



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Céadaoin, 16 Nollaig 2015

Wednesday, 16 December 2015

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

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

The need for the Minister for Social Protection to outline the reason her Department is refusing to provide the necessary funding under the community services programme to provide for the imminent increase in the national minimum wage and to consider the serious impact on the voluntary sector unless she reverses her decision.

I have also received notice from Senator Trevor Ó Clochartaigh of the following matter:

Go dtabharfaidh an tAire Coimirce Sóisialaí soiléiriú maidir lena bhfuil beartaithe ó thaobh cothrom na féinne a thabhairt do saoirí ar an scéim sóisialta tuaithe i gcomórtas le saoirí na scéimeanna fostaíochta eile a thagann faoina cúram ó thaobh socraithe fostaíochta de.

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

The need for the Minister for Education and Skills to clarify the position on teaching practice hours for teachers who are pursuing the master's degree in education and already have contract hours in a school.

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

The need for the Minister for Jobs, Enterprise and Innovation to introduce a salary scale for workers in the child care sector to ensure that, in the interests of quality, qualifications are reflected in the salary achieved for workers.

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

The need for the Minister for Health to clarify the reason Xolair, an approved treatment for severe allergic asthma, has not yet been introduced under the HSE drugs payment

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scheme or reimbursement scheme for persons who are asthmatic.

I have also received notice from Senator Catherine Noone of the following matter:

The need for the Minister for Justice and Equality to outline, in view of the perception that there is an increased threat to Ireland from within the Middle East, the security arrangements that have been made in Ireland.

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

The need for the Minister for Children and Youth Affairs to state when he will publish the adoption (information and tracing) Bill; if it will include the recommendations of the Oireachtas Joint Committee on Health and Children which called for changes to the draft scheme of the Bill; and if it is expected to be passed into law before the general election.

I regard the matters raised by the Senators as suitable for discussion. I have selected the matters raised by Senators Paschal Mooney, Trevor Ó Clochartaigh, Mary Moran and Lorraine Higgins and they will be taken now. Senators Colm Burke, Catherine Noone and Averil Power may give notice on another day of the matters they wish to raise.

Commencement Matters

An Cathaoirleach: I welcome the Minister of State, Deputy Jimmy Deenihan. The first motion is in the name of Senator Paschal Mooney. As he is not present, is the Minister of State taking any other Commencement matter?

Deputy Jimmy Deenihan: Yes, the second one.

Rural Social Scheme Administration

Senator Trevor Ó Clochartaigh: Cuirim fáilte roimh an Aire Stáit. Tá na saoirí ar na scéimeanna sóisialta tuaithe ag obair an-mhaith ar fud na tíre. Dar leo, tá easpa cothromaíochta idir na coinníollacha oibre ata acu féin agus na coinníollacha atá ag saoirí ar na scéimeanna eile.

I am sure the Minister of State will be well aware of the considerable work that is done on the rural social schemes throughout the country. It is a very important scheme that has provided significant supports in local rural communities for those on meagre enough incomes and subsistence to try to keep people in their communities. There have been a lot of questions in the past year or so on the pay and conditions of the supervisors on these schemes that fall within the remit of the Department of Social Protection. Senator Lorraine Higgins organised a good presentation from the supervisors of the rural social schemes where they highlighted quite a number of these issues.

Much of the work done on roads, piers, graveyards, community halls and across the community is done in conjunction with some of the other schemes such as Tús and the community employment schemes, particularly in recent times when there was bad weather. It is felt that a lot of the work being done is on a par with the work being done under those other schemes but that the working conditions of the supervisors are not comparable. This has been subject to an

application to the Workplace Relations Commission to try to have these issues resolved. What dumbfounds me is how the Department of Social Protection, with two Labour Party Ministers, has not even engaged with the Workplace Relations Commission to try to resolve these issues. That is unacceptable.

I asked a number of months ago and the Minister of State at the Department of Social Protection, Deputy Kevin Humphreys, came to the House to address this issue. I do not see that there has been any real progress made on it. It is important that we try to resolve this issue before year's end, if possible. The schemes' supervisors deserve parity of esteem with other supervisors doing similar work. It is incumbent on the Department of Social Protection to treat them fairly. They do not feel as if they are being treated fairly. The Labour Party Minister and Minister of State in the Department should uphold workers' rights, respect the wishes of the unions that are involved, treat this as a matter of urgency and try to resolve it before the Christmas break. It has gone on for too long. I hope the Minister of State will, on behalf of his ministerial colleagues in the Department, have some light at the end of the tunnel for us.

Minister of State at the Department of the Taoiseach (Deputy Jimmy Deenihan): I am taking this Commencement matter on behalf of my colleague, the Minister of State, Deputy Kevin Humphreys.

Senators will be aware of the many communities in rural areas that benefit from the services supported by the rural social scheme, RSS, and the positive impact that the scheme has had on the livelihoods of farming families and the social fabric of communities along the western seaboard.

The Department of Social Protection operates a number of programmes and initiatives in support of jobseekers and those in receipt of long-term social protection payments. Senators will be familiar with initiatives such as Tús, the community work placement initiative, the RSS, Gateway and the community employment programme. These are funded by the Department and delivered and administered at community level by local development companies, Údarás na Gaeltachta, county and city councils and local not-for-profit sponsor groups.

The primary objective of these interventions is to offer those in receipt of social protection payments the opportunity to engage in work-related training, work experience and-or income support. The rural social scheme, to which the Senator referred, provides income support for those involved in the farming and fishery sectors where the level of income from their primary economic activities is insufficient to provide an adequate income. The scheme is delivered by 35 local development companies and Údarás na Gaeltachta. These companies are funded to employ 130 supervisor staff in full-time positions to support the delivery of the scheme. Each company is individually responsible for setting the terms and conditions of employment. The Department of Social Protection has no role in such matters but requires that each company meet at least the minimum requirements of employment contracts set out by the various employment statutes. The Department also meets the cost of employment and related operational costs for these supervisors through the provision of funding and fees to the companies.

The Senator referred to disparities in the terms of employment of supervisors on the RSS and supervisors on similar job activation schemes that the Department funds. The only scheme that could be considered comparable to the RSS is Tús, the community work placement initiative. Tús is delivered by the same local development companies and Údarás na Gaeltachta. That initiative has many similarities to the RSS in terms of the structure of delivery, funding

and fees paid to the companies, placement of workers with community organisations and undertaking work in support of community initiatives. I understand that, when considered broadly, the terms and conditions of employment are similar across both programmes within individual companies and the rate of payment on each is similar.

The terms applying to other programmes such as community employment and Gateway differ significantly and reflect a number of other factors. For instance, the Department of Social Protection provides funding for sponsor organisations under the community employment programme to support the management of each organisation's services and provide dedicated training and activation services for participants. Managers of community employment sponsor organisations have responsibility relating to the management of the community employment payroll, training grant, associated service provision and the organisation itself. Many of the elements of work outlined in respect of community employment do not arise in the case of the RSS or Tús. The Department does not fund the provision of supervision on Gateway, as that is a matter for each county and city council.

I know at first hand the benefits that have been achieved for individuals and communities that have participated in these schemes or have had services supported. I am also aware that the work of supervisors and participants is greatly valued. Their work has played a critical role in the maintenance of services during the past few difficult years. The House should note that, despite difficult funding conditions, the budget for the RSS has been protected each year since 2011, with participant levels holding constant at 2,600 and full-time work being maintained for 130 supervisory staff. This underlines the Government's commitment to the scheme and rural communities.

Senator Trevor Ó Clochartaigh: I thank the Minister of State for his response, but it was splitting hairs. The communities on the ground do not see a major difference between the schemes. The Department and various agencies do not see a difference when they ask people to work with the other organisations that have been mentioned.

According to the Minister of State, he is "aware that the work of supervisors and participants is greatly valued." If so, would he mind asking his relevant ministerial colleagues why they have not engaged with the Workplace Relations Commission, WRC, on the issues that have been raised by the supervisors? One would assume that, if they were so valued, the Department would at least sit down at the WRC. If everything in the Department's response is correct, surely the WRC would find in its favour and it should have no fear in that regard. At least the supervisors would have closure on these issues. Will the Minister of State convey to his colleagues that they should engage with the WRC as a matter of urgency to bring about that closure?

Deputy Jimmy Deenihan: I will do that for the Senator.

Departmental Funding

Senator Paschal Mooney: I thank the Cathaoirleach for including this matter in the Commencement matters list and the Minister of State for taking this debate. I was informed by the Department of Social Protection that neither the Tánaiste nor the Minister of State, Deputy Kevin Humphreys, was available this morning; I am particularly grateful, therefore, that the Minister of State, Deputy Jimmy Deenihan, is present instead.

The matter is self-explanatory. Community support groups are doing invaluable work, but a decision seemingly taken in recent weeks has been causing them some consternation. I have been in contact with groups in my county of Leitrim. I know of an example in County Mayo that my colleague, Deputy Dara Calleary, mentioned in the Lower House, that being, Killala. The Department's decision not to incorporate the increase in the minimum wage, which becomes effective on 1 January, in the annual allocations will have an adverse financial impact on community support groups, which struggle for money normally and rely to a large extent on fund-raising to pursue their valuable activities.

Childhood Days is a special needs group in Drumshanbo. It does extraordinarily good work with severely handicapped children. It provides a wonderful service in our home town and is open to everyone in the county and the wider catchment area. Like other support groups, it raises funds and receives State allocations. It was the first to raise the red flag with me regarding this issue. When it attended a meeting in County Mayo of similar support groups a few weeks ago, word came through from Pobal that the imminent increase in the minimum wage to €9.15 would not be absorbed.

I appreciate that a significant number of people employed in community support services are paid more than the minimum wage, but there are those who are not because of the nature of their work. I was disappointed to learn through Deputy Dara Calleary's raising of the issue in the Lower House that the Department's response was that this had never been the case. I queried that with the support groups, which assured me that increases had been incorporated in their allocations since 2006. Obviously, there is some distance between what the Department and the support groups are saying. I hope the Minister of State will clarify it, as I have raised this issue with the Department in the past 24 hours.

Overall, this is an opportunity to raise an important matter and express our solidarity with the support groups. I hope that the Department will not leave them swinging in the wind and that, if the support groups find themselves in financial difficulty after the implementation of the increase, there will be a positive response from the Department, under the aegis of which they fall.

Deputy Jimmy Deenihan: I thank the Senator for raising this matter. I am taking this Commencement matter on behalf of my colleague, the Minister of State at the Department of Social Protection, Deputy Kevin Humphreys.

Senators will be aware of the many community companies that provide services across the country. The Department of Social Protection supports service provision through a number of programmes and schemes. The community services programme, CSP, only supports community companies that operate on a community business or social enterprise model. Companies supported by the CSP generate and use income from the services they provide to pay staff, meet overhead costs and to contribute to future development. The CSP provides a contribution to the wage cost on the basis that the services are not fully self-financing or the cost of provision would be prohibitive on users.

Today there are 398 active contracts in place with community companies, representing commitments from the Department of Social Protection of €42 million per annum. The programme directly supports 2,110 full-time positions. Of these positions, a financial contribution of €32,000 per annum is made to support the employment of managers - 312 at last count. Funds are also provided as a contribution to employing people in some 1,800 full-time equiva-

lent positions. The Department estimates that some 2,800 people are employed across these companies with direct CSP support. Another 1,100 people are employed in these companies without public funding support. Additionally, the companies provide some 1,500 work placements under the CE scheme, the rural social scheme and Tús. These companies are valuable to the social fabric of the country and provide very good quality services, particularly in poorer urban areas and rural villages where services are few and far between.

In recent days, a number of service providers on contract to the community services programme raised queries about the value of grants in 2016. Since the CSP became operational in 2006, it has helped companies to move from a situation where the minimum wage was paid to a position today where 60% of employees are paid above this level. The Department of Social Protection is committed to working with the remaining companies to work towards paying a reasonable wage. The resurgent economy will support this move. A core requirement of the programme is that service providers generate non-public revenue from their operations by the sale of goods, charging fees for services delivered or fundraising. Companies in contract with CSP must be a not-for-profit, social enterprise or community business in nature. That does not mean that they should not aspire to make reasonable returns from their activities that allow for a good wage to be paid. I recognise that this is a challenge, but there is a commitment to work towards achieving it. CSP funding is expressed as a fixed annual contribution towards the costs of employing a specified number of full-time equivalent positions and, in the case of 312 contracts, a manager position. The current value of contribution is €19,033 per full-time equivalent and €32,000 per management position annually. The CSP operates very clearly on the basis that it provides “a contribution only” to offset the wage costs of service provision. It is entirely a matter for each service provider to set its own wage levels.

An analysis of the June 2015 returns from the companies indicated that 45% of full-time equivalents were paid the minimum wage, contrary to the requirements of the programme to pay the local pay rate; 10% were paid above the proposed living wage of €11.50 per hour; and the remaining 45% were paid between these ranges. The development of the programme and the companies in recent years has ensured that the majority of companies do not continue to operate with a low-pay model. I commend that commitment and achievement. The Department of Social Protection is working with Pobal to put in place arrangements that will allow companies to apply in a structured manner to access short-term financial support if that is needed to deal with the issues identified in recent days. Companies will be advised of the arrangements which are being prepared early in the new year.

Senator Paschal Mooney: I am grateful to the Minister of State. Like me, he will be aware from his long experience that when it comes to Commencement motions, it is not so much about the devil being in the detail, but it is usually the last two paragraphs that give the real meat and drink of any of these replies. I am particularly grateful that the Minister of State has addressed the core of the issue, in that the Department is now working with Pobal to put arrangements in place for anybody who needs financial support in the context of the increase in the minimum wage, which is to be welcomed. I should have stated on the record that I unequivocally welcome the increase in the minimum wage and I am sure that, like me, the Minister of State would wish it were more and that it would come closer to the living wage of €11.50. Can I take it that in the context of the remarks contained in the last line of the second last paragraph, “short-term financial support if that is needed to deal with the issues identified in recent days” really means the issues we are talking about, that a concern has been expressed that they may not be able to meet their financial requirements?

Deputy Jimmy Deenihan: I thank the Senator for raising this matter. As a number of companies were in contact with me about it in recent days, I am delighted to be here just to clarify the position. That is my understanding of the response I have given to the Senator's motion. That is my interpretation, namely, that companies that have a need will be able to work with the Department in resolving issues if they have them.

In-service Training

Senator Mary Moran: I presume the Minister of State is taking this motion on behalf of the Minister for Education and Skills, Deputy Jan O'Sullivan. I brought this Commencement matter to the House to ask the Minister to clarify the position on teaching practice hours for teachers who are pursuing a master's degree in education and who already have contract hours in school. I have been contacted by several people who are in this predicament, who already have contract hours within a school and who are now required during the second year of the PME course to teach for a minimum of one and a half to two hours in an alternative school. As it stands, the Teaching Council requires all PME students, regardless of their university, to undertake teaching practice in two school settings. The alternative arrangement made for the students who are employed by a school one year before commencing the PME course allows for them to teach in a block of ten weeks for one and a half to two hours a week.

I have been contacted by principals and school management who say this will cause serious problems for them in that these teachers who are already contracted, some of them for 15 to 17 hours, will have to move to a second school, while maintaining their place in the first school, to teach for one and a half to two hours per week for a ten-week block. It also occurs during January and Easter, which is the time for every school when pre-examinations or mock examinations and oral examinations are going on. For example, if a teacher who
11 o'clock is teaching Irish and is contracted for 15 hours in one school has to leave the school to go and teach in a second school for one and a half to two hours a week, principals have informed me that they are now going to have to get substitute cover to cover the teacher for the hours for which they have to move to a second school. The whole thing is going to be very disruptive and unsettling for everybody involved: for the students who are pursuing the postgraduate degree in education; for the teaching staff; and especially for the pupils, some of whom might have these teachers for junior or leaving certificate Irish and who now find their teacher is going to be absent for a block of ten weeks to fulfil these criteria.

Will the Minister go back and have a look at this? There needs to be consultation between the Teaching Council and the Department again, to get something concrete, satisfactory and clear for the students who are pursuing this course.

Many students remain unclear, as do some of the universities, as to exactly where this is going. They have ironed it out for students who have one school for one year, which is fine where they have gone in and had to do the minimum of four hours. However, a huge problem is being opened up for people who have already been employed with contract hours and everybody involved.

Deputy Jimmy Deenihan: I thank the Senator for raising the matter. I respond on behalf of the Minister for Education and Skills, Deputy Jan O'Sullivan.

I will first set out for the House the role of the Teaching Council in programmes of initial

teacher education, or ITE. The council has statutory responsibility for the review and accreditation of ITE programmes and all programmes that lead to registration must have professional accreditation from it. Changes to initial teacher education were proposed in the National Strategy to Improve Literacy and Numeracy among Children and Young People 2011 to 2020 and the Teaching Council published criteria and guidelines for providers of ITE programmes in order to ensure that their programmes meet the council's accreditation requirements. Improvements to ITE courses include the reconfiguration of their content and an increase in their duration. Programmes now include substantial periods of school placement as central to student teacher development. In this regard, the Teaching Council has determined that 25% of student time over the four years of undergraduate programmes and 40% of student time over the two years of postgraduate programmes should be allocated to school placement.

The Teaching Council has prepared school placement guidelines in partnership with stakeholders. The guidelines contain information on the duration, structure and timing of placements, the settings and activities which are appropriate and the roles of all the key stakeholders. Specifically, the guidelines state that in accredited ITE programmes, there must be a school placement component, which must take place in at least two settings while the second half of the programme should include one block placement for a minimum of ten weeks. In relation to the specific issue referred to by the Senator, the Teaching Council has advised that, earlier this year, one higher education institution with an accredited ITE programme proposed that an arrangement regarding school placement be made available to the small number of its students who were in employment as teachers. The Minister is informed that the arrangement is consistent with the council's school placement guidelines. The council has approved the proposal in respect of students from the 2014 and 2015 entry cohorts who meet the specified criteria. The arrangement will be reviewed by the institution concerned and a report will be submitted to the council in line with normal arrangements. The overall student placement arrangements are, of course, subject to the normal quality assurance procedures of the council.

The Minister reminds the House that the Teaching Council is the statutory body responsible for the regulation of the teaching profession and the maintenance of standards in the profession. As stated, the council has statutory responsibility for the review and accreditation of ITE programmes and has published criteria and guidelines for providers in order to ensure their programmes meet the council's accreditation requirements. The Minister is satisfied that the arrangements agreed by the council in this case are in accordance with best practice, as set out in the school placement guidelines.

Senator Mary Moran: As Senator Paschal Mooney said, one always gets the nub of the answer in the last paragraph of a reply. I am very disappointed because the reply does not reflect the question I asked on what arrangements are in place and how they will deal with the fact that a teacher who is employed in a school for a certain number of hours will now have to have substitute teaching hours. It is students who will lose out if a substitute teacher comes in to take the hours for somebody to allow them to move to another school for a minimum number of weeks. Something could be done to address this. While I appreciate and agree that it is the Teaching Council that needs to look at it, the Minister should be aware that there is a huge problem. It is going to be a much bigger problem as this course unfolds and more and more people come on stream every year who have hours. I will write to the Minister herself to take up this issue. I would appreciate it if the Minister of State would also pass this on to her.

Deputy Jimmy Deenihan: I will certainly convey the Senator's concerns about the matter to the Minister, whom I hope to meet later today.

Early Childhood Care Education

An Cathaoirleach: I welcome the Minister of State, Deputy Gerald Nash.

Senator Lorraine Higgins: I welcome the Minister of State to the Chamber. It is the first time I have had the opportunity to address my former director of elections in the Chamber. How different things were this time last year.

I ask the Minister of State if there have been any moves by his Department to introduce a salary scale for workers in the child care industry to ensure their qualifications are reflected in their salaries in the interests of quality. The Minister of State will be aware that staff in the child care sector work an average of 39 hours per week. In return, they receive only two paid sick days per year and 20 days holidays. I am aware of a case in my home county, Galway, where four staff with full degrees working in a community child care facility are earning between €22,000 and €25,000, at the maximum, per year, while their manager earns just €27,000. In addition, there is no in-work pension entitlement accrued by these workers. The resultant frustration from talking to these staff on their burn-out is only compounded by the fact that they are subject to regular HSE and Pobal inspections, as well as having the responsibility of introducing a new curriculum to be overseen by Tusla.

While it is only right that standards should be so high within the child care sector, when these pressures and expectations are not reflected in the wages paid to employees, it does a huge disservice to them. One of the greatest issues facing the sector is retention of staff. It has been brought up with me by a number of people working in the child care sector. I worry that there will be a considerable drain of talent from the industry. In fact, it is already happening as a result of the stressful working conditions and the low pay involved. As a result, many child care workers are choosing instead to go into teaching as an alternative where they will have training times and will not have to comply with the expectation of weekend and long evening work.

My worry really is that at a time of greater than ever need of child care places we are driving graduates out of the industry and making the discourse surrounding work in the child care sector a net negative. A wage structure such as those in place for the construction and house hospitality sectors is needed. I appreciate fully that the Minister of State cannot introduce wage structures in every industry, but it is very important in the child care sector in particular. It would be a welcome move for the thousands who work in the sector and would advance the dignity at work agenda which has been at the heart of Government policy. Will such a salary scale be considered by the Department in the light of the qualifications achieved by workers and in recognition of the great service they provide in fostering the future of the nation?

I thank the Minister of State for attending and look forward to his response.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Gerald Nash): I thank the Senator for tabling this matter for discussion and her kind remarks. I look forward very much to continuing to work with her next year.

Senator Lorraine Higgins: And a wonderful director of elections he was.

Deputy Gerald Nash: I thank the Senator. That is appreciated.

The amount of pay an employee receives is a matter for negotiation and agreement between the individual and the employer subject only to the provisions of the National Minimum Wage

Act 2000. There is nothing to prevent employees reaching individual or collective agreements with employers on higher rates based on qualifications or other agreed criteria. As the Senator will be aware, I have created a legislative framework to allow that to happen. The Low Pay Commission which I established earlier this year will, on an annual basis, examine and make recommendations to the Minister of the day on the national minimum wage with a view to ensuring the national minimum wage, where adjusted, is adjusted incrementally having regard to changes in earnings, productivity, overall competitiveness and the likely impact any adjustment would have on employment and unemployment levels. The commission submitted its first report to me last July and recommended an increase of 50 cent per hour for an experienced adult worker. I will introduce that positive change on 1 January 2016, which will benefit approximately 124,000 of the lowest paid workers in society. The Government has moved on a number of fronts to facilitate other forms of wage setting, in contrast with the view taken by other western European democracies in a post-recession scenario. We have enhanced wage-setting mechanisms and our collective bargaining legislation to support low-paid workers. The Industrial Relations (Amendment) Act 2012 provides a framework within which employers and employee representatives, through the joint labour committee, JLC, system, can come together voluntarily and negotiate terms and conditions of workers in their sector. When it reaches agreement on terms and conditions, the JLC publishes details and invites submissions. If, after consideration of any submissions received, the committee adopts the proposals, it will submit them to the Labour Court for consideration. The Labour Court will then make a decision on the adoption of the proposals. If the court decides they should be adopted, it will forward a copy of the proposals to the Minister. If it is considered appropriate, an order giving effect to such proposals will be made by the Minister. Such orders will be known as employment regulation orders. I signed two such orders on 1 October last for the security and contract cleaning sectors. These two orders will benefit, on a net basis, approximately 50,000 workers. Pay rates negotiated in the JLC fora have tended to be above the national minimum wage.

The Industrial Relations (Amendment) Act 2015, which came into effect on 1 August, provides for a revised legislative framework to replace the registered employment agreement, REA, framework that was deemed invalid by the Supreme Court in 2013. The legislation sets out a replacement framework for REAs in individual enterprises and a new mechanism whereby pay, pension and sick pay provisions in a particular sector can be established, agreed and enforced by order.

I have outlined the legislative frameworks available to various sectors across the economy in terms of wage-setting mechanisms. There are opportunities for individual sectors to have their pay and terms and conditions examined in a structured way, for example, through the JLC system. While they are voluntary systems, where a JLC system is active, the legislation insists that a trade union that is representative of workers in the sector be active on the JLC and that it include representative bodies that represent the employer bodies. Thus the organisations can come forward and agree on improvements in the sector and the improvements can be approved by the Labour Court and, subsequently, adopted by the Minister of the day by way of employment regulation order. There are opportunities available under legislation to every sector to engage wage-setting mechanisms to improve their pay and terms and conditions and the position of the industry in general.

Sitting suspended at 11.15 a.m. and resumed at 11.40 a.m.

Seanad Éireann
Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill 2015 [*Seanad Bill amended by the Dáil*] - Report and Final Stages, to be taken at 12.45 p.m. and brought to a conclusion not later than 1.45 p.m., if not previously concluded; No. 2, motion for earlier signature of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill 2015, to be taken without debate at the conclusion of No. 1; No. 3, Prisons Bill 2015 [*Seanad Bill amended by the Dáil*] - Report and Final Stages, to be taken at the conclusion of No. 2 and brought to a conclusion not later than 2 p.m. by one question which shall be put from the Chair and which shall, in relation to amendments, include only those set down or accepted by the Government; No. 4, Finance (Tax Appeals) Bill 2015 – all Stages, to be taken at 2 p.m. and brought to a conclusion not later than 3.15 p.m. by one question which shall be put from the Chair and which shall, in relation to amendments, include only those set down or accepted by the Government, with the time allocated on Second Stage to group spokespersons not to exceed six minutes, the contributions of all other Senators not to exceed four minutes and the Minister to be called on to reply for five minutes not later than 3.05 p.m.; No. 5, Houses of the Oireachtas Commission (Amendment) Bill 2015 – all Stages, to be taken at 3.15 p.m. and brought to a conclusion not later than 4.15 p.m. by one question which shall be put from the Chair and which shall, in relation to amendments, include only those set down or accepted by the Government, with the time allocated on Second Stage to group spokespersons not to exceed six minutes, the contributions of all other Senators not to exceed four minutes and the Minister to be called on to reply for five minutes not later than 4.05 p.m.; No. 6, Criminal Justice (Burglary of Dwellings) Bill 2015 - Committee and Remaining Stages, to be taken at 4.15 p.m. and brought to a conclusion not later than 6 p.m. by one question which shall be put from the Chair and which shall, in relation to amendments, include only those set down or accepted by the Government; and No. 7, Harbours Bill 2015 – Committee Stage, to be taken at the conclusion of No. 6 and conclude not later than 8 p.m., if not previously concluded.

An Cathaoirleach: I welcome to the Visitors Gallery Mary Leyden, wife of the good Senator Terry Leyden; her daughter, Councillor Orla Leyden, and her granddaughter Donata. They are very welcome.

Senator Marc MacSharry: Her full name is Donata Maria.

An Cathaoirleach: I thank the Senator for the clarification.

Senator Marc MacSharry: I wish to raise a number of issues. In recent days there has been a series of actions throughout the country which have compounded the difficulty caused by the Government and previous Governments in shutting down rural communities, in particular the closure of Garda stations. In west County Sligo we had the closure of Easkey Garda station some years back and despite officials from the OPW visiting the location with me and members of the community, who had a project for community use, the infrastructure was sold for a mere €65,000 at auction on Monday. This has been repeated throughout the country. Another action is proposed in Keshcarrigan, County Leitrim. The measly gain of €65,000 on the part of the OPW is insignificant when we consider the loss in value in the uses it could have had for community initiatives. It also wipes out the potential for these communities to have, at a future date, the return of community Garda stations when resources permit. This is a retrograde step. I again wrote to the Minister of State, Deputy Simon Harris, on the issue this morning. I beseech all members of Fine Gael and the Labour Party to put a stop to this because it is wreck-

ing rural communities throughout the country.

We welcome the White Paper launched today by the Minister for Communications, Energy and Natural Resources, Deputy Alex White, on the future energy needs of the country and how we will provide them. Not directly connected to energy, it provides the community in Ireland with the opportunity to state - in a final way - that this is a country which is not in favour of fracking and is not prepared to gamble our tourism and agriculture infrastructure, and our clean air and clean water for what still remains an unknown quantity in the context of its impact on communities.

The main issue I want to raise is the health budget, about we heard this morning. Articles in *The Irish Times* underpin what we have been saying for many years, namely, that when the service plan for the HSE is published, it remains a bogus account of what lies ahead. Still we see - it surpasses even the terrible days of the former Minister, Deputy James Reilly - that the Minister for Health, Deputy Leo Varadkar, has adopted a punditry and commentary role on health instead of realising he is captain of the ship and the one who is supposed to be driving the bus. He spoke on "Morning Ireland" and used phrases like "We projected this" and "We probably will not have enough money for that". Next year, under the fiscal treaty rules, we will not be able to have a supplementary budget of €605 million such as that which has been brought forward this year. Next year we will have to make do without. However, the budget for next year is only marginally above it. When will we have somebody in charge of the Department of Health who will take responsibility for the general management of it, budget appropriately for what is needed by the health service in the year ahead and acknowledge the crisis we are experiencing?

With regard to one crisis, in particular, we propose an amendment to the Order of Business to the effect that No. 15 be taken before No. 1 or at any stage today. It relates to the cystic fibrosis, CF, drug Orkambi, which, as Members probably know, has had huge results in other countries, with up to a 40% reduction in hospital admissions for cystic fibrosis patients. It is quite simply a wonder drug in terms of its effects and benefits. It would help at least 60% of the patients in Ireland. It is very effective for the most common CF gene alteration in Ireland, which is delta F508. Mr. Tony O'Brien, the CEO of the Health Service Executive, stated there is not enough money in the purse to provide this drug to people, without even considering the benefits we would have in reducing the number of patients. This is before the National Centre for Pharmacoeconomics has even negotiated on the provision of the drug. I have been through this before, with Senator John Crown, in respect of access to cancer treatment. He and I were rubbished for our efforts to try to change the focus to the benefits to the patient rather than the cost per life saved, which is very different from patient to patient. We believe this is a retrograde step and we will put to a vote today that we take this motion and we will not agree to the Order of Business until it is taken because the cystic fibrosis patients of Ireland, their families and many people affected by this deserve better than somebody in the HSE in an ivory tower or a Minister simply saying we do not have the money to help.

Senator Aideen Hayden: I am sure the Leader will deal with the issue Senator Marc MacSharry has raised regarding the health service. However, I heard the same interview as the Senator and took a completely different impression from it. In fact, it was gratifying to hear in particular about the fall in the number of people in need of medical cards because they have been able to return to work. That was the most gratifying of all. It enables us to invest more money in the other areas of the health system. If I remember correctly what the Minister, Deputy Leo Varadkar, said, the headline figures in almost every area are heading in the right

direction. However, I am sure the Leader will have more to say on that matter.

I welcome the announcement by the Minister for the Environment, Community and Local Government, Deputy Alan Kelly, that he will be allocating an additional €8 million to local authorities to facilitate and support the meeting of the cost of the clean-up in communities in the aftermath of Storm Desmond. I am sure we all agree this is good news.

