



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Dé Máirt, 30 Meán Fómhair 2014*

*Tuesday, 30 September 2014*

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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### **Business of Seanad**

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

The need for the Minister for Education and Skills to outline what Government supports are being put in place to ensure completion of work at Gaelscoil Philib Barún, County Waterford, in light of the fact that all of her Department's queries have now been satisfactorily answered and the project is effectively at stage 2B - approved, whether the project will be included in a new building list, and her plans to increase the number of schools being built and to restore the minor works grant.

I have also received notice from Senator Pat O'Neill of the following matter:

The need for the Minister for Education and Skills to provide an update on the provision of a site for a new school for Coláiste Pobail Osraí, Ormond Road, Kilkenny.

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

The need for the Minister for Health and the HSE to review the current terms of employment being offered to dieticians by the HSE and, in particular, that contracts in future would require dieticians to visit nursing homes as part of their terms of employment.

I have also received notice from Senator Mark Daly of the following matter:

The need for the Minister for the Environment, Community and Local Government to outline changes to the fire service in County Kerry and nationwide and to address the fear that changes are resulting in fire crew members being put at risk.

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

The need for the Minister for Education and Skills to give a commitment to strict adherence to a timeline for the publication, scrutiny and enactment of the technological universities Bill in order that this legislation will be in place in advance of the recommencement of

the academic year beginning on 1 September 2015.

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

The need for the Minister for Arts, Heritage and the Gaeltacht to explain in full her reasons for the appointment of Mr. John McNulty to the board of the Irish Museum of Modern Art, in light of the Taoiseach apologising for the affair.

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

The need for the Minister for Communications, Energy and Natural Resources to confirm whether he was consulted by RTE regarding its decision to end transmission of RTE radio programmes on 252 long wave, whether he is aware that the termination of this service will cause considerable unease within the Irish diaspora in the UK, and whether he is aware that the withdrawal of the service will be of significant inconvenience to the elderly Irish in Britain and others who do not wish to access RTE radio through other media platforms.

I regard the matters raised by Senators Cullinane, O'Neill, Burke, Daly, Mullen and Byrne as suitable for discussion on the Adjournment. I have selected the matters raised by Senators Cullinane, O'Neill, Burke and Daly for discussion today and they will be taken at the conclusion of business. The other Senators may give notice another day of the matters they wish to raise. I regret I must rule the matter raised by Senator Mooney out of order as the Minister has no official responsibility in that regard.

**Senator Thomas Byrne:** I do not request preferment but by ruling out the matter I wished to raise, the Cathaoirleach has decided the Seanad cannot discuss a matter directly relating to it that has been widely discussed in public in the past week.

**An Cathaoirleach:** Senator Byrne is completely out of order.

**Senator Thomas Byrne:** The Minister for Arts, Heritage and the Gaeltacht, Deputy Heather Humphreys, is at the centre of a national controversy relating to the Seanad, and the Cathaoirleach will not allow a debate on the matter.

**An Cathaoirleach:** Senator Byrne is completely out of order. I adjudicated on those matters. I must be fair to every Member of the House on the issues they raise. I call the Leader.

### **Order of Business**

**Senator Maurice Cummins:** The Order of Business is No. 1, Education (Miscellaneous Provisions) Bill 2014 - Committee Stage (resumed), to be taken at 4.15 p.m.; and No. 2, Companies Bill 2012 - Report and Final Stages, to be taken at 5.30 p.m. and to be adjourned not later than 7.30 p.m., if not previously concluded.

**Senator Darragh O'Brien:** Has the Leader received an update from the Minister for Health on the multiple sclerosis drug, fampridine - Fampyra - which has still not been assessed by the Department of Health? Many sufferers of MS cannot access the drug which could change their lives and give them back their mobility. I do not take issue with the Leader but I am sick to the back teeth of writing to the Department of Health on the issue. People are losing their mobility and independence. The cost of the drug is €270 a month. Surely to God an urgent decision

could be made on it.

I wish to follow up on what my colleague, Senator Byrne, said about the unprecedented events of the past week. We all received our ballot papers for the imminent Seanad by-election by registered post yesterday.

**An Cathaoirleach:** It is not in order to display a ballot paper in the Chamber.

**Senator Darragh O'Brien:** I am holding a ballot paper for the Seanad by-election.

**An Cathaoirleach:** Senator O'Brien should not display it in the Chamber.

**Senator Darragh O'Brien:** I do not see the problem with displaying it.

**An Cathaoirleach:** We do not display documents in the Chamber.

**Senator Darragh O'Brien:** I know the Government does not want to discuss the issue.

**An Cathaoirleach:** One is not allowed to display anything in the Chamber.

**Senator Darragh O'Brien:** I will not display it but I refer to the ballot paper for the Seanad by-election. The second candidate on the list is Mr. John McNulty from Donegal. I will not give his address. He is listed as a business man and board member of the Irish Museum of Modern Art. We know he is not a board member of the Irish Museum of Modern Art and we contest that he probably never was, because the board never met to ratify his appointment by whomever, and we do not know whether the Minister, Deputy Heather Humphreys, was told to do it by the Taoiseach-----

**An Cathaoirleach:** Last week, I ruled that the qualifications of candidates is not a matter for the Seanad.

**Senator Darragh O'Brien:** I accept and respect your ruling from last week, a Chathaoirleach, but the Government cannot slide away from this and think people are going to forget about it.

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

**Senator Darragh O'Brien:** I am not forgetting about it, because what has happened in the past week is absolutely despicable and deplorable. It is a degradation of the Seanad. I say to the Leader that the Taoiseach and a Minister of his party has brought the Chamber and the democratic structures of the State into disrepute. A nomination was made up in order to ensure the individual concerned could run in the by-election. Others will say he may have been able to do that anyway. We will never know that because another candidate, Mr. Craughwell, withdrew his complaint to the committee on the basis of the apparent qualification of Mr. McNulty due to his being a board member of the Irish Museum of Modern Art. That is what happened. Now we have a ballot paper that states he is a board member of the Irish Museum of Modern Art. That is who some Members across the Chamber are being asked to vote for, when that is not the case. I put it to the House that he is not qualified on that basis.

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

**Senator Darragh O'Brien:** Yes, I have a question for the Leader and I have also tabled an amendment to the Order of Business. We deserve answers on the issue. Let us be fair. The

Taoiseach belatedly apologised, but I do not know what he apologised for, because the previous day he said it was a matter for the Minister, Deputy Heather Humphreys. I would not have tabled the amendment if the Minister, Deputy Humphreys, had answered any questions when she came to the House last week, but as colleagues are aware, she did not. She re-read her script into the record of the House. She did not answer the question-----

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

**Senator Darragh O'Brien:** -----as to why-----

**An Cathaoirleach:** Senator O'Brien is way over time.

**Senator Darragh O'Brien:** She did not answer the questions that were put to her, so I will give her another opportunity. I table an amendment to the Order of Business-----

**Senator Marie-Louise O'Donnell:** Senator O'Brien is so good.

**Senator Darragh O'Brien:** -----and I would ask my colleagues to examine the matter if we care about transparency and getting to the bottom of the issue. I seek the attendance in this Chamber today of the Minister, Deputy Heather Humphreys, to answer questions put to her, such as who asked her to appoint this chap, John McNulty, to the board of the Irish Museum of Modern Art, IMMA. Was she aware that this individual was going to be a Seanad by-election candidate for Fine Gael?

**An Cathaoirleach:** Senator, these are questions you can ask during the debate.

**Senator Darragh O'Brien:** I am tabling this amendment because this is a serious issue.

**An Cathaoirleach:** Senator, you are way over time.

**Senator Darragh O'Brien:** I will finish on this point but for argument's sake, had this not been raised in this Chamber last week and had some journalist not done the job, none of us would have known about this. Incidentally, two thirds of State appointments since the present Administration took over have been appointed without any advertisement.

**An Cathaoirleach:** Senator, you are way over time. These are points that can be made during the debate. I call Senator Bacik.

**Senator Darragh O'Brien:** I formally table an amendment to the Order of Business again today to have the Minister, Deputy Heather Humphreys, come into this House to answer questions put to her about the appointment of Mr. John McNulty to the board of IMMA in order to ensure he could be a ratified candidate to fill a vacancy in this very House.

**Senator Ivana Bacik:** All Members had the opportunity to speak last week, when the Minister was in this Chamber and to put our views on the appointment of John McNulty-----

**Senator David Cullinane:** No, we did not.

**Senator Ivana Bacik:** Many Members did. They put on record their views on the appointment of John McNulty to the board of IMMA. I put my own views on the record that time and was glad to have the opportunity to do so.

**Senator David Cullinane:** The Senator will vote against him in that case.

**Senator Ivana Bacik:** I seek a date from the Leader for the resumption of the Committee Stage debate on the Employment Equality (Amendment) Bill. This is the Bill that I, together with the Labour Party Senators, introduced as a Private Member's Bill on 13 March 2013 to amend section 37(1) of the Employment Equality Act to ensure one no longer has the potential to discriminate in schools against teachers because of their sexuality or marital status. There is great support for the principle of this Bill from all sides of the House. The Committee Stage debate began earlier this year, in April, and it is due to resume once Government amendments have been prepared. I hope the Leader and I can work to ensure that Committee Stage will resume and that this Bill will pass through the House before the end of this session in December.

I also ask the Leader for a debate on the national dementia strategy. I was glad to join with members of The Alzheimer Society of Ireland outside Leinster House earlier today and I commend them on their work. In particular, they seek to highlight the need to ensure the proper roll-out of a national dementia strategy and I ask the Leader for a debate on this issue in early course. Finally, I commend the Start Strong organisation on its event last Thursday that I attended and at which the Minister for Justice and Equality, Deputy Fitzgerald, spoke. I also wish to state how glad I am that she has made a commitment to making some change in the law to ensure better provision of parental leave and paternity leave in particular. Senator White has been hugely active on this issue and has introduced Private Members' legislation in this regard and like the section 37 amendment, I hope there also can be cross-party support for this initiative.

**Senator Katherine Zappone:** I have two questions for the Leader, one of which is related to the arts and the other to the Seanad. Since last Wednesday, as all Members are aware and as they just have been reminded by Senator Darragh O'Brien, there has been an ongoing public controversy about the disrespect - the Senator used the word "disrepute" - paid both to the arts and to the Seanad in light of John McNulty's nomination to IMMA and the Seanad by-election. By contrast, last Wednesday the Irish arts world had much cause for positive celebration outside this Chamber because Eavan Boland, one of Ireland's most eminent poets, turned 70. This coincided with the publication of her new collection of poems entitled *A Woman Without a Country*. Throughout the decades, her body of work has had a profound impact on the Irish psyche and soul as she charted new territory in search of a language not voiced before and in search of a nation not fully imagined and that depicted how woman's place outside history could be transformative as well as transformed. I believe that by way of marking the 24th Seanad's commitment to the arts, as well as to women "finding a voice where they found a vision", as in the great words of Eavan Boland often quoted by the former president, Mary Robinson, I ask the Leader to bring Eavan Boland's name to the Seanad committee that decides on inviting significant public figures to this Chamber to address Members. I expect it would be a remarkable and inspiring exchange.

My second question relates to another date on the calendar, namely, 4 October 2014, when Members will mark the first anniversary of the day on which the Irish people voted in referendum to retain the Seanad. It is my belief, as well as that of countless citizens throughout Ireland, that the people did not vote to retain the Seanad in its current form but that they voted for real reform. Consequently, I request that the Bill published by Senator Quinn and I on Seanad reform be brought to Committee Stage as soon as possible. This would be a fitting way to mark the anniversary of the people's vote. Senator Quinn and I also will table amendments to ensure the Bill is capable of delivering on a core set of fundamental reforms on which we believe all parties can agree. We will be seeking Government time for Committee Stage on the Seanad Bill. This would be a prime way for the Taoiseach and the Government to demonstrate respect

for the people, for the Seanad and for implementing the new politics that all sides of this House agree is needed.

**Senator Sean D. Barrett:** When the handover of Hong Kong to China took place in the 1997, the then Governor of Hong Kong, Lord Patten, had agreements with the Chinese authorities. We all remember the valuable work Lord Patten did in the reform of the RUC on this island. Those agreements provided for democracy and a free press. I ask the Leader to take up with the Minister for Foreign Affairs and Trade, Deputy Flanagan, the issue that we might approach the Chinese authorities to say that we would prefer that what is going on in China should not happen and that its economic success should be paralleled by the development of democracy and a free press in Hong Kong and throughout China.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Sean D. Barrett:** I also raise today the corporate tax issue in relation to Apple. The Commission wrote to the former Tánaiste and Minister for Foreign Affairs and Trade, Deputy Gilmore, on 12 June last and, apparently, we have not participated. What was put to the media today from the Commission is a complaint that a request was made to us on 12 June, with, as it states, normally a month to reply, and it is now 13 weeks since then. The Commission has put the document out, and we have to participate in this. What it states is based on the above, that the Commission is of the opinion that the contested rulings do not comply with the arms-length principle and, accordingly, the Commission is of the opinion that through these rulings the Irish authorities confer an advantage on Apple and the advantage is obtained every year, and is ongoing, when the annual tax liability is agreed upon by the tax authorities in view of that ruling. The Americans estimated last year that the tax avoided per day by Apple in 2012 was €25 million, or €9 billion a year. We have been condemned for our policies on this in the United States and, only today, in the United Kingdom. I do not know whether this was addressed to the Department of Foreign Affairs and Trade, whether we have enough economic expertise but we should not be getting into this kind of relationship with the European Commission. We should enter into this dialogue, defend - as we have stated here on so many occasions - the 12.5% corporate tax rate and get rid of the fiscal termites who keep on undermining that rate and bringing Ireland into public odium in the United States, in the European Union and in the United Kingdom.

**Senator Paul Coghlan:** I was sorry to learn, and would be concerned, that the people-owned pillar bank has plans to outsource its loyal bank porters of whom there are over 200 in the country. Many of these staff have over 20 years' service. They are the face of the bank. They are the staff who open and close the branches. They are the ones who often meet and greet customers. I have even seen them being helpful with clients trying to use the new quick-lodge system. I worked in that institution once upon a time and, I hasten to add, that was long before the cowboys invaded the pitch. It is disgraceful trying to removing these staff, who have been so loyal and steadfast to the institution, who have done nothing wrong as regards banking in this country. We should make a protest, which I intend to do, to headquarters in regard to this matter.

**Senator Marc MacSharry:** I ask the Leader to arrange for the Minister for Health, Deputy Varadkar, to come to the House and debate the future of maternity services in this country. Members will be aware of the sad case of Ms Dhara Kivlehan, who, after giving birth at Sligo Regional Hospital, died in a Belfast hospital. At the inquest last evening, an independent expert obstetrician and former master of the Rotunda stated that it was effectively a systemic and

clinical failure that led, in a complex case, to her death. This is a case that requires a serious review by the State in how it approaches maternity services in the future. It is worth reminding Members of the report we exposed on this side of the House which planned to downgrade maternity services in the north west to the extent that an obstetrician would not be available but that it would be a midwife-led service. Last night underpinned the need for expert obstetrician services to be available to all the women of Ireland regardless of where they live.

At this point, the Minister must make clear his intentions. Clearly, significant investment and additional resources are required to be put into maternity services as Ireland has the lowest number of obstetricians per patient in the OECD. With commitments under the working time directive and the temptation of higher remuneration abroad, it seems fewer obstetrician hours will be made available in Ireland. We are facing a crisis in ensuring further cases such as that of Dhara Kivlehan can be averted. I hope this debate will be held soon as it is merely a matter of time, sadly, that this will happen again. Unless the appropriate resources and strategic plan are put in place, we cannot ensure this will not happen again.

**Senator John Whelan:** The Irish Wheelchair Association was founded in 1960 and now has 20,000 members. It is one of our foremost advocacy groups and charities doing tremendous work for people who lead a challenging life when confined and bound to a wheelchair in assisting and supporting them in living full and independent lives. It is hard in this day and age to believe, however, that we still provide funding for the construction of public buildings, spaces, such as car parks and parks, venues and stadiums, that are not adequately wheelchair accessible or friendly.

I thought we had brought to this to an end some years ago. Only this week, the Irish Wheelchair Association, however, published the latest draft of its best practice guidelines for wheelchair access. Will the Leader arrange for the Minister for the Environment, Community and Local Government to attend the House at the earliest juncture to debate this issue to ensure these guidelines are embedded in the planning code and regulations? This will not put any additional cost on anyone building privately. However, when we build arts centres, post offices, schools, and sports stadiums, as well as simple facilities such as public toilets in car parks, we should not suffer upon people confined to wheelchairs the further indignity or embarrassment of not being able to access, use freely or enjoy facilities that the rest of us can. It is a simple matter to resolve and one in which we can play a part.

There are also people who still park on kerbs on footpaths and clearly designated disabled parking zones which is a further affront to those confined to wheelchairs. There is no fine too large for someone who parks improperly like that.

**Senator Feargal Quinn:** I support Senator Zappone's call on the Leader to allow time for Committee Stage of her Bill on Seanad reform. As he knows, we passed this Bill on Second Stage way back in March last year. Since then, there was a referendum this week last year in which the people said they did not want to support the Government's move to abolish the Seanad. Nothing has happened since then that we know of. I know the Taoiseach said he has called together a few leaders of different groups to see what could be done. This is 12 months after the referendum, however.

Members have often heard me argue before how frustrating it is to see the length of time it takes to get something done legislatively. Senator Zappone has proposed the Leader finds time for Committee Stage of that Bill which she introduced here over a year ago.

*3 o'clock*

I urge the Leader to find time to do so because the people of Ireland have said they want to see a Seanad that works and that is capable of doing far more than it is being allowed to do at present. That probably requires the changes that she has proposed in her Bill, which I was happy to second. I believe we should make these changes and I urge the Leader to arrange time for Committee Stage of the Bill so that it can come before the House very shortly.

**Senator Marie-Louise O'Donnell:** I am glad that some young people are in the Visitors Gallery. I do not know whether they are Irish but what I am about to say might inform them. Are the Senators aware that the great Bank of Ireland is doubling the interest rate it charges graduate entries to medicine when they qualify? That is financial thuggery at its best. In other words, it is telling graduates who want to continue studying that they will get the loan at a certain interest rate but within three months of completing the course, the rate will be doubled. I want the Minister for Finance or the Minister for Education and Skills to come into the House to address this issue. It is not only doubling the interest rate but it is also picking rates out of the sky. According to the Medical Independent, graduate entry medical students are buried in a ditch of debt because of this. Some 65% of all our young doctors have left the country not only to seek better conditions and better lives but also because they cannot repay these enormous loans.

Education is the right of everybody. We have, of course, to pay for it, and that includes graduates, but to take the 4.5% interest rate for entrants to graduate medicine and then increase it to 6%, 7% or 9%, to be repaid over ten years, chokes the graduates of this country and beggars them before they even begin. It is financial thuggery. Bank of Ireland is back where it began. When I pointed out to its representatives last week that it had received €3.75 billion out of a universal social charge on all of our wages, they stared blankly at me but they are quite capable of running around America after builders who owe them the millions of euro that they gave out like nuts at a circus tent and of begging our graduate students. This is extremely important because parents in this country do not have the money to send children to universities in their areas and thus have to send them to other cities. They need to borrow money not for credit but for education. I want the Minister for Education and Skills to outline how she intends to address this issue and I am looking for an amendment to the Order of Business on that account. It is financial thuggery. No Senator should vote against me on the Order of Business because the issue is above politics.

