DÁIL ÉIREANN

AN ROGHCHOISTE UM THITHÍOCHT, PLEANÁIL AGUS RIALTAS ÁITIÚIL

SELECT COMMITTEE ON HOUSING, PLANNING AND LOCAL GOVERNMENT

Dé Céadaoin, 26 Meitheamh 2019

Wednesday, 26 June 2019

The Select Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Mick Barry,	
Pat Casey,	
Shane Cassells,	
Eoin Ó Broin.	

* In éagmais / In the absence of Deputy Darragh O'Brien.

Teachta / Deputy Maria Bailey sa Chathaoir / in the Chair.

Local Government (Rates) Bill 2018: Department of Housing, Planning and Local Government

Chairman: Apologies have been received from Deputies Darragh O'Brien and Fergus O'Dowd. Deputy Shane Cassells will be substituting for Deputy O'Brien.

This meeting has been convened for the purpose of consideration by this committee of the Local Government (Rates) Bill 2018, which will be preceded by a briefing from officials from the Department of Housing, Planning and Local Government.

At the request of broadcasting and recording services, members and visitors in the Public Gallery are requested that for the duration of the meeting, mobile phones be turned off completely or switched to airplane safe or flight mode, depending on their device. It is not sufficient to put phones on silent mode, as it maintains a level of interference with the broadcasting system.

Item 1 on the agenda is a briefing on the Local Government (Rates) Bill 2018. On behalf of the committee, I welcome to the meeting, from the Department of Housing, Planning and Local Government, Mr. Barry Quinlan, Ms Lorraine O'Donoghue, Ms Sinéad O'Gorman, Ms Sheila McMahon, Mr. Paul Hogan and Ms. Patricia Curran.

Before we begin, I wish to draw the attention of witnesses to the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I call on Mr. Barry Quinlan to make his opening statement.

Mr. Barry Quinlan: I am pleased to be here this morning to assist the committee in its consideration of the Local Government (Rates) Bill 2018, in particular, to discuss proposed Report Stage amendments. This is a very important piece of legislation and I thank committee members for their time and consideration.

I am joined by a number of colleagues: Ms Lorraine O'Donoghue and Sinead O'Gorman, who have been working hard on the rates Bill, from the local government finance section in the Department; Ms Sheila McMahon, who is here to cover the Residential Tenancies (Amendment) Act amendments; and Ms Patricia Curran and Mr. Paul Hogan, who are here to cover the planning amendments. As requested, we have provided advance briefing on these Report Stage amendments to the committee.

Commercial rates are a critical source of funding for local authorities, accounting for €1.51 billion, or 32%, of the €4.67 billion expenditure budgeted in the sector in 2018. The overall aim of this rates Bill is to modernise and improve the rates regime. In this regard, the drafting process is complex and of necessity, requires significant ongoing consultation with key stake-

holders, particularly local authorities and the valuation office.

I might just mention that in terms of important provisions not subject to amendment, the Bill provides for the introduction of rates alleviation - waiver - schemes by local authorities, subject to ministerial approval, which can support important policy objectives contained in local, economic, community and land use plans. The Bill also includes important provisions for collection and enforcement by local authorities.

The Bill was passed on Second Stage in the Dáil on 30 January, at which time a number of amendments were signalled for introduction on Committee Stage. Report Stage is provisionally scheduled for 3 July. Committee Stage consideration will take place immediately after this briefing session. The Minister of State, Deputy Phelan, will be in attendance and it will present an opportunity to discuss important amendments such as those related to the Valuation Acts. The changes are required to ensure the ongoing national revaluation programme will remain revenue neutral for the local authorities, taking account of the revaluation of utilities on a global basis and the impact of successful appeals to the Valuation Tribunal. In that context, an amendment to allow the Commissioner of Valuation share the preliminary valuation of Irish Water with the local authorities is time critical to facilitate the calculations for 2020 budgets in local authorities.

A small number of important but mainly technical amendments were not ready for tabling on Committee Stage, but it is intended to introduce them on Report Stage. There will be a number of further amendments relevant to the Bill. Furthermore, amendments to the Planning and Development Acts, the Residential Tenancies Act 2004 and the Residential Tenancies (Amendment) Act 2019 are proposed. Amendments to the rates regime are proposed to enhance notification procedures and provision for additions and amendments to the valuation list to be immediately effective for rating purposes, given that there is currently a delay. A possible further amendment remains subject to drafting.

An amendment to the Residential Tenancies (Amendment) Act 2019 is required to overcome a risk that might allow the definition of an "owner of student accommodation" to be construed in a manner that could circumvent the intention of the Act. The amendment is required prior to the imminent planned commencement of the student accommodation provisions. Technical amendments related to the timing of the commencement of the student accommodation provisions will also be required. An amendment to the Residential Tenancies Act 2004 will be required to provide an alternative route for protected structures to qualify, further to substantial refurbishment works, for exemption from rent increase restrictions in rent pressure zones, RPZs, because they would be unlikely to qualify under the provisions recently enacted in the 2019 Act. The objective is to eliminate any potential negative impact on the planned refurbishment of protected structures in the rental sector.

An amendment will be required to the Planning and Development Act 2000 to address transitional issues following the establishment of the Office of the Planning Regulator. It is a time-critical amendment in the context of the ongoing development of regional spatial and economic strategies, RSESs, by regional assemblies. A further minor technical amendment will be proposed to underpin the special provisions for Cork city and county councils to extend the period for review of their development plans to incorporate RSESs into their plans. A possible amendment to the Local Government Act 1998 to reinsert a provision inadvertently deleted which empowers the Exchequer to pay into the Local Government Fund is no longer deemed to be required following further legal advice on the matter.

I thank the committee. We look forward to the discussion. We have provided some more detail in the briefing note on the proposed amendments.

Deputy Eoin Ó Broin: I thank Mr. Quinlan and our other guests for their attendance. While I do not mean to criticise anyone, there is a certain degree of dissatisfaction among committee members. Yet again, we have been notified of Report Stage amendments that we will not have a chance to scrutinise in committee. I appreciate that the idea in Mr. Quinlan appearing before the committee is to fill in at least part of the gap, for which we are grateful, but the Minister of State, Deputy Phelan, should hear loud and clear the view of the committee that it would have been much better if the amendments had been brought through the full and proper process of Committee and Report Stages. Nevertheless, we have always been flexible as a committee and do not wish to stand in the way of important amendments.

I have concerns about two of the proposed Report Stage amendments and would like to hear more about them. While the amendments related to student accommodation and rates seem to bebroadly sensible, my concern is with the protected structures and RPZs. If I understand the problem correctly, it is that the building energy rating, BER, requirements included in the new definition of "substantial refurbishment" cause a difficulty in the case of pre-1963 properties because they are exempt from BER upgrades. Would it not have made more sense to simply remove the provision of a new definition of "substantial refurbishment" from the criteria for pre-1963 properties to be eligible for substantial refurbishment? Was this considered, or have I misunderstood the position? Why is the solution to the problem a requirement to have been outside the rental market for 12 months rather than 24?

I also have a concern about the RSESs. We will again give a significant power to the Minister. Although I do not want to return to the debate, the purpose in creating a planning regulator was to shift the overconcentration of power from the hands of the Minister and the Department, to which the Mahon tribunal had rightly pointed. In the case of the current RSES processes, however, the amendment would allow the Minister to issue a direction to the regional assemblies to take such specified measures as he or she might require for the plan. That seems to be another significant shift in power towards the Minister and an undermining of the regional and local authorities. What is Mr. Quinlan's response? I am open to supporting both amendments on Report Stage, but I struggle with these two questions.

Deputy Pat Casey: On global revaluations, the Valuation Office is carrying out the valuation of Irish Water and there have been some indications of how the valuation will be broken down for each local authority. I have heard that population size might be used in calculating the figure. I have also heard indications that, by coincidence, the valuation may end up being the same as the current total valuation of Irish Water. That will be interesting if it turns out to be the case. If the figure is divided by population, counties such as Wicklow will lose out significantly. In fairness, Wicklow County Council rated all of its water infrastructure in its books, whereas I understand a number of councils did not rate any of their water infrastructure. Is there a question mark over the current valuation of Irish Water, given that some councils did not carry out a valuation? When the Valuation Office gives its valuation of Irish Water, who will decide how to apportion it and how will it be done? If it is apportioned according to population size, what will happen to the likes of County Wicklow which will probably lose approximately €1.6 million in commercial rates? What involvement will we or the Government have in the process, or who else will decide how it is to be apportioned after the Valuation Office provides the valuation?

Deputy Shane Cassells: I am glad to participate in something that is very important for so many businesses throughout the country. As Mr. Quinlan noted, €1.5 billion is raised in com-

mercial rates. It is the most significant contributor in the running of local councils throughout the country. I echo what Deputy Ó Broin said. I appreciate that everything is time sensitive, but what is happening with the Bill before us is similar to what happened in the case of the Cork city Bill, when an amendment was proposed on Report Stage to provide for municipal councils across boundaries. However, it failed because it was such a late addition and there was not a proper debate on it.