The environment committee's report is expected to be published today. It will cover, in particular, the issue of insurance that I raised yesterday in this House and the plight of people who find themselves unable to obtain insurance for properties that were previously flooded. I was somewhat disappointed by comments attributed to the Taoiseach to the effect that he did not believe it would be in the interest of the State to step in with regard to insurance for people who have been flooded. However, if we are to go by what is happening in a number of other European jurisdictions, we must realise there needs to be a backstop for people who find themselves in these circumstances. We must not rely on private companies to provide appropriate insurance for people in these circumstances.

I welcome the announcement that the number of unfinished housing estates has dropped by 75%. This is excellent news. With the flooding issue, it gives rise to the need for a serious debate on planning. The Minister, Deputy Alan Kelly, has announced that agreement was reached at Cabinet level on Tuesday on the publication of a major package of legislative and policy reforms to the planning system, including the publication of a planning and development Bill that will set up an independent office of the planning regulator. That is most important and has been called for over a very long period by a number of organisations, not least the Irish Planning Institute.

I welcomed the statement by the Government that it aims to boost diversity in third level education. It is particularly unfortunate that significant groups of people are still excluded from third level education in spite of the fact that the participation levels in third level education have increased very significantly in the past decade. However, as the report states, nearly all young people from Dublin 6 go to college but just 16% of people from Dublin 17 or Dublin 10 do so. This is an outrageous statistic that needs to be addressed. The lack of student accommodation is a very significant factor, particularly for people from rural areas, in gaining access to third level education. I am sure the Leader, being from Waterford, is aware of this.

I do not know whether I have any time left but the Cathaoirleach was very generous to Senator Marc MacSharry. On a lighter note, I welcome the commission of a commemorative stamp in honour of the Irish war poet Francis Ledwidge who, unfortunately, after having survived the battle of Gallipoli, died in Passchendaele during the First World War. It is totally appropriate that there will be a commemorative stamp on the centenary of his death in 2017. I welcome the fact that he has been put back on the leaving certificate syllabus. He was on it in my day.

Senator Jillian van Turnhout: I, too, welcome Senator Terry Leyden's granddaughter, whom I know has had her interest in the work of the Seanad sparked recently. However, I will let Senator Terry Leyden elaborate on that.

I welcome the appointment of Professor Geoffrey Shannon to the District Court. His contribution will be a tremendous addition to the work of that court, particularly in respect of family law. He will be sorely missed as special rapporteur for child protection in his role as chairman of the Adoption Authority of Ireland. He has given *pro bono* advice to countless NGOs across

Ireland. We will miss him greatly but he is joining the District Court at a critical time. His appointment is an inspired choice, and I very much welcome it.

I noted the launch yesterday by the ISPCC of its special helpline for children who are homeless. I congratulate the society on this but I am extremely saddened that it has to resort to this to ensure homeless children will be able to contact Santa Claus to ensure he will know where they are on Christmas Day. We must all ask what more we can do when we see the increasing number of families, including children, who are finding themselves homeless because of any of the myriad reasons we have discussed here in the House. I really hope we do not need the special helpline and that it will not be needed this time next year.

I congratulate the Minister for Communications, Energy and Natural Resources, Deputy Alex White, on the launch of his White Paper on a carbon-free Ireland. I was at the launch, where I met a tremendous youth ambassador, Ms Aisling O'Boyle. I encourage everybody to look at her speech. If one needs a compelling reason to secure climate justice in Ireland, she will convince one. I commend her for her speech at the launch this morning. She certainly convinced me and re-engaged me on the need for us to do more.

Senator David Norris: I wish to ask the Leader about the Criminal Law (Sexual Offences) Bill. We were left with a number of Committee Stage amendments pending and Report Stage is to come. As I do not see the legislation on the Order Paper for this week, I take it that the remaining Committee Stage amendments and Report Stage amendments will be taken in the new year, if at all. I notice there is quite a lot of guillotining to occur today, which is regrettable.

I spoke on the health Bill dealing with raising the price of alcohol. I spoke about it on the wireless also. The subject of people on social welfare was raised. I said, perfectly logically I believe, that social welfare was intended for the clothing, food and warmth of people in distress and that it should not be spent on drink. I indicated I felt there was a good reason for this given the plight of many people, including elderly taxpayers. Elderly, poor taxpayers do pay tax and I thought it offensive for their tax money to be spent on alcohol. That is a point of view. It led to a considerable schemozzle. Somebody wrote an article in one of those downstream newspapers in which it was stated the Dáil bar is apparently swimming with totally drunken Members of both Houses and that one cannot stir in it.

Senator Paschal Mooney: Terrible.

Senator David Norris: How this young creature - I have never heard of her before - manages to get inside the Dáil bar, to which she has no access, is simply beyond me. In 30 years, I saw a drunk Member only once; it was a Member of the other House and he was dealt with effectively.

I am told I have received €56,000 in transport guarantees or whatever they are.

Senator Paschal Mooney: Expenses.

Senator David Norris: Expenses of €56,000. Yahweh, but where is it? I would like to know; it would be just wonderful. I could be backwards and forwards like I was a yo-yo on that amount of money. Apparently, this story is granted credibility. It is said we have these huge salaries, enormous grants and allowances, but I just wonder why it is that the 3,000 civil servants who are receiving so much more than we do want to break with us. It is because we are so timid in getting money. They fear they will be held back. They are already 30% below

the general population. We are 30% below as well and now we are going to be shafted by the civil servants abandoning us. I want to know, before the ship goes down, where my €56,000 in travel expenses is because I have not got it. I want to know where it is. Every kind of looney in the country rises to the service and tries to take a gobble at me. I have received all kinds of correspondence. Senators will excuse the vulgarity of the remarks made. My secretary received a telephone call yesterday and she had to put down the phone. The fellow on the line asked whether he could speak to me and she said I was not available as I was working at a committee. He said, "Well, do you know what he wants? He wants a red-hot poker stuck up his arsehole." She put the-----

12 o'clock

An Cathaoirleach: That is not parliamentary language.

Senator David Norris: You can say that again. By God, it is not parliamentary language and certainly should not be stated to my secretary and parliamentary assistant. I will just read another statement. There is very little that is offensive-----

An Cathaoirleach: Is the Senator seeking a debate on the matter?

Senator David Norris: It is a wonderful catalogue of what I am.

An Cathaoirleach: Is the Senator seeking a debate on the matter?

Senator David Norris: Absolutely, yes. The correspondence is from a Mr. John Tierney. Hello, John. This is what he said and wants me to read, "You gay shit, read this about you - cunning little toady, creep, crawler, fawner, flatterer, flunkey, truckler, groveller, doormat, lick-spittle, kowtower, obsequious person, minion, hanger-on, leech, puppet, spaniel."

An Cathaoirleach: The Senator is over time.

Senator David Norris: That is me and here I am.

He should send more - I absolutely love them-----

An Cathaoirleach: The Senator is way over time.

Senator David Norris: -----but will he, please, leave my poor secretary out of it? She does not like it. I laugh at it; she does not.

Senator Michael Comiskey: I assure Members that neither my secretary nor I nor anyone working for me ever received such a telephone call, thanks be to God.

I welcome the news of the deal done yesterday evening by the Minister for Agriculture, Food and the Marine on fishery quota, whereby there will be an increase of 10% in the whitefish quota and of 8% in respect of prawns. This is good news in particular for those fishermen who own smaller vessels and are trying to eke out a living in difficult circumstances off the coast. The other point is discards have been done away with. I always have called for the abolition of discards because it is a waste of perfectly good fish and there is no point in discarding them, as they can be brought to market and used.

In recent days and again this morning, a number of colleagues have mentioned the issue of flooding. Now the floods appear to have started to recede, it is time to give consideration to putting in place a national drainage scheme along the River Shannon, as well as for some smaller rivers. I refer, in particular, to rivers in the part of the country from which I come, such as the

Owenmore in County Sligo, as well as a number of other rivers in counties Sligo and Leitrim. It now is time for a drainage scheme to be put in place. I have been contacted in recent days by many farmers whose lands are under water and who have lost considerable amounts of fodder. Moreover, some of them have been obliged to move their cattle out of their sheds. This is a terrible time for those farmers and for the small businesses that are affected. In my native county of Leitrim, Carrick-on-Shannon and Leitrim village are badly affected. Thankfully, all the towns are open for business, but, as Christmas approaches, it is difficult for those people to be able to conduct their business. It is time to give real consideration to undertaking a complete drainage scheme along the Shannon and the other rivers affected by drainage issues. It is past time to put in place such a scheme.

Senator Terry Leyden: I second Senator Marc MacSharry's amendment to the Order of Business. I also thank the Cathaoirleach for his welcome to my family today.

On 10 December 2015, the Minister for Children and Youth Affairs, Deputy James Reilly, signed the commencement order on the removal of the defence of reasonable chastisement in cases of corporal punishment under section 28 of the Children First Act 2015. This amendment came about through the work of Senator Jillian van Turnhout and was supported unanimously by this House. It was a marvellous step forward and Members have provided and done the State great service and have done the children of Ireland a great service henceforth. Furthermore, on the eve of the 100th anniversary of the 1916 Rising, is it not appropriate, in that the Proclamation refers to treating children equally? Senator Jillian van Turnhout tabled that amendment, which was accepted by the Minister which has been brought into force. It does not change family relationships at all but takes away the defence of immunity from criminal liability essentially for striking a child. This is of great importance and I make the point to the Cathaoirleach, the Leader of the House, the Minister, Senator Jillian van Turnhout and every Member of this House which unanimously supported this move that it was not initiated in Dáil Éireann but in this House. This House deserves credit for this, as well as for many other amendments that have been made over the course of 2015. The Leader has brought much innovation to the House in his own way, which has resulted in amendments being accepted by the Government on his initiation. Moreover, I note that most debates are given unlimited time, although I accept there is some tidying up under way at present. However, throughout the year, the Leader has given adequate time for detailed debates, which have resulted in Ministers returning after Committee Stage to table amendments on Report Stage on the basis of amendments tabled by Members of this House.

Senator Mary Moran: I congratulate Ms Phil Donnelly, one of the ushers in the House, who is with Members this morning on her recent promotion as a team leader. It is a huge recognition for Phil, who becomes the first ever female usher to be promoted within the Houses, but it is also a stark reminder that although female ushers were first appointed in 1994, it has taken 21 years for a female usher to win promotion. I wish Phil all the best in her future role. It is a great day, but it is also a sign for the men to watch out - the women are coming. Let us hope it is a sign of things to come.

Senator Terry Leyden: The Senator is here already.

Senator Diarmuid Wilson: There are other vacancies coming up very shortly.

Senator Mary Moran: Absolutely.

I also welcome the passage through the Seanad last night of the Assisted Decision-Making (Capacity) Bill 2013 with unanimous support from all parties. This was a momentous and historic day in the history of the Seanad, particularly for those who lack capacity, as it will allow them to have more control and more of a say over their financial property and personal affairs into the future. It was a great day for people with disability or who lack capacity in any form, and it was one of my proudest days, if not my proudest, in my four and a half years in the Seanad.

Senator Feargal Quinn: I ask the Leader whether anything is being done about the jihadists who are returning to Ireland after going to the Middle East to fight for ISIS. I believe there is a need to ensure there is a massive disincentive for those who live in Ireland to go abroad to fight and then take an Aer Lingus aeroplane back to Ireland. I read recently that a number of people in Cork were refused, but, to the best of my knowledge, we do not have a penalty for them. I believe it is necessary to prosecute those who try to recruit these people online. While I am unsure how it would be done, a massive disincentive is needed to prevent people from being coaxed to go and fight with ISIS, and a range of countries in the European Union and elsewhere have introduced legislation to do precisely that. Its specific purpose is to target returning ISIS fighters. For instance, in Italy there is an eight-to-ten-year jail sentence for those who fight in an armed group that is illegal. Could this be the framework of an anti-terrorism law? The Criminal Justice (Terrorist Offences) Act 2005 prosecutes those who engage in terrorist activities outside the State; however, it appears as though the penalties listed in that Act must be upgraded in the light of what has happened in Paris and elsewhere. It appears to me that one could provide for a minimum of 20 years' imprisonment for those who go to fight for entities such as ISIS and then return to Ireland. It is a matter to which Members should be giving consideration and attention, and while I am unsure whether it could be done without all-party approval, I imagine it probably would have all-party approval.

Senator Paul Coghlan: I welcome the appointment of Mr. Justice Peter Kelly as President of the High Court. As Members are aware, he is an able and most distinguished judge and I believe no more able or fitting person could be found for the post. He will bring tremendous leadership to the role, as he already has brought to the Commercial Court in his time there, when he pioneered some great work. I believe no one has proved his worth as much as has this man in the role of judge. Consequently, I greatly welcome the appointment and wish him well.

I am delighted that Senator David Norris referred to that grossly inaccurate piece which appeared in the centre page of yesterday's edition of the *Irish Independent*. One would swear to God that all Members were drinking until the wee hours of the morning every night.

Senator Trevor Ó Clochartaigh: The Senator should never believe anything he reads in the *Irish Independent*.

Senator Paul Coghlan: Every night in both bars. My experience here in recent years has been that Members use the Members' Bar mainly for teas, coffees, scones, lunches and so on. While I am not normally there at closing time, I believe the bars close at what would be considered to be normal hours. As to where the journalist got this, I note that the facts she had were not facts; they were completely wrong about the number of Senators who are elected on panels and so on. She should check her facts before she writes further about this House or the other House.

Senator Paschal Mooney: It was rubbish. It was beneath journalism.

Senator Paul Coghlan: Absolutely correct. The Senator is quite right.

Senator Trevor Ó Clochartaigh: The Senator should stop buying it then.

Senator Paschal Mooney: I would not give her any publicity.

An Cathaoirleach: There must be a spy in the bar.

Senator Thomas Byrne: Renamed the coffee shop.

Senator Paul Coghlan: I do not know because the bar is not open at the hour she was claiming. We will leave it at that. The Senator is quite right.

Senator Katherine Zappone: Today I am publishing and presenting my fourth and probably final Bill during this term. It is the Residential Tenancies (Amendment) Bill 2015 and it aims to reform the terms of private renting in Ireland by addressing both the high insecurity when renting long-term homes and the financial challenges faced by landlords. It also provides an immediate community-based and people-led solution for the ongoing homelessness crisis. I acknowledge the excellent work of the National Economic Social Council and the DKM report which I consulted during the policy-making process. I also thank Mr. Mike Allen of Focus Ireland and Mr. Fintan McNamara of the Residential Landlords Association for their expert commentary during the drafting of the Bill. I especially thank my assistant, Ms Magdalene Hayden, for her work on this.

The Bill provides for three voluntary rent agreement schemes which offer better security of tenure and certainty of rent for tenants than is currently available, even with the changes made by the Government in the previous Bill. It also provides for a more favourable tax treatment for landlords who voluntarily provide better protections for their tenants. I have included three proposed tenancy schemes. The first is the home tenancy scheme which is open to all households regardless of income or rent. The second scheme is social tenancy which is available for tenants who receive rent supplement and their landlords. The third scheme is solidarity tenancy which provides the highest level of incentives for landlords who offer medium-term accommodation to households who are either homeless or refugees. It is a way to offer an immediate resolution to the homeless and refugee crises.

An Cathaoirleach: That Bill has not been published yet.

Senator Katherine Zappone: It is being published today.

An Cathaoirleach: It is not on the Order Paper.

Senator Katherine Zappone: I have it in my hand here.

An Cathaoirleach: It is not on the Order Paper for today.

Senator Katherine Zappone: I apologise. I thought it was on the Order Paper. Will the Cathaoirleach allow me still to welcome it and mention it?

An Cathaoirleach: No, it is not on the Order Paper.

Senator Katherine Zappone: I thank the Cathaoirleach. I will conclude by asking the Leader for time to debate this in the new year or to bring it to the attention of the Minister for the Environment, Community and Local Government. I ask also that my colleagues consider it.

Senator Trevor Ó Clochartaigh: I am concerned about the amount of time being allocated to discuss the Prisons Bill 2015 which, I understand, will only be 15 minutes. We welcome the Prisons Bill because it seeks to close St. Patrick's Institution, but the Department of Justice and Equality, during the Dáil debates, sneaked in a provision on certain persons who are serving sentences of imprisonment for the purposes of deportation or removal from the State and to change the Title of the Bill to take account of this. There are also technical amendments related to warrants issued by courts in Dublin. I imagine they are topics which Senators would wish to debate in this House. When these matters have arisen previously, there has been debate around them. It seems strange these topics are being sneaked into a Bill that is about the closure of St. Patrick's Institution. I am concerned there has not been a proper chance to debate it in the Seanad and I ask the Leader to consider the amount of time being allocated for that discussion.

I also propose an amendment to the Order of Business, if possible. I request that the Minister of State, Deputy Joe McHugh, be invited to the House to debate yesterday's High Court ruling on the levies charged on ferry services to the Aran Island ports of Kilronan and Inis Mór. Based on the ruling, the ferry company has stated it will discontinue the ferry service to Inis Mór in January 2016. This comes on foot of the decoupling of a public service obligation, PSO contract for the ferry service to the Aran Islands by a previous Minister of State, Deputy Dinny McGinley, which split the three Aran Islands into separate contracts. Consequently, there is now no PSO to Inis Mór which means the islanders are at the behest of the private company which runs the ferry service. The island could be without a ferry service from January onwards. We are running out of time before Christmas and it must be addressed urgently. Will the Leader call on the Minister of State, Deputy Joe McHugh, to see if he has one hour today to discuss what his Department will do to try to reinstate the PSO contract and to get the stakeholders - the islanders, the private ferry company in question, Galway County Council and his Department - to resolve the issue this side of Christmas in order that the service can be continued.

Senator Lorraine Higgins: I commend a parish priest in Ashbourne, County Meath, for the novel approach he has taken to confirming children in his parish. Usually children who are being confirmed take a pledge not to consume alcohol until they reach 18 years of age. Fr. Darby is insisting that children take a different pledge not to cyberbully others. He has also invited gardaí to speak at masses, from the pulpit, on the dangers of the Internet and to encourage the 250 students to take a pledge against cyberbullying for their confirmation. It is most welcome. Gardaí in Ashbourne have been proactive in delivering the anti-cyberbullying message. They have visited schools to alert children to online behaviour and responsibilities. The gardaí there are doing such good work that it should be a model of excellence for others in similar roles. Garda Connor who has been out to schools and who will be speaking from the pulpit-----

An Cathaoirleach: I ask the Senator to refrain from naming people in the House.

Senator Thomas Byrne: I will pass on Senator Lorraine Higgins's regards to Garda Connor.

Senator Lorraine Higgins: I thank the Senator. I know that she is a constituent of his. It is great to see this proactive measure being taken. It is a great move but it is only happening because there is a legislative vacuum in this area, which is a huge failure. Many people have contacted me over the past year and a half with concerns about online abuse and so on which I have documented in this House, particularly when I brought my Bill to Second Stage. I remember a headline from 2013 which stated that cyberbullies claimed the lives of five teenagers. I am sure all Senators would agree that for five children to have taken their own lives is five too

many. It is clear there is a massive problem and the parish priest in Ashbourne has recognised this. It has been allowed to fester as a result of a lack of legislation. The reality is that adults and children in the State have been exposed to sustained and sometimes orchestrated campaigns of online abuse and their mental health and well-being has suffered. Unfortunately, they have no recourse. I call on the Minister for Justice, Deputy Frances Fitzgerald, to return to the House to debate my Bill on Committee and Report Stages and conclude the matter for the betterment of our online world.

Senator Paschal Mooney: I am pleased that reference was made to the individual who wrote that scurrilous article, which was riddled with ignorance, about this House and the Dáil. I will not enhance or otherwise refer to her further which would give her more publicity. She should check her facts. My late father, God be good to him, always bemoaned the fact that journalists, even in his time, did not check their facts. If there is any criticism, facts must be checked.

I wish to be associated with remarks made by Senator Aideen Hayden about Francis Ledwidge. I also grew up with his poetry and the opening line of his poem, Lament for Thomas MacDonagh, about the 1916 signatory whom he befriended, “He shall not hear the bittern cry”, still rings true to this day, and I was not one to remember poetry all that well. I visited the spot where Francis Ledwidge had been killed. A stray shell came over a hill. He was a ganger with Meath County Council and his expertise was used. He was with a bunch of other soldiers who were clearing a road, actually more of a laneway, but the imagery I remember in particular is the Irish Tricolour flying proudly on the spot where an Irish patriot died. It is wonderful that An Post is going to acknowledge him.

Last Monday was the 60th anniversary of Ireland’s accession to the United Nations. Although the United Nations was formed in 1945, Ireland did not become a member until 1955 because the Soviet Union objected to Ireland’s membership. The de Valera Government applied for membership of the United Nations, but the Soviet Union blocked it because Ireland did not have diplomatic relations with Moscow. However, in the early stages of the foundations of the Free State, strong representations were made to the then emerging Soviet Union and there was developing ties between the Soviet Union and Ireland in the context of independence. All that fell away primarily because of the 1930s, fascism, anti-communist feeling and the strong influence of the Catholic Church at the time. The Soviet-Irish relationship lay fallow and when Ireland applied for membership of the United Nations, it was blocked by the Soviet Union. In 1927, when the Fianna Fáil Party first entered Leinster House, one of the platforms included in its manifesto was the opening of diplomatic relations with the Soviet Union. This calls to mind a comment my dad used to make that Fianna Fáil was viewed as a group of communists and radicals and its members were ex-communicated by the church left, right and centre. I like to think that radicalism remains at the heart of the party to this day. This is the 60th anniversary of Ireland’s accession to the United Nations.

Senator Colm Burke: In the past 18 months I have dealt with cases involving local authority housing tenants who have a family member with a severe physical and intellectual disability and have been waiting for adaptation works to be done to their homes. In one case, a family has been waiting more than seven and a half years for this work to be done. In two cases, the parents involved are providing full-time care to children with severe physical and intellectual disabilities. If the children were being cared for in an appropriate setting, it would cost the State approximately €3,500 per week to meet the needs of each child. I ask that the Minister come before the House to discuss the inadequate funding provided to local authorities for housing

adaptation grants.

A significant amount of funding is being provided for local authorities to provide grants to enable private homeowners to carry out adaptation works. While these grants are also necessary, the amount provided for local authority houses is small. I ask that local authorities be allowed to exercise discretion in 2016 with regard to funding for housing adaptation grants. This would enable them to provide grants for priority cases in local authority housing. It is unacceptable that many families in Cork city have been waiting for between seven and eight years for adaptation works to be done, especially where the parents are providing full-time care and going far beyond what is required to care for a child. We are not providing the support these families need. Co-ordination is required between the health service, the local authority and the relevant Departments to ensure these parents are given the support they require. I ask that the Minister come before the House to discuss this extremely important issue for those who have been waiting such a long time.

Senator Gerard P. Craughwell: I am not sure if Senators are aware that our colleague in County Kildare, Councillor Willie Crowley, was the victim of a hit and run accident last night. His condition is critical and I am sure all Senators will join me in sending our good wishes to him.

This morning, representatives of the Organisation of National Ex-Service Personnel and the Irish United Nations Veterans Association appeared before the Joint Committee on Justice, Defence and Equality. I commend both organisations for the tremendous work they have done in the past 25 or 30 years improving the welfare of retiring and departing members of the Defence Forces. The establishment of a house for ex-service personnel in Smithfield is a credit to them. A former member of the Defence Forces residing in the Smithfield house suffers from Huntington's disease and urgently needs to be transferred to a medical facility. I understand the facility in question has indicated it will accept him but there is a problem with a bed. The Organisation of National Ex-Service Personnel is extremely worried that the individual in question will be injured in the house because he is no longer capable of looking after himself. I will not name the individual, but I will pass on his personal details to the Leader. I ask him to request that the Minister who I know is sympathetic to the man's case try to make the necessary arrangements on his behalf before Christmas. The individual in question cannot be left in the house in his current condition. While I accept that volunteers are working to relieve the floods across the country, members of the Defence Forces do not have a choice in the matter. They are issued with an instruction and must mount their trucks and work in the most horrendous conditions every day and the House must acknowledge this.

Senator Mark Daly: To add to Senator Paschal Mooney's comments, the Soviet Union was the first country to recognise the Irish Republic in 1919 and no less a man than Leon Trotsky was its foreign Minister at the time.

I second the amendment regarding the taking of No. 15, the non-Government motion on cystic fibrosis. I will read a note I received from a person who suffers from cystic fibrosis. He writes:

I suffer from cystic fibrosis, a debilitating disease which affects many organs of the body, eventually leading to premature death in many cases. I am 26 years of age with a life expectancy of 41. I spent three months of this year on intravenous antibiotics, a debilitating chest infection and I spent six months in hospital as an inpatient. Just last September, my

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lung capacity went to its lowest level ever of 23%. My condition will continue to deteriorate and I too, along with many other young Irish people, will have their lives cut short by cystic fibrosis. However, for the first time, there is now hope. A new drug that treats the underlying cause of cystic fibrosis has become available in Europe. Orkambi targets sufferers who have two copies of the cystic fibrosis gene. It has been shown to reduce lung exacerbation by 40% and greatly limits the amount of time that cystic fibrosis sufferers have to spend in hospital. And our hopes were shattered on December 6th by Tony O'Brien of the HSE who said he would not fund Orkambi. It is estimated the treatment will cost €160,000 per patient. This brings the total amount to €92 million. Orkambi will now undergo a rapid review within the national centre for pharmacology and pharmoeconomics. It is most likely that a health technical assessment will then be required to further assess the drug regarding cost-effectiveness and overall benefit to the patient. However, due to the costs, Orkambi will fail the HTA-----

An Cathaoirleach: Is the Senator supporting the call for a debate on this issue?

Senator Mark Daly: Yes, I am calling for a debate. The note continues:

The Health Minister, Leo Varadkar, has stated if it gets to the point where this drug gets through the process and gets approved by the NCPE and the National Drug Committee I will go to Government and seek money for it. I hold the opinion that Mr. Varadkar is very much aware that Orkambi will fail the NCPE-----

An Cathaoirleach: The Senator may make these points during the debate.

Senator Mark Daly: He continues:

We are tired of putting our lives on hold. I spend three hours per day taking treatment to alleviate the symptoms of cystic fibrosis.

An Cathaoirleach: We are not having a debate on the Order of Business.

Senator Mark Daly: The note continues:

This isn't even a guarantee of prolonged good health because my efforts will be in vain. I will still end up battling consistent chest infections, enduring long hospitalisation stays, which will lead to my eventual death sooner rather than later.

An Cathaoirleach: The Senator is out of order.

Senator Mark Daly: He continues:

I can't even hold down a job because of regular illness. I simply ask that I and my fellow CF sufferers be given a chance to lead a normal life without constant interruption and fear of the road ahead.

An Cathaoirleach: The Senator is way over time.

Senator Mark Daly: The note concludes as follows, "For that to happen, the HSE needs to approve Orkambi."

Senator Paul Bradford: I will try to remain within the time limit. I support the comments of Senator Colm Burke on adaptation grants. He cited a number of cases in the Cork City

Council area, but the problem is nationwide. Until a few years ago, local authorities operated an uncomplicated, flexible and locally generated scheme known as the disabled person's grant. When the scheme was transformed to become the housing adaptation grant scheme, the level of administration increased. Occupational therapist reports were required and the costs of the scheme and the red tape surrounding it caused many of the delays we are now experiencing. While further investment is clearly required, it would be helpful if council officials showed much greater flexibility and discretion. Senator Colm Burke has referred to cases where applicants for home adaptation grants have been waiting for six or seven years. That is deeply regrettable. A disabled person's grant provides immediate assistance for families and disabled persons who may otherwise need to be institutionalised or cared for by the State in alternative accommodation. We should try to re-establish the flexibility of these valuable schemes. In most cases, the amount of grant aid is modest. The requirements are small, but it is of importance to the applicants and their families. I support Senator Colm Burke. We should be able to make progress on such schemes and return to the days when the local authority had much greater flexibility and there was less bureaucracy and less need for all the reports. Up to five or ten years ago, applications were processed, certainly in the northern area of Cork County Council, within months rather than five or six years because of the flexibility that was allowed. I would like to see a return to the procedure at that time.

Senator Thomas Byrne: I support the calls made in the Seanad today and second Senator Mark Daly's amendment if it is necessary, because we were not sure if it was properly called the first time, for a debate in the Seanad and calling on the Minister for Health and the HSE to make funding available for the drug, Orkambi. There is another drug, called Kalydeco, which is already available for the relatively small percentage of cystic fibrosis, CF, sufferers in Ireland who need it and it is life-changing for them. The majority of CF sufferers in Ireland, as I understand it, would benefit from the drug, Orkambi. As Senators will be aware, Ireland has the highest rate of cystic fibrosis in the world. We all know persons who suffer from it and who have died from it. The least we can do is lead the way on this issue. What was most hurtful, for those with cystic fibrosis and those who have family members with it were the comments of Mr. Tony O'Brien of the HSE when he ruled the drug out before it had gone through any of the processes.

An Cathaoirleach: The Senator should not name officials from the Department.

Senator Thomas Byrne: That is how this debate started. People could not believe this process appeared to be done and dusted with the HSE.

An Cathaoirleach: The person named is not here to defend himself.

Senator Thomas Byrne: We need a debate on this issue today in the Seanad. We need to support those affected. Ireland needs to lead the way on this issue. We should not be rubbish-ing drug companies all the time like we did in the case of the drug Soliris last year because the hope of these CF sufferers for a relatively normal life depends on the research and development done by many of these drug companies. We should applaud these drug companies for the research they have done, some of which, it must be said, has been funded by charitable and other sources. A considerable amount of research has gone into this drug. I understand it would be of immense benefit to almost 60% of Irish CF sufferers and we need to show the way. When the drug Soliris was granted last year, there was a major injustice when two patients out of 12 were refused access to it. We debated the matter here in the Seanad on a number of occasions, it went to the Dáil and, eventually, that fight, which was a fight for justice, was won. I support

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the proposal for an amendment to the Order of Business.

I thank my colleagues, Senators Aideen Hayden and Lorraine Higgins, for mentioning County Meath where ears will be burning today and Francis Ledwidge. We are delighted that the stamp is being issued. I am also delighted that the Ledwidge committee has launched a CD of Francis Ledwidge's poetry which I recommend to colleagues as it would make an excellent Christmas gift.

I will pass on Senator Lorraine Higgins's words of praise for Fr. Darby in Ashbourne who is a wonderful priest because it is a wonderful idea. He is a great churchman but also, as one can hear from what Senator Lorraine Higgins said, an extremely practical man.

Senator Fidelma Healy Eames: Lots of valuable items are being discussed in the House today. I add my voice to the urgent call for a debate on the provision of the new drug, Orkambi, for cystic fibrosis sufferers. We are talking about not only quality of life but life or death. One can rule it out of order all one wants but if it was one's life that was on the line, one would like to think that Parliament would at least hear a motion on a drug that could save one's life.

I would like to be strongly associated with the words of Senator Trevor Ó Clochartaigh about the need for the PSO to be put in place for the ferry to Inis Mór. Once again, we are in a mess when it comes to the Aran Islands.

An Cathaoirleach: Is the Senator seconding the amendment which has been proposed to the Order of Business?

Senator Fidelma Healy Eames: I certainly am. It is as simple as this. Bad decisions are being made about the Aran Islands all the time. A few months ago, it was an t-eitleán. Anois, an bád. Will the Minister of State, Deputy Joe McHugh, and others get their act together when it comes to the Aran Islands, not make their Christmas a mess and stop isolating them? They are on an island in the Atlantic. They are off our coast, not on the mainland; let us, therefore, cut them a bit of slack.

I also support my good friend, Senator Feargal Quinn, about the importance of a debate on how we treat terrorists in this country. We should not think it is down the line of priorities. I refer to those who go to fight with ISIS or jihadists. We need to give a clear message that we do not tolerate that in our country and that we are a peace-loving nation. Regrettably, some of our own people could be joining those forces. That is an important debate to have in the new year. I do not expect it will be this week.

I am concerned that there is one Bill not on the Order Paper, that is, the Criminal Law (Sexual Offences) Bill. Will the Leader tell the House if that Bill will come in by the end of tomorrow? We have waited for years for the Criminal Law (Sexual Offences) Bill. We have waited for years to decriminalise the women and penalise the buyer. The Leader should not tell me that this term, the Dáil and the Seanad could rise without this Bill going through this House. There is speculation that the Taoiseach may call an early election in January. If that is the case and if this Bill is not through, I bid "good luck" to all our brave comments and support for women who are marginalised, in poverty and at the mercy of pimps. I hope it is coming in this session.

Senator Sean D. Barrett: I note today a publication from the Department of Education and Skills and the Higher Education Authority on addressing inequality in participation in third level education. This is commendable, but one also must respond that addressing inequality in

education when students are aged 18 years rather than between the ages of four and 18 misses a large part of the problem of inequality in education. Perhaps these issues should be addressed by the new Oireachtas.

I also note the ESRI report today that families are still on average 10% worse off due to the combined impacts of the budgets since the crisis began in 2008. It is a challenge for all of us in this House in its remaining days and in the new Oireachtas that such losses of income to families still have not been made up. We have made a lot of progress and we are going in the right direction, but 10% is still missing.

Senator Maurice Cummins: Senator Marc MacSharry referred to the closure of Garda stations, particularly the fact that the OPW had sold Easky Garda station in County Sligo for €60,000. He complained that these Garda stations should be available for community use. I believe it was the intention that if communities showed such an interest, serious consideration would be given to making the Garda stations available for community use, but I do not know what happened in the case of the particular Garda station mentioned.

Senator Marc MacSharry proposed an amendment to the Order of Business, that No. 81, non-Government motion No. 15, be taken before No. 1. The motion relates to a cystic fibrosis drug, a matter raised by a number of Senators. The facts of the matter are that the drug has not yet been approved by the HSE for usage and the Minister is on record as saying that if it is approved for usage, he will go to the Government to seek more funding to make it available. As that is what the Minister would say if he were here, there is no need to bring him to the House today. Therefore, I do not propose to accede to the amendment proposed to the Order of Business. I assure Senator Marc MacSharry that, as soon as the drug is approved, the Minister will make the necessary funding available.

Senator Aideen Hayden welcomed the allocation of an additional €8 million for local authorities to clean up after the flooding. All local authorities in the various areas affected will appreciate this funding.

The Senator also referred to unfinished housing estates, a matter which has been addressed on many occasions in the House. It is welcome that the number of unfinished housing estates has been reduced by 75%. Tremendous progress has been made in that regard and I hope we will see an end to them completely within the coming year.

Senators Aideen Hayden and Sean D. Barrett raised the issue of inequality of access to third level education. Senator Sean D. Barrett stated the inequality started when children were four years of age or so. I am sure we will discuss this matter with the Minister for Education and Skills early in the new year.

Senator Aideen Hayden outlined the need for further student accommodation, particularly in Dublin, given its exorbitant cost. She had a lot to say this morning because she also referred to the commemorative stamp for Francis Ledwidge which was also mentioned by Senators Paschal Mooney and Thomas Byrne. It is to be welcomed. Like Senator Paschal Mooney, I had the pleasure of visiting Francis Ledwidge's grave last year when members of the British-Irish Parliamentary Assembly visited a number of war graves.

Senator Jillian van Turnhout welcomed the appointment of Dr. Geoffrey Shannon to the District Court. On the question of judges, Senator Paul Coghlan welcomed Mr. Justice Peter Kelly's appointment as President of the High Court. We wish both judges well.

Senator Jillian van Turnhout also referred to the special helpline for homeless children, expressing the hope we would not need it next year. That is the hope of every Senator.

Senators David Norris and Fidelma Healy Eames discussed the sexual offences Bill. It will not be before the House again this year. We took but did not finish Committee Stage last week. There was no prospect of finishing Committee and Report Stages by the end of the session, but we hope the Bill will be passed by the Houses early in the new year.

Among other Senators, Senator David Norris commented on an article in yesterday's edition of the *Irish Independent* which contained some glaring errors and which certainly was not factual. One error that stood out was the statement that 54 Members of the Seanad would continue to be elected by Deputies, Senators and local councillors. Any child entering the House knows that 43 Senators are elected in that way, not 54.

Senator Paschal Mooney: That is a reflection on the quality of the journalism involved.

Senator Trevor Ó Clochartaigh: Boycott the *Irish Independent*.

Senator Maurice Cummins: Journalists were always known for examining and researching the facts before publishing anything, but obviously there is a need for-----

Senator Paschal Mooney: Traditionally, but there is a new generation of journalists who obviously do not need to conduct any research. They just pick things off the top of their heads.

Senator Maurice Cummins: Senator Michael Comiskey complimented the Minister for Agriculture, Food and the Marine, Deputy Simon Coveney, on fishing quotas. The Minister has done well in that regard in recent years. The Senator welcomed the increased quotas for whitefish and prawns, in particular, and the abolition of the policy on discards. He also outlined the difficulties for businesses and farmers as a result of the floods and discussed the need for an agency to deal with the question of drainage of the River Shannon, a suggestion that was addressed yesterday.

Senator Terry Leyden complimented the Minister for Children and Youth Affairs, Deputy James Reilly, on the Bill dealing with the reasonable chastisement of children. I appreciate the Senator's comments in that regard.

Senator Mary Moran complimented the usher, Ms Phil Donnelly, on being appointed as team leader. She also welcomed the passage of the Assisted Decision-Making (Capacity) Bill through the House yesterday.

Senators Feargal Quinn and Fidelma Healy Eames discussed the issue of jihadis returning to Ireland and what penalties they would face. The Senators mentioned the need for the Criminal Justice (Terrorist Offences) Act 2005 to reflect the changes we had witnessed in recent years. I agree and I am sure the Department of Justice and Equality and the Minister are considering proposals to change the Act to reflect current circumstances.

Senator Katherine Zappone outlined the fact that she intended to publish a residential tenancies (amendment) Bill. I am sure the Bill will be debated in the new year.

Senator Trevor Ó Clochartaigh asked for more time to debate the Prisons Bill. We have allocated one hour to debate the Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill, but I expect the debate to conclude within a short period. As we will go straight into

the Prisons Bill, I expect there to be more time available to debate it than indicated.

Senator Trevor Ó Clochartaigh was supported by Senator Fidelma Healy Eames in referring to the difficulties with the public service obligation, PSO, licence for the ferry service to the Aran Islands. I suggest the Senators table a Commencement matter in order that we might receive an answer from the Minister.

Senator Lorraine Higgins complimented the gardaí who were visiting schools to outline the dangers associated with online abuse. They are to be complimented on their efforts in this regard because it is a serious issue that needs to be addressed.

Senator Paschal Mooney stated that last Monday was the 60th anniversary of Ireland's membership of the United Nations. He outlined the historical background to Ireland's membership.

Senators Colm Burke and Paul Bradford discussed the need for house adaptation works for people with disabilities, particularly those living in local authority housing. I cannot understand how any council could stand over people having to wait six or seven years for such grants. The Senators are seeking greater flexibility in the provision of funding. This year the local authority in Waterford allocated an extra €88,000 from its own resources for grants for disabled persons. It is unbelievable to think it has taken six or seven years for adaptation works to be carried out. Councils should examine the issue.

We all join Senator Gerard P. Craughwell in wishing Councillor Crowley from Kildare well. He was seriously injured in an accident yesterday evening.

The Organisation of National Ex-Servicemen and Women, ONE, a great organisation, is concerned about the health of one of its members in Springfield House. I suggest Senator Gerard P. Craughwell submit a Commencement matter tomorrow to receive an answer from the Minister. I join the Senator in complimenting the Defence Forces on their work, particularly in dealing with the recent floods when they did a tremendous job. They continue to do so.

Senator Sean D. Barrett mentioned the report of the ESRI. I am sure it will be examined and acted on by the Government.

An Cathaoirleach: I am sure all Senators would like to congratulate and wish Ms Phil Donnelly well in her new role.

Senator Marc MacSharry has proposed an amendment to the Order of Business, "That No. 1, non-Government motion No. 15, be taken today." Is the amendment being pressed?

Senator Thomas Byrne: Yes.

Amendment put:

The Seanad divided: Tá, 18; Níl, 24.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Bradford, Paul.	Brennan, Terry.
Byrne, Thomas.	Burke, Colm.
Craughwell, Gerard P.	Cahill, Máiría.
Daly, Mark.	Coghlan, Eamonn.

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Healy Eames, Fidelma.	Coghlan, Paul.
Heffernan, James.	Comiskey, Michael.
Leyden, Terry.	Conway, Martin.
MacSharry, Marc.	Cummins, Maurice.
Mooney, Paschal.	D'Arcy, Jim.
Norris, David.	D'Arcy, Michael.
Ó Murchú, Labhrás.	Hayden, Aideen.
O'Brien, Darragh.	Henry, Imelda.
O'Donovan, Denis.	Higgins, Lorraine.
Quinn, Feargal.	Kelly, John.
White, Mary M.	Moloney, Marie.
Wilson, Diarmuid.	Moran, Mary.
Zappone, Katherine.	Mulcahy, Tony.
	Mullins, Michael.
	Noone, Catherine.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Sheahan, Tom.
	van Turnhout, Jillian.

Tellers: Tá, Senators Paschal Mooney and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

An Cathaoirleach: Senator Trevor Ó Clochartaigh has proposed an amendment to the Order of Business, "That a debate on the future of ferry services to the Aran Islands, in view of the levies being imposed on contractors, be taken today." Is the amendment being pressed?

1 o'clock

Senator Trevor Ó Clochartaigh: Yes.

Amendment put:

The Seanad divided: Tá, 20; Níl, 24.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Bradford, Paul.	Brennan, Terry.
Byrne, Thomas.	Burke, Colm.
Craughwell, Gerard P.	Cahill, Máiría.
Cullinane, David.	Coghlan, Eamonn.
Daly, Mark.	Coghlan, Paul.
Healy Eames, Fidelma.	Comiskey, Michael.

Heffernan, James.	Conway, Martin.
Leyden, Terry.	Cummins, Maurice.
MacSharry, Marc.	D’Arcy, Jim.
Mooney, Paschal.	D’Arcy, Michael.
Norris, David.	Hayden, Aideen.
Ó Clochartaigh, Trevor.	Henry, Imelda.
Ó Murchú, Labhrás.	Higgins, Lorraine.
O’Brien, Darragh.	Kelly, John.
O’Donovan, Denis.	Moloney, Marie.
Quinn, Feargal.	Moran, Mary.
White, Mary M.	Mulcahy, Tony.
Wilson, Diarmuid.	Mullins, Michael.
Zappone, Katherine.	Noone, Catherine.
	O’Keeffe, Susan.
	O’Neill, Pat.
	Sheahan, Tom.
	van Turnhout, Jillian.

Tellers: Tá, Senators Fidelma Healy Eames and Trevor Ó Clochartaigh; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

Question, “That the Order of Business be agreed to,” put and declared carried.

Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill 2015 [Seanad Bill amended by the Dáil]: Report and Final Stages

An Leas-Chathaoirleach: This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 118, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question, “That the Bill be received for final consideration,” the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators’ convenience, I have arranged for the printing and circulation of the amendments. The Minister will deal separately with the subject matter of each related group of amendments. I have also circulated a proposed grouping in the House. A Senator may contribute once on each grouping and I remind Senators that the only matters which may be discussed are the amendments made by the Dáil and nothing else.

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

An Leas-Chathaoirleach: I call the Minister to speak to the subject matter of the first grouping.

Minister for Justice and Equality (Deputy Frances Fitzgerald): I thank the House for facilitating the debate this morning. The purpose of the first amendment is to impose a statutory timeline on the Garda Commissioner for the provision by the Commissioner to the authority of

the Garda strategy statement. Essentially, once we set up the new policing authority on 1 January, the Commissioner will be obliged to present the strategy statement to the authority within six months and then every three years thereafter. It is really to get the authority up and running and to have the strategy statement presented to it within six months. That is quite demanding, rightly so, on the Commissioner in terms of having a discussion on the new strategy statement with the new Garda authority.

An Leas-Chathaoirleach: I ask the Minister to speak on the second grouping which comprises the subject matter of amendments Nos. 2 and 3.

Deputy Frances Fitzgerald: Amendment No. 3 which involves the insertion of a new subparagraph takes into account what a number of Opposition Deputies and Senators were seeking, namely, that there should be a provision which makes explicit the authority's function to keep under review the adequacy of the arrangements for managing and deploying the resources available to An Garda Síochána so as to ensure the most beneficial, effective and efficient use of those resources. This simply was not spelled out originally and, as such, we have included an arrangement by way of the amendments for managing and deploying the resources available to An Garda Síochána so as to ensure the most beneficial, effective and efficient use of those resources.

Senator Trevor Ó Clochartaigh: I welcome the Minister and thank her for coming. She might clarify an issue raised with me again and again by local gardaí, which is rostering and the change in Galway - as a result of the working time directive - from four rosters to five. I am informed that has had the knock-on effect of having gardaí available for fewer hours, which, in turn, has had an impact on rural Garda stations which it is harder to man during the evening time. Where does the policy issue arise here? Obviously, the working time directive is connected into a different Department. How much of that is left to the authority to decide and how much to the Commissioner? What input will the Minister of the day have in having that changed? I understand the matter of rostering is up for review again at present because the scheme in place was a pilot scheme. The chief superintendent in Galway has sent forward a submission on the working of the pilot scheme. I am not sure if the Minister is aware of when the pilot scheme will be reviewed and if there is any move afoot to revert to the previous system or to put a system in place that would better suit rural areas.

Deputy Frances Fitzgerald: This issue was addressed in the Garda Inspectorate's report. There was a great deal of consultation before the new roster scheme came into operation. Obviously, as more gardaí are recruited - we have ongoing and continuous recruitment - some of the issues the Senator raises will be addressed. The Garda roster scheme is being considered under Haddington Road by Mr. Ray McGee. Clearly, this is an operational matter for the Garda Commissioner and there is also a question of compliance with the working time directive. We have asked for the Haddington Road agreement review to be completed by the end of February. We will see what recommendations are made. It took a great deal of time to get to the new roster but there are some operational issues that have arisen. It may be that changes to some aspects of the rosters may be negotiated which deal with the situation the Senator outlined. There are some real operational issues that have arisen and I have no doubt that the Commissioner will address them. As I say, it is being dealt with under the Haddington Road agreement review.

An Leas-Chathaoirleach: I ask the Minister to speak about the subject matter of amendments Nos. 4 and 5.

Deputy Frances Fitzgerald: Amendments Nos. 4 and 5 are straightforward. They relate to a proposal to request the authority to submit to the Minister a report on any matter relating to policing services. The authority is required to submit that report as soon as it is in a position to do so. This is to ensure that there is an option for the Minister of the day to request a report on a particular topic from the Garda authority. It is a sensible thing to do because issues may arise in the Dáil or the Seanad on policing. They may be operational matters that the Garda authority has been looking at. These amendments give the Minister the power to request a report from the Garda authority.

Senator Paschal Mooney: I take into account the fact that the Minister may not be in office within the next six months, not for personal reasons, but on foot of the cycle in which ministerial rotation happens in any administration. The future is uncertain and no one knows it. The Minister has been reported as welcoming the recommendations contained in the recently published Olson report. We have raised the report here, as have colleagues from other parties, and it is a shocking indictment of 30 years' of governance of policing matters. For example, the report states that An Garda Síochána has been behind technologically for nearly 30 years and that it takes four years for child abuse investigations to be processed because it does not have the necessary technology. Friends and family of mine who are members of the Garda tell me morale in the force is at a very low ebb, primarily due to top-heavy management, as addressed in the Olson report. This heavy-handed management results in questionable promotion practices. The Minister will be more aware of it than I. I am only an ordinary citizen who picks up on these matters. Individual rank and file gardaí who have merit and who in the normal course of events, or in any other occupation, would be promoted are not being promoted. They are not being mentored by senior management, who are ensuring their own futures and feathering their own nests, not financially but in the system, to ensure their continuance in the positions they hold by ensuring the people they recommend for promotion are singing from the same hymn sheet. These are very serious issues which gardaí are telling me about and which have come out in the open through the Olson report. Does the Minister have an opinion on this? In the context of her acceptance of the recommendations of the report, will she take positive action in the short time left?

I hope the Minister continues in her role, given that she is doing a fine job in the most difficult and complex ministry. She is responsible for range of issues, not least ensuring the personal security of every citizen in the State. It is a heavy burden for anybody to carry, and the Minister is doing it well. I am sure the Minister agrees that the issues raised by the Olson report, and in the context of the amendments and the policing authority, will recur. I hope the Minister will take the opportunity today to indicate her thinking on it. I have not seen the detail of her response, except that she has generally welcomed the report and accepts the recommendations.

Senator Ivana Bacik: I welcome the Minister and the fact that the Bill has reached this Stage. It is a very important Bill in terms of providing, at last, for a policing authority which will oversee the performance of An Garda Síochána. It has been widely welcomed across the House, will be a notable achievement of the Government and will have important benefits for the future of policing. I refer to what Senator Mooney said about the recent Garda Inspectorate's report, *Changing Policing in Ireland*, known as the Olson report. The Garda Inspectorate will come before the Joint Committee on Justice, Defence and Equality at 2.30 p.m. today to discuss the 81 recommendations for change made in the report and explain how they could be implemented.

While the inspectorate is saying there must be a strong implementation group to drive a pro-

cess of reform, it will take time. Some of the suggestions for change are fundamental, including a reduction in the number of Garda regions from six to three and a significant reduction in the number of senior managers. The report merits much wider discussion, which I hope we will have at the meeting of the justice committee. I particularly welcome the amendment allowing the Minister to require the policing authority in future to prepare a report on particular policing matters. The matters on which the inspectorate has reported are very important and deserve a more substantive debate.

Deputy Frances Fitzgerald: On Senator Paschal Mooney's point about Garda morale, the Garda Inspectorate held its focus groups with members of An Garda Síochána approximately two years ago. Given that the Government is managing the economy effectively, we are able to invest in ongoing Garda recruitment. We have 1,150 new gardaí and have allocated an investment of several hundred million euro for the refurbishment and development of the kind of facilities the Garda needs. This year, we have made a much-needed investment in Garda vehicles that will help gardaí do their jobs effectively and efficiently. When gardaí are receiving the resources they need and there are new members joining the force, it is good for morale.

Approximately 800 recommendations on An Garda Síochána have been made by a variety of reports over several years. The Government accepted all the recommendations of the report on criminal investigations, which was published before this report. Last year, a programme of implementation started, and the changes outlined in the report are already happening. It is reassuring and important. By the end of the year, PULSE will record crime investigations, not just the fact that a crime took place. It is a development of the technology. There was a need for investment in technology, and it is under way. Rosters, as mentioned by Senator Trevor Ó Clochartaigh, will be on computers. It is extraordinary to think that rosters are not computerised and no HR system is available to the Garda. The tendering process is in place to ensure it happens next year. All of this is important in dealing with the issues in the inspectorate report.

I have asked the Garda Commissioner and some other stakeholders to respond in the first instance to the recommendations. Many of the recommendations are very far-reaching and, if implemented, will lead to a fundamental restructuring of the Garda Síochána across the country. I, therefore, want the full implications of the recommendations to be clearly discussed and understood. I agree that the inspectorate report needs wider discussion and I am very pleased that the justice committee will meet representatives of the inspectorate this afternoon. Given the history of community policing, which we want to maintain, and the need for community policing, there are questions about how the recommendations would impact on it and how we can ensure it continues. The report makes general points about culture, and there are many recommendations. We must carefully consider what an implementation plan would look like. We need feedback from the front line on the implications of the recommendations.

An Leas-Chathaoirleach: We move on to group 4 which deals with the subject matter of amendments Nos. 6 to 8, inclusive.

Deputy Frances Fitzgerald: The purpose of the amendments is to enable the authority or the Minister to refer matters to GSOC for consideration as to whether GSOC should initiate a public interest investigation under section 102(4). This is an important provision.

Question put and agreed to.

Question, "That the Bill do now pass," put and agreed to.

Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill 2015: Motion for Earlier Signature

Senator Ivana Bacik: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill 2015 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put and agreed to.

Prisons Bill 2015 [Seanad Bill amended by the Dáil]: Report and Final Stages

An Leas-Chathaoirleach: This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 118, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question, “That the Bill be received for final consideration,” the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators’ convenience, I have arranged for the printing and circulation of the amendments. The Minister will deal separately with the subject matter of each related group of amendments. I have circulated the proposed grouping of amendments. Senators may speak only once on each grouping. The only matters that may be discussed are the amendments made by the Dáil and no wider issues.

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

Minister for Justice and Equality (Deputy Frances Fitzgerald): Regarding group 1, amendments Nos. 1 and 3, there was a court case earlier this year, *NBO v. the Minister for Justice and Equality*, during which the High Court considered the temporary release of a person who was subject to a deportation order and was deported immediately after being granted temporary release. The High Court decided that the temporary release provision does not permit the temporary release of prisoners who are subject to deportation orders for the purpose of their deportation. I refer to convicted prisoners, that is, people who have committed a criminal offence and are in prison.

Given the implications of the judgment, a clear legislative basis was needed to allow non-national convicted prisoners to be transferred into the custody of gardaí or immigration officers for the purpose of giving effect to the deportation order. This new section will permit a prisoner to be transferred into the custody of a garda or immigration officer to facilitate his or her deportation or removal from the State in accordance with a deportation order or a removal order before the end of the person’s sentence. It is proposed that the new section will only apply in respect of prisoners who have one year or less of their sentences remaining to serve when remission is taken into account. A prisoner transferred into the custody of a garda or immigration officer under the new section will be required to remain out of the State as required by the deportation order or removal order. A person who does not comply with this condition will be deemed to be unlawfully at large and may be arrested and returned to prison.

Senator Trevor Ó Clochartaigh: It seems strange to insert this miscellaneous provision in

a Bill that has closed St. Patrick's Institution. It seems a little out of place. The Minister said it was a convicted prisoner who was to be deported. How serious a case was this? Is there a danger that, for people seeking asylum, the process could be deemed to be exhausted because of a deportation order against them? Is there any fear that someone seeking asylum could be jailed for the failure to pay a fine or a smaller offence and could be deported quickly under this mechanism rather than having the full range of his or her international rights?

Senator Ivana Bacik: I welcome the Bill, on which we spoke in the Seanad last week. It is a notable achievement of the Government finally to see the closure of St. Patrick's Institution and it is a notable achievement on children's rights as well as on penal reform. Last week the Minister highlighted the fact that she would bring forward this amendment in the Dáil; therefore, it is not a surprise to see the new Part 5, section 24 in the Bill.

I agree in general with what Senator Trevor Ó Clochartaigh said on the widespread practice of using particular Bills to make amendments to other Bills in a piecemeal reform. It is unfortunate to see this provision in a Bill that otherwise has such a key core purpose. At the same time, I accept the need for this change. I assumed the change would be by way of an amendment to existing legislation but section 24 is just a stand-alone provision. What was the basis for the power? Was there no statutory power previously? I have not read the High Court judgment.

Senator Colm Burke: I thank the Minister for bringing forward this legislation and for the change relating to St. Patrick's Institution. I have visited Oberstown and have seen young people coming into the criminal justice system. We need a more comprehensive co-ordination of services at local level involving education, health and justice to keep the maximum number of people out of the system. I am concerned by the lack of co-ordination and that each Department seems to pass the responsibility to other Departments. I also welcome the amendment proposed by the Minister, which has been dealt with in the Dáil. It is an important amendment and it is important there is co-ordination in dealing with deportation orders.

Deputy Frances Fitzgerald: I assure Senator Trevor Ó Clochartaigh that the amendment will not affect the operation of existing procedures under immigration legislation, for example, where a person wishes to appeal or seek a review of a deportation order. It is not intended in any way to cut across the person's rights. If they are in prison or seeking an appeal or review, that process has to be completed. It is not a shortcut or something which will cut across any legislation on immigration or refugee rights.

On Senator Ivana Bacik's point, the court decided that section 2 of the Criminal Justice Act, which governs the temporary release of prisoners, does not permit the temporary release of prisoners who are subject to deportation orders. Given the practical implications, it was felt that a clear legislative basis was needed for this section. We decided to do it as a section of this Bill, although I take the points made by Senators Trevor Ó Clochartaigh and Ivana Bacik that it is not associated with the closure of St. Patrick's Institution. We are using this legislation because it is important to have a clear legislative basis for deporting people who are convicted criminals, in prison and subject to deportation orders. To deal with what the High Court had found on temporary release, I have used this opportunity to bring it to the House in this legislation. The central issue we are addressing, though, is the closure of St. Patrick's Institution.

Senator Paschal Mooney: Will the Minister reassure the House that, given the current international climate relating to terrorism, gardaí under her watch continue to monitor those coming in and out of the State? Will she assure us that undesirable people, once identified, will

be locked up and deported immediately?

Deputy Frances Fitzgerald: A serious terrorist threat faces Europe and some countries are under severe threat from terrorists. While we in Ireland know that an attack is possible, we do not consider it to be likely. Having said that, we have to be very rigorous in our monitoring of the situation and of anybody who might raise concerns. I assure the Senator that An Garda Síochána, which acts as the security service in this country along with the separate but important role the Defence Forces play, will continue to monitor this issue.

An Leas-Chathaoirleach: Group 2 comprises technical amendments, the subject matter of amendments Nos. 2 and 4.

Deputy Frances Fitzgerald: Of the second group of amendments, amendment No. 2 is a technical amendment relating to warrants issued by courts in Dublin for the committal of persons to prison. It arises from an issue that has emerged in very recent High Court proceedings. Outside of the Dublin district, warrants are addressed to An Garda Síochána in accordance with very old legislation. However, the District Court rules permit committal warrants in Dublin to be addressed directly to the governor of the prison to which a person is to be committed. The courts have operated on this basis for a very long time. In a recent judgment, a judge of the High Court expressed the view that the relevant provision of the District Court rules may be inconsistent with this very early Act. It opens up the prospect of uncertainty at least in the legal provision, and it is appropriate to amend the relevant legislation to make it clear that the arrangements made for Dublin and the rules of court are permitted. Amendment No. 2 proposes to insert a new section amending an 1851 Act. The effect of the amendment is to declare that a committal warrant issued by the District Court in Dublin can be addressed to the governor of a prison. This is the position that has been taken to apply in Dublin for many years.

On amendment No. 4, because the new section to the Bill will broaden the scope of the Bill as published, I have had to amend the Long Title.

Senator Paschal Mooney: I have a question on the issuing of warrants. I presume this is in the context of committal to prison. The Minister knows better than most that the prison population has been increasing. Does she have an opinion on the imminent implementation of the law next month? It will have implications for those who are, or could be, committed to prison for non-payment of fines, as happened in two high profile cases last week involving two Members of the other House. This appears to be a recurring problem. The change in the law and the use of attachment orders should reduce the prison population, which means that those who should be in prison will be imprisoned.

An Leas-Chathaoirleach: That might be a little *ultra vires*, but the Minister may respond if she wishes. It is Christmas time.

Senator Ivana Bacik: On the subject of committal, I welcome the Minister's announcement last week that the legislation would be commenced in the new year; therefore, we will no longer see people committed to prison for non-payment of fines. Senator Paschal Mooney raises a pertinent issue. There will probably be a reduction in the number of committals, one hopes, but perhaps not a reduction in the numbers incarcerated, given how short a period of time people tend to spend in prison when they are committed for non-payment of fines, as we saw last week. Perhaps the Minister might comment on this.

Senator Colm Burke: On that matter, I saw the figures and they are quite frightening. Be-

tween 2008 and 2010, the number of people arrested for non-payment of fines increased from 2,500 to 6,500, even in that short timeframe. In fact, over 50% of all arrests for committal to prison, where people are going into the prison system, are for non-payment of fines. That will all stop, rightly so. It has been a huge waste of Garda time as well. At least now we are setting up the proper structures to deal with this through attachment of earnings. I hope it will reduce the amount of Garda time spent on this matter, which is welcome. It is a change that is long overdue. I thank the Minister and the Department for the work they have done in that area.

An Leas-Chathaoirleach: I call on the Minister to respond to those pertinent and not-so-pertinent questions.

Deputy Frances Fitzgerald: The Bill before the House is a straightforward effort to deal with the case of *Grant v. the Governor of Cloverhill Prison*. It is right to introduce this amendment to ensure the arrangements are clear for Dublin and that it is permitted in the District Court rules.

Regarding the broader point that Members have made, the Government introduced legislation on the payment of fines, which was passed a couple of months ago. Since it was passed, the courts have been working hard to ensure they can implement it. Some technology had to be implemented and other arrangements had to be put in place before the legislation could be implemented effectively by the courts. That was important work. It is completed now and the legislation will be implemented from 11 January next year. It means that attachment orders can be made and that there is the new opportunity to pay fines by instalment. Clearly, that should result in more efficient management where fines have been ordered to be paid.

If people still refuse to pay fines, the penalties are more severe in terms of both fines and jail sentences. Those who insist that they will break the law and who do not use the various opportunities that will be provided through the implementation of the fines legislation from 11 January will face much more severe punishment. I believe that is right. If one breaks the law and does not pay what the law tells one to pay and one is given every opportunity to pay it, ultimately there will be a severe penalty if one insists on breaking the law.

Question put and agreed to.

Question, "That the Bill do now pass," put and agreed to.

Sitting suspended at 1.45 p.m. and resumed at 2 p.m.

Finance (Tax Appeals) Bill 2015: Second Stage

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

Minister of State at the Department of Finance (Deputy Simon Harris): The purpose of the Bill is to provide for reforms of the role, functions and structure of the Office of the Appeal Commissioner and the tax appeals system. The overall objective is to ensure an enhanced and cost-effective appeal mechanism for tax cases, while providing transparency and increased certainty for taxpayers. The Appeal Commissioners are responsible for carrying out the statutory duties assigned to them under the Taxes Consolidation Act 1997 and related legislation, principally the hearing of appeals by taxpayers against decisions of the Revenue Commission-

ers concerning taxes and duties. The commissioners hear appeals relating not only to income tax, but also to corporation tax, value added tax or VAT, capital gains tax, stamp duties, capital acquisitions tax, customs and excise duties, vehicle registration tax and local property tax. Most appeals relate to the amount of an appellant's tax liability.