**An Cathaoirleach:** Does the Senator want the Minister for Finance to come into the House?

**Senator Marie-Louise O'Donnell:** The Minister for Education and Skills.

**Senator David Cullinane:** I second the Fianna Fáil amendment to the Order of Business. I agree that the Minister for Arts, Heritage and the Gaeltacht should come before the House today but in reality the Taoiseach should come before the House. Last week the Taoiseach stated that he took personal responsibility for what has become a fiasco in regard to the Seanad by-election. If the Taoiseach was taking personal responsibility, what was he taking personal responsibility for? When one takes responsibility for something, it means one did something wrong. The Taoiseach should come into this House to explain to us what he did wrong. We all know what he did wrong but he should account for himself in this House.

We also, shamefully, had a situation where the Minister of State at the Department of the

Environment, Community and Local Government, Deputy Paudie Coffey, hired a former Fine Gael councillor and director of Irish Water as his personal driver on a salary of €665 per week. The same individual received a gratuity payment of €57,757 when he lost his council seat and received an annual fee of €15,000 for his position on Irish Water. There is a clear conflict of interest where a director of Irish Water is employed by the Minister of State with responsibility for that body to be his driver. What was most disturbing was the response of the former councillor to questions from the media. When he was asked if there was a salary attached he said: "I don't think there is anyone working for free at the moment." Many people on Gateway schemes throughout the State would disagree with him. He also said:

You tell me one party out there who doesn't look after their own. I don't see anything wrong with it.

Would the Leader stand over those remarks? Does he see anything wrong with it? The most disgusting thing he said, which I invite the Leader to condemn, was: "We were all nearly eating out of bins three years ago." Very few Fine Gael supporters were eating out of bins three, ten or 30 years ago. There are many people, however, who, while they may not be eating out of bins, are in poverty and cannot afford to pay their bills. On this day of all days for us to discuss the issue, the Leader and his party want to impose water charges and some families will have to pay up to €500 once metering begins. I ask the Leader to comment on all these issues and I will support the amendment to the Order of Business proposed by Fianna Fáil.

**Senator Paschal Mooney:** I am very disappointed that the Cathaoirleach has ruled out of order my motion on RTE's decision to terminate the 252 long wave transmission. While I respect the Cathaoirleach's decision, I want to tell RTE I am not letting go of the matter. As a news broadcaster, RTE monitors everything that goes on in the House. I intend to raise it at tomorrow morning's meeting of the Committee on Transport and Communications and I will request the support of my colleagues, which I believe will be forthcoming, in inviting RTE to come before the committee to explain its terrible decision to terminate the 252 long wave transmission. RTE tried this some years ago but was stopped in its tracks. Now RTE has got it in under the radar and the Minister is acquiescing in it by refusing to come into the House to give his response to this outrageous decision that will have a very adverse effect on the Irish diaspora in Britain.

It is unacceptable to state that only a small percentage of people are listening. How does RTE know? RTE says people have other platforms, but many people, Irish and otherwise, listen in their cars, travelling throughout England. I have received an extraordinary level of reaction to the decision from colleagues, friends and other representatives of the Irish community in Britain. I will not let go of it. RTE cannot and should not be allowed to do this. As a public service broadcaster it has a responsibility to look after the Irish diaspora as much as the people on the island of Ireland.

I echo Senator Barrett's comments that a very poor image of Ireland has been transmitted as a result of the European Commission's release of its letter on corporation tax and the way it is levied on multinational companies in Ireland. I am particularly concerned about the impact this is having on Irish America and corporate America. I remind the House that in May last year, *thejournal.ie* reported the comments by Senators Carl Levin and John McCain, who raised this in the US Senate and from whom it is alleged that all this came, that Apple negotiated a 2% rate in Ireland, far less than the State's 12.5% rate for companies. What was significant about the letter from the Commission was that the man who was responsible for the tax affairs of Apple

in 1991 in his negotiations with the Irish Revenue said the conclusions arrived at were “unscientific”. If that does not ring alarm bells in the Government, I do not know what will.

**An Cathaoirleach:** Senator, you are way over time.

**Senator Paschal Mooney:** A company called Apple Operations International, AOI, operates an Irish subsidiary in this country that pays little or no tax on profits in Ireland or the US. AOI has not filed tax returns in any country over the past five years, despite income of approximately €23 billion between 2009 and 2012 according to the Senate investigation. While I fully respect, understand and appreciate that any government has a responsibility to ensure foreign direct investment continues and I value, like everybody on both sides of the House, the enormous contribution Apple has made to improving the workforce in this country and the tax it pays here, and I have no doubt it pays tax-----

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

**Senator Paschal Mooney:** I ask for the Minister for Finance to come before the House at the earliest opportunity. There is a concern about the adverse image this is having abroad on the Irish.

**An Cathaoirleach:** The Senator is way over time. I call Senator Healy Eames.

**Senator Paschal Mooney:** Last weekend there was a report and a headline in the *Financial Times*, a much-read newspaper internationally, which was particularly damaging to Ireland and Ireland’s image in the corporate field.

**An Cathaoirleach:** The Senator is way over time. I call Senator Healy Eames.

**Senator Paschal Mooney:** I urge the Minister for Finance to come to the House or issue a statement that would address the issues that have been raised.

**Senator Fidelma Healy Eames:** I second the amendment proposed by Senator O’Donnell for the Minister for Education and Skills to come to the House to debate the issue of abuse of graduate entrants into medicine. I support her on that motion.

We have all received the ballot papers for the Seanad by-election on 10 October. That by-election will be a test for all of us - a test of democracy in this country. We are seeing Government politics being carried out in a way more like Beijing than a western democracy. We are seeing abuse of public office, no free votes and job fixing. We are seeing the very worst type of politics that none of us stood for in 2011. Above all, this election on 10 October will be a test of the courage and resolve of Fine Gael and Labour Party Members. It is unreasonable for the Taoiseach to expect his Deputies and Senators to follow his lead and support stroke politics by voting for Mr. McNulty. Mr. McNulty is a victim here and his candidacy is corrupted as a result of the abuse of public office by having him put on the IMMA board. It has been well documented and written on today by Fintan O’Toole. He has abused six political operational principles: selflessness, objectivity, accountability, openness, honesty, and leadership.

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

**Senator Fidelma Healy Eames:** I have a question. I am asking the Members of this House on the Government side whether enough Fine Gael and Labour Party Oireachtas Members will have the courage to stand up and abstain from voting for Mr. McNulty.

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**An Cathaoirleach:** That is not relevant to the Order of Business.

**Senator Fidelma Healy Eames:** It absolutely is relevant.

**Senator Darragh O'Brien:** Hear, hear.

**An Cathaoirleach:** It may be relevant, but it is not relevant to the Order of Business.

**Senator Fidelma Healy Eames:** Our Taoiseach and Tánaiste are meant to be giving leadership here.

**An Cathaoirleach:** It is not relevant to the Order of Business. I call Senator van Turnhout.

**Senator Fidelma Healy Eames:** Instead they are calling on us to vote for stroke politics and cronyism as the way forward for our young people. That is not leadership.

**Senator Jillian van Turnhout:** I support Senator O'Donnell. I also attended a briefing by the graduate entry medical students. The debt burden among them is very high and it has been increasing. They have made a very compelling case for relief on repayment of loan products used to finance their graduate entry to medicine. We should be doing everything we can to encourage them to remain here in Ireland when in fact we are encouraging them to leave. I formally second the amendment to the Order of Business proposed by Senator O'Donnell.

**Senator Denis O'Donovan:** The Leader promised me a year or two ago that we would have a debate in the Chamber on the persecution of Christians in certain parts of the planet. It is a critical issue. A debate in the House for a couple of hours would be worthy and it might highlight the appalling plight of Christians in certain parts of the world who are demonised, executed or forced to give up their religion. We should have such a debate at the Leader's early convenience.

What is the status of the proposed sea fisheries amendment Bill? Is it likely to come before this House or is it lost at sea, to coin a phrase? I have a very strong interest in the matter and I ask the Leader to ascertain the status of the Bill and when it is likely to come before the Seanad.

**Senator Rónán Mullen:** Following on the point made by my colleague, Senator Darragh O'Brien, I wish to ask a question. In light of the fact Mr. McNulty is referred to on the ballot paper as a board member of the Irish Museum of Modern Art and this is not the case, I want to know whether this invalidates the process. I have only had a chance to briefly look at the 1947 legislation. Is the election invalid? Has this issue been looked into? Perhaps it is not something the Leader can answer but I would be grateful if he could be of some assistance.

**Senator Maurice Cummins:** I will be of major assistance.

**Senator Rónán Mullen:** I am asking it as a question and not making any flamboyant statements. It is a legitimate and important question. It is not appropriate to cast a ballot on any ballot paper where the information on it is false-----

**Senator Darragh O'Brien:** Hear, hear.

**Senator Rónán Mullen:** -----and I would like to know what is the status of such a process in law.

I also wish to raise the issue of water charges. What was announced today on the exten-

sion of the period for a flat charge to nine months is welcome but it does not go near providing people with the real-time information I called for last week, whereby people would be able to assess their usage from the beginning of October to see how they are doing and what needs to change. Considering that many families will be interested in conserving water, people may be surprised to learn the water efficiency of washing machines and dishwashers can vary greatly. Perhaps they will not be surprised. The most efficient washing machines use 6 litres per kilogram of clothes in comparison to the least efficient, which use 14 litres per kilogram. Many families would consider replacing white goods such as washing machines and dishwashers with more economic models. Would it not be an idea to provide tax relief for those who want to do so? The Leader is aware grants are available for domestic energy saving measures such as solar panels and replacing boilers. There should be a grant or tax relief system for people to fit rainwater tanks. Such grants are available for farmers but not for domestic customers.

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

**Senator Rónán Mullen:** There should also be a grant to replace inefficient appliances.

The announcement by the Minister for Education and Skills last week to increase the block grant to Protestant schools by €250,000 is little more than the politics of spin and shallowness. It does nothing to address the serious disadvantage faced by minority faith schools because of raising the pupil-teacher ratio and I call for this situation to change.

**Senator Thomas Byrne:** I understand Mr. McNulty has withdrawn from the by-election - according to Twitter - so we will see how this changes things. It is the right and honourable thing for him to do. He was put in a terrible situation by the Taoiseach and the Minister for Arts, Heritage and Gaeltacht Affairs, who owe him and his family a complete and wholehearted apology. He has been put through the mill unnecessarily by the type of stroke politics for which, unfortunately, Fine Gael and the Labour Party have become known in recent years.

An Bord Altranais - or the Nursing and Midwifery Board of Ireland as it likes to call itself, although it is officially called An Bord Altranais agus Cnáimhseachais na hÉireann and I do not know why it insists on using the English name when we have always used the Irish one - has decided the annual retention fee should be increased by 50%. Unfortunately, the legislation allows it to do so without recourse to us. We need to make a stand on this. Nurses are among the only PAYE workers who must pay professional fees to a professional bodies. They are not solicitors or doctors who are self-employed and can put it off against tax, or employed solicitors whose employer normally pays the society fees. Nurses must pay it out of their own pockets. Nurses throughout the country are going mad over this because they have suffered pay cuts and increased hours. They are the front line of trying to provide an effective service and are under more pressure than they have ever been before. It is neither fair nor right of An Bord Altranais to seek this increase in fees. The Seanad should play a role in highlighting it, because nothing has been said in the Dáil, and tell An Bord Altranais nurses cannot pay it and its administrative costs are too high.

I pay tribute to the Clerk of the Seanad who during the Seanad by-election has always displayed her complete and utter independence.

**Senator Michael Mullins:** I support the call made by Senator O'Donovan for a debate with the Minister for Foreign Affairs and Trade on the persecution of Christians throughout the world. It has come to the fore very much in recent times and I would like to see such a debate

in early course. I also seek a debate with the Minister for Foreign Affairs and Trade following his return from the United States where he met the Vice President, Joe Biden, and the Secretary of State, John Kerry. The Minister's visit focused on Northern Ireland, immigration reform and Ireland-US economic matters. His meetings were timely, as the British and Irish Governments will become involved in talks in Northern Ireland during the coming weeks. We would like to hear from him what involvement the US Administration is likely to have in those peace talks. In recent years, many Members of this House have spoken at length about immigration reform and the need for us to see something done in respect of the undocumented Irish, who cannot return to their home country for special occasions like weddings and funerals. There have been many false dawns, so I would like to hear from the Minister about what progress is likely to be made during the coming months. I also welcome today's swearing in of the new ambassador to Ireland, Mr. Kevin O'Malley.

I would like to hear from the Minister about how his discussions with the US Chamber of Commerce went regarding support for Irish companies setting up in the US and the prospect of inward investment into Ireland.

**Senator Mary M. White:** It gives me great pleasure to note on page 8 of today's *The Irish Times* that the Minister for Justice and Equality, Deputy Fitzgerald, will progress the introduction of paid paternity leave. I thank Senator Bacik for drawing attention to the fact that I put this matter on the radar by introducing a Bill. Last year, Senator Cummins advised me that the Government would deliver on my Bill.

I wish to draw the House's attention to the fact that 2,780 women get breast cancer every year. Although BreastCheck offers a free screening to every woman aged 50 to 64 years, women who are aged 65 to 69 years are not being screened. This is a question of broken promises and ageism. The programme for Government included a commitment to extend BreastCheck to the 65-69 year old age cohort. According to the HSE's national service plan for 2012, this planned extension was to be completed before the end of that year. I joined a protest outside Leinster House today that called on the Government to implement its promise.

Ageism is an unacceptable prejudice in Irish society. Women aged between 55 and 70 years have a higher risk of developing breast cancer than others, yet they are still being denied BreastCheck. I am calling for parity of esteem-----

**Senator Marie-Louise O'Donnell:** Hear, hear.

**Senator Mary M. White:** -----and equal treatment in our health services. The Government should prioritise that matter immediately. I feel strongly about it. We are not a truly liberal democracy or even just a democracy until we treat all of our citizens equally.

**Senator Mary Moran:** I concur with Senator White's sentiments regarding parity for women and her call for the extension of breast cancer screening to women aged over 55 years. It is important that this be done immediately.

Last Friday, I had the opportunity to participate in what we believe was the first ever workshop organised by a disability group in Trinity College Dublin for people with intellectual disabilities on how the Government worked. It was organised by the national anti-bullying advocacy group and Ms Fiona Weldon, its anti-bullying advocacy officer. It was an excellent workshop that presented an opportunity to learn more about something that affects us all, the Government. I commend the group on its taking the initiative to educate people about the Gov-

ernment, voting and what goes on in government. I would like to see further similar workshops held. It was an enlightening day for everybody involved.

On a separate matter, along with my colleagues I have previously raised the serious and expensive matter of petrol. Last night, I received a representation from an individual who was distraught at being €3,500 out of pocket because of kerosene contaminated petrol. People are only becoming aware of this issue having brought their cars to a garage. I am aware of a number of cases of this in my own area in Louth and across the country. The people involved are the unsuspecting victims of this crime. I call on the Minister for Transport, Tourism and Sport to come to the House to discuss this issue as a matter of urgency.

**Senator Martin Conway:** I support the calls made today for a debate with the Minister for Foreign Affairs, Deputy Flanagan, on the undocumented Irish in the United States. There are an estimated 50,000 undocumented Irish people living and working in the United States. These people who come from every corner of this country have had their hopes raised and dashed time and again over the past number of years, including by the Kennedy-McCain Bill. We need to make a renewed effort to work with our friends in Congress and the United States Senate to ensure meaningful immigration reform in the United States. We are speaking in this regard of people who consider the USA their home. They want a pathway to legalisation and to be able to pay their taxes, obtain health insurance and the certainty of knowing that when something goes wrong they can return home without the fear of not being able to return to the USA. They also want to be able to go about their daily lives in the United States not living in dread of being deported.

I dealt with a constituent who was deported from the United States three years ago. Despite that he had been living in the United States for a number of years and employed 12 and 13 people in a very successful business which he had set up there, he was deported. This is an issue on which we in this country can easily take our eye off the ball. For the people living here who have loved ones abroad illegally in the United States this is a constant worry. I would like to hear from the Minister, Deputy Flanagan, what progress he made on this issue during his recent trip to the United States and about the Government's plans and those of our diplomatic corps in the United States in terms of engagement with members of the Congress and Senate.

**An Cathaoirleach:** Somebody's telephone is causing interference.

**Senator Maurice Cummins:** I do not have a mobile telephone with me. I do not bring mine into the House and would advise that other Members also not do so.

**Senator Marie-Louise O'Donnell:** Hear, hear.

*(Interruptions).*

**Senator Marie-Louise O'Donnell:** I do not bring my mobile telephone into the Seanad and have never done so.

**An Cathaoirleach:** The Leader without interruption, please.

**Senator Maurice Cummins:** In regard to Senator Darragh O'Brien's call for an update on the drug for MS sufferers, I have made inquiries on the matter but as I have not yet had a response I will communicate with the Senator on the matter at a later date.

**Senator Darragh O'Brien:** Thank you.

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**Senator Maurice Cummins:** I wish to advise the House that Mr. John McNulty has withdrawn from the Seanad by-election and has asked that Oireachtas Members not support his candidacy. He issued a statement in that regard in-----

**Senator Rónán Mullen:** Perhaps he thinks he is worrying us by doing so.

**Senator Maurice Cummins:** I think that-----

**Senator Darragh O'Brien:** On a point of order, I thank the Leader for his statement and clarification. However, in light of Mr. McNulty's withdrawal from the Seanad by-election what is the process now? As members of the electorate and Seanad we need to know-----

**An Cathaoirleach:** That is not a matter for the Order of Business.

**Senator Maurice Cummins:** It is also not a matter for me. I have no say in the election. That is a different matter and different procedures apply. It is not a matter for me. There is no question for me.

**Senator Darragh O'Brien:** How would I know that? We have never had an issue like this before.

**Senator David Cullinane:** On a point of order, what happens to the ballots of those who have already voted?

**Senator Darragh O'Brien:** Yes.

**An Cathaoirleach:** It is not a matter for the Order of Business.

**Senator Maurice Cummins:** It is not a matter for me and I cannot provide any clarity. I am sure the returning officer will be in touch with people, advising them of the position.

**Senator Darragh O'Brien:** I am not trying to be disruptive but I wish to ask one question. Following on from Senator Cullinane's comments, ballot papers arrived yesterday morning.

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

**Senator Darragh O'Brien:** People would have voted yesterday. What is the position? Will the Seanad, through the Cathaoirleach, ask the returning officer what is the position? The statement could be read into the Official Report.

**An Cathaoirleach:** This is not a matter for the Chair.

**Senator Maurice Cummins:** It is not a matter for me to advise on that either and I have no wish to get involved in that. I am sure advice will be made available to Members. I agree that quite a number of people have voted, including myself. The issue will have to be examined.

**Senator Darragh O'Brien:** What happens if that candidate wins and does not wish to take up his seat?

**Senator Maurice Cummins:** I have no intention of amending the Order of Business. Senator Bacik asked about Committee Stage of the employment equality Bill, and I will try to ascertain when that will be dealt with. She also called for a debate on the national dementia strategy. Senator Zappone spoke about Eavan Boland, and we will certainly bring the name to the Committee for Procedure and Privileges for consideration. With regard to Committee Stage

of the Bill dealing with Seanad reform, the Senator is aware that I have made a number of announcements on Seanad reform. I will check to see if the Government wishes to proceed with that Bill and allow it in Government time.