I thank Mr. Quinlan for the briefing. He raised issues with the Planning Act and RSESs and I would appreciate it if he fleshed them out. In time regional assemblies will have more clout than councils, which will have a significant impact on the hierarchy of plans ranging from the national development plan to regional strategies and those of councils. As we are discussing a Bill on rates, I would like to flesh out what the impact will be.

Mr. Barry Quinlan: Ms McMahon will reply to the question on protected structures.

Ms Sheila McMahon: The issue is that the description of substantial works relating to the improvement in the building energy rating or BER inserted in section 19 of the 2019 amendment Act were not capable of being applicable to protected structures. They apply to pre-1963 structures but it is just the protected structures within that and this has to do with a technical issue. The BER system emanates from an EU directive and the regulations were made under the 1972 Act. That means the regulations can only be applied as a requirement as opposed to an optional facility. They cannot be used like that. It turned out that the only way protected structures could qualify for the exemption would be either more than 25% of the property was refurbished or they met all three of the exemptions relating to adaptation for disabled people, an increase in the layout and an increase in the number of rooms. Effectively, that would have meant it would have been very difficult for protected structures to quality under the grounds of the change in the substantial refurbishment works. To provide an alternative way in which this subset of buildings in the rental sector could qualify, so that there would not be a deterrent effect on doing needed refurbishment work, this amendment is being introduced whereby if it is a case that there has not been a tenancy in the building for 12 months prior to the new tenancy that commences after the works, there will be an exemption from the application of the 4% rent increase restriction in the rent pressure zones, RPZs. This is an alternative. It will still be two years for every other building.

Deputy Eoin Ó Broin: Does the amendment only deal with protected structures rather than the generality of the pre-1963 structures?

Ms Sheila McMahon: Yes. Protected or proposed protected.

Deputy Eoin Ó Broin: Does that mean the requirements under the recent amendment to legislation will not apply at all but the 12-month rule will apply?

Ms Sheila McMahon: They will apply but what is not capable of being satisfied by a protected structure is the one related to seven point improvement in BER. Even if they do improve it by seven points, legally they will not be deemed to have done so. The four and five, which is either the two or three point improvement, along with two other, either permanent changes to the internal layout, an increase in the number of rooms or having disability access, the two relating to BER improvements of either two or three point ratings, in association with two out of those other three, is not capable of being-----

Deputy Eoin Ó Broin: If the property has not been let for the previous 12 months, what

are the other requirements?

Ms Sheila McMahon: That on its own can qualify. Just as a non-protected structure, if it has not been let for the previous two years, that on its own can qualify.

Deputy Eoin Ó Broin: I get that. So none of the other stipulations of substantial refurbishment would apply to such a property. The only criterion would be if it had not been let for the previous 12 months, it would then be exempt.

Ms Sheila McMahon: Yes.

Deputy Eoin Ó Broin: Is that because it is not just that the BER is a legal requirement but there are issues relating to the disabled access and floor space because of the protected nature of the structures? Is that the rationale for doing so?

Ms Sheila McMahon: We understand that it is very difficult and virtually impossible for the owner of a protected structure to carry out the type of works that would qualify under the other routes because of the strong controls over the changes one can make to those buildings. The objective is still, though, that those buildings that are not in good condition would be improved to make them more comfortable for tenants.

Deputy Eoin Ó Broin: There is no statutory definition of what a substantial refurbishment is for those properties.

Ms Sheila McMahon: Sorry, it would not be correct to say it like that. For any dwelling, the exemption is available if there has been no tenancy in the preceding two years to the one that is commenced just in terms of the initial rent setting but after that the restrictions will apply.

Deputy Eoin Ó Broin: Sure.

Ms Sheila McMahon: It is just in the case of protected structures that that will be one year as opposed for two years and, again, only for the initial rent setting if this amendment is passed and then the 4% restriction will apply to subsequent rent reviews.

Deputy Eoin Ó Broin: I thank Ms McMahon.

Mr. Barry Quinlan: I ask Mr. Hogan to address the questions on planning and the RSESs posed by Deputies Ó Broin and Cassells.

Mr. Paul Hogan: The provision seeks to address an interim situation that arises. Up until 3 April of this year what is envisaged is a power that the Minister has always had. Up until now the Department, on behalf of the Minister, has been fully engaged in all three regional spatial strategy processes. All three processes are well advanced. In fact, the east and midlands regional strategy is due to be published on Friday. The process is that well advanced and is almost complete.

The problem is that the legislation that we now have has made the involvement of the Minister in the process at this stage subject to the involvement of the Office of the Planning Regulator, OPR, from the outset in the process, which can never be achieved because we cannot turn the clock back. This arises because this legislation was published in 2016 and enacted last year. It was always envisaged that the OPR would be in place before the RSESs kicked off but the office was not in place and it did not happen like that. They have travelled down the road and the regulator has come in pretty much three quarters of the way through all of the processes.

As I said, the legislation envisages the regulator being given notice, making submissions and being very clear about what the issues are and what his or her office wants to see done all the way through and then, on foot of that either happening or not happening, making a recommendation to the Minister at the very end for the Minister to act. The Department, on behalf of the Minister, has been involved to date in line with legislation that was there until 3 April. This amendment simply seeks to put a once-off interim arrangement in place for the current round of RSESs, all of which are at a slightly different stage, and simply enable the process, as it was prior to 3 April, to be concluded as it would have been. However, there is one new addition, which enables the Minister to invite the regulator to issue an advisory report to him or her. That is seen as something that would enable at least the advice of the regulator's office to be brought in to the current process. It is a new provision but it gets us over the problem of the regulator not having been involved all of the way through and having things on the record that he said. There is an issue about legal consistency where one cannot have someone coming in at the 11th hour raising new issues or whatever. The ability to involve the regulator is the only new element, otherwise it is just putting the clock back to prior to 3 April. The regulator's office is only recruiting staff now so the reality is there will not be a significant capacity there to undertake what was envisaged even if we could set the clock back.

Deputy Shane Cassells: Why do it in the first place? Why place this on such a footing if, as Mr. Hogan said, the regulator's office does not have the capacity and the east and midlands regional strategy will be published on Friday?

Mr. Paul Hogan: It has been through a process. It is concluded.

Deputy Shane Cassells: I know that.

Mr. Paul Hogan: There are three regional strategies. With all three, as it stands, there is a legal gap where there is no provision for anyone to oversee the conclusion of the process as envisaged in the legislation. The only remedy is judicial review, which would be a far more difficult and complex remedy.

Deputy Eoin Ó Broin: For the Minister?

Mr. Paul Hogan: For any party.

Deputy Eoin Ó Broin: Obviously, the reason one wants to do this is in anticipation or in case of something in one of those spatial plans that the Minister or the Department feels is not consistent with the national planning framework, NPF, or other Government strategies.

Mr. Paul Hogan: Yes.

Deputy Eoin Ó Broin: If one does not do this, is Mr. Hogan saying that if one of the spatial strategies is not consistent in the view of the Minister or the Department the only recourse for the Minister would be a judicial review?

Mr. Paul Hogan: Exactly.

Deputy Eoin Ó Broin: Does Mr. Hogan anticipate any such gaps between what he expects to be in the plan and the NPF and existing Government strategies?

Mr. Paul Hogan: It is quite possible, yes. The way it works is once the strategy is published, the Minister has a period of time in which to form a view as to whether or not the strategy complies with national planning policy and guidelines, etc. I do not want to prejudge the

ability of the Minister to make that decision but there are issues in respect of some elements of the soon-to-be adopted plan in the east and midlands. There are also issues ongoing in the north and west, and the south, that may not be resolved by the end of the process but we cannot anticipate how that will go.

Deputy Pat Casey: At this stage, I am slightly confused. The purpose of this is to allow the planning regulator to make a report.

Mr. Paul Hogan: It is simply a timing issue to ensure that someone has the responsibility to oversee this process. As it stands, the way the legislation is, the regulator cannot get involved in the process and the Minister's involvement has effectively been curtailed since 3 April. No one is responsible at present. Basically, that is for the lack of a transitional arrangement. This is a transitional arrangement given that we are well advanced on the three and that was not envisaged when the legislation was drafted.

Deputy Eoin Ó Broin: It is more than a timing issue. It is quite a significant provision. Clearly, it is a provision that was intended in the original legislation that was published in 2016. So that we are clear, if the Minister or the Department is concerned that the content of one of these plans is a problem, this gives the Minister an avenue to resolve that problem in line with the national planning framework and Government strategies.

Mr. Paul Hogan: Yes.

Deputy Eoin Ó Broin: The Minister would then request the planning regulator to go in, produce a report and make recommendations to the Minister as per the legislation, and the Minister would then be legally entitled to act to say to the regional authorities to amend their draft plan in line with Government policy. Am I wrong in that?

Mr. Paul Hogan: It is not subject to the regulator. It is an advisory role because the regulator has no history with the processes to date.

Deputy Eoin Ó Broin: My point is, because the Minister is only able to - I will use the word "intervene" but Mr. Hogan might have a more polite word - intervene in this process through the office of the planning regulator, this is the mechanism through which the Minister and the Department is allowed to intervene if the Minister or the Department feels there is a problem with one of those spatial strategies.

Mr. Paul Hogan: Yes. Legally and legislatively, it is easier to revert to the situation as it was for a whole variety of reasons. That was the advice we got but we were keen also to ensure there was some role for the regulator given that was what the legislation envisaged.