As is appropriate for an administrative tribunal, the Appeal Commissioners are independent in carrying out their functions. I acknowledge the valuable role the commissioners play in the operation of a fair and efficient taxation system. Mr. Ronan Kelly recently retired as an Appeal Commissioner, having served in that role for over 20 years. I understand the term of the other commissioner of long standing, Mr. John O'Callaghan, will end in a few days. On behalf of the Minister, Deputy Michael Noonan, I thank both for their diligent service since the early 1990s. I am pleased that, following an open competition conducted by the Public Appointments Service, Mr. Mark O'Mahony took up his post as Appeal Commissioner on 9 November last. Ms Lorna Gallagher will commence as Appeal Commissioner in the next few days. I look forward to both playing a central role in the reform of the appeals system and I wish both well in their work.

The tax appeal system has been examined over the years and the following reports and tribunals have made recommendations about the Appeal Commissioners in that time: the steering group on the Revenue Commissioners; the Dáil Committee of Public Accounts final report on the DIRT inquiry; the Revenue powers group report; the Law Reform Commission report on a fiscal prosecutor and a revenue court; and the Commission on Taxation report. Proposals for changes to the appeals system have been made by stakeholders, including the professional representative bodies, such as the Irish Tax Institute and the accountancy bodies.

The Minister announced in budget 2014 his intention to instigate a reform of the appeal system for tax matters, including reform of the role, functions and structure of the Office of the Appeal Commissioner. The Bill represents the culmination of a process that involved constructive dialogue with stakeholders on the oversight and operation of the tax appeals system towards a common objective of reform to enhance the system for all participants.

The reforms proposed will bring appeals through the initial stage in a more streamlined fashion, with enhanced case management procedures to facilitate a more efficient and structured flow of appeals. The proposed reforms in the Bill will end the practice of appeals being made via the Revenue Commissioners and will involve a significant change to the process for appeals by way of the "case stated" procedure for the High Court, and the removal of the Circuit Court rehearing stage of the appeal process. This issue was the subject of much debate in the other House and I expect it to be the subject of some debate in the Seanad. The Minister remains convinced that, with the strengthening of the roles and procedures for the Tax Appeals Commission and given trends in relation to other expert administrative tribunals, retention of the Circuit Court stage of the appeals process would be anomalous. There are also opportunities for redress in certain circumstances by way of judicial review and appeal to the Court of Justice of the European Union.

In accordance with the agreed protocol for pre-legislative scrutiny by Oireachtas committees, the heads of Bill were sent to the Joint Committee on Finance, Public Expenditure and Reform, which issued its report on 16 April last. Following consideration of the report of the joint committee and concerns expressed by stakeholders prior to and during the pre-legislative scrutiny process, the Minister decided to change the provisions in the heads of Bill regarding public hearings of tax appeal cases. The heads had envisaged that hearings before the Appeal

Commissioners, heretofore held privately or *in camera*, would in future be held in public session following enactment of the legislation. While the default position will still be for public hearings, the Bill has been drafted to provide that where an appellant requests it, the hearing of his or her tax appeal will be held in private. I consider that this provision will meet the concerns of the committee and stakeholders, although I appreciate that diverse views were expressed. The committee considered that transparency, which had been one of the objectives of the original public hearings proposals, would be enhanced and clarity provided to taxpayers and the general public if all hearings were accompanied by written determinations, as is proposed.

The key elements of the Bill are as follows: the establishment and structure of the commission; the appointment and removal process for Appeal Commissioners; the terms and conditions of Appeal Commissioners; the provisions for staffing and funding of the commission and its accountability; a new Part 40A of the Taxes Consolidation Act 1997, providing for a wide range of amendments to the legislation governing appeals in regard to the various taxes under the care and management of the Revenue Commissioners; and a schedule of consequential amendments to the various tax and duty Acts arising from reform measures and from the effect of the new Part 40A. The main thrust of the reform is to strengthen the independence, and the perceived independence, of the Appeal Commissioners. The measures to achieve this contained in the Bill include appropriate selection and appointment provisions involving the Public Appointments Service, fixed-term appointments, a clear statutory statement of independence, new funding and staffing arrangements and the making of appeals directly to the Appeal Commissioners, and not Revenue, as currently happens.

The Bill is in five Parts and has two Schedules. I will outline the provisions of Part 2 in some detail. As the provisions of the subsequent sections are extensive and complex, I will give an overview of their essential components. I am aware that Members of the Seanad may wish to address some specific issues on Committee and later Stages.

Part 1 is preliminary and general. It contains standard provisions comprising the Short Title and commencement provisions, together with interpretations and definitions for the Bill.

Part 2 contains provisions relating to the establishment of the tax appeals commission, its membership and functions and the appointment, terms and conditions of the individual Appeal Commissioners and their staff. The more important of these provisions are described as follows.

Section 6 sets out the functions of the Appeal Commissioners with regard to the acceptance, refusal, adjudication and determination of appeals, the conduct of hearings, the provision and publication of determinations, the stating and signing of cases for the High Court and the establishment of efficient and effective systems and procedures for the processing of appeals. The commissioners are required to conduct appeal proceedings in a way that is accessible and fair and as expeditious as possible. The functions of the commissioners can be performed by any one of them acting individually, unless they have provided otherwise in their rules of procedure.

Section 8 deals with the appointment of Appeal Commissioners. The Minister is required to have the Public Appointments Service assess and select candidates for appointment as commissioners and to recommend suitable candidates to the Minister. The Minister is given powers to specify requirements with which candidates must comply, such as practical experience or academic qualifications. The Minister is permitted to appoint a serving commissioner for a second term, without recourse to the Public Appointments Service, where the commissioner's

first term of office has expired. A commissioner is precluded from serving for more than two consecutive seven-year terms.

Section 9 provides for temporary commissioners in cases where the full-time commissioners have recused themselves. In such cases, the Minister can appoint a Circuit Court judge as a temporary commissioner. The Minister can also appoint a person as a temporary commissioner in non-recusal situations where circumstances require such an appointment, for example, in a situation where there has been a significant increase in appeals and a temporary commissioner is required to help deal with it.

Section 10 establishes the independence of the tax appeals commission and its Appeal Commissioners in the performance of their functions. Section 13 provides that the term of office of Appeal Commissioners will be seven years, with scope for the Minister for Finance to reappoint a commissioner for a second and final seven-year term.

Section 17 provides for the Minister's powers to remove commissioners from office for stated reasons, subject to the Minister laying a statement before the Dáil giving the reasons for any such removal.

Section 18 provides for the cessation of a commissioner's tenure where she or he is adjudicated a bankrupt, makes a composition or arrangement with creditors, is convicted of an offence or ceases to be ordinarily resident in the State. The section also provides for the cessation of a commissioner's tenure on his or her nomination or election to various public offices such as the Oireachtas, a local authority or the European Parliament.

Section 19 provides for the funding of the commission to be as determined by the Minister for Public Expenditure and Reform.

Section 20 provides that staff numbers of the tax appeals commission are to be determined by the Ministers for Finance and Public Expenditure and Reform.

Section 21 requires the Appeal Commissioners to submit annual reports to the Minister for Finance, who will lay them before the Houses of the Oireachtas. These reports are to contain specified statistical information with regard to appeals where this is required by the Minister or by any enactment. The commissioners also will be able to report to the Minister on other matters as they consider appropriate. The Minister may require the commissioners to report on various matters but this is subject to the commissioners not being required to include information on matters that would prejudice the performance of their functions.

Part 3 provides for the treatment of existing appeals when the new appeal process comes into operation. It contains provisions relating to the arrangements for transitioning from the old appeal process to the new model. On the commencement date for the new appeal process, appeals already will have been made and will be at various stages of the old appeal process. Many of the steps in the old appeal process will continue under the new process. The general rule is that existing appeals will move on to the next stage in the process. Thus, for example, appeals that have already been made to Revenue will be transferred to the Appeal Commissioners and the revised case stated procedure for appeals to the High Court will apply to Appeal Commissioners' determinations made after the commencement date. However, there are exceptions to this general rule, for example, a taxpayer whose appeal has been heard but not determined still will be entitled to a rehearing before a Circuit Court judge, should he or she lose the appeal. There also are provisions to allow a different Appeal Commissioner to finalise an appeal in

circumstances where the Appeal Commissioner who started the adjudication is unable to do so for reasons such as retirement.

Part 4 concerns the insertion into the Taxes Consolidation Act 1997 of a new Part 40A, which deals with appeals to the Appeal Commissioners. Part 40A contains provisions relating to the entire appeal process and to the Appeal Commissioner's conduct and management of that process, commencing with the making of appeals and their acceptance or refusal, progressing to adjudication, hearing, determination and publication of determinations and finishing with appeals to the courts against determinations of Appeal Commissioners. It facilitates a more active case management approach by the Appeal Commissioners. In straightforward cases, they will not be required to hold a hearing but can adjudicate and determine the appeal based on paper submissions, subject to the agreement of the taxpayer to this approach. The Appeal Commissioners will be able to dismiss appeals where the taxpayer does not co-operate with them by, for example, providing information such as accounts requested by the commissioners. Responsibility for the preparation of a case stated for an appeal to the High Court, subject to a time limit, is being given to the Appeal Commissioners themselves instead of the parties to the appeal. Increased transparency and certainty will result from the requirement that all Appeal Commissioners' determinations must be published.

Part 40A contains provisions relating to whether a hearing, or part of a hearing, is to be held in public or in private. As I outlined, the default position is that all hearings are to be held in public, subject to exceptions relating to, for example, issues involving public order or sensitive issues. However, the Appeal Commissioners must hold a private hearing or a part-private hearing where an appellant submits a request for this. As I indicated earlier, this represents a change from the original proposed provisions following the views expressed during pre-legislative scrutiny and by many stakeholders.

Part 5 contains amendments to 137 separate sections and Schedules in the Taxes Consolidation Act 1997. A consequence of the changes being made to the appeal process is the need to make a large number of consequential amendments to provisions relating to appeals in the Taxes Consolidation Act 1997 and in various other taxation Acts contained in Schedule 2. While there are a large number of individual amendments, given they are being made with regard to several different types of taxes and affect a wide range of provisions, most of them are of a similar nature. For this reason, each individual amendment is not explained. The most common amendment is that necessitated by the fact that under the reformed system, a taxpayer will be obliged to appeal directly to the Appeal Commissioners and not via Revenue, as currently happens. Various cross-references that no longer are relevant are being removed such as, for example, references to Part 40 of the Taxes Consolidation Act 1997, which is being phased out and replaced with the new Part 40A.

Another type of amendment will clarify and make more explicit a right of appeal that is currently only implicitly stated in the various tax and duty Acts. A valid appeal under the revised appeal process will require a specific right of appeal to be given in the relevant tax and duty Act. The opportunity presented by the reform of the appeal process is being taken to rectify any anomalies and inconsistencies that currently exist and to standardise as far as possible the appeal provisions for the various taxes and duties. One example of such standardisation relates to the number of days allowed for the making of an appeal. While 30 days is the usual time limit, this has not been standard across all of the taxes and duties. Another example is the alignment of the preconditions for the making of an appeal against different types of Revenue assessments such as, for example, the requirement to have submitted outstanding returns to Revenue and to

have paid the part of the tax liability not in dispute before an appeal can be made.

The origins of the Appeal Commissioners date back to the Act of Excise 1662 and thus it is a body that predates the foundation of the State. At present, the Minister for Finance appoints Appeal Commissioners pursuant to section 850 of the Taxes Consolidation Act 1997. Effectively, the Minister has had discretion as to who was appointed and on what terms, subject only to laying details of the appointment before the Houses of the Oireachtas. This Bill proposes to change this by requiring that appointments will be made by the Minister only following an open competition run by the Public Appointments Service.

The role of the Appeal Commissioners is to act as an independent administrative tribunal in adjudicating disputes between taxpayers and the Revenue Commissioners. This Bill is designed to enhance the independence of the Appeal Commissioners, increase transparency and provide a more efficient appeal system in tax disputes to the benefit of compliant taxpayers and the Exchequer alike. I commend the Bill to the House.

Senator Darragh O'Brien: I thank the Minister of State for outlining the provisions of the Bill. The single fact that will shock people is the Revenue Commissioners sometimes get things wrong. In response to a question tabled by Fianna Fáil's finance spokesperson in the Dáil, Deputy Michael McGrath, it was revealed that in approximately 26% of cases, appeals were decided in favour of the taxpayer. This demonstrates there is a requirement for an appeal mechanism. Fianna Fáil welcomes this Bill because it will update and modernise the appeal system. The Minister of State has outlined from where this derives and it effectively dates back to the 17th century. All Members seek to have this process modernised, particularly when one considers the delays in processing some appeals. While there may be some valid reasons, more than 600 appeals have been pending for more than five years and 30 appeals have been pending for more than ten years. Such figures and instances certainly means the system should be streamlined. It will help greatly that decisions will be made within 90 days and will be published in public via the Internet. I certainly welcome this because other potential appellants will be able to see on the public record how other appeals were heard and how they were found. This then could lead to someone deciding whether to take an appeal in certain instances and this is to be welcomed.

It was mentioned in the Dáil - I repeat it here - that removing the option to appeal to the Circuit Court is a concern, but it does not mean we will not support the Bill. We will support the Bill, but the appeal issue should be looked at again. By removing the option to appeal to the Circuit Court, the only appeal would be on a point of law. Anyone going into court to argue a specific point of law knows that it remains on that item alone. I am not sure why that appeal option has been removed and I cannot see the reason in the Minister of State's speech. Perhaps he could address that specific issue in his response to the House and it may be possible to have this reviewed next year to see how it works. I will not detain the House. Fianna Fáil supports the Bill but once it is in place, the historical appeals should be tracked and a review held into how the backlog is to be tackled. It can then be established if the target of 90 days is being reached in which appeals are heard and decided on.

I welcome the Minister of State's comments that any future appointments would be made through the Public Appointments Service, PAS, an open process, and ratified by the Minister. The positions will still be decided by the Minister but through the PAS, which is an important step forward. The Circuit Court concern is the one point on which Fianna Fáil would want further consideration. We support the Bill, it is very welcome and it will make a difference to

many people. There are instances where over 25% of appeals have been found in favour of the taxpayer, which shows the importance of having an appeals system. It is hoped this legislation will allow a more streamlined and efficient approach.

Senator Michael D’Arcy: I welcome the Bill which has been a long time coming. In 1662 Cromwell was not long gone from Wexford after he sacked it in 1649. This Bill should have been brought forward much earlier. The Revenue Commissioners are very good at their job, but as Senator Darragh O’Brien said, on occasion they get things wrong. Over 25% of appeals were overturned by Revenue. When people are appealing to an independent and objective office rather than going back to Revenue, perhaps the expectation is that even more cases may be overturned or more will be taken to appeal. The 26% figure could be higher but we will never know because we do not know how many people would be more likely to take an appeal when they can go to an independent office.

I welcome the matter of the appeals being made public, but there are concerns around tax matters being private until they are concluded. If Revenue finds that somebody has done something wrong, perhaps unintentionally, and there is a finding against somebody, penalties and charges apply. However, in the number of appealed cases which were found to be correct, where the taxpayer is found to have done nothing wrong or where the case had gone against Revenue, I am sure some people would not like that information put out there. It is a space we need to consider. I understand there is an option for the appeal to be held in private. I would appreciate it if the Minister of State could clarify this matter further.

The target of 90 days in which to make findings on appeals is welcome. A person may have a bill from Revenue and the clock is ticking. If the matter is dealt with within 90 days, whether it is in favour or against, at least the clock is no longer ticking and the person has their determination of what is due or not.

I welcome the transparency around the appointment of people to these important commissions, now and in the future, via the Public Appointments Service. The way things were done, where a person got a job because they were a friend of or knew someone, was not good practice. That is old hat from an older era that no longer has a place in society. I am broadly supportive of this proposal. I was a little surprised to learn the Act went back to 1662.

Senator Feargal Quinn: I welcome the Minister of State. I welcome the Bill and hope it means that customers, that is, citizens, will benefit from a more transparent and efficient tax system. However, there are a few issues, one of which was raised by Senator Darragh O’Brien. The removal of the right to appeal to the Circuit Court is one of the more contentious parts of the legislation. For instance, sections 35, 36 and 38 delete references in the 1997 Act where a party can make an appeal to the Circuit Court. Unfortunately, amendments in the Dáil on Committee Stage to reintroduce the possibility of appeals to the Circuit Court were not accepted. These amendments also included a proposal to allow a party who wanted to appeal to the Circuit Court regarding a determination by the new tax appeals commission. The references to the Circuit Court should be retained to give people another option for redress. The Circuit Court would also give people a viable and reasonable option for appeal if they were not satisfied. The appeal to the Circuit Court would not always happen but it is a safeguard in place if a person is not happy with a determination of the appeals commission. The massive costs associated with going to the High Court mean that it is not a reasonable option for many people. It must be remembered that people have to appeal on a point of law rather on their own case *per se*. If the legislation is passed as it stands, it will simply stop many people from appealing and I hope

that is not the intention of the legislation. I am sure it is not the intention but it may be the end result.

There is much concern about removing the possibility of the Circuit Court even getting involved in these matters. This is not about clogging up the courts system but about retaining checks and balances. It is about allowing the largest number of people to access redress, which is something the Circuit Court could provide given that the High Court is not a practical option. We know that cases can be very complex and having the Circuit Court as a backup is very worthwhile. One of the members of the Select Sub-Committee on Finance, Deputy Pearse Doherty, said “This is one of the areas in which there was no division among committee members on the question that the right of appeal to the Circuit Court should be maintained.” The Government should take that opinion on board. If having the reference to the Circuit Court in the legislation helps just 1% of cases, then it is worth reinstating it in the legislation. I would support this and would appreciate a response from the Minister of State on these concerns.

The Bill provides for the online publication of determinations. Is it envisaged that customers would in future lodge their appeals online? Section 949C, inserted by section 34 of the Bill, covers appeals to the appeals commission via electronic means. Subsection (3) states, “The Revenue Commissioners and the Appeal Commissioners may each, in their discretion, put arrangements in place for, or approve, the use of electronic means for any purpose of this section”. I do not think it is good enough in this day and age to leave it to the discretion of Revenue and the appeals commission if they want to introduce an online appeals system. Will the Minister of State consider amending this section to compel Revenue and the appeals commission to introduce an online appeals system within one year on the Bill coming into force? I believe that is what the customer and citizen wants. Substantial work has been done on the Bill and yet this very obvious target has been deliberately left ambiguous. An amendment should be included in the legislation to provide for the introduction of a set date by which the appeals commission would implement an online appeals system. It is a vital aspect if the Government is serious about providing an improved tax appeals system. Is there a target date for responses to the customer? The current system is overloaded and I would like to see a response time being set in order that the efficiency of the current system could be improved. Perhaps the Minister of State could comment on these areas.

The Bill is about improving the overall tax system in the State and a good effort has been made, but it could be argued that we had a setback in the past year. In its *Doing Business 2016*, the World Bank reported on Ireland’s system. It states, “Ireland made paying taxes more costly and complicated for companies by increasing landfill levies and by requiring additional financial statements to be submitted with the income tax return.” This report which is one of the most important in comparing conditions for doing business worldwide indicates that we are imposing more red tape on business. Will the Minister of State address this concern, particularly in respect of the increased paperwork imposed on companies in the past year as a result of the requirement to provide additional financial statements with their income tax returns?

On vehicle registration tax, section 2 outlines the various taxes the new system will cover, including income tax and the local property tax. It states the Act will also cover, “any instrument made thereunder and any instrument that is made under any other enactment and which relates to tax”, including in respect of stamp duties and of duties related to Customs and Excise. Will the Minister of State confirm that the legislation will cover vehicle registration tax, VRT, which is one of the most contentious taxes? When people import a car the rate of vehicle registration tax is determined based on the so-called open market selling price. Revenue purportedly

arrives at a figure by comparing similar models of vehicles. However, this method is highly unscientific when the model is rare or obscure. While this may not affect a large number of vehicles, these types of cases certainly arise and the system has caused much public satisfaction. In the interests of customers, it would be useful if the open market selling price arrived at by Revenue could be appealed.

These are only some of my thoughts on the Bill. I am particularly concerned that Ireland has slipped back from 17th to 23rd place in the rankings of the best places to do business, especially as the Taoiseach's objective is to make the country the best small country in which to do business.

Senator Aideen Hayden: I broadly welcome the Finance (Tax Appeals) Bill 2015. As a member of the Joint Committee on Finance, Public Expenditure and Reform, I was involved in the pre-legislative scrutiny of the legislation. I am pleased, therefore, that a number of the issues about which members of the joint committee raised concerns have been addressed in the drafting of the Bill. The pre-legislative scrutiny process has proved a useful way of evaluating a proposed change to the tax code that is perhaps more fundamental than people realise.

I have been struck by a number of issues and it may be useful to refer to them. The joint committee met one of the Appeal Commissioners. Members were struck by how effective the current appeals process is and the incredible work that is done by a team of four people, consisting of two Appeal Commissioners and two members of staff. I understand the annual cost of the Office of the Appeal Commissioners is €447,000 per annum. The service the office provides to the general public is highly successful.

One of the issues that arises in the context of the legislation is transparency in the tax code. In an international context, transparency is highly desirable, particularly for those who want to do business here, as they will seek clarity and transparency around the tax code. No one disputes the need for transparency. One of the proposed changes was to have all appeals heard in public. A number of stakeholders and members of the joint committee raised concerns about this proposal. The first of these was that Ireland is a small country. While a number of members indicated we should align the system with those in place in larger countries such as the United States and Canada, a number of other stakeholders pointed out that in a country with such a small population - there are only approximately 5 million people on the island as a whole - having all appeals against Revenue decisions heard in public would have a negative effect in terms of achieving the desired outcome of bringing about the level of engagement that people should have with the tax system and the transparency desired. I am pleased this concern has been addressed in the Bill. I understand the Revenue Commissioners agreed that public hearings could act as a disincentive to people considering lodging an appeal against a Revenue decision. The provision that private information related to the family should not be brought into the public domain solely on the basis that a person wants to appeal a decision of the Revenue Commissioners is a positive step.

The fundamental change the Bill makes is that all appeals will be held in public, except where a person requires that an appeal be held in private. Under the current system, all appeals are heard in private. One of the criticisms made of the current position was the lack of transparency arising from the failure to report decisions, in other words, the failure to record them on the website of the Office of the Appeal Commissioners. From memory, the Appeal Commissioners responded to this criticism by pointing out that the service has four staff with which to deal with 400 cases per annum. They indicated that they could place all the necessary

information on any website if they had more resources. It is important to bear this in mind when we decide to throw the baby out with the bath water. Sometimes we need to be conscious that systems may work more effectively without the introduction of fundamental changes.

I am disappointed that one or two of the recommendations made by the joint committee have not taken on board. The first of these was the recommendation not to remove the role of the Circuit Court as a court of appeal. This recommendation should be noted. I understand one of the reasons it was not accepted was that, as the law stands, the Revenue Commissioners cannot appeal certain cases. I believe they can only appeal cases involving capital gains tax to the Circuit Court and cannot appeal under any other circumstances.

I wonder why the Bill does not simply allow the Revenue Commissioners the right to appeal to the Circuit Court. I am conscious that a number of the stakeholders were aware that having to go to the High Court in a case stated is a much more expensive procedure than taking an appeal to the Circuit Court. On the other hand, I accept that introducing an appeal to the Circuit Court delays the process and makes it less speedy and perhaps less effective because, as was made clear by the Appeal Commissioners, the level of detail required to hear some of these complicated tax cases requires extensive knowledge of the tax code, which is not necessarily available at Circuit Court level. I found this argument persuasive.

A number of the improvements made also remove the necessity to go to the Circuit Court. One relates to the fact that decisions can effectively be heard at a pre-hearing stage. The Bill introduces - if not in fact, certainly in practice - a pre-hearing stage to the appeal commission phase of the process. This is a positive development. On balance, while the joint committee recommended that the Circuit Court stage of a tax appeal be retained, I am not persuaded that it was completely correct in that respect. Having read the legislation in more detail, I do not believe the Bill would have been improved by retaining the role of the Circuit Court.

As I am under time pressure, I will raise other matters on Committee Stage.

Acting Chairman (Senator Catherine Noone): All Stages are being taken today.

Senator Aideen Hayden: I am aware of that. The engagement between all stakeholders was good and demonstrated the positive impact of pre-legislative scrutiny. This process could be useful in many more areas of legislation.

Senator Kathryn Reilly: I will briefly pick up on Senator Aideen Hayden's concluding point in which she welcomed the pre-legislative scrutiny process. Scrutiny of all aspects of public policy is needed and we should engage in the process to the best of our abilities. I welcome the Bill which Sinn Féin will support.

While many members of the public will not be familiar with the work of the Appeal Commissioners, it is an important office. My party's approach to this Bill, as during pre-legislative scrutiny, is to ensure transparency and fairness in the appeals system open to citizens when dealing with their tax affairs. After much debate, my party still believes this Bill should be improved in two ways, one of which was mentioned earlier.

The first issue is the removal of private hearings in the appeals process. It has been mentioned here a good deal. I am aware that during the pre-legislative scrutiny process many stakeholders expressed views on that and that, in itself, brought about the changes in relation to the hearings. We are told that as a rule, hearings will be in public but the reality is that by giving

an opt-out few, if any, will opt for a public hearing. This could be seen as a step backwards and a climbdown on one of the core issues of this reform. My party has tabled amendments on this issue, but I will speak to it and I know that the Minister of State will come back to it.

All hearings will be accompanied by written determinations, but I do not know whether this, in itself, will be sufficient. It is a good Bill but this issue might be seen as a weakness. It is often said that not only must justice be done; it must also be seen to be done. Senator Aideen Hayden reflected on some of the concerns on this during pre-legislative scrutiny. I was not a member of the committee involved and some of these issues were new to me. It would be good to hear in the House the Minister of State reflect on the debate that occurred during pre-legislative scrutiny and why the Department agreed to change the draft heads of the Bill.

The second key issue my party would have relates back to what other Senators were talking about, namely, the removal of the right of appeal to the Circuit Court. The Government is sticking to its guns here on this issue and going against the members of the committee who sought that the right of appeal to the Circuit Court be maintained. Like other Senators, I ask the Minister to reconsider this.

There is a pattern of removing the right of access to the Circuit Court for citizens. We have seen this in the Customs Act 2015 which was recently passed and in the Financial Services Ombudsman process. The idea that persons abuse the appeal system would not stand up to scrutiny. The Minister will say this is the way it is for other State bodies, but that does not make it right and that is not the issue before us. The question has to be whether we want citizens to be able to have their day in court or whether it is to be made more difficult and only available in certain circumstances. For example, I note Senator Feargal Quinn mentioned the issue of only being able to appeal on a point of law. That is an important consideration.

There is a lot to be welcomed in this legislation. A more transparent system with decisions recorded systematically for the first time is a positive move. The idea of a record of decision to provide guidance is clearly sensible.

As I stated, my party will support the Bill. We have tabled some amendments. However, I think the issues have been thrashed out on Second Stage. As I stated, I would like it if the Minister of State could respond to the issues about the pre-legislative scrutiny and the issue of the public versus private hearings.

Minister of State at the Department of Finance (Deputy Simon Harris): I sincerely thank the Senators who contributed to this debate and for the broad welcome all Senators have given to this reforming legislation.

The reform of the tax appeal system will bring positive reform of the role, the functions and the structure of the Office of the Appeal Commissioners and the tax appeals system. It will serve a dual function: first, in providing transparency and increased certainty for taxpayers; and, second, bringing about an enhanced and cost-effective appeal mechanism for taxpayers and for the Exchequer. It is timely to proceed with this reform process which will see appeals being brought through the initial stages in a more streamlined fashion with enhanced case management procedures to facilitate a more efficient and structured flow of appeals.

I have already gone through the improvements and the various sections of the Bill and in the time available to me I will focus on the two issues of concern that have been raised during Second Stage, on which there are Committee Stage amendments from Senator Kathryn Reilly.

In relation to the hearings in public, I share the view that the pre-legislative scrutiny stage was valid and helpful in teasing out and discussing a number of issues and hearing from stakeholders. The Senator is correct that the Minister, Deputy Michael Noonan, when he originally published this Bill, envisaged a situation whereby all appeals would be in public. However, there were, I will accept, diverse but strong views at the committee on the unintended negative consequences this could have. Senators Aideen Hayden and Michael D'Arcy articulated them. This is a small country. We do not want to have an appeals system that would in any way discourage persons from their right of appealing a decision of the Revenue Commissioners and while the default position in the legislation will be for public hearings, on application by an appellant for a hearing or part of a hearing to be held in private, that will be granted. That is the balance the Minister is trying to achieve in this legislation. He believes and I believe that this will meet the concerns of stakeholders, particularly as voiced by a number of Members of the Houses at pre-legislative stage on behalf of small business people. For example, small shopkeepers could find themselves in a public hearing with their customers in attendance, with material from the hearing being reported locally, and such publicity could undermine their business even if the appeal was upheld. It is a balance we are trying to achieve here. The publication of determinations will be valid and important in terms of increased transparency.

In relation to the issue of the Circuit Court, I refer Senators to a Supreme Court judgment in 1997 in the case *Henry Denny and Sons (Ireland) Limited v. the Minister for Social Welfare*. It is a particularly relevant quote. It states:

I believe it would be desirable to take this opportunity of expressing the view that the courts should be slow to interfere with the decisions of expert administrative tribunals. Where conclusions are based upon an identifiable error of law or an unsustainable finding of fact by a tribunal such conclusions must be corrected. Otherwise, it should be recognised that tribunals which have been given statutory tasks to perform and exercise their functions, as is now usually the case, with a high degree of expertise and provide coherent and balanced judgments on the evidence and arguments heard by them it should not be necessary for the courts to review their decisions by way of appeal or judicial review.

This is a message from the courts, one might argue, to the Oireachtas about the role of expert administrative tribunals. What we are trying to do in this legislation is further ensure that taxpayers, when they take an appeal, have an opportunity to appeal to an independent expert administrative tribunal that will have a level of expertise, with no disrespect to the courts, that the Circuit Court would not profess to necessarily have in tax matters.

I take the point that Senator Aideen Hayden raised in relation to cost and the cost of a High Court hearing obviously being more than the cost of a Circuit Court hearing. While some of the costs that I have heard bandied about in other parts of this debate are not quite accurate, I appreciate that the high cost may be a barrier to participation but it must be pointed out that even if we were to retain the Circuit Court stage, it would remain open to the Revenue Commissioners to appeal the Circuit Court stage, if they lost, to the High Court, and the idea that the taxpayer may not find himself or herself in the High Court does not really stand up to scrutiny in that regard also.

The intention of the Bill is to produce reforms which will ensure a more robust, transparent and streamlined tax appeal procedure. In my view, a route of appeal from the reformed Appeal Commissioners stage to the Circuit Court does not make sense and it is not one that the Minister could stand over. The Appeal Commissioners are the specialist expert tax tribunal and the Min-

ister is determined that this status be acknowledged and, where possible, even strengthened.

Furthermore, the current tax appeals process is out of step with the procedures of other expert appellant tribunals. Some examples of decisions made by public bodies that can be appealed only by way of an appeal to the High Court on points of law are decisions made by An Bord Pleanála, the Financial Services Ombudsman, the Information Commissioner, the Irish Financial Services Appeals Tribunal, the Labour Court, the Refugee Appeals Tribunal, the Rent Tribunal, the Social Welfare Appeals Office, the Tenancy Tribunal of the Private Residential Tenancies Board, the Valuation Tribunal in respect of commercial rates and the Workplace Relations Commission, WRC, where unfair dismissal cases were appealable from the Employment Appeals Tribunal to the Circuit Court but this, too, has now ceased following the WRC's recent establishment. The Houses have considered these issues on many occasions and, I would contend, have favoured establishing the expert independent administrative route to a tribunal rather than the Circuit Court route. I hope I am explaining, even though we may not fully agree on this, the rationale behind our thinking in that regard.

In the interests of absolute clarity, I need to point out that the 90 days that have been referred to throughout the Bill is not a target for processing an appeal. The 90-day time limit is for the publication of the determination after the Appeal Commissioner has made the determination. There is no time limit for processing appeals because each case will be different and the Appeal Commissioners have to be given the space to deal with issues based on the complexity.

On the point Senator Feargal Quinn made, I will certainly read that report. The Senator is correct that as we move into a recovering economy it is important that we keep our relentless pursuit of making this a good country in which to do business. I will certainly consider those recommendations and discuss them with colleagues.

The new commission will develop electronic case management systems. There may in time be greater facilities for dealing with claims online. It is certainly something I would like to see. In the interests of clarity, there is no specific requirement in the Bill to migrate all processes to electronic systems.

I am pleased with the broad welcome for the Bill by Senators. I thank the Senators who were involved in the pre-legislative stage and the officials from the Department of Finance and Revenue who have worked so hard on this legislation. I hope I have provided some clarity on the points of concern.

Question put and agreed to.

Finance (Tax Appeals) Bill 2015: Committee and Remaining Stages

Sections 1 to 33, inclusive, agreed to.

SECTION 34

Acting Chairman (Senator Catherine Noone): Amendments Nos. 1 and 2 are related and will be discussed together.

Senator Kathryn Reilly: I do not intend to move the amendments at this point.

Amendments Nos. 1 and 2 not moved.

Acting Chairman (Senator Catherine Noone): Amendments Nos. 3 to 9, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Kathryn Reilly: I do not intend to move the amendments.

Amendments Nos. 3 to 9, inclusive, not moved.

Section 34 agreed to.

Sections 35 to 42, inclusive, agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

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

Sitting suspended at 2.25 p.m. and resumed at 3.15 p.m.

Houses of the Oireachtas Commission (Amendment) Bill 2015: Second Stage

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

An Cathaoirleach: I welcome the Minister of State, Deputy Simon Harris.

Minister of State at the Department of Public Expenditure and Reform (Deputy Simon Harris): I am pleased to present the Houses of the Oireachtas Commission (Amendment) Bill 2015 to the House. The Bill passed all Stages in the Dáil last Friday. The Houses of the Oireachtas Commission came into existence on 1 January 2004 under the Houses of the Oireachtas Commission Act 2003. The founding of the commission through legislation passed in 2003 had two consequences: the commission became the sanctioning authority for expenditure and for deciding on staff numbers up to the grade of principal officer 2, and for the provision of services and related matters to the Oireachtas, which authority formerly rested with the Department of Finance; and the system for the allocation of budgets to the Oireachtas changed from the annual Civil Service Estimates procedure to a different process involving a three-year budget drawn from the Central Fund. The new budget is set every three years following negotiations with the Department of Public Expenditure and Reform, formerly the Department of Finance, and is approved at political level by the commission, and the amending legislation is passed by both Houses.

Under the terms of the inaugural commission Act, a three-year budget, covering the period 2004 to 2006, was provided for the commission. Further Bills were enacted in 2006, 2009 and 2012. In addition, legislation was enacted in 2013 to give the commission responsibility for the translation into Irish of statutory instruments and the publication and periodic review of An Caighdeán Oifigiúil. Senators will recall the recently passed Houses of the Oireachtas (Appointments to Certain Offices) Act 2015, under which the method of appointing the Clerks and Clerk Assistants of the Dáil and the Seanad was revised. They will also be aware of the recent announcement of an open competition for appointment to the post of Clerk of the Dáil and Secretary General of the Houses of the Oireachtas Service.

The Houses of the Oireachtas Commission (Amendment) Bill 2015 is now required as the financing provided under the 2012 Act expires on 31 December next. The Houses of the Oireachtas Commission is an independent body. It is, in effect, the governing body which oversees the provision of services for the Houses and their Members by the Houses of the Oireachtas Service in accordance with the Houses of the Oireachtas Commission Acts. The primary functions of the Houses of the Oireachtas Commission are to provide for the running of the Houses of the Oireachtas, to act as governing body of the service, to consider and determine policy in respect of the service and to oversee the implementation of that policy by the Secretary General. The commission is composed of 11 members under the chairmanship of the Ceann Comhairle. The Cathaoirleach of the Seanad is an *ex officio* member, as is the Secretary General. There are also seven ordinary members, four of whom are appointed by the Dáil and three of whom are appointed by the Seanad, and one member appointed by the Minister for Public Expenditure and Reform. The Minister's representative must also be a Member of either House.

The Houses of the Oireachtas Commission has no role in regulating the business of the Houses, which is a matter for the Committee on Procedures and Privileges of each House. The commission is not responsible for the management and day-to-day operations of the Houses. The Secretary General has overall responsibility for these functions in accordance with the Houses of the Oireachtas Commission Acts. The commission does not set the level of remuneration payable to members of the Houses. Salaries, pensions and allowances are determined by the Minister for Public Expenditure and Reform. The commission is accountable to the Parliament. It presents annual reports on its work to both Houses together with estimates and accounts of its expenditure. The Houses of the Oireachtas Service is the public service body that administers the Houses of the Oireachtas on behalf of the commission as the governing authority. The functions of the service are set out in legislation. They can be broadly summarised as the provision of professional advice and support services for the commission, the Houses and their committees and the Members of both Houses.

The primary purpose of the Bill is to make available the funding for the Houses of the Oireachtas Commission for the coming three-year period. The Bill proposes to make available to the commission a sum not exceeding €369 million to carry out its functions for the three-year period from 1 January 2016 to 31 December 2018. This sum has been agreed between the commission and the Minister for Public Expenditure and Reform. It takes account of foreseen expenditure over the three-year period. The figure of €369 million over three years comprises €131 million in 2016, €120 million in 2017 and €118 million in 2018. The €131 million figure for next year represents an increase of €19 million over the expected outturn of €112 million for this year. The bulk of the increase - over €14 million - relates to the forthcoming general election and covers payments in respect of termination allowances and pensions for former Members and secretarial assistants. The remainder of the increase - just under €5 million - relates to: the increase in staffing levels that is required to support enhanced security arrangements, as recommended by An Garda Síochána; the Oireachtas television channel, which now runs 24 hours a day, seven days a week; enhanced ICT services; Dáil reform measures, such as longer sitting hours, increased budget scrutiny and pre-legislative scrutiny; the much-needed updating of the various forms of technological equipment in operation in both Houses of the Oireachtas, including the electronic voting, sound technology, voting panel and broadcasting systems; and an increase in the provision of legal services arising from legal cases being taken against committees of the Houses.

In summary, the extra expenditure projected for 2016 over 2015 is either a direct conse-

quence of the forthcoming general election or emanates from demands to meet unavoidable security, technological and legal cost pressures on the commission. The Estimates for 2017 and 2018 show a decrease from the 2016 levels, due primarily to a reduction in general election-related costs. While the funding issue is the primary purpose of the Bill before the House, as I have said, this opportunity is being taken to make a number of amendments of a more technical nature. I would like to give Senators details of some of the amendments in question. First, under section 8 of the Ethics in Public Office Act 1995, as amended, the initial assessment and transmission of complaints from the public against Members of the Houses can only be undertaken by the Clerk of the relevant House. This creates an impediment to the processing of such complaints when the relevant Clerk post is vacant. The proposed section 8 of the Bill allows the relevant Clerk Assistant explicitly to exercise the necessary powers.

Second, with regard to section 2 of the Bill which deals with copyright, Oireachtas copyright was vested by section 195 of the Copyright and Related Rights Act 2000 in each House. This provision was enacted before the Houses of the Oireachtas Commission was established. The right of the commission to exercise such powers on behalf of the relevant House, together with the power to delegate the exercise to the Secretary General, is being made explicit in this Bill.

Third, with regard to paragraphs (b) and (c) of section 6, the Oireachtas wishes in the interests of administrative convenience to have an enabling provision included in the Bill to allow the secretarial assistants of Members who are elevated to posts at Minister or Minister of State level to continue to remain under the scheme for secretarial assistance, rather than being seconded to Departments as is currently the case. In addition, these costs will be borne by the commission, rather than being spread over the Votes of the relevant Departments or offices as they are at present. Currently, the commission bears the cost of secretarial assistance for non-office-holding Members under Schedule 1 to the Houses of the Oireachtas Commission Act 2003. The amendment being proposed here would extend that arrangement to secretarial assistance for all Members.

Fourth, I draw the attention of Deputies to amendments being provided for in sections 2, 5 and 6(a) in connection with the substitution of the term “grant” for “grant-in-aid” in section 4 of the 2003 Act and Schedule 1 to that Act. This follows a change in Government accounting procedures that was instigated by the Department of Public Expenditure and Reform, whereby arrangements under which bodies and funds, etc., were allowed through grants-in-aid to retain unspent moneys at the end of the year have been superseded by grants systems in the interests of expenditure control. The term “grant-in-aid” is no longer in use and, therefore, references to it in individual sections of the Houses of the Oireachtas Commission Acts and the Schedules thereto need to be amended. Fifth, section 4 corrects a typographical error in the 2003 Act and section 7 of the Bill is a cross-referencing update to Schedule 2 to the principal Act concerning the treatment of the commission’s receipts in its accounts. Sixth, section 9 provides for the repeal of provisions in the 2003 Act which have been made redundant by the repeal of the Freedom of Information Acts 1997 and 2003 and their replacement by the Freedom of Information Act 2014, the repeal of the Civil Service Commissioners Act 1956 and certain amendments effected by the Civil Service Regulation (Amendment) Act 2005. I commend the Bill to the House.

Senator Marc MacSharry: We support the Bill. One thing that was missing from the Minister of State’s speech was a reference to the performance of the Houses of the Oireachtas Commission in recent years. I understand that as a result of the savings which have been provided for, there has been a year-on-year reduction in costs other than those associated with the

banking inquiry or general elections. That is a testament to the efforts of the Ceann Comhairle and the members of the Houses of the Oireachtas Commission, of which I am one. I think Senator Paul Bradford is a former member of the commission. Frankly, the multi-annual approach that is taken to funding the Houses of the Oireachtas is one that should be replicated across all Departments. The Department of Health would certainly benefit from such an approach if it were possible, as would HSE executives such as Mr Tony O'Brien, about whose day-to-day work many of us are critical. The lack of multi-annual budgeting in other Departments impedes the ability of organisations to correctly plan or identify savings over periods of two to three years. I think we would benefit from an Oireachtas perspective if they were in a position to plan in that way.

I would like to make a point about the issue of legal defences, which came up recently. As a member of both the Houses of the Oireachtas Commission and the banking inquiry - I am not publicly discussing any of the evidence the inquiry is considering - I am aware that the issue of the members of the inquiry signing off on the report if there were any legal challenges against us has arisen. It has been suggested that, theoretically, we could be on our own. If there is a challenge, presumably it will be a matter for the next commission, which will be put in place in six or eight months' time after the general election has taken place, to determine whether it is a defensible challenge.

I am aware, from my experience as a member of the banking inquiry and of the Houses of the Oireachtas Commission, that from time to time the Houses of the Oireachtas Service consults Members of the Oireachtas on what they feel is best, but on other occasions it does not consult Members and instead does what it feels is best. I will give an example. Those of us who worked on the banking inquiry for 23 months or thereabouts were told that we could make a decision but that we could be on our own thereafter. At the same time, funds from the Oireachtas pool were presumably used in preparation for a review of an allegation made under the Protected Disclosures Act 2014 by a confidential informant. That review, which was carried out and paid for independently, in effect vilified the confidential informant without carrying out any level of investigation that would be required in terms of interviewing key witnesses or considering material that would have a material relationship with the allegations being made. I would be happy to say that publicly and not just under privilege. I am sure that legal review was paid for. I doubt very much that it was run through the Houses of the Oireachtas Commission. I did not attend all of the meetings of the commission at that time because of my banking inquiry obligations.

Although Members of the Oireachtas in their elected roles on committees should be driving the bus, it seems at times that officials are doing so. I suggest decisions must be made by elected Members from all parties and none, regardless of who they are and what committees they have chairmanship or membership of, rather than being signed off by them retrospectively as in the instance I have cited. The members of the banking inquiry were wished the best of luck and told they had done great work and could be on their own. By contrast, the whistleblower who had come forward with concerns about that process was in a position to be vilified in a quasi-independent review by an external senior counsel who, presumably had to be paid taxpayers' euro, without what I would see as a reasonable investigation. That said, it is a broader issue that Oireachtas committees, the Houses of the Oireachtas Commission and elected bodies under the auspices of the Houses of the Oireachtas - the people's representatives as elected - must be the ones in control. There are the civil servants, directors general and public servants who work so hard and on whom we depend so much for their expertise and advice, but the people driving the

bus must be the elected representatives, not unelected people.

Senator Maurice Cummins: I welcome the Minister of State back to the House. He has been a regular visitor this afternoon. The Bill's main purpose is to deal with the funding of the Oireachtas for a number of years. I note that there is a €14 million increase connected to the forthcoming general election. I also note from the Minister of State's speech that much of this will cover termination allowances. I hope that not all the Members here will be availing of them and that we will be back here again after the next Seanad election.

There are a number of other sections dealing with other technical amendments which are necessary and which the Minister of State has outlined. I have no problem in commending the Bill to the House and complimenting the members of the commission who did Trojan work in the past five years. I thank them for their efforts and wish them every success for the future. The commission seems to have been working quite well since it was set up.

Senator Paul Bradford: I welcome the Minister of State and support the legislation. As Senator Marc MacSharry said, I was previously a member of the second commission, I think. I enjoyed my membership and got a very good insight into the workings of all those associated with it. It is commendable that we have this three-year budget model. It allows for review and overview. It could be reflected on by all Departments. It gives us a greater long-term view of expenditure coming down the line, of future plans and developments and how to fund same.

The increase being sought today is quite modest, yet it has hit the media and the news in a typically negative fashion in respect of money being set aside, not just for Members of the Oireachtas but for members of staff who, as a result of the electorate's decision in Dáil and Seanad elections, will lose their seats or their jobs. The fact that we are setting aside a sum of money to provide for same should not be an extraordinary moment in Irish politics. One would hope in today's world of advanced labour relations that most people who lose their jobs would be entitled to some degree of allowance, compensation, redundancy or pension on the way out. What applies now to Oireachtas Members is radically different from what applied to them five, six or seven years ago. It is fair and balanced. The Bill is brief and I have no suggested amendments.

In respect of the overall presentation of Houses of the Oireachtas Commission business, the dedicated Oireachtas channel notwithstanding, from a public relations perspective we have a long, long way to go in providing a complete view of the work and worth of the Oireachtas and responding to some of the - to put it mildly - erroneous, sometimes deliberately created hysteria which applies. If the Minister of State had been here this morning he would have heard Senator David Norris refer to media reports yesterday or the day before about completely manufactured so-called goings on in the Dáil bar. Some journalists present an entirely false view of facts but for many readers, that view becomes reality. It gives politics, politicians and the whole system of democracy a bad name. We need to be much more responsive to that.

We occasionally see a letter written on behalf of the Oireachtas to a national daily newspaper or two but it is not really sufficient. The damage has already been done and the public mindset changed. The commission, our staff and the staff serving as public relations officers for the Houses will certainly have to be much more responsive. They are not responding on behalf of individual Members; I think they are responding on behalf of the Oireachtas itself and of the democratic process and procedure in the State. If I was to be slightly negative I would say we have more work to do in that regard.

I welcome the Bill and the three-year budget. The figures are the cost of democracy and, in the overall scale of Government expenditure, not over 12 months but over three years, the provision and maintenance of democracy, democratic Houses and open, transparent government is value for taxpayers' money. I am happy to support the Minister of State in respect of this Bill.

Senator Marie Moloney: I welcome the Minister of State and support the Bill. It is very brief. If the Cathaoirleach will pardon the pun, it is getting our Houses in order here and gathering up a few ends. I have not sat on the commission but compliment it, as Senator Marc MacSharry did, as it has achieved an overall reduction during the years. Of course it will go up in line with a general election when the redundancy payments will be paid out to people.

As Senator Paul Bradford said, a lot of our staff beaver away in the background. They work late nights at the drop of a hat. We could be sitting until 11 p.m. and the staff and the clerks here are sitting recording and doing what they do without any complaint. It is time we paid tribute to the staff who work in our offices as secretarial staff and to the staff of both Houses. I have never heard a comment or complaint from them. The guys up there at the back are always there to help keep us on the straight and narrow when we are sitting in as Acting Chairman. There is great credit due to them. If some of them are retiring, they are more than entitled to their redundancy payments. When there is forced retirement of our staff, in terms of us losing our seats, they are certainly entitled to it. They are only earning a day's pay and they are entitled to their redundancy.

I just asked the Minister of State if the refurbishment of this House and the offices here came under the commission's remit, but apparently that project is under the OPW. After the next Seanad election there will be big changes. There will be no House here as this Chamber will not be in operation for the best part of two years, I think. I do not know if the decision has been made as to where the Seanad is going to be located. If we are outside the Leinster House complex and are going across the street to take votes and things, it is going to be awkward for staff and Members. It will be dealt with in due course by whomever will be here.

It is so important to put our words of thanks to both Houses. I support the Bill.

Minister of State at the Department of Public Expenditure and Reform (Deputy Simon Harris): I thank all Senators who took part in the debate for their very constructive responses to the Bill. To take up Senator Marie Moloney's point, and in my role as Minister of State with responsibility for the OPW, it is important that we remember that while this building is a parliament, it is also an historic building which we have a duty to protect and preserve. There are a number of things that need to be done in that regard to ensure we keep this historic building in the safe and protected manner which is our legal obligation and to pass it on to the next generations. While that will cause significant inconvenience around the House, it will leave us with a Parliament and, more importantly, an historic building in good care and stead to pass on.

This is a suitable opportunity to make some general comments on the commission, especially as the current Dáil and Seanad draw to a close. The Houses of the Oireachtas Commission is an expression of a fundamental tenet of the doctrine of separation of executive and legislative powers. The financial independence of Parliament is essential to ensure the effectiveness of the process of holding the Government to account. The commission built from a low base the services and connectivity essential for Members, including information and research services and transparent and accountable financial and governance systems. Examples of new or enhanced services include increased ICT facilities, new library and research services, the establishment of

Oireachtas TV, which rightly allows members of the public to track our work here, and the introduction of a parliamentary legal service. Through prudent financial management, for which I pay it tribute, the commission has consistently managed its budgets so as to return a significant surplus. It has fully implemented all Government policy for the Civil Service in the areas of governance, planning, accounting, audit and value for money. Fundamentally, it operates in a transparent manner through the publication on the Oireachtas website of commission minutes, strategic plans and corporate business plans.

It is of great significance that a new Clerk of the Dáil will soon be appointed following an open competition. This competition was recently announced. The new Clerk will be expected under the terms of the Civil Service renewal plan published by the Government last year to play a key role in raising morale and productivity among staff, creating opportunities for staff to develop their talents, strengthening strategic planning capacity, assigning the appropriate staff to the right areas in order that they can encourage and develop excellence and drive the modernisation process in the Oireachtas service and, overall, in ensuring the Oireachtas service has a strong culture of leadership, excellence and continuous development. With these demands being placed on whoever becomes Clerk of the Dáil, Senators can be reassured that the substantial progress made under the various commissions to date will be continued.

I take the opportunity to express my gratitude and I think that of all Members for the work of all members of staff in the Houses of the Oireachtas. I refer to our personal staff and the staff who work in the Seanad, the Dáil and the committees to keep Parliament going. It is a very important role that they play. When people talk about remuneration and termination payments, they tend to focus on the public face of the office of the Deputy or Senator. However, it is right and proper that a number of Senators acknowledged the role played by our staff who work very hard to assist in our work. Sometimes, as part of the democratic process, they find themselves without employment after an election.

I draw Senators' attention to the fact that during the passage of the Bill through the Dáil, my colleague, the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, recorded his view that we need a mechanism to allow the incoming commission after the forthcoming general election to be as representative as possible of the Houses. It is a view that I share. Real powers are devolved to the commission and the exercise of such powers needs to have as broad a mandate from Members as possible. It is a responsibility that will fall to the membership of the next Dáil and Seanad. Overall, the commission has been able in the past 12 years to develop into an organisation which can validly be regarded as being fit for purpose for current demands. I thank the commission for its work and I hope the Bill provides clarity and transparency in terms of the funding envelope for the next three years. I commend the Bill to the House.

Question put and agreed to.

Houses of the Oireachtas Commission (Amendment) Bill 2015: Committee and Remaining Stages

Sections 1 to 10 agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

Question proposed: "That the Bill do now pass".

Senator Marc MacSharry: The Minister of State mentioned two points in his contribution on Second Stage on which I wish to touch. He said that the Minister, Deputy Brendan Howlin, wanted the commission to be as representative as possible. I agree and have no doubt that the Minister of State does too. Perhaps the Minister did not have any input into it. The current commission is the only one in history so far where the Government did not use the ministerial appointment mechanism to put in somebody independent. As such, the only non-government representatives on the commission were Deputy John Browne and me. That is poor practice.

While the commission did a good job and we worked well together with not too many rows, it is not a good practice. Ministerial and Government appointments, while ensuring that there are adequate Government representatives, should also be used to ensure that small parties and Independent Members are represented. There were ten or 12 of us on the commission, only two of whom are not from Government parties. It raised issues at times because certain groups were not represented. We tried to represent them, but they were not happy about it. I make the point in the interests of transparency.

I note another thing the Minister of State might bring back to the Department and the Minister and his efforts. Obviously, the commission is responsible in people's eyes for salaries and expenses and all of those types of things, but the Department of Public Expenditure and Reform is the body that determines rates. That is not for the commission.

The other thing that came up several times over the five-year period was that there was a change to the expenses regime which we all supported. Expenses went down and things became a great deal more transparent. That is very much to be commended. We all welcomed it. What did not change, notwithstanding the fact that it needed to, was that Senators in particular were entitled to claim for certain expenses but did not have a list of tangible things they were allowed to put expenses towards, as Members of the Dáil did. The Minister consistently ignored it for no reason other than that it might not have played out that well in the media from an aesthetic point of view. There was a pool of money there and it was not going to make it any more expensive, but the menu of issues permitted for Senators to draw down was much smaller and much narrower than for Deputies. One could argue that this was necessary as Deputies certainly have expenses which Senators do not incur. I get that. However, it was prohibitively narrow and made life extremely difficult for Senators in trying to do their work over the course of the past five years.

Senator Marie Moloney: I support Senator Marc MacSharry on that point very strongly. Senators from country areas cannot use the facilities of the House on the days we are not sitting. As such, many of us have set up offices in what I call our constituencies but referring to our home bases. We never asked for expenses for those offices. We asked to be allowed to put the expense of our offices under the €12,000 we get for our expenses. It was never going to cost more money, but for some reason heels were dug in. There was a view that it would give us bad press or something. In the meantime, we are all laying out big money for offices, but cannot put that in as an expense. It is crazy because we are providing the service and working for the people. I know they keep telling us we do not have constituencies and that our constituency is Ireland and I understand the point. However, we have to have a base from which to work and a place our secretaries can be if they are in our local areas. It is fine for people in Dublin. Things are really geared around Dublin people who can come in every day to Leinster House and use their offices here. We cannot do so.

Speaking for myself because everyone does things differently, I note that I rent an office and have photocopying, electricity and other costs. I bear those costs out of my wages. I am not complaining about that because I am well paid, but we should be allowed to put those costs in under our expenses. It is not about giving us any more money. The ones who ended up gaining out of all of this have been the newspapers because we ended up spending a lot of the expenses money on advertising. That is what we can put under our expenses, as well as a bit of extra secretarial staff support. I cannot understand why we are not allowed to include our offices as an expense under the same amount. I support Senator Marc MacSharry very much on that issue.

Senator Maurice Cummins: This matter was the subject of meetings with the Minister for Public Expenditure and Reform, Deputy Brendan Howlin. While he was very sympathetic towards us, nothing happened. I do not think we were even talking about offices but rather about some small areas where Senators were looking for parity of esteem with their colleagues in the other House. These matters should be dealt with and should never have happened. There was a variation between what people in the other House and the Seanad could do. In one ridiculous instance, a Senator could not buy a laptop and claim it under expenses whereas a Member of the Dáil could. These simple matters should be addressed, and I hope they will be addressed as a matter of urgency by whoever makes up the next Government. There are restrictions and anomalies that must be addressed.

Minister of State at the Department of Public Expenditure and Reform (Deputy Simon Harris) (Deputy Simon Harris): I thank the officials who worked so diligently on the Bill to get it through both Houses. I thank Senators for their constructive engagement on the Bill. I will relay their views to the Minister, Deputy Brendan Howlin, although it sounds like he is very aware of them.

Senator Marie Moloney: He is.

Deputy Simon Harris: I imagine all of the issues raised will be matters for the next Dáil to consider.

Question put and agreed to.

Sitting suspended at 3.50 p.m. and resumed at 4.20 p.m.

Criminal Justice (Burglary of Dwellings) Bill 2015: Committee and Remaining Stages

An Cathaoirleach: I welcome the Minister.

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

Question proposed: "That the Bill do now pass."

Minister for Justice and Equality (Deputy Frances Fitzgerald): The Bill was developed following detailed consultation with Garda management and the detectives working on the ground to tackle burglary every day. It addresses two key problems they identified, namely, the relative ease with which repeat offenders can obtain bail and the fact relatively short sen-

tences can be imposed by the courts when multiple burglary offences are taken into account.

The Bill will provide that for bail applications previous convictions for domestic burglary, coupled with pending charges or recent convictions, shall be considered as evidence that an accused person is likely to commit further domestic burglaries. The Bill will also require a court which decides to impose custodial sentences for multiple burglary offences committed within a 12-month window to impose such sentences consecutively. It is important legislation which carefully balances the right to an inviolable dwelling with the right to liberty, both of which are guaranteed by the Constitution.

The legislation, together with Operation Thor and the joint agency response to crime, is focused on tackling and managing prolific offenders. It forms part of a comprehensive package aimed at reducing the scourge of crime, and burglary in particular. The package is supported by the Government's significant investment in Garda vehicles, ICT and buildings, but most importantly in recruitment to the force. I have secured the funding that will see 1,150 new recruits enter the college between 2014 and 2016. I thank all Senators who contributed to the debate during our discussions.

Senator Ivana Bacik: I welcome the Minister and the very speedy passage of the legislation. We did all point out on Second Stage last week how important the Bill is and how real a concern there is about levels of burglary throughout the country, in particular high levels of recidivism. Last week, the Minister quoted the very high level of recidivism, particularly arising in statistics on burglary offences. The Bill is particularly focused and targeted. It seeks to ensure preservation of safeguards and protections for the rights of due process of accused persons, but it is targeted specifically at recidivist offending. We all welcome this in the interests of victims' rights.

We just heard from the chairperson of the parole board a moment ago in the Oireachtas Joint Committee on Justice, Defence and Equality, and we spoke about the need to ensure rehabilitation of offenders. Of course the Bill, as a criminal justice measure, is only part of a package of measures aimed at dealing with recidivism and tackling repeat offending. The Minister pointed out the need for the interagency approach and we all very much welcome this. Clearly a range of other interventions are necessary to prevent reoffending and crime. I thank the Minister for coming to the House and note the speedy and welcome passage of the legislation.

Senator Martin Conway: I welcome the Minister and concur with the sentiments expressed by her and Senator Ivana Bacik. The legislation has been called for by many people, particularly those who have been the victims of crime. It certainly will equip the courts to impose appropriate sentencing. I hope it will act as a serious deterrent for people who repeatedly engage in criminal activity, which is something that must be welcomed.

We all share Senator Ivana Bacik's view, and the Minister holds the same view, that rehabilitation is ultimately what is necessary. The House has had motions on community courts and restorative justice. When it comes to justice, the House is leading the way. I commend the Minister for initiating legislation in the Seanad. We are always delighted to co-operate with the Minister's busy programme. It is a busy legislative programme to make this country safer and better and to make citizens feel safe in their homes.

It is very poignant and worth noting that a Behaviour & Attitudes survey conducted in 2014 found only 67% of Irish people had confidence in An Garda Síochána, but a survey car-

ried out in the past two or three months has shown the figure is now up to 87%. This is worth noting, and the newly appointed Commissioner, Nóirín O’Sullivan, the Minister and the senior management team in the Minister’s office and in An Garda Síochána deserve credit because we came from a low place where public confidence was very poor. The Garda always had the confidence of the Irish people. Unfortunately, there was a little erosion, but thankfully we are back to where we want to be and it will only improve from here on in.

Senator Diarmuid Wilson: I welcome the Minister, Deputy Frances Fitzgerald, back to the House. Like Senators Martin Conway and Ivana Bacik, I very much welcome the speedy passage of the Bill through the House. It makes very important changes to the bail laws and sentencing policy. As we are all aware, burglary must be one of the most horrific crimes that can be visited upon ordinary people in their own home. Several Senators, including Senator Sean D. Barrett, quoted what Mr. Justice Hardiman of the Court of Criminal Appeal stated, which is that the offence of burglary committed in a dwelling house is in every instance an act of aggression, an attack on the personal rights of the citizen as well as a public crime and a violation of the victim. This sums up exactly how horrendous the crime is. Any attempt to deal with the people who are, in some cases, habitual offenders of burglary is welcome. I thank the Minister and welcome the speedy passage of the Bill through the House.

Question put and agreed to.

Sitting suspended at 4.30 p.m. and resumed at 5 p.m.

Harbours Bill 2015: Committee Stage

Section 1 agreed to.

Amendment No. 1 not moved.

Section 2 agreed to.

Sections 3 to 7, inclusive, agreed to.

SECTION 8

An Cathaoirleach: Amendments Nos. 2, 3 and 35 are related and may be discussed together, by agreement. Is that agreed? Agreed.

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

In page 8, lines 8 and 9, to delete “by order provide that, without the need for any instrument of transfer or other form of assignment” and substitute the following:

“not less than one year after the publication of an independent cost-benefit analysis of all options for the future of a port”.

As always, I welcome the Minister for Transport, Tourism and Sport. On this occasion, we are here to discuss harbours. It is not the first time that both of us have discussed harbours, we have both done so in our previous existences in a place of higher education. He is welcome and it is an honour to be here with him to discuss these issues.

Looking at the harbours scene, as the Minister said on the previous occasion, the sector peaked at handling 54 million tonnes in 2007. Within two years its tonnage had decreased to 42 million. It has increased again to 47 million, which is 88% of peak tonnage. I agree with the Minister that the sector is almost back at peak tonnage. It is in that context that I propose the first of my amendments. We should deliberate long and hard as to which configuration of ports is best for the economy of the country. We can either put them into local authorities, which is a feature of this legislation, we can run them on a group basis or we can see whether some of them have a future, as my amendment states, as independent entities.

I hope to illustrate that ports are a very good business. I am also concerned about local authorities taking over ports. The cause of my concern is Irish Water and I do not say that in an underhand way. Irish Water exposed problems which the McLoughlin report had stated earlier were inherent with the process of government in this country. The McLoughlin report recommended that the number of county and city managers should be reduced from 34 to 24, representing a reduction of 30%, that the number of directors of services should be reduced by at least 20%, from 240 to 190, and that the number of senior and middle managers should be reduced by 15%. It also recommended that: the number of corporate service staff should be reduced by 10%; the number of planning staff should be reduced by 10%; the number of roads staff should be reduced by 250; and that there should be a 15% reduction in staffing and local government arrangements in Dublin and Cork. I have outlined these numbers because I am not convinced that our local authorities are models of efficiency and that moving ports into them is beneficial for the economy.

Let us look at the specifics of the first amendment that is in my name. In terms of the Bill as proposed, my amendment states, "In page 8, lines 8 and 9, to delete "by order provide that, without the need for any instrument of transfer or other form of assignment", which seeks to ensure that the ownership of all of the shares and share capital of the company concerned can be moved.

Amendment No. 3 in my name seeks the deletion of lines 15 to 17 which read, "No consideration shall be payable by the local authority specified in an order made under this section in respect of the shares vested in that local authority under this section". The reason I use the words "without the need for any instrument of transfer" is because what is proposed is almost casual. I know that is not the way the Minister operates and is not what he intended it to be but it almost seems as if we can just do this at the stroke of a pen. Does it make economic sense? The Minister is running the risk of encountering the problem the McLoughlin report identified in respect of layers of management at local government level. I am unaware that those concerns from July 2010 have been addressed.

We have a business which, as the Minister said on Second Stage, is highly competitive. In the Northern Ireland market, Warrenpoint has taken over as the second port from Larne. As the Minister will be aware, Dublin Port has gained a huge market share from all of the other ports, including ports in Northern Ireland. When one considers the material provided for us by the Oireachtas Library and Research Service one can see that Dublin Port made a profit of €26 million in 2013, Cork made a profit of €1.7 million, Shannon Foynes made a profit of €2.8 million, Waterford has improved by making a profit of €1.5 million, and Rosslare made a profit of over €1 million. These harbours made a combined profit of over €33 million which shows that they are highly successful businesses. Therefore, I would not make the casual assumption that they should be moved to local authority control or that local authorities represent a more efficient kind of model for running harbours. It takes a specific kind of skill to relate to one's customers

and competition also keeps harbours efficient. As I mentioned on the last day, we are at fault because we have not implemented the Competition Authority's report on competing terminals, more people doing stevedoring and having shorter leases on facilities at ports. There is a job to do at those ports to make them efficient.

There is a serious question to be asked on whether it is correct to place an emphasis on transferring them to local authorities in view of what I have outlined. Obviously, I make an advocacy case for them here. We need to sit down and see what is the best option for these ports. That is why I mentioned in amendment No. 2 "an independent cost-benefit analysis of all options for the future of a port". The ports are good businesses which I shall go through individually and they have a high amount of turnover per staff employed. They also have, as a group, a combined profit of €33 million. As the Minister said on the last day, as much as €26 million of that combined profit was generated by Dublin Port. These businesses compete internationally and have a track record. Therefore, an assumption that they could be run better by local authorities is one which would require to be proved.

Amendments Nos. 2, 3 and 35 have been grouped together. I tabled amendment No. 3 because I am concerned about what will happen if these assets are transferred. My amendment seeks the deletion of lines 15 to 17, on page 8, "No consideration shall be payable by the local authority" in respect of those assets. I contend that they are valuable assets. Perhaps they can be sold to somebody else if a local authority does not want to pay for them. They are businesses which are up and running. That is the caveat that I have about amendment No. 3.

I shall move on to discussing amendment No. 35, which relates to section 30. I have elucidated the same principle in amendment No. 35 which states, "following published evaluation of the productivity both of the port company and the local authority concerned". Is the port company operating to full productivity? Has it left un-implemented the recommendations of the Competition Authority? Is the local authority operating at full productivity? We do not assume that the takeover by the local authority of a port will in fact give us the desirable result. The relevant section is section 30(1), which states:

A local authority specified in an order made under *section 28* shall, on the company transfer and dissolution day, accept into its employment each person who immediately before that day was a member of staff of the dissolved company concerned.

That is almost negating any possibility of productivity gain without investigating the two factors mentioned in amendment No. 35.

The other concern I have is referred to in the documentation prepared by the Library and Research Service. Where county councils run ports, their level of traffic is far lower than at the ports listed in Schedule 1. The list includes the ports in Drogheda, Dún Laoghaire, which is a special case, Galway, New Ross and Wicklow. Where local authorities have taken over ports, one could say they had gone so far down in the market that they could not be reversed. However, looking through the list that the Library and Research Service prepared for us, it seems that up to seven of them have no ships calling at all. Arklow, which is under the control of Wicklow County Council, has nine. Wicklow Port, which has a separate authority, had 70 ships in the past year. Is the running of ports by local authorities a good idea? Granted, some of them had gone very far down the list of busiest ports, and that was the reason they were transferred. However, would it amount to death for ports that might otherwise have recovered as the economy recovers? Certainly, I have looked through all the zeros on the list as well as

the very small numbers for the ports at Ballyshannon, Annagassan, Baltimore, Buncrana, the River Moy, Westport and Wexford Harbour. Compared to what the independent port companies have been doing, there is not much evidence, going on past record, of local authorities being able to develop ports. The only one I could find was Youghal, which had 73 ships per year. All the rest are way out of line. Some places are serving four or five ships per year. That does not equate to commercial business for a port. Is it the wrong model, then, to allow local authorities to take over ports? I maintain that such ports are feasible, making money, attracting ships and, as the Minister said the last day, reviving themselves as the economy pulls out of the recession.

I am making the case in my three amendments that ports are a specialised business. They are disciplined by their customers. The idea of local authorities taking them over, particularly in light of the McLaughlin review and the experience of Irish Water, is not a precedent that commends itself to me.

I am pleased that the Minister is considering these great issues, but I wonder whether the speed of takeover by local authorities of the ports listed in schedule 1 is too great. Are there alternative models that should be considered? Should a further cost-benefit analysis be done?

Senator Fidelma Healy Eames: Cuirim fáilte roimh an Aire. It is great to have the Bill before the House. I thank Senator Sean D. Barrett for tabling these amendments. They tie in with my concerns about Galway Harbour. I have grave concern about the Minister's recommendation that Galway Harbour come within the remit of Galway City Council.

I am familiar with how councils work. I was a member of Galway County Council. To say they have a mixed bag of duties is an understatement. I had grave concerns about the local enterprise offices being within their remit. At issue is a particular set of skills and expertise. I want to know the Minister's reasoning to justify placing a harbour such as Galway Harbour within the remit of Galway City Council.

I completely agree with Senator Sean D. Barrett that it is a specialised business. Ports and harbours need dedicated staff who know their business. The Minister is familiar with what we are trying to achieve in Galway. We are trying to extend the port. It is now in a Bord Pleanála process. We had hearings some months ago as part of the process. Galway Harbour is a commercial port which has particular challenges around its depth and so on. That is all in the plans for expansion. I have listened to those in business who rely on it. According to the Minister's report, it is graded as a tier 3 port, and that is of major concern to us. At a minimum it should be a tier 2 port in order to attract funding from the European Commission trans-European transport network, TEN-T, in time. The plans are ambitious for the extension of Galway Harbour. They include bringing the city further out into the bay and making it a far more feasible option. I call on the Minister to respond to these issues.

Perhaps the Minister can explain something else for me. There was no consultation with the harbour prior to the issuance of the national ports policy which formed the basis of this Bill. Why was that? I have no doubt it preceded the current Minister's time in office. What were the commercial and economic reasons for the proposed transfer of ownership? There are no cost savings or synergies for the proposed transfer of ownership. There are no benefits, but I see downsides.

Again, I am very concerned about the classification of the port as a tier 3 port. As the Minister is aware, the port in Galway is one of five commercial ports to be designated as ports of

regional significance. Two others, the ports at New Ross and Wicklow, will come under the remit of Wexford County Council and Wicklow County Council, respectively. The remaining three, namely, Drogheda, Dún Laoghaire and Galway, will remain as limited companies with their shareholding held by the chief executive of the local authority. The first two have been included with Dublin Port as being eligible for TEN-T funding, but Galway has been excluded. It is, therefore, the only commercial port of its size in the country to be excluded from TEN-T funding. Can the Minister tell me the reason for that? As the Minister is aware, Galway is critical to the balanced regional development of the country. It is a city of excellence when it comes to education and hospitals. Why are we being excluded when it comes to ports?

This is worrying given our ambitious plans for the growth of the city and the region. This classification of Galway as a tier 3 port could amount to a closing out of 20% of funding. We would be placed at a serious disadvantage and that is very worrying. Galway is the only port of its size in the country being denied this opportunity. I strongly believe the port of Galway should have been afforded the same status as the ports at Waterford and Rosslare - that is to say, tier 2 at a minimum. This would have made it a designated national port eligible for TEN-T funding. I believe the legislation is anti-competitive and discriminatory. In fact, it creates a monopoly on the east and south coasts, contrary to balanced regional development aims. The effect of not being a tier 1 or tier 2 port will make it extremely difficult for Galway to attract investment funds for the port extension.

An Cathaoirleach: The Senator has moved away from the amendments.

Senator Fidelma Healy Eames: It is building up to the overall point relating to the classification of the port and the transfer of the ownership. I will leave it at that and wait to hear the Minister's reply.

Senator Gerard P. Craughwell: I support Senator Sean D. Barrett. I am a little confused about why we are bringing local authorities in to run ports. The ports are a specialised area. I would rather see an integrated transport policy, whereby the big ports in use would incorporate some form of rail transfer of assets, etc. I am a little concerned that we are asking too much of local authorities. We have stripped them of practically all of their other powers and we are now burdening them with the management of ports, a highly specialised area. Later on I will refer to the removal, to all intents and purposes, of the right of a harbour master to sit on a board of directors.

I refer to section 8. Senator Sean D. Barrett mentioned the transfer of assets. If there are assets that cannot be utilised by a port, surely they should be sold and the funds recouped. While I would not want to see any employees lose out on the transfer of assets, a point on which the Senator and I may differ, I have some serious concerns about a port being transferred to a local authority. It is a case of horses for courses.

Senator Jim Walsh: I have listened to other speakers and concur with a lot of what they said. I refer in particular to New Ross. I understand that two decades ago it was the fifth largest port in the country by volume of trade. My business background involved working in ports all of my life, particularly in New Ross. I was also involved in operations in the ports of Foynes and Waterford.

The closure of Albatros which was a very large customer, the expiry of zinc from the Arcon mines and the transfer of a lot of oil imports from the port of New Ross have eradicated much

of the trade at the port. It is not generally known that in the 12th and 13th centuries New Ross was reputed to be the largest port in the country. In the middle of the 19th century it was a very prominent port - many of our emigrants left from New Ross and went directly to places such as Vancouver and Liverpool. It was a very busy port and trade then declined for well over half a century until, I understand, the Stafford family invested in the port. It then became very active, and over the years many hundreds of people and their families earned a living from it.

I was a member of a local authority for 30 years. I am not convinced that transferring assets to local authorities will assist in any way in the rejuvenation of ports. As semi-State ports, they had a commercial focus that is missing in the current proposals. I understand Drogheda is on the list of ports to be transferred. I saw great potential in that port. At one stage, I was involved in trying to acquire it in order that we could have activity there. I saw potential in the outer port of Drogheda, in particular, for transferring some of the work done in Dublin Port to a deep-water port in the area. It has always struck me as something of an anomaly that the major port in the country is located in the middle of a city. A lot of investment has taken place, which might make such a change uneconomical. During the past decade the real estate value of ports was such that the opening of a new port in a deep-water location somewhere north of Dublin would have underpinned significant development. That opportunity has been lost, but it may return. It should be part of our thinking. In all probability, there would not have been a necessity for the port tunnel if the port had been transferred north of the city. We need that kind of strategic thinking to emerge, particularly in the medium and long term. Unfortunately, we do not have that within the public service.

An Cathaoirleach: The Senator is straying from the amendments.

Senator Jim Walsh: Am I?

An Cathaoirleach: The Senator is.

Senator Jim Walsh: I thank the Cathaoirleach for reminding me. Will he tell me what amendments we are discussing? I will try to get back to them.

An Cathaoirleach: We are discussing amendments Nos. 3 and 35.

Senator Jim Walsh: I thank the Cathaoirleach. It is proposed to carry out an independent cost-benefit analysis of all of the options for ports in amendment No. 2. A cost-benefit analysis must take into account the potential for commercial elements.

I remember when the tonnage in New Ross surpassed that in Foynes which has much deeper water and greater potential in that regard and it was considered a shipment port. However, its location did not lend itself to use by a lot of the traffic that came in through the eastern ports.

As a country that depends on imports and exports, we receive a lot of 3,000-, 4,000- or 5,000-tonne deadweight ships from mainland Europe. They fit very well into ports the size of New Ross and Drogheda. New Ross gained significantly at the expense of Waterford when the latter was locked down for two decades because of a dispute. It was akin to what went on with Waterford Crystal during the years. The dispute involved very difficult industrial relations, and very difficult players such as union activists were involved, which mitigated against those enterprises.

Smaller ports are better managed and have more focused workers who are keen to gain

tonnage and improve their prospects and livelihoods, but this is being lost. I do not think local authority structures that have been denuded of funds will be in a position or have the commitment to promote and market those ports.

No matter what business one is in, if one does not market it, it is unlikely to do well. We will probably not deter the Minister of State from following through on the planned route, but when he was in the Chamber previously he showed an independence and clarity of thinking that needs to be brought to bear on this issue.

I refer specifically to two ports because my life's work in the port industry around the country has led me to understand what went on with competitors. I see potential in the two ports to which I referred, even though at present they may not be fulfilling their potential. Consigning them to a group and transferring assets to local authorities will not be a step in the right direction in terms of recovery in those ports.

If the Minister is going down this road, I would have preferred him to consider some sort of privatisation of the ports or a mixture involving privatisation. That is what is needed if there is to be any hope of the ports recovering and regaining the potential and business that they had in the past.

Senator Denis O'Donovan: I wish to speak briefly in support of Senator Sean D. Barrett's amendments. I will not delay the House very long and will not speak for four and a half or five hours. I see a lack of joined-up thinking in the port system in Ireland. Some are independent, while others are controlled by local authorities. For example, the legislation against which I fought dealt with Cork, and Kinsale and Baltimore were taken under the umbrella of Cork County Council. I fought against the legislation pertaining to Bantry but failed, and nothing has happened in the past five or six years. There have been a lot of plans and talks, but nothing has happened. My view is still that I would have preferred to see the local authority take over Bantry rather than the Port of Cork, because it would have involved more local cohesion. There is now provision in the Bill to allow the Minister of the day to transfer the likes of Bantry back to a local authority when the time suits. Bantry is a little nugget of gold, given the proximity of the Whiddy Island mine. When the Port of Cork decides that something is no longer viable or Whiddy closes down, it will transfer it back as a dead duck to Bantry. If one considers the overall system of ports in Ireland, there is no cohesion in that one port is independent and another has been taken over by the local authority. The establishment of Bantry Port as an independent port was almost achieved back in 1997 or in that era. As a former member of Bantry Harbour board who has read many reports on all these ports, some of which are in west Cork, I make the point that a local authority with hands-on control of a port, as opposed to it being brought under the auspices of a larger port, is the lesser of two evils. This is because I know for a fact the Cork Port authority had no interest in Bantry but was nudged along by the Department and the mandarins and agreed to take it over because at that point, there was €1.5 million in the kitty in Bantry.

A plan was then drawn up, which was agreed in principle, that particular development would be carried out with State aid and with investment by the Port of Cork but four fifths of it have been taken out and the planning was torn up. I note it took approximately 15 years to sort out planning in respect of due diligence and various items of work it was necessary to carry out before planning was complete. While that plan was to carry out A, B, C, D and E, Bantry is now left with A, and B, C, D and E have been thrown down the drain.

This is not a personal criticism of the Minister, but I have grave reservations that the entire system is higgledy-piggledy and has no cohesion. While I cannot envisage how this Bill will be of help, I would prefer Bantry to be under the control of Cork County Council, in the same manner as are Baltimore and Kinsale, as opposed to the Port of Cork board. This is because the Port of Cork has a big vision and plan and Bantry is, was and ever will be a nuisance to it. Those who tell me otherwise will not convince me and will not convince 90% of the people of Bantry.

Minister for Transport, Tourism and Sport (Deputy Paschal Donohoe): I thank all the Senators for the different points they have made about the amendments before the House. I wish to clarify what the Bill is and is not about and to outline the work that has taken place to date in respect of the Bill. I might offer some context as to how the Government has reached this point with the Bill.

Work and consultation regarding national port policy began in 2010 and after three years of that work, the Government published a national port policy. The Bill before Members went through pre-legislative scrutiny and nearly three years after the publication of the aforementioned national port policy, the Government reached the point of publishing a Bill that deals primarily - I might address some of the points made by Senator Jim Walsh - with ports of regional significance. That is the focus of the Bill and by way of offering this context to Members, I emphasise to them the amount of time, consultation and work that has gone into getting to this point. In particular, when Senators Gerard P. Craughwell and Sean D. Barrett make the point about not moving with too much haste in considering how one deals with local authorities, I assure them that whatever the Bill can be accused of, one genuinely would struggle to levy the charge against the Government that it is moving too quickly in dealing with this matter. The Government has been moving with great care to deal with this issue in putting together a consultation period and then putting together a policy, which in turn has formed this Bill. As I stated, the Bill went through pre-legislative scrutiny, went through work in the Oireachtas transport committee and has now reached this point. To those Senators who raise the charge of rushing the legislation, I give this context and make the point about the time that has gone into getting to this point with the Bill.

If I turn to the Bill and refer to the ports raised by Senator Jim Walsh who focused his contribution on Rosslare and Waterford, for the purpose of absolute clarity they are ports of national significance, tier 2. Consequently, they are not part of the group of ports I propose to move into a model of local authority ownership. I agree with a point the Senator made regarding the Port of Waterford in particular to which he referred in his contribution.

Senator Jim Walsh: While I made an observation, New Ross and Drogheda were the two that are affected by the Bill.

Deputy Paschal Donohoe: Very well, I will talk about each port. but I will talk about Waterford for a moment to make clear it is not the kind of port that will be moving into a local authority structure. I simply wish to emphasise that point.

Likewise, while I acknowledge Senator Sean D. Barrett appreciates this point on some of the ports to which he referred, I wish to make clear regarding the proposals for the Port of Dublin, the Port of Cork and Shannon Foynes Port Company that they are outside the remit of local authority ownership or governance. The Bill deals purely with the governance structure for a group of ports the Government proposes should move into local authority governance and by governance, I specifically mean who owns the share in this regard because as matters stand,

as Minister, I and my Department hold the share. In the Bill I am proposing that this share, through two models, will be held by a local authority structure.

I turn to the points made by Senator Sean D. Barrett and consider the amendments he has proposed. I absolutely agree with the Senator who knows so much about this area on much, if not all, of what he said in respect of the competitive reality faced by the ports and their centrality to the economic development of Ireland. During my time in office, I have had the opportunity to visit nearly all the ports for which I am responsible or to meet their boards or both.

As to how they are performing at present, many are doing well and some are doing very well but all are different. They all face many challenges and in his contribution the Senator picked up on this point. From my perspective, this is the great benefit of the national port policy on which I have worked, that I am proposing and from which the Bill flows. The policy recognises that all ports obviously are different but within that, a cluster of different ports are sufficiently similar to allow one to state some of them should be treated in a certain manner and that each group of ports plays a different role in how they support either the national economy or regional economies.

I will give a small example of the kind of market about which I am talking. If one considers the existing number of ports and the amount of business they now handle, five ports handle almost 90% of the tonnage that comes through the State.

Senator Fidelma Healy Eames: Did the Minister say 90%?

Deputy Paschal Donohoe: Yes, five ports handle 90%, much of which is entirely due to the kind of changes to which Senator Sean D. Barrett referred, namely, the kind of changes that have taken place in the economy and in markets to which Ireland is exporting or from which it is importing. If one considers the 10% of tonnage that is not handled by the aforementioned top five ports, out of that 10%, 4% is now handled by the five remaining State commercial ports. As that figure of 4% constitutes a 45% decline on the position they held in 1998, one therefore is witnessing a real change in the nature of shipping throughout the world.

Furthermore, this change is not simply happening in respect of where tonnage is going to but also in how that tonnage is arriving at ports. One can now see tonnage arriving in vessels of a different kind that are larger and need a better capacity in ports to receive them. For example, in 2013 Irish ports handled 17% more tonnage than in 1998 but there was a reduction of 28% in the number of vessels entering those ports. This highlights the need for investment and how different ports will respond to this in different ways. This really is the context of the policy.

I will deal first with the amendments Senator Sean D. Barrett has proposed. Without wishing to crudely summarise them, all the amendments focus on the need to recognise the commercial challenges ports face and consider the need, in the Senator's view, to put in place a cost-benefit analysis before any such transition would take place. It is for this very reason that a due diligence process will apply in the case of all ports that I recommend should go through the process of share ownership and come under the control of a local authority. My Department is funding this process which will consider all matters the ports in question must address as part of the transition to local authority ownership.

As to the rationale for moving into local authority ownership, different transition models will apply to different ports. I have proposed two different models, the first of which is the amalgamation model to which many Senators referred. Under this model, an entire port will

transfer into the local authority structure. Under the second model, the port will remain a company, with its shares held by the local authority. The approach we are proposing is correct because it offers the ports and regions in which they are located the best opportunity to implement the type of integrated planning about which many Senators spoke, in particular, Senator Denis O'Donovan.

On my visits to ports, I have noted that many require either national or regional infrastructural development. In the case of national ports, we have responded through our decisions on the national rail and road networks. For example, in the case of Shannon-Foynes Port I have prioritised the N69 in the new capital plan and in the case of Cork Port I have recognised the need for road works at Ringaskiddy and Dunkettle. We are addressing the issue of regional integration and the infrastructure the ports will need if they are to be secure in the face of the type of competitive pressures I outlined. All the work we have done in this area strongly indicates to me that the best way to address the issue is through the local authorities.

Senator Fidelma Healy Eames raised a specific point concerning Galway Port. I have met members of the board of the port and listened to their views. I assure the Senator that ports were given every opportunity to participate in the consultation process. The board of Galway Port expressed its views on the proposed policy to the Senator and to me and my Department and we listened to it. Notwithstanding the substantial dialogue that has taken place on this issue, I accept that individuals, stakeholders and boards may still take a different view from me on the issue.

On Senator Fidelma Healy Eames's specific concern regarding TEN-T funding for Galway Port, the ability to access TEN-T funding is entirely independent of anything in the Bill. TEN-T funding operates in parallel with the national ports policy and the criteria for accessing it are set by the European Commission. The Commission examines the track record of a port to determine whether it ships a specific percentage of freight in the European Union by tonnage and value. Ports that reach a certain threshold will be able to access TEN-T funding, while those that do not will not be able to access this funding. Nothing in the ports policy or the Bill affects the ability of a port to apply for TEN-T funding because the criteria are set by the Commission. Many ports elsewhere in the European Union are integrated in local authority structures and are able to access TEN-T funding on the basis of their size.

In recognition of some of the points the Senator and other public representatives in County Galway have made to me, I do not propose to apply the provisions of the Bill to Galway Port for a period of up to 18 months. This is being done to give the board sufficient time and space to conclude the various processes under way at the port. If these processes conclude before the 18-month period elapses, either I or the next Minister will apply the legislation to Galway Port. The 18-month period will be provided to allow the matters and processes that are relevant to Galway Port to be completed.

Senator Sean D. Barrett: I thank the Minister for his response. I always value his attendance in the House. My experience of being locked up downstairs for the past few months has meant that in recent times I have not recognised any part of the economy except banks. I hope, however, that I was trying to pay attention within those constraints.

The Minister's comments on Galway Port are welcome. The company is making €456,000 profit on 144 ship visits per annum, which amounts to approximately €3,000 per ship. That appears to be a pretty good return and I contend that the port should be given more than 18

months to increase its profitability. I view local authorities in the context of the McLoughlin report, on which I will not dwell, and the serious housing problems they are facing. What are county managers supposed to bring to the specialised activity of running harbours? The 47 staff in Rosslare Harbour achieve an annual profit of approximately €1 million on a turnover of approximately €10 million. These are not railway staff but a group of people who specialise in running the port. The success of the ports to which the Minister referred illustrates my point. Do the local authorities possess previously unknown hidden talents that will enable them to start running sea ports?

The Minister is correct that Galway Port has experienced a wobble as a result of the recession. However, it is currently making a profit of €456,000 on 144 ship visits. Drogheda Port is also on the list for transfer to local authority ownership. It had 332 ship movements in 2008 and 314 in 2013, which indicates it has recovered to reach 95% of its previous activity. As the Minister stated, given recent changes in shipping, few ports have returned to 95% of previous activity levels. What will the combined wisdom of Louth and Meath county councils bring to the running of Drogheda Port? I pose this question somewhat rhetorically. Would Drogheda Port also benefit from a pause of 18 months?

As the figures show, New Ross Port, which is also listed, has experienced problems and I am sure the Minister is concerned that it made losses of €200,000 in 2012 and €333,000 in 2013. I do not know whether activity has picked up in the port in the meantime. Wicklow Port is doing better than Arklow Port, having reached a break-even position with a profit of €33,000. In my time in transport economics with people such as the Minister, I learned that ports are a specialised business. I do not see what they stand to gain from local authority control as they have a commercial challenge to deal with.

I welcome the Minister's comments on due diligence, which were very reassuring. While provision may have been made for different transitional models, I am not sure what happens with integrated planning.

Perhaps one should not be unduly influenced by having spent the best part of two years with bankers. The consensus between the Department of Finance, the Central Bank, the banks, the regulator and so on was achieved by shutting out contrarian views, in particular those of Morgan Kelly, although he was not alone as Mr. David McWilliams and the National Treasury Management Agency also had different views on banking. Perhaps people tell Ministers what they think those Ministers want to hear and then tell others what they think they want to hear.

I am not going to press amendments Nos. 2, 3 or 35 because I was pleased to hear the Minister's comments on how carefully he is going to evaluate these options. However, I am glad the amendments were tabled because it was a most interesting discussion, perhaps because some people were involved in too many bank-related discussions and left out harbours and seaports and should have been talking to the Minister. I am indebted to the Minister for his views on that matter. I see Galway and Drogheda ports in a stronger position than might otherwise have been envisaged. There is a problem in respect of New Ross Port which requires special attention. Wicklow Port seems to be doing all right and it may not want to follow Arklow into the control of Wicklow County Council. I thank the Minister wholeheartedly for what he has said.

Senator Fidelma Healy Eames: I thank the Minister for his reply. It is welcome that he will not apply the Bill's provisions to Galway Port for 18 months, a development of which I was aware. My concern is that decisions which are made now, without seeing the realisation of our

very ambitious plans in Galway Port, would limit, hinder and disadvantage the growth of the port. As Senator Barrett outlined, Galway Port is now back in profit. The figure of €456,000 is not to be scoffed at, given the significant challenges around the port size and the ships that can and cannot come in. However, we have plans and I ask the Minister to enable the port to grow. I understand the 18-month grace period is part of that but the port has to work with other processes also such as An Bord Pleanála; therefore, our hands are tied in that respect. Based on his point about the TEN-T funding and it being an independent process and EU based, etc., could the Minister clarify if a tier 3 port qualifies for such funding?

An Cathaoirleach: The Minister has said the Bill has nothing to do with TEN-T funding at all.

Senator Fidelma Healy Eames: I am just seeking clarification. Would a tier 2 designation not have helped? Putting ports such as Galway into the control of local authorities is very worrying - I understand that everybody in the House has been singing the same tune in this regard - despite the Minister's explanation of the structures and the shareholding. Councils already have too much on their plates and I do not see them meeting many of the significant responsibilities they have, for example, around housing and emergency services, etc. There are so many unmet challenges. The current funding model which supports councils is really suspect.

An Cathaoirleach: That matter has nothing to do with the amendment.

Senator Fidelma Healy Eames: It has much to do with it.

An Cathaoirleach: It has nothing to do with the amendment at all.

Senator Fidelma Healy Eames: It has absolutely loads to do with it. Would the funding model that currently supports councils be relied upon for ports? I hope the answer is no.

Senator Jim Walsh: I agree with much of what Senator Sean D. Barrett said and I agree with the figures. The figures for New Ross Port are very bad because of a significant decline in the traffic through that port. I am familiar with ports, although it is 45 years since I operated in Wicklow Port when I was with Nitrigin Éireann Teoranta. We brought rock phosphate through that port. Wicklow and Galway ports have very limited potential, in my opinion. Drogheda and New Ross ports certainly have potential and they have proved this by having good operations and large tonnage well in excess of those other ports for 40 or 50 years up until the last decade.

In the context of putting ports under the control of local authorities - I think Senator Sean D. Barrett asked a very succinct question in this regard - the difficulty is around what local authorities will do to enhance the recovery of operations in those ports. There is a complete imbalance in giving all the powers to county managers who will often have many more problems with which to deal. Most of the managers are contemplating losses. The deficit in Wexford is approximately €10 million and that will concentrate the mind of county manager ahead of what happens in the Port of New Ross or whatever new responsibilities he might have there. I am concerned that the local authorities would consign a peripheral contribution to the ports in the future. From my experience at New Ross Port, it gained considerably at the expense of Waterford Port because of the bad industrial relations at the latter, particularly in the 1970s, 1980s and into the 1990s. The whole south east depended on New Ross Port being a functioning facility and the area made a contribution. Business and traffic through ports is cyclical. The Ministers made reference to the move towards panamax sizes. The animal feed shipments used to come in on 1,000, 2,000 and 3,000 tonne ships and are now coming in on 20,000 and 25,000 tonne

ships. There are only a couple of ports in the State that can actually handle that size vessel. However, traffic and shipping changes. My main concern is that removing the potential to meet the country's future needs could be an error and a lack of foresight.

Senator Gerard P. Craughwell: I take the Minister's word that there was a significant period of consultation but everything about this Bill seems to remove the opportunity for locally elected people to have a serious input into the ports' boards. The boards would have oversight of what goes on. We seem to be empowering chief executives and disempowering elected people, a theme which appears to run right through everything that has happened in the State. Has there been consultation with county councillors? I have been contacted by many of them asking me to ensure that councillors' positions on boards are not removed. I understand the Minister said that a councillor board member may have a conflict of interest if he or she returns to the council and a particular item is being discussed. There are ways around this potential conflict, such as having non-voting board members or consultant board members. The exclusion of locally elected representatives from the harbour boards is causing outrage around the country. I would appreciate if the Minister would deal with that concern.

Deputy Paschal Donohoe: I thank the Senators for their comments. Owing to the level of consultation and the degree of work around this policy and this Bill, the national ports policy is in quite a rare position within the Department of Transport, Tourism and Sport as being endorsed by both IBEC and ICTU. Senators made reference to the ability of ports to respond to economic opportunities and I could not agree more. This policy is also supported by the Irish Exporters Association and the Chartered Institute of Logistics and Transport. There is recognition that the policy tries to acknowledge that different ports play different roles in our economy and that we need to have a policy which reflects this.

My colleagues made some very good points. I thank Senator Sean D. Barrett for noting the role of due diligence and how that will address some of the points to which reference has been made. We must ensure that we do not find ourselves in a place where Ministers are surrounded by people who tell them what they think said Ministers want to hear. That does not feel like the case with this policy because I have had much feedback on it which I know has prompted the Senators' contributions. The policy gives us the best platform to respond to the changes taking place in how countries export and import, a matter of which I know the Senators are aware.

On the points raised by Senator Fidelma Healy Eames, I thank her for acknowledging the point I have made in respect of the period of 18 months. I always have to say this and I know the Senator believes the same, but nothing I say about this port or any other is in any way seeking to be involved or to be seen to interfere with the role of An Bord Pleanála and the independent work it does. That is a comment on the port about which the Senator asked questions.

In relation to the TEN-T funding, the criteria are it is for annual passenger traffic volume which exceeds 0.1% of that for the European Union or total annual cargo volume which exceeds 0.1% of that for the European Union; that it is located on an island and provides the sole point of access to a region in the comprehensive network; and that the port is located in the outermost region or a peripheral area outside a radius of 200 km from the nearest other port in the comprehensive network. The classification for ports as to whether they are tier 2 or tier 3 is entirely independent of these criteria. If a port meets those criteria or if it can put the case to the Commission for meeting the criteria and persuade it of that fact, it will be in a position to access that funding but it is not influenced by a classification that we are giving it.

Senator Jim Walsh touched on the change that is taking place and how ports perform. He offered his views on different ports. Different Senators will have different views on that issue. I would make the point that when I or a future Minister seek to make a decision on the mode of integration of a port into the local authority, the choice that is made has to reflect the commercial reality that the port faces. For a port that has a significant tonnage business, that has plans and the ability and can credibly grow that in the future, then a model of the retention of that port as a company within the local authority is the most appropriate one.

For ports whose future is best delivered in integration within the local authority and in the development plans of that local authority, one of complete integration and the dissolution of the company into the local authority could be right for them. The answer will depend on the ability and the prospects of that port.

That leads back to the two points Senator Gerard P. Craughwell put to me. I know that councillors who are on some port board and who may be on the boards of ports in the future will not be happy with the direction in which the Bill is going. I can assure the Senator that those councillors in the local authorities who are not on those boards - there are many more of them - will be given an opportunity, through different sections of the Bill, to engage in the kind of oversight and relationship with these port companies which any Member of the Oireachtas can do if a member of the Joint Committee on Transport and Communications. I hope the Senator will consider that is a very significant change versus where we are at.

Senator Jim Walsh: Where the integration of a port into the local authority occurs, will the Minister outline what consideration has been given to the issue of rates of pay? In some instances people working in ports were handsomely paid which was traditional because of their commercial success. If they are integrated, presumably people will come in at a particular grade. If the salaries are in excess of those grades, what happens? If they are left on higher salaries how will that affect-----

An Cathaoirleach: I do not think that is included in the amendments.

Senator Jim Walsh: It is a point that arises from what the Minister has said.

An Cathaoirleach: It may be, but it is not included in the amendment.

Senator Jim Walsh: It is a pertinent point given that local authorities are taking over the shareholding in a situation where the operation of the port is totally integrated, not the company, but the operation including the personnel. Presumably, there is a transfer of undertakings arising so that employees will have to transfer. If there is a disparity of rates for people on the same grades, will that lead to a knock-on claim for differentials, be it going in one direction or the other? That strikes me as an issue that must have received serious consideration. Will the Minister, please, outline his opinion on that issue?

Senator Sean D. Barrett: I thank the Minister. I wish to withdraw amendment No. 2.

An Cathaoirleach: Does the Minister wish to comment on Senator Jim Walsh's comments?

Deputy Paschal Donohoe: Yes, the Senator asked a direct question. In relation to all employees, their terms and conditions are protected by this Bill. They will transfer in on the terms and conditions they have. That was the feature of the consultation that took place in the run-up to publication of the Bill.

In relation to some of the other matters to which the Senator has referred in regard to the integration of some employees into the pay scales of local authorities in the future, that would be a matter for the chief executives of the local authorities to deal with.

Senator Jim Walsh: My question is-----

An Cathaoirleach: It has nothing to do with the amendment.

Senator Jim Walsh: It has.

An Cathaoirleach: It might have to do with the section but not with the amendment.

Senator Jim Walsh: The amendment deals with the section on the issue of the shareholding and who owns the shareholding. The Minister has pointed out the integration. My concern is that the Minister is setting local authorities up, many of them are already in serious deficit, to knock-on wage claims because of the integration. To transfer people from commercial or semi-State operations into the local government system on much higher salaries than people on a similar grade within the local authority would surely give rise to a claim to be made by unions to address that particular anomaly and, therefore, could we have a knock-on wage claim as a consequence of this? That is my concern.

Deputy Paschal Donohoe: No. I genuinely believe not. The reason is that for those companies we are going to transfer through which will have a significant commercial activity in front of them, we will be transferring them as a separate company. They may well be in a place where the share is owned by the local authority, but they will be a separate company under company law. That is the way in which that matter will be dealt with.

Senator Jim Walsh: And will be protected.

Senator Sean D. Barrett: I thank the Minister for providing for the period of 18 months. It is more generous than what the amendment asked for, which was 12 months. I thank the Minister for his generosity in response.

Amendment, by leave, withdrawn.

Amendments Nos. 3 and 4 not moved.

Section 8 agreed to.

SECTION 9

Amendments Nos. 5 and 6 not moved.

Question proposed: "That section 9 stand part of the Bill."

Senator Gerard P. Craughwell: Can the amendments be resubmitted on Report Stage?

An Cathaoirleach: No. If they are not being discussed, they cannot be reissued.

Senator Jim Walsh: Many of the amendments on the list refer to section 9(1) which provides that a local authority chief executive may, at such time or times as appear to him or her appropriate, sell, transfer, exchange, etc., any shares vested in the local authority. Why is that not subject to a reserved decision of the council? It strikes me that councillors elected-----

Senator Pat O'Neill: It does.

Senator Jim Walsh: Does it? I have seen it in the past.

Senator Pat O'Neill: I ask the Senator to read the section.

Senator Jim Walsh: Therefore, it is provided for. I only read section 9(1).

Senator Pat O'Neill: On Second Stage I outlined that section 9 was one section on which I needed further clarification. Section 9 deals with the right of the local authority on the advice of the CEO to sell up to 49% of the shareholding of a port or harbour. Who values these shares and at what valuation will they be set? What rights do the 49% shares give shareholders in relation to lands and rights in the port, including access to the water? Will the Minister clarify if the shares will be valued by an independent body or the Minister's office? Where does the valuation come from and what rights will people have when they take over the shares?

Deputy Paschal Donohoe: I assure Senator Jim Walsh that section 9(1)(c) requires the consent by resolution of the elected council which is in line with the powers local authority members have in other financial matters. It is entirely consistent.

On the point Senator Pat O'Neill put to me, the valuation of the shares would have to take place via expert advice that would have to be procured at that time. Anything that would happen to the shares would require the consent of the local authority but also the consent of the Minister. Any concerns people might have on the disposal or valuation of shares or any of the rights that could be conferred can be addressed not only through the scrutiny of the local authority, but also by virtue of the fact that the Minister's consent would also be required. That would happen in consultation with the Minister for the Environment, Community and Local Government and the Minister for Public Expenditure and Reform, thereby dealing with any issues of valuation that might arise in the future.

Senator Pat O'Neill: I understand what the Minister is saying because the local authority and the Minister would still control 51% of the shares. If I held some or all of the other 49%, would I have the right to sell them to a third party, or would I require the Minister's consent to do so?

Deputy Paschal Donohoe: Will the Senator put the question to me again to ensure I answer the right one?

Senator Pat O'Neill: I understand the local authority and the Minister will control 51% of the shareholding, but if I was a person who held some of the 49% of the rest of the shares as a private citizen, would I have the right to sell them to a third party without the Minister's consent or that of the local authority?

Deputy Paschal Donohoe: If a private citizen holds private shares that have been issued in a company, he or she has the right to do with those shares as he or she sees fit. Once one buys shares, they are then one's private property. This is precisely the reason I am saying in the Bill that 51% of the shares should be retained within the ownership of the local authority. While there are some extenuating circumstances in relation to that, all of them require very explicit consent. My strong belief is that ports such as these are national assets. Regardless of whether they are regional or ports of national significance, the majority share should be kept in public ownership.

Senator Jim Walsh: Senator Pat O'Neill has raised a point in respect of which it has occurred to me to wonder why the Minister looks to retain 51%. It does not make any sense. If a company is going to invest in a port, it will come with some expertise in the shipping or port business. The least that party would want is management control but it would not have that at 49%. What the Minister is doing is leaving the local authority holding management control. I do not see any real benefit in that if the partner coming in has the expertise I suggest. I would see some benefit in the State holding 26% to ensure that the assets could not be disposed of. The next threshold after the 51% is 75% where one can control the sale of the assets. Why is it imperative for a local authority, which is not in the business of ports at all and which may have no staff member with expertise other than a person working in the port, to control management? It might just deprive a port of the opportunity to have commercial entities becoming involved.

Deputy Paschal Donohoe: In all of the consultation we went through to develop the policy, in particular in relation to ports of regional significance, at no point did we encounter any great demand or even interest within the private sector to buy ports in their entirety. There is a lack of demand. Were the demand to develop in the future, my view is that up to a 49% share would deliver the kind of equity holding that in turn would deliver a commercial return for investors to be interested in it. However - here is the "but" - as a small open economy for which access is of fundamental importance, it is prudent for us to retain the right to at least have a majority share in port assets if not to entirely own them outright. It will not surprise the Senator to hear me say I do not believe private sector investment in State assets is a bad thing. It can play a very positive role in developing assets like ports. Given their importance to our ability to trade regionally and nationally, however, the State should have the ability to retain an ownership stake.

Question put and agreed to.

SECTION 10

Amendment No. 7 not moved.

Senator Sean D. Barrett: I move amendment No. 8:

In page 10, between lines 7 and 8, to insert the following:

“(4) The Minister shall, after consultation with the Minister for Jobs, Enterprise and Innovation, give a direction to a Port Company to report on the implementation of the Competition Authority Report on Competition in the Irish Ports Sector (2013) in particular in respect of the vital need for intra-port competition and shall report on these matters to both Houses of the Oireachtas.”.

Section 10 deals with general ministerial powers of direction. The amendment proposed is an invitation or an offer in spirit to assist if the Minister thinks the general power of direction would be useful to him in the discharge of his duties. In addition to the other directives the Minister may issue on the development of harbours, navigational safety, security, operations generally in harbours and other items, having consulted the Minister for the Environment, Community and Local Government and the local authority, the amendment would allow the Minister to give a direction to a port company to report on the implementation of the 2013 report of the Competition Authority on competition in the Irish ports sector, in particular with regard to the vital need for intra-port competition, and require him to report on these matters to both Houses of the Oireachtas. It is a power which would strengthen the hand of the Minister in trying to ensure efficiency at ports.

On file is a letter to Ms Isolde Goggin of the then Competition Authority, dated 11 August 2014. The letter stated the Minister was looking at the authority's recommendations on leasing and licensing of Dublin lo-lo terminals and stevedore licensing. On the first matter, the Minister said, "It is not one in which I as Minister have any role". Over the page and on the second matter, the Minister stated: "The statutory functions of port companies are not areas in which I as Minister have any role." Will they do it without the Minister pushing? Will those necessary competitive gains, as documented very well in a very long report by the Competition Authority, be made? That is why I tabled the amendment. If the Minister thinks it enhances his control of the ports sector, would he wish to add improving efficiency as recommended to the matters in respect of which he has a power of direction? Would it just lie there or does it fit in with his remit as he sees it in running ports? If it is, I will hand it over as the Minister's amendment. It does not necessarily have to go as far as mine. It would complement the package and what the Minister is trying to do. My fear is that reports gather dust. Obviously, the people who are benefiting from restrictive practices and arrangements are not going to get up one morning and say, "Let's all implement the competition report". Is this power of value to the Minister? That is the spirit in which it is offered.

Senator Jim Walsh: This is a meritorious amendment. We are taking a number of ports which, while they now account for only a small percentage of traffic into Ireland, accounted for a significantly greater proportion in the recent past. It is therefore imperative that they remain commercially focused and that they are there to provide competition, often to neighbouring ports. If I could extend the question in that regard, I presume the individual companies, if they are maintained and integrated into the local authorities as companies, will have to do their annual returns as port companies, which will outline all of that. Is there any requirement in the Bill - I cannot see it, but I have not read all 50 pages from cover to cover - for the companies, where they are integrated into the local authority, to issue some report that will show the commercial activities within the port and in particular what they are doing to improve the prospects and business through the port? Marketing should be a requirement for the local authority, as well as setting out its plans to increase traffic and commercial focus and to enhance the operation of the business.

Deputy Paschal Donohoe: This is an excellent amendment and that was a very good question from Senator Jim Walsh about the maintenance of competition within ports. If I could deal with the amendment first, it is one that is very close to my own heart in terms of trying to drive and increase competition within the port sector, because I can see the benefit of it to ports and to the country. I have to respectfully say to Senator Sean D. Barrett that I am not in a position to accept it. The simple reason is that I have to recognise that if a port is integrated as a company into a local authority, it has its own board and its own autonomy and it is not up to me as Minister to get involved and to issue instructions as to how it conducts its business. I have to recognise its role as an independent board of directors.

All that being said, if I could give him some encouragement regarding the implementation of that report, which was one of the first things I brought to the Cabinet shortly after I was appointed, I would point to the kind of change that is now happening in Shannon Foynes Port Company. It has reorganised how it provides stevedoring and has significantly modernised it. I point now to what is happening in Dublin Port. It has now published its own review and analysis of the Competition Authority's recommendations. It has published that on its website; therefore, it is available for stakeholders and interested figures such as the Senator to see. It is now looking to incorporate the principles of the Competition Authority's report into how it

plans to manage its estate in the future. The Competition Authority has indicated its broad support for what we are looking to do here by having ports of national significance in two different tiers as well as ports of regional significance, because it offers us a platform to develop more competition in the future.

On alternative ways to address the point the Senator has made, under other legislation I already have power as Minister to seek information from ports regarding how they operate. The statutory accountability of port companies to the Oireachtas transport committee is in place under section 40 of this Bill. Perhaps members of the transport committee could in future issue an invitation to the boards of companies to come in and explain to the Oireachtas what they are doing to implement the analysis and recommendations of the Competition Authority. I reassure the Senator that my Department and I are working to see the implementation of that report over time.

On the point Senator Jim Walsh put to me, the answer will depend on how the port is integrated into the local authority. If it is integrated as an existing and stand-alone company, it will have to produce its financial accounts and an overview of how it is trading that will in turn allow the Senator and other public representatives to quiz it on how it is performing *vis-à-vis* the implementation of that report and its general trading.

Senator Jim Walsh: Will the Minister give consideration between now and Report Stage to requiring the local authority, where the company is integrated with the local authority, to issue some formative report, which would show the activities in the port and, more importantly, show what plans it has for increasing traffic through the port? This would place an onus on it. It would then have to do something, because it would have to compile a report and develop a strategy to improve the traffic through this port, which is now its responsibility and which is a national asset that it holds. Would he consider it?

Deputy Paschal Donohoe: I am not sure that is a matter that could be dealt with through primary legislation. What I will say to the Senator is that there may be a way it could be dealt with through the due diligence process, in that such a matter could be dealt with at the point at which the Minister of the day makes the decision on the type of integration. I will give consideration to this before I am back in here on Friday. It is my absolute expectation that all the ports, regardless of how they are integrated into the local authority, will have the ability to trade successfully into the future. On Report Stage, when I get the opportunity to revisit this point, I will see if I can give the Senator more of an update.

Senator Sean D. Barrett: I thank the Minister for his reply. We are on the same side in regard to both of those recommendations - that is, the recommendations regarding competitions between terminals and competition in stevedoring. If the Minister were to table an amendment on Report Stage, I would be delighted to support it, but we are on the same side. What leverage does he need to make sure this will happen? There is a fear that lethargy would take over. We have had a very good review of the issues at stake.

Amendment, by leave, withdrawn.

Section 10 agreed to.

Sections 11 and 12 agreed to.

16 December 2015

SECTION 13

Amendments Nos. 9 to 11, inclusive, not moved.

Acting Chairman (Senator Michael Mullins): Amendments Nos. 12 and 13 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Sean D. Barrett: I move amendment No. 12:

In page 10, line 35, to delete “may” and substitute “shall”.

I can see this amendment has Senator Gerard P. Craughwell excited already. The line reads at present “a harbour master may attend formal meetings of directors of the transferred company”. I wish to change this to “shall attend.” We need the people who know the harbour on the ground, particularly if we are bringing in what might be called the landlubbers in the county management. One of the problems I have with much of managerial theory is that it creates layers of bureaucracy and never involves talking to the people who are actually there. The harbour master is there and I hope he might be given that role. He should be there. He will know what he is talking about, unlike the others who have come in from the local authority.

Amendment No. 13 states: “In page 11, to delete lines 3 to 11”. If we allowed him to be at meetings in any case, we would not need that other section regarding when he can attend. By being at the meeting, he is best placed to offer the kind of advice and wise counsel that will be useful. The harbour masters know the ships inside and out. They know the captains and the pilots who guide the ships ashore. We want the knowledge of such people, rather than people from the land side.

Senator Gerard P. Craughwell: Senator Sean D. Barrett is correct. For the life of me, I cannot believe we would want a harbour that would be managed by a load of “landlubbers”, as the Senator has called them. Surely the harbour master - the person who understands the harbour - is the one person we should want to be present at all board meetings. A number of harbours around the country are extremely peculiar in their design and their abilities. Galway Harbour, for example, is a tidal harbour. The gates in Galway Harbour limit the size of craft that can come into Galway. Surely we would want the harbour master, who understands these kinds of things, to be in attendance. I do not intend to waste the time of the Minister because I respect the patience he has shown. If the Minister accepts the proposal to replace the word “may” in section 13(3)(a) to “shall”, there will be no need for sections 13(3)(b) or 13(3)(c). If we take this great step forward, we will all have a great Christmas.

Senator Fidelma Healy Eames: I support the amendment. It would be a retrograde step if a harbour master were not present. I am not familiar with the other ports, but having been at meetings in Galway Port I am familiar with the expertise that has been presented to us by the harbour master and the people who are on the front line at that facility. If we failed to take on board the expertise of the key people who are on the front line, it would run contrary to everything we believe in. Case studies are about getting it from the horse’s mouth, so to speak. I think the amendment carries a lot of weight.

Deputy Paschal Donohoe: The Bill does not change the current status of harbour masters or the current relationship between harbour masters and boards of directors. Everything the Senators have said about the important role of harbour masters in the operation of ports is correct. I have met many of them on my journeys to various ports throughout the country. I have

heard their absolute and genuine expertise on matters from dredging to sea walls. I have heard much about these topics. However, there is a fundamental difference between a director and an employee. That is what this boils down to. The relationship between boards of directors and harbour masters will be completely unchanged by the passage of the Bill. I assure Senators that this legislation does not in any way change the status of the harbour masters *vis-à-vis* the boards of directors. The harbour masters will retain all the powers and rights they enjoy at the moment. Fundamentally, it is up to the directors on the boards of companies to decide who should attend meetings. As directors, they are responsible for the organisation of the company and for their employees. I assure Senators that contrary to what has been suggested, there is no question of any kind of a “retrograde step”. The Bill does not in any way change the statutory responsibilities of harbour masters and boards of directors of harbours.

Senator Sean D. Barrett: The Minister used the word “retrograde”, but it would be progressive to provide for those who actually do the work on the ground, as the Minister has said, to attend board meetings. As he was speaking, I was reminded that I sat on a board at Trinity College Dublin before I was elected to this House. The people who gave the lectures were there as board members. It worked very well, although there were complaints that it was like a mini parliament. Perhaps it was training for people like the Minister and me who wanted to come up to Leinster House. I do not know whether this falls into the category of ministerial advice. I suggest it would be crazy to allow a meeting to go ahead while the harbour master is left outside. I do not know what this means for the role of directors, etc.

We need to listen to men and women who know their stuff. I am sure the Minister found when he was going up and down the country that they are great characters. They know everything about ports. Their expertise is invaluable. Under a previous system, they may have been regarded as workers who were not worthy of being on the board or attending at the board. As it progresses, Ireland should examine how to learn from those who know so much. We should do away with the old idea that the harbour master should be outside the door with his cap in his hand, unable to come in until he is invited to do so. We need to avail of all the wisdom that is available. Many reforms of this nature are needed in this country. The Minister and I are on exactly the same page on this one spiritually and temperamentally. This has been a fine discussion. I will not pursue this amendment. The Minister is aware that the Seanad agrees with him on the need to avail of expertise. Nobody should be left out as we try to continue the reform of this country. In this case, we should not leave the harbour masters out.

Senator Gerard P. Craughwell: I accept what the Minister said. The magic word in what he had to say was “employee” because it suggests that it is envisaged, as suggested by Senator Sean D. Barrett, that the harbour master will be standing outside the door with his cap in his hand waiting to see whether his masters inside want to hear his wisdom. These men have developed wisdom over many years. By right, they should be *ex officio* members of the board with full voting rights. Senator Sean D. Barrett has said he is withdrawing this amendment, but I wish to make it known that I intend to resubmit it on Report Stage.

Senator Sean D. Barrett: I will not move amendment No. 13 because it arises from this amendment and also relates to harbour masters. Obviously, Senator Gerard P. Craughwell would have the harbour masters inside already. I think the Minister is veering in that direction. I will not pursue amendments Nos. 12 and 13, which are being taken jointly, any further.

Senator Gerard P. Craughwell: We will be back on Report Stage.

16 December 2015

Amendment, by leave, withdrawn.

Amendment No. 13 not moved.

Section 13 agreed to.

Amendment No. 14 not moved.

Section 14 agreed to.

SECTION 15

Amendment No. 15 not moved.

Question proposed: "That section 15 stand part of the Bill."

Senator Gerard P. Craughwell: Amendments Nos. 14 and 15, which were tabled by Sinn Féin, seek to remove the authority of the chief executive officer and to vest that authority in elected council members. I appreciate that the Bill gives the council some powers of oversight. It is most regrettable that we are not in a position to consider amendments Nos. 14 and 15.

Senator Pat O'Neill: I am sorry, but it is not our fault.

Acting Chairman (Senator Michael Mullins): The Sinn Féin Senators are not here to move their amendments.

Question put and agreed to.

Amendments Nos. 16 and 17 not moved.

Section 16 agreed to.

Section 17 agreed to.

SECTION 18

Amendment No. 18 not moved.

Question proposed: "That section 18 stand part of the Bill."

Senator Jim Walsh: It seems from sections 18(1) and 18(2) that a harbour company that wants to borrow will be required to get the approval of the county manager. Will the Minister clarify whether the county manager will be a director *ex officio*? I do not believe he will be. If he is not a director, this section of the Bill will make him a shadow director. I would like to know whether the fact that a company's borrowings will have been approved by the county manager - they are subject to his approval - could subsequently put the banks in a position to be able to pursue the local authority. I do not know whether this has been legally checked. Is a provision that gives somebody outside the board of the company responsibility for such an important decision in compliance with company law? That is my first question. I have a number of questions on this section. It is customary - I think it is a requirement - for all local authority borrowings to be approved by the council as a reserved function. Overdrafts and loans are, I believe, all subject to the formal approval of the council. In a scenario where there is full integration, I presume that still applies. However, when the company remains as a stand-alone company, this does not apply; instead, it is left to the discretion of the manager. In particular,

the issue of blurring the corporate refinement of the manager is significant. I also note that the amount is €200,000, or 50% of the transferred company's assets.

Senator Colm Burke: It is €200 million.

Senator Jim Walsh: Yes, a large amount of money. It is very difficult to value the assets of some of the port companies because they are in the form of fixed assets such as jetties. It is a bit like having a property: anybody valuing those assets would have to look at the income they were generating. I am wondering if that could become a hindrance to the development of the port. Very strict statutory guidelines are being applied as to how they will be done.

I know that one or perhaps more of the port companies has a significant pension deficit. What happens to that? Does it become the responsibility and liability of the local authority? How will it be addressed? In many instances, these are defined benefit schemes backed by commercial insurance.

Deputy Paschal Donohoe: The valuation of assets has to be dealt with in the financial accounts that the port produces each year. It could be considered at the point of integration. The financial accounts will provide the valuation of the assets.

What happens to liabilities will depend on the mode of integration of the company into the local authority. If it goes in as a stand-alone company, both assets and liabilities are retained within that company. If it is integrated completely, they are dissolved into the broad balance sheet of the local authority.

As I have said, assets must be monetised in the financial accounts that the port has to provide under company law. If any further work needs to be done, going back to Senator Pat O'Neill's earlier point, expert advice would need to be brought in. The Bill is absolutely consistent with company law. The chief executive would not be a member of the board of directors if the port was integrated into the local authority as a stand-alone company.

Senator Jim Walsh: I thank the Minister. He has clarified some of my questions. The assets of these companies would be difficult to value. We saw the balance sheets of the banks before the crash; they had no connection whatever with reality. I would have thought it prudent, if the State is taking over - even in the case of a semi-state company - to have at least a couple of valuations done on the assets as a precautionary measure. That should then be certified in the accounts with the attachments, in order that the local authority would have some responsibility to validate the valuations for itself.

I ask the Minister to deal with the issue of the pension deficits in both scenarios - that is, where the company is integrated in the first instance, and when it remains as a stand-alone company within the local authority. The Minister is giving a very important corporate decision to the chief executive of the local authority, who is not a member of the board. He is making the board's decision subject to an external person in the very important area of borrowing money. The chief executive may be a shareholder but he is still external. I am concerned by the legal interpretation as to the chief executive being regarded as a shadow director. He is playing a fundamental role with regard to a very important decision. He is the primary decision maker, the approver of borrowing within the company. As a consequence, he is putting himself in the role of a shadow director. Has legal advice been taken? If he is a shadow director and the loan cannot be repaid by the company for some reason, if a stand-alone company cannot pay, could the banks have recourse to the manager and the local authority for repayment of that loan? The

banks could go outside the corporate pale simply because the manager was, in fact, the approver and maybe the decision maker for that borrowing. There is very extensive borrowing, as we have mentioned.

Deputy Paschal Donohoe: Absolutely not. He or she, as chief executive, would not be a shadow director of the company but the shareholder and would occupy the role I currently occupy. There is no question of company law being breached in any way in this regard. I accept the Senator's point about the need for valuations and balance sheets to be checked. That is exactly why we have a due diligence process in place which has to be completed before either form of integration can happen. That would be covered within it.

Senator Jim Walsh: I know that there will be a very substantial deficit in at least one of the companies. How is it proposed to deal with it?

Deputy Paschal Donohoe: The answer will depend on the mode of integration. If it is a stand-alone company within the local authority, the pension deficit or surplus, should there be one, will be retained within that independent company. If it is integrated into the local authority, it will be a matter for the local authority.

Senator Jim Walsh: I am sorry for pursuing this point. In the event of a decision to integrate the assets, in order that the pension liability becomes the responsibility of the local authority, will the Minister recompense the local authority for that deficit?

Deputy Paschal Donohoe: Absolutely not. Any decision I make on the method of integration will be taken in close consultation with the local authority and port in question.

Question put and agreed to.

Amendments Nos. 19 to 22, inclusive, not moved.

Section 19 agreed to.

Amendment No. 23 not moved.

Section 20 agreed to.

Section 21 agreed to.

SECTION 22

Acting Chairman (Senator Michael Mullins): Amendments Nos. 24 and 25 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Sean D. Barrett: I move amendment No. 24:

In page 16, line 18, to delete "local authority chief executive" and substitute the following:

"Minister for Transport, Tourism and Sport on the advice of bodies representing trade, commerce and tourism, and local government".

This section currently refers to the chairperson and directors, of which there are eight, of the transferred company. It states that "[t]he directors of a transferred company [...], other than the chief executive, shall be appointed by the local authority chief executive." My concern is

that this makes the county manager master of all he surveys. It is an incredible amount of power to reside in one pair of hands. I have proposed that we delete “the local authority chief executive” and insert a reference to the Minister who is before us, as per the text of the amendment. Too much power resides in the county manager. The Minister is elected. He is a great democrat and is in touch with more views.

Some county managers are very autocratic and to give them the power to put eight people on a board with nobody else there has me worried. I would prefer the Minister to discharge that responsibility.

Deputy Paschal Donohoe: I thank the Senator. Perhaps at some point in the future when time permits and we are less busy with other matters, we can look at the difference the new Public Appointments Service process is making for the appointment of directors to companies. It is a matter I was dealing with only today. As such, I can assure the Senator that because of that process, the variety of candidates coming through and their huge diversity of experience is offering the shareholder, whether me or the local authority, the ability to appoint a breadth of people that will really benefit these boards.

The appointments process that will happen when the Bill is, I hope, implemented, will have to follow the process launched by the Minister for Public Expenditure and Reform, Deputy Brendan Howlin. The very reason I am so confident that the quality of boards will meet the need the Senator describes for better diversity and expertise is that we now have a better process in place to deal with these matters. The simple reason that I cannot make the particular appointments is that I will no longer be the shareholder in those posts. It will be the chief executive who is the shareholder, but that person will need to follow the new process I have just described.

Senator Gerard P. Craughwell: I thank the Minister for his patience. I agree with Senator Sean D. Barrett. Where power is invested in a local individual, those autocratic people are suddenly given the power to put a number of puppets in place who will behave as desired. I would have no problem with the local authority chief executive making a recommendation while the final decision rested with the Minister of the day. Like Senator Sean D. Barrett, I consider that the Minister would have a far more democratic view of the world than a Civil Service appointed chief executive.

Senator Sean D. Barrett: I accept totally what the Minister said. I have seen that process in operation and we know that some of the candidates who have emerged have been very impressive. Perhaps the Howlin method might be considered for Report Stage, if that is possible. I endorse fully the sentiments the Minister has expressed. It is most encouraging to see the variety of backgrounds of candidates who have come forward.

Amendment No. 25 is a small provision. The requirement is that the local authority chief executive shall have regard to Government or nationally-agreed guidelines which, for the time being, are extant, or to Government policy concerning appointments to State boards. We have had the requirement to “have regard to” in other legislation. For example, I had regard to the fact that I was in a 30 km/h zone and just happened to be doing 50 km/h. A requirement to comply is much stronger and would strengthen the Minister’s hand. We can all say we had regard to something and then go off and do something else. It is in the spirit of the Howlin amendment the Minister described that a requirement to comply with the procedures laid down by that Minister should be provided for. Those procedures have been impressive in the way that we have seen them executed. Is “comply” better for the Minister than “have regard to”?

Deputy Paschal Donohoe: They are exactly the same. I have checked on the matter and been advised that from a drafting point of view, the phrase “shall have regard to” is exactly the same as “to comply with”.

Acting Chairman (Senator Michael Mullins): Is the Senator happy?

Senator Sean D. Barrett: As long as they comply.

Amendment, by leave, withdrawn.

Amendments Nos. 25 to 28, inclusive, not moved.

Question proposed “That section 22 stand part of the Bill.”

Senator Gerard P. Craughwell: Section 22(7)(b)(vi) provides that in considering whether to appoint a person to be a director of a transferred company, the local authority chief executive concerned shall have regard to the desirability of experience of local government. However, we have ensured that those with the greatest experience of local government are excluded. We will be talking about that a little later in the Bill. I cannot for the life of me see why. One could have two brothers, one of whom is a local authority employee, while the other is a local authority representative. The employee is eligible for appointment to the board while the elected representative is not. There is a great deal of disquiet about this among local authority members and I have not heard the Minister address it specifically. He has had wide consultation with IBEC, ICTU and others, but I have not heard him say he has addressed all the local authority members.

Deputy Paschal Donohoe: I have met many councillors who are highly supportive.

Senator Gerard P. Craughwell: Okay.

Deputy Paschal Donohoe: Many, many councillors.

Senator Gerard P. Craughwell: We are meeting different guys then.

Deputy Paschal Donohoe: I say to the Senator respectfully that earlier in the Bill he was challenging me to say local authorities were not the right place for these ports. Now, he is standing up to say it is terrible that local authority members will not have a role on their boards.

Senator Gerard P. Craughwell: In fairness, if the harbour was not under the control of the local authority, an elected member of a local authority would have no difficulty being on the board whatsoever.

Deputy Paschal Donohoe: As the Senator is making his point, I affirm to him that I have met a large number of councillors who are very much looking forward to this change. There is a point he should address and I look forward to hearing him do so. Why should powers of oversight be confined to a small number of councillors as opposed to all of them?

Senator Gerard P. Craughwell: With respect, I have never suggested the power of oversight should be invested in any small group that would be appointed to a harbour board. I welcome most of the Bill and what the Minister is doing in terms of oversight. I am a little sorry Sinn Féin Members are not here to move some of their amendments, but I welcome what the Minister is doing. At the end of the day, there is a subtle difference between having oversight and being a member of a board. The latter is about being there and being party to the decisions.

Senator Fidelma Healy Eames: There is an important distinction. What I understood was being said and certainly what I was saying was that the better model for ports and harbours as referred to in the Bill did not involve them being under the jurisdiction of local authorities. However, if they will be under the jurisdiction of local authorities, the democratic process is important. The more members that are empowered and have a say, the more the issues will be brought out. That is not to say what perhaps the Minister said Senator Gerard P. Craughwell was saying. That distinction is important.

Deputy Paschal Donohoe: I note again that I have met many councillors who are looking forward to this change.

Senator Jim Walsh: It is a point of principle that people should not automatically be excluded from a board simply because they are councillors. There is no justification for that. People who go forward for councils are generally people who are interested in participation and making a contribution to various aspects of life in their localities.

The Minister can correct me if I am wrong on the following. Perhaps I am reading it in the wrong way. If a local authority takes over a port and integrates the assets, the corporate veil is gone. In that scenario, they are subject, like any asset of a local authority, to the direct input and control of the councillors. In a scenario where a local authority takes over the shares of the company, we are excluding them from involvement in it. That looks like an anomaly to me. Will the Minister give me the logic behind it? If one owns the assets directly and is trading them, one has a direct input. If shares are purchased and the corporate veil is maintained, however, one is debarred from a direct input.

Deputy Paschal Donohoe: I believe there is an amendment from Senator Gerard P. Craughwell on this point and perhaps we might have this debate when we get to it. As it is tangentially related to this point, I look forward to a debate with the Senator on it.

Question put and agreed to.

SECTION 23

Senator Sean D. Barrett: I move amendment No. 29:

In page 19, to delete lines 39 to 42.

This deals with the accountability of the chairperson and chief executive to the local authority, which we support and have been talking about for a long time. In subsection (2) it is stated, “Neither the chairperson nor the chief executive of a transferred company referred to in *subsection (1)* shall be required to attend before the elected council if a resolution referred to in that subsection was made within a period of 6 months of the making of the last such resolution”. It is somebody declining to be democratically accountable except at six monthly intervals. I have never come across anything like it. A Minister would not come into the Seanad because he was here six months ago. It does not seem to add up under the heading of accountability. This is something none of us in the room believes in. If I told my electorate I did not intend to talk to them for the next six months, they would issue a P45 fairly pronto.

Senator Fidelma Healy Eames: I support Senator Sean D. Barrett’s amendment. What is the logic behind this? Is it expediency? It could be one of the biggest decisions that was ever made. Perhaps then they would not need to attend to respond to it. It does not make sense. I

completely agree with Senator Sean D. Barrett that if we are talking about accountability they need to be present.

Deputy Paschal Donohoe: We are bringing in a provision for mandatory appearance. This has not happened before. In subsection (1) it is stated “may by resolution require the chairperson ... to attend”. Senators Gerard P. Craughwell and Fidelma Healy Eames spoke about accountability, but this Bill gives local authority members the ability to require the chairperson to come before them. These powers will in many ways be similar, though not identical, to those of an Oireachtas committee. We will still have ports commercially trading and which have a commercial mandate; therefore, in recognition of the fact we are granting a substantial new power to local authority members, we are seeking a balance in order that we create a framework within which that power can be appropriately and responsibly discharged. This section gives local authority members the power to require the chairperson or chief executive to appear before them rather than just to invite them to appear.

Senator Gerard P. Craughwell: I support the Minister fully on this one.

Senator Fidelma Healy Eames: I understand what subsection (1) states about the local authority requiring the chairperson or chief executive to attend. However, if a new resolution were taken within six months of a previous appearance, would it not be necessary for the person to attend? The new resolution might be one of the biggest decisions to be made in the history of a particular port. Will the Minister clarify the matter?

Deputy Paschal Donohoe: Will the Senator explain what she means? I did not understand her.

Senator Fidelma Healy Eames: A mandatory appearance is built into subsection (1), but in subsection (2) it states that if a person appeared less than six months ago, he or she would not have to appear until six months had passed since his or her previous appearance, even if there were a new resolution as referred to in that subsection. If a new and important decision were to be made but within six months of the previous appearance, the person would not have to reappear. Is that correct?

Deputy Paschal Donohoe: The mandatory requirement to come before a local authority is as a result of a substantial new power in the Bill. I am trying to seek a balance to ensure that power is discharged appropriately. In the scenario the Senator has raised, local authorities are entitled to decline to exercise the power at a particular time, instead inviting the chairperson or chief executive to come in. All the power they have to invite people to come in and to ask people to appear in front of them is still there, but I am creating a whole new space of power for the local authorities. In recognition of the fact that a mandatory requirement to come in is such a big development, the ability to trigger it should be limited to particular time periods. Outside of those periods-----

Senator Fidelma Healy Eames: They can still invite them in.

Deputy Paschal Donohoe: Absolutely. I will outline a hypothetical situation to illustrate. If something is happening within a port with which the local authority is not happy, the local authority could invite the chairperson and chief executive to come in. The person or persons will come before the local authority, but if the authority decides to require them to come in at another time, it has a new power which it can now use on top of inviting people to come before it. Since it is a new power, I do not believe it would be appropriate for it to be triggered with

the same frequency with which invitations can be triggered.

Senator Fidelma Healy Eames: Okay.

Acting Chairman (Senator Michael Mullins): Is the Senator withdrawing his amendment?

Senator Sean D. Barrett: Yes, but somewhat carefully. I hope officials would not just turn up every six months. I hope they would be required to turn up and would accept invitations. We will have to conduct the experiment. People should respond to the democratically elected representatives of the people and not be begrudging or parsimonious in their attendance. Having to be required to turn up is not a good definition of accountability. I will go with the Minister as he was very generous to us earlier.

Amendment, by leave, withdrawn.

Section 23 agreed to.

Section 24 agreed to.

SECTION 25

Senator Sean D. Barrett: I move amendment No. 30:

In page 21, line 14, after “executive” to insert “or acting chief executive”.

This is a small amendment relating to subsection (1) in which it is stated, “There shall be a chief executive of a transferred company”. Is it helpful to the Minister to offer the option of an acting chief executive rather than have to promote somebody who can fulfil the requirement and engage in a lot of public expenditure? Is it understood that if there is not a chief executive, there would be an acting one? I offer it in case it is of use to the Minister and helps in the operation of the legislation. It is onerous to have a chief executive always present when vacancies may occur for all sorts of reason.

Deputy Paschal Donohoe: I thank the Senator for his amendment. I assure him the drafting we have is consistent with what we have with all other harbour legislation, the origin of which is in section 35 of the Harbours Act 1996. I do not want to accept the amendment because I am fearful that if I were to introduce a term that is different from what we have in other legislation, it could create a consequence I cannot foresee and which might require me to be in front of Senators again on the issue at some point in the future. I prefer to exercise caution and prudence by leaving the language as it stands because it is consistent with that used in other harbours legislation.

Senator Sean D. Barrett: I will withdraw the amendment, despite the inducement that the Minister could return to the House.

Amendment, by leave, withdrawn.

Section 25 agreed to.

Section 26 agreed to.

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SECTION 27

Amendment No. 31 not moved.

Senator Sean D. Barrett: I move amendment No. 32:

In page 23, line 35, after “company” to insert “following a vote of the local authority”.

The amendment provides that a local authority chief executive may, after consultation with the transferred company, give a direction in writing to the transferred company following a vote of the local authority should he or she bring the members of the local authority along with him or her in that transaction. The purpose of the amendment is to strengthen the legislation.

Deputy Paschal Donohoe: I am satisfied with the way in which the legislation is drafted. Under local government legislation, it is the elected members who set the policy of the local authority. Therefore, any direction relating to local authority policy would be in respect of a decision of the elected members. The fact that the direction in writing issues from the pen of the local authority chief executive reflects the reality of the issuance of such an authority. As I indicated, under local government legislation, policy is set by the elected members.

Amendment, by leave, withdrawn.

Section 27 agreed to.

Amendments Nos. 33 and 34 not moved.

Section 28 agreed to.

Section 29 agreed to.

SECTION 30

Acting Chairman (Senator Michael Mullins): Amendment No. 35 was discussed with amendment No. 2. Does Senator Sean D. Barrett propose to move the amendment?

Senator Sean D. Barrett: No. I thank the Minister for the thorough discussion on the earlier amendment.

Amendment No. 35 not moved.

Section 30 agreed to.

Sections 31 to 33, inclusive, agreed to.

SECTION 34

Acting Chairman (Senator Michael Mullins): Amendments Nos. 36 and 37 are related and may be discussed together.

Senator Sean D. Barrett: I move amendment No. 36:

In page 27, line 22, after “may” to insert the following:

“, not less than one year following publication of an independent cost-benefit analysis of Bantry Bay Harbour as an independent entity, as part of the Port of Cork Company

or as part of Cork County Council”.

The control of two ports is jumping from one alternative form of governance to another. The first of these is Bantry Bay Harbour. It is a pity Senator Denis O’Donovan is not contributing on this occasion because he knows much more about the harbour than I do. Bantry Bay Harbour was independent before control over it was transferred to the Port of Cork Company. It is proposed to transfer responsibility again, this time to Cork County Council. Do we know the ins and outs of the evaluations done on the harbour?

The second port in question is Dundalk, which was independent before it was transferred to Dublin Port Company. It is now proposed to transfer control of the port to Louth County Council. The changes in governance over a relatively short period are almost dizzying. What is the text underpinning this? Did Dublin Port Company find Dundalk Port unviable when it took it over? Was the issue competition with Drogheda Port, the new port at Bremore or Greenore Harbour? Did Dublin Port change its mind on ownership of Dundalk Port? Fundamental decisions are being made in rapid succession. We expected Dublin Port Company to do something in Dundalk Port. Why did it want to take over Dundalk Port if it is now proposing to hand over control of it to Louth County Council?

What is the best course of action for Bantry Port’s future given that its position has changed from being independent to coming under the control of the Port of Cork Company and is now to be moved into Cork County Council? These are important decisions for the areas in question and the country. There should be some text by which we can assess whether these are good moves.

Deputy Paschal Donohoe: I thank the Senator for raising a number of points. Neither transfer forms part of the immediate policy horizon. However, the opportunity is being taken to provide that the legislative basis will be in place should a decision be taken in future. The Bantry Bay Harbour Commissioners were dissolved in 2014 and control of the harbour transferred to the Port of Cork Company. This decision was taken to ensure the highest standards of safety given that the harbour contains Whiddy Island oil terminal. The expertise of the Port of Cork Company is overseeing and managing the arrival and departure of some of the largest ships calling to Irish waters. It was for this reason that control was vested in the company. However, if at some future point, there is no longer commercial activity at Whiddy Island oil terminal, the rationale for the Port of Cork’s involvement with Bantry Port ceases. Control of the harbour should then vest in the local authority given its role in promoting local and regional development and managing the public realm generally. The transfer envisaged is not that an entity will transfer but that an actual physical place will transfer to ensure that a statutory body is entrusted with its care and management.

Senators will recall that in 2011, Dundalk Port Company was dissolved and its functions transferred to Dublin Port Company. That decision was taken in response to the very deep financial difficulties experienced by Dundalk Port Company. Since the transfer to Dublin Port Company, operations at the port have been managed under licence by a local operator. The role of Dublin Port Company is that of statutory authority and licence management. There is, therefore, no entity as such known as Dundalk Port. The role of Dublin Port Company could easily be facilitated at local level by the local authority. In line with the principles of national ports policy and local government generally, control of the harbour area should, at some future point, transfer to Louth County Council.

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Given that, as I indicated, neither of these proposed transfers is on the immediate horizon, the appropriate legislative foundation is in place to deal with these matters in the future. Were such a transfer to be considered, we would have to go through the type of process to which the Senator referred in terms of assessing the costs and benefits of such a transfer to the State and completing the due diligence process currently being done on ports of regional significance. For these reasons, I will not accept the amendment.

Senator Jim Walsh: What is the Minister's opinion not only on the acquisition of Dundalk Port by Dublin Port Company but also the prior acquisition of Greenore Port from the O'Rahilly family by Dublin Port Company and One51? Has this acquisition helped Greenore Port? The context of my questions is that Greenore Port is one of four deep-water ports we rely on to accommodate many of the panamax-type vessels arriving in the country with animal feed and other products. While the issue is not addressed in the legislation, perhaps the Minister will comment as it would be interesting to hear either his view or that of the Department on this matter.

Deputy Paschal Donohoe: As the port is in private ownership, having been sold in 2014, it would not be appropriate for me to comment on how it is performing.

Senator Jim Walsh: It is a strategic port.

Deputy Paschal Donohoe: That is correct. As the Bill relates to the large number of ports that are owned by the State, it would not be appropriate to comment on Greenore Port as it is not owned by the State.

Senator Jim Walsh: I understand One51 is no longer involved in the port. I presume it is completely owned by Dublin Port. Is that correct?

Deputy Paschal Donohoe: No.

Senator Jim Walsh: Will the Minister clarify the ownership?

Deputy Paschal Donohoe: It is in private ownership.

Senator Jim Walsh: Dublin Port is no longer involved.

Deputy Paschal Donohoe: No, it is fully privately owned.

Senator Sean D. Barrett: I thank the Minister for describing those two sets of developments in Dundalk and Bantry. I will not press amendments Nos. 36 and 37.

Amendment, by leave, withdrawn.

Section 34 agreed to.

Amendment No. 37 not moved.

Section 35 agreed to.

Sections 36 to 38, inclusive, agreed to.

SECTION 39

Senator Sean D. Barrett: I move amendment No. 38:

In page 33, line 41, to delete “public administration” and substitute “harbour management”.

This amendment goes back to our old friend, the harbour master, and the skills that role requires. The Bill currently reads:

In considering whether to appoint a person to be a director of a company (not being a director to whom the requirements of paragraph (a) apply), the Minister shall have regard to the desirability of there being appointed persons with wide experience and competence in areas such as.

I thought harbour management might be a desirable characteristic rather than or in addition to public administration. It is a skill which is at the core of the Bill and the purpose for putting forward the amendment. It might be a moot point as to whether this would form part of the Howlin guidelines, but it is useful to take the profession of running harbours into the legislation.

Deputy Paschal Donohoe: I agree with the Senator on the need to have a wide board with honest experience regarding management of harbours. However, the Bill already provides for the kind of skill set for which the Senator is looking. The language used in the Bill refers to wide experience and competence in maritime transport services. The role of harbour management is clearly contained within that language. These are the reasons I am not accepting the amendment. I agree with the Senator on the need to have such experience catered for on the board. However, the language contained in the Bill does that.

Senator Sean D. Barrett: I thank the Minister for his response.

Amendment, by leave, withdrawn.

Section 39 agreed to.

Sections 40 and 41 agreed to.

SECTION 42

Acting Chairman (Senator Michael Mullins): Amendments Nos. 39 and 40 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Gerard P. Craughwell: I move amendment No. 39:

In page 38, to delete line 22.

I know that we could joust on this for the evening but we will not do that. When this Bill was first published I contacted all the local authority representatives, sent them a copy of the Bill and asked for their comments. The feedback, particularly from those in coastal areas, was that local authority members wanted to be allowed to serve on the harbour boards for one term and that no local authority representative could serve for more than one term. I believe the Minister is on top of his brief when he says that he has consulted more councillors than I have. I will withdraw these amendments at this stage and bring them back on Report Stage, and in the intervening period I will go back to those councillors. I will be able to give a more robust argument and the Minister might consider it then. I will not delay the Minister any further and I thank him for his time and his patience.

Deputy Paschal Donohoe: I thank the Senator for doing that. Reference was made to

my patience but it is just me in front of the House, respecting the work done by Senators and justifying what I believe is the right approach to take for the Bill. I look forward to spending some hours with the Senator continuing this work on Friday, if he feels it to be appropriate. I appreciate where he is coming from. The Bill will make a difference by allowing a wider group of councillors to have more powers in the operation of the ports. It gives new balance to the area of port management and I look forward to having the opportunity to debate that matter further with the Senator.

Amendment, by leave, withdrawn.

Amendment No. 40 not moved.

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

Senator Jim Walsh: With regard to the section, the reference to excluding elected or co-opted members of local authorities from serving on the board of the port company is an anomaly. If the Minister or I served on a local authority and it took over the assets of a port company, we would have a direct say on the port activities through debating in the council chamber. However, if the local authority takes over the shares of the port company and becomes the shareholder, the Minister and I, as local authority members, would be debarred from serving on the board of the company. I do not see the logic in making a distinction between them. Both operations are port operations. In one instance we have a direct say and in the other instance we are not allowed participate on the board. I have always held the view that local authority members should not be barred from any board if they qualify under other criteria to be board members. That a person is a local authority member should not impinge on his or her qualifications and bar him or her from becoming a board member. If the local authority takes over the assets, councillors would be able to be directly involved, but if it takes shares in the company, the local authority members are excluded from any involvement, which is anomalous. The Minister said he would deal with this. I asked earlier if the concerns could be addressed along with Senator Gerard P. Craughwell's amendments which have been withdrawn. This is why I raise it on the question on the section.

Deputy Paschal Donohoe: I do not believe there is an anomaly at all. The Senator will have to explain it to me again. I wish to make it absolutely clear that this Bill will provide for appropriate separation between the board of directors and local authority members while giving local authority members more say in the oversight of the port company.

Senator Jim Walsh: That is not the case. For example, if Drogheda Port is taken over by Louth County Council and the ministerial order signs the assets over to the council, the corporate veil is removed and the port is no longer a legal entity separately. The assets are now owned by Louth County Council. The port continues to function in every respect as if it were a company and the elected members of Louth County Council have a direct say and input into the activities of the port.

Senator Pat O'Neill: They are not running it.

Senator Jim Walsh: They will be. It is being done in Wexford. It will be a shareholding by the local authority like any asset held by the local authority.

Senator Pat O'Neill: They are not managing it.

Senator Jim Walsh: It will be subject to debate on it at council level. If the council takes over shares of the company, however, the Bill does not allow the members to have similar input at board level. I do not see the logic in that.

Deputy Paschal Donohoe: The logic is clear. It is a company.

Senator Jim Walsh: Effectively it is the same operation.

Deputy Paschal Donohoe: No, it is not.

Senator Jim Walsh: Of course, it is.

Deputy Paschal Donohoe: It is not. The difference is that if it is incorporated as a company, it is a company under company law.

Senator Jim Walsh: I am talking about the operation of it. The Minister is talking about the corporate structure, which I agree with.

Deputy Paschal Donohoe: No. If it is integrated into the local authority, it is no longer a company, there is no board of directors and the local authority members will have their say in the operation of it. We have agreed to that. As for the reason, if it is then brought in as a company, there would be directors of the company. Does the Senator agree with me on that point?

Senator Jim Walsh: Yes.

Deputy Paschal Donohoe: My point is that it would not be appropriate for councillors to be directors of that company.

Senator Jim Walsh: Why?

Deputy Paschal Donohoe: It would lead to a position in which the accounts of that company would be laid before the local authority of which those directors were members. That is why.

Senator Jim Walsh: While I do not normally disagree with the Minister and normally follow his logic, that is totally illogical. Effectively, the Minister is stating that because the accounts of the company will come before the local authority, members somehow should not be directors of the board. It is the same situation with shareholders, in that a company might have many shareholders some of whom may well be directors of the company, but the accounts will come before the shareholders at an annual general meeting. It is absolutely no different, which is why I do not perceive the logic of what the Minister is doing.

I will state directly to the Minister what I think it is. While it probably is not his doing, I have found previously, even when Fianna Fáil was in government, that there is a prejudice within Departments against having local authority members participate on boards of any companies. I merely state that if a member of a council has the qualifications that would make him or her an eminently qualified director of that company, wherein he or she would be in a good position to make a positive contribution to the development of the company and fulfil his or her fiduciary and other responsibilities as a director, there is no reason for debarring that councillor simply because he or she is a member of a local authority. That ideology has flowed into this legislation, as it does across Departments in other legislation. I also have witnessed this happen in respect of other legislation. However, how many times do companies that are subject to a

Department have the Secretary General of that Department as a director? While the argument the Minister has made to me about debarring the local authority members is never made, this is fairly common practice. I believe that in this provision, individuals are being discriminated against simply because they are local authority members. I have never agreed with that and do not believe it is good enough.

However, what exposes the situation is the comparison between this scenario and council members having a direct say in the operation of a port. I presume that even though the operation of that port will continue as part of the assets of a local authority, the port will operate as an unregistered company wherein the accounts will be ring-fenced. I am sure the revenues coming in will not be bumped into the local authority and the expenditure will not be bundled into some other side of the local authority. Surely there will be a separate account to ascertain how that particular operation is performing and members will have a direct input into that operation. However, if the Minister chooses to secure not the assets but the shares, then they are not allowed to have any say in the operation itself. These two things simply do not sit together logically. That is all.

Deputy Paschal Donohoe: I believe they do.

Senator Jim Walsh: I am afraid we must agree to disagree.

Deputy Paschal Donohoe: Of course, we can agree to disagree. It also is worth stating to the Senator that I set the policy in these areas. While I listen to what my officials say, ultimately it is my responsibility and it is a responsibility I take extremely seriously. Any comment in this regard always should be addressed to the Minister with whom the responsibility sits. I am making this decision-----

Senator Jim Walsh: I am not addressing them to the Minister.

Deputy Paschal Donohoe: The Senator is addressing them to me. I am making this decision because I believe it is the right thing to do and I am standing by the Bill and the way in which it has been drafted. The reason I do is because there is a fundamental difference between a local authority member being a director in an organisation, which, of course, they are entitled to be, and being a director of an organisation that is inside the local authority of which they are member.

Senator Jim Walsh: I did not say that.

Deputy Paschal Donohoe: The potential conflict of interest to which I draw the Senator's attention is a scenario in which the financial accounts for a commercially-trading company are being laid before the local authority of which the director is a member. To my mind, this clearly is a potential conflict of interest, which is why I believe this is the correct approach to take. As the Senator will be aware, it is the same approach that is taken to the Senator as a Member of the Seanad, to Members of the Dáil and Members of the European Parliament. If it is the right approach for the Senator, why is it the wrong approach for a councillor?

Senator Jim Walsh: I actually do not believe it is the right approach. There are people in these Houses who are directors of fairly important companies who have decisions to make in that regard and who make a contribution to those companies. I believe that if any Member who is a public representative in any capacity has the expertise, then this blanket exclusion of people in any sort of representative role is fundamentally wrong. As I stated, it does not apply to public

servants. One can go through the list of companies to establish how many public servants, particularly Secretaries General, are on boards of companies that would be subject in some sense to Departments and, in fact, to the particular Department of the Secretary General in question. I do not believe the Minister's issue in respect of conflict stands up in that regard. However, I take it the Minister and I disagree on this point and I will oppose the section.

Senator Pat O'Neill: I understand from where Senator Jim Walsh is coming and how local authority members, that is, elected representatives on the councils are people one can trust. However, in this section of the Bill I believe the Minister also is trying to protect them from perhaps being accused of having a conflict of interest. It is better, therefore, to have this provision in legislation in order that they are protected. While I understand the Senator's perspective, the Minister is doing the right thing in this regard. He is trying to protect local authority members from being accused of having a conflict of interest. As Members have witnessed the controversy in the past ten days about councillors getting into situations, it is important that the Minister should protect councillors in this way.

Question put and agreed to.

Sections 43 to 52, inclusive, agreed to.

SCHEDULE 1

Question proposed: "That Schedule 1 be Schedule 1 to the Bill."

Senator Sean D. Barrett: Schedule 1 reads "COMPANIES TO WHICH AN ORDER UNDER SECTION 8 OR 28 MAY REFER" and I see it as death row. Section 8 provides for the transfer of shareholdings of a company, while section 28 provides for the transfer and dissolution of a company. In examining the ports listed, I believe there is no need to have Drogheda there. It made half a million euro and its volumes have returned to pre-recession levels. Members have heard the case for Galway Port which made €450,000 and has a profit of approximately €3,000 per ship. New Ross Port definitely needs repair and if I have the numbers to hand, I believe it lost €333,000 in the last year. While Wicklow Port is going reasonably and is breaking even, then there is Dún Laoghaire Harbour which has been in trouble since the departure of Sealink. I believe it lost €3.5 million in the three years from 2011 to 2013. It needs to examine whether it can turn itself into some kind of marina and I gather a planning decision from An Bord Pleanála is imminent. I believe three of the five ports listed, namely, Drogheda, Galway and Wicklow, do not need to be under the threat of transfer and dissolution of company. Bear in mind that this is an industry in which the port in Larne is in the private sector and presumably makes a profit. Greenore Port is also in the private sector and presumably those who put their money into it are satisfied, or at least they do not come to the House seeking assistance. Cork Port made €1.7 million, Shannon Foynes Port made €2.8 million, Waterford Harbour made €1.5 million and Rosslare Harbour made €1.4 million. That is a total of €7.4 million; therefore, this is a business.

Two ports will require radical change and I believe three can survive. I appreciate what the Minister said about the 18-month period, as it allows for the possibility of them turning around. The two that are in trouble deserve the attention of the House, the Department and anybody who can help to envisage a future for Dún Laoghaire and New Ross harbours, but some of the others are trading successfully. Is their development potential reduced by the fact that there is this threat over them? We have heard what the Galway people have said. I have heard people

say the same about Drogheda and Wicklow ports, where there are 70 ships compared with nine in Arklow Port, which is under Wicklow County Council. Is this too draconian a place for all five harbours? Does having that death row list accomplish anything? In other words, if they are not careful they will be moved into local authority control. Those were my thoughts in framing that amendment. The outlook is quite grim if one is under sections 8 or 28, although it states that it “may refer”. I am not sure how many ports would wish to be there.

Deputy Paschal Donohoe: Death row is quite a bleak description for somebody who has been lauding the ability of ports to trade successfully, although the Senator acknowledges the challenges that some of these ports face. It is correct that they face challenges and I am very familiar with them.

The Senator will not be surprised to hear that I disagree with him on the amendment. I also disagree with any suggestion that this is death row for these ports. In fact, it is the contrary. This is the first time there has been a policy that recognises the role of regional ports. If one is working in, a director of or doing business with one of these ports, there is now a national policy that recognises the key role of national ports, which we discussed earlier, and acknowledges that there is also a role for regional ports. The allegation could be made that this is about big ports getting bigger, but we are saying very clearly that there is a role for regional ports and, within that, the appropriate governance structure for them is inside the region within which they are located. That is not to say that they do not face significant challenges.

Earlier, Senator Jim Walsh described the changes he has seen in the ports with which he is familiar. I have also talked about the type of changes that are taking place within the overall sector. The Schedule, as the Senator knows given his skill in this area, cuts to the core of national ports policy. If we believe different ports have different roles to play, as I do, the characterisation in this Schedule is fundamental to this. Were we to accept the Senator’s amendment, as currently drafted, these ports would sit outside of national ports policy and some of the challenges they face and the work they must do could get even more difficult outside a Bill which seeks to enact the regional dimension of national ports policy.

Senator Pat O’Neill: The Bill is giving them a ministerial pardon from death row at this stage.

Senator Sean D. Barrett: I thank the Minister for his patience and this fine discussion on ports policy. I would not wish to be under section 28, but in the context of the harmonious discussion we have had, I will not press the matter. If the provisions in section 28, which provide for the transfer and dissolution of a company, were in the legislation referring to Trinity College Dublin, I would be worried. I have less optimism about local authorities taking over ports than the Minister, but he is entitled to be optimistic. I will not press the matter, but that is the background to it. Death row is a dramatic description. Obviously, I hope they will live and thrive and never come under county council control. However, we will not go there; we have been there for approximately three hours.

Question put and agreed to.

Schedules 2 and 3 agreed to.

Title agreed to.

Bill reported without amendment.

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

Senator Pat O'Neill: On Friday, 18 December.

Report Stage ordered for Friday, 18 December 2015.

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

Senator Pat O'Neill: At 10.30 a.m. tomorrow.

The Seanad adjourned at 7.50 p.m. until 10.30 a.m. on Thursday, 17 December 2015.