Senator Barrett referred to the events in Hong Kong and democracy, rightly expressing his opinion in that regard. With regard to the EU probe into Apple's dealings with Ireland, we maintain a very transparent corporate tax regime, with most companies paying effective rates very close to the top rate of 12.5%. The Revenue Commissioners have already confirmed that Ireland does not make any special deals with individual companies and the regime is statute-based, applying to everybody. There is nothing new in the publication from the Commission, as it is a copy of a letter sent from the European Commission to Irish authorities in June, indicating the commencement of a formal state aid investigation. Ireland is confident there has been no breach of state aid rules in this case, and it already issued a formal response to the Commission earlier this month addressing in detail the concerns outlined in the opening position.

Senator Coghlan spoke about the plight of bank porters, and, as he rightly stated, they are on the front line for banks. Many of the banks now want to get rid of people and we may be talking to machines more often than people when we go into banks. I note his concern in that regard and that he will raise the matter with the bank in question. Senator MacSharry called for a debate on maternity services and I will certainly try to facilitate that. Senator Whelan discussed the Irish Wheelchair Association and the need for best practice. My understanding is that building regulations would cover the issues he mentioned but we will try to ascertain the exact position. It is very important that all the building regulations are adhered to. Inappropriate use of disabled parking zones is a despicable practice and people fined for it deserve the loss of every euro in such instances.

I have already referred to the matter of Seanad reform, which Senator Quinn mentioned. Senator Ó Domhnaill spoke of interest rates for graduate-entry medical students and sought an amendment to the Order of Business. I will certainly bring the matter to the attention of the Minister for Education and Skills but I do not propose to accept the amendment to the Order of Business today. Senator Cullinane discussed events concerning the Minister of State in the Department of the Environment, Community and Local Government. I read the newspapers today and some of the alleged comments attributed to the ex-councillor were unfortunate, to say the least. I have no intention of being drawn into this matter. However, it is very important for a Minister to be driven by a person that he or she implicitly trusts. I have no intention of being drawn further into the matter.

Senator Mooney mentioned the termination of 252 long wave transmission. I agreed with him, some time ago, that it is a retrograde step. A saving of €800,000 has been quoted but it will be interesting to see how he gets on when he raises this matter at an Oireachtas committee meeting in the morning.

Senator van Turnhout raised the question of graduate entry for medical students. Senators O'Donovan and Mullins mentioned the persecution of Christians in many areas of the world and called for a debate. I shall try to find out for Senator O'Donovan when the sea-fisheries (amendment) Bill will come before the House.

Senator Mullen made a number of points about the Seanad by-election and also grants for water tanks and so on which I shall bring to the attention of the relevant Minister.

30 September 2014

**Senator Rónán Mullen:** I thank the Leader.

**Senator Maurice Cummins:** Senator Byrne mentioned retention fees for nurses. I will bring the matter to the attention of the Minister for Health whom I am sure is aware of the matter.

Senator Mullins and Conway mentioned the visit by the Minister for Foreign Affairs and Trade to the USA, especially regarding the undocumented Irish, and sought a debate on same. I know the Minister intends to come to the House in the next couple of weeks to update us on the question of Syria and Iraq. I am sure we may be able to include a report on his visit during that debate.

Senator White mentioned paternity leave. She brought in a very laudable Bill into the House and I am delighted that the relevant Minister intends to proceed with a Bill.

On the issue of breast screening for women aged between 65 and 69 years, I agree totally with Senator White. I think the Minister for Finance indicated that when finance becomes available, such screening will be one of the areas which will be attended to, and rightly so.

Senator Moran commended the disability group in Trinity College. She also raised the matter of petrol stretching which has been raised by a number of Members in the House over the past number of weeks.

**An Cathaoirleach:** Senator Darragh O'Brien has moved an amendment to the Order of Business: "That a debate with the Minister for Arts, Heritage and the Gaeltacht to address questions on the appointment of Mr. John McNulty to the board of the Irish Museum of Modern Art, be taken today." Is the amendment being pressed?

**Senator Darragh O'Brien:** In light of the information and statement made by the Leader here today that Mr. McNulty has withdrawn his candidacy, although questions remain to be answered, I withdraw my amendment. I have asked for clarification on the electoral process and would welcome a note from the returning officer to be read into the Seanad record as soon as possible.

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

**Senator Fidelma Healy Eames:** On a point of information-----

**An Cathaoirleach:** There is no such thing as a point of information.

**Senator Fidelma Healy Eames:** On a point of order then.

**An Cathaoirleach:** A point of order.

**Senator Fidelma Healy Eames:** The Taoiseach has just informed the Dáil that the by-election is in process and a candidate cannot be withdrawn.

**An Cathaoirleach:** It is not a matter for the House.

**Senator Thomas Byrne:** There are already Fine Gael votes in the ballot box. If Mr. McNulty wins will there be another by-election? Is that what is going to happen?

Amendment, by leave, withdrawn.

**An Cathaoirleach:** Senator O'Donnell has moved an amendment to the Order of Business: "That a debate with the Minister for Education and Skills on the rates of interest charged by Bank of Ireland on loans given to medical students be taken today." Is the amendment being pressed?

**Senator Marie-Louise O'Donnell:** Yes.

Amendment put:

The Seanad divided: Tá, 21; Níl, 23.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Byrne, Thomas.	Brennan, Terry.
Crown, John.	Burke, Colm.
Cullinane, David.	Coghlan, Eamonn.
Daly, Mark.	Coghlan, Paul.
Healy Eames, Fidelma.	Comiskey, Michael.
MacSharry, Marc.	Conway, Martin.
Mooney, Paschal.	Cummins, Maurice.
Mullen, Rónán.	D'Arcy, Michael.
Ó Murchú, Labhrás.	Gilroy, John.
O'Brien, Darragh.	Hayden, Aideen.
O'Brien, Mary Ann.	Henry, Imelda.
O'Donnell, Marie-Louise.	Higgins, Lorraine.
O'Donovan, Denis.	Landy, Denis.
Quinn, Feargal.	Moloney, Marie.
Reilly, Kathryn.	Moran, Mary.
van Turnhout, Jillian.	Mulcahy, Tony.
Walsh, Jim.	Mullins, Michael.
White, Mary M.	Naughton, Hildegard.
Wilson, Diarmuid.	O'Keefe, Susan.
Zappone, Katherine.	O'Neill, Pat.
	Sheahan, Tom.
	Whelan, John.

Tellers: Tá, Senators Marie-Louise O'Donnell and Jillian van Turnhout; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

Order of Business agreed to.

## **Education (Miscellaneous Provisions) Bill 2014: Committee Stage (Resumed)**

### SECTION 8

Debate resumed on amendment No. 18:

In page 9, lines 18 and 19, to delete all words from and including “deletion” in line 18 down to and including line 19 and substitute “substitution of “authorised” for “administered”.”

- (Senator Seán D. Barrett)

**Senator Sean D. Barrett:** I thank the Minister for the good dialogue we had on the last occasion we debated the Bill. She proposes that a section of the Student Support Act 2011 shall be amended by the deletion of the phrase “pursuant to a scheme administered by the Minister”. According to the briefing documents, this change is intended to reflect the transfer of PLC courses to SOLAS. The amendment I propose to the Minister’s amendment is that we substitute “authorised” for “administered”. I had in mind the administration of schemes devolved to agencies, of which this is one. In the teething problems of SUSI, we found that the fact that the Minister’s predecessor, Deputy Quinn, was in charge meant that he took on board many comments made here and the operation of it in year 2 was substantially improved such that it disappeared from the political radar. He put a person in charge in each part of the office to deal with a county. I had a query from somebody in Wexford and it was expeditiously handled. The purpose of the amendment is to specify that student support systems are authorised rather than administered by the Minister and it would not mean the Minister would not have a role, or that the previous Minister, Deputy Quinn, did not have a role. I have tabled the amendment with the intention of being useful, not to cause more confusion.

**Minister for Education and Skills (Deputy Jan O’Sullivan):** The provision of grants for students participating in further and higher education is provided for by way of secondary legislation through an annual scheme of grants and a set of regulations governed by the Student Support Act 2011. As it currently stands, an approved institution in the further education sector is one that receives a grant out of moneys provided by the Oireachtas, pursuant to a scheme administered by the Minister for the provision of post-leaving certificate, PLC, courses.

Following the transfer of the administration of these courses to SOLAS after its establishment last year, for clarity I propose to remove the current reference to PLC courses as being “pursuant to a scheme administered by the Minister”. As a result of the change to SOLAS, the proposed amendment would not reflect the change needed to clarify arrangements on the administration of PLC courses following the establishment of SOLAS. While I appreciate what the Senator is trying to do, it is because of the establishment of SOLAS that we feel the language needs to be changed as we propose.

**Senator Sean D. Barrett:** I thank the Minister and will not press the amendment. We wish both SUSI and SOLAS every success because they are important schemes for students.

Amendment, by leave, withdrawn.

Section 8 agreed to.

NEW SECTION

**Senator Kathryn Reilly:** I move amendment No. 19:

In page 9, between lines 19 and 20, to insert the following:

“9. The Student Support Act 2011 is amended, in section 16(3), by the substitution of the following paragraph for paragraph (d)—

“(d) whether he or she has been or is self supporting having regard to information provided by bodies including but not limited to GPs, student support organisations, student unions, welfare officers, non-HSE employed social workers or non HSE employed family support workers, LGBT advocacy workers, and youth advocacy workers, as well as information provided by other government departments and statutory bodies that demonstrates evidence of self-support, or affidavits provided by the student.”.

The purpose of the amendment is to address anomalies in the SUSI grant legislation. Students aged under 23 are assessed on their parents’ incomes, and can be assessed on their own incomes only if they can prove they are estranged from their parents. The only proof of estrangement SUSI will accept is verification from a HSE social worker or family support worker, FSW. This is problematic because HSE social workers and FSWs will not assess people aged over 18. Therefore, there is no route to verify estrangement from one’s parents if it took place when one was over the age of 18.

My colleague, Deputy O’Brien, has continuously raised the issue but it has not yet been rectified. It leaves very vulnerable students in a precarious situation and has forced some to leave their courses if their parents do not co-operate with grant applications, given that SUSI is rigid in its application processing and vehemently sticks to its guidelines. It is a difficult situation when a Department such as the Department of Social Protection will accept that a person resides in a particular place for the purpose of social welfare claim but not for a student grant. The purpose of the amendment is to expand the range of information that is acceptable to verify a claim of estrangement for the purposes of a student grant.

**Deputy Jan O’Sullivan:** I can understand the Senator’s concerns about students who live away from their parents but must prove that they are also estranged from their parents. Cases of genuine estrangement are relatively rare and although they have a significant impact on individual students, each one has unique circumstances. Having carefully considered the Senator’s amendment I will not be accepting it, for the following reasons. Section 16(3) of the Student Support Act 2011 already makes provision for the Minister to specify a class of applicant or criteria that may be considered in determining whether an applicant is a student of a particular class. For example, the student grant scheme, SI 201 of 2014, makes provision in Article 21.3 to allow a dependent student to be exempt from having parents’ income taken into account where it is established to the satisfaction of the relevant awarding authority that the dependent student is irreconcilably estranged from both parents and neither parent furnishes financial support to the student. This provision allows the awarding authority to assess dependent students in genuine estrangement cases without reference to their parents or guardians’ income or address.

The legislation allows latitude. I know the Senator makes the point that the actual practice may be restrictive, but the Student Support Act 2011 allows latitude for specifying some additional class of applicant and the criteria to be applied for such applicant having regard to the resources available and subject to the consent of the Minister for Finance. In effect the proposed amendment would replicate the provision in section 16.3 of the Student Support Act 2011.

In looking at how the student grant scheme is being administered, I will certainly consider the Senator's point to see whether we need to look at the administration. If we are reviewing the scheme again, I would be willing to look at it at that stage. All Members from time to time come across difficult cases where students do not qualify for grants. I would certainly like to review the scheme at some stage, but I do not feel it is appropriate to put it into this legislation.

**Senator Kathryn Reilly:** Based on what the Minister has said I will not press the amendment, but I reserve the right to submit an amendment on Report Stage having looked at the legislation.

**Senator Mary Moran:** I thank the Minister for agreeing to look at reviewing it. I concur with her that we should look at it in the future. We all come across such cases.

Amendment, by leave, withdrawn.

Section 9 agreed to.

Amendment No. 20 not moved.

Section 10 agreed to.

SECTION 11

**Acting Chairman (Senator Diarmuid Wilson):** Amendment No. 21 was already discussed with amendment No. 16. Is Senator Barrett pressing the amendment?

**Senator Sean D. Barrett:** I move amendment No. 21:

21. In page 10, line 2, after "Education" to insert "and Royal College of Surgeons".

I will not be.

The criteria for the university to be so designated outside Ireland but not so designated in Ireland - but located in Ireland - require that it have an international reputation and have 40% of the students from outside the European Union. We had the Minister at the Irish Universities Association conference a few doors down the road only yesterday. Of the people the Minister was talking to yesterday, no other institution would qualify for it. It seems to me that it is about the Royal College of Surgeons in Ireland, so why not put it in the title? We had the rather strange debate the last day that only people on this side of the House were saying that this was about the Royal College of Surgeons in Ireland and nobody on the Government side was willing to acknowledge that. I do not know why it is a secret and it may have weakened the Bill because, as the Minister knows, doubts began to manifest themselves on this side of the House - not with me yet - as to why the body for which this legislation was primarily and probably exclusively intended within our lifetime, was not mentioned in it.

The second issue is whether it needs to change its charter to become a university for some purposes outside the country but not inside it? Should it not be referred to in its own legislation,

the Royal College of Surgeons in Ireland (Charters Amendment) Act 2003? Perhaps we will have a longer discussion on it on Report Stage, but that aspect strikes me as strange. Senator Power expressed doubts when she said it is really a medical university. Other people subsequently asked whether it was possible to have a university that specialises in such a narrow area. News to my ears in those discussions was that universities need a full range of subjects and disciplines and particularly that the civilising influence on a university is its arts faculty.

While it started off with my support - it seemed like a good idea but there were doubts - at least if we want to go there and do it, why is it not mentioned in the Bill? It would be very strange to have something implemented by a law and an Act of Parliament which does not refer at all to the body for which it is intended. This is the purpose of the amendment. It struck me as anomalous. I will not push the amendment, and I will not move amendment No. 22 as I would only be repeating what I just said, which is that it is strange.

Amendment, by leave, withdrawn.

Section 11 agreed to.

Amendment No. 22 not moved.

Title agreed to.

Bill reported with amendment.

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

**Senator Hildegard Naughton:** Next Tuesday.

Report Stage ordered for Tuesday, 7 October 2014.

*Sitting suspended at 4.30 p.m. and resumed at 5.30 p.m.*

### **Companies Bill 2012: Report and Final Stages**

**Acting Chairman (Senator Marie Moloney):** Before we commence I wish to remind the House that Senators may speak only once on Report Stage, except the proposer of an amendment, who may reply to the discussion on that amendment. I also remind Members that on Report Stage each amendment must be seconded.

Government amendment No. 1:

In page 71, to delete lines 28 and 29 and substitute the following:

“(8) This section is without prejudice to—

(a) the generality of the Interpretation Act 2005 and, in particular, section 27 of it;

and

(b) the special provision made in certain provisions of this Act for transitional

matters as they relate to those provisions.”.

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Damien English):** The purpose of this amendment is to ensure greater clarity in interpretation. No substantive change is made to the Bill. The amendment refers to any provision in a former enactment. This section provides that the repeal of previous Companies Acts does not affect companies incorporated under those repealed Acts. It provides that documents referring to repealed Acts are to be read alongside the corresponding provisions of this Act. This section preserves the appointment of officers, registers, funds and accounts. The other amendments in this group arise as a result of this amendment and are technical in effect and nature.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 2 and 3 are related and may be discussed together.

Government amendment No. 2:

In page 74, between lines 10 and 11, to insert the following:

“(10) If a document created before the commencement of this section defines the expression “subsidiary” by reference to section 151 of the Act of 1963, then, for the avoidance of doubt, the construction provided in respect of that expression by the document is not affected by this section in the absence of an agreement to the contrary by the parties to the document.”.

**Deputy Damien English:** The purpose of these grouped amendments is to provide for existing documents that contain a definition of “subsidiary” or “holding company” that is based on the construction of section 151 of the 1963 Act. It is important to provide certainty in law and to ensure the continuity of such an expression unless parties agree otherwise.

Amendment agreed to.

Government amendment No. 3:

In page 74, between lines 27 and 28, to insert the following:

“(4) If a document created before the commencement of this section defines the expression “holding company” by reference to section 151 of the Act of 1963, then, for the avoidance of doubt, the construction provided in respect of that expression by the document is not affected by this section in the absence of an agreement to the contrary by the parties to the document.”.

Amendment agreed to.

Government amendment No. 4:

In page 75, between lines 14 and 15, to insert the following:

“(5) References in *Chapter 6 of Part 2*, however expressed, to this Part and *Parts 2 to 15* having application to a private company limited by shares shall not be read as excluding the application to such a company of provisions of the kind mentioned in *subsection (4)*.”.

**Deputy Damien English:** The purpose of this amendment is to assist with the interpretation of this Bill. Due to the very technical nature of the Bill, the draftsman has concluded that a clarifying provision along the lines of the proposed amendment is necessary to ensure a clearer reading of the Bill's structure. It is important that the reader understands that Parts 16 to 25, inclusive, may have an impact on private limited companies in certain circumstances.

Amendment agreed to.

**Senator Michael Mullins:** I move: "That in accordance with Standing Order 128(1) the Bill be recommitted in respect of amendments Nos. 5, 110, 111, 115, 116, 131, 132, 136, 137, 151 and 152."

Question put and agreed to.

Bill recommitted in respect of amendment No. 5.

Government amendment No. 5:

In page 75, between lines 17 and 18, to insert the following:

"(2) For the avoidance of doubt, *subsection (1)* does not apply to the construction of—

(a) the expression "holding company", where that expression is used without qualification, in *Parts 2 to 14*; or

(b) any related expression, where used without qualification, in those Parts."

**Deputy Damien English:** The purpose of these amendments is to clarify that "holding company" and "subsidiary" are not to be read as covering only private companies limited by shares. With a close reading of Part 6, for example, a reader will see that it actually provides a firm indication that "holding company" and "subsidiary" are not to be read a restricted fashion. Nevertheless, it was felt prudent to ensure this section is not read in isolation from such sections nor undue emphasis placed on the words "unless expressly provided otherwise". Due to the structure of this Bill and the manner in which various Parts apply to specific company types, it has been necessary to introduce corresponding amendments in relevant Parts for other company types.

Amendment agreed to.

Bill reported with amendment.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 6, 77 to 84 inclusive, 156, 157, 159 and 160 are related and may be discussed together.

Government amendment No. 6:

In page 83, to delete the text inserted by amendment 6 at Seanad Committee and substitute the following:

"(3) *Subsection (1)* as it relates to the use of the word "limited", or any abbreviation of that word, shall not apply to a society registered under the Industrial and Provident Societies Acts 1893 to 2014."

**Deputy Damien English:** The purpose of these amendments is to update the legislative reference to a recent enactment.

Amendment agreed to.

Government amendment No. 7:

In page 83, between lines 12 and 13, to insert the following:

“(6) *Subsection (1)* shall not apply to any company—

(a) to which *Part 21* applies, and

(b) which has provisions in its constitution that would entitle it to rank as a private company limited by shares (whether under this Part or *Part 16*) if it had been registered in the State.”.