Deputy Shane Cassells: On that point from Deputy Ó Broin, does the Minister - this is the key point - invite the regulator to conduct that report? Is that on the basis of the Minister and the Department not being happy with what is positively published?

Mr. Paul Hogan: No. It would be prudent to seek the advice-----

Deputy Shane Cassells: Regardless.

Mr. Paul Hogan: -----irrespective. The Minister has to form a view and there could be issues that may or may not be noticed or picked up. These are complex documents.

Deputy Shane Cassells: What weight does the report conducted by the new office of the

planning regulator carry? Is it simply an advisory document?

Mr. Paul Hogan: It is advisory in the transitional arrangement. Ultimately, the legislation, as enacted, for all future regional strategies will remain. In the future scenario, it will be a much more binding set of advice because it is based on involvement from the very beginning of the process that is followed through, and if not taken, needs to be reported on to the Oireachtas.

Deputy Eoin Ó Broin: In the planning regulating legislation, it is not binding. It is only that if the Minister chooses not to accept that advice, he or she has to lay on the record of the Dáil the reasons.

Mr. Paul Hogan: Yes.

Deputy Eoin Ó Broin: In no sense is it binding. It is only that the Minister must explain why he or she is not accepting it.

Mr. Paul Hogan: Pretty much, yes.

Chairman: Are there any further questions?

Deputy Shane Cassells: By when must the full adoption of the regional strategies happen?

Mr. Paul Hogan: At a meeting on 3 May, the Eastern and Midland Regional Assembly agreed that its strategy would come into effect on 28 June. I think the Minister has a period of six weeks to form a view. Prior to 3 April, it was four weeks. The six weeks is to allow for the input of the regulator should it be sought.

Deputy Shane Cassells: Must it be adopted within six weeks of Friday next?

Mr. Paul Hogan: No.

Deputy Shane Cassells: Apologies. The Minister has the opportunity to-----

Mr. Paul Hogan: The Minister may issue a direction if he so requires.

Deputy Shane Cassells: Okay. At the end of that six weeks, if the Minister states he is reverting to the office for a view, does that extend it even further?

Mr. Paul Hogan: No.

Deputy Shane Cassells: The Minister must get the view within the six-week period.

Mr. Paul Hogan: That is it. It was four weeks when there was no regulator. The period of six weeks is to allow for that additional reporting.

Deputy Shane Cassells: Okay.

Chairman: Deputy Casey?

Deputy Pat Casey: I do not know whether or not I am okay with it. If everything was in sync and there was not the timing issue - picking the Eastern and Midland Regional Assembly strategy as it is the one that has been adopted - and if everything was correct, what would have happened that at this stage? Would it have gone to the planning regulator who would have made a report to the Minister? Would Mr. Hogan take me back through the sequence that would have happened if the timing of the legislation was correct, and what is the difference?

Mr. Paul Hogan: Instead of the Department making the submissions from the outset, the regulator's office would have been making the submissions and there would have been back and forth with the regulator. They would have been keeping the Department informed, but the primary point of contact and assessment is the regulator's office. Let us say we had got to this stage and the regulator had been involved from the beginning. From Friday, the regulator would be in a position where he would then report back to the Minister based on whether or not his recommendations have been taken on board and whether or not he considers the strategy has complied with national and other guidance, and would likewise report to the Minister in the four-week period, and the Minister then would have six weeks from the beginning of the process to act, that is, another two weeks on top of the four weeks.

Deputy Pat Casey: Basically, all we are doing is adding an extra two weeks to allow the regulator to overview the regional strategy that it conforms to all national strategies.

Mr. Paul Hogan: Yes.

Deputy Pat Casey: Realistically, that is all this legislation does.

Mr. Paul Hogan: That is the whole effect of it if we are starting now but the legal reality is that the regulator has not been involved all the way to date.

Deputy Pat Casey: If the regulator has an issue with the plan, what happens then?

Mr. Paul Hogan: The Minister may form a view. If the Minister agrees with the regulator, the Minister is then empowered to issue a draft direction to the regional assembly in the first instance. The regional assembly then has a period of time to consider the draft direction and make a response. Then there is a further process where, as before, the Minister considers the report of the director of the regional assembly and decides on foot of that either to make the direction or to invite an independent report to be done. Then there is a period of time for an independent report, if need be. Finally, on foot of that, the Minister makes a final decision.

Deputy Pat Casey: The Minister is basically acting on the planning regulator's advice to give direction to the regional assembly. It is similar to a county development plan-----

Mr. Paul Hogan: It is exactly the same.

Deputy Pat Casey: -----where there is a ministerial direction and it goes through a process. It is the same process taking place.

Mr. Paul Hogan: Yes, it is the same process.

Deputy Eoin Ó Broin: On the student accommodation provisions, which I support, is the issue that the definition of an "owner" in the Bill we passed may allow the likes of a shell company, for example, to get some kind of permission and then restructure itself so that the terms of the original Act would not apply? Can the Department give us a little more information about the kind of loopholes that are available? I think I understand it but I want to make sure I understand it properly.

Ms Sheila McMahon: It concerns the use of lessors to issue the licences to occupy to the students as opposed to the owners. The definition was overlooked in the sense that when it went into the draft provision, the drafter explained to me that he was using a temporary definition and that he had intended to go back and consider further whether it was certain there were no ways of circumventing it. However, other work intervened and he did not get around to it.

Deputy Eoin Ó Broin: Can Ms McMahon explain in the most simple terms possible how that loophole could work?

Ms Sheila McMahon: For example, the owner of the accommodation could set up a separate company and give it a lease. If that lease was for a term of less than five years, that would mean it would not fall within the definition in the legislation and therefore the provisions would not apply.

Deputy Eoin Ó Broin: Could the same loophole apply in other relevant legislation such as with co-living or to other recent innovations with leased properties? Has anybody checked whether the potential loophole that has been identified in the drafting also exists elsewhere?

Ms Sheila McMahon: This provision is in isolation because it is dealing with licensed student accommodation and the Residential Tenancies Acts specifically do not apply to licensed accommodation. This is the only type of licensed accommodation that would be encompassed by it and it is very specific to student accommodation.

Deputy Eoin Ó Broin: Is Ms McMahon certain that type of loophole could not apply in a co-living development, for example, as opposed to student-specific accommodation?

Ms Sheila McMahon: To the best of my knowledge, they would not come within the legislation in any event because there is no exclusive occupation. The Residential Tenancies Acts only apply to tenancies and this is the first exception to that by the application to the student-specific accommodation occupied under licence as well as occupied under tenancy.

Deputy Eoin Ó Broin: The Residential Tenancies Board stated in this committee that there would be certain circumstances, even before this legislation was introduced, where certain kinds of licences would have entitled a licensee to claim exclusive occupation and, therefore, would have fallen under some of the provisions of the Residential Tenancies Acts. That has been its view for some time.

Ms Sheila McMahon: If it is in fact a tenancy, although it is claimed by one of the parties to be a licence, it will look beyond what it is and then if it was a tenancy, the legislation would apply. Sometimes the claim will be made that something is a licence when in fact it is a tenancy but if it is a genuine licence, the legislation will not apply.

Mr. Barry Quinlan: If that covers everything on the planning and the Residential Tenancies Acts, I will address rates and Irish Water valuation. The first valuation of Irish Water is under way. Other valuations of the ESB and EirGrid will also be undertaken this year. On the Irish Water evaluation, the Commissioner of Valuation is independent and that process is ongoing. We have engaged with the commissioner and local authorities to ensure the greatest possible understanding but the figures are not yet available. The preliminary valuation will be on 18 July and the Minister will be notified of it. Local authorities would not normally be notified but that is addressed in one of the amendments. These are Committee Stage amendments so there will be an opportunity to discuss them with the Minister. The other two amendments are very important, particularly for local authorities that are being revalued at the same time as a global valuation. There is also a mechanism for appeals.

The revaluation will deliver a figure for each of the relevant local authorities. What that means for local authority finances is a separate process. We are engaging with the local authorities on funding and perhaps in the Estimates process later this year. Both of those processes are operating in parallel, although the valuation is taking place in an information vacuum until the

final figure is produced.

The apportionment under the Act is done by the commissioner. I understand that the previous apportionments have been done by population. Perhaps my colleagues would like to add to that.

Ms Lorraine O'Donoghue: I will add to that because I was around the last time it happened. For clarification, that apportionment is set out in section 53 of the Valuation Act 2001 and it is done by order. As Mr. Quinlan said, it is done in consultation with the commissioner but the Minister is empowered under the legislation to make the order. To date, all global utilities have been apportioned on a population basis. As Mr. Quinlan said, two other global utilities, the ESB and EirGrid, are being revalued next year. Previously, they would have been apportioned under that order on the basis of population data in the census. It has been done that way to date because it is independently verifiable, treats every local authority the same way and the data are transparent and robust. Those are the only reasons that approach has been taken. It is a decision for the Minister to make later this year but I expect the same apportionment mechanism to apply to the three utilities this year.

Deputy Pat Casey: Of the €46 million generated by Irish Water, two counties receive zero compensation. Some counties will lose out significantly on this apportionment if it is done on a population basis because until now, the valuations have been done on the basis of the assets in each county. What will happen if there is a gap between the revenues in the counties?

Before the Minister comes in, I want the witnesses to help me get my head around half of the letters of the alphabet in amendment No. 15. I assume these are related to global valuations and national valuations that happen in the same year. For the life of me, I still cannot work it out. The Department has used 11 letters of the alphabet to come up with a formula that is mind-boggling, to say the least. I presume the purpose is to protect counties which have a global revaluation and a national revaluation in the same year. If nothing is done, they would lose out on the global revaluation but I do not know why we need a formula with 11 characters in it to try to calculate it. The simple approach would be to take the complete valuation out of the equation along with its revenue, deal with what is left over and then add it all back together in order that the county would get the benefit. I have not tried to work out the figures A to K because I lost the will to live and I do not want the land the Minister in it when he comes in.

I have concerns about Irish Water and about what exactly is happening here because I honestly lost the will to continue. I got as far as F before deciding I had enough. I just could not work it out. Will the officials explain exactly how the formula should be worked out using A to K and what steps are taken?

Mr. Barry Quinlan: There are two pieces to this. The legislation will address the revaluation. Then there is the matter of the impact of the valuation of Irish Water, the apportionment and the impact that has on local authorities. That will have implications, either in its redistribution and how it operates or just the impact of the valuation on the funding that was available previously. I have signalled that this is complex legislation-----

Deputy Pat Casey: Before Ms O'Donoghue goes into that matter, will the committee have an involvement in that Irish Water process or will it be down to the commission and the Minister to decide at the end of the day how it should be apportioned? Will we have sight of it?

Mr. Barry Quinlan: I think the process, as laid out in the current Act, is that the commis-

sioner makes recommendations and the Minister then makes an order. I am acutely aware of the potential impact on local authorities, a number of which have written to us directly, but it is based on estimates of what they know. We will work out the impact on each local authority and what the valuation will be. Our understanding is it will have a significant impact on some local authorities. Others will benefit from it, but it is only when one has the table that one can see that there will be a process. I have said to the local authorities that we will have to engage on that issue. We are working with them and the Valuation Office to bring them together to try to understand the process. It would be good if the local authorities received the information at the same time as the Minister on the preliminary work. At least, we could then all work out the figures and work off the same numbers. Under statute, the commissioner makes a recommendation and the Minister then decides and makes an order.

Ms Lorraine O'Donoghue: I have a lot of sympathy for the comments made by Deputy Casey. The formula is complex and hard to explain and understand. I might get ready to bat it to a colleague. The aim of the provision is to separate the standard national revaluation, the global revaluation, and the ongoing impact of Irish Water. We have crunched the numbers in the Department. It is safe to say we made a similar assumption to the Deputy that a much simpler process was possible and to add it back in at the end, but we could not get the numbers to work. We made an actuarial assessment, but it was not working out. We reviewed the formula in consultation with the Valuation Office. The draft members have related to the Committee Stage amendment is not straightforward, but it is what is being proposed. We are as confident as we can be that it is what will work. Ms O'Gorman might address more technical matters.

Ms Sinéad O'Gorman: One of the reasons we did not separate it altogether was that if we did, it would make the process of determining the annual rate on valuation, ARV, in the annual budget very difficult. If we had pulled out the global income and worked out the rate limitation order with reference to non-global income, it would have made the ARV process very complex. Two elements of the formula were changed from what we are proposing. The portion G is to take account in the formula of possible leakage on appeal. Following a revaluation, relevant properties can appeal to the Valuation Tribunal and the valuation may be revised downwards.

Mr. Barry Quinlan: Or upwards.

Ms Sinéad O'Gorman: The original valuation has been factored in in the local authority budget and the rate limitation order amount. The amendment we are proposing is that element G in the formula account for the average percentage loss of income on appeal and that it be advised to the Minister by the Commissioner of Valuation when making the order. The Commissioner of Valuation is independent in carrying out their functions and the only party who would able to provide the data accurately. That is the first proposed amendment. The second concerns the second portion of the formula in the second set of brackets. At present, if a global valuation is revised upwards or a new global valuation such as Irish Water this year is added, it cannot be factored in in the formula. As it is, the local authority cannot get the value of it. The second portion of the formula is to allow for that buoyancy to be accounted for. If we raise the upper limit in the rate limitation order for the local authorities concerned, it means that they will be able to get the benefit of a new valuation, or if the figure for the ESB or EirGrid was to go up, it would also apply.

Chairman: Is that okay with Deputy Casey?

Deputy Pat Casey: Probably not, but-----

Mr. Barry Quinlan: There is significant consultation. Some rate practitioners from local authorities came to the Department to work on the issue. It is a complicated system.

Ms Sinéad O'Gorman: We went through all of the options.

Mr. Barry Quinlan: We worked with the Valuation Office. We are confident that amending the formula is the best way to do it. We want to tweak it to take account of appeals, the leakage that can come from them and the effect it can have on equity in the payment of rates overall. This matter is critical because of the potential inequity in revaluing in counties at the same time as there is a global change. It is an anomaly in the formula. The best way to try to fix it is to fix the formula. We have taken the advice of the people who are expert in the matter.

Deputy Pat Casey: I will not get into the nitty-gritty of it, but will the delegate send me a practical example? For the purposes of this discussion, we will allow it to go through, but I would like to examine it by the time the Bill reaches Report Stage next week. With regard to appeals, there would be leakage in the determination of an ARV. Why is it a factor in this instance? I ask the question not having studied the matter fully.

Ms Sinéad O'Gorman: A local authority which is not undergoing a revaluation process is not subject to a rate limitation order. Therefore, it can adjust its ARV upwards or downwards as it sees fit to earn a certain income from rates. The local authorities which are subject to a rate limitation order because there was a revaluation in the previous year have no flexibility and there will inevitably be a loss. They will be limited by the value in the rate limitation order and the ARV will have to be set in accordance with it. This will give them a little more flexibility. The amount in the rate limitation order will take account of a percentage for leakage and will be a little higher. It is the upper limit to which they can raise rates, but it will give them the flexibility to do so which they currently lack.

Deputy Pat Casey: Is it normally only applied after the results of appeals are known?

Ms Sinéad O'Gorman: No. Unfortunately, it can take a long time to work through appeals.

Ms Lorraine O'Donoghue: It can take a long time for appeals to work their way through the Valuation Tribunal. Sometimes the tribunal might make a ruling on the valuation of a business which might have retrospective effect. Some local authorities might find themselves having to provide refunds, assuming rates have been collected if there is an appeal. The leakage on appeal provision proposed for insertion into the formula is simply to ensure the revaluation will remains revenue neutral. The evidence suggests that when an appeal works it way through the system and the impact is fully known - this can take a number of years because of the volume of appeals - a revaluation is not revenue-neutral and that in some instances it is a considerable cost to individual local authorities. This will allow the formula to be adjusted on the basis of the expertise of the commissioner and their advice and to be factored in immediately, rather than having to deal with the consequences a couple of years later.

Deputy Pat Casey: I will tell the ratepayers in County Wicklow who have appealed not to get their hopes up that it will be done by the end of the year. It was indicated that it would be done by September.

Mr. Barry Quinlan: We are reviewing the appeals tribunal. In terms of the volume, etc. of appeals that came to us, that increased with our Reval work. A little piece of work will do that. It would be better to reduce that time so that the piece is more known. In a way we have the flexibility. If the risk of leakage on appeals is reduced because appeals are quicker then that

can be taken into account and that would be a low element of the extra ceiling that is needed. In the interim it could be a significant loss to a local authority. That is not the way the system was designed to be because the rate limitation order has been based on a figure that in actual fact may not materialise because of these appeals.

Deputy Pat Casey: I have one more question and I will leave my questions for today if the officials are willing to forward me the information I have requested.

Mr. Barry Quinlan: Yes.

Deputy Pat Casey: The potential for buoyancy in global revaluation of both the ESB and Eir network has been mentioned. Is there a chance that the Minister or the commission could use the buoyancy in local authorities to balance the potential deficit of Irish Water?

Mr. Barry Quinlan: For that a couple of things must happen. The valuation and notification must happen. Separately, the Department, in consultation with local authorities, must work out the table of effect on a local authority by local authority basis. There are a number of levers available to the Minister and the Government but first we need the figures. I am speaking about the future but it will be known very quickly. In terms of my own agenda in here, the interaction with local authorities is very high.

Deputy Pat Casey: Is there potential for the Minister to leverage a revaluation of both the ESB and Eir to balance out a potential shortfall in Irish Water's funding of local authorities?

Ms Lorraine O'Donoghue: Each utility is valued independently of every other by the commissioner and completely independently of the Department. As Mr. Quinlan has said, the table is done and we understand the impacts on the sector as a whole and on individual local authorities. Our role then, as the Department, is to consider that in the context of the Estimates process.

Deputy Pat Casey: The officials have not said "Yes" or "No".

Ms Lorraine O'Donoghue: We would consider all of those things in the round. We would take into account other decisions that may or may not have an implication on the overall local authority funding piece.

Mr. Barry Quinlan: We have that responsibility in terms of local government financing on an annual basis. It is a very independent process. The only information that we would have from the commission is an explanation of some of the processes, etc. The notification will happen in July and it is only at that stage one can start to put these figures on it but that is something we will have to work out and we will advise the Minister of his options.

Deputy Pat Casey: Is that one of them potentially? Potentially. It would be helpful if the witnesses could forward the full calculation to us.

Ms Lorraine O'Donoghue: Yes, that would be no problem.

Deputy Pat Casey: The information will help us to get our heads around A to K before 3 July.

Ms Lorraine O'Donoghue: We will certainly do that.

Deputy Shane Cassells: What is the average waiting time for the appeals process? In

County Westmeath the revaluation happened last year or the year before. Is that county cleared now in terms of the appeals process? What is the average waiting time?

Mr. Barry Quinlan: I only have the aggregate figures. When one peruses the amount of appeals that came in one will see that the number of appeals really increased from the low hundreds in 2014 to over 1,000 since then. There were very good efforts to clear appeals. As at the end of 2018 there were more than 1,000 appeals left so there is a backlog in the appeals tribunal.

Deputy Shane Cassells: Is that countrywide?

Mr. Barry Quinlan: Yes.

Deputy Shane Cassells: The backlog nationwide is an issue. We will do a major piece of work to increase the capacity of the Valuation Tribunal. There is a review of that tribunal that includes local authorities and other stakeholders. The review is under way and I hope to close it off fairly quickly.

Deputy Shane Cassells: What is the cumulative figure for the 1,000 appeals? How much income would they generate in rates?

Mr. Barry Quinlan: I am not sure if it is contained in what I have here with me. If I do not have it then I might be able to get an estimate. There are figures. In terms of the local authorities, we are working with the Valuation Office on the revisions. I have seen figures on those and I think the number has decreased. I will check to see if I can add a figure. I am not sure if the figure has been included as I did not notice it when I read this document.

Deputy Shane Cassells: Is it the same with the tax appeals commission? Are the figures or rates on ice while the appeals process takes place?

Ms Lorraine O'Donoghue: There is what we call the payment pending appeal provision in the legislation. There is a statutory obligation on ratepayers who have appealed their valuation to pay some or all of the rate as originally levied. The adherence to that or its enforceability, we do understand that ratepayers who have an appeal pending before the Valuation Tribunal can sometimes be reluctant pending the outcome of the appeal. I presume people do not want to prejudice a potential appeal result if they pay the full amount as levied. It can be a challenge for local authorities to collect rates in that circumstance if there is an appeal pending but it is the statutory position that payment pending appeals should proceed.

Deputy Shane Cassells: Does it come down to a case-by-case scenario for finance sections in local authorities as to how they handle the situation?

Ms Lorraine O'Donoghue: Yes. As the Deputy will know, local authorities and rate collectors generally have a very good relationship. They know the local situation better than the Department does in terms of engagement with individuals.

Deputy Shane Cassells: It would be helpful if the officials forwarded to us the figure for the cumulative net worth.

Mr. Barry Quinlan: Yes.

Deputy Shane Cassells: This is a wider question. We had the Valuation Office next door where we discussed the slow pace of work of the Reval nationwide and the impact of same. I would appreciate if the officials forwarded the figure for the cumulative net worth to us.

Mr. Barry Quinlan: Yes. There are a couple of other things separate to the Bill. I would see this as an important building block. In terms of the overall valuation process, revisions, etc., the Valuation Office signed a contract this week to bring in extra resources specifically to do the revisions in the next group of Revals. The Valuation Office has gone through a lot of them themselves. The other piece is how the Valuation Tribunal operates. That definitely needs to be modernised and made more efficient. We are looking at those. They do not all necessarily need to be done in legislation. Between ourselves, the Department, the Valuation Office and local authorities, we are really trying to work on all of the other pieces that we can do, procedurally.

Deputy Shane Cassells: It would be useful if we could get a note on the average waiting times because that is an important part of this process as well.

Mr. Barry Quinlan: Yes.

Chairman: Are we finished the briefing session? Yes. I propose that we briefly suspend the meeting to allow the Minster of State at the Department of Housing, Planning and Local Government to take his seat and then we will start our discussion of the Bill. Is that agreed? Agreed.

Sitting suspended at 10.40 a.m. and resumed at 10.55 a.m.

Local Government (Rates) Bill 2018: Committee Stage

Chairman: I propose we deal with some housekeeping matters. In order to ensure the smooth running of the meeting, any member acting in substitution for a member of the committee should formally notify the clerk to the committee if they have not already done so. Deputy Cassells has already informed the committee that he is substituting for Deputy Darragh O'Brien. I propose that after a period of two hours that we take a break for approximately ten minutes, if required. Is that agreed? Agreed.

I welcome the Minister of State at the Department of Housing, Planning and Local Government with special responsibility for local government and electoral reform, Deputy Phelan, and his officials to the meeting.

At the request of broadcasting and recording services, members are requested that for the duration of the meeting, mobile phones are to be turned off completely or switched to airplane mode. It is not sufficient to put phones on silent mode, as it maintains a level of interference with the broadcasting system.

Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan): Chairman, I wish to signal at this point that it is my intention to bring forward amendments on Report Stage. It may have been discussed earlier but I wish to outline the provisions of those amendments. Section 10 is about notification procedures and the amendment will enhance the existing provisions of the section to ensure there is an obligation on ratepayers to register with the local authority and to notify it of any material changes in respect of rateable properties. A difficulty in obtaining such information, for example, concerning a change of occupier or a change in the legal name of the business, has proven to be a barrier to the effective levying and collection of rates for many local authorities, placing a clear statutory obligation on the occupier-ratepayer and this amendment will mitigate that.

The amendment to section 4 relates to the making of the rate process and the provision for additions and amendments to the valuation lists and changes to occupation to be immediately effective for rating purposes. Currently rates are levied on properties that exist on the valuation list on the date of the making of the local authority budget. This means that additions of new properties or amendments to the valuation lists during the year are not effective for rates until the following financial year and the following budget year. It is, therefore, proposed to amend section 4 to allow for additions and amendments to the valuation lists to become immediately effective for rating purposes.

A further amendment to section 4 provides that where a person becomes the occupier or enters into an agreement which entitles him or her to occupy the relevant property on a date after 1 January in any year, a local authority should charge that person a charge adjusted to reflect the remaining period of the year. Currently the person in occupation on the date of the making of the rate is liable for the entire year. This is an anomaly which the amendment seeks to address. It is now proposed that the local authority should adjust the charge or demand issue to the person who was in occupation on 1 January or after 1 January where there were more than one previous occupier in that year, so that the charge for the full year is apportioned between the different occupiers during the year on a *pro rata* basis.

The introduction of a rates compliant certificate will mean that if a ratepayer seeking a certain licence from a particular local authority, he or she may be required to demonstrate to that same authority that the rates bill has either been paid or is subject to a payment plan. This measure is intended to facilitate a more joined up approach within individual local authorities without being overly burdensome and as a measure to encourage business to meet their rates obligations and to engage with local authorities. Subject to the drafting being finalised this amendment will introduce the concept of this rates compliance certificate for the first time and can be kept under review in terms of its effectiveness.

SECTION 1

Chairman: Amendments Nos. 1 and 15 are related and will be discussed together.

Deputy John Paul Phelan: I move amendment No. 1:

In page 5, between lines 14 and 15, to insert the following:

" "Act of 2015" means the Valuation (Amendment) Act 2015;".

Amendment No. 1 is a technical amendment and is included to cater for an amendment to section 20. Section 20 is being expanded to include two separate references to the Valuation (Amendment) Act 2015.

I will now turn to amendment No. 15. Currently, rates are levied on properties on the valuation that exists on the date of the making of the local authority budget. This means that the addition of new properties - this refers in part to what I said earlier - or amendments to the valuation list during the year are not effective for rates until the financial year following the making of the budget. Amendment No. 15, as set out in the proposed expanded section 20, subsection (a), provides that additions and amendments to the valuation list become immediately effective for rating purposes.

As for the proposed sections 20(b) and 20(c), currently there are differences in the timeframes allowed to public utilities undertakings and other ratepayers as set out in the Valuation Act. There are no objectively justifiable reasons that different or more generous time periods

should be given to public utility companies, as opposed to private citizens or to citizens with businesses. The current provisions in this regard appear to give rise to different treatment for different categories of ratepayers. The proposed amendments to sections 53 and 54 address this and ensure an equitable and more efficient streamlined process for all ratepayers.

The proposed section 20(d) is about rate limitation orders, which was also discussed earlier. It concerns section 56 of the Valuation Act and amends the formula on which rate limitation orders are based. There are two elements to the formula. First, the rate limitation order is introduced for local authorities following a revaluation process to ensure the revaluation is revenue neutral. Revaluation results in a redistribution of commercial rates liability between ratepayers depending on the relative shift in the rental value of the properties in relation to one another. In practice, however, local authorities lose out on income from successful appeals to the Valuation Tribunal, which means the revaluation exercise is not revenue neutral as intended. To mitigate this, it is intended to amend the rate limitation order formula to allow for the inclusion of a factor that takes account of the level of appeals. It is proposed to add this factor in order that the upper limit of rates income in the year following revaluation is raised slightly to take account of leakage on the appeal following revaluation. The factor would be agreed annually by the Minister and by the Commissioner of Valuation.

The second part, which is a further amendment to the formula for calculating rates limitation orders, is also proposed. As it is currently worded, section 56 has the unintended consequence of linking the standard revaluation programme, which is carried out on a cyclical basis, with the valuation cycle for global utility companies. This has a particularly acute impact for any county or local authority undergoing a standard revaluation that coincides with a new valuation of a global utility. It means that the mandatory rate limitation order will limit the rates income from that utility. The global utilities are network based operators with a national presence and include telecommunications operators, ESB, EirGrid and Irish Rail. Irish Water will become a global utility in the coming months and is currently being revalued for this purpose. Authorities being revalued currently stand to lose out from any additional rates income from Irish Water at a potential cost of significant sums. Included in the revaluation process at the moment are Fingal, Tipperary, Meath, Wicklow, Wexford, Louth, Cavan and Monaghan. The addition of the second portion of the formula for the rates limitation order calculation will ensure the buoyancy achieved for new or revised global utility evaluations can be accounted for in the formula, which sets the upper limit for rates income in the following year. In other words, it will accrue to the local authority and they will not have to balance it out with other existing ratepayers, and therefore will potentially see a rate reduction for some of the utility companies. That is an unintended consequence of the current system.

Deputy Pat Casey: We had a fairly detailed conservation on amendment No. 15. There is no point in going through half the alphabet and discussing it all over again. We are willing to support this amendment today with a view to having a closer look at it when the staff have agreed to send us on the details of that formula and how the amendment around the A to K formula is actually worked out practically.

We had a detailed discussion on Irish Water - I do not know if the Minister of State was listening in on that - and on the revaluation that is taking place. With regard to Irish Water and how it is distributed further down the line, Wicklow had all of its water assets valued and had them rateable - unlike some local authorities that did not have theirs - and at this stage it looks like Wicklow will be at a significant loss if it is done on a population basis compared with how it is currently calculated. In fairness to the staff, they have given us a clear indication of how

that can be sorted out in the longer term. In the last session I said that the buoyancy generated by EirGrid and by ESB could potentially be used by the Minister to sort out the discrepancies with regard to Irish Water. I want to have this on the record again but at the moment I can say that we may want to bring forward amendments to this section on Report Stage.

Deputy Eoin Ó Broin: I thank the Minister of State. I have no difficulty with the thrust of anything he has said but I have two questions for clarification on amendment No 15, specifically on the proposed section 20(d). Even though the title is "Power to limit rates income" can I take it to mean this is really to ensure that local authorities do not lose out financially either from losing appeals or from the global revaluations of the utility companies? Is this essentially the nub of it?

Deputy John Paul Phelan: Yes.

Deputy Eoin Ó Broin: We had a discussion earlier about the length of time appeals are taking, and if there was a significant number of appeals in one local authority area that were lost - and if those appeals take six or 12 months - clearly there would be a net impact on other ratepayers. In order for the local authority to not lose out from losing those appeals and for the overall rates income to be revenue neutral, it means that somebody else will have to pay more. Perhaps the Minister of State will clarify how that will operate and how it will impact on the local authority, given that many of the people who appeal the rate increase through a revaluation do not necessarily pay the rates until the appeal is concluded. What happens if other people who did not get a rates increase then get hit with a rates increase in order to meet the revenue neutrality that is set out in this? Does this make sense?

Deputy John Paul Phelan: I think so. I must admit that the formula-----

Deputy Eoin Ó Broin: I am not so concerned about the formula, it is more the principle behind the formula that I am trying to get my head around.

Deputy John Paul Phelan: I am aware there are other questions but I will start with that question while it is fresh in my head. The idea behind the proposed section 20(d) is as the Deputy has said. The legislation as currently worded would allow for that situation to occur every number of years where a revaluation of utilities coincides with a revaluation of X number of local authorities. This would see any potential increase - or buoyancy - from revenue received in rates from the utilities offset against other existing rates received from existing businesses in their local area. The main purpose of section 20(d), as proposed in amendment No. 15, is to ensure that this loophole is covered off.

The Deputy also referred to the appeals process and he makes a valid point. Talk is ongoing between departmental officials and the Valuation Office to ensure staffing levels will be sufficient to allow for valuations to occur and for appeals to be heard in a timely fashion. When the revaluation process was introduced originally, as everybody is aware, it was intended to be a revenue-neutral change and that any increases would be offset by decreases to other ratepayers in the local authority area.

On the length of time for appeals to be heard, members who deal with local authority members will know that when rates are agreed at budget meetings in the local authority, sometimes - even with the best of intentions by members and officials - if there are a number of appeals outstanding and if there are appeals that have been successful, it has led to a situation where the cost has not always been neutral with a resulting loss or reduction on the books of the local au-

thority in terms of the potential income it thought it was going to accrue from commercial rates. Part of amendment No. 15 is designed as an attempt to ensure that such revenue neutrality will occur into the future. It does not fully occur at present but varies from local authority to local authority. Amendment No. 15 refers to the change that will allow for another figure or factor to be used in respect of the volume of appeals and the difference between what was agreed by the local authority at budget time and what it can sometimes turn out to be. The purpose of that particular section of the amendment is to ensure that this shortfall is as small as possible and may be fully eliminated. I hope that answers some of what Deputy Ó Broin has asked.

As to Deputy Casey's point, the process of valuation for Irish Water has not been completed yet. Off the top of my head, Wicklow has significant water infrastructure, which serves a far greater region than Wicklow alone and that obviously would be a reason for Wicklow to have a greater commercial rate potential from Irish Water than most other local authorities.

I fully agree with the Deputy, and it is his entitlement, to bring forward an amendment on Report Stage that Wicklow would see a commensurate benefit from that Irish Water revaluations process when it is completed. As to whether it will be offset, there is a further job to be done in the local government section as to how the Local Government Fund is administered in future. I believe everyone present has been a member of the local authority at some stage and understands the number of movable parts that currently exist in the local authority fund, many of which are grossly outdated at this stage. We need a more simplified, streamlined method of allocating local authority funding that is more easily explicable to the public. That might well mean that a situation like the Deputy has outlined as to some of the buoyancy that is obtained from utility companies in the future would be distributed in a different manner. I do not want to pre-empt whatever the ultimate outcome would be by completely agreeing with Deputy Casey.

Amendment agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

SECTION 4

Chairman: Amendments Nos. 2 to 7, inclusive, are related and may be discussed together.

Deputy John Paul Phelan: I move amendment No. 2:

In page 6, line 32, to delete "who owns" and substitute "who is for the time being entitled to occupy".

Amendment No. 2 is again a technical amendment to amend the definition of "owner" to link it with the established definition in rating practice. An earlier definition of "owner" already exists in rating law exists in section 14 of the Local Government Act 1946 which defines the owner as the person for the time being entitled to occupy a vacant hereditament at the time of the making of the rate, which is old rates wordage.

Amendment No. 3 is another technical amendment and relates to deleting in page 6 line 34, "Notice of" and substituting "A rates bill stating". It is preferable to describe the notice that is being issued seeking payment of the rates as a rates bill. The phrase, "rates bill" is the term already used in current rating legislation. In Article 25 of the Local Government (Financial Procedures and Audit) Regulations 2014 "rates bill" is distinctive, self-explanatory and stands from out other statutory notices served by local authorities. The number of rates bills that are

issued also vastly exceeds any other statutory notice and are therefore worthy of a distinct title.

Amendment No. 4 is effectively the same amendment, which is to delete "the notice" and substitute "the rates bill" for exactly the same reasons that I have just outlined.

Amendment No. 5 is the same amendment, which is, in page 7, line 6, to delete "A notice" and substitute "A rates bill", with the very same explanation.

Amendment No. 6 proposes, on page 7, line 11, to delete "in a prepaid registered letter". The number of rates bills served by local authorities is considerable. It is some 5,000 to 6,000 in the case of Dún Laoghaire-Rathdown Council and multiples of this in the case of Dublin City Council. In the event that a rates bill could not be served by ordinary post, the efficiency of the current rates recovery process would be affected to a major extent. This would result in significant delay in the recovery of rates and the need for local authorities to apply further resources for the purpose of serving rates bills upon occupiers of rated properties who have refused to accept the service of a rates bill by registered post.

Amendment No. 7 is also a technical amendment to allow for a rates bill to be addressed to the owner or occupier, if the name of the liable person is not known. Addressing a rates bill to the owner or occupier is likely to arise in only exceptional circumstances, but the existing ability of a rating authority to address a rates bill to an owner or occupier, which is in Regulation No. 42 of SI 508 of 2002, which is superseded by Regulation 28 of SI 226 of 2014, should be retained in the new Local Government (Rates) Bill 2018, notwithstanding that it is not possible to issue legal proceedings for recovery of rates without identifying the name of the occupier.

Deputy Mick Barry: I oppose amendment No. 2. It seems to me that the majority of those amendments are fine and are basically technical amendments. The exception to that is amendment No. 2. Before I register that position, I seek clarity and have a question. My understanding of amendment No. 2 is that it changes the provision of the vacant property charge, in the case of a vacant property, from the owner being charged to whosoever is entitled to occupy it at that point in time. Is that correct?

What would the Minister of State say to the assertion that this would tend to benefit landlords over occupiers at any one time? Is there any compelling logic as to why that change is needed in his view?

Deputy Pat Casey: On amendment No. 6, my heart goes out to these local authorities which have so many commercial bills to send out, that it is causing financial constraints to send them in prepaid envelopes. I wish we had that many to send out in Wicklow.

I am not 100% sure what is the purpose of amendment No. 7. Is it to take liability away from the person who was using the property and putting it back on the owner or occupier? My understanding is that if the owner or occupier of the property informs the local authority with the name and address of the person who is renting the property, the liability then stays with that person and does not revert back to the owner-occupier. If that is the case, why is this amendment needed, if the liability is not transferable to the owner-occupier?

Deputy John Paul Phelan: I apologise to Deputy Casey but I missed the start of his question, can he repeat it please?

Deputy Pat Casey: My understanding of the regulation at the moment is that if I own a property and I rent it out, once I give that information as to who that person is, their address and

details to the local authority, my liability then ceases. If so, why is this amendment needed? If the liability on the owner-occupier ceases, why is it the case that, where "the name of the liable person concerned cannot be ascertained by reasonable inquiry, a rates bill under this section may be addressed to "the occupier" or "the owner"" of the property?

Deputy John Paul Phelan: Regarding Deputy Barry's points, the compelling case is that commercial rates are due from occupiers of commercial premises, not owners. It is often the case - in fact, I would say it is the case in most examples - that the owner is the occupier, particularly where it is a small operation paying the rates. The compelling case for this change is that, if an owner rents a premises to a person who runs a business in it and the latter decides to cease trading for whatever reason, rates legislation has always operated to the effect that the latter is the person on whom the liability falls. Rates are not a property tax or anything else other than a charge on commercial activity in order to fund local authority activities in the area.

Amendment No. 7 is necessary to meet those very rare cases where people have not registered. Deputy Casey is right about the legal validity of a rates bill issued to the owner. Currently, if an operator cannot be ascertained, the next logical fallback is generally for the rates authority to engage with the arms of the State that operators register their properties with, for example, the Property Registration Authority, and determine where the bill should be served. The Deputy is right to point out that this would not occur often, but we are trying to ensure that there is a specific process that a rateable authority can go through in order to ascertain who the occupier of the premises is.

Deputy Pat Casey: I seek clarification. While I understand the logic presented by the Minister of State, this amendment seems to read that, even though I as the owner have provided the local authority with all of the necessary information, I will be next in line if the occupier absconds. Does the amendment place the liability back on me? I am concerned. Given the way this is worded, it looks like the liability owed ends up-----

Deputy John Paul Phelan: That is not the intention, nor is it the effect, of this change. It will not place the onus of payment where it should not lie. Rather, this is about ensuring a process whereby a local authority can try to get to the bottom of who the occupier is.

Deputy Pat Casey: I am concerned that it exposes an owner to that charge. What the Minister of State has set out is not actually mentioned in the amendment.

Deputy John Paul Phelan: The liability does not change. It still rests with the occupier, which relates to Deputy Barry's first question. This is just a method of trying to ensure that the rates bill is served. A local authority does not always have accurate information as to who the occupier is. It is another attempt to get that information in a small number of cases. It does not reverse in any way the liability that is currently placed on occupiers over owners.

Amendment agreed to.

Deputy John Paul Phelan: I move amendment No. 3:

In page 6, line 34, to delete "Notice of" and substitute "A rates bill stating".

Amendment agreed to.

Deputy John Paul Phelan: I move amendment No. 4:

In page 6, line 35, to delete "the notice" and substitute "the rates bill".

Amendment agreed to.

Deputy John Paul Phelan: I move amendment No. 5:

In page 7, line 6, to delete "A notice" and substitute "A rates bill".

Amendment agreed to.

Deputy John Paul Phelan: I move amendment No. 6:

In page 7, line 11, to delete "in a prepaid registered letter".

Amendment agreed to.

Deputy John Paul Phelan: I move amendment No. 7:

In page 7, between lines 18 and 19, to insert the following:

"(7) Where the name of the liable person concerned cannot be ascertained by reasonable inquiry, a rates bill under this section may be addressed to "the occupier" or "the owner" as the case may be.".

Amendment agreed to.

Section 4, as amended, agreed to.

SECTION 5

Chairman: Amendment No. 8 is in the name of Deputy Darragh O'Brien, but he is being substituted for by Deputy Cassells.

Deputy Shane Cassells: I move amendment No. 8:

In page 8, between lines 6 and 7, to insert the following:

"(6) (a) The Minister may allow for a multi-annual increase in a rate payment and multiannual decrease in a rate payment following a re-valuation if requested by a local authority.

(b) The Minister may by direction in writing amend or revoke a direction under this section (including a direction under this subsection).".

We have discussed the impact on businesses of revaluations and the significant increases in the bills associated with same. As Mr. Quinlan told us, appeals by businesses have increased in recent years from just a couple of hundred to thousands. There are 1,000 appeals on the books as we speak. The Minister of State well knows that the impact on a business of a re-valuation and significant increase, a situation caused by the Valuation Office not having kept pace with the process in recent years, is massive and can be very detrimental to a small business. The thrust of this amendment allows for the staggered payment of rates so that a business is allowed to meet a significant increase over a period of time instead of being hit with it in one go.

Deputy John Paul Phelan: Deputy Cassells is right. There is not a Member of the House, be he or she in government or anywhere else, who does not get many queries from constituents on this issue, particularly in local authority areas that have undergone the revaluation process. The Deputy is right to point out the number of appeals and the delays in same. We have a re-

sponsibility to ensure that commercial rates bring €1.4 billion into the local authority sector. Were that figure adjusted downward significantly, it would have serious consequences for our local government system.

It is my intention in the autumn to deal specifically with the valuation side of this process. As practitioners, we all know that rates and valuations are two sides of the same coin. The Commissioner of Valuation operates independently of the Government and every elected politician, local and national. That is important, as the job the commissioner must do should be completely independent of politics. Equally, however, the Oireachtas has a responsibility to review from time to time the legislation underpinning the valuations process. That is why I am determined to do so in the autumn of this year. I will not use the word "anomalies", but there are a number of pinch points in certain sectors of the economy, particularly in small rural communities and villages where there is only a business or two that, in effect, can often act as a social service as much as commercial operations. Other arms of Government - for example, the Minister, Deputy Ring's Department and the local government section - are constantly trying to do their utmost to improve the quality of life for people in these communities throughout the country and sometimes it can seem that commercial rate provisions do not have the same interests at heart, and they do not. There is a conflict there. The rating system is designed to ensure a level playing field or an even system is operated across the country in the way we collect commercial rates. Equally, with respect not only to isolated rural areas but to some of the more deprived urban centres in towns and cities across the country where smaller business premises have closed in recent years, there is a desire, politically, across all sides for those local businesses to be retained and to ensure that valuation rules or anything around them would not be a contributory factor to the closure of such business. In the autumn of this year it is very much my intention that we would bring forward legislation on valuations.

To answer specifically the amendment in the name of Deputy Darragh O'Brien proposed by Deputy Cassells, the Valuation Acts provide for the revaluation of all rateable property within a rating authority area so as to reflect changes in value due to economic factors such as business turnover, differential movements in property values or other external factors and changes in the local business environment. The Department has been informed that the general outcome of the revaluations conducted to date by the Valuation Office is that approximately 60% of ratepayers have had their liability reduced following a revaluation and 40% have had their liability increased, which is expected to be replicated elsewhere as the national programme advances.

With respect to reported cases where the rates liability has increased by multiples of the original bill, the Department has been informed that while such increases may have occurred in some isolated cases, increases of this level would be a rarity. Possible reasons for significant increases where they occur would be that the valuation of some of these properties had not been revised to take account of improvement, extensions, etc., for some considerable time or where the valuations were historically low in comparison to the general level of valuations on the valuation list.

Additionally, some properties may have undergone extensive refurbishment and this was not reflected in the valuation immediately before the revaluation that is now in train. It is not the purpose of a revaluation to increase the total amount of commercial rates collected by the local authorities. Section 56 of the Valuation Acts 2001 to 2015 provides that the Minister for Housing, Planning and Local Government having obtained the consent of the Minister for Public Expenditure and Reform is obliged to make an order directing a rating authority to limit the overall amount of income it could raise through rates in the year following a revaluation to the

total amount of rates liable to be paid in the previous year, plus buoyancy arising from valuations determined in the year of a revaluation of newly constructed property and adjusted for inflation as measured by the consumer price index, CPI.

Rate limitation orders have been made in each local authority that has undergone a revaluation to date and further orders will be made in respect of future revaluations as they arise. Ultimately, any undue or contrived delay in achieving up to date valuations in line with current property rental values would result in unfairness in the levelling of rates. A proposal to phase in increases in valuations over a number of years would either see the shortfall in rates income being made up by other ratepayers in the form of higher rates bills or would be absorbed by the local authorities. In light of that, it is not my intention to accept this amendment.

We will have to examine in some detail the valuations system in the fall of this year. There is already a review of some of the exemptions that currently exist under the Valuation Acts under way, to which I would have referred in a few of my responses to parliamentary questions. We, as an Oireachtas, should ensure we have legislation in place to take on board that review. I believe we can do that in the fall of this year. It need not necessarily be major legislation but it could deal some of the issues Deputy Darragh O'Brien's amendment seeks to address, which is to avoid a situation where there can be severe increases on individuals. Sometimes there can be a significant delay in the hearing of appeals and the process of revaluation is a little slower than we would like. In that proposed legislation we should be able to address some of those concerns.

Deputy Pat Casey: I will briefly speak to the amendment. I put on the record that I am a commercial ratepayer so that everybody knows that. Wicklow went through it is revaluation process this year and March was an exceptionally busy month in my office. The purpose of this amendment to take the shock out of a revaluation system. As the Minister of Sate said, 40% of properties received an increase.

Deputy John Paul Phelan: Those owners of those properties were not the ones who telephoned the Deputy's office.

Deputy Pat Casey: It was the 40% who received an increase who contacted my office not the 60% who did not receive an increase. While the Minister of State mentioned that properties could have had improvements carried out and extensions added, the critical factor is that a revaluation had not been carried out in Wicklow during the past 30 years. The fundamental problem is that revaluations do not take place often enough. I have been contacted by owners of several properties facing a 300% to 400% increase in their rates liability for no reason other than they are located on a street that has seen much improvement in that period while they have not made any improvements to their properties. It is hard for a small business to take that hit and to be asked to do so in one year. This amendment seeks to harmonise that liability over a period of time. In the absence of the legislation the Minister of State proposes to the Valuation Office, a harmonisation measure such as that proposed in the amendment is required. I speak from my experience in Wicklow when we had to harmonise the town council rate with the local authority rates and we had a similar situation with properties decreasing in value and other properties increasing in value. Therefore, it is possible to harmonise rates over a period of time when we can examine the figure with which we are dealing at the end of the day. I went into family businesses that were on their knees when they got their revaluations. It is not acceptable to say there is nothing in place to assist small businesses to deal with the shock of the impact of a revaluation that is not of their own making. This is the State's fault. It does not have a proper revaluation system. It was nearly 40 years since Wicklow had a revaluation carried out. My

business suffered a 100% increase as result of its revaluation. We had not had a revaluation in more than 20 years. We, as a party, will be pushing this amendment. In the absence of the legislation the Minister of State is proposing there is nothing in place to assist the small and medium sector to deal with the shock they face on foot of a revaluation.

Deputy Shane Cassells: To pick up on Deputy Casey's point, the Minister said the general outcome of previous revaluations has resulted in a 60% reduction for rate payers and 40% of businesses had experienced an increase. He said there were only isolated cases where there were significant increases and that they were a rarity. Meath had a revaluation this year, as had Wicklow, and Westmeath and Longford had revaluations last year. I kept all the local newspapers from that period. Individual businesses had significant increases and they were certainly not rarities. If the Minister of State has been told they were rarities he has been wrongly advised. Certain businesses such as public houses and so forth were hit with multiple increases which have the potential to close those businesses. That is what this amendment seeks to address. People want to pay the charges being levied on them but the issue the way they can do so. The Minister of State admitted in his response to me that a phasing arrangement should be examined. That is what we are pushing for in this amendment. As Deputy Casey said, this scenario is developing because of the tardiness of the Valuation Office. I tackled its representatives when they appeared before the Committee of Public Accounts on this matter. The sheer lack of pace in the manner in which they are doing their job has caused this situation in the first place in the context of the timeframes involved. That has already been admitted and accepted this morning. The Minister of State agreed that the appeals process and delays in that regard are adding to the problem. As I said, I will press the amendment.

Deputy John Paul Phelan: I acknowledge what Deputy Cassells said about the issues with vintners. I understand the Commissioner of Valuation engaged in a process with vintners groups whereby some of those difficulties were ironed out or an agreement was reached that was more acceptable to the vintners. Following a number of requests to the Commissioner of Valuation in recent months, he indicated regarding the fuel retail sector that consultation and engagement were ongoing between the Valuation Office and the representative group of the fuel retail sector, the Irish Petrol Retailers Association, IPRA. The commissioner has agreed to consider adjustments to the valuation scheme for service stations, including changes that would result in reductions in valuations based on detailed evidence to be provided by the IPRA. That process is under way.

More broadly, the Valuation Office engages in ongoing consultation with other sectoral groups on the methodology used in the revaluation programme. In that context, the commissioner has committed to fully examining any additional detailed information provided by sporting or equestrian bodies. A number of Members of both Houses were made aware of issues among sporting and equestrian bodies caused by significant increases arising from the revaluation process. The Commissioner of Valuation has indicated that in sectors where significant community and voluntary services are provided along with commercial activities, he is open to considering adjustments to the valuation scheme, including changes that would result in reductions in valuations based on detailed evidence to be provided by the sectoral representative bodies.

I welcome the Commissioner of Valuation's engagement with the vintners' representatives, service station representative groups and sporting bodies to try to iron out some of the significant issues that have emerged in the revaluation process. I always felt that it was crazy that voluntary bodies were levied with commercial rates when certain exemptions from rates are

provided under the valuation legislation for activities which, on the face of it, appear to be commercial in nature. To return to my earlier point, that is the reason we will need legislation on valuation in the autumn. The commissioner's engagement has the potential to deal with some of the issues raised in the amendment.

I reiterate that a full review of staffing is under way to identify additional numbers that may be needed to ensure the revaluation process is speeded up. Deputy Casey is correct. I do not know the exact figure for Wicklow but it could well be 30 or 40 years since the previous revaluation in the county. The target is to try to have a revaluation process approximately every seven years. That would avoid the emergence of significant spikes in rates, such as those with which every Member of the Oireachtas has been presented. In light of that, I am not in a position to accept the amendment, although I accept many of the issues that gave rise to it. Some of these matters are being addressed, while others will be addressed in legislation in the autumn.

Amendment put.

The Committee divided: Tá;, 2; Níl, 2.	
Tá;	Níl;
Casey, Pat.	Bailey, Maria.
Cassells, Shane.	Phelan, John Paul.

Amendment declared .

Staon: Deputies Mick Barry and Eoin Ó Broin.

Chairman: Standing Order 97(1) negatives a question when there is an equality of votes.

Amendment declared lost.

Section 5 agreed to.

Sections 6 and 7 agreed to.

SECTION 8

Deputy John Paul Phelan: I move amendment No. 9:

In page 9, line 35, to delete "therefor" and substitute "at a reasonable rent therefor".

This technical amendment adds "at a reasonable rent" to the definition of "vacant property" in this section. Section 14 of the Local Government Act 1946 includes "at a reasonable rent" as a condition for the refunding of rates on vacant properties. This definition is part of established rates practice.

Amendment agreed to.

Deputy Shane Cassells: I move amendment No. 10:

In page 9, between lines 35 and 36, to insert the following:

"(13) The Minister may make regulations with regard to the abatement of rates in respect of vacant properties and those regulations may, in particular and without prejudice to the generality of the foregoing, include provision for the public consultation process

that must be followed by a local authority before the scheme for the abatement of rates in respect of vacant properties is approved.".

This provides for something similar to the public consultation process in respect of the local property tax, LPT, and so forth. Where there is an abatement of rates, this would allow for transparency.

Deputy John Paul Phelan: I am divided in where I stand on this. I understand the motivation behind it, but the budgetary process that a local authority undergoes takes place in a tight time period. It is also the case that, where local elected representatives are given a mandate to make decisions, they often complain - I receive such complaints - that their hands are tied too much on issues. They have a free hand in how they operate and vote and in the decisions they take in the formation of budgets.

Under the legislation governing rates currently, a local authority may provide up to 100% relief on rates where a premises is vacant due to renovation, repairs or the owner being unable to find a tenant. Outside the city councils of Dublin, Cork and Limerick, which historically had separate legal provisions enabling a refund of 50% on vacant properties, the practice has generally been for elected members to give 100% relief. The introduction of the Local Government Reform Act 2014 gave discretion to the elected members of an authority to vary the rate refund levels applicable to individual areas within the authority's administrative area. The lack of any charge on vacant premises may act as a disincentive for the property to be put to its best use. Vacancy refunds also introduce a level of uncertainty regarding the revenue that a local authority can collect.

Section 8 provides that a local authority may provide for a temporary abatement for vacant properties subject to any maximum relief, which may be specified by the Minister, to ensure that all property owners other than those whose rates liability would be below the *de minimis* threshold may make some level of payment to the local authority. The section allows the Minister to prescribe that the maximum level of relief can be further reduced by individual local authorities. To incentivise the elected members, it is proposed that the revenue accruing from further reduction in the vacancy refund beyond this level would be added to the general allocations of the municipal districts in the local authorities.

A public consultation provision as envisaged by the amendment would be similar to the one in place in advance of the annual setting by a local authority of the local adjustment factor in respect of the LPT. The public consultation on the LPT adjustment factor enhances the strength of the relationship between local authorities and local electorates. I accept that public consultation during the development of a scheme for the abatement of rates on vacant properties can similarly strengthen the process, but the amendment as drafted inserts a new regulation-making power for the Minister under the proposed section 8(13). Section 8(3) provides regulