act to give proper rights to adopted people in this country. I was fortunate to find my mother after 28 years. I am one of the small minority of people who were matched through the adoption preference register. In almost every other country in Europe, people like me have an

automatic entitlement to their birth certificate at the age of 18. Irish people should have that right too. If we are serious about this issue and providing justice for people, it is not just about the past but also about the daily experience of thousands of mothers and babies in this country who are separated and who want to find each other and deserve support from the State.

I second the motion proposed by Senator MacSharry that the Minister for Health would come to the House for a debate on medical cards. I too have been contacted by dozens of people who are confused about where they stand in the midst of all the various announcements. It is important we would get clarity in this House.

Senator Michael D'Arcy: I support Senator Power's view that birth certificates would be made available. That would be very helpful for many children throughout the country. I also support the call for a debate on employment. We need to do a full analysis of where people are employed. There is a massive drive to promote employment through foreign direct investment jobs in particular in Cork, Galway, Limerick and Dublin. We must put a spotlight on those foreign direct investment jobs. While much has been said about the south east being left out, there are areas within regions that are left out. I wish to provide statistics about my county of Wexford. The county has in the region of 26% unemployment, which is equivalent to Donegal and the north midlands. In terms of foreign direct investment jobs - the last year for which full data are available is 2011 - there are only 12 IDA companies in County Wexford who employ 2,060 people out of 146,000 people. That means 1.4% of those employed in County Wexford, which is one of the largest counties in the country, are directly involved in IDA companies.

In 2011 a total of 51 jobs were created by IDA companies and in 2012 a total of 111 jobs were created. That is less than 3.4% of the workforce in County Wexford. I do not want something belonging to somebody else but there are counties that are being hard done by in terms of their fair share of the cake. Those are minor statistics in the scheme of things nationally and I feel hard done by that it is the case. Not enough is being done and there is insufficient analysis on a county basis, a regional basis and even on the basis of commuters. Some areas are being neglected by the IDA in terms of foreign direct investment and to a lesser extent by Enterprise Ireland. It is something we in this Chamber could do well, namely, to provide the analysis and make the information available in order that people can see exactly where the jobs are going. I feel hard done by given that people in Wexford are on the dole who could fill the positions if they were given the opportunity were the jobs to be made available in the county.

Senator Mary M. White: It is my pleasure to support my colleague, Senator Feargal Quinn, on his introduction of the subject of shingles in the Seanad today. Having suffered, and still suffering, the remains of it over the past year and a half, I concur with him on the severity of the illness which has been under the radar for so long. In the United States every person over 50 is recommended to get the vaccine against shingles and for the past two years a free vaccine has been introduced in the UK for everybody between the ages of 70 and 79. We owe a responsibility to older people in society to have a discussion on the matter. I can confirm that the vaccine is now available in this country but, as with most things, we are behind the times. I thank Senator Quinn for raising the matter.

I introduced a Bill that was supported in principle by the Government on the abolition of mandatory retirement. I take the opportunity to reaffirm what you, a Chathaoirligh, said about Councillor Ian McGarvey, who is in the Gallery, who at the age of 84 has successfully completed a term as chairman of Donegal County Council. I also welcome his wife of 82 years, Marjorie.

An Cathaoirleach: It is not in order to put such personal details on the record.

Senator Mary M. White: It is my pleasure to welcome them. It is a very serious issue in society that people must compulsorily retire at 65 and it is my duty to draw attention to the matter. When there is someone in this Chamber who has been allowed to continue in his work, then it is only my responsibility to draw our attention to it.

Senator Terry Brennan: I support Senator Denis O'Donovan's call for a debate on the fishing industry. I hope such a debate will include the inshore fisheries sector, such as the oyster, mussel and lobster fishing industries, and that we would discuss first-time licences and the time it takes to have one renewed. Many families throughout this island are involved in inshore fisheries. Will the Minister indicate his future plans for both European and Far Eastern export opportunities for these industries?

I hope the appalling scenes witnessed on our national television broadcaster in the Athletic Grounds in Armagh, prior to the commencement of a national football game, will never be replicated-----

Senator Diarmuid Wilson: The Armagh crowd was responsible for it.

Senator Terry Brennan: -----and that the perpetrators will get their just-----

An Cathaoirleach: This is not relevant to the Order of Business. I call Senator Paul Coghlan.

Senator Terry Brennan: It is to me.

Senator Paul Coghlan: I join the Cathaoirleach in welcoming the active county councillor in the Visitors Gallery, Ian McGarvey, and warmly congratulate him on his recent re-election. He puts many others to shame.

Speaking of green shoots which my colleague Senator Michael D'Arcy mentioned, it is almost 50 years to the day since the late Dr. James Ryan, as Minister for Finance, re-opened the magnificent Muckross House which had been closed since 1932. I also want to remember the late Deputy Honor Mary Crowley who was very influential with a local group in assisting-----

An Cathaoirleach: The Senator can submit this by way of an Adjournment matter.

Senator Paul Coghlan: No, this is a wonderful story and is very relevant. Several years ago, there was a Cabinet meeting in Muckross House. I happened to be present there at the time to facilitate other matters. It might be appropriate on the 50th anniversary of its re-opening that we have a meeting of the Seanad there. This is a matter the Cathaoirleach might consider. It is a wonderful story of co-operation between the State and a local group of trustees. The development there of the traditional farms, the garden restaurant-----

An Cathaoirleach: That is a matter for the Committee on Procedure and Privileges.

Senator Paul Coghlan: -----the story of the House itself, the late Billy Vincent and his people, the Bourn Vincents, after whom 11,000 acres of the 27,000 acre national park was called. We should not forget that nor the people who were associated with that on behalf of the State, such as Dan Kelleher, the manager in 1964, and all those since such as Paddy O'Sullivan and Pat Dawson.

10 June 2014

Considering Muckross House has been used in the past for auspicious State occasions, will the Cathaoirleach seriously consider, on the 50th anniversary of the reopening of the house,-----

An Cathaoirleach: The Senator can take this to the CPP.

Senator Paul Coghlan: I will do so as I always take the Cathaoirleach's advice. Will the Leader also consider it and use his good will in this respect?

Senator Catherine Noone: There was much discussion about plain tobacco packaging again in the media over the past two days. I understand legislation in this regard was brought to the Cabinet earlier today and will be initiated in the Seanad. The tobacco lobby, as all Members know, is a strong one. When this matter was discussed at EU level, it practically had one lobbyist per two Members of the European Parliament, such is the money expended and the amount at stake for the tobacco industry with this new legislation. Up to 78% of current smokers started before the age of 18. The marketing and packaging of cigarettes is particularly targeted at those under the age of 18 to initiate the habit at a young age. Plain packaging will limit the tobacco industry's ability to reach young people by using marketing techniques that are intentionally misleading. All citizens, especially children, should have a right to be protected from the marketing of a highly addictive and seriously harmful product. The tobacco industry has promoted the argument that this will impact on counterfeiting and increase illegal activities. I hope we, as legislators, will have the courage to stand up to the lobby. It is at a stage where legislation should go through. Some ten years ago we became the first country in Europe to introduce a smoking ban and it would be very fitting, a decade later, if we became the first country in the EU to compel tobacco companies to use plain packaging.

Senator Maurice Cummins: Senator Byrne raised the question of the Companies Bill 2012. Committee Stage of the Bill is due to commence next Tuesday, 17 June and will run for a number of hours. Two further Committee Stage sittings have been scheduled, making a total of 13 hours of debate over the various sessions. There will be no guillotine. If the 13 hours allocated are insufficient to complete the Bill, I will arrange for further time.

Senator Thomas Byrne: I am sure the Leader will not delay it unnecessarily.

Senator Maurice Cummins: I appreciate that and would welcome the co-operation of all sides of the House in moving this very progressive Bill forward.

A number of Senators raised the question of mother and baby homes and welcomed the establishment of the inquiry. I have asked the Minister for Children and Youth Affairs, Deputy Charles Flanagan, to come to the House tomorrow or Thursday for statements on this very important issue. He has acceded to the request and it is more than likely that we will have statements on the matter on Thursday. I will give the House notice of the exact time for this debate and I hope all Members who made contributions on the issue on the Order of Business will be there to take part.

Senator Byrne also raised the matter of wind turbines. Although I do not propose to accept the amendment to the Order of Business, I will invite the Minister here in early course to address the issue. I will do my best to have the Minister come here.

Senator Bacik raised the matter of domestic violence and abuse and the shocking figures from SAFE Ireland which she mentioned. She also said the justice committee is about to report on the issue and we can arrange a debate on that report as soon as it is published.

Senator Mullen raised the question of building control regulations, which were formulated to ensure we have proper standards for building. I think the Minister came in for a debate on the issue. The Senator can correct me if I am wrong. If the Senator has specific issues, I suggest he tabled an Adjournment debate matter.

Senator Naughton raised the issue of mother and baby homes more than two weeks ago and welcomed the inquiry, and I am sure she will participate in the debate.

Senators O'Donovan, Jim D'Arcy and others raised the matter of job creation in the regions and called for a debate on it. The Minister, Deputy Bruton, came to the House to discuss another matter on the Adjournment last week, but I agree he should come to the House to discuss this matter and I will tender the request.

Senator O'Donovan also called for a debate on the fishing industry. He mentioned that the Minister, Deputy Coveney, came to the House to discuss the Common Agricultural Policy negotiations a number of weeks ago. I will renew my representations to him on a debate on the fishing industry. On this matter Senator Terry Brennan also called for a debate on inshore fishing, and this debate would be taken in conjunction with the overall debate on the fishing industry.

Senator Hayden complimented Senator Zappone on her Bill, which we will discuss today and which addresses fundamental issues of human rights. I am sure it will be a very good debate.

Senator Barrett raised points on the public service obligation levy and the report of the Commission for Energy Regulation. This is another matter which we can ask the Minister, Deputy Rabbitte, to come to the House to discuss.

Senator Conway spoke about the Health Information and Quality Authority report on the emergency department at University Hospital Limerick. The Limerick group is the first hospital group to be assessed against HIQA's national standards for safer and better health care. This reform will improve the quality and safety of services for patients who use them. The HSE has identified actions which have been and will be taken to address the concerns raised and provide an improved and safer service for patients. As the Senator mentioned, an extensive capital project is under way to build a new emergency department which will open in 2016. In the interim, the HSE has advised the Department of Health that a number of initiatives have been put in place to address the current limitations for patients and staff in the emergency department. In particular, since the review visit, a separate paediatric emergency area has fully opened which provides a separate area for children who require an emergency response. A new €35 million critical care unit opened recently at University Hospital Limerick, which is a major step forward in the development of acute hospital services in the region. I will certainly bring attention to the matter raised by Senator Conway on the accident and emergency departments in the hospitals in Ennis and Nenagh.

Senators Ó Clochartaigh and MacSharry spoke about the issue of discretionary medical cards and the location of the original files. This matter will have to be addressed as well. I will certainly ask the Minister to come to the House to clarify the situation. The Minister has assured everyone the matter will be dealt with in early course, and perhaps we can have an update on it to clarify the situation.

Senator Burke raised the recruitment of non-consultant hospital doctors, a matter which the

10 June 2014

Senator has raised on a number of occasions in the House. I am sure the Minister is well aware of the matter. It is another issue we will try to get the Minister to come to the House to discuss.

Senators Quinn and White raised the issue of the vaccination against shingles which is available in Northern Ireland. We will try to get an update to see whether this matter can be progressed here as soon as possible. Senators Quinn, Mullins and Jim D'Arcy welcomed the 6,000 additional Springboard places and the array of courses available to people participating in the scheme. They also called for a debate to review the scheme after its three years in operation. I am sure the Minister, Deputy Quinn, would be willing to come to this House and discuss that matter.

Senator Jim D'Arcy referred to the creation of 1,000 jobs per week and the improvement in the economy.

Senator Power spoke on mother and baby homes and there will be a debate on that matter in this House this week. The Minister for Children and Youth Affairs, Deputy Flanagan, has indicated that he will attend.

Senator Michael D'Arcy raised the issue of job creation in the south east, particularly his own county of Wexford. I will ask the Minister for Jobs, Enterprise and Innovation, Deputy Bruton, to come before the House on that matter.

Senator Paul Coghlan spoke of the 50th anniversary of the reopening of Muckross House and I am sure that will be raised at the Committee on Procedure and Privileges.

Senator Noone spoke of legislation on the packaging of tobacco. The Minister for Health intends to introduce such legislation and I understand it will be published this week. I have given my full support to the Minister on progressing this matter through the House in an orderly fashion and I am sure all Members of the House would support such legislation. We are taking the lead on this issue and the Minister should be complimented on his efforts.

An Cathaoirleach: Senator Thomas Byrne has proposed an amendment to the Order of Business: "That a debate with the Minister for Communications, Energy and Natural Resources to explain the process in relation to the construction of industrial wind turbines in this country be taken today." Is the amendment being pressed?

Senator Thomas Byrne: Yes.

Amendment put:

The Seanad divided: Tá, 17; Níl, 27.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Byrne, Thomas.	Brennan, Terry.
Crown, John.	Burke, Colm.
Cullinane, David.	Coghlan, Eamonn.
MacSharry, Marc.	Coghlan, Paul.
Mooney, Paschal.	Comiskey, Michael.
Mullen, Rónán.	Conway, Martin.
Ó Clochartaigh, Trevor.	Cummins, Maurice.

Seanad Éireann

Ó Domhnaill, Brian.	D'Arcy, Jim.
Ó Murchú, Labhrás.	D'Arcy, Michael.
O'Donovan, Denis.	Gilroy, John.
O'Sullivan, Ned.	Hayden, Aideen.
Power, Averil.	Henry, Imelda.
Quinn, Feargal.	Keane, Cáit.
Walsh, Jim.	Mac Conghail, Fiach.
White, Mary M.	Moloney, Marie.
Wilson, Diarmuid.	Moran, Mary.
	Mullins, Michael.
	Naughton, Hildegard.
	Noone, Catherine.
	O'Brien, Mary Ann.
	O'Keeffe, Susan.
	O'Neill, Pat.
	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 Byrne inadvertently voted in Senator Darragh O'Brien's place but it does not alter the result of the vote.

Senator MacSharry has proposed an amendment to the Order of Business: "That a debate with the Minister for Health on the allocation of medical cards, including discretionary cards, be taken today." Is the amendment being pressed?

Senator Marc MacSharry: Yes.

Amendment put:

The Seanad divided: Tá, 17; Níl, 26.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Byrne, Thomas.	Brennan, Terry.
Crown, John.	Burke, Colm.
Cullinane, David.	Coghlan, Eamonn.

10 June 2014

Heffernan, James.	Coghlan, Paul.
MacSharry, Marc.	Comiskey, Michael.
Mooney, Paschal.	Conway, Martin.
Mullen, Rónán.	Cummins, Maurice.
Ó Clochartaigh, Trevor.	D'Arcy, Jim.
Ó Domhnaill, Brian.	D'Arcy, Michael.
Ó Murchú, Labhrás.	Gilroy, John.
O'Donovan, Denis.	Hayden, Aideen.
O'Sullivan, Ned.	Henry, Imelda.
Power, Averil.	Keane, Cáit.
Quinn, Feargal.	Moloney, Marie.
Walsh, Jim.	Moran, Mary.
Wilson, Diarmuid.	Mullins, Michael.
	Naughton, Hildegard.
	Noone, Catherine.
	O'Brien, Mary Ann.
	O'Keeffe, Susan.
	O'Neill, Pat.
	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.

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

The Seanad divided: Tá, 28; Níl, 16.	
Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Brennan, Terry.	Byrne, Thomas.
Burke, Colm.	Crown, John.
Coghlan, Eamonn.	Cullinane, David.
Coghlan, Paul.	Heffernan, James.
Comiskey, Michael.	MacSharry, Marc.
Conway, Martin.	Mooney, Paschal.
Cummins, Maurice.	Ó Clochartaigh, Trevor.

D’Arcy, Jim.	Ó Domhnaill, Brian.
D’Arcy, Michael.	Ó Murchú, Labhrás.
Gilroy, John.	O’Donovan, Denis.
Hayden, Aideen.	O’Sullivan, Ned.
Henry, Imelda.	Power, Averil.
Keane, Cáit.	Walsh, Jim.
Moloney, Marie.	White, Mary M.
Moran, Mary.	Wilson, Diarmuid.
Mullen, Rónán.	
Mullins, Michael.	
Naughton, Hildegard.	
Noone, Catherine.	
O’Brien, Mary Ann.	
O’Keeffe, Susan.	
O’Neill, Pat.	
Quinn, Feargal.	
Sheahan, Tom.	
van Turnhout, Jillian.	
Whelan, John.	
Zappone, Katherine.	

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

Question declared carried.

Criminal Law (Sexual Offences) (Amendment) Bill 2014: Order for Second Stage

Bill entitled an Act to make it an offence for a person to abuse a position of dependence and trust for sexual purposes and to provide a statutory test for determining the existence of consent in respect of sexual acts and for that purpose to amend the Criminal Law (Sexual) Act 1993 and to provide for related matters.

Senator Katherine Zappone: I move: “That Second Stage be taken today.”

Question put and agreed to.

10 June 2014

Criminal Law (Sexual Offences) (Amendment) Bill 2014: Second Stage

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

Acting Chairman (Senator Diarmuid Wilson): Before calling on Senator Zappone to speak, I wish to take this opportunity to welcome the Minister for Justice and Equality, Deputy Frances Fitzgerald, to the House in her new capacity. She is a familiar face in this House not only because she was Leader of the Opposition during the last Seanad, but also because she was a frequent visitor here during her time as Minister for Children and Youth Affairs both to present legislation and take Adjournment matters. She is very welcome.

I call Senator Zappone who has ten minutes.

Senator Katherine Zappone: I wish to echo the Acting Chairman's eloquently stated sentiments in welcoming the Minister for Justice and Equality, Deputy Frances Fitzgerald, in her new portfolio. That role is so appropriate for her.

The Bill that I have such a privilege to introduce this afternoon was inspired by the voices of people with disabilities in Ireland. Those voices are telling stories of loving relationships that are crushed, or never even given the chance to develop, because of stigma and prejudice against people with intellectual disability. Those voices, which also belong to some of those in the Visitors Gallery today, are calling for the freedom to love and to express love on an equal basis with others.

The right to relationships and sexuality goes to the core of what it means to be human. Only this morning, I received an e-mail from the parent of a very young boy with Down's syndrome. After expressing his gratitude for this Bill this parent wrote:

While this doesn't affect my son yet, as he is far too young, I have been aware of the current legislation for quite some time. It is completely outdated and harks back to the time of anyone with an intellectual disability being segregated, isolated and not allowed the freedom to live their life, their way ... I would hate my son to be at risk of prosecution ... for finding a happy, fulfilling and active relationship in time - actually, maybe, when he's in his thirties.

As the Minister is aware, section 5 of the Criminal Law (Sexual Offences) Act 1993 prevents people with intellectual disabilities from having sexual relationships before marriage. While the initial intention of this law was to provide protection from abuse, it has instead created a painful, chilling effect on loving relationships. Although the law is relatively infrequently utilised in the criminal context, the mere presence of such a discriminatory law on the Statute Book has caused a widespread and damaging mindset against people with intellectual disabilities engaging in romantic relationships. This conflicts with international human rights law and Irish constitutional law.

Recently, self-advocates with intellectual disability have given poignant accounts of the effect of these laws on their lives through the Inclusive Research Network, Connect People Network, some of whose members are present in the Visitors Gallery, the RTE documentary "Somebody to Love", which powerfully captured the artistry of the Blue Teapot Theatre Company in Galway, a number of whose members are also present, and the wider self-advocacy national platform and movement. These accounts inspired me to take action and create this Bill, which aims to change the current discriminatory laws and give people with intellectual

disabilities the freedom to love. One could say, therefore, that art and advocacy have influenced politics in this case. In lay person's language, the Bill could be, to take as the Title, the right to love Bill - that is the hashtag - or the right to romance for people with intellectual disabilities Bill.

I acknowledge the research and technical support I have received in the drafting of the Bill from Dr. Eilíonóir Flynn and Dr. Anna Arstein-Kerslake of the Centre for Disability and Law at NUI Galway, both of whom are in the Visitors Gallery, and Dr. Brian Hunt. I also thank the Leader for allowing me to introduce a Private Members' Bill at this time.

I am aware that the Department is reviewing the Criminal Law (Sexual Offences) Act and my Bill is offered to support that process. It has been designed with and for those on whom it impacts and according to the best international standards, including the United Nations Convention on the Rights of Persons with Disabilities. This is an opportunity for Ireland to become a world leader in securing the right to relationships for people with disabilities.

The aims of the Bill are threefold, namely, to eliminate discrimination on the basis of disability; to provide protection from abuse for all individuals by introducing a new offence, "abuse of a position of dependence and trust"; and to create a statutory definition to consent to sex. As a starting point and to ensure non-discrimination, it was clear that section 5 needed to be removed from the Act in its entirety. International human rights standards and Irish constitutional law do not permit such blatant discrimination against people with intellectual disabilities. In addition, in accordance with the UN Convention on the Rights of Persons with Disabilities, the Bill specifically and intentionally avoids any functional test of capacity, as it is known in legal terms, to consent to sex.

These tests generally require that the individual understood and appreciated the nature and consequences of the act and could use and weigh information relevant to the Act prior to the sexual act. Even in jurisdictions where their application is not specifically restricted to people with intellectual disability, these tests are disproportionately applied to people with intellectual disability. This occurs formally in courtrooms and informally when service providers and others believe they can require people with intellectual disabilities to pass such a test before they will support or facilitate their relationships. In addition, these tests do not accurately reflect how sexual decision making occurs. If we were all held to the standard of understanding and appreciating the nature and consequences of sexual acts prior to engaging in them, much of our sexual activity would be criminalised. For this reason, the Bill aims to eliminate such tests to ensure people with intellectual disabilities are not discriminated against by being held to a higher standard of sexual decision making than we are.

The Bill creates an offence for people in a position of authority or trust who abuse their position for sexual purposes. This reflects a recommendation of the Law Reform Commission. This offence of abuse applying to people who are in a position of trust or authority is an attempt to respect people with intellectual disabilities as individuals while acknowledging that they, like anybody else, may consent to sexual activity. The offence is included to provide the necessary protection while ensuring that right is respected.

As the Minister is well aware, the focus of criminal law generally is on the perpetrator and ensuring the law is appropriately crafted to hold people responsible for their criminal actions. We took that into account in the Bill. However, the purpose of criminal law also is to see that justice is served. The mere existence of the criminal law encompasses much more than court-

rooms, law enforcement and the perpetrators of crime. The codified law permeates the minds and social consciousness of wider society and has the power to affect the daily lives of individuals. We have seen this effect in respect of section 5 of the 1993 Act. Its most damaging effect has not been in the criminal justice system but in the daily lives of people with intellectual disabilities. As a consequence of that provision, community service providers, family members and others have believed that they can or must prevent people with intellectual disabilities from having relationships. This Bill aims to end that situation, to ensure justice is truly served and to prevent the criminal law from acting as a barrier to the rights of people with disabilities.

The proposed section 5A of the 1993 Act, as inserted by section 1 of this Bill, aims to provide a statutory definition of consent in order to respect the sexual agency of all actors and criminalise sexual acts that are not agreed upon or understood by all parties. This provides a nuanced, meaningful and relatively straightforward definition of consent that is inclusive of people with disabilities. It is intended to apply to all existing sexual offences that provide for a defence of consent. There has been a great deal of debate about the merits of including a statutory definition of consent to sex in Irish law. My view is that it must be done. In fact, it is a crucial addition to ensure full equality before the law, especially for people with disabilities. The goal of the provision is to set out fundamental principles to guide courts and jurors when determining whether valid consent was given in particular circumstances and thereby eliminate the need for a functional test of capacity that is discriminatory.

The Bill provides a test of consent which everybody can undergo. Rape Crisis Network Ireland and the Law Reform Commission support the inclusion of a statutory definition of consent in sexual offences legislation. The Minister has the power to ensure it is done. The guidance on determining consent provided in the proposed section 5A of the 1993 Act includes a requirement that is simple, namely, that there must be agreement and understanding by both parties before engaging in a lawful sexual act.

The proposed subsection 5A(5), to be inserted in the 1993 Act by way of section 1 of this Bill, provides that in determining whether consent was validly given, a person's mental impairment shall not be a determinative factor. This requirement reflects the obligations contained in the Convention on the Rights of Persons with Disabilities, especially the obligation under Article 12 which has been interpreted by the UN committee to mean that "perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity". In other words, legal capacity cannot be denied on the basis of a person's mental capacity.

In summary, this short Bill seeks to replace a section of the current Act, to insert a new offence and to add a statutory definition of consent to sex. Taken together, these provisions will ensure that Irish legislation on sexual offences is disability neutral, that is, that no separate offences exist which apply only to persons with disabilities and no higher standards are imposed on persons with disabilities than those imposed on the general population. This is essential to end the stigmatisation of persons with disabilities and ensure full equality. The Bill represents an attempt at a legal innovation to ensure a proper balance is achieved between respect for individual autonomy and legal capacity and the need to ensure protection against exploitation and abuse. I repeat the terms "respect" and "protection" - the Act refers only to protection but not respect.

I remain open to discussing ways of accomplishing these important goals of equality and protection against abuse by introducing other innovations, but not at the expense of the principles that I have identified as core to the Bill. I thank the Minister for Justice and Equality,

Deputy Fitzgerald, and the officials in the criminal law reform unit who very graciously met me last week, for their consideration of the Bill and I look forward to the Minister's response.

Senator Ivana Bacik: I welcome the Minister, Deputy Fitzgerald, back to the House as Minister for Justice and Equality. I think that I have already welcomed her in that capacity, but she is welcome, too, on this important legislation. I commend Senator Zappone on bringing forward this legislation and I am delighted and honoured that she asked me to second it.

The legislation recognises a lacuna and flaw in our current legislation on sexual offences which has been recognised and identified by many people, but Senator Zappone is the first to have put the work in and given the commitment to look at how best to deal with and resolve the issue. I thank her also for the excellent briefing which she offered us in the Merrion Hotel earlier today, which I was delighted to attend. It was chaired by Suzy Byrne, the disability rights campaigner, and a clip from the documentary "Somebody To Love" by Anna Rodgers was introduced by Zlata Filipovic. It is a moving and powerful film concerning the right to sexual autonomy of people with disabilities. I am sorry that I had to leave before the end, but a panel of self-advocates was also there. I know that many of the people there, whom we also welcome here today, would have been instrumental in seeking legislation such as this.

As Senator Zappone said, she created the Bill in response to a call to action by the self-advocates and disabled people's organisations. She also acknowledged, as was acknowledged at the meeting earlier, the role of the Centre for Disability Law and Policy at NUI Galway in the formulation of the Bill, in particular that of Dr. Eilionóir Flynn and Anna Arstein-Kerslake. I should acknowledge also the role of my friend, Professor Gerard Quinn, who has done a huge amount to put law on disability rights to the fore in Ireland. There has been a long genesis to the Bill and I commend Senator Zappone on putting it together.

The fact that the existing legislation is outdated has been recognised. The current legislation is the Criminal Law (Sexual Offences) Act 1993, section 5 of which creates an offence for a person who has or attempts to have sexual intercourse, or commits or attempts to commit buggery, with a person who is mentally impaired. It is a crude provision which is problematic in two aspects, as Senator Zappone has outlined. First, it purports to criminalise particular forms of sexual activity with persons who are mentally impaired irrespective of consent, the only proviso being otherwise than a person to whom they are married. Marriage provides the defence, but there is no provision for consent as a defence. Secondly, the Act provides insufficient protection against abuse for persons who are vulnerable. As the explanatory memorandum points out, that was demonstrated in a case in the Central Criminal Court in November 2010, where it was pointed out that particular sexual acts are not covered by section 5. The provision is therefore crude and inadequate in some respects, but it is also overly paternalistic in others and fits in with a very outdated view of intellectual disability which happily has changed even in the relatively short period since 1993. We are not talking about very old legislation - that is the irony - but I wanted to address the context for this. If one looks at our sexual offence laws generally - I did some work on them in practice, acting for the State in some cases defending aspects of sexual offences legislation - one sees that a real problem, particularly when one is in that position of defending legislation before the courts, is that there has been so much piecemeal reform over the years. So much of it has become dated quickly as our understanding of certain offences, for example, those against children, has changed. We have seen our sentencing regime for sexual offences against children change dramatically within a relatively short space of time as people become more aware.

Senator Zappone has proposed a Bill that seeks to amend section 5 of the Criminal Law (Sexual Offences) Act 1993, which did quite a number of things but did not purport to set out any sort of proper code on sex offences. That had been attempted in the Criminal Law (Rape) (Amendment) Act 1990, which is now seen as somewhat problematic as it creates a somewhat clumsy series of tiered serious offences, including the rather anomalous offence of “rape under section 4”, which covers forms of rape other than common law rape as covered in the Criminal Law (Rape) Act 1981. Even though we have all of these different variants of sexual offences, we have gaps where certain adequate protections are not offered. As a result of the 2006 decision in the CC case, which called into question the whole practice and policy of charging in sexual offences case, we saw some hasty law-making to try to fill another gap concerning the protection of children against sex offences. Again, that legislation subsequently needed to be amended.

This Government has committed to an overhaul of sex offence laws. On 17 December 2013, it approved the drafting of a wide-ranging sexual offences Bill. I know it is currently being drafted as priority legislation. Private Members’ legislation like the Bill before the House has an important role to play in seeking to highlight to the drafters of Government legislation what can be done to try to address problems that have been identified with existing legislation. Now that we are finally looking at a comprehensive overhaul and codification of sexual offences laws, we have an opportunity to ensure up-to-date and adequate provisions are in place. The Government has to ensure the new legislation is consistent with the Assisted Decision-Making (Capacity) Bill 2013, which the Joint Committee on Justice, Defence and Equality has been debating. At our hearings on that Bill, we have considered similar issues relating to personal autonomy and the capacity to make choices. We heard about some of the same issues at this morning’s briefing. They were evident in the documentary.

Senator Zappone has proffered a resolution of the difficulties with section 5 of the 1993 Act, which we have identified. It is a much more elegant structure. As the Senator said, it offers a disability-neutral approach. Rather than providing specific protection for people with intellectual disabilities, it breaks down what section 5 sought to do into two things. First, it provides for a new offence of “abuse of position of dependence and trust”. This new offence would apply to anyone who takes advantage of such a position by sexually exploiting another person, or committing a sexual offence involving him or her. That is disability-neutral. It does not offer specific protections to people with disabilities. Instead, it rather elegantly shifts the focus to the perpetrator of the offence of “abuse of position of dependence and trust”. There are specific criteria for what constitutes a position of dependence and trust. It covers a person who provides care to another. That would clearly cover many instances of carers of people with disabilities. It is not limited to that, however. It seeks to resolve an issue that relates not only to people with disabilities but also to people who are vulnerable in other ways and may be in dependent positions.

The second thing the new legislation seeks to do is provide for a definition of consent. This goes well beyond any issues around specific offences concerning people with disabilities. It seeks to offer a new definition of consent that again focuses on the issue of agreement and on the positive aspect of consent. This is something feminist critics of rape laws have often called for. We do not yet have it in an Irish context. The explanatory memorandum rightly points out that section 9 of the Criminal Law (Rape) (Amendment) Act 1990 sought to assist juries in defining absence of consent by providing that “any failure or omission by [a] person to offer resistance ... does not of itself constitute consent”. Again, that is a very inadequate provision.

By simply stating that submission is not consent, it addressed an old rape myth that needed to be addressed but did not go any further than that. It certainly did not provide the sort of positive affirmation of the need to ensure agreement and consent in sexual activity that we now recognise as imperative.

I am out of time but I will conclude by commending Senator Zappone again. The legislation the Government will bring forward should take account of many of the issues and principles that have been addressed by the Senator in this Bill. Section 5 of the 1993 Act has not given rise to many prosecutions - almost none, as it is very rarely used - but it has undoubtedly had a chilling effect on the lives of people with disabilities. It is a discriminatory provision that requires amending. I hope the new legislation that the Government intends to introduce will incorporate respect for the sexual agency of all.

Senator Averil Power: I welcome the Minister to the House and congratulate her on her recent promotion. I also commend Senator Zappone on introducing the Bill. I welcome the individuals and organisations present with us today in the Gallery. It has been a long fight to put the legislation on the agenda. Those concerned have a powerful advocate in Senator Zappone to take the issue forward. I acknowledge the work that has been done by individuals, their families, advocacy groups, personal advocates, and Anna Rodgers who made the documentary “Somebody to Love” which I found powerful and touching, that highlighted the need for change in the area.

As other speakers have indicated, the current law is totally out of date and inappropriate. It stigmatises people and is based on totally outdated and patronising attitudes to people with disability and takes no account of their ability to have relationships, engage in sexual activity and have the same aspirations all of us have. Senator Zappone referred to the freedom to love, to be in a relationship and to have ways of expressing that love. It is past time for us to change the law to ensure that it is disability-neutral and is based on the principle of equality while also ensuring adequate protection against exploitation and people taking advantage of their position. That should apply to everyone, regardless of whether they have a disability. Advantage can be taken of elderly people and others in care homes and other environments regardless of whether they have a disability.

I very much welcome the legislation, which as Senator Zappone pointed out, addresses a number of different issues. For the first time, it moves towards having a statutory definition of consent that is disability neutral. That is something the Rape Crisis Centre, the Law Reform Commission and others have recommended. It is a complex area in some respects and I look forward to considering such aspects in more detail using case law and definitions used in other jurisdictions. It would be a new departure to put such a definition in legislation. That is a positive step but it is something we must be careful to get right. I welcome the opportunity to debate the issue at a later stage.

I agree with the principles proposed that the definition of consent would be based on a consideration of understanding and communication and not on the circumstances that pertain such as whether the person involved has a disability. It is time that those matters should be the key elements rather than as has been pointed out, presenting anyone with an impossible test on which any of us could fall short. It is wrong to categorise people with disability and assume they do not have the capacity to consent.

It is important that the Bill raises educational initiatives. Advocacy groups and the Law Re-

form Commission have highlighted such a gap in current practice. We are not great on sex education in general for anyone in this country. We still have young people going through school that get a cursory sex education, if any, depending on the school they attend or the teacher they have for the purpose. Some students still go through the school system with perhaps a half hour talk on the mechanics of sex but without any proper education on protecting themselves, risks, relationship and related matters. It is an area where a lot of work needs to be done. It is of particular importance that people with disabilities would have the same access to appropriate sex education as everyone else so that they do not end up in a situation where they are vulnerable to abuse because they do not understand what is happening. I am concerned that as matters stand that would be an issue for all children, in particular when some schools do not offer the stay safe programme. Because the programme is not compulsory a small number of schools do not offer child protection programmes. I accept that is a wider issue. I commend Senator Zappone on including it as part of the debate because it is important. Regardless of whether a person has a disability, key aspects in a relationship include having an understanding of what is involved, having an ability to spot if someone is doing something inappropriate, protecting oneself and making an informed decision and choice. It is time we recognise one cannot categorise people with disabilities so as to refuse them the option to make that choice. Our laws must catch up and, as was said at the start of the debate, it is time these people were given the freedom to love.

This is excellent legislation and I commend Senator Zappone for bringing it forward. I hope the Minister will support it. I understand the Government has promised legislation in this area at some stage but that it deals with a much wider area than what is proposed in this Bill. I would like to see this legislation progress to Committee Stage where we could have a more detailed discussion on the different issues involved.

I commend the Bill to the House.

Minister for Justice and Equality (Deputy Frances Fitzgerald): I thank Senator Zappone for introducing this important legislation and Senator Bacik for seconding it. I was glad to avail of the opportunity to meet with Senator Zappone, along with my departmental officials, to discuss the details of the Bill. I congratulate her on drafting this legislation and pay tribute to the advocates she mentioned who work in this area and supported her in this, some of whom join us here today.

Section 5 of the Criminal Law (Sexual Offences) Act 1993 is of its time - although as was noted earlier, it is not very old as we often discuss much older legislation - and I accept it should be repealed. It does not reflect current thinking or international developments concerning the rights of persons with disabilities. In particular, the 2006 UN Convention on the Rights of Persons with Disabilities aims to facilitate the full participation in society of disabled persons and the full realisation of their human rights. From its adoption, the convention set out a blueprint as to what was needed to promote equality, in practice, for persons with disabilities. The impetus driving the convention was well put in the statement of Don McKay, chairman of the committee that negotiated the treaty: "What the convention endeavours to do is elaborate in detail the rights of persons with disabilities and set out a code of implementation".

Article 12 of the convention views equal recognition before the law as a fundamental right of persons with disabilities. The article imposes several obligations on signatory states, namely to reaffirm that people with disabilities have equal right to recognition before the law; to recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life; to take appropriate steps to support persons with disabilities to exercise their legal

capacity; and to provide appropriate safeguards against abuse.

The Assisted Decision-Making Capacity Bill 2013, currently before the Oireachtas, will comprehensively reform the long outdated civil law on mental capacity. It will greatly assist vulnerable persons to better manage their personal, property and financial affairs. To mirror these developments, both I and the Government are committed to amending the criminal law on sexual offences to acknowledge, as far as possible, the right of vulnerable persons to sexual autonomy.

The challenge in mental capacity legislation is to develop legal solutions that are appropriate to diverse decision-making needs, yet are effective within the existing legal system. The challenge in criminal law is not dissimilar. The criminal law should only be used to punish the clear sexual abuse or exploitation of vulnerable persons, not to deprive them of intimate sexual relationships where that is possible. In this context too, there are diverse decision-making needs and the criminal law must take this into account.

As well as recognising the rights of persons with disabilities, the UN convention also imposes a specific obligation to put effective legislation in place to ensure that instances of exploitation, violence and abuse can be identified, investigated and prosecuted. There is a requirement, therefore, to strike an appropriate balance between sexual autonomy for vulnerable persons who have the capacity to consent and some level of special protection so abuse and exploitation of vulnerable persons can effectively be prosecuted. The purpose of Senator Zappone's Bill, as stated in the explanatory memorandum, is to reform the sexual offences law to eliminate discrimination against people with disabilities and to ensure they have the same freedom to consent to sexual activity as people without disabilities. It also aims to reform the law to ensure respect for the sexual agency of people with mental impairment while also providing protection from sexual abuse. It is clear, therefore, that we share the same principal objectives. I have no difficulty incorporating a number of the concepts in Senator Zappone's Bill into the sexual offences Bill currently being drafted, and I intend to do that. The Bill is priority legislation and work is under way on it.

Modern provisions to substitute section 5 of the 1993 Act will be included in the sexual offences Bill, will be consistent with the Assisted Decision-Making (Capacity) Bill and will acknowledge the right of vulnerable persons to sexual autonomy. I also want to ensure sexual abuse and exploitation of vulnerable persons can be effectively prosecuted. Linked to that is the clear need to avoid subjecting vulnerable persons to potentially traumatic court proceedings, including cross-examination. These are very real, practical concerns that must be considered, as Senator Zappone would acknowledge.

Despite its very obvious drawbacks, given the developments in current thinking and discourse I mentioned, the current offence in the 1993 Act facilitates prosecution of those who would exploit the vulnerable because there is no need to prove lack of consent. This means the offence under section 5 is an offence regardless of consent. In addition, the Director of Public Prosecutions, DPP, has the discretion not to prosecute non-exploitative incidents. The sexual offences Bill will create a number of new offences to enhance the protection of children from sexual exploitation and abuse, and these will be applied to vulnerable persons. All these provisions combined will significantly extend the protections available to vulnerable persons in the criminal law on sexual offences.

Discussions are ongoing with the Office of the Attorney General and the Office of the Di-

rector of Public Prosecutions to complete work on the provisions to substitute section 5 of the 1993 Act, which is the section under discussion here today. Although I am a little constrained on what I can say about this head in the general scheme of the Bill, as soon as this work is completed I intend to engage in consultations with the disability sector. I will be very happy to continue discussions with Senator Zappone and other interested parties. Like the Senator, I am concerned to avoid labelling vulnerable persons. I want to avoid making provisions which make blanket assumptions about the decision-making powers of persons with intellectual or learning disabilities or those with mental health issues or cognitive disabilities.

The law on sexual offences frames criminal offences. Criminal offences are perpetrated by perpetrators, not victims, and perpetrators should be the focus of criminal law. Another requirement of criminal law is certainty. These factors are central to our approach, without making inappropriate assumptions about the capacity of vulnerable persons, as a number of Senators said. I thank Senator Zappone for bringing forward this Private Members' Bill on a complex but very important issue. The Senator's work has a fit with the work the Department of Justice and Equality is doing in this area. There is no monopoly of wisdom in how to progress this. I look forward to contributions from and working with everybody involved in today's debate and I will listen to the contributions in today's debate and consider them in the context of the development of the relevant provisions in the sexual offences Bill. I will not oppose the Bill today.

Senator Trevor Ó Clochartaigh: Tá céad fáilte roimh an Aire. Is dóigh go bhféadfar a rá gur lá maith don Seanad an lá inniu agus an méid atá ráite ag an Aire anseo go n-aontaíonn sí leis an Seanadóir Zappone gur gá an reachtaíocht atá ann i láthair na huaire a athrú agus go nglacann sí i bprionsabail leis na moltaí atá an Seanadóir ag cur chun cinn.

Having listened to the Minister's contribution, it should be said this is a good day for the Seanad. It is very welcome that the Minister stated she agrees with Senator Zappone that the law at present should be repealed and that in principle she takes the thrust of what the Senator is putting forward and accepts it. We also certainly support the Bill from this perspective. It is good this is happening today in the Seanad. I hope the level of priority the Minister indicated will be given to the legislation because we know she is very busy with much on her plate and we hope the legislation she is discussing will be moved as quickly as possible through the parliamentary process so it becomes a reality for the people living in difficult situations at present.

I welcome our guests in the Gallery, many of whom are from my home town of Galway. It is great to see the work done by Senator Zappone, the people from NUIG who are here, and the members of the Blue Teapot Theatre Company. I will mention a neighbour of mine, Paul Connolly, who is one of its stars. He would not let me go if I did not mention the fact he is involved with the group.

As republicans, we in Sinn Féin believe all people living with a disability have the right to have their whole person recognised, their capabilities valued and developed to full potential and their dignity respected. We believe disabled people should have the right to make choices about their lives and be consulted, heard and resourced in all matters affecting them. Disabled people should be protected against all exploitation and all regulations and all treatment of a discriminatory, abusive or degrading nature. People with disabilities have the right to a poverty-free life facilitated by direct payments to offset the cost of disability and to equal access and equal participation in education, employment and training.

People with disabilities have the right to access appropriate co-ordinated services. The

State has a duty to provide such services as well as proper individual needs assessments. I very much welcome Senator Zappone's Bill which aims to eliminate discrimination against those with intellectual disabilities in Irish legislation concerning sexual offences. The Bill will repeal the existing law which is discriminatory in that it criminalises sexual activity of people who are mentally impaired unless they are married to one another. Here in this State a person's mental capacity or decision-making skills are often used to restrict or deny his or her legal capacity. This disproportionately affects people with disabilities whose mental capacity is more likely to be questioned than that of non-disabled people. This means all people are not treated as equal in the eyes of the law.

Assessing mental capacity is most commonly done via the functional test. This test requires individuals to demonstrate that for the specific decision they are able to understand information about the decision, including the nature and consequences of the decision, use and weigh information to come to a decision, retain the information long enough to make a decision and communicate the decision to third parties. However, as we have heard there, is now widespread criticism of the functional test.

The UN Committee on the Rights of Persons with Disabilities stated in its general comment on Article 12 that it does not permit this discriminatory denial of legal capacity and instead requires that support be provided for the exercise of legal capacity. By using this test for mental capacity to distinguish an individual's ability to consent to sex, we hold people with a disability to a higher standard than the rest of the population. We do not make all citizens prove to us that they understand and appreciate the nature and consequences of their decision when they engage in sexual activity. We only demand this standard of people with a disability and this is clearly discriminatory.

Sinn Féin also welcomes the introduction of a new offence of abuse of position of dependence or trust, which will address the law created by the abolition of the outdated section 5. I reiterate Sinn Féin's support for the Bill and I commend Senator Zappone on bringing it before us. I wish her the best with it. Cuirim fáilte roimh an reachtaíocht but with the caveat that while we appreciate the Minister stated she is in favour of the thrust of the Bill and will bring forward her own legislation, we hope we will not have to wait for the legislation because it got caught in the quagmire of legislation which is already in the Office of the Attorney General. We are often told legislation is on the way but we do not see it. The people in the Gallery deserve equality in this regard and I hope it can be brought forward as soon as possible.

Senator Martin Conway: I am very pleased that the Government is supporting the Second Stage of this Bill. I commend Senator Zappone on the huge effort she made to bring this legislation before the Seanad. Unfortunately I could not attend the briefing in the Merrion Hotel earlier but my assistant was there on my behalf. I believe it was a very powerful and informative session.

I also welcome those in the Public Gallery, particularly those who assisted Senator Zappone in preparing this legislation. I have had contact with the Centre for Disability Law and Policy in the National University of Ireland Galway, NUIG, over the years and have often met the people who work there. There is a world class research department there and their work is recognised internationally. We are fortunate to have the support of people in such policy units to help us drive this agenda on.

As previous contributors have said, society has moved on and so have people with dis-

abilities but, like so much else in society, this legislation is in a timewarp. The legislation of 1993, though not old, was not appropriate even at the time it was enacted. The Minister has committed to wide-ranging legislation that is being worked on at the moment. I agree with Senator Ó Clochartaigh that this legislation should not be caught in places to which we have no access, such as the Office of the Attorney General. I sincerely hope this legislation, on which the Minister and her staff are working, will run in tandem with Senator Zappone's legislation. Indeed, it will be interesting to see how Senator Zappone's legislation progresses on Committee Stage. There is a clear commitment from the Minister to follow the thrust of Senator Zappone's legislation and to ensure her legislation encompasses it when the time comes. It is absolutely appropriate that it should be an offence for a person to abuse a position of responsibility. The Minister has correctly said that a balance must be struck between protecting citizens and ensuring those with the capacity to make decisions have the freedom to do so. As Senator Zappone said eloquently today, this is about fostering love, companionship, romance and the things we all hope for in our lives. Why should people with disabilities be treated any differently?

Section 5 of the 1993 legislation was a gross generalisation and categorised everyone within the same ambit. I think this is wrong and I am pleased the Seanad has, yet again, been the Chamber to highlight this issue and give a voice to people who have felt without a voice for too long. The people voted to retain the Seanad because its job is to reflect the views of those perceived to be members of minority groups. I hate labels such as minorities and majorities because we are talking about people and citizens. Everyone deserves to be treated equally and this is a matter of the equality agenda. Thankfully we are here today thanks to the good work of Senator Zappone carried out when Private Members' time in Seanad Éireann was dedicated to the discussion of this issue. When it comes to issues that matter to people, the great thing about the Seanad is the various parties and Independent Members can form a unified force to support the right thing.

5 o'clock

It is incredible how we can have a unified force where all the parties and Independents can come together to unanimously support a measure when it is the right thing to do. Our colleagues in Dáil Éireann could learn quite a lot from the manner in which we do our business. We do not often get recognition for it because we possibly do our business a little too quietly, which does not get the same headlines generated by the adversarial element.

This legislation is most welcome. It is putting right something that is wrong within our legislative process that affects people's lives in a profound way. I agree with Senator Ó Clochartaigh that it is a good day for the Seanad. Let us hope it is a good day for our citizens as well.

Senator Cáit Keane: I am pleased to be present for the debate. I thank Senator Zappone for introducing the Bill and I welcome the Minister, Deputy Fitzgerald, to the House.

The Minister outlined what she proposes to bring to the House. She stated it is priority legislation. If priority means anything the Bill will be introduced very quickly. When the Minister referred to priorities in her previous portfolio she could be taken at her word and she introduced change. I look forward to the same approach in this case. It is my first time addressing the Minister since she became Minister for Justice and Equality and I congratulate her on her appointment.

I welcome the representatives of disability groups in the Visitors Gallery. I am aware of

the research and report they contributed to Senator Zappone. The purpose of the Bill has been widely stated and I will not refer to that. It is important to ensure that people with disabilities will have the same freedom to consent to sexual activity as people without disabilities. Just because a person has one type of disability or another does not mean he or she should be discriminated against in any sphere of life, in particular in terms of sexual activity which is a very important aspect of all our lives.

The Bill also protects people from sexual abuse. It goes without saying that it must be part of the Bill as our aspiration must be to protect everybody in society from sexual abuse. We have not been very successful to date given all the sexual abuse that has arisen, especially from places from where we would least have expected it. It is important to ensure that such protection is written into the Bill.

The Minister and another speaker indicated that one would think the current legislation is ancient and given the manner in which we are discussing it that we were back in the bad old days. It is not that ancient as it dates from 1993. One could ask whether we have moved forward since then. It is a case of we have and we have not, given that attitudes are slow to change. I am delighted the Bill is before us as attitudes do not change until something is written down in legislation. The existing law on the mentally impaired and the criminalisation of such people led to enforcing attitudes, not changing them, and we must ensure we change the situation.

The Minister and Senator Bacik referred to the Assisted Decision-Making (Capacity) Bill. In framing the legislation one must take into account the situation in general. If one were to examine the decision-making capacity of everybody who has sex at any stage and, for example, whether alcohol or another substance is involved, and if the same standards were to apply it would give rise to questions. We must bear that in mind as well.

The United Nations Convention on the Rights of Persons with Disabilities aims to facilitate the full participation in society of disabled people and the realisation of all their human rights. The specific UN obligation requires that effective legislation is put in place to ensure that exploitation does not take place. When one decriminalises something, it is important to ensure that people in all walks of life are protected from exploitation and abuse. The Minister made reference to the issue.

I am delighted that the Minister is accepting the Bill. She made the point that nobody has all of the answers and that progress can be made by working with Senator Zappone and the Seanad. The rights of people with disability have been talked about for a long time and the change is welcome. The National Disability Authority has done some work. Sexual activity is a worry for everybody in society, especially for parents, be their children able or disabled. The worry does not go away because one's child is disabled. Everyone should have the same rights and degree of fulfilment through relationships and sexuality. Sex is a topic that has been surrounded by sensitivities in any walk of life and people tend to sweep things under the carpet. I am delighted that the sexualisation of people with a disability has been recognised as the situation has been unacceptable for far too long. Thankfully, the legislation will change that situation.

Many bodies that have written on the issue have made recommendations. The granting of rights gives rise to the facilitation of people with disabilities to have sexual relations in various walks of life but if there is segregation in society it does not lend itself to facilitation. We spoke previously about the involvement of Departments in the context of children. A cross-departmental approach is required. The Department of the Environment, Community and Lo-

cal Government has a role in terms of housing. The Department of Health has a role to play in producing legislation for the provision of facilities for people with disabilities. The role of the Department of Education and Skills involves information, counselling and sexual education in an accessible format, including family planning. The work of the Departments is interlinked. Research and background information are required in advance of legislation rather than making changes at the stroke of a pen but there is no point in changing the legislation if nothing changes in society or changes are not implemented to facilitate what one wants to achieve in terms of disability and sexual awareness.

Those who work with people with disability also require training. Attitudes are hard to change and not everybody who works in homes or workplaces involving disabled people are aware of what is available or where the legislation has changed. Advice and counselling are necessary for all concerned.

The Minister and Senator Zappone spoke about sexual abuse. Some research has been done but I am not as *au fait* with it as Senator Zappone. Research abroad has highlighted that children and adults with disabilities face an increased risk of sexual abuse. They were found to be most at risk in places where they live and work rather than in public places. We must ensure people are protected where they live and work and that such provisions are included in the legislation. That goes for people in all walks of life. If certain rights and responsibilities are not included in legislation people might not be protected. It is good that we are reforming the legal system.

I welcome the Bill and thank Senator Zappone for introducing it.

Acting Chairman (Senator Diarmuid Wilson): Before I call Senator Quinn I welcome the Minister of State, Deputy Perry, to the House.

Senator Feargal Quinn: The Minister of State, Deputy Perry, who has just arrived, is very welcome. I commend Senator Zappone on introducing the Bill. This is very much a human rights issue but it also shows how we must examine legislation which might no longer be fit for purpose. I was in the House in 1993 when the legislation was introduced and at the time I thought it was an excellent Bill. As far as I was concerned the purpose of the legislation was to protect people. My eyes were opened when I attended the session in the Merrion Hotel today organised by Senator Zappone. I understood for the first time the need for the Bill. Perhaps the Seanad could do even more in the area, such as examining legislation to see whether we can improve it or get rid of it in some cases. As the explanatory memorandum, which is very good, notes, the current Criminal Law (Sexual Offences) Act states it is a criminal offence to engage or attempt to engage in sexual intercourse or an act of buggery with a person with a mental impairment and consent is not a defence. However, as it stands, if the people are married, or if the victim is proven to be capable of living independently, no criminal offence is committed. I did not understand this when the Bill passed 20 years ago. Obviously the current law discriminates as it criminalises the sexual activity of people with mental impairments before marriage. People with mental impairments also have to prove their ability to live independently and protect themselves from abuse before engaging in sexual activity. This is something which people without mental impairments do not have to do, which is an obvious form of discrimination.

The Bill is very progressive, reflecting human beings' ability to choose and communicate preferences in order that they do not need to do more than a person without disabilities before engaging in sexual activity. There are also other various problems with the law, including the

fact the law has not been used successfully very often – I do not know whether it has been used successfully at all - to prosecute relevant cases and is seen as inadequate in protecting people with disabilities from various forms of sexual abuse, which was the main objective of what we discussed 20 years ago.

I note the submission of the Connect People Network who describe themselves as a group of people in Ireland who believe that people with extra support needs have the right to have romantic and sexual relationships, just like everyone else. They made a smashing case today and those of us who attended their presentation without our eyes wide open beforehand had them opened. In its submission to the Law Reform Commission, it stated:

We can have sex like everybody else ... We should be allowed do all the sexual things we want to do. It's not up to other people: it's up to you. Everybody decides what they like and what they don't like. It is nobody's business what I do in my spare time. Other people don't get questioned, why should we get our private life questioned?

I agree we should not have different standards in our legislation. This is one of the reasons Senator Zappone's Bill is very welcome. People's mental capacity should not have to be tested. It is a concrete form of discrimination. If one can think of any form of discrimination, this certainly is. We must move towards recognising the capacity of all citizens to make adult decisions. With regard to specific questions, it would be interesting to consider the original intention of the 1993 legislation. It was partly influenced by the fact people with disabilities are more vulnerable to crime and specifically to sexual offences, and international research backs up this fact. I wonder whether we have figures or percentages on how much more vulnerable to crime a person with a disability is in this country. Recently in the Seanad we discussed the need for the Garda to record hate crimes which have an ethnic motive. There is a need for the Garda to record crimes against people with disabilities. With this information legislators would be much better equipped to tackle the problem. Senator Rónán Mullen will bring forward a Bill shortly on older people being attacked and seeking mandatory sentences. How many people with disabilities report sexual crimes against them? A major issue which goes along with the legislation is giving people the avenues and support to come forward. A local Garda station may be extremely intimidating.

The Bill proposes that section 5 of the 1993 Act be replaced with a new section which covers the offence of abuse by a person in a position of dependence and trust. The new section states it will be an offence if somebody aids, abets, counsels or procures another person to take advantage of his or her position or induces or seduces a person to have sexual intercourse with him or her. Should we expand this to include the fact a perpetrator could try to get the person with a disability to have sexual activity with a third party? Should we make this very clear in the Bill? I would be interested to hear a comment on the possible expansion of the offence.

With regard to the abuse of trust, the Bill states it will be an offence if a person commits any other sexual offence involving a person. Do we need to be more specific in the Bill? The offender could engage in sexual activity in front of the person with mental disabilities or they could force a person with disabilities to watch a sexual act, be it in person or images. I am very unsure whether this is already adequately covered in the legislation but this is what Committee Stage is for.

Should we explicitly include a reference to the fact that a person with a mental disability could be threatened or deceived into engaging in sexual activity? The UK's Sexual Offences

Act 2003 uses this particular phrasing and it would be useful to consider whether we should do something similar with this legislation, with the end goal of providing as much protection as possible to the person with the disability. I would like to get a comment on this if possible. The Bill rightly considers people with disabilities as sexual beings and they should be treated like everyone else. Originally when I saw the Bill I did not understand it. I am sure we are all to a certain extent reticent about getting involved in this topic. I congratulate Senator Zappone on introducing it and identifying the issue. I congratulate all of those involved in bringing forward this topic because it needs to be discussed and the Bill will solve the problem. It may be possible to change and improve it but I hope the Government continues the support it has already shown for it.

Senator Katherine Zappone: I welcome the Minister of State, Deputy John Perry, and I am happy to have him here as I add my final comments. I wish to express my deep appreciation to the Minister for Justice and Equality and her team for having listened to and heard the prime aspects of the Bill and the intent and principles behind it. This is critical in law-making and I am most appreciative.

The Minister made several comments in her speech which are particularly important for us as we take all of these issues forward. She stated she accepts that section 5 should be repealed. This means we have a Minister for Justice and Equality who accepts section 5 should be repealed, and this is a big deal. The Minister also stated it is important we make law to ensure everyone's equality before the law and acknowledge as far as possible the right to vulnerable persons to sexual autonomy. She also stated in her remarks that there is a requirement to strike an appropriate balance, and "balance" is the key word, between sexual autonomy for vulnerable persons who have the capacity to consent and some level of special protection. This is critical, but we must get the balance right. We did not get the balance right the last time. Senator Bacik, of whose seconding the Bill I am most appreciative, described the existing Act as crude, paternalistic and inadequate. We did not get the balance right the last time so we need to get it right this time. I am appreciative of the awareness of this.

I am a bit concerned about the use of language such as "vulnerable persons" and the need for "special protection". It sounds a little like language which is engaged to make law which treats differently people with a difference and therefore reduces their access to equality and justice. I know this is not the Minister's intent and this is the challenge we face as law-makers. The Bill, with its elements, is trying to move to provide a way to ensure a balance between respect and protection which does not take it away from people with a disability.

I acknowledge and thank the Minister because we share the same principles and concepts expressed in this Bill and in the Government's Bill which has priority in being drafted. Other Senators picked up on this and I am most grateful that the positive sentiments echoed by the Minister for Justice and Equality were also echoed by my fellow Senators. I appreciate the fact people attended the launch of the Bill and the briefing. I knew what Senator Quinn meant when he said his eyes had been opened because my eyes were opened too on this journey. My ears could hear the voices that were growing louder and I knew that we had to do something. We must change the current law.

The Minister has identified many positive aspects and it indicates that the Minister and the Department of Justice and Equality have reached a milestone. I appreciate that Catherine Byrne and many others in the Department have worked long and hard on this Bill as we move towards the repeal of the discriminatory aspect of the legislation. Will there be amendments on

Committee Stage? Perhaps it would be better if aspects of this Bill were incorporated into the Government's Bill. Once section 5 is repealed what will take its place and how will we make the substitution in a way that will appropriately balance respect with protection? The Minister said many of these issues are currently before the Attorney General and the Director of Public Prosecutions so of course we must wait to hear what they say. The Minister said the focus in criminal justice must be on the perpetrator and I said the same. In our discussions with the Department before this debate we learned something of this along with the Department's concerns. I appreciate the time I had to discuss this matter with the Department.

It is correct that the focus in criminal justice must be on the perpetrator to ensure victims are not doubly discriminated against or abused. This is why the effort to create a statutory definition of consent in this Bill seeks to focus on the perpetrator but also the victim, in order to protect the victim. There must be mutual understanding and agreement. The focus is not solely on the victim in our effort to create appropriate protection and respect by changing the legislation.

I have been considering what brought about the development of this Bill, including the voices of the self-advocates, especially those in the documentary "Somebody to Love". The director of the Blue Teapot Theatre Company in Galway, Petal Pilley, said in the documentary that one feels as though one has been hit in the chest when one realises existing legislation says people with intellectual disabilities should not engage in sexual relations and that it is a crime to do so. We must fix this legislation soon. I appreciate that this is priority legislation but as Fintan O'Toole said in his newspaper column today on the mother and baby homes, "the past has yet to pass". We need to make the past pass by passing this legislation soon. The milestone must not be kicked aside and nor can we fail to reach it. The timeframe on this is critical and we all, including self-advocates, must keep our feet on the pedal of protest until the legislation changes. The legislation must change before this Government comes to an end or we may have to start all over again. There is a sense of urgency and we await the responses from the Office of the Attorney and the Office of the Director of Public Prosecutions. I am very anxious to engage in final consultations to conclude this Bill.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry): I congratulate Senator Zappone on this important legislation. There seems to be a consensus here, including Senators Keane and Quinn, that this is a milestone. I do not doubt that this debate will be of great benefit to the Minister and those drafting the Bill in forming a consensus on the legislation as it passes through Seanad Éireann and Dáil Éireann as Government legislation. This is about the move into the 21st century and the next generation. It is right that the discrimination that prevailed for so long will now be corrected.

Question put and agreed to.

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

Senator Ivana Bacik: Next Tuesday.

Acting Chairman (Senator Diarmuid Wilson): Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 17 June 2014.

Sitting suspended at 5.25 p.m. and resumed at 5.45 p.m.

State Airports (Shannon Group) Bill 2014: Committee Stage (Resumed)

An Cathaoirleach: I welcome the Minister for Transport, Tourism and Sport, Deputy Leo Varadkar, to the House.

NEW SECTION

Senator Averil Power: I move amendment No. 17:

In page 31, between lines 24 and 25, to insert the following:

“34. The Air Navigation and Transport (Amendment) Act 1998 is amended by inserting a new section 32A as follows:

“32A. The IAS scheme shall not be allowed to close its pension scheme except where the scheme has reached a minimum 90 per cent funding standard.”.”.

I referred to this amendment when discussing the Bill last week. Essentially, it provides for a recommendation made by the OECD report on pensions which recommended that in a single insolvency situation where the pensions scheme is insolvent but the sponsoring employer is not, the company should not be able to walk away from the scheme unless the assets in the scheme cover 90% of the pension liabilities. It is incredibly unfair that a company that is still profitable would be allowed walk away from a scheme without ensuring that proper financial provision has been made. The IAS scheme, a scheme into which employees paid contributions from their wages over extended periods, was used for redundancy payments in SR Technics and to incentivise early retirements from the Dublin Airport Authority and Aer Lingus. The employees were given an assurance that they were members of a defined benefit scheme.

We are in a situation where on foot of the legislation the Minister for Social Protection, Deputy Burton, introduced, to which I objected at the time, and the proposed section in this Bill, the IAS scheme will not only be able to wind up without the consent of the employees, under the earlier section which we discussed and voted on last week, but the employers will be able to walk away from the scheme without ensuring it is adequately funded. Whatever about a double insolvency position where the company is insolvent and does not have the money to make up the difference, it is wrong that a financially viable and profitable company should be able to throw people's terms and conditions out the window and close a scheme, into which those employees had paid over an extended period without making proper financial provision. This is why we are tabling this amendment. It is based on a recommendation by the OECD, which is an expert on pension provisions across OECD countries. Unfortunately, the Government voted against an amendment we moved last week which would have ensured the IAS scheme could not simply be closed down and people's entitlements thrown out the window without their consent. We put the issue to a vote and the Government Senators voted against it. The least we should do now is to ensure that a scheme cannot be wound down unless it is properly funded and the employers' take their fair share of the responsibility for it by ensuring sufficient assets are available to meet liabilities.

Minister for Transport, Tourism and Sport (Deputy Leo Varadkar): I will not be accepting the amendment. As I made clear previously, I cannot impose or prescribe solutions for

the current difficulties in the IAS scheme. These are matters for resolution by the trustees, the employers and the Pensions Authority. If this amendment is accepted, it would add a further constraint to what is already a highly complex and inflexible pension scheme. It also carries the implication that the scheme could continue indefinitely with an unresolved substantial deficit in a manner that would be in conflict with the Pensions Act 1990. That is not a tenable situation. The Pensions Authority, as the national regulatory body for pensions, will be the ultimate adjudicator on any decision to wind up this scheme if the parties cannot agree on solutions consistent with the 1990 Act. As I explained last week, I am providing in the Bill for an alternative to a wind up situation should it prove impossible for the parties to agree an acceptable and sustainable way forward. Separately, and based on my own reading, the amendment may be flawed in terms of its intent because it provides that the scheme could not close except where it has reached a minimum funding standard of 90%. A simple way to reach a 90% standard is for the trustees to savagely slash the benefits. I imagine that is not what Senator Power is proposing but it appears that her amendment would allow that as a potential solution.

On Committee Stage I made an observation on the proposals issued by the trustees last March. I implied that the proposals were disproportionate as far as the deferred pensioners were concerned. The trustees have since been in touch with me to point out that what they are proposing is exactly the same for both active and deferred members of the IAS scheme. When I spoke on this last week, I meant to say that I regard the overall package, which incorporates substantial cash contributions from the employers as well as the trustees' proposals, as capable of being improved on as far as the deferred pensioners are concerned. These proposals are subject to ongoing discussions and the trustees have also asked that the position of deferred members and pensioners be taken into account in those discussions. Following a commitment I gave in this House, the expert panel has agreed to meet with the group representing deferred members.

Senator Averil Power: I welcome the Minister's response regarding deferred members. It is unfair that they have not been part of the process to date and I welcome that a meeting will take place. I look forward to hearing further details on that subject. The group has done a considerable amount of work on the issue and its concerns deserve to be heard.

I am disappointed, although not entirely surprised given the intent behind this legislation, that the Minister will not accept our amendment on ensuring minimum funding of 90% before a scheme can close. As I pointed out to the Minister for Social Protection in regard to pensions legislation last year, it is wrong that employers are able to walk away scot free without being required to provide a certain level of funding, whether that is 90% or 80%. A profitable company should not be able to walk away from its pension schemes without being required by the Government to ensure they are adequately funded in line with OECD recommendations. It is a shame that the Minister is not willing to listen to reason on this issue and, for that reason, we will be pressing the amendment.

Senator Sean D. Barrett: On the issue of pensions in general, trustees must face up to their responsibilities. In regard to the casual addition of extra years or early retirement schemes which run up deficits amounting to hundreds of millions of euro, people must examine their situations so that we do not get a repeat of what happened to the banks in 2008. I note there are complaints on the adjoining island about high administration costs and low investment returns. One of the excuses given for pension funds getting into difficulties is that increases in longevity were unforeseen. I noted previously to the Minister for Social Protection that it has been known for at least 100 years that longevity is increasing. Pension fund trustees have a responsibility

not to present bankrupt situations to the Government and asking to be bailed out. In general, financial services in Ireland have not been regulated tightly enough, and pension funds are part of that. Irrespective of whether the board can manage alone or whether pensions schemes should be regulated by the Central Bank, it is part of the picture of a non-performing financial sector, which the Government should address. In regard to the casual way in which red ink appears on pension funds, with the potential consequence of causing disputes and strikes, the causes might bear examination. It would be useful to develop some procedure by which the trustees can explain to members how these deficits were run up.

Deputy Leo Varadkar: For clarity, it is neither right nor fair to characterise the employers or companies as walking away from their responsibilities. The remaining employers in the scheme, DAA and Aer Lingus, have between them offered to put over €100 million into the scheme. It is not the case that they are walking away from their responsibilities. People are trying to find a solution to a pension scheme with a deficit of over €700 million, and regardless of Aer Lingus's profits last year or the paltry profits of the DAA, their profits would be wiped out for I do not how long if they were expected to come up with that sum of money. The DAA alone has a net debt of approximately €600 million. It is certainly not the case that the companies can bear the entire deficit. A compromise is required whereby the companies put in some money to shore up the scheme or create a new one, and the beneficiaries, whether deferred pensioners or active members, accept reduced benefits. That is the only way this will be solved and it is the way similar problems in direct benefit schemes have been solved. It is a shame that the matter was not resolved a long time ago.

We also should not forget those who have joined DAA in Shannon and Aer Lingus in recent years. This scheme has been closed to new entrants for quite some time, with the result that a considerable number of people working in the State airports and in Aer Lingus have no pension scheme. They are often forgotten in this debate. They have been working for a semi-State company in the case of DAA and a very successful company in the case of Aer Lingus but their only option is to set up their own personal private pension scheme or a PRSA. Part of the solution to this problem will be the establishment of a new sustainable scheme of which they can become members. There is too much keenness in this country to pull up the ladder on young people and new entrants. I want to ensure that whatever arises from this offers a solution to these individuals, about whom nobody seems to be speaking. It is interesting that we have debated the issue in this House for quite some time without anybody mentioning the hundreds or even thousands of relatively young people in their 20s, 30s or perhaps older who have no pension schemes.

6 o'clock

Senator Averil Power: I can assure the Minister that Senators on both sides of the House want to see a fair and equitable resolution to the pension difficulties facing the scheme. It has been going on for a number of years and a fair solution needs to be found.

The Minister said he cannot interfere in those arrangements but that is precisely what he is doing in bringing forward this legislation. As my colleague, Senator Darragh O'Brien, pointed out last week, it is unprecedented for the Government to bring forward legislation that interferes with the private pension rights of employees in such a way. It has not happened with any other company and it is inappropriate.

It is also unfair that the Minister is essentially legislating so that the scheme can be wound up without the consent of any of its members and without meeting any minimum funding stan-

dard. The situation has not been resolved, although we asked the Government to withdraw the previous section from the Bill and allow the expert panel to continue its work on seeking a fair resolution. I do not think that is unreasonable.

The expert panel was set up to try to find a solution to all these issues: to look at the ability of the company to pay, to consider what is reasonable, and to weigh that against the rights of employees and deferred pensioners and others who paid into a scheme in the assurance that it was going to be a defined benefit scheme and come up with a fair arrangement. Instead, the Minister is pre-empting all of that and legislating that the scheme can be wound down without any of those protections. That is why we think it is wrong. We want, at least, to insert this one protection based on the OECD's recommendations. That would ensure that trustees would have to clear at least one hurdle before being able to close the scheme.

As regards the overall issue, however, we do not feel that any provisions concerning the IAS should be in this Bill. We would have preferred the Minister to withdraw the other section and allow the expert panel to do its work.

An Cathaoirleach: I call an tAire.

Deputy Leo Varadkar: I have nothing further to add.

Amendment put:

The Committee divided: Tá, 16; Níl, 21.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Byrne, Thomas.	Brennan, Terry.
Crown, John.	Burke, Colm.
Heffernan, James.	Coghlan, Eamonn.
MacSharry, Marc.	Coghlan, Paul.
Mooney, Paschal.	Comiskey, Michael.
O'Donovan, Denis.	Conway, Martin.
O'Sullivan, Ned.	Cummins, Maurice.
Ó Clochartaigh, Trevor.	D'Arcy, Jim.
Ó Domhnaill, Brian.	D'Arcy, Michael.
Ó Murchú, Labhrás.	Gilroy, John.
Power, Averil.	Hayden, Aideen.
Quinn, Feargal.	Henry, Imelda.
Walsh, Jim.	Keane, Cáit.
White, Mary M.	Moloney, Marie.
Wilson, Diarmuid.	Moran, Mary.
	Mullins, Michael.
	Noone, Catherine.
	O'Keeffe, Susan.
	O'Neill, Pat.
	van Turnhout, Jillian.

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

Amendment declared lost.

Suspension of Standing Orders: Motion

Senator Thomas Byrne: I move: “That Standing Orders for today’s sitting be suspended.”

I want to move a suspension of Standing Orders under Standing Order 159. A short time ago in the Dáil, the Taoiseach stated that in order for terms of reference to be adopted and a mandate to be given to the banking inquiry, the Government needed to have a majority on it and that the matter was now being considered by the Seanad. I call for a suspension of Standing Orders because this is a grave imposition on the Seanad by the Executive and is totally uncalled for. If any consideration is being given by the Seanad to giving the Government a majority, I as a Senator would like an explanation of it because I am not aware of it. I, therefore, formally propose under Standing Order 159 that the Cathaoirleach grant a suspension of Standing Orders so that we might discuss what the Taoiseach said in the Dáil and get clarity on what exactly the Taoiseach claims is happening in the Seanad in his determination to impose a Government majority against the democratic wishes of this Chamber.

Senator Maurice Cummins: I am not agreeable.

Question put: “That Standing Orders for today’s sitting be suspended.”

The Seanad divided by electronic means.

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

Question put:

The Seanad divided: Tá, 17; Níl, 23.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Byrne, Thomas.	Brennan, Terry.
Crown, John.	Burke, Colm.
Cullinane, David.	Coghlan, Eamonn.
Heffernan, James.	Coghlan, Paul.
MacSharry, Marc.	Comiskey, Michael.
Mooney, Paschal.	Conway, Martin.

O'Donovan, Denis.	Cummins, Maurice.
O'Sullivan, Ned.	D'Arcy, Jim.
Ó Clochartaigh, Trevor.	D'Arcy, Michael.
Ó Domhnaill, Brian.	Gilroy, John.
Ó Murchú, Labhrás.	Hayden, Aideen.
Power, Averil.	Henry, Imelda.
Walsh, Jim.	Keane, Cáit.
White, Mary M.	Moloney, Marie.
Wilson, Diarmuid.	Moran, Mary.
Zappone, Katherine.	Mullins, Michael.
	Noone, Catherine.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Quinn, Feargal.
	Sheahan, Tom.
	van Turnhout, Jillian.

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

Question declared lost.

Business of Seanad

An Cathaoirleach: The Leader wishes to make an amendment to the Order of Business.

Senator Maurice Cummins: I propose an amendment to the Order of Business, that we would adjourn the State Airports (Shannon Group) Bill at 7.15 p.m. rather than conclude it, if not previously concluded.

An Cathaoirleach: Is that agreed? Agreed.

Senator Sean D. Barrett: I wish to raise a point of order.

An Cathaoirleach: Could we have silence in the House please? Senator Barrett wishes to raise a point of order.

Senator Sean D. Barrett: The reports we have heard - they have not been confirmed - that the Taoiseach is concerned that the banking inquiry should have a pro-Government majority-----

An Cathaoirleach: That is not a point of order. We are proceeding to resume our discus-

10 June 2014

sion on the State Airports (Shannon Group) Bill 2014.

Senator Sean D. Barrett: I accept your ruling, a Chathaoirligh, but could I just say that partly it is based on a misunderstanding that I am an anti-Government member of the committee.

An Cathaoirleach: That is not a point of order. We are proceeding to deal with section 34 of the Bill.

Senator Sean D. Barrett: I gather that the other House has been suspended on the basis of the appointments to the banking inquiry. If I could do anything to alleviate the fears that appear to exist in Government that the committee as constituted would not serve the country, I would welcome the opportunity, at your discretion, to explain my position. I appreciate that we have resumed discussion of the Bill but I wish to set the fears of the Government at ease on how the finance committee operates under Deputy Ciarán Lynch.

An Cathaoirleach: That is not a point of order. The other House is in session.

Senator Sean D. Barrett: It might damage governance and this House if the Government insists on having a majority on the committee and overturns the committee that has been duly constituted.

An Cathaoirleach: I must rule Senator Barrett out of order. We are proceeding to deal with section 34 of the State Airports (Shannon Group) Bill.

Senator Sean D. Barrett: Go raibh maith agat, a Chathaoirligh.

Order of Business, as amended, agreed to.

State Airports (Shannon Group) Bill 2014: Committee Stage (Resumed)

Sections 34 to 43, inclusive, agreed to.

SECTION 44

An Cathaoirleach: Amendments Nos. 18 to 21, inclusive, are related and may be discussed together.

Government amendment No. 18:

In page 37, line 22, to delete “unlawfully parked in any place in the airport” and substitute the following:

“parked contrary to bye-laws made under this section or parked without payment of the charge fixed for its parking”.

Minister for Transport, Tourism and Sport (Deputy Leo Varadkar): Amendments Nos. 18 to 21, inclusive, are technical adjustments to the provisions of section 44 which deal with amendments to the airport by-laws as set out in the 2004 Act. They do not change the substance of what is already provided.

Amendment No. 21 is provided solely for legal clarity. The airport by-laws have always provided that the airport authorities may regulate parking at airports. Airports have charged for parking and for removing clamps, etc., for many years.

Amendment agreed to.

Government amendment No. 19:

In page 37, lines 23 and 24, to delete “and the amount of any fee to be paid in respect of such removal”.

Amendment agreed to.

Government amendment No. 20:

In page 37, line 26, to delete “and the amount of any fee in relation to such,”.

Amendment agreed to.

Section 44, as amended, agreed to.

NEW SECTION

Government amendment No. 21:

In page 38, between lines 32 and 33, to insert the following:

“Airport may make charges for vehicle parking and removal of immobilisation devices, etc.

45. A company (within the meaning of section 15 of the Act of 2004) or, with the consent of the Minister, an airport which is not a company, may provide parking facilities and fix charges in respect of the parking of a vehicle at its airport and for the removal of an immobilisation device fixed to a vehicle or a vehicle removed, detained, stored, released or disposed of under bye-laws made under section 15(3)(o) of the Act of 2004.”.

Amendment agreed to.

SECTION 45

Question proposed: “That section 45 stand part of the Bill.”

Senator Sean D. Barrett: The Minister announced this morning controls on clampers in general which has been generally welcomed.

Question put and agreed to.

Sections 46 to 49, inclusive, agreed to.

NEW SECTION

Senator Sean D. Barrett: I move amendment No. 22:

In page 43, after line 25, to insert the following:

“Criteria for efficient airport investment and operation

50. The Commission for Aviation Regulation shall publish reports in regard to State airports and comparable international airports stating—

- (a) passengers per employee,
- (b) work load units per employee,
- (c) operating cost per work load unit,
- (d) capital cost per work load unit,
- (e) aircraft movements per employee,
- (f) aircraft movements per runway,
- (g) passengers per airport gate,
- (h) passengers per square metre of terminal, and
- (i) other measures of performance indicators deemed appropriate by the Commission.”.

The Minister and I are at one that we need these measurements for the efficiencies of airports. Since we started these deliberations, there was another determination of the maximum level of airport charges by the Commission for Aviation Regulation, CAR, dated 29 May 2014. The Minister, I understand, was considering whether the Department, the commission or the Central Statistics Office, CSO, would publish the information. We have a legacy problem of excessive capital investment in our airports and the premature building of terminals. The regulator has many suggestions which have come to light since we put down these amendments and so forth.

Will the Minister decide on Report Stage where is the best place to put this useful information when deciding investment plans at airports, as he suggested earlier that he welcomed this proposal? We have a very competitive aviation business and we need airports to be competitive internationally.

An Cathaoirleach: This amendment has already been discussed.

Senator Sean D. Barrett: This is why these indicators of efficiency should be in place. More have come to light since I put this amendment down. They are offered to the Minister in that spirit. The Parliament and the Minister need that information from which we can judge whether airport charges are correct and capital investment proposals are worthwhile at the time which they are proposed.

An Cathaoirleach: Is the Senator pressing the amendment?

Senator Sean D. Barrett: I would prefer to hear the Minister’s response if I may. There may be agreement and, therefore, it may not be necessary to press the amendment. I do not wish to detain the Minister unnecessarily-----

An Cathaoirleach: The Minister has responded already on this amendment.

Deputy Leo Varadkar: I am at one with the Senator in that we need to have much better statistics on transport, to have them independently collected and published regularly. We are getting there. The Irish Maritime Development Office already publishes an excellent statistical bulletin and reports. The National Transport Authority now has the power to collect transport statistics for public transport. For the first time, it has the legislative authority to require private transport operators to hand over their statistics which will be helpful in planning the bus network. I agree we need a similar set-up for the airports and aviation sector. I am not sure whether it needs to be written into legislation or that CAR is the right body to do it.

Will the Senator withdraw the amendment and I will deal with it in the context of aviation policy, picking the right body to do it whether it will be the Irish Aviation Authority, IAA, the CSO or the Department?

Senator Sean D. Barrett: I thank the Minister for his response. I look forward to working with him on these efficiency and productivity measures. I will not press the amendment.

Amendment, by leave, withdrawn.

Section 50 agreed to.

SECTION 51

An Cathaoirleach: Amendments Nos. 23 to 26, inclusive, are related and amendments No. 24 and 25 form a composite proposal. They can be discussed together.

Government amendment No. 23:

In page 44, to delete lines 8 to 21 and substitute the following:

“ “ ‘retailer’ and ‘organiser’ have the meaning assigned to each of them, respectively, in the Package Holidays and Travel Trade Act 1995;

‘sufficient evidence of security’, in relation to a package, means sufficient evidence of security for the refund of money paid over and for the repatriation of a consumer in the event of insolvency of the retailer or organiser of the package in compliance with the requirements of—

(a) section 22 of the Package Holidays and Travel Trade Act 1995, or

(b) if the retailer or organiser is established in another Member State,

measures giving effect to Article 7 of Council Directive No. 90/314/EEC of 13 June 1990 in the other Member State;”, ”.

Deputy Leo Varadkar: These amendments are of a linguistic nature and do not change the effect of the existing text in section 51. The amendments insert phrases from the EU package travel directive so the text relates more exactly to the language used in that directive. For instance, “retailer” and “organiser” is inserted instead of package provider. These amendments also add the phrase “established in the State” to make it clear the provisions of the 1982 travel trade Act applies only to businesses established in Ireland. Clarity is provided as to what carrying on a business in the State means under the 1982 Act, including that business can be carried out in Ireland at a distance as in by e-commerce by a business established in another member state. The amendments also make it clear that the 1982 Act relates only to travel commencing

in Ireland destinations outside of Ireland.

Amendment No. 26 is a technical amendment to make it clear for the avoidance of doubt that the provider referred to in the section is a provider of travel services established in the State. It also makes clear the penalties provided in the section only apply to businesses established in this State.

Amendment agreed to.

Government amendment No. 24:

In page 44, to delete lines 23 to 38, and in page 45, to delete lines 1 to 13 and substitute the following:

“ “Restriction on carrying on business as tour operator

4. A person established in the State, shall not carry on business as a tour operator in the State or hold himself or herself out, by advertisement or otherwise, as carrying on such business unless he or she—

(a) is the holder of a licence granted under section 6 to carry on such business, or

(b) being a retailer or organiser of packages established in the State,

has—

(i) sufficient evidence of security in respect of packages offered for sale or sold by him or her, and

(ii) has provided a notification to that effect, in the English language, to the Commission for Aviation Regulation before carrying on such business.

Restriction on carrying on business as travel agent

5. A person established in the State, shall not carry on business as a travel agent in the State or hold himself or herself out, by advertisement or otherwise, as carrying on such business unless he or she—

(a) is the holder of a licence granted under section 6 to carry on such business, or

(b) being a retailer or organiser of packages established in the State,

has—

(i) sufficient evidence of security in respect of packages offered for sale or sold by him or her, and

(ii) has provided a notification to that effect, in the English language, to the Commission for Aviation Regulation before carrying on such business.

Requirements on a retailer or organiser of packages established in another Member State carrying on business in State

5A. (1) A retailer or organiser of packages whose place of establishment is in another

Member State shall not carry on business, including on a temporary basis, either physically or at a distance, as a retailer or organiser of packages or hold himself or herself out, by advertisement or otherwise, as carrying on such business in the State unless he or she—

(a) has sufficient evidence of security in respect of packages offered for sale or sold by him or her in the State, and

(b) has provided a notification to that effect, in the English language, to the Commission for Aviation Regulation before carrying on such business in the State.

(2) A tour operator or travel agent, whose place of establishment is in another Member State, other than a retailer or organiser of packages, may carry on business in the State, including on a temporary basis, either physically or at a distance.

(3) In this section, ‘carrying on business in the State’ means the sale of travel services in the State for travel which commences within the State to destinations outside the State.”.

Amendment agreed to.

Government amendment No. 25:

In page 45, to delete lines 16 to 22 and substitute the following:

“Offence – contravening section 4 or 5 and penalties

20. (1) A person who carries on business, or holds himself or herself as carrying on business—

(a) as a tour operator, retailer or organiser of packages, in contravention of section 4, or

(b) as a travel agent, retailer or organiser of packages, in contravention of section 5,”.

Amendment agreed to.

Section 51, as amended, agreed to.

SECTION 52

Government amendment No. 26:

In page 46, line 31, to delete “the provider” and substitute “a provider established in the State”.

Amendment agreed to.

Section 52, as amended, agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported with amendments.

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

10 June 2014

Senator Pat O'Neill: Next Thursday.

Report Stage ordered for Thursday, 19 June 2014.

Sitting suspended at 6.50 p.m. and resumed at 7.15 p.m.

Companies Bill 2012: Second Stage

Acting Chairman (Senator Paschal Mooney): I welcome the Minister of State, Deputy Seán Sherlock.

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

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Sean Sherlock): My speech, along with the information pack containing supplementary documentation, has been circulated.

I am pleased to bring the Companies Bill 2012 before the Seanad today. The Bill as presented represents a landmark legislative project, which is the result of many years of detailed and comprehensive work by officials in the Department of Jobs, Enterprise and Innovation, the Company Law Review Group and the Office of the Parliamentary Counsel to the Government. It is the largest substantive Bill in the history of the State, spread out over 25 Parts, 17 Schedules and comprising 1,436 sections. We got through this in two days on Committee Stage in the Dáil, and I hope that signals how it might be dealt with in this House. It was recognised at an early stage of the process that a mere consolidation of the existing Companies Acts would be too limiting in light of the reforms necessary to sustain Irish competitiveness with respect to company law. Instead, an overhaul and restructuring of the company law framework was embarked upon. The result is a Bill that provides a state-of-the-art framework for all businesses operating in Ireland, whether domestic or foreign and irrespective of size.

The principal objective of the Bill is to restructure, consolidate, simplify and modernise company law in Ireland and in doing so improve Ireland’s competitive position as a location for business investment. This reform seeks to ensure a balance between simplifying the day-to-day running of a business, maintaining the necessary protections for those dealing with companies, such as creditors and investors, and putting in place an effective corporate governance regime to ensure compliance. Any modernisation and reform of company law must be viewed against the backdrop of the fact that limited liability itself is a concession by the State to business, and must therefore be tempered by robust regulation to protect creditors’ interests.

In making company law more accessible, more coherent and more reflective of actual business practice, Ireland’s international competitiveness will improve and ordinary businesses and companies throughout the country will find it easier to establish and operate. However, by simplifying the law and making it more intelligible, it is not intended to water down compliance. In fact if the law is more accessible, it is more likely to ensure respect and compliance.

It is important to bear in mind that the last major review and consolidation of Irish company law was in the lead-up to the Companies Act 1963, more than 50 years ago. Since then there have been 17 amending Acts and 15 statutory instruments, which are required to be read as one

with the principal Act. In that time, Ireland has taken on EU obligations on the harmonisation of laws, and this has inevitably added to the volume and complexity of Irish company law. Therefore, the Bill seeks to break company law down into distinct principles and areas and to remove or lessen the administrative burdens where possible and appropriate, bearing in mind that the public interest will sometimes require the introduction of additional regulation. These developments will bring Irish company law into the 21st century and ensure Ireland maintains a competitive edge as one of the best places in Europe, and indeed the world, in which to do business.

The Bill is the culmination of 14 years of work by my Department and the Company Law Review Group, CLRG. The CLRG is a statutory body that was set up in February 2000 and includes all relevant stakeholder interests, with members from Departments, professional bodies representing solicitors, barristers and accountants, employer and trade union interests, and regulatory bodies. To date, the group has published 15 reports and these reports have been freely available on the CLRG website. By making these reports publicly available, the transparency of the CLRG's decision-making process is ensured and the reasoning behind any recommendations issued by the group can be analysed. Members of the public and interested groups have been free to make submissions to the CLRG and all such submissions are given due consideration.

In advance of publication of the Bill to the Oireachtas, Volume 1 was published in draft form on my Department's website in May 2011. This afforded an opportunity to all interested stakeholders to familiarise themselves with the proposed new legislation, to interrogate it from a technical perspective and to prepare for its introduction. Submissions were welcomed and a number of the proposals were adopted in the Bill as published.

Following publication of the Bill in December 2012, suggestions and observations regarding the Bill began to flow from company law users throughout the country. To date, in excess of 1,000 such suggestions have been received and each one has been subject to careful analysis by my Department. Many of these suggestions formed the basis of the amendments put forward during the Bill's passage through the Dail. In all, more than 400 amendments were carried during Committee and Report Stages. While this was a large volume, it is worth noting that these amendments did not seek to change either the policy or the structure of the Bill. The purpose of the amendments was generally to bring about technical and practical improvements. It is clear that the development of this Bill has, at every stage, involved extensive input from a wide variety of sources and I thank sincerely the members of the CLRG, as well as the many other individuals and groups, who have contributed to this hugely collaborative project.

Turning now to the Bill itself, one of the striking features is the general structure it has adopted. For the first time in Irish company law, the most common company type, the private company limited by shares, is placed at the core of the legislation as the default company. By adopting this structure the Bill acknowledges the practical reality that almost 90% of the companies currently registered at the Companies Registration Office are private companies limited by shares. In addition the Bill rectifies the anomaly in the current legislation that presupposes that the public limited company, PLC, is at the centre of corporate life in Ireland. In reality fewer than 1% of companies are registered as PLCs. The result is that the architecture of the company law code is now recalibrated to reflect the true landscape of enterprise in the State. There is world of difference between the one person private company formed by a tradesperson and the large publicly listed limited company. To ensure greater accessibility to the new company law code, the Companies Bill is made up of two volumes. Volume 1, containing Parts 1

to 15, inclusive, sets out the law applicable to the most common company type in the State, the private company limited by shares - the new limited company, as it were. In keeping with the objective of ensuring the law is clearly accessible, the Bill is arranged to reflect the life cycle of the company, starting with the incorporation of a company, followed by matters pertaining to its operation and finally providing for the company's wind-down.

Volume 2, which contains Parts 16 to 25, inclusive, and the Schedules, sets out the other types of company that can exist and how the law contained in Volume 1 is applied, disapplied or varied for each other company type. These other company types are the designated activity company, DAC, the public limited company, PLC, the guarantee company, CLG, the unlimited company, the unregistered company and the investment company. There are legitimate users of all the different company types set out in the Bill and it is imperative that Irish company law should facilitate all types of enterprise and the wider commercial community by making appropriate provision for these different company types.

Returning to the new model private limited company, the Bill contains a number of significant innovations and reforms for this company type. First, this company type will have the same legal capacity as a natural person. The current *ultra vires* rule does not apply to this new company type. The *ultra vires* rule is the legal doctrine whereby a company must have what is known as an objects clause in its memorandum of association. Removing the need for an objects clause will both ease the administrative burden on companies and provide certainty to third parties, such as lenders, who will no longer have to examine extensive objects clauses to determine whether a company is acting within its powers. This company type will be allowed to have only one director. Under the current law, a company must have at least two directors and even if one person wishes to establish a business as a company on his or her own, he or she needs to find an additional person to act as the second director. Removing this requirement will make it easier to start a new business. The new limited company can have a minimum of one member and a maximum of 149 members. The 149 member upper limit is linked to the requirements of EU prospectus law, which governs the offer of shares to the public. The new limited company will have a single document constitution, in contrast to the current law whereby every company must have two documents, a memorandum of association and separate articles of association. The new limited company will no longer be obliged to go through the formality of holding a physical annual general meeting, AGM, where all the members have to convene in one location at the same time on an annual basis. Instead the members will be able to hold a written AGM, whereby all the matters which must be dealt with at the AGM can be approved by written procedure.

The Bill contains a codified version of the fiduciary duties to which directors are currently subject by a combination of the common law and statutory provisions. This brings all of these duties together in a single identifiable place, making it easier for directors to understand their responsibilities and more difficult to deny their existence. This also addresses one of the recommendations of the Moriarty report on company law. The Bill contains what is known as a summary approval procedure, which is applicable to a number of activities, for example, the reduction of capital, which under the current law might require the company to undertake the burdensome and expensive process of securing court approval. The new summary approval procedure incorporates safeguards on directors' liability in circumstances where the procedure is used without proper justification. Additionally, there are a number of innovations which will apply to other company types. For example, Part 20 enables any company to convert from its existing company type to any other company type that can be formed under the Bill. This is in

contrast to the current law which contains restrictions on conversions. This provides flexibility and greater options to companies which face a change in their circumstances. For the first time, guarantee companies will be able to avail of the audit exemption. This innovation will be of significant benefit to the sectors which tend to use the guarantee company structure, for example companies in the voluntary sector, charities and residential management companies, while at the same time recognising the particular circumstances applying to guarantee companies in allowing a single member to object.

Moving on from the key innovations, I now turn to the amendments passed by Dáil Éireann. As I mentioned earlier, a large number of amendments have been passed and, due to the volume, it is not possible to cover each one. However, I will briefly touch on some of the more significant.

There is now an explicit prohibition on bearer shares. This will enhance Ireland's reputation as a country which is playing its part in the international movement against money-laundering. In a winding-up, company books and papers must be retained for six years, rather than three years, after the dissolution of the company. This brings Ireland in line with best practice internationally. It also makes it easier for authorities such as the Revenue Commissioners, or the ODCE, to investigate potentially fraudulent or criminal activity. There has been a significant increase in the minimum share capital thresholds for companies that wish to appoint restricted persons as a director.

In addition to those measures designed to reduce white-collar crime, other amendments have focused on the modernisation and efficiency of company law. Such changes include permitting companies to use cloud computing solutions for keeping records; modernising some provisions regarding service of notice; and clarifying certain powers of directors upfront in the Bill in order to avoid every company having to change their constitution individually.

I now turn to the substance of the Bill. Due to the unprecedented size of the Bill, it is not possible to give a detailed explanation for each of the 1,436 sections. Instead, I will give an overview of the 25 constituent Parts, along the way highlighting any significant changes to the law and explaining the policy behind these changes. The supplementary information provided to the Senators contains a more detailed overview at chapter-by-chapter level.

Part 1 consists of 14 sections and is largely devoted to housekeeping. It sets out the structure and defines terms which are used throughout the Bill. Part 2 makes provision for the incorporation and registration of the new model private company limited by shares - the new LTD company - and provides that any one or more persons may form such a company. The most significant aspect of this Part is the provision for the conversion of an existing private company limited by shares to a new model private company limited by shares. If the company chooses to opt for the new regime, Schedule 1 sets out a template to assist them. Companies that do not elect to opt into the new regime will not be able to avail of the many advantages associated with the new model private company limited by shares, such as the ability to have only one director, the one document constitution and the possibility to avoid having a physical AGM. However, the new limited company will not suit all business activities. Therefore, a company is entitled to opt out of the new regime and can do so by converting to a designated activity company, or other company type.

Part 3 consolidates all existing law relating to share capital, shares, and certain other instruments. At present, this law is set out across the three main Companies Acts. Many pro-

visions from Table A of the First Schedule to the Companies Act 1963 are today commonly inserted into the articles of association of a company. Under the Bill they are incorporated into its text and will, therefore, apply unless the company's constitution provides otherwise. This will reduce the amount of detail required in the constitution of the company and make it more business-friendly.

Part 4 provides a framework for directors and other officers as regards their appointment, their interaction with the company and its members, and the ways in which the activities of the company are conducted on a day-to-day basis. This Part permits the new limited company to have a single director. It also allows such a company to dispense with holding an AGM, where agreed unanimously by the members. Provision is made for unanimous written resolutions, thus allowing a company to pass resolutions, including special resolutions, in writing.

Part 4 also sets out the new summary approval procedure which deals with restricted activities such as the giving of financial assistance for the acquisition of shares, making reductions in company capital, or for varying company capital. This reduces the burden and expense on companies who previously may have had to secure court approval for certain transactions. Additionally, it simplifies and streamlines the current methods of effecting such transactions. To ensure balance, it incorporates safeguards in relation to directors' liability if the procedure is used inappropriately. Greater detail on the summary approval procedure is provided in the Senators' handouts.

Part 5 codifies, for the first time in Irish law, all the duties of directors and other officers of the company. Up until now, these duties were to be found in the common law and in various statutory provisions. They are set out now, in their entirety, for the sake of clarity. It is expected that this innovation in company law will promote compliance with such duties by directors and company officers.

Also dealt with in this Part is the directors' compliance statement, which is now being introduced into law as recommended by the CLRG and approved by Government in November 2005. These provisions apply to the majority of public limited companies and to large private limited companies. It places an obligation on directors to make an annual statement, in their directors' report, acknowledging that they are responsible for securing the company's compliance with its relevant obligations. This provides that directors confirm that certain actions have been done, or where they have not been done, explaining the reasons why. Failure to prepare a director's compliance statement will constitute an offence under the Bill.

Part 6 contains provisions regarding the accounting records to be kept by companies, the financial statements to be prepared by them, the periodic returns to be made to the Registrar of Companies and the auditing of financial statements. It also covers other matters related to auditors, particularly rules governing the appointment of statutory auditors and their removal from office. To a large extent, these requirements are unchanged from existing law. However, the relevant provisions have been redrafted in order to make them easier to understand and in order to improve compliance.

Part 7 contains provisions regarding debentures and charges. It also introduces a number of changes to the current law, the purpose of which is to simplify the registration and de-registration of charges while clarifying the rules for the priority of charges. A new two-stage procedure for the registration of charges is proposed. It provides that an initial notice can be sent to the Registrar stating the intention of the company to create a charge, followed up by a further

more detailed notification within 21 days of the creation of the charge, stating that fact. In this way, it is envisaged that lenders may be more willing to advance funds if they can achieve more certainty with regard to the priority of the secured assets. The rules governing the priority of charges have also been significantly changed. Where the priority of charges is not governed by other regulation such priority will be determined by reference to the date of receipt by the Registrar of Companies of the prescribed particulars.

Part 8 deals with receivers. It substantially re-enacts the current law on receivership as contained in the Companies Act 1963, as amended. There are, however, some new provisions that set out the powers and duties of receivers. The receivers are now given certain specific powers in this Part, in addition to those conferred on them by court order or the instrument under which they were appointed. Conferring statutory powers on receivers is intended to alleviate many of the problems which arise from poorly drafted debentures.

Part 9 contains provisions relating to the reorganisation, acquisition, merger and division of companies. The main innovation in this Part is the provision, for the first time in Irish law, of a statutory mechanism whereby two private Irish companies can merge. Therefore, the assets, liabilities and corporate identity of one, are transferred by operation of law to the other, before the former is dissolved. A further innovation is that a merger can be effected without the necessity for a High Court order. Where a merger meets the requirements of the legislation, it is proposed that the summary approval procedure can be utilised to effect the merger, which can be expected to result in a significant saving of time and money. The provisions dealing with divisions are also entirely new and have been drafted to mirror the corresponding provisions in this Part that deals with mergers.

Part 10 contains the provisions regarding examinership. It largely reproduces the existing law on examinerships as contained in the 1990 Act and the recent 2013 Act which allowed small private companies to go to the Circuit Court for examinership.

Part 11 reorders in a more logically coherent way the law relating to winding up. As a result, greater consistency has been introduced between the three different methods of winding up - members' voluntary, creditors' voluntary and court ordered. This is most evident in the changes to the court-initiated mode of winding up, which will reduce the court's supervisory role in favour of greater involvement for creditors. Further changes are the introduction of new professional indemnity insurance requirements for liquidators and the requirement for a person to be qualified before acting as liquidator of a company.

Part 12 combines into one Part the many diverse provisions of the current law regarding the strike off and restoration of companies. The new provisions set out the reasons a company may be struck from the register and the procedures for restoration to the register. The Director of Corporate Enforcement will be empowered to require the directors of a company which is being struck off to produce a statement of affairs. These directors can then be required to appear before a court and answer on oath any question relating to the statement.

Part 13 substantially re-enacts, without any significant amendments, the law regarding the appointment of inspectors to companies and seeks to codify all law relating to the investigation of companies. In keeping with the stricter approach to the enforcement of company law, Part 14 brings together the various compliance and enforcement provisions, a change which will provide greater transparency. If a director applies for relief from a restriction order, the Director of Corporate Enforcement must now also be included as a notice party in any application for

relief. A new provision is inserted whereby a company is prohibited from utilising the summary approval procedure where that company has a restricted director. Additionally, higher capitalisation is now required for companies with a restricted director. A new four tier categorisation of offences is introduced. It is proposed that, subject to a small number of exceptions in the case of the most serious offences, for example, prospectus and market abuse offences, all offences under the Companies Acts should be categorised according to this four tier scheme. The Senators will find details of the scheme in their information packs. A further new provision has been introduced which provides that, following a conviction for an offence under this Bill, the court may order that the convicted person should remedy any breach of the Bill in respect of which they were convicted.

Part 15 contains provisions relating to the Registrar of Companies, the Irish Auditing and Accounting Supervisory Authority, IAASA, the Director of Corporate Enforcement and the Company Law Review Group. For the first time, the powers and duties of both the Minister and these bodies are brought together in one coherent group of legislative provisions.

I now turn to Volume 2 of the Companies Bill, which Senators will recall sets out the other types of company that can exist and how the law contained in Volume 1 is applied, disappplied or varied for each other company type set out in Parts 16 to 24.

Part 16 provides for a type of private company to be known as a designated activity company, DAC. There will be two types of DAC under the Bill - a private company limited by shares and a private company limited by guarantee, having a share capital. The primary defining feature of a DAC, although I do not know if DAC has worked its way into the popular parlance yet - we will call it a DAC-----

Senator Paul Coghlan: Give it time. One heard it here first.

Acting Chairman (Senator Paschal Mooney): There used to be a rat poison called DAC at one time.

Deputy Sean Sherlock: Senators heard it here first. The primary defining feature of a DAC will be the continued existence of an objects clause in the constitution of the company. It is envisaged that entities which would welcome the DAC include special purpose companies, for example, those incorporated for joint ventures or for use in a financing transaction. However, the Bill does not restrict the availability of DACs to persons engaged in such activities.

Part 17 is concerned with public limited companies, PLCs. The key difference between public limited companies and private companies is that only PLCs will be permitted to list their shares on a stock exchange and offer them to the public. A PLC is now permitted to have as little as one member and there is no maximum number on the membership of such a company. A PLC must have at least two directors. A PLC is obliged to establish an audit committee, and corporate governance provisions for the majority of PLCs are set out in this Part.

Part 18 provides for companies limited by guarantee, CLGs, not having a share capital. Since guarantee companies do not have a share capital, they are a popular type of company for charities, sports and social clubs and management companies. A CLG may be exempt from the requirement to use such a suffix to its name, for example, if it has a charitable object. The audit exemption is now being extended to guarantee companies under the Bill, if it fulfils the criteria for a small company. It is expected that this will benefit the many guarantee companies that are charities or sports clubs, etc. However, to ensure probity, any one member of the company is

entitled to object to the exemption and thus force a company to carry out an audit.

Part 19 provides for unlimited companies. This Part is structured in such a way that it covers both private unlimited companies and public unlimited companies. In this regard, three different types of unlimited companies are being catered for: the private unlimited company with a share capital, ULC, the public unlimited company with a share capital, PUC, and the public unlimited company that has no share capital, PULC. All three types of unlimited company exist already.

Part 20 provides for re-registration of companies. A company will generally be permitted to re-register as another type of company subject to complying with the requirements applicable to the latter company type. Re-registration will involve the passing of a special resolution and the delivery of certain documents, including a compliance statement, to the CRO. Additional requirements may apply depending on the type of company following re-registration.

Part 21 provides for the registration and disclosure requirements of external companies, also known as foreign companies or overseas companies, which have been formed and registered outside the State but which have a connection with Ireland. Existing law provides for both the concept of “place of business” and the concept of “branch”. Under the Bill, however, the “place of business” is abolished and the law will provide only for the “branch” concept. By not retaining the concept of “place of business”, it is hoped to remove the uncertainty in the current law and oblige external companies to register as a branch if appropriate and thus be required to file accounts.

Part 22 deals with unregistered companies and joint stock companies and the application of the Bill to companies formed or registered under previous Acts. It also provides a mechanism for an unregistered company to register as a PLC. The most important unregistered company in Ireland is the Governor and Company of the Bank of Ireland.

Part 23 contains the provisions relating to prospectus law, market abuse law, and transparency law. In particular, provisions are set out regarding the consequences of a breach of a measure forming a part of any of these, and requiring a company with traded securities to prepare a corporate governance statement. For the sake of clarity, these provisions are housed in a standalone Part rather than in Part 17 which deals with PLCs.

Part 24 provides for the establishment of companies as investment companies, currently provided for under the 1990 Act. To be permitted to operate, these companies must be authorised by the Central Bank. Such companies are a key constituent of the set of legal structures under which the international collective investment funds industry operates in Ireland. An investment company is a type of PLC.

The final Part, Part 25, contains miscellaneous provisions that do not naturally fit in any of the preceding Parts, such as foreign insolvency proceedings, the prohibition on partnerships with more than 20 members and certain public auditor requirements.

I am delighted with the significant benefits which the Bill will bring to all companies, big and small, throughout the country. It will make it far easier to run a business as a company and it will enhance Ireland’s competitive position as a place to start and grow a business. I look forward to working with the Senators on progressing the Bill to enactment, and I believe it will bring significant benefits to companies and to business life in Ireland.

I commend the Bill to the House.

Senator Mary M. White: Fianna Fáil is generally supportive of this Bill, which is the outcome of tremendous work over the years by various Ministers and civil servants in the Department of Jobs, Enterprise and Innovation. Ireland was a different country when the first Companies Bill was introduced more than 50 years ago. We are far more complex now than we were in the 1960s. We never heard of the word “entrepreneurship” in the 1960s but now it is an everyday term. Greater transparency is needed to make it easier for companies to grow while knowing their precise legal position.

I shall make two points based on my personal experience. In regard to Part 10 of the Bill, which deals with receivership, it is disturbing and disheartening for a company to enter receivership. It is a personal blow to those who put so much effort into their businesses. Examinership is a far better way to proceed than receivership. When a case goes before the courts, it is too easy for judges to make a decision on receivership. Generally speaking, they have no understanding of the complexity involved in doing business or the owners’ passion for holding on to their companies and helping them to return to sustainability. Approximately 1,000 jobs in small firms were saved through the examinership process in 2012, which is an increase of 67% over 2011. Anything that can assist in saving jobs is to be welcomed.

Part 5 of the Bill deals with another issue close to my heart, namely, the duties of directors and other officers. Part 5 codifies, for the first time in Irish law, all the duties of directors and other officers of a company. Heretofore, these duties were to be found in common law and various statutory provisions but they are now set out in their entirety for the sake of clarity and it is expected this innovation in common law will promote compliance. Part 5 also introduces a director’s compliance statement into law, as recommended by the Company Law Review Group and approved by the Government in November 2005. This provision, which will apply to the majority of public limited companies and small and medium enterprises, places an obligation on directors to thoroughly engage with their companies and to understand the rules of corporate governance. It is about time this was put in place. Directors will be obliged to make annual statements which acknowledge their responsibilities for securing their companies’ compliance with the relevant obligations and confirming that certain actions have been taken or, where they have not been taken, explaining the reasons for not taking them. Failure to prepare a director’s compliance statement will constitute an offence under the Bill. This provision has not yet hit the public radar and only those who are on the inside track are aware that directors’ responsibilities have changed. We have to get it into the public arena because directors will have to wake up and face their responsibilities or they will be in serious legal difficulties.

While we support the Bill in principle, the bottom line is that it has to be implemented. Anything that makes us more competitive, develops existing businesses and creates new opportunities for our little country is to be lauded. I thank the Minister of State, Deputy Sherlock, for taking the Bill.

Senator Paul Coughlan: I warmly welcome the Minister of State, Deputy Sherlock, to the House and thank him for his comprehensive overview of this Bill, which is fairly comprehensive itself. I got a fright when I saw the explanatory memorandum because it is nearly the same size as the Bill. I do not have much to say simply because I paid attention to the Minister of State while he was speaking and cannot disagree with anything he said. I recognise that many years of effort went into this Bill and that the Company Law Reform Group did great work over that period. It is a necessary consolidation measure which deals with the Companies Acts 1963

to 2013. It restructures and qualifies the law while maintaining compliance, standards and other necessary safeguards. It will make company law more understandable and simpler without removing safeguards. The inclusion of a coherent set of legislative provisions in one Act will be beneficial for competition and for Ireland, as well as those who work in the various kinds of companies concerned.

The measures contained in the Bill have been subjected to rigorous examination over a prolonged period. Like many of my colleagues, I am familiar with private limited companies from my experience as a sole trader. I welcome that it will now be possible for private limited companies to operate with one director, who will not have to bother with a separate memorandum and articles of association. Equally, I welcome the Bill's provisions on companies limited by guarantee, which might be limited by £1 or €1 in the cases of charities, clubs and other such entities. The simplification that the Bill provides is necessary.

As the Minister of State noted, the rationale for the Bill is to improve Ireland's competitive position as a location in which to do business and to modernise and reform the law. It is also important for our reputation that the corporate enforcement regime ensures compliance with the law. As far as I can see, all the safeguards are in place but we will have an opportunity on Committee Stage to make further amendments. However, given that more than 400 amendments were made to the Bill in the Dáil, I do not think there will be much for us to do in that regard. The broad community of stakeholders in company law will greatly welcome this legislation. Its 1,400 heads and general scheme dealing with 17 separate Acts and older reforms will simplify the operation of company law while preserving sufficient safeguards for members and creditors. The Bill will bring tangible benefits to a broad range of ordinary businesses.

I welcome the introduction of a procedure whereby private limited companies will be able to convert to other forms of company, including in particular a public limited company. As public limited companies only form 1% of the overall sector, it is important that we give so much time and attention to private limited companies. We will consider these issues further next week and I do not want to delay the House further. I appreciate the Minister of State's efforts and the amount of time he has devoted to the Bill. I look forward to engaging further on Committee and Report Stage. I commend the Bill to the House.

8 o'clock

Senator Feargal Quinn: The Minister of State is very welcome. It was a delight to listen to the range of views expressed. As Senator Paul Coghlan said, there were 400 amendments in the other House. We will probably only have 200 or 300 amendments when the Minister comes back to us on Committee Stage.

While I will propose a number of amendments on Committee Stage, I welcome the Government's efforts in this area. The Bill has the overall purpose of making company law simpler and, consequently, it will be easier for businesses to operate. I also hope it will set the conditions so that more foreign companies are encouraged to relocate here to do business.

I wish to raise a few issues which this Bill could incorporate concerning overall conditions for business, as well as some technical matters. First, I think the Bill should clear up the term "accountant" once and for all in order to provide better protection both for individual and business customers. The fact is that we do not have legislation regulating accountants. I am not sure if that would also include turf accountants, but certainly accountants in general.

Senator Paul Coughlan: I think they must be members of registered bodies.

Senator Feargal Quinn: Maybe so. There are a number of problems in this area, including the fact that a number of accountants have been expelled from professional bodies yet are still offering their services to the public. While there are strict standards within accountancy bodies, such as codes of practice, in essence they are voluntary.

There are also people operating outside the system. Even someone with a criminal conviction can set up a business and offer their accountancy service to the public. That is not a proper situation and Ireland is unlike many other EU member states in this regard. I am calling for some form of mandatory regulation within the Companies Bill covering the term “accountant” in order to provide better protection for the customer. Specifically, I strongly believe the term “accountant” should only be allowed to be used by those accountancy professionals who are supervised or authorised by the Irish Auditing and Accounting Supervisory Authority. The Minister of State mentioned them in his speech and that makes perfect sense.

There would be no cost involved with this measure but it would give more protection to businesses and individuals against fraud, deception and poor performance. I urge the Minister of State to address the area in the Bill which I believe would be simple and straightforward. I would really appreciate it if the Minister of State could address this problem as soon as possible - if not today, then on Committee Stage.

The Government should examine the possibility of not imposing the same burdens on small companies or SMEs, as those placed on a multinational company with thousands of employees. I note the Minister of State said that this Bill introduces a series of major reforms to reduce red tape. I think that this particular proposal would be very much in line with the Minister of State’s goals. Should we impose the same legislation on a company the size of Google with thousands of employees and, for example, a small food company employing four people?

In France, many regulations come into force once firms employ 50 workers. We should consider doing something similar here. Has the Minister of State heard of this situation in France? Could we examine the French legislation and see if there is a chance we could somehow adopt - or, if necessary, adapt - it here?

It is unfair that massive multinationals are in some ways considered the same as SMEs. What are the Minister of State’s views on this problem and could the Government do more to look at this area to help companies and SMEs in particular?

I attended the Springboard launch yesterday with the Minister for Education and Skills, Deputy Quinn, and the Minister of State, Deputy Cannon. It was interesting to meet some of those people at the launch, which Senator Mullins spoke about earlier. People such as architects, quantity surveyors or engineers may have ended up with degrees that are no longer of value to them. Such people, however, are now changing direction and taking on something else, usually in the high-tech or ICT sectors.

It is not fair that small companies should find it difficult to start up a business due to the amount of red tape involved. There should be one procedure, on one piece of paper, to set up a business. This tangible idea would reduce red tape and set the conditions to create businesses and jobs.

According to the World Bank’s *Cost of Doing Business Report 2014*, it takes four proce-

dures and as long as ten days to start a business in Ireland. I know the Minister of State disagrees with me and has said they have speeded that up, but the World Bank report is comparing us to all the other countries. In my opinion as a business person, this is simply too long. It is a real disincentive to establish a business if it takes so long to do so.

If it is made quicker and easier, it is a simple fact that more people will set up businesses, which is a good thing whether they succeed or fail. The New Zealand model is regarded as the best. There it takes just one procedure and half a day to set up a business at a cost of approximately €100. We should be aiming towards that benchmark. It should be possible to set up a business in Ireland with just one procedure in one day at a very low cost. We should examine how they do it in New Zealand. To the best of my knowledge, they do not have any big challenges there.

In Ireland, there are four specific procedures to set up a company: first, the founder of a company swears before a commissioner of oaths; second, they need to file necessary materials with the Companies Registration Office; third, they get a company seal; and fourth, they must register with the Revenue Commissioners for corporation tax, social insurance PAYE/PRSI and VAT.

My point is that these four procedures could be done on one piece of paper at a single location for a maximum once-off payment of €50. At the very least, it should be well under €100. Can the Minister of State say whether we are moving in this direction at all? We could do this on one simple piece of paper - ideally, electronically - so it would be super easy for a person to set up a business and give it a try. New Zealand has done it, so we can too. Let us at least set a target to get there by 2016, which is only two years away. Can the Minister of State comment on whether he would be open to setting this target? I have also put this point to the Minister for Jobs, Enterprise and Innovation, Deputy Bruton, so I hope there will be a response to it.

Could the Minister of State include something in the Companies Bill on reducing the number of procedures to start a company? If not, could he at the very least look at possibilities in this area, including best practice internationally? One of the issues that we should make a priority when discussing companies legislation, is reducing the amount of red tape so that it is easy to start a company. The more businesses we encourage to start the better it is. Whether they fail or not is not the issue; we should encourage the formation of businesses. Those bright people who got the benefit of Springboard are exactly the ones to do that.

I have also proposed to the Minister, Deputy Bruton, that the Government should pledge to remove legislation. This proposal is related to improving conditions for companies in Ireland. It means that the Government would make a pledge to remove a piece of legislation affecting business for every piece of legislation it imposes on business. I think it is a smashing idea.

I would like to raise a specific example that I have raised before. In the UK, they introduced a system called "One in, one out" whereby if the Government introduced one measure that affected business, it would have to take another one out. They have even moved that on now and the new system is called "One in, two out" whereby the Government pledges to remove two bits of legislation for every one introduced. It is claimed that these measures have saved UK businesses around £1 billion in burdens since 2010. We should be seeking to do this here also in order to save Irish companies millions of euro.

Could the Minister of State include something in the Companies Bill to this effect? If not,

could he propose this idea at Cabinet level in order that the Government would pledge to remove one piece of legislation affecting business for every one it introduces? That is only half what the British are doing.

The Seanad could even be tasked with finding some piece of legislation to remove. It would be fantastic to consider this matter, both in the Bill and in the wider idea of improving conditions for business in Ireland.

Those are some of the ideas that I wished to put forward. They are not related to the immediate issues addressed in the Bill. I will express further views on these matters on Committee Stage.

While the Bill is welcome, I ask the Minister of State to respond to some of my proposals for creating conditions in which companies will thrive. The concept behind the Bill is correct and aimed at achieving the outcome we all seek. I wish the Minister of State with well with it.

Senator Ivana Bacik: I welcome the Minister of State. As the largest substantive Bill in the history of the State, this is welcome legislation. Even carrying it to the Chamber took a little more work than the Bills we usually deal with. I also thank the Minister of State's officials for the helpful briefing they provided on 14 May and to which a number of Senators referred. I thank, in particular, Ms Elaine Cassidy and Dr. Tom Courtney who helpfully provided an overview of the Bill. The additional materials we received are also welcome.

This is seminal, codifying legislation. Reading through the text brought me back to the days before I specialised in criminal law when I used to lecture accounting technicians in the basics of company and business law. I did so as part of an exercise aimed at making highly complex legal provisions accessible to people who did not have a legal background. Studying to become accountant technicians, they needed to know how to work the provisions of the law. I recalled that we used always to start the series of company law lectures with the case of *Salomon v. Solomon*, a shoemaker case on the veil of incorporation and the separate corporate personality. For some reason, this case and the principle behind it resonates with people as it is a simple idea to grasp. It remains the core of company law with this legislation. Built around this Bill, however, are a web and network of different regulations, both domestic and European, that have become very hard for anyone to penetrate, including company directors, lawyers and accountants. It has become very difficult for company directors to find their way around company law.

Previous speakers referred to the many Acts dating back to the major codifying law of 1963 and including the 1990 Act, which was an attempt to bring together the newer provisions around criminal liability and so forth. That these and many more Acts have been brought together in only two volumes is a matter of great importance.

I am struck that one of the key changes in the architecture of company law following the implementation of the Bill before us will be the shift of focus to the private limited company or company limited by shares. As the Minister of State and others noted, such companies account for 90% of firms in this country. The law, however, has tended to focus on public limited companies, which account for only a small minority of companies here. To refer again to my experience in criminal law, it is a little like the teaching of criminal law where the focus is always on murder cases, despite the fact that they make up only a tiny proportion of criminal offences.

One of the issues that arises in respect of separate corporate personality and the veil of incorporation and one which has become current in recent weeks has been what is described as

the phoenix syndrome, whereby companies in the restaurant trade, the Paris Bakery in Dublin, for example, shut down without carrying out orderly windings up. In some cases, they re-open under a new brand, leaving creditors and, in the case of the Paris Bakery, employees high and dry. While we all welcome the resolution of the Paris Bakery case through the intervention of the Revenue Commissioners, it is necessary to ensure in legislation that this type of abuse of the principle of limited liability is prevented. This legislation appears to be the appropriate Bill in which to do so.

I will now address the core Parts of the Bill. As previous speakers noted, the legislation has been more than 14 years in genesis. The process commenced in 1999 and in 2000 the company law review group took up the proposal from the then Department of Enterprise, Trade and Employment to start work on drafting a codifying Bill. The group produced a number of reports and in 2011 a soft copy draft of Parts 1 to 15 of the Bill was published and a consultation process commenced. A good deal of amendment has been made to the Bill and further amendment will be made on Committee Stage. We are seeing a finessing of reforms around the idea of ensuring there is a simple, accessible structure for companies and an architecture for their regulation.

Parts 1 to 15, inclusive, contain a number of welcome provisions to simplify law on private limited companies. Under the new model, these are known as private companies limited by shares, a description which does not exactly roll off the tongue. The new company will, as is currently the case, have the same legal capacity as a natural person. The abolition of the *ultra vires* rule is welcome, as is the removal of the need for an objects clause in the memorandum of association. This requirement has become a largely artificial exercise in any case as objects clauses have developed, for the most part, into a catch-all set of provisions and no longer have a real purpose. The old cases we used to consider have become somewhat redundant and the formal removal of this rule is welcome in the new model companies.

The provision that a second director will no longer be required is also welcome. This requirement was in many cases artificial as it resulted in a second person, whether a partner, spouse or relative, being found who was willing to add his or her name to the company. The move towards a one director company is welcome. Companies will also have a single document constitution and will no longer be required to go through the formality of holding a physical annual general meeting, AGM. Instead, provision is made for a written AGM, which will simplify matters for small businesses. Previous speakers, notably Senator Quinn, have spoken of the need to ensure simplification of procedures for small and medium enterprises. This is a very important measure as the obligation to hold a physical AGM was an artificial requirement for small family companies.

The Bill also contains a simplified and codified set of obligations - fiduciary duties - for directors and deals with the streamlining of offences under company law through the four categories. These are important measures. It features a large number of other innovations, including the possibility of merging two private companies and the simplification of the application procedures that must currently be made to courts. The new summary approval procedure is very welcome.

I propose to refer specifically to the transition provisions, whereby private limited companies may choose to opt in or out for a transition period of 18 months. Clearly, a good deal of briefing of company directors is under way on how they can operate the transitional 18 month period, which can, I believe, be extended by a further 12 months from commencement. During

this 18 month period, the directors and members of the existing private companies can elect either to register as a designated activity company or DAC - this process may enter common parlance as “dacking” - or a company limited by shares. Some of the briefings from solicitors’ firms and so forth indicate that private limited companies will be treated as DACs for the transition period of 18 months given that they will, during that period, still have their objects clauses in place. The position in this regard is not clear from a reading of the Bill. At the end of the 18 month period, companies which have not opted in and become DACs will be deemed to register as a new form company limited by shares. While they may choose to register, will there be a difference in this regard? Can such companies avail of the same benefits as a new model private limited company if they are simply deemed to be registered? The Companies Registration Office will still have the existing memorandum and articles of association. While I understand that the company will be deemed to have fulfilled the new provisions, they may still have to file a one page constitution. Interestingly, there is some divergence of instruction for companies in the guides being provided by private firms as to how to operate the transition period. It is important, therefore, that the matter is clarified.

The Seanad earlier debated a much different Bill tabled by Senator Katherine Zappone on sexual offences, which proposes to end discrimination against persons with disabilities. The Senator produced a highly accessible guide to her Bill, which Senators found to be a model of good practice in that it allowed people without a legal background to see at a glance the issues addressed in her legislation. Likewise, several very helpful guides to the content of this Bill have been produced. The transitional arrangements it sets out are of particular practical significance for company owners and directors, especially in the SME sector, who may not have access to their own legal or accounting advice and are relying on what is available on the Internet. It is important that these issues be clarified. The other Parts of the Bill, which deal with other types of companies, will be much less relevant to the vast majority of directors and shareholders. However, it is very important that we have this simplified architecture, which means that different company types will have their own dedicated provisions. For example, designated activity companies are dealt with in Part 16, public limited companies in Part 17, and so on. This will make the structure of company regulation far more accessible for everybody.

The legislation has received strong cross-party support. It is an important codifying Bill which can well be described as a one-stop shop for the regulation and governance of companies. It will provide a much more simplified structure for those who wish to start up their own businesses. There is unnecessary red tape at present and it is welcome to see a way of cutting through that. We must be careful, however, that the size of the Bill does not scare off people who might not believe us when we say that it provides for a simpler and more accessible procedure. How we disseminate the information about this Bill is critical in achieving the type of compliance we want to see. I presume we are aiming for a situation, at the end of the transitional period, where 90% or more of companies will opt for the new model of private limited companies set out in Parts 1 to 15, inclusive. It is vital that people understand how they can now benefit from these new procedures. That is the practical challenge in terms of ensuring the legislation beds down quickly in practice.

Senator Sean D. Barrett: I welcome the Minister of State, Deputy Sean Sherlock, to the House. Presenting a Bill with 1,436 sections must be a record, certainly since I have been in the Seanad. I congratulate the Minister of State on his weight-lifting prowess in bringing it forward today. This is welcome legislation, its object being to reduce the cost of doing business in Ireland.

I agree with Senator Feargal Quinn's point regarding the need to define the term "accountants" in law. There are proposals circulating in this regard, some of which I am sure have reached the Minister of State. The regulatory agency for accountants has been stymied by court cases pending, as detailed in its annual reports. Some of those court cases have been resolved and we can look forward to much stricter regulation of accountants in the future.

Senator Quinn's one-for-two proposal - that one extra imposition in law on companies should be accompanied by two others being removed - is similar to a proposal that was made in respect of quangos by the well-known economist, Colm McCarthy. In making that proposal, the latter pointed to the pub licensing rule whereby the opening of a new pub required the extinguishing of two existing licences. Mr. McCarthy regarded pubs as much more important than quangos and argued, on that basis, that the establishment of any new quango certainly should require two existing bodies to be expunged.

The provision regarding the objects clause is important. We have had a tradition in this country of board membership being a badge of honour or representing inclusion in some type of club. These days, however, board members have a great deal of work to do, particularly in the financial sector where so many companies collapsed in 2008 or thereabouts. In future, directors will have to take a much stricter view of what is going on and the role that is required of them. I welcome the requirement for a statement of compliance with the objects clause. To turn directorships from an honorary role akin to membership of a club into a hard-working position is essential to the reforms the Minister of State is proposing.

I have some concerns regarding the provisions relating to annual general meetings. Sometimes at meetings useful facts can emerge, ideas can be exchanged and so on. Would there be an element of things going underground if AGMs were conducted in written form rather than taking the form of an actual meeting?

The provision regarding a directors' compliance statement is welcome, as is the proposal regarding statutory auditors and the procedures for removing them. There was a view in company law reform debate - a view that seems to have gone somewhat out of fashion - that some auditors were around too long and became part of the problem rather than the solution. The proposal was that there be a limit on the length of time an auditor can stay with any one company. Perhaps the Minister of State will consider some type of measure in this regard, such as a requirement to rotate auditors.

In his introduction to Part 15, which deals with the functions of the Registrar of Companies and advisory bodies, the Minister of State referred to the Irish Auditing and Accounting Supervisory Authority, the Director of Corporate Enforcement and the Company Law Review Group. The latter, under the chairmanship of Dr. Tom Courtney, has received universal praise. It is important to note, however, that the Irish Auditing and Accounting Supervisory Authority and the Director of Corporate Enforcement are both regulatory and enforcement bodies, and that enforcement function should be made clear in the legislation.

I support the requirement to establish an audit committee and would argue, moreover, that the audit exemption should be granted very sparingly. In fact, my view is that even entities whose dealings do not involve large sums of money - a small tennis club, for example - should prepare accounts. This is important in terms of training people up to be properly accountable. Perhaps the Minister of State will review that provision.

The provisions regarding directors' fiduciary duties and directors' statements represent welcome improvements in corporate governance. I have a query regarding section 195, which deals with majority written decisions. The note from the Minister of State's advisers indicates that this will eliminate the need for face-to-face shareholders' meetings and any inconvenience or cost associated with such physical meetings. The counterweight argument, however, is that these things should be done in public. I take my lead from Senator Ivana Bacik in pointing out that much of what is proposed in this legislation is effectively extending the openness and transparency of Parliament to the corporate sector, which is welcome. In the past, too much of what was happening was done in secret, until Parliament was required to step in when it all came off the rails in 2008. The response to the argument that it is too inconvenient or costly to have meetings is that perhaps it is too costly not to have meetings.

Finally, the note to which I referred raises a query as to whether these provisions will result in a significant divergence between the systems of company law operating on either side of the Border. Has any detailed consideration been given to that issue?

The Minister of State is moving in the right direction with this legislation. Its objects are ones we all share and the reforms he is proposing merit support. I thank the Minister of State's advisers for their help in working through this immense document. The presentation and note prepared by Mr. Brian Hutchinson and Dr. Noel McGrath were most helpful, and those learned gentlemen have assisted us greatly in coming to terms with these very complex proposals. I wish the Minister of State well in advancing the legislation. There is broad support for it in the House and his endeavour deserves to succeed.

Senator Michael D'Arcy: One of the broad criticisms made when the crisis hit a number of years ago was that we did not have sufficient legislation on the books. That was true of financial and economic legislation, but our companies legislation was not codified correctly either, which to some extent is what this Bill is doing. The demerging of the common law and statutory legislation can only be welcomed.

It is crucial that this legislation does two things. First, it should make it easier to do business and, second, it should make it less costly. I speak as an employer of two staff. As the Minister said earlier, almost 90% of companies registering with the CRO are private limited companies, yet a huge quantity of the legislation deals with the PLCs.

I mixed up the explanatory memorandum with the Bill. It was suggested earlier that a simplified executive summary should be available, so that if somebody was interested in starting his or her company, he or she would be able to get to grips with the big-ticket items in the Bill very quickly. That would be helpful.

It would also be helpful, as was mentioned earlier, if we could have some form of a tiered system. I know that the legislation has to apply to all companies, but one cannot compare some of the blue chip companies that trade here internationally and at the level at which they do so, in billions of euro, with a small company that has one director. It is a good thing that it is now permissible to have one director rather than there needing to be two. One just cannot compare like with like. For small and medium enterprises - I think that 60% of people are employed in companies of three people or fewer - we should relieve the burden of red tape and excessive bureaucracy if that is possible.

I want to touch on two more issues. Senator Bacik referred earlier to phoenix companies.

Many people in business in Ireland, whether small traders or trading as a small limited company, have a relationship of trust with those with whom they trade. They give credit in the expectation that, if they are owed, they will be paid. It is galling for anybody who is in business to see companies close down in an opportune manner and then start up again with the objective of doing out of money the people with whom they have traded, especially in the manner that Senator Bacik touched on earlier. Among a lot of people who trade, their word is their bond. A cheque is only as good as when it is paid, and people rarely if ever give out cheques if they are not to be honoured. I have a real issue with phoenix companies. There are too many people who bring into disrepute the reputation of good Irish business people by trading in that manner and the legislation should be harsh on them.

One point on which I agree with Senator Barrett - sometimes we agree; sometimes we do not - is in relation to auditing. We have spoken hard words on the record about the large auditing companies. These were the people who audited our banks and said that they were fine just a few months before they crashed. The auditing structure should not be easy and flexible. There should be strong auditing oversight wherever possible. I can only assume that somewhere within the Bill, which reminds in its size of one of the 01 directories that one would get many years ago, a strong auditing regime is provided for.

Senator David Cullinane: I welcome the Minister of State to the House. I know that he is a very busy man these days and wish him well in his hustings.

Deputy Sean Sherlock: I have to catch a flight at 7 a.m. as well, so I thank the Senator for his indulgence.

Senator David Cullinane: I shall be honest and say that I have not read the Bill. I did not draw the short straw in my party; somebody else did. I got the job of reading the explanatory notes, which are themselves 402 pages long. It is one of the largest pieces of legislation in the history of the State. It has 1,429 sections, so the sheer scale and size of the Bill are causes for concern in terms of oversight and implementation.

The Bill consolidates 16 Companies Acts with the aim of simplifying and modernising company law for the purpose of making it easier to do business in Ireland. We would all support that and would all want to make legislation as simple for businesses as possible while also protecting the integrity of company law.

I turn to some of our points of concern. Work on this legislation began in 2000 and the bulk of its drafting was completed prior to the economic and financial crisis. The Irish Congress of Trade Unions has warned that, as no investigation has been carried out of the role that existing company law played in the crisis, the Bill is not sufficiently robust with regard to regulation or protection of the public interest. It is also the view of the Irish Congress of Trade Unions that the legislation's primary concern is business interests and that it does not adequately consider third parties such as suppliers to small businesses or employees. The legislation does not provide that a registered company be managed and controlled in the state; rather, a company need only "carry on an activity" to be formed or registered in this state. The provision for a directors' compliance statement excludes the majority of companies due the height of the monetary amount set for the annual turnover and balance sheet, thus rendering the measure ineffectual. Following the DIRT inquiry, robust legislation was passed in 2003 which would have ensured directors' compliance in the areas of auditing and accounting. However, not all provisions were commenced, despite concerns raised by Revenue and the Director of Corporate Enforcement.

Directors' responsibilities to their employees have not been enhanced and remain vague. We have just heard about what happened to the Paris Bakery workers. I accept that Revenue has stepped in there, but workers were left in a state of limbo for many years because the company was not formally wound up or put into liquidation. There is no guarantee that that will not happen again, nor that, if it does so, Revenue will step in as it did in this instance. We need to correct those anomalies, which have an impact on workers' rights.

Currently, all companies have an objects clause which sets out the business that a company is allowed to perform, for example, entering into a contract. Such clauses are often lengthy, as they have to provide for every scenario. If a business engages in a transaction not provided for in the objects clause, it is considered to have gone beyond its powers and will find itself on the wrong side of the law. Businesses and their advisers have long complained about the objects clause and argued that it is obsolete in a modern business environment. In response, the Government has included a provision that gives companies full and unlimited capacity to carry on and undertake any business or activity, and to act or enter into any transaction inside or outside the state. As a consequence, as the Irish Congress of Trade Unions identifies, the Government has changed the legal persona of a company to that of a natural person, which in effect gives a company the same rights as an individual. This is a big shift in company law. Similar changes to legislation in the US have resulted in mischievous business owners engaging in anti-worker practices, arguing that it is their company's human right to do so. The objects clause is not fit for purpose, but there should be some middle ground. That could easily be achieved by amending the relevant section to state limitations on the right provided for. The Irish Congress of Trade Unions has called for the provision to be referred to the Irish Human Rights Commission, which I would support.

This Bill was an opportunity for the Government to deal with rogue employers who abused the insolvency provisions for a limited company, which I have just talked about. While we will table amendments, if they are not accepted, it is proposed to initiate a stand-alone Bill to deal with this issue once and for all. The legal anomaly needs to be sorted out.

Currently a creditor can seek the winding up of a company for a debt to the value of €1,269. The proposed legislation increases this amount to €10,000, which effectively removes the ability for an employee to pursue court action for salary moneys owed. It allows for a group of creditors to pursue a debt worth €20,000, but this scenario would not be helpful to workers in a small business. With specific references to employees, it remains the case that they could pursue an employer for moneys owed through the High Court, the cost of which is obviously prohibitive. Legislation could provide an opportunity to address this by enabling such a case to be heard in a lower court.

The Bill provides a bond of €25,000 where there is no director resident in Ireland. Arguably this is an arbitrary figure and should be accompanied by a provision that ensures the bond amount is linked to turnover and the wage bill, which would ensure that unpaid salaries, redundancy and the minimum provision for creditors are covered. Concern remains that the Bill is not sufficiently robust to ensure auditors' compliance to provide a true and fair view of a company's position. This has been dealt with during the Second Stage debate in the Dáil when the role of auditors during the economic crisis was debated. As previous speakers in the Seanad said, a balance must be struck and we need to ensure auditing is not overly prohibitive while at the same time ensuring proper scrutiny and auditing of companies and business. We have seen in banking and other sectors that auditing processes have failed and let us down. We need to learn the lessons from that.

These are some of the concerns that not only my party but other organisations such as the Irish Congress of Trade unions have. We will debate some of those issues on Committee Stage.

Senator Paschal Mooney: I, too, welcome the Minister of State and thank him for his very comprehensive explanation of what is a very complex Bill. Having listened to Senator Cullinane, the thought struck me that parts of the Bill are geared very much to business. I tried to search for the elements that would protect the worker associated with the company. I am sure the Minister of State will take the opportunity to address some of the issues raised by the Irish Congress of Trade Unions. Having said that, I welcome the common thread running through the legislation that is making it relatively easier for somebody of an entrepreneurial bent to set up and operate businesses because there is less paperwork, red tape and less bureaucracy involved. I particularly welcome the fact that a second director is not required and that articles of association and double documents are no longer required. All of these measures were inhibiting factors. I am sure there are many other examples of measures throughout the Bill that make it relatively easy for companies. This is to be welcomed.

The Minister for Justice and Defence introduced changes to the period of bankruptcy. I, together with other Members, argued that three years was too long, when one considered that in the United Kingdom one could be discharged from bankruptcy after 12 months, which gave Irish citizens an opportunity to go there as tourists. We identified the need for the Minister to reconsider whether the bankruptcy period of three years was too long. I still believe three years is too much, especially in light of the recent revelation about personal insolvency arrangements between banks and individuals, where the banks are fast-tracking the process and reaching an arrangement with the client in a period of between three and six months. I know it is very early in the day to be asking to repeal that legislation, but it seems that the provisions of this Bill make it relatively easier for people to start a business and inevitably there will be failures. At the other end of the equation, if the failures lead to bankruptcy, then that entrepreneurial ability, and I use the word “ability”, will be lost to the State. Many have given the American example that one is not successful in business unless one has failed at least once. There has been a stigma attached to people failing in business in this country but I would like to think that in recent decades, particularly in the past ten to 15 years, Ireland has greater awareness of the importance of creating business and that the entrepreneurs create jobs, which in turn contributes to the economy.

Senator Barrett has dealt with some of the issues I had wanted to raise. I found it rather interesting that the Bill rectifies the anomaly in the current legislation which presupposes that the public limited companies are the centre of corporate life in Ireland. I thought that was the case, whereas in reality fewer than 1% of companies are registered as PLCs. I am not so *au fait* with business that I understand the reason. Will the Minister of State explain how the other 99% are registered? Are they private companies with share capital or private companies where the public or the law have no access to them other than within the normal company legislation?

I agree with the expressions of concern about auditing. I understand the reason the Bill suggests exemption for charities, sports clubs and small companies. The point was made that any one member of the company is entitled to object to the exemption and thus force a company to conduct an audit. I presume that protects the rights so that, even if the majority say no to an audit, under the law any one member can object. It is not a case of the majority winning out.

Would the Minister of State comment on the decision not to retain the concept of place of business? It is hoped to remove the uncertainty in the current law and oblige external compa-

nies to register as a branch if appropriate and thus be required to file accounts. While I was reading this, I was thinking about the brass plate companies which operate in the country. Does this provision apply to them? Will it tighten up the regulation of those companies who have been using Ireland but have no legal obligation to file accounts in this country? Does this refer to large multinationals? Will the Minister elaborate on it because the impression I have - please correct me if I am wrong - is that this may tighten up a particular law in that regard in light of the discussion on corporation tax, inheritance tax and the issues raised by the Governor of California last week, which I thought was bad mannered if nothing else. Perhaps he should look into his soul in respect of American tax law before he starts commenting on Irish tax law. My understanding is that the Americans are as much responsible for not getting tax from their own companies as any other country's tax regime. I would like to know the context of the external companies tax regime.

This is welcome and I applaud the Government for introducing this Bill. I wish the Minister of State every success in progressing it.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Sean Sherlock): I thank Members for the very precise nature of the points raised in their brief contributions. I will endeavour to answer all the points but if I do not do so tonight, I hope they will indulge me to respond to them on Committee Stage when I will have comprehensive answers.

I thank the Senators for their valuable contributions to the debate on the Companies Bill 2012. I welcome the general expressions of support for the Bill. There were many positive contributions spanning across a range of issue in respect of the legislation, in particular with regard to the collaborative approach taken throughout the development of the Bill.

Senator White referred to the importance of ensuring awareness of the new legislation and providing education to the business community on the changes and new requirements. The Companies Registration Office, CRO, will have a particularly pivotal role to play in the implementation phase of the new Bill and considerable progress is already under way in this regard. This includes company owners, formation agents, company secretarial software vendors and legal and accounting practitioners to name but a few that would be impacted by this reform in the corporate code. They have been identified and specific and relevant communications and updates in preparation for implementation will be targeted by the CRO to each of these groups. In particular, the CRO is working with representative bodies for major stakeholders, such as the accounting and auditing professional bodies, to ensure that clear and early information on this new code is available.

Senator White also referred to receivership and examinership. The Government is supportive of the examinership process and brought forward legislation last year to give more small companies access to it and try to save as many jobs as possible.

Senator Quinn raised concerns about the regulation of the title "accountant". In 2007 the Company Law Review Group, CLRG, recommended the regulation of this title in the interests of consumer protection. On foot of this the Department considered the matter and noted the views of the Office of the Director of Corporate Enforcement and the Competition Authority. The Competition Authority took the strong view that there was no clear public interest case that would warrant the legal protection of the term "accountant". The authority noted the statutory regulation of a title automatically creates barriers to entry and market rigidity that can have negative impacts for service users. Based on this consideration, the fact the title is not

protected in the UK, with which we are closely associated in all matters relating to accounting, the lack of data quantifying the detriment to the consumer and the ongoing discussions of the EU professional qualifications directive, it was considered that the evidence does not support the regulation of the term “accountant”. While it is clear that there is a benefit to consumers in knowing that professionals are fully qualified and hold appropriate levels of indemnity insurance, consideration must also be given to the potential for adverse consequences such as added cost to business, increased cost of regulation and compliance, barriers to entry and to competitiveness, inhibition of the market and a threat to the continuing existence of good practitioners that do not meet the new requirements.

The Government is also obliged to consider the principles of better regulation and the Competition Authority the issue specifically in light of the principles of necessity, proportionality and effectiveness. Under each of these headings the authority found that the proposal did not meet the requirements of better regulation. However, in light of the concerns expressed by the accounting bodies the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, has asked officials in our Department to undertake an assessment of the issues by consulting with key stakeholders such as professional bodies, consumer representatives, small business representatives, regulators, the Revenue Commissioners, the Companies Registration Office and other official bodies with an interest in this matter. Members of the Oireachtas have also met the Minister to discuss this issue.

Senators Quinn and Michael D’Arcy spoke of making life easier for small businesses. We all wholeheartedly support this and the Bill is intended to do exactly that. In terms of reducing administrative burdens the Bill will implement a number of reforms on red tape that will make it easier and cheaper to run a company in Ireland and this will make a real difference to our international competitiveness. The Bill will make company law more accessible for the end user and reduce the complexity of doing business with companies. The main savings will come from the ease of setting up a company, the written AGM, the streamlining of corporate governance procedures and reduced professional fees. For example, the provisions relating to examinership allow small private companies apply directly to the local Circuit Court, rather than the High Court.

Senator Bacik spoke of redundancy payments and they are now managed by the Department of Social Protection under the insolvency scheme. However, officials from my Department are working with that Department to find a solution in cases where employees are abandoned by a company that does not formally wind up. This work is ongoing and we all share the concerns raised here relating to the Paris bakery, though this issue goes beyond that business and applies on a wider scale.

Senator Bacik also raised the matter of the deeming provisions and it is correct that a private limited company will be a DAC during the transition period. It is also correct that such a company will be able to benefit from the new limited structure, even if it does not actively change to allow itself to be deemed at the end of the transition period. I hope that answers the question.

Senator Barrett expressed concern about companies not having a physical AGM. It is worth noting that a company can, of course, hold an AGM and there is no barrier to doing this. It is up to the company whether the AGM is in writing or in person and it is a private matter for the members of a private company.

Senator Cullinane referred to the financial crisis, as have other Senators, and asked what ac-

tions have been taken to deal with its effects. The drafting of the Companies Bill began before the financial crisis but it has not been a static process. The CLRG has produced 15 reports since 2000 and its recommendations are generally reflected in this Bill. Most recently action was immediately taken on foot of a recommendation that small companies be permitted to initiate examinership proceedings in the Circuit Court as a less costly way to facilitate small companies in difficulties. The Bill also incorporates the 2009 Act, which increased and clarified the powers of the Director of Corporate Enforcement and increased the disclosure requirements relating to loans made by companies to directors. These are just a few examples of how the Bill has been adapted to take account of current economic circumstances. I want it to be on the record of this House that the Irish Congress of Trade Unions, ICTU, was included in the deliberations of the CLRG. If a document is to be quoted verbatim on the record of this House I would like to know what it is. Perhaps it could be circulated to all of us.

Senator Ivana Bacik: Hear, hear.

Deputy Sean Sherlock: Senator Cullinane is concerned that the full rights, powers and privileges of a company under section 38 of the Bill will confer human rights on companies to the detriment of workers. That is wonderfully rhetorical, if I may be so bold as to say so. The full and unlimited capacity referred to in section 38 has been included because under existing law a company has no capacity to carry on business except in so far as its constitution allows. This rule has resulted in enormous objects clauses that named every activity conceivable to its drafters. It has proved ineffective in protecting the rights of creditors and members. As a result it has been abandoned in other common law jurisdictions, most notably the United Kingdom.

Under the Bill, although directors can still be made liable for participation in certain activities by the Constitution, section 38 means that all contracts properly made on behalf of the company will be binding. It does not give a company human rights such as the unlimited capacity to enter into civil partnerships, adopt children, to be elected to public office nor even become the sole director of another company. All of these things are reserved to human persons. In terms of rights, it is well established jurisprudence of the European Court of Human Rights that human rights may be engaged with regard to the activities of companies. For example, it has held that the right to free speech under Article 10 of the European Convention on Human Rights protects advertising, including advertising by companies. Rights to privacy, property and fair trial have also been successfully argued for companies at the European Court of Human Rights. These rights are now well established and are unrelated to changes in this Bill.

Senator Mooney asked which companies were the non-PLCs. They are mostly small private companies limited by shares and a smaller portion are companies limited by guarantee, CLGs, which are mainly sporting clubs and charities. Regarding getting rid of the “place of business”, it is intended that this provision will tighten up matters as companies will not be allowed operate without making appropriate annual returns - they will be required to do so.

The issue of multinationals and tax minimisation schemes has been raised today.

9 o'clock

While I understand the genuinely held concerns of the Senators, this is a matter that is best addressed within tax law.

My colleague, the Minister for Finance, is very clear on his objective of making Ireland part of the solution to global tax challenges, and not part of the problem. International compa-

nies are in a position to avail of the differences in tax law between jurisdictions in order to minimise their taxes to the greatest extent possible. Therefore, the most effective way to address this international issue is for countries to work together. Ireland is playing an active role in the OECD base erosion and profit shifting process, BEPS, and is fully supportive of international efforts in this regard.

I am aware that the drafting of this Bill has involved a hugely collaborative effort to date and I know that we can maintain that approach as it moves through the House. I return to Senator White's point, the legislation has transcended many mandates, political parties and stakeholders. I am not saying that it is apolitical but there has been a degree of collegiality about the approach. I look forward to that further collegiality in terms of listening to the Senators' amendments when they bring them forward.

I thank the Senators who contributed to this debate. I look forward to engaging again with them on Committee and Report Stages.

Question put and agreed to.

Acting Chairman (Senator Michael Mullins): When is it proposed to take Committee Stage?

Senator Ivana Bacik: Next Tuesday.

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

Committee Stage ordered for Tuesday, 17 June 2014.

Acting Chairman (Senator Michael Mullins): When is it proposed to sit again?

Senator Ivana Bacik: At 10.30 a.m. tomorrow.

Adjournment Matters

Road Traffic Offences

Senator John Kelly: I thank the Minister of State for taking this Adjournment debate regarding fines where people go into court and claim they received summonses in regard to fines they were not aware had been issued. It has been brought to my attention that this has happened on numerous occasions. The matter has been well aired in the media as well. I refer to reports of court cases where people receive a summons in the post which is the first time they realise that, somehow, they had been issued with a fine.

An easy way to solve the problem is to have all of those fines sent by registered post to the offenders. If it is a defence on behalf of the Government that all of these fines are sent out and that people receive them but then claim they never received them in order that the judge will be lenient, it is a fallacy. For the past three years I have dealt with medical card issues and I know the PCARS would almost claim that of the 50% of people who applied for medical cards,

it either never received their application or never received supplementary information that was required. Therefore, it is safe to say that mistakes do happen and can happen within the An Post system. It can also be the case that people claim they never received the fine when in fact they did. The easy way to deal with the problem is to issue all of these fines using registered post.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Sean Sherlock): I thank the Senator for raising this matter on the Adjournment. I am responding on behalf of the Minister for Justice and Equality.

When a relevant offence is detected, the registered owner of the vehicle involved receives a fixed charge notice. I know that is stating the obvious but I wish to set out the process. The address to which the fixed charge notice is posted to is either the one supplied by the driver, when intercepted by An Garda Síochána, or the address listed on the Department of Transport, Tourism and Sport's national vehicle and driver file or NVDF.

The Minister has been informed by the Garda authorities, who are responsible for enforcement of the legislation, that ordinary post is utilised to serve fixed charge notices, in accordance with section 25 of the Interpretation Act 2005. This provides that service of a document may be effected by post and that such service is deemed to have been effected at the time at which a letter would ordinarily have been delivered, unless the contrary is proved. The Minister is also advised that road traffic legislation provides that, in a prosecution relating to an unpaid fixed charge notice, it shall be presumed that the relevant fixed charge notice has been served, or caused to be served, and that a payment pursuant to the relevant notice has not been made, unless the contrary is shown.

In so far as the use of registered post is concerned, the Minister will convey the Senator's views on this matter to the Garda authorities and to the Minister for Transport, Tourism and Sport. However, the Minister for Justice and Equality would note that use of registered post would not overcome objections that notices were received by persons other than those for whom they were intended, or that persons would seek to avoid service by declining to accept such registered notices. There would also be logistical and cost implications associated with issuing what could be more than 400,000 registered letters annually, in circumstances where a majority of persons receive and pay the fixed charge notices under current arrangements with no difficulties.

The Senator will also be aware that section 44 of the Road Traffic Act 2010 will introduce what is commonly referred to as a "third payment option" into the fixed charge system. Under this mechanism a person, who is summonsed to court for a fixed charge offence, will have a final option to pay a fixed charge not later than seven days before the court date on which the charge is to be heard. Without reading the rest of the statement, the central point has been made.

Senator John Kelly: We must acknowledge that mistakes are made and that some people do not receive these fines. I notice from the answer prepared for the Minister of State, by the Department's officials, that it was assumed that people had received their fines. There is nothing definitive about the matter.

In the response it stated that, in some cases, people "would seek to avoid service by declining to accept such registered notices". That is fine but the letter can then be returned to the Department with it noted "refused to accept registered letter". At least the person will have been made well aware that there is a fine and he or she cannot escape that fact. In the past some of

these fines were sent by registered post. I speak on behalf of the genuine people who do not get them but are summoned to court, must get a solicitor, get the fine doubled and suffer harsher measures dished out to them. I would appreciate if this matter received serious consideration.

Garda Recruitment

Senator Martin Conway: I welcome the Minister of State to the House. I know he is a busy man these days.

I tabled this Adjournment because a number of people, who are members of An Garda Síochána Reserve, applied to join An Garda Síochána when the recent recruitment drive took place. Thousands of people applied to join An Garda Síochána but only a couple of hundred, at a maximum, will be successful. People who have served in the Garda Reserve did not even get called for an interview. They felt a little let down, particularly given the fact that a number of them have served in the Garda Reserve since day one. It is reasonable to expect that somebody who has served in the Garda Reserve for a minimum of two years or 24 months and has a clean record, good references and is well regarded should have got called for an interview. That would have been fair and proper, particularly given the fact that they had given up two years of their time, on a voluntary basis, to serve in the reserve. If they have done that and shown themselves to be good competent citizens, and they are recommended, then they should have automatically been included for interview for An Garda Síochána when the recruitment process came around.

I know that nothing can be done about the current recruitment drive at this stage. With all things being equal, it is not unreasonable to promote the idea that somebody with a minimum specified period in the Garda Reserve, proper references and so on, are afforded an opportunity - out of common courtesy if for no other reason - to reach the interview stage and be interviewed. I am certainly not advocating that they should have a direct VIP pass into the Garda Síochána but it is more than reasonable that they should be afforded the opportunity of an interview.

Deputy Sean Sherlock: I thank the Senator for raising the issue. Again, I am responding on behalf of the Minister for Justice and Equality.

In terms of the current recruitment competition, any member of the Garda Reserve was entitled to apply for a position for the full-time service, provided they met the statutory requirements. I can advise Senators that, furthermore, the admission and appointment regulations provide that, as part of the competitive selection process organised by the Public Appointments Service for full-time membership of An Garda Síochána, “due recognition to any satisfactory service by the person as a reserve member” shall be given to such candidates. This provision was introduced in order to acknowledge the beneficial experience and skills gained by a reserve member and to allow them, at assessments and at interview, the opportunity to highlight that experience and skill.

In February 2008 the Garda Commissioner established a group to review training and development for Garda and civilian staff in the Garda Síochána. The report of the review group was published in May 2009 and the contents were noted by the then Government. The objective of the review group was to make recommendations to improve and reinvigorate Garda training in line with best practice in order to meet the new challenges of a changing society. One of the key recommendations identified by the group was that the student-probationer training programme

should be radically restructured. The course for Garda trainees is a high level BA course, which necessitates a certain academic capability. The revised training programme stemming from the recommendations of the review group was devised in order to better prepare recruits for the modern policing environment. The main differences between the new and the previous programme is that the new programme carries a greater emphasis on operational policing and focuses on real life scenarios which in turn prepare students for the policing challenges they will face. The new programme will also instil a lifelong learning philosophy for members of the Garda Síochána, with a suite of mandatory and elective courses made available.

I will now outline the stages of the process. The interview stage allows reserve candidates to demonstrate their experience, having a deeper understanding of the work involved as a fully-fledged member. By virtue of their exposure to work in the Garda Síochána, they are in a position to perform well at the structured competency based interview and offer highly relevant examples of how-they demonstrated the key competencies required. Interview boards have been briefed in the work of the reserve and their experience in this context.

It is important that all persons wishing to join the full-time force undergo the same competitive selection and recruitment process. In doing so the integrity of the process is maintained. However, the mechanisms mentioned give the reserve members the opportunity to demonstrate their on-the-job learning acquired as members of the reserve. This allows them some advantage in the recruitment process.

I can advise Senators that there are currently 1,192 attested reserve gardaí with a further 89 at various stages of training. To date, 40 reserve members have become full Garda members, and we will, no doubt, see more joining the ranks from this recruitment competition. Garda reserve members make a real and tangible contribution to policing right across the country and we are all fully supportive of its continued development. In this regard, recruitment to the reserve and training of new reserve members is ongoing.

The Minister would like to assure the Senator that the Government is and will continue to be, fully committed to the Garda Reserve. The Minister would also encourage reserve members to apply for the full-time force if they are interested in and committed to being a full-time member. The assessment process will ensure that those who are successful have the capability both to pass the BA course in Applied Policing, as well as the ability to carry out the important functions of a full-time member.

Senator Martin Conway: I thank the Minister of State for his response in which there are many positive aspects. All things being equal, there should be a slight discrimination in favour, if I may go that far, of a person who has had a period of unblemished service within the Garda Reserve.

Overseas Development Aid

Senator John Crown: I welcome the Minister of State and wish him well in his various undertakings at present.

I have had representations made to me by concerned citizens who are interested in our development aid programme and who asked that I highlight the issue of the attitude of the statutory Irish developed authorities towards efforts at population control.

Access to birth control is critical to managing the earth's populations. During the 20th century alone, the global population exploded from 1.65 billion to 6 billion people. Over the course of my young lifetime the world population has doubled. There is a huge burden on global food supply. Today 842 million people do not have enough to eat and one in four Sub-Saharan Africans are hungry. As a consequence of the increasing population we have also been quickly depleting the earth of its resources, poisoning its water supply, so critical for life, and disrupting other aspects of the environment. Thankfully, in many parts of the world, this is a situation which is beginning to be ameliorated. However, the situation in Africa - a very troubled continent, where many of our fellow humans live in terrible conditions, to which we have pointed a great degree of our own national aid - is very troubling. Africa's population is likely to double in the next 30 years. Historically, access to birth control has been a deeply divisive political issue in western countries but over the course of my lifetime the ability to access and use contraception is something that women in the western world and Irish women have come to take for granted.

Sadly, family planning is much less readily available in Africa than in any other region on the earth, including other regions which are facing development challenges. Some estimates indicate that a quarter of married women in Africa want contraceptives but cannot get them. In the first 14 years of the current millennium, access to birth control was restricted because of political tensions between the Bush Administration in the US and the UN population programmes, as a result of internal political and cultural issues in the US. As the then Minister of State with responsibility for trade and development noted in 2011, providing women with access to reproductive health care is not just an end in itself, it can have a transformative effect on women's vulnerability to poverty, hunger, economic and social discrimination. The choice to have smaller families allows for greater investment in each child's health care, nutrition and education, improved productivity and better long-term prospects for women, their families and societies.

I understand that between 2006 and 2011, only €30 million was donated to the UN population fund by the Republic. When the then Minister of State, Deputy Jan O'Sullivan, addressed this issue in 2011 the world's population was just under 7 billion people. In the three years since that address, the population has increased by 0.25 billion. How much has the Republic given to the UN population fund since 2011? Does Ireland engage in any programmes which provide increased access to birth control other than the UN population fund? Is the availability of birth control an issue that Irish Aid addresses when it develops programmes with its partner countries?

Deputy Sean Sherlock: I thank the Senator for his good wishes and extend my own good wishes to him and his betrothed on their impending nuptials and wish them the best of luck in their future.

I am responding on behalf of the Minister of State at the Department of Foreign Affairs and Trade, Deputy Joe Costello. I thank the Senator for raising the issue. We must acknowledge the work and support of the all-party Oireachtas group on sexual and reproductive health and development in supporting the aid programme in difficult financial circumstances domestically and particularly for its work in raising the profile of the issues around gender equality and sexual and reproductive health rights. Population planning remains a priority for Ireland. This is reflected in the funding allocated to population assistance. According to the UNFPA's latest report on tracking the financial resource targets agreed at the International Conference on Population and Development, ICPD, Ireland ranked fourth in terms of the percentage of our official

10 June 2014

development assistance allocated to the specified population assistance activities. This funding is vitally important to ensure that our partners, such as UNFPA, various NGOs and other partners can deliver programmes which empower women and provide access to sexual and reproductive health rights not only in key partner countries but in more complex settings, such as those referenced by the Senator, affected by natural disaster or conflict and where continued access to reproductive health is particularly critical for women and girls. We have strongly supported the ICPD global review process which provides the continued evidence to incorporate broader population planning issues into the new sustainable and universal post-2015 development framework. The review report confirms the importance of the linkages between human rights, non-discrimination, equality, sexual and reproductive health and population dynamics for sustainable development.

Under the General Assembly the UN will convene a special session on 22 September to follow up on the programme of action from the ICPD. Ireland will use this opportunity to reiterate our commitment to the full implementation of the programme of action and we will work closely with the EU and UN to ensure its recommendations are fully reflected in the post-2015 development framework which must ensure no one is left behind. This means addressing the fragmented implementation of the programme of action. It also means being unafraid to address all elements of the ICPD vision, including sexual and reproductive health, and in doing so that we reach the most marginalised. It is only through this approach that we can address the reason we are all here and truly achieve gender equality and sustainable and inclusive development.

Senator John Crown: I thank the Minister of State. I acknowledge in particular Mr. Cartan Finegan, who has been an activist and advocate on behalf of the inclusion of population policy in our foreign aid. He was the source of many of the documents I have used in this debate. When we get into the specifics of our aid programmes with our bilateral partners in recipient countries I urge that we ensure an appropriate level of emphasis is given to the need for population control as a component of development policy in these countries.

Deputy Sean Sherlock: I thank the Senator for raising the issue. We use many acronyms in this business, and I should state the ICPD is the International Conference on Population and Development. I acknowledge this year is the 20th anniversary of the ICPD, which itself marked an important new consensus recognising that increasing social, economic and political equality, including sexual and reproductive health and rights, should be the basis for individual well-being, lower population growth and sustainable development.

The Seanad adjourned at 9.25 p.m. until 10.30 a.m. on Wednesday, 11 June 2014.