**Deputy Damien English:** The purpose of this amendment is to clarify that this section does not apply to an external company that could, by constitution, be either categorised as a private limited company or a designated activity company in this jurisdiction. The amendment provides a dispensation to an external company from having to use the words “limited”, “LTD”, “designated activity company” or “DAC” in their names. The purpose of this provision is to continue to enable external companies to carry out their business in Ireland. A similar dispensation was granted to industrial and provident societies in the Seanad on Committee Stage.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 8 and 10 are related and may be discussed together. Is that agreed? Agreed.

**Senator David Cullinane:** I move amendment No. 8:

In page 88, line 34, to delete “privileges.” and substitute the following:

“privileges,

in so much as such action does not undermine or take precedence over a person’s right and entitlements as provided for in existing legislation or international treaties and agreements to which Ireland has signed up to.”.

I welcome the Minister of State to the House. As this is the first time I have seen him here since his appointment, I wish him all the best in his role. The two amendments arise from committee proceedings. We still have a concern about companies being regarded as a legal entity and having the same rights and “full and unlimited capacity” as a human being. It is one of the most striking but unremarked upon changes in the Bill and which is contained in section 38. It gives companies the same capacity and authority as a human being. I do not have a difficulty with the idea behind the change but I would have a concern about giving “full and unlimited capacity to carry on and undertake any business or activity, do any act or enter into any transaction” and having the full rights and privileges as a human being as going too far.

Amendment No. 10, which is similar, states:

In page 89, between lines 6 and 7, to insert the following:

“(2) In the case of a clash of “rights and privileges” a natural human being’s rights and privileges would always take precedence over a company’s.”.

It is difficult to determine the ultimate use that companies and directors will make of this provision. In the US where there are similar situations, this type of right has resulted in companies claiming a breach of their human rights when they are required to allow inspections of the workplace or that their human right to free speech is infringed upon by advertising rules or that laws dealing with unfair labour practices, such as holding anti-union meetings, are contrary to their employment of their human rights. That is a difficulty we have. We agree with the Irish Congress of Trade Unions that a human being their human rights need to be protected first and foremost above and beyond any company which would be given, as the Bill does, the same full and unlimited capacity and which would be seen then as a legal person in legal terms. These issues have been discussed at length on Second and Committee Stages but we are not convinced that our concerns have been taken on board. That is the reason we have resubmitted the amendments on Report Stage.

**Acting Chairman (Senator Marie Moloney):** Is there a seconder? As there is no seconder, the amendment falls.

Amendment No. 8 lapsed.

Government amendment No. 9:

In line 89, line 5, to delete “shall” and substitute “may”.

**Deputy Damien English:** The purpose of this amendment is to make this provision permissive rather than mandatory for companies. The advantage of this amendment is that a company can choose to grant unlimited authority to a person to act on behalf of the company and, if they do so, they will notify the Companies Registration Office. There was concern that making it mandatory would create unnecessary additional administrative burdens on both companies and on the CRO.

Amendment agreed to.

**Senator David Cullinane:** I move amendment No. 10:

In page 89, between lines 6 and 7, to insert the following:

“(2) In the case of a clash of “rights and privileges” a natural human being’s rights and privileges would always take precedence over a company’s.”.

**Acting Chairman (Senator Marie Moloney):** Is there a seconder? As there is no seconder the amendment lapses.

Amendment No. 10 lapsed.

**Acting Chairman (Senator Marie Moloney):** Government amendments Nos. 11 and 12 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 11:

In page 91, lines 14 and 15, to delete “, by writing under its common seal,”.

**Deputy Damien English:** The purpose of these two amendments is to bring this section in line with the Powers of Attorney Act 1996 and the Land and Conveyancing Law Reform Act 2009. The use of a seal is no longer necessary to empower a person to execute deeds or other matters on behalf of a company.

Amendment agreed to.

Government amendment No. 12:

In page 91, line 18, to delete “and under his or her seal”.

Amendment agreed to.

Government amendment No. 13:

In page 99, between lines 1 and 2, to insert the following:

“(9) For the avoidance of doubt, the application of *Part 16*, in the circumstances under this section where that Part is stated to apply and notwithstanding that the course of action of delivering a constitution of the kind referred to in *subsection (1)* will not be adopted by such a company, extends to an existing private company falling within *subsection (10)* but-

(a) the application of *Part 16* to such a company does not affect the application of the provisions of the statute referred to in *subsection (10)* (or any other relevant statute) to the company; and

(b) if, by virtue of the foregoing statute, the company was not required to include the word “limited” or “teoranta” in its name, that exemption is not affected by anything in this section or *Part 16*.

(10) The existing private company referred to in *subsection (9)* is one that has been incorporated under a former enactment relating to companies (within the meaning of *section 5*) pursuant to, or in compliance with a requirement of, any statute.”.

**Deputy Damien English:** The purpose of this amendment is to clarify the manner in which this section, which clarifies that the law applicable during the transition period for a private company limited by shares is the law governing designated activity companies, applies to semi-State companies and other companies formed pursuant to a statute.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Government amendments Nos. 14 and 164 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 14:

In page 104, between lines 33 and 34, to insert the following:

“(10) The procedures under this section may be followed, after consultation by the company with the relevant Minister, by an existing private company that has been incorporated under a former enactment relating to companies (within the meaning of *section 5*) pursuant to, or in compliance with a requirement of, any statute (in *subsection (11)*)

referred to as the “relevant statute”) and may be so followed notwithstanding that statute but-

(a) the provisions otherwise of that statute (and any other relevant statute) shall apply to the designated activity company that the foregoing company re-registers as under this section as they apply to the foregoing company before such re-registration; and

(b) if the foregoing company is a company to which *section 1436* applies, the provision made by *subsection (1)* requiring the substitution of certain words in its name shall be taken to be omitted from that subsection.

(11) In *subsection (10)* “relevant Minister” means the Minister of the Government concerned in the administration of the relevant statute.”.

**Deputy Damien English:** This group of amendments provide for the procedure for re-registration of an existing private semi-State company as a designated activity company. The purpose of these amendments is to ensure clarity in relation to existing semi-State companies. It is possible that the private company limited by shares model may not be an appropriate fit for existing semi-State companies. The legislation governing them could not have foreseen the innovation of a one document constitution that this Bill, when enacted, will provide. The schemes governing such companies are premised on them being two document companies, that is, their incorporation is governed by a memorandum and articles of association. This amendment makes it clear also that a semi-State company, under its new guise as a DAC, will be subject to the same terms of its governing legislation as it was before it re-registered. The associated grouped amendment No. 164 exempts semi-State bodies from having the terms “limited”, “designated activity company” and so forth at the end of their names.

**Senator Feargal Quinn:** The Minister of State is welcome. He has used the words “semi-State company” about six times. I recall somebody saying to me some years ago that we should not use that term; they are all State companies. They are not semi-State, although there may be some semi-State in them. They should be called State sponsored companies rather than semi-State. I believe that would be the more correct term to use. I am not suggesting any change to the Bill.

**Deputy Damien English:** It might send shockwaves to the Bill if we tried to change it for this purpose. It is an issue I will bear in mind and will raise it with my colleagues in the Department.

**Senator Mary M. White:** They are not fully State.

**Senator Feargal Quinn:** They are State-owned.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Government amendments Nos. 15, 31, 38, 39, 63, 65, 105, 109, 117, 148, 168, 169 and 172 are technical drafting amendments and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 15:

In page 139, line 33, to delete “*Chapter 4*” and substitute “4”.

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**Deputy Damien English:** These are technical amendments that purport to correct the language used in a section or to insert missing words. The purpose of all the amendments in this group is to aid with interpretation and understanding.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Recommittal is necessary in respect of Government amendment No. 16.

**Senator Michael Mullins:** I move: “That in accordance with Standing Order 128(1) the Bill be recommitted in respect of amendment No. 16.”

Question put and agreed to.

Bill recommitted in respect of amendment No. 16.

Government amendment No. 16:

In page 149, between lines 23 and 24, to insert the following:

“(5) This section shall not prevent the subscription, acquisition or holding of shares in its parent public company by a company which is a member of an authorised market operator acting in its capacity as a professional dealer in securities in the normal course of its business.”.

**Deputy Damien English:** The purpose of this amendment is to ensure existing law is carried into this Bill. The 2001 Act provided an exemption to section 32 of the 1963 Act. In simple terms, this allows a subsidiary, whether limited or unlimited, to hold shares in its listed parent where that subsidiary is a member of an approved stock exchange. This permits market making in a parent’s shares.

This amendment proposal maintains existing law. It replicates section 32 of the 1963 Act as amended by section 111 of the Company Law Enforcement Act. If the subsidiary is a member of an approved stock exchange acting in the ordinary course of its business as a professional dealer in securities, the restrictions and limitations of the acquisition of shares by a subsidiary in its holding company will not apply. A holding company must treat such shares as treasury shares.

Amendment agreed to.

Bill reported with amendment.

**Acting Chairman (Senator Marie Moloney):** Government amendments Nos. 17, 119 and 120 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 17:

In page 156, to delete lines 23 to 27.

**Deputy Damien English:** This is a refinement to clarify that the term “properly prepared” refers to statutory financial statements and not also to the “initial” and “interim” financial statements. This provision is only applicable to public limited companies and therefore a deletion is necessary in this section. Amendment No. 120 remedies the position in Part 17 which governs

alterations and modifications of the general law to public limited companies.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 18 and 19 are cognate and may be discussed together, by agreement. Is that agreed? Agreed.

**Senator David Cullinane:** I move amendment No. 18:

In page 166, line 28, after “on” to insert “and managed and controlled”.

This was dealt with on Committee Stage but the two amendments tabled are another attempt to strengthen protection for employees. As the Minister of State knows from his previous role as Chairman of the Joint Oireachtas Committee on Jobs, Enterprise and Innovation, there has been a plethora of abuses and cases where workers have had to fight tooth and nail to get their entitlements. Our amendments are designed to ensure proper protection for workers in these circumstances and that when they put their time and energy into making a profit for a company-----

**Deputy Damien English:** What amendment is Senator Cullinane speaking to?

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 18 and 19.

**Senator David Cullinane:** -----they should be protected. This is what the amendments are designed to do.

**Acting Chairman (Senator Marie Moloney):** Is there a seconder? As there is no seconder the amendment lapses.

Amendment No. 18 lapsed.

**Senator David Cullinane:** I move amendment No. 19:

In page 166, line 41, after “trade” to insert “and is managed and controlled”.

**Acting Chairman (Senator Marie Moloney):** Is there a seconder? As there is no seconder the amendment lapses.

Amendment No. 19 lapsed.

**Senator Michael Mullins:** I move: “That in accordance with Standing Order 128(1) the Bill be recommitted in respect of amendments Nos. 20, 122 and 123.”

Question put and agreed to.

Bill recommitted in respect of amendment No. 20.

Government amendment No. 20:

In page 197, between lines 33 and 34, to insert the following:

“(7) The depositing of the instrument of proxy referred to in *subsection (5)* may, rather than its being effected by sending or delivering the instrument, be effected by communicating the instrument to the company by electronic means, and this subsection

likewise applies to the depositing of anything else referred to in *subsection (5)*.”.

**Deputy Damien English:** The purpose of the amendment is to clarify that electronic means may be used to deposit the instrument of proxy. The current wording might suggest that “deposited” means physically left at and not sent by electronic means, which would be contrary to the spirit of the Bill which aims, where possible, to reduce administrative burdens on companies by availing of methods to simplify matters.

Amendment agreed to.

Bill reported with amendment.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 21 and 22 form a composite proposal and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 21:

In page 220, line 24, to delete “Save where regulations under *subsection (7)* provide otherwise, any” and substitute “Any”.

**Deputy Damien English:** The purpose of the amendments is to clarify that subsection (6) applies but that the Minister may, as he or she considers appropriate, regulate in this matter.

Amendment agreed to.

Government amendment No. 22:

In page 220, line 31, after “mentioned” where it secondly occurs to insert the following:

“and may also, by regulations, provide for such exceptions to *subsection (6)* as he or she considers appropriate”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 23, 24 and 27 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 23:

In page 233, line 4, after “duties” to insert “(other than those set out in *section 228(1)(b)* and *(h)*)”.

**Deputy Damien English:** The purpose of these amendments is to highlight that certain fiduciary duties of directors derive from statute and that such duties are not subject to the same rules and principles as common law provisions would be.

Amendment agreed to.

Government amendment No. 24:

In page 233, line 7, after “duties” to insert “(other than those set out in *section 228(1)(b)* and *(h)*)”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendment No. 25 is consequential to amendment No. 26, therefore, amendments Nos. 25 and 26 may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 25:

In page 233, line 25, to delete “or”.

**Deputy Damien English:** The purpose of these amendments is to ensure a company may exercise its right regarding a director’s power to exercise independent judgment by general resolution.

Amendment agreed to.

Government amendment No. 26:

In page 233, line 26, after “*subsection (2);*” to insert the following:

“or

(iii) the director’s agreeing to such has been approved by a resolution of the company in general meeting;”.

Amendment agreed to.

Government amendment No. 27:

In page 236, line 8, to delete “*section 228(1)(d)*” and substitute “*section 228(1)(a), (c), (d), (e), (f) or (g)*”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 28 and 29 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 28:

In page 264, between lines 31 and 32, to insert the following:

“(a) “basic facts concerning the default” means such of the facts, relating to the one or more acts or omissions that constituted the default, as can reasonably be regarded as indicating, at the relevant time, the general character of those acts or omissions.”.

**Deputy Damien English:** The purpose of these amendments is to strengthen the law governing the existing offence of officer in default. The amendment clarifies that a company officer may have a legitimate defence to a committed default.

Amendment agreed to.

Government amendment No. 29:

In page 265, to delete lines 5 to 17 and substitute the following:

“(2) In relevant proceedings, where it is proved that the defendant was aware of the basic facts concerning the default concerned, it shall be presumed that the defendant

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permitted the default unless the defendant shows that he or she took all reasonable steps to prevent it or that, by reason of circumstances beyond the defendant's control, was unable to do so."

Amendment agreed to.

**Senator David Cullinane:** I move amendment No. 30:

In page 266, between lines 37 and 38, to insert the following:

"(d) a certificate of tax compliance,".

This issue was discussed on Second and Committee Stages. We feel it is important that companies operating in these areas are tax compliant and the amendment provides that companies making an annual return must also provide a certificate of tax compliance as part of the process. This is to ensure no company can continue to be registered if it is not fully tax compliant. On Committee Stage the Minister stated it might be difficult to synchronise the annual returns with tax returns and I have sympathy with this, but there is no reason why the most recent tax certificate, perhaps for the previous year, would not suffice. It would be good practice and would give confidence to all elements in the chain of supply if people had a tax certificate. A number of examples were given to us of contractors using subcontractors who were not tax compliant for many years, built up an exposure and eventually went out of business. It would add value to the Bill and I ask the Minister of State to consider the issue.

**Acting Chairman (Senator Marie Moloney):** Is there a seconder? As there is no seconder the amendment lapses.

Amendment No. 30 lapsed.

Government amendment No. 31:

In page 278, line 13, after "both" to insert "of".

Amendment agreed to.

Government amendment No. 32:

In page 278, to delete lines 27 to 32 and substitute the following:

"(6) Subject to *subsection (7)*, the reference in *subsection (5)* to the net assets of the company is a reference to net assets, as defined in *section 275(1)*, of the company and for this purpose the amount of its net assets shall be ascertained by reference to the entity financial statements prepared under *section 290* and laid in accordance with *section 341* in respect of the last preceding financial year in respect of which such entity financial statements were so laid.

(7) Where no entity financial statements of the company have been prepared and laid under the foregoing sections before that time, the reference in *subsection (5)* to the net assets of the company shall be taken to be a reference to the amount of its called-up share capital at the time of the contravention."

**Deputy Damien English:** The purpose of the amendment is to provide for a more precise definition of "net assets", which is to be used in determining whether a company has not main-

tained adequate accounting records in accordance with the Bill.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 33 and 34 are cognate and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 33:

In page 288, line 26, to delete “to its not having elected to prepare IFRS group financial statements and”.

**Deputy Damien English:** The purpose of the amendment is to ensure the Courts Service has greater flexibility in listing the court in a given district. The existing reference is too limited in scope and could cause undue delay as to when a court hearing would be set as some District Court areas only sit once a month.

Amendment agreed to.

Government amendment No. 34:

In page 290, line 17, to delete “to its not having elected to prepare IFRS group financial statements and”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 35 to 37, inclusive, 41 to 50, inclusive, 74 to 76, inclusive, 114, 134, 144 and 150 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 35:

In page 325, to delete lines 31 and 32 and substitute the following:

“(b) the company is availing itself of the exemption on the grounds that *section 358* or *359*, as appropriate, is complied with,”.

**Deputy Damien English:** I wish to correct the record as I made a slight error when discussing amendment No. 33. In case there is confusion, the purpose of amendments Nos. 33 and 34 is to remove the incorrect reference to a company not having elected to prepare IFRS group financial statements.

**Acting Chairman (Senator Marie Moloney):** That is clarified and I thank the Minister of State. Has the Minister of State spoken on the grouping which includes amendment No. 35?

**Deputy Damien English:** I have.

**Acting Chairman (Senator Marie Moloney):** No, the Minister of State started with the clarification.

**Deputy Damien English:** Amendment No. 38-----

**Acting Chairman (Senator Marie Moloney):** We will start again. We are discussing amendments Nos. 35 to 37, inclusive, 41 to 50, inclusive, 74 to 76, inclusive, 114, 134, 144 and

150.

**Deputy Damien English:** The purpose of these amendments is to ensure the audit exemption criteria are in line with article 52 of Directive 2013/34/EU which must be transposed into national law by July 2015. The aim of the directive is to simplify the accounting requirements for small companies and improve the clarity and comparability of companies financial statements in the European Union.

*6 o'clock*

The new directive takes a small company or group as a starting point and imposes additional requirements on medium-sized companies and groups and even more requirements on large companies and groups as well as on public interest entities, those essentially being listed companies and banks and insurance undertakings regardless of their size or whether they are listed. This is described as the “think small first” approach. These amendments also make provision for the securitisation requirements arising from the directive and many people will be happy to see them pass after being discussed a great deal on Committee Stage.

Amendment agreed to.

Government amendment No. 36:

In page 326, between lines 8 and 9, to insert the following:

“(5) Whenever a company has availed itself of the audit exemption in respect of a financial year, the company shall, if required by the Director of Corporate Enforcement to do so--

(a) give to the Director such access to and facilities for inspecting and taking copies of the books and documents of the company, and

(b) furnish to the Director such information,

as the Director may reasonably require for the purpose of satisfying himself or herself that the company did, in respect of that financial year, comply with *section 358* or *359*, as appropriate.

(6) If a company fails to comply with a requirement under *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.”.

Amendment agreed to.

Government amendment No. 37:

In page 326, line 10, to delete “*section 358(2)*” and substitute “*section 359(1)*”.

Amendment agreed to.

Government amendment No. 38:

In page 333, lines 36 and 37, to delete “district court area” and substitute “District Court district”.

Amendment agreed to.

Government amendment No. 39:

In page 336, line 17, to delete “returns” and substitute “return’s”.

Amendment agreed to.

Government amendment No. 40:

In page 343, lines 15 and 16, to delete “laid before the members in general meeting or which is otherwise” and substitute “approved by the board of directors or which is”.

**Deputy Damien English:** This is basically a technical amendment.

**Acting Chairman (Senator Marie Moloney):** Sin é.

Amendment agreed to.

Government amendment No. 41:

In page 346, to delete lines 6 to 41, and in page 347, to delete lines 1 to 23 and substitute the following:

**“Main conditions for audit exemption — non-group situation**

**358.** (1) Subject to *subsection (3)* and the other provisions of this Chapter, *section 360* (audit exemption) applies to a company in respect of its statutory financial statements for a particular financial year if the company qualifies as a small company in relation to that financial year.

(2) For the purposes of this section, whether a company qualifies as a small company shall be determined in accordance with *section 350(2), (3), (5), (7), (8), (9) and (10)*.

(3) *Section 360* does not apply to a company in respect of its statutory financial statements for a particular financial year during any part of which the company was a group company (within the meaning of *section 359*) unless the group qualifies, under *section 359*, as a small group in relation to that financial year (and the other relevant provisions of this Chapter are complied with).

(4) In *subsection (3)* “group”, in relation to a group company, shall be read in accordance with *section 359(1)(b)*.

(5) Nothing in this section prejudices the operation of *Chapter 16* (special audit exemption for dormant companies).”.

Amendment agreed to.

Government amendment No. 42:

In page 347, to delete lines 24 to 39, and in page 348, to delete lines 1 to 10 and substitute the following:

**“Main conditions for audit exemption — group situation**

**359.** (1) In this section--

(a) “group company” means a company that is a holding company or a subsidiary undertaking; and

(b) references to the group, in relation to a group company, are references to that company, together with all its associated undertakings, and for the purposes of this paragraph undertakings are associated if one is the subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.

(2) Subject to this Chapter, *section 360* (audit exemption) applies to any group company in respect of its statutory financial statements for a particular financial year if the group qualifies as a small group in relation to that financial year.

(3) The determination of whether a group so qualifies shall be made, as provided for in this section, by reference to whether the financial year in question is the first, or a subsequent, financial year of the holding company that heads the group.

(4) A group qualifies as small in relation to the holding company’s first financial year if the qualifying conditions are satisfied in respect of that year.

(5) A group qualifies as small in relation to a subsequent financial year of the holding company--

(a) if the qualifying conditions are satisfied in respect of that year and the preceding financial year;

(b) if the qualifying conditions are satisfied in respect of that year and the group qualified as small in relation to the preceding financial year;

(c) if the qualifying conditions were satisfied in respect of the preceding financial year and the group qualified as small in relation to that year.

(6) The qualifying conditions for a small group are satisfied by a group in relation to a financial year in which it fulfils 2 or more of the following requirements:

(a) the balance sheet total of the holding company and the other members of the group taken as a whole does not exceed €4.4 million,

(b) the amount of the turnover of holding company and the other members of the group taken as a whole does not exceed €8.8 million,

(c) the average number of persons employed by the holding company and the other members of the group taken as whole does not exceed 50.

(7) For the purposes of *subsection (6)(a)*--

(a) “balance sheet total”, in relation to the holding company or another member of the group, means the aggregate of the amounts shown as assets in the company’s or other member’s entity balance sheet;

(b) there shall, in the operation of taking the balance sheet totals as a whole, be eliminated inter-group balances.

(8) For the purposes of *subsection (6)(b)*--

(a) “amount of the turnover”, in relation to the holding company or another member of the group, means the amount of the turnover shown in the company’s or other member’s entity profit and loss account;

(b) there shall, in the operation of taking the amounts of turnover as a whole, be eliminated inter-group sales.

(9) For the purpose of *subsection (6)(c)*, the average number of persons employed by a company or another member of the group shall be determined by applying the method of calculation prescribed by *section 317* for determining the number required by *subsection (1)* of that section to be stated in a note to the financial statements of a company.

(10) In the application of *paragraph (b)* of *subsection (6)* to any period which is a financial year but is not in fact a year, the amount specified in that paragraph shall be proportionally adjusted.

(11) Each occasion of an amendment of the kind referred to in *subsection (12)* being effected shall operate to enable the Minister to amend, by order, *subsection (6)(a)* and *(b)*, by substituting for the total and the amount, respectively, specified in those provisions a greater total and amount (not being a total or an amount that is greater than the total or amount it replaces by 25 per cent).

(12) The amendment referred to in *subsection (11)* is an amendment of the amount and the total specified in *paragraphs (a)* and *(b)*, respectively, of *section 350(5)*, being an amendment made for the purpose of giving effect to a Community act.

(13) Nothing in this section nor in any subsequent provision of this Chapter prejudices the operation of *Chapter 16* (special audit exemption for dormant companies).”.

Amendment agreed to.

Government amendment No. 43:

In page 348, lines 12 to 25, to delete all words from and including “The” in line 12 down to and including line 25 and substitute the following:

“The following provisions (the “audit exemption”) have effect where, by virtue of *section 358* or *359*, as appropriate, this section applies in respect of the statutory financial statements of a company or a group for a particular financial year--

(a) without prejudice to *section 384(2)*, *section 333* (obligation to have statutory financial statements audited) shall not apply to the company or group in respect of that financial year, and

(b) unless and until circumstances (if any) arise by reason of which the company or group is not entitled to the audit exemption in respect of that financial year, the provisions specified in *subsection (2)* shall not apply to the company or group in respect of that year.”.

Amendment agreed to.

Government amendment No. 44:

In page 349, to delete lines 17 to 36 and substitute the following:

**“Audit exemption not available where notice under *section 334* served**

**361.** (1) Notwithstanding that *section 358* is complied with, a company is not entitled to the audit exemption referred to in that section in a financial year if a notice, with respect to that year, is served, under and in accordance with *section 334(1)* and (2), on the company.

(2) Notwithstanding that *section 359* is complied with--

(a) a holding company and the other members of the group are not entitled to the audit exemption referred to in that section in a financial year if a notice, with respect to that year, is served, under and in accordance with *section 334(1)* and (2), on the holding company (irrespective of whether such a notice is served under and in accordance with those provisions on one or more of the other members of the group),

(b) where no such notice has been served, under and in accordance with those provisions, on the holding company but one has been so served on another member of the group, then that member is not entitled to the audit exemption in the year concerned irrespective of whether its holding company and any other members of the group avail themselves of the audit exemption in that year (but this paragraph is not to be read as diminishing the extent of the audit exemption, so far as it relates to the holding company’s group financial statements, that is availed of by the holding company).”.

Amendment agreed to.

Government amendment No. 45:

In page 349, to delete lines 37 to 41, and in page 350, to delete lines 1 to 15 and substitute the following:

**“Audit exemption not available where company or subsidiary undertaking falls within a certain category**

**362.** (1) Notwithstanding that *section 358* is complied with, a company is not entitled to the audit exemption referred to in that section if the company is a company falling within any provision (in so far as applicable to a private company limited by shares) of *Schedule 5*, other than a company referred to in *paragraph 5* or *16* of that *Schedule*, or if it is a relevant securitisation company.

(2) Notwithstanding that *section 359* is complied with, a holding company and the other members of the group are not entitled to the audit exemption referred to in that section if--

(a) the holding company is a company falling within any provision (in so far as applicable to a private company limited by shares) of *Schedule 5*, other than a

company referred to in *paragraph 5 or 16* of that *Schedule*, or if it is a relevant securitisation company, or

(b) any of those other members is--

(i) a credit institution,

(ii) an insurance undertaking,

(iii) a company falling within any provision of *Schedule 5*, other than a company referred to in *paragraph 5 or 16* of that *Schedule*,

(iv) a relevant securitisation company or

(v) a body any of the securities of which are admitted to trading on a regulated market.

(3) In this section “relevant securitisation company” means--

(a) a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997; or

(b) a financial vehicle corporation (“FVC”) within the meaning of--

(i) in the period before 1 January 2015, Article 1(1) of Regulation (EC) No. 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions; or

(ii) subject to *subsection (4)*, in the period on or after 1 January 2015, Article 1(1) of Regulation (EU) No. 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (recast).

(4) If a Regulation is made by the European Central Bank concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions that--

(a) contains a different definition of financial vehicle corporation (“FVC”) from that referred to in *subparagraph (ii) of subsection (3)(b)*, the reference in that provision to that definition shall be read as a reference to the definition contained in the Regulation so made, or

(b) amends the definition so referred to, the reference in that provision to that definition shall be read as a reference to that definition as it stands so amended.”.

Amendment agreed to.

Government amendment No. 46:

In page 350, to delete lines 16 to 30 and substitute the following:

**“Audit exemption (non-group situation) not available unless annual return filed in time**

**363.** (1) Notwithstanding that *section 358* is complied with, a company is not entitled to the audit exemption referred to in that section in a financial year unless--

(a) there is delivered to the Registrar, in compliance with *section 343*, the company's annual return to which the statutory financial statements or (as appropriate) abridged financial statements for that financial year are annexed, and

(b) if the annual return referred to in *paragraph (a)* is not the company's first annual return, there has been delivered to the Registrar, in compliance with *section 343*, its annual return to which the statutory financial statements or (as appropriate) abridged financial statements for its preceding financial year were annexed.

(2) Where the annual return referred to in *paragraph (a)* or *(b)* of *subsection (1)* is the company's first annual return, that paragraph shall have effect as if the reference to statutory financial statements or abridged financial statements being annexed to that return were omitted."

Amendment agreed to.

Government amendment No. 47:

In page 350, to delete lines 31 to 39, and in page 351, to delete lines 1 to 31 and substitute the following:

**“Audit exemption (group situation) not available unless annual return filed in time**

**364.** (1) In this section--

(a) a reference to each of the relevant bodies is a reference to each of the holding company and the other members of the group (but this paragraph is subject to *subsection (6)*),

(b) “preceding financial year” means the financial year preceding the financial year referred to in *subsection (2)*.

(2) Notwithstanding that *section 359* is complied with, a holding company and the other members of the group are not entitled to the audit exemption referred to in that section in a financial year unless--

(a) there is delivered to the Registrar, in compliance with *section 343*, the annual return of each of the relevant bodies to which the particular relevant body's statutory financial statements or (as appropriate) abridged financial statements for that financial year are annexed, and

(b) if the annual return referred to in *paragraph (a)* is not the first annual return of each of the relevant bodies, the condition specified in *subsection (3)* or *(4)*, as the case may be, is satisfied.

(3) If the annual return referred to in *paragraph (a)* of *subsection (2)* is not the first annual return of any of the relevant bodies, the condition referred to in *paragraph (b)* of that subsection is that there has been delivered to the Registrar, in com-

pliance with *section 343*, the annual return of each of the relevant bodies to which the particular relevant body's statutory financial statements or (as appropriate) abridged financial statements for the preceding financial year were annexed.

(4) If the annual return referred to in *paragraph (a)* of *subsection (2)* is the first annual return of one or more, but not all, of the relevant bodies, the condition referred to in *paragraph (b)* of that subsection is that there has been delivered to the Registrar, in compliance with *section 343*, the annual return of each of the relevant bodies (excluding any of them the annual return of which is its first annual return) to which the particular relevant body's statutory financial statements or (as appropriate) abridged financial statements for the preceding financial year were annexed.

(5) In the case of--

(a) the annual return thirdly mentioned in *subsection (2)(a)*, if that return is the company's or other member's first annual return, *subsection (2)(a)* shall have effect (in relation to the company or other member) as if the reference to statutory financial statements or abridged financial statements being annexed to that return were omitted,

(b) the annual return to which the condition referred to in *subsection (3)* or *(4)* applies (namely the annual return to which statutory financial statements or abridged financial statements for the preceding financial year are to be annexed) if that annual return is the relevant body's first annual return, *subsection (3)* or *(4)*, as the case may be, shall have effect (in relation to the relevant body) as if the reference to statutory financial statements or abridged financial statements being annexed to that return were omitted.

(6) There shall not be reckoned as another member of the group for the purposes of this section (other than for the purposes of the expression "other members of the group" in *subsection (2)*) a subsidiary undertaking that is not a company registered under this Act or an existing company and the construction provided for by *subsection (1)(a)* (of references to each of the relevant bodies) shall be read accordingly."

Amendment agreed to.

Government amendment No. 48:

In page 352, to delete lines 9 to 12 and substitute the following:

"(b) unless and until circumstances, if any, arise in that financial year by reason of which the company is not entitled to that audit exemption in respect of that financial year, the provisions specified in *subsection (4)* shall not apply to the company in respect of that year."

Amendment agreed to.

Government amendment No. 49:

In page 352, to delete lines 22 to 27 and substitute the following:

"(5) *Section 363* shall apply for the purposes of this section as it applies for the pur-

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pose of *section 358* with the substitution in *subsection (1)*--

(a) for the reference to *section 358* being complied with of a reference to the condition specified in *subsection (2)* of this section being satisfied, and

(b) for the reference to the audit exemption referred to in *section 358* of a reference to the dormant company audit exemption.”.

Amendment agreed to.

Government amendment No. 50:

In page 366, to delete lines 3 to 10 and substitute the following:

“(2) Whenever by reason of circumstances arising the company is not entitled to the audit exemption in respect of the financial year concerned, it shall be the duty of the directors of the company to appoint statutory auditors of the company as soon as may be after those circumstances arise.”.

Amendment agreed to.

Government amendment No. 51:

In page 380, line 17, to delete “the foregoing paragraphs” and substitute “*paragraphs (b) to (c)*”.

**Deputy Damien English:** The purpose of this amendment is to clarify the definition of “claims and rights” in respect of any money or deposit credited to an account of a financial institution consisting of shares, bonds or debt instruments.

Amendment agreed to.

Government amendment No. 52:

In page 383, line 6, after “not” to insert “be under any duty to”.

**Deputy Damien English:** The purpose of this amendment is to remove the onus on the registrar to assess the nature of particulars submitted to her or him. The reality is that almost all filings are submitted to the registrar electronically and the Companies Registration Office, CRO, has no role in interpreting the details submitted in the prescribed forms.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 53, which arises out of committee proceedings, and 54 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 53:

In page 398, line 36, after “(4)” to insert “or this subsection”.

**Deputy Damien English:** The purpose of these amendments is to update the subsection references to ensure that section 316(2) of the 1963 Act is fully enacted.

Amendment agreed to.

Government amendment No. 54:

In page 398, line 38, to delete “that” and substitute “this”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 55, which arises out of committee proceedings, and 59 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 55:

In page 426, line 3, to delete “Subject to *subsection (6), subsection (1)*” and substitute “*Subsection (1)*”.

**Deputy Damien English:** This is a technical amendment and its purpose is to remove an obsolete cross-reference.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendment No. 56 arises out of committee proceedings. Amendments Nos. 56 to 62, inclusive, and 125 to 130, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 56:

In page 431, between lines 34 and 35, to insert the following:

“(4) The following provisions have effect for the purposes of *subsection (3)*--

(a) “instrument” in that subsection includes--

(i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real); and

(ii) an instrument relating to personalty;

(b) *paragraph (f)(ii)* of that subsection applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;

(c) *paragraph (g)* of that subsection applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.”.

**Deputy Damien English:** The purpose of these amendments is to cater for the consequences of a merger on leasehold property legally classified as chattels real or immovable property. The language of the provision has been improved in order to increase certainty with respect to the property transactions and, thus, to reduce the paperwork and costs to businesses associated with the merger.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendment No. 57 is included in the first additional list of amendments, dated 30 September 2014.

Government amendment No. 57:

In page 431, line 35, to delete “The” and substitute “Without prejudice to *subsections (5) and (6)*, the”.

Amendment agreed to.

Government amendment No. 58:

In page 431, between lines 38 and 39, to insert the following:

“(5) There shall be entered by the keeper of any register in the State--

(a) upon production of a certified copy of the order under *subsection (2)*; and

(b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply),

the name of the successor company in place of any transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(6) Without prejudice to the generality of *subsection (5)*, the Property Registration Authority, as respects any deed (within the meaning of section 32 of the Registration of Deeds and Title Act 2006) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in *subsection (5)(a)* but without the necessity of there being produced that which is referred to in *subsection (5)(b)*, enter the name of the successor company in place of any transferor company in respect of such deed.

(7) Without prejudice to the application of *subsection (5)* to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that subsection:

(a) the register of members of a company referred to in *section 169*;

(b) the register of holders of debentures of a public limited company kept pursuant to *section 1121*;

(c) the register kept by a public limited company for the purposes of *sections 1050 to 1055*;

(d) the register of charges kept by the Registrar pursuant to *section 414*;

(e) the Land Registry;

(f) any register of shipping kept under the Mercantile Marine Act 1955.”.

Amendment agreed to.

Government amendment No. 59:

In page 443, line 10, to delete “Subject to *subsection (6)*, *subsection (1)*” and substitute “*Subsection (1)*”.

Amendment agreed to.

Government amendment No. 60:

In page 449, between lines 2 and 3, to insert the following:

“(5) The following provisions have effect for the purposes of *subsection (4)*--

(a) “instrument” in that subsection includes--

(i) a lease, conveyance, transfer or charge or any other instrument relating to real property (including chattels real); and

(ii) an instrument relating to personalty;

(b) *paragraph (f)(ii)* of that subsection applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;

(c) *paragraph (g)* of that subsection applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendment No. 61 is included in the first additional list of amendments, dated 30 September 2014.

Government amendment No. 61:

In page 449, line 3, to delete “Such” and substitute “Without prejudice to *subsections (6)* and *(7)*, such”.

Amendment agreed to.

Government amendment No. 62:

In page 449, between lines 6 and 7, to insert the following:

“(6) There shall be entered by the keeper of any register in the State--

(a) upon production of a certified copy of the order under *subsection (2)*; and

(b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply),

the name of the relevant successor company (or, as appropriate, the names of the relevant successor companies) in place of the transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(7) Without prejudice to the generality of *subsection (6)*, the Property Registration Authority, as respects any deed (within the meaning of section 32 of the Registration of Deeds and Title Act 2006) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in *subsection (6)(a)* but without the necessity of there being produced that which is referred to in *subsection (6)(b)*, enter the name of the relevant successor company (or, as appropriate, the names of the relevant successor companies) in place of the transferor company in respect of such deed.

(8) Without prejudice to the application of *subsection (6)* to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that subsection:

(a) the register of members of a company referred to in *section 169*;

(b) the register of holders of debentures of a public limited company kept pursuant to *section 1121*;

(c) the register kept by a public limited company for the purposes of *sections 1050 to 1055*;

(d) the register of charges kept by the Registrar pursuant to *section 414*;

(e) the Land Registry;

(f) any register of shipping kept under the Mercantile Marine Act 1955.”.

Amendment agreed to.

Government amendment No. 63:

In page 452, to delete line 20 and substitute the following:

“(c) the circumstances set out in *section 570(a), (b) or (c)* are applicable to the company.”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendment No. 64 arises out of committee proceedings. Amendments Nos. 64, 67 and 68 are related and may be discussed together by agreement. Is that agreed? Agreed.

Amendment No. 64 not moved.

Government amendment No. 65:

In page 490, line 14, after “to” to insert “in”.

Amendment agreed to.

**Senator Michael Mullins:** I move: “That in accordance with Standing Order 128(1) the Bill be recommitted in respect of amendment No. 66.”

Question put and agreed to.

Bill recommitted in respect of amendment No. 66.

Government amendment No. 66:

In page 490, I line 21, to delete “Part” and substitute “Act”.

**Deputy Damien English:** This is a technical amendment to assist with interpretation.

Amendment agreed to.

Bill reported with amendment.

Amendments Nos. 67 and 68 not moved.

**Acting Chairman (Senator Marie Moloney):** Amendment No. 69 arises out of committee proceedings. Amendments Nos. 69 to 71, inclusive, form a comprehensive proposal and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 69:

In page 592, line 31, to delete “The” and substitute “Subject to *subsection (3)*, the”.

**Deputy Damien English:** The purpose of these amendments is to preserve the existing factors concerning strike-offs that have been initiated by the Revenue Commissioners. If Revenue has given the registrar notice under section 882(3) of the Taxes Consolidation Act 1997, the registrar is bound pursuant to section 726(b) of this Bill to effect involuntary strike-off of the company from the register. For the registrar to have powers to restore such a company administratively to the register, the registrar must be in receipt of a letter of no objection from Revenue.

Amendment agreed to.

Government amendment No. 70:

In page 592, to delete lines 34 to 36.

Amendment agreed to.

Government amendment No. 71:

In page 593, between lines 4 and 5, to insert the following:

“(3) If the ground, or one of the grounds, on which the company had been struck off the register is that referred to in *section 726(b)*, *subsection (2)* shall have effect as if the following paragraph were inserted after *paragraph (a)* of that subsection:

“(aa) the Registrar has received written confirmation from the Revenue Commissioners that they have no objection to the company being restored to the register under this section;”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 72 and 73 are cognate and may be discussed together. Is that agreed? Agreed.

Government amendment No. 72:

In page 594, line 3, to delete “Minister for Finance” and substitute “Minister for Public Expenditure and Reform”.

**Deputy Damien English:** The purpose of these amendments is to change the reference to “Minister for Finance” to the “Minister for Public Expenditure and Reform” to reflect the reality that the function under the State Property Act 1954 transferred in July 2011 to the Minister for Public Expenditure and Reform under the Ministers and Secretaries (Amendment) Act 2011 and Statutory Instrument No. 418/2011 - Finance (Transfer of Departmental Administration and Administrative Functions) Order 2011.

Amendment agreed to.

Government amendment No. 73:

In page 594, line 9, to delete “Minister of Finance” and substitute “Minister for Public Expenditure and Reform”.

Amendment agreed to.

Government amendment No. 74:

In page 600, to delete lines 6 to 8 and substitute the following:

“(b) in the case of a company that, in respect of the latest financial year of the company that has ended prior to the date of the making of the application under this section, fell to be treated as a small or medium company by virtue of *section 350*, the Circuit Court,”.

Amendment agreed to.

Government amendment No. 75:

In page 600, between lines 12 and 13, to insert the following:

“(6) For the purpose of *paragraph (b) of subsection (5)*, if the latest financial year of the company concerned ended within 3 months prior to the date of the making of the application concerned, the reference in that paragraph to the latest financial year of the company shall be read as a reference to the financial year of the company that preceded its latest financial year (but that reference shall only be so read if that preceding financial year ended no more than 15 months prior to the date of the making of the application concerned).”.

Amendment agreed to.

Government amendment No. 76:

In page 601, to delete lines 7 to 9 and substitute the following:

“*subsection (1)*, if in respect of the latest financial year of the body corporate there referred to that has ended prior to the date of the making of the application for the approval, that body fell to be treated (or, if it were a company, would have fallen to be treated) as a small or medium company by virtue of *section 350*, and *subsection (7) of section 747* applies for the purposes of this subsection as it applies for purposes of *subsection (6)(b)* of that section.”

Amendment agreed to.

Government amendment No. 77:

In page 656, line 13, to delete “1977” and substitute “2014”.

Amendment agreed to.

Government amendment No. 78:

In page 656, line 15, to delete “1978” and substitute “2014”.

Amendment agreed to.

Government amendment No. 79:

In page 663, line 16, to delete “1977” and substitute “2014”.

Amendment agreed to.

Government amendment No. 80:

In page 663, line 18, to delete “1978” and substitute “2014”.

Amendment agreed to.

Government amendment No. 81:

In page 666, line 20, to delete “1977” and substitute “2014”.

Amendment agreed to.

Government amendment No. 82:

In page 666, line 22, to delete “1978” and substitute “2014”.

Amendment agreed to.

Government amendment No. 83:

In page 671, line 5, to delete “1977” and substitute “2014”.

Amendment agreed to.

Government amendment No. 84:

In page 671, line 6, to delete “1978” and substitute “2014”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 85 and 86 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 85:

In page 678, lines 19 and 20, to delete “an offence under this Act that is subject to summary prosecution” and substitute “a category 3 or 4 offence”.

**Deputy Damien English:** The purpose of this amendment is to be more precise about the category of the offence which is subject to summary prosecution.

Amendment agreed to.

Government amendment No. 86:

In page 679, line 27, after “Act” to insert “(being a default that constitutes a category 3 or 4 offence)”.

Amendment agreed to.

Government amendment No. 87:

In page 692, between lines 15 and 16, to insert the following:

“(7) The Registrar shall ensure that information is made available explaining the provisions of this Act according to which a third party can rely on the information and particulars referred to in *subsection (4)*.”.

**Deputy Damien English:** The purpose of this amendment is to address the EU requirement in relation to Directive 2012/17/EU. Under EU law it is necessary to have a positive statement in law to the effect that information will be available as required by law and that this must be stated so that third parties can rely on the information.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 88, 89, 93 to 97, inclusive, 99 to 104, inclusive, and 106 to 108, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 88:

In page 699, to delete lines 34 to 38.

**Deputy Damien English:** These amendments relate to the deletion from the remit of the supervisory authority of certain existing but uncommenced functions. The function concerned is what is known as a section 26 review, namely, a review of whether accounts comply with Companies Acts. The section 26 review was introduced in the 2003 Act and provided the supervisory authority with the novel power of requiring the ratification of the accounts of large organisations where such accounts fail in some respects to comply with the accounting requirements of the Companies Acts. The reason for the proposed deletion of the references is that these references are now deemed to be obsolete and unsuitable for commencement. The transparency directive has provided the supervisory authority with a more targets and effective way of dealing with companies’ accounts.

Amendment agreed to.

Government amendment No. 89:

In page 705, line 28, to delete “*sections 933 and 937*” and substitute “*section 933*”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 90 to 92, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 90:

In page 706, line 27, after “shares” to insert “or designated activity company”.

**Deputy Damien English:** The purpose of this amendment is to ensure that the supervisory authority may also levy designated activity companies, DACs. This was always intended. Section 917 of the Companies (Auditing and Accounting) Act 2003 refers to private companies limited by shares. As Members will be aware, a designated activity company is also a type of private company limited by shares and to omit such a company from the levy would be incongruous.

Amendment agreed to.

Government amendment No. 91:

In page 707, line 1, after “shares” to insert “or designated activity company”.

Amendment agreed to.

Government amendment No. 92:

In page 707, between lines 14 and 15, to insert the following:

“(3) For the purpose of determining whether a holding undertaking and all its subsidiary undertakings meet the criteria in *paragraph (b)*, in the operation of taking, as appropriate—

(a) the amounts of their turnover as a whole, or

(b) their balance sheet totals as a whole,

there shall be eliminated inter-group sales or inter-group balances, as the case may be.”.

Amendment agreed to.

Government amendment No. 93:

In page 709, line 18, after “*section 917*,” to insert “and”.

Amendment agreed to.

Government amendment No. 94:

In page 709, to delete lines 20 and 21 and substitute “*934(7)*”.

Amendment agreed to.

Government amendment No. 95:

In page 722, to delete lines 23 to 38, to delete pages 723 and 724, and in page 725, to delete lines 1 to 10.

Amendment agreed to.

Government amendment No. 96:

In page 725, to delete lines 11 to 40, and in page 726, to delete lines 1 and 2.

Amendment agreed to.

Government amendment No. 97:

In page 726, line 5, to delete “938” and substitute “936”.

Amendment agreed to.

Government amendment No. 98:

In page 727, to delete the text inserted by amendment 133 at Seanad Committee and substitute the following:

**“Confidentiality of information**

**942.** (1) A person shall not disclose information that—

(a) comes into the possession of the Supervisory Authority by virtue of the performance by it of any of its functions under this Act; and

(b) has not otherwise come to the notice of members of the public.

(2) *Subsection (1)* shall not apply to—

(a) person specified in *subsection (3)* or a director of the Authority in the performance by the Authority, or him or her, of any of its or his or her functions under this Act or any other enactment, being a communication the making of which was, in the Authority’s or his or her opinion, appropriate for the performance of the function concerned; or

(b) the disclosure of information in a report of the Supervisory Authority or for the purpose of any legal proceedings, investigation, enquiry or review under this Act or any other enactment or pursuant to an order of a court of competent jurisdiction for the purposes of any proceedings in that court; or

(c) a disclosure made where such disclosure is required by, or in accordance with, law; or

(d) a disclosure of information which, in the opinion of the Supervisory Authority, a member of its staff, any person specified in *subsection (3)* or a director of the Authority, may relate to the commission of an offence; or

(e) a disclosure to a person prescribed by regulations made by the Supervisory Authority as a person to whom a disclosure, or a specified class of disclosure, may lawfully be made.

(3) The persons mentioned in *subsection (2)(a)* and *(d)* are any agent of the Supervisory Authority or professional or other adviser to it.

(4) A person who contravenes *subsection (1)* shall be guilty of a category 2 offence.”.

**Deputy Damien English:** The purpose of this amendment is to make provision for the supervisory authority in relation to the confidentiality of information it obtains in the exercise of its functions. It also identifies information obtained pursuant to this Bill that may be disclosed to State bodies and statutory authorities such as the Minister for Finance, the Garda Síochána, etc.. A breach of confidentiality of information committed by a person associated with the supervisory authority such as staff, advisers, etc., is deemed to be a category two offence.

Amendment agreed to.

Government amendment No. 99:

In page 729, to delete lines 13 and 14.

Amendment agreed to.

Government amendment No. 100:

In page 729, line 16, to delete “or (5)”.

Amendment agreed to.

Government amendment No. 101:

In page 730, lines 10 to 13, to delete all words from and including “body;” in line 10, down to and including “*section 938(5)(a)*.” in line 13 and substitute “body.”.

Amendment agreed to.

Government amendment No. 102:

In page 731, to delete lines 11 to 14.

Amendment agreed to.

Government amendment No. 103:

In page 731, to delete lines 15 and 16.

Amendment agreed to.

Government amendment No. 104:

In page 731, line 17, to delete “all or any of *sections 225, 917 and 937*” and substitute “*sections 225 and 917* (or either of those sections)”.

Amendment agreed to.

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Government amendment No. 105:

In page 731, line 19, to delete “1997)” and substitute “1997”.

Amendment agreed to.

Government amendment No. 106:

In page 731, line 24, after “provisions” to insert “or that provision”.

Amendment agreed to.

Government amendment No. 107:

In page 731, line 40, to delete “, (g)”.

Amendment agreed to.

Government amendment No. 108:

In page 732, line 11, to delete “(g),”.

Amendment agreed to.

Government amendment No. 109:

In page 733, line 5, to delete “947(3)” and substitute “947(2)”.

Amendment agreed to.

Bill recommitted in respect of amendments Nos. 110 and 111.

Government amendment No. 110:

In page 741, line 22, to delete “*section 10*” and substitute “*section 10(1)*”.

Amendment agreed to.

Government amendment No. 111:

In page 741, line 23, to delete “Unless” and substitute the following:

“(1) Unless”.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 112:

In page 742, to delete lines 19 to 22.

**Deputy Damien English:** The purpose of this amendment is to remove incorrect references from the table of this application.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 113, 121, 133 and 143 are cognate and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 113:

In page 757, to delete lines 25 to 27 and substitute the following:

**“DAC, with 2 or more members, may not dispense with holding of a.g.m.**

**991.** *Section 175(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a DAC if it has more than one member.”

**Deputy Damien English:** The purpose of this and other amendments in the group is to clarify that a single member company of any type, whether a designated activity company, a private limited company or so on may dispense with the holding of an annual general meeting.

Amendment agreed to.

Government amendment No. 114:

In page 758, lines 25 and 26, to delete “as referred to section 358(1) or (2)” and substitute “as referred to in *section 358 or 359*”.

Amendment agreed to.

Bill recommitted in respect of amendments Nos. 115 and 116.

Government amendment No. 115:

In page 763, line 28, to delete “*section 10*” and substitute “*section 10(1)*”.

Amendment agreed to.

Government amendment No. 116:

In page 763, line 29, to delete “Unless” and substitute the following:

“(1) Unless”.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 117:

In page 765, to delete line 24 and substitute the following:

Mergers and divisions of companies	Chapters 3 and 4 of Part 9
------------------------------------	----------------------------

Amendment agreed to.

Government amendment No. 118:

In page 817, to delete paragraph (a) inserted by Seanad Committee amendment 146.

**Deputy Damien English:** The purpose of this amendment is to remove an amendment

inserted on Committee Stage. Upon close inspection, the amendment has proved to be unnecessary and potentially confusing for practitioners and others. I am satisfied the existing law relating to the acquisition of shares is essentially reflected in Part 3, section 102(1), which states that for any company, a requisite for a share acquisition is that the share is fully paid up.

Amendment agreed to.

Government amendment No. 119:

In page 824, line 11, to delete “(7)” and substitute “(8)”.

Amendment agreed to.

Government amendment No. 120:

In page 825, between lines 7 and 8, to insert the following:

“(8) The reference in the definition of “properly prepared” in *section 121(7)* to financial statements includes a reference to interim or initial financial statements referred to *subsection (5) or (6)* and, for the purpose of that definition as it relates to either such type of statement, *section 290* and *section 291 or 292* as appropriate, and, where applicable, *Schedule 3* shall be deemed to have effect in relation to interim and initial financial statements with such modifications as are necessary by reason of the fact that the financial statements are prepared otherwise than in respect of a financial year.”.

Amendment agreed to.

Government amendment No. 121:

In page 827, to delete lines 20 to 22 and substitute the following:

**“PLC, with 2 or more members, may not dispense with holding of a.g.m.**

**1091.** *Section 175(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a PLC if it has more than one member.”.

Amendment agreed to.

Bill recommitted in respect of amendments Nos. 122 to 124, inclusive.

Government amendment No. 122:

In page 835, to delete lines 31 to 33.

Amendment agreed to.

Government amendment No. 123:

In page 835, line 34, to delete “A member” and substitute “Without prejudice to the member’s general entitlements in that regard under *section 183(7)*, a member”.

Amendment agreed to.

Government amendment No. 124:

In page 838, between lines 4 and 5, to insert the following:

**“Voting by director in respect of certain matters: prohibition and exceptions thereto**

**1115.** Save to the extent that the PLC’s constitution provides otherwise, a director of a PLC shall not vote in respect of any contract or arrangement in which the director is interested, and if the director does so vote, the director’s vote shall not be counted, nor shall he or she be counted in the quorum present at the meeting, but neither of those prohibitions shall apply to:

(a) any arrangement for giving any director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the PLC; or

(b) any arrangement for the giving by the PLC of any security to a third party in respect of a debt or obligation of the PLC for which the director himself or herself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of security; or

(c) any contract by the director to subscribe for or underwrite shares or debentures of the PLC; or

(d) any contract or arrangement with any other company in which the director is interested only as an officer of such other company or as a holder of shares or other securities in such other company,

and the operation of those prohibitions may at any time be suspended or limited to any extent and either generally or in respect of any particular contract, arrangement or transaction by the PLC in general meeting.”.

**Deputy Damien English:** The purpose of this amendment is to make provision for the restriction and exemptions for directors of public limited companies. It makes it clear that a director of a public limited company may not vote with regard to contracts or arrangements in which the director has an interest. This rule can be altered by the public limited company’s constitution. In addition, the proposed amendment also makes statutory provision for certain exceptions where a director may vote in matters of interest.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 125:

In page 860, between lines 13 and 14, to insert the following:

“(4) The following provisions have effect for the purposes of subsection (3)—

(a) “instrument” in that subsection includes—

(i) a lease, conveyance, transfer or charge or any other instrument relating to real property (including chattels real); and

(ii) an instrument relating to personalty;

(b) *paragraph (f)(ii)* of that subsection applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;

(c) *paragraph (g)* of that subsection applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.”.

Amendment agreed to.

Government amendment No. 126:

In page 860, line 14, to delete “The” and substitute “Without prejudice to *subsections (5) and (6)*, the.

Amendment agreed to.

Government amendment No. 127:

In page 860, between lines 17 and 18, to insert the following:

“(5) There shall be entered by the keeper of any register in the State—

(a) upon production of a certified copy of the order under *subsection (2)*; and

(b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply), the name of the successor company in place of any transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(6) Without prejudice to the generality of *subsection (5)*, the Property Registration Authority, as respects any deed (within the meaning of section 32 of the Registration of Deeds and Title Act 2006) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in *subsection (5)(a)* but without the necessity of there being produced that which is referred to in *subsection (5)(b)*, enter the name of the successor company in place of any transferor company in respect of such deed.

(7) Without prejudice to the application of *subsection (5)* to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that subsection:

(a) the register of members of a company referred to in *section 169*;

(b) the register of holders of debentures of a public limited company kept pursuant to *section 1121*;

(c) the register kept by a public limited company for the purposes of *sections*

1050 to 1055;

- (d) the register of charges kept by the Registrar pursuant to *section 414*;
- (e) the Land Registry;
- (f) any register of shipping kept under the Mercantile Marine Act 1955.”.

Amendment agreed to.

Government amendment No. 128:

In page 879, between lines 21 and 22, to insert the following:

“(5) The following provisions have effect for the purposes of subsection (4)—

(a) “instrument” in that subsection includes—

(i) a lease, conveyance, transfer or charge or any other instrument relating to real property (including chattels real); and

(ii) an instrument relating to personalty;

(b) *paragraph (f)(ii)* of that subsection applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;

(c) *paragraph (g)* of that subsection applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.”.

Amendment agreed to.

Government amendment No. 129:

In page 879, line 22, to delete “Such” and substitute “Without prejudice to *subsections (6) and (7)*, such”.

Amendment agreed to.

Government amendment No. 130:

In page 879, between lines 25 and 26, to insert the following:

“(6) There shall be entered by the keeper of any register in the State—

(a) upon production of a certified copy of the order under *subsection (2)*; and

(b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply),

the name of the relevant successor company (or, as appropriate, the names of the

relevant successor companies) in place of the transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(7) Without prejudice to the generality of *subsection (6)*, the Property Registration Authority, as respects any deed (within the meaning of section 32 of the Registration of Deeds and Title Act 2006) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in *subsection (6)(a)* but without the necessity of there being produced that which is referred to in *subsection (6)(b)*, enter the name of the relevant successor company (or, as appropriate, the names of the relevant successor companies) in place of the transferor company in respect of such deed.

(8) Without prejudice to the application of *subsection (6)* to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that subsection:

(a) the register of members of a company referred to in *section 169*;

(b) the register of holders of debentures of a public limited company kept pursuant to *section 1121*;

(c) the register kept by a public limited company for the purposes of *sections 1050 to 1055*;

(d) the register of charges kept by the Registrar pursuant to *section 414*;

(e) the Land Registry;

(f) any register of shipping kept under the Mercantile Marine Act 1955.”.

Amendment agreed to.

Bill recommitted respect of amendments Nos. 131 and 132.

Government amendment No. 131:

In page 882, line 18, to delete “*section 10*” and substitute “*section 10(1)*”.

Amendment agreed to.

Government amendment No. 132:

In page 882, line 19, to delete “Unless” and substitute the following:

“(1) Unless”.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 133:

In page 898, to delete lines 25 to 27 and substitute the following:

**“CLG, with 2 or more members, may not dispense with holding of a.g.m.**

**1202.** *Section 175(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a CLG if it has more than one member.”

Amendment agreed to.

Government No. 134:

In page 901, lines 30 and 31, to delete “as referred to *section 358(1) or (2)*” and substitute “as referred to in *section 358 or 359*”.

Amendment agreed to.

Government amendment No. 135:

In page 906, line 19, after “to” to insert “that section and”.

**Deputy Damien English:** This amendment corrects the language of a subsection in order to ensure correct interpretation. The name of any unlimited company, irrespective of the type of unlimited company, shall be governed by section 123(6) and 124(6).

Amendment agreed to.

Bill recommitted in respect of amendments Nos. 136 and 137.

Government amendment No. 136:

In page 906, line 31, to delete “*section 10*” and substitute “*section 10(1)*”.

Amendment agreed to.

Government amendment No. 137:

In page 906, line 32, to delete “Unless” and substitute the following:

“(1) Unless”.

Amendment agreed to.

**Senator Michael Mullins:** I move: “That in accordance with Standing Order 128(1) the Bill be recommitted in respect of amendment No. 138.”

Question put and agreed to.

Bill recommitted in respect of amendment No. 138.

Government amendment No. 138:

In page 915, between lines 5 and 6, to insert the following:

“(5) If special circumstances exist which render it, in the opinion of the Minister, expedient that such an exemption should be granted, the Minister may, subject to such conditions as he or she may think fit to impose and specifies in the exemption, grant, in writing, an exemption from the obligation imposed by *subsection (1)*.”

**Deputy Damien English:** This amendment provides the Minister, in exceptional circum-

stances, with the power to exempt an unlimited company from having the titled “unlimited company” in its name. The related amendments extend this power to those sections also. The requirement to have “unlimited” in name is a new administrative requirement under the Bill. As there are many companies which are long established as unlimited companies, it was felt that it would be safer to have an exempting power should unforeseen circumstances arise after the Bill is enacted.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 139:

In page 915, line 6, after “is” to insert “also”.

**Deputy Damien English:** This amendment clarifies that section 1236 is subject to section 1246 which provides for the transitional rule for an existing unlimited company with regard to its name.

Amendment agreed to.

**Senator Michael Mullins:** I move: “That in accordance with Standing Order 128(1) the Bill be recommitted in respect of amendments Nos. 140 and 141.”

Question put and agreed to.

Bill recommitted in respect of amendments Nos. 140 and 141.

Government amendment No. 140:

In page 919, line 18, after “by” to insert “(subject to *section 1236(5)*)”.

Amendment agreed to.

Government amendment No. 141:

In page 920, line 16, after “shall” to insert “, subject to *section 1236(5)*”.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 142:

In page 922, between lines 1 and 2, to insert the following:

**“Application of section 94 to ULCs and PUCs**

**1252.** *Section 94* shall apply to an ULC and a PUC as if the following subsection were substituted for subsection (2):

“(2) The instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee.”.

**Deputy Damien English:** The purpose of this amendment is to modify the manner in

which section 94, which governs transfer of shares and debentures, applies to any unlimited company that has share capital.

Amendment agreed to.

Government amendment No. 143:

In page 924, to delete lines 3 to 5 and substitute the following:

**“Unlimited company, with 2 or more members, may not dispense with holding of a.g.m.**

**1260.** *Section 175(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to an unlimited company if it has more than one member.”.

Amendment agreed to.

Government amendment No. 144:

In page 925, lines 16 and 17, to delete “as referred to in *section 358(1) or (2)*” and substitute “as referred to in *section 358 or 359*”.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendments Nos. 145 to 147, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 145:

In page 944, to delete line 36.

**Deputy Damien English:** These are technical amendments that update the relevant directive references from the 1968 directive to the recast directive on public disclosure of certain companies’ information.

Amendment agreed to.

Government amendment No. 146:

In page 945, between lines 1 and 2, to insert the following:

“ “2009 Directive” means Directive 2009/101/EC of 16 September 2009;”.

Amendment agreed to.

Government amendment No. 147:

In page 949, line 30, to delete “Article 2(1)(h), (j) and (k) of the 1968 Directive” and substitute “Article 2(h), (j) and (k) of the 2009 Directive”.

Amendment agreed to.

Government amendment No. 148:

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In page 954, line 28, to delete “the registration of company” and substitute “registration of the company”.

Amendment agreed to.

Government amendment No. 149:

In page 959, between lines 6 and 7, to insert the following:

“(4) Notwithstanding anything in *paragraph (a)* of that subsection, *subsection (1)* applies to, amongst other bodies corporate, a society registered under the Industrial and Provident Societies Acts 1893 to 2014.”.

**Deputy Damien English:** The purpose of this amendment is to ensure a society registered under the Industrial and Provident Societies Acts may also avail of this provision. The purpose of this section is to provide for an unregistered company to register as any of the company types, that is, a private limited company, unlimited company and so forth, provided for under this Bill. The amendment maintains the existing terms set out for such societies in the 1963 Act.

Amendment agreed to.

Government amendment No. 150:

In page 996, lines 8 and 9, to delete “as referred to *section 358(1)* or *(2)*” and substitute “as referred to in *section 358* or *359*”.

Amendment agreed to.

Bill recommitted in respect of amendments Nos. 151 and 152.

Government amendment No. 151:

In page 1001, line 36, to delete “*section 10*” and substitute “*section 10(1)*”.

Amendment agreed to.

Government amendment No. 152:

In page 1001, line 37, to delete “Unless” and substitute the following:

“(1) Unless”.

Amendment agreed to.

Bill reported with amendments.

Government amendment No. 153:

In page 1002, between lines 30 and 31, to insert the following:

“

Directors' compliance statement and related statement	Section 225
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”.

**Deputy Damien English:** The purpose of this amendment is to revert to the position in existing law and disapply section 225 for Part 24 companies. It was never intended that investment companies would have to comply with the directors’ compliance statement requirement. Investment companies are subject to additional regulation from the financial sector in relation to compliance. Investment companies often use service companies for administrative purposes. Thus such companies are already subject, as an alternative company type, to the requirements of section 225.

Amendment agreed to.

**Acting Chairman (Senator Marie Moloney):** Amendment Nos. 155 is consequential on amendment No. 154. Amendments Nos. 154 and 155 may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 154:

In page 1008, to delete lines 32 to 38.

**Deputy Damien English:** The purpose of these amendments is to update the references to the provisions of the alternative investment fund managers directive regulations which have been altered in 2013. AIFMD refers collectively to the alternative investment fund managers directive, Directive 2011/61/EU, and Commission Delegated Regulation (EU) No. 231/2013. Directive 2011/61/EU was transposed into Irish law under the European Union (Alternative Investment Fund Managers) Regulations 2013, the AIFMD regulations, on 16 July 2013.

Amendment agreed to.

Government amendment No. 155:

In page 1008, line 39, to delete “*subsection (1), (8) or (9)*” and substitute “*subsection (1) or (8)*”.

Amendment agreed to.

Government amendment No. 156:

In page 1029, line 7, to delete “1977” and substitute “2014”.

Amendment agreed to.

Government amendment No. 157:

In page 1029, line 9, to delete “1978” and substitute “2014”.

Amendment agreed to.

Government amendment No. 158:

In page 1030, between lines 24 and 25, to insert the following:

**“Audit by Comptroller and Auditor General of companies not trading for gain**

**1433.** (1) This section shall apply to a company which is not trading for the acquisition of gain by its members.

(2) The expression “statutory auditor” and the expression “audit of the statutory financial 25 statements” shall, for the purposes of this Act, be deemed to include, respectively, the Comptroller and Auditor General and audit of the statutory financial statements by the Comptroller and Auditor General in any case in which he or she is appointed, under any enactment, auditor of a company to which this section applies.

(3) *Chapters 18, 20 and 21 of Part 6* shall not apply to the Comptroller and Auditor General in a case falling within *subsection (2)* nor to the audit of statutory financial statements by him or her in such a case.”.

**Deputy Damien English:** The purpose of this amendment is to clarify that the Comptroller and Auditor General is entitled to carry out statutory audits of companies not trading for gain. It also clarifies that the Comptroller and Auditor General is entitled to carry out audits of statutory financial statements of any company not trading for gain in which he is appointed, under an enactment, the auditor of that company.

Amendment agreed to.

Government amendment No. 159:

In page 1031, line 15, to delete “1978” and substitute “2014”.

Amendment agreed to.

Government amendment No. 160:

In page 1031, line 16, to delete “1977” and substitute “2014”.

Amendment agreed to.

Government amendment No. 161:

In page 1031, line 21, after “body” to insert “of accountants”.

**Deputy Damien English:** This is an insertion of missing words. The reference out to be to what is legally understood to be a body of accountants, not merely any body.

Amendment agreed to.

Government amendment No. 162:

In page 1031, between lines 21 and 22, to insert the following:

“(3) In addition to the requirement of *subsection (2)*, none of the following persons shall be qualified for appointment as a public auditor of a society registered under the Industrial and Provident Societies Acts 1893 to 2014—

(a) an officer or servant of the society,

(b) a person who has been an officer or servant of the society within a period in respect of which accounts would fall to be audited by the person if he or she were

appointed auditor of the society,

(c) a parent, spouse, civil partner, brother, sister or child of an officer of the society,

(d) a person who is a partner of or in the employment of an officer of the society,

(e) a person who is disqualified under this subsection for appointment as a public auditor of any other society that is a subsidiary or holding company of the society or a subsidiary of the society's holding company,

(f) a person who is disqualified under Regulation 71 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 for appointment as statutory auditor of a company that is a subsidiary or holding company of the society,

(g) a body corporate.

(4) In addition to the requirement of *subsection (2)*, none of the following persons shall be qualified for appointment as a public auditor of a friendly society—

(a) an officer or servant of the friendly society,

(b) a person who has been an officer or servant of the friendly society within a period in respect of which accounts would fall to be audited by the person if he or she were appointed auditor of the friendly society,

(c) a parent, spouse, civil partner, brother, sister or child of an officer of the friendly society,

(d) a person who is a partner of or in the employment of an officer of the friendly society,

(e) a body corporate.

(5) A person shall not act as a public auditor at a time when he is or she is disqualified under *subsection (3)* or *(4)*, as the case may be, for appointment to that office.

(6) If, during the person's term of office as public auditor, a person becomes disqualified under this section for appointment to that office, the person shall thereupon vacate his or her office and give notice in writing to the society or friendly society, as the case may be, that he or she has vacated his or her office by reason of such disqualification.”.

**Deputy Damien English:** The purpose of these amendments is to ensure the existing law in relation to public auditors is maintained. The proposed amendment relates to the prohibition on connected persons acting as auditor of a society, at present covered by section 187(3)(a) to (f) and (4)(a) to (d) of the 1990 Act. The amendment also exempts the Comptroller and Auditor General from the section. A connected person is defined in relation to company directors in section 220 as a spouse, civil partner, brother, sister or child, a trustee of a trust of which the beneficiaries are the director and-or his family, a body corporate that the director controls, and any person who is in a partnership with the director.

Amendment agreed to.

Government amendment No. 163:

In page 1031, to delete line 26 and substitute the following:

“(4) A person who contravenes *subsection (2), (5) or (6)* shall be guilty of a category 2 offence.

(5) This section shall not apply to the Comptroller and Auditor General.

(6) References in this section to an officer or servant do not include references to a public auditor.”.

**Deputy Damien English:** The amendment was taken with amendment No. 162.

**Acting Chairman (Senator Marie Moloney):** No. Amendment No. 162 stands alone.

**Deputy Damien English:** My apologies. The amendment is grouped with amendment No. 166. Amendment No. 163 imports section 8 of the Companies Miscellaneous Provisions Act 2013 into the Bill. As a result of this amendment, all the company law related provisions of the 2013 Act have been-----

**Acting Chairman (Senator Marie Moloney):** We are on amendment No. 163.

**Deputy Damien English:** Yes. When I spoke to amendment No. 162, I covered amendment No. 163. Did I not group the two amendments together?

**Acting Chairman (Senator Marie Moloney):** They were not grouped. Does the Minister of State wish to repeat himself? He does not have to is he does not wish to do so. Perhaps he can clarify that he has dealt with them.

**Deputy Damien English:** I spoke to them and took amendments Nos. 162 and 163 together.

**Acting Chairman (Senator Marie Moloney):** For clarification, the Minister spoke to amendment No. 163 when he replied to amendment No. 162. Is that correct?

**Deputy Damien English:** Yes.

Amendment agreed to.

Government amendment No. 164:

In page 1031, between lines 26 and 27, to insert the following:

**“Provision as to names of companies formed pursuant to statute**

**1436.** (1) This section applies to a company that—

(a) had been incorporated under a former enactment relating to companies (within the meaning of *section 5*) pursuant to, or in compliance with a requirement of, any statute; and

(b) by virtue of that statute was not required to include the word “limited” or “teoranta” in its name (or, as the case may be, the words “public limited company”

or “cuideachta phoiblí theoranta” in its name).

(2) A company to which this section applies, notwithstanding its continuance in existence by a particular Part of this Act, shall not be subject to the requirement in that Part that its name end with a particular set of words.

(3) A company to which this section applies, notwithstanding its re-registration pursuant to *Chapter 6 of Part 2* as a designated activity company, shall not be subject to the requirement in *Part 16* that its name end with a particular set of words.”.

Amendment agreed to.

**An Cathaoirleach:** Amendments Nos. 165 and 166 are related and may be discussed together by agreement.

Government amendment No. 165:

In page 1031, after line 30, to insert the following:

**“Provision in respect of certain discretion afforded by Commission Decision 2011/30/EU**

**1437.** (1) In this section—

“2010 Audits Regulations” means the European Communities (Statutory Audits)(Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010);

“third-country audit entity” has the same meaning as in Regulation 3 of the 2010 Audits Regulations;

“third-country auditor” has the same meaning as in Regulation 3 of the 2010 Audits Regulations.

(2) The Minister may by regulations provide that Chapter 3 of Part 8 of the 2010 Audits Regulations shall apply to third-country auditors and third-country audit entities that carry out audits of the annual or group accounts of a company falling within Regulation 113(2) of the 2010 Audits Regulations and incorporated in a country listed in Annex II to Commission Decision 2011/30/EU of 19 January 2011 (as amended by Commission Decision 2013/288/EU of 13 June 2013), including that Annex as it stands—

(a) amended from time to time, or

(b) replaced by another Annex (or an equivalent provision listing third countries for the purpose of the discretion of the kind afforded to Member States by Article 2(4) of Commission Decision 2011/30/EU of 19 January 2011).”.

**Deputy Damien English:** This amendment incorporates section 8 of the Companies (Miscellaneous Provisions) Act 2013 into the Bill. As a result of this amendment, all of the company law related provisions of the 2013 Act have been consolidated into this Bill, and when it is passed, the 2013 Act can be repealed. The amendment empowers the Minister to make provision with regard to third country audit and entities on companies falling within Regulation 113(2).

Amendment agreed to.

Government amendment No. 166:

In page 1033, to delete lines 30 and 31 and substitute the following:

“

No. 46 of 2013	Companies (Miscellaneous Provisions) Act 2013	Sections 2 to 8
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“

Amendment agreed to.

Government amendment No. 167:

In page 1072, line 17, to delete “Subject to *paragraph 6, subparagraph (1)*” and substitute “*Subparagraph (1)*”.

**Deputy Damien English:** This is a technical amendment. The reference to a paragraph is incorrect.

Amendment agreed to.

Government amendment No. 168:

In page 1072, line 18, to delete “paragraph” and substitute “subparagraph”.

Amendment agreed to.

Government amendment No. 169:

In page 1076, line 19, after “holding” to insert “undertaking”.

Amendment agreed to.

Government amendment No. 170:

In page 1078, to delete lines 20 and 21 and substitute the following:

“of the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009).”.

**Deputy Damien English:** The purpose of this amendment is to update the legislative references. SI 396 of 1992, the European Communities (Consolidated Supervision of Credit Institutions) Regulations 1992 have been revoked by SI 475 of 2009, the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009.

Amendment agreed to.

Government amendment No. 171:

In page 1078, to delete lines 37 to 39 and substitute the following:

“14. A company that has close links (within the meaning of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) with an authorised investment firm referred to in paragraph 1 or a company referred to in paragraph 5.”

**Deputy Damien English:** This amendment updates the reference to the European Union (Capital Requirements) Regulations 2014, SI 158 of 2014. It has revoked SI 267 of 1996, the Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations 1996.

Amendment agreed to.

Government No. 172:

In page 1080, line 35, to delete “*section 1395(6)*” and substitute “*section 1395(4)*”.

Amendment agreed to.

Bill, as amended, received for final consideration.

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

**Senator Michael Mullins:** Now.

Question proposed: “That the Bill do now pass.”

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Damien English):** I thank the Senators for their valued contributions to the debate on the Companies Bill 2012. I welcome the general expressions of support for the Bill and I am glad that it has passed all Stages.

I was not present for the initial debate on Committee and Report Stages but I know that Members raised many issues and engaged with the process. I thank them for their hard work. There were many positive contributions spanning across a range of issues. Some of the issues raised were not necessarily about this legislation but we have taken note of them. I thank Members for the collaborative approach taken to the development of the Bill. I dealt with the Bill in committee and at all times members were supportive of the general thrust of the Bill and were genuinely trying to work on it to ensure it would be enacted. I appreciate the time and effort of members from all parties.

It is a landmark Bill that has involved years of work. I think it has been worked on for between ten and 12 years in the Department, the Office of the Parliamentary Counsel and the experts in the Company Law Review Group as well. The overall rationale for the Bill is to improve Ireland’s competitive position as a location for business investment, and the objective is to have the legislation enacted as soon as possible.

I thank Members for their co-operation in the passage of the Bill. I appreciate it.

**Senator Mary M. White:** It gives me great pleasure to congratulate Deputy English on his appointment as Minister of State at the Department of Education and Skills and at the Department of Jobs, Enterprise and Innovation with special responsibility for skills research and innovation. I know how dedicated he is, as I have had the pleasure of being a member of the Committee on Jobs, Enterprise and Innovation when he was the Chairman. I have said before that I think he should have been promoted before now, but it is better late than never. I have

complete confidence in Deputy English in his role as Minister of State and I am delighted about his appointment.

I congratulate all the civil servants who, together with various Ministers, worked on this complex Bill over the past 12 years. The Bill brings company law into the 21st century and it is no mean feat that we have the Bill before us. The essential objective of the Bill is to improve Ireland's competitive position as a location for business investment.

**Senator Michael Mullins:** I join Senator White in congratulating sincerely the Minister of State, Deputy Damien English on his recent appointment. I, too, had the pleasure of seeing him in action as Chairman of the Committee on Jobs, Enterprise and Innovation. He acquitted himself well during the years.

This is significant legislation, as the Minister of State has said. It is the culmination of many years of hard work by politicians and public servants. It is designed to bring company law into the 21st century, to make it easier to do business in the country, and to ensure business becomes more competitive. It is a significant day for the Oireachtas. I am very pleased the Minister of State, as one of his first tasks, has steered this Bill successfully through the Seanad.

**Senator Lorraine Higgins:** I join in the chorus of congratulations to the Minister of State on his new role. It is great to be at the forefront of introducing this seminal Bill. It is a great piece of law and I understand that 12 years were spent in researching, drafting and working on it. Well done to everybody in the Department of Jobs, Enterprise and Innovation and to the foresight of the Ministers who have gone before the Minister of State. If we are to continue to attract multinational companies to our shores, it is very important we have a proper legislative framework in the company law arena.

I wish the Minister of State well for the remainder of his term.

**Senator David Cullinane:** I have congratulated the Minister of State twice already and I am afraid it will not be third time lucky because I do not want him to get too comfortable. We will obviously have to hold him to account in the next 14 to 15 months. There is a report that relates to the south east that I want the Minister of State to implement.

It seems a long time ago since the briefing sessions on this Bill were arranged and we were brought to a presentation in Agriculture House. We were brought through a very lengthy PowerPoint presentation that went on for hours but it was worthwhile to have had the Bill discussed with us. As one of the other speakers said, the previous Government also had a hand in the preparation of the Bill, as the Bill was a long time in the making. It brings company law into the 21st century and consolidates many Acts that needed to be consolidated. It is a very important Bill and it is a good legislation. I am happy that we were in a position to support it.

**Deputy Damien English:** I thank the Members - Senators Mullins, Higgins, White and Cullinane - for their kind comments. Members are correct. It is good to get the job done, but it has been a pleasure to work on this Bill and to be involved in the Committee Stage debate during its deliberation by the Committee on Jobs, Enterprise and Innovation because we were able to see it progress through the committee, the Dáil and the Seanad.

It has been said that it has taken a long time for me to be appointed to ministerial office, but I am pleased I went this route because the years I spent on the Committee of Jobs, Enterprise and Innovation were very important. I know some of the Members in front of me have put a great

deal of work into the Committee Stage of this Bill as well as other Bills. The work of committees is not always recognised and it is a credit to the Members as well.

The Companies Bill 2012 is a significant body of work and, as Senator David Cullinane said, we received the English version and went through the briefing documents and attended the presentation on it. I thank the officials who are present from the Department of Jobs, Enterprise and Innovation. A great deal of work went into ensuring members of all parties were brought up to speed on it and were brought on the journey of the passage of the Bill. That helped to fast-track the passage of the Bill through all Stages in both Houses. This is the right way to process legislation. A great many people were involved and everybody engaged in the process of consultation. The Company Law Review Group were very busy working on it and all Members had a full chance to be involved and took the opportunity to do so.

I am glad to be present for the debate on the Report and Final Stages of the Bill. I again thank Members for their kind comments. I hope we can work together again. We will not always agree, but that is part of the process.

I confirm that the document and report that Senator David Cullinane submitted was put on the agenda of the first management meeting I attended. We will work on it and I believe an interesting development is making progress in the south east.

Question put and agreed to.

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

**Senator Colm Burke:** At 10.30 maidin amárach.

## **Matters on the Adjournment**

### **Schools Building Projects Status**

**Senator David Cullinane:** The Minister of State can do his first job for the south east by approving the capital funding for this school. I campaigned on this issue for many years before I came into the Seanad. I have raised it on five separate occasions here and have tabled four Adjournment motions. I have done so because it is important to me. I have visited the school, Gaelscoil Philip Barún, Tramore, County Waterford, several times and far too many of its students are being taught in prefabs.

The school has applied for capital funding to build a new building to move the children out of prefabs. Since July the school has worked with its design team to clarify the final stage 2(b) report for architectural planning. All of the Department's queries have been answered. Ms Noeleen Newman, the major design and construction person for the project, has assured it that the project is effectively at stage 2(b) and needs approval. Only four other schools in the country have completed all the architectural planning stages. This project needs to be included in a new building list as it is shovel ready and will benefit the students. It will create jobs in the area and remove prefabs which have been used for far too long.

The Department's position is that the earliest it can go to tender is 2018. The school would like the Minister and the Department to bring that forward. Are there any plans to increase the number of schools being built? If that was the case, we would hope this school could be included. The Government is talking about stimulus and investment and if there is, as it says, an upturn in the economy, one would hope for an increase in capital funding across all Departments. If there is to be any increase in school building programmes, I will make sure to do my part to see that this school is included on that list.

The minor works grant has been withdrawn and the school's maintenance budget has been cut by €10,000 with no prospect of a permanent building being provided in the short or medium term. I will continue to track this issue and to lobby on behalf of the people who use the school, the pupils and the parents. I welcome the fact that the application has come this far because the school is in a much better position than it was last year or two years ago. We want the building to be built and the funding to be provided as quickly as possible.

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Damien English):** I am taking this matter on behalf of my colleague, the Minister for Education and Skills, Deputy Jan O'Sullivan.

I thank the Senator for raising this matter as it provides me with the opportunity to clarify the current position on the major capital project for Gaelscoil Philip Barún, Tramore, County Waterford. The Senator will be aware of the demographic challenge facing the education system in the coming years. Primary enrolments, which have already risen substantially in recent years, are projected to rise by over 36,000 pupils by 2016 and they are set to continue to rise, with a likely peak at around 574,000 pupils to be catered for in 2018. This compares with some 526,422 pupils enrolled in primary schools for the 2012-13 school year. It is vital, therefore, that there is sufficient school accommodation to cope with these pupil enrolments.

In order to meet the needs of our growing population of school-going children, the Department must establish new schools as well as extending or replacing a number of existing schools in areas where demographic growth has been identified. The delivery of these new schools, together with extension projects to meet future demand, will be the main focus of the Department's budget for the coming years.

While the Department would seek to provide additional accommodation to meet demographic growth, it would also aim to ensure maximum use of existing school accommodation. A priority, therefore, for the Department is to ensure that schools in an area can, between them, cater for all pupils seeking places.

The school building project for Gaelscoil Philip Barún comprises a new eight classroom school with ancillary accommodation. The project is at an advanced stage of the architectural planning process and the stage 2(b) submission was recently approved by the Department. This was confirmed to the school by letter on 25 September last. It was explained to the school that due to competing demands on the Department's capital budget, it is not possible to authorise the project to proceed to tender at this time. However, the project for Gaelscoil Philip Barún is now well placed to progress to tender and construction in the event that further funding becomes available to the Department in the future.

The Senator also referred to the restoration of the minor works grant. The Senator will be aware that the focus under the infrastructure and capital investment programme 2012-16 is on

meeting the demand for additional school places. Consequently, there is no funding provided at this time in the 2014 capital allocation for the payment of a minor works grant. Circular letter 0062/2013, which accompanied the publication of the minor works grant scheme last November, advised that the grant will be paid in future years only as funding permits. The Minister is very interested in this matter and has spoken about it on several occasions.

I thank the Senator for raising the matter as it provides me with the opportunity to clarify the current position on the matters raised.

**Senator David Cullinane:** I think what the Minister and the Department are saying is that the school has done all the preparatory work and it comes down to whether extra funding will be provided to build more schools, whenever the next round of funding is made available beyond the current capital list. I appreciate the Minister of State may not have the answer now but could he tell me afterwards what plans there are to build new schools and provide extra funding for new schools? If there is no plan until 2018 that is bad news. The pupils, parents and staff would welcome clarification so that they know exactly where they stand.

**Deputy Damien English:** I can update the Senator now. We are involved in a budgetary process now and will be next year. The decision was correctly taken to put together a capital envelope for schools for 2012-16. If it is any help to the Senator, that is progressing quite well. It is ahead of target and provides good value for taxpayers' money. The Minister for Education and Skills is very keen to have additional money spent on capital projects as soon as she can get her hands on it. There is progress in that group of schools.

The aim for this school is to fight to be included in the next project. The school is in a very good position. It has gone through the various stages. It is a question now of when money becomes available. The Senator should keep raising the issue, as he has done today, to ensure that it is on the next list of projects. I hope it will not be as far off as the Senator thinks. That depends on circumstances, money and growth. Recent news is good even if the Senator might not want to admit that. I hope that will lead to there being more money available sooner than we all hoped.

**Senator Pat O'Neill:** My Adjournment matter concerns Colaiste Pobail Osraí and is similar to Senator Cullinane's but it may not be as advanced. Colaiste Pobail Osraí was established in Kilkenny as an ionad in 1991 with 13 students. It now has 193 students and is the only Irish language second level school in County Kilkenny. Following an inspection by the Department of Education and Skills, it was granted its own roll number. Prior to that it had been under the remit of Kilkenny Vocational School. The application for the next few years shows an enrolment increase of approximately 20 students per year. The only outdoor play area at the school is a basketball court. This is not ideal for 193 students.

The school has been located in temporary prefabricated accommodation on the site of Ormonde College, a post-leaving certificate, PLC, college, since 1995. To date, €930,000 has been spent on temporary accommodation for Colaiste Pobail Osraí, that is, €137,000 per annum, since 2007 and, therefore, it makes sense to move this project on. If some decision is not reached within the next two to three years, there will be no option but for the school to move into temporary accommodation on a more suitable site, which will incur greater expense for the Department, without an overall resolution to this problem.

*7 o'clock*

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This would incur greater expense for the Department, without an overall solution to the problem. I would appreciate a positive response from the Minister to this.

**Deputy Damien English:** I am taking this matter on behalf of the Minister for Education and Skills, Deputy Jan O'Sullivan, who wanted to attend but could not do so. I thank the Senator for raising this matter as it provides me with the opportunity to clarify the current position on the provision of improved accommodation for Coláiste Pobail Osraí, Ormonde Road, Kilkenny.

The Senator will be aware of the demographic challenge facing the education system in the coming years. Post-primary enrolments, which have already risen substantially in recent years, are projected to rise by over 19,000 pupils by 2016, as I mentioned earlier to Senator Cullinane. They are set to continue to rise and will probably peak with around 404,000 pupils to be catered for in 2025. This compares with some 327,320 pupils enrolled in post-primary schools for the 2012-2013 school year. It is vital, therefore, that there is sufficient school accommodation to cope with these pupil enrolments.

In order to meet the needs of our growing population of school-going children, the Department must establish new schools as well as extending or replacing a number of existing schools in areas where demographic growth has been identified. The delivery of these new schools, together with extension projects to meet future demand, will be the main focus of the Department's budget for the coming years.

Coláiste Pobail Osraí operates from prefabricated premises on the grounds of Ormonde College, which is in the ownership of the Kilkenny and Carlow Education and Training Board, ETB. I understand that it shares woodwork, science, technology and computer facilities with Ormonde College. I can confirm to the Senator that the Department has received an application from the school for major capital funding to provide a new school on a green field site. Department officials visited the school earlier this year and the Department subsequently provided grant aid to the school to reconfigure existing accommodation within Ormonde College and to purchase additional temporary accommodation. This grant will assist in providing improved accommodation for the school as well as providing accommodation for increasing pupil numbers.

The forward planning section of the Department is currently considering the demographic demand for additional school places in all areas of the country, including Kilkenny. The accommodation needs of Coláiste Pobail Osraí and how they might be met will be considered in the context of this review. The review should occur in the timeframe envisaged by the Senator as the forward planning section has been very active analysing various counties. I hope we can work on the report next year to get some indications on pupil numbers, demographics and required school accommodation.

In view of the financial constraints imposed by the need, outlined in the five year plan, to prioritise available funding for the provision of essential teaching accommodation to meet demographic demand, the Senator will appreciate that it is not possible to provide an indicative timeframe at this time for the progression of a building project for the school. The Department will, however, continue to liaise with Coláiste Pobail Osraí regarding its accommodation needs.

I thank the Senator for raising the matter as it provides me with the opportunity to clarify the current position. The analysis will be conducted in a manner that I hope the Senator finds timely.

**Senator Pat O'Neill:** As the Minister of State notes, the school is sharing a site with Ormonde College, a post-leaving certificate, PLC, college, and is sharing some of its woodwork, science, technology and computer facilities. The school has now been granted three rooms in Ormonde College, which means the PLC college is being squeezed for space. It is imperative that this matter progresses because the concept of a pobail school was not taken into account at one time but there is now a growing demand for children to be taught through Irish. There is a Gaelscoil in Kilkenny but only 50% of its students, around 25 to 30 pupils, go on to Coláiste Pobail Osraí each year. Other students come from outside areas to attend the school. I urge the Minister of State to keep this matter on the agenda so that if a site is identified the school can proceed to apply to the Department for a new school on a green field site.

**Deputy Damien English:** Just to clarify, an application has been made relating to a green field site. I will discuss this issue with the Minister, Deputy O'Sullivan, and her officials. I am interested in this because the PLC area falls under my remit and I am concerned that PLC colleges are not too squeezed. When I travel around the country I see a greater demand for PLC places and we must work on this. I will take an active interest in this, along with the Minister, and we will give the Senator feedback.

### **Nursing Home Services**

**Senator Colm Burke:** I am raising a matter relating to dieticians employed by the Health Service Executive. I understand that in many parts of the country elderly patients who seek access to a dietician must attend a clinic in a hospital. This costs the health service because an ambulance or taxi must be provided to take the patient to the hospital. As a result, many nursing homes now rely on privately-employed dieticians, many of whom are employed by pharmaceutical companies. I do not doubt that these dieticians are above board and I do not question their decisions but they tend to prescribe drink supplements, some of which are extremely expensive, that are added to the health budget. I was surprised to learn there is no procedure whereby dieticians are employed to visit nursing homes on a monthly or bi-monthly basis to assess patients and advise as to their management. I am seeking to reduce costs to the health service regarding care of the elderly.

I accept that existing dietician contracts cannot be changed and that what I have proposed is not currently part of a dietician's work programme. I know that there is a recruitment embargo but in future when contracts are offered by the HSE to dieticians they should state that they may be required to visit nursing homes to give assistance. More than 22,000 people are in nursing homes under the fair deal scheme - that is in addition to those in public nursing homes - and that is why I have raised this Adjournment matter.

**Minister for Health (Deputy Leo Varadkar):** I thank Senator Burke for raising this important issue and for allowing me to address the matter. I am answering on behalf of the Minister of State, Deputy Kathleen Lynch, who is responsible for social care.

The HSE is responsible for the delivery of health and personal care services. The current health reform programme involves a major change process which will see a

greater integration and a streamlining of service access and provision for the public. The staff appointed to dietician posts will be required to work as part of multi-disciplinary teams delivering a co-ordinated approach to client care. Currently dieticians practice across health

promotion, acute hospital services and primary care and interact on a daily basis with service users. There are 129 community facilities through which the HSE provides residential care for older persons and all of these facilities have access to dietetic services. This service recognises the fact that making healthy and nourishing food choices easily accessible to older people in residential care can help reduce the incidence of poor nutrition - both under-nutrition and over-nutrition.

The nursing homes support scheme, the fair deal, provides financial support towards the cost of long-term residential care in nursing homes. The scheme covers the cost of standard components of residential care. While access to dieticians is not covered by this scheme, older people in residential settings are entitled to be referred and assessed for HSE ancillary services and therapies. These include physiotherapy, occupational therapy, OT, and access to dieticians - access is provided in the same way as to those who are resident in the community.

In conjunction with the development of primary care teams, specific development funding has been provided to develop services for older people in the community. Referral protocols, direct access to diagnostics, individual care plans, discharge planning, integrated care pathways and shared care arrangements will allow for a more fully integrated primary care service.

As the HSE implements the reform programme, it continues to review the job descriptions for all posts with a focus on maximising the contribution of all professionals to the overall well-being of the public and all service users.

**Senator Colm Burke:** I thank the Minister for his comprehensive reply, which dealt with the issue I raised by acknowledging that patients are entitled to access to dieticians under the fair deal scheme, but not in a nursing home setting. Short cuts are being taken and dieticians who are not employed by the HSE are being used by nursing homes. As a result, an additional cost is imposed on the HSE in real terms. I urge the Minister to examine the matter. While dieticians do have access to community facilities and provide support in community facilities, we should now examine the issue in the context of the fair deal scheme in order to ensure we get value for money for the service they provide. The matter should be addressed in future contracts.

**Deputy Leo Varadkar:** The Senator makes a very good point. I must admit I have never read the contract of a dietician so I am not sure what is in it. Many of them would be private to the individuals concerned. However, what would seem to me to be eminently logical is where a dietician is part of a primary care team or is employed within the community, that he or she would be available to go to nursing homes and speak to relatives in the way a GP does, as suggested by Senator Burke. The situation is different where a dietician is based in a hospital and his or her job is to work full time in the hospital. I will certainly bring the matter to the attention of the HSE.

## Fire Service

**Senator Mark Daly:** I welcome the Minister to the House. The matter I raise is directed to his colleague in the Department of the Environment, Community and Local Government, Deputy Kelly. It relates to the fire service nationally and the changes that have occurred, specifically the concerns of members of the fire service in County Kerry. The view is that the changes put members of the fire crew at risk.

**Deputy Leo Varadkar:** I thank Senator Daly for raising this matter. I am responding to the debate on behalf of the Minister for the Environment, Community and Local Government, Deputy Alan Kelly. It relates to the development of fire services in Ireland using the standards and norms in the policy document Keeping Communities Safe, KCS.

It is a function of each individual fire authority, under the Fire Services Act 1981, to provide a fire service in its functional area. Kerry County Council's fire services are provided primarily through a retained staffing system with full-time officers. Retained firefighters are employees of fire authorities, and are organised to provide a fire service through a network of ten fire stations located throughout the county.

Published as national policy in February 2013, the national standards contained in KCS are in keeping with international good practice and are considered crucial to achieving consistency across fire services. From the outset, the work undertaken has focused on the integration of national norms and standards into service planning within each fire service in the period 2013-15.

The approach in KCS is based on an area risk categorisation system which will be applied by all fire services. That will result in fire station areas being graded across five bands from very high to very low-risk categories. The fire service approach to risk management, including response in terms of numbers of fire appliances and fire crews in an area, is to correspond to the risk categorisation. The risk categorisation process has been completed for County Kerry and appropriate risk designations for each station area in the county have been determined.

For the first time KCS sets national norms for crewing levels. The KCS standard is that the normal crewing level on the first responding class B fire appliance is five, including an incident commander, with four personnel on the second or subsequent appliances mobilised from the same station. In establishing national standards and norms, the KCS document reflects widespread practice in Ireland and elsewhere for crewing levels on appliances. A series of task analyses has been prepared to show how an initial crew of five may be used to safely undertake tasks normally associated with a range of fire scenarios.

Rather than compromising or threatening the safety of firefighters, initiatives under KCS enhance the safety of firefighting personnel. The policy provisions are based on the systems approach and international best practice which have shown how the approaches adopted in KCS can achieve better results in terms of public safety. Safety provisions under KCS include guidance on managing safety in fire services, and risk assessments for equipment. They complement existing safeguards such as the national incident command system, the ancillary safety statement, breathing apparatus guidelines and a comprehensive suite of standard operating guidelines.

It is expected that fire service management will bring any proposals for significant change in fire service provision to their local authorities for consideration. The principles of local democracy and local accountability for service provision are maintained in KCS, while the objectives of national standards for important public services such as fire services are introduced.

**Senator Mark Daly:** I thank the Minister for the comprehensive reply. I wish to raise a point of clarification. I accept the matter does not relate to the ministerial responsibility of the Minister, Deputy Varadkar. Is it the case that the final say on the proposals rests with local authorities and their members or will the county manager or CEO have the final say on the adoption of the new proposals?

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**Deputy Leo Varadkar:** I am not fully sure, but what I am told is that it is an objective in KCS for each service to develop a new format fire and emergency operations plan. That is provided for in section 26 of the Fire Services Act. Proposed plans are then put forward for consideration and adoption by the relevant county council or city council. All services are developing section 26 plans, taking account of the area risk categorisation, which requires consideration and adoption by the council. I am afraid I do not know whether that is an executive function or a reserved function but I imagine section 26 of the Act clarifies the matter.

**Senator Mark Daly:** I thank the Minister.

The Seanad adjourned at 7.15 p.m. until 10.30 a.m. on Wednesday, 1 October 2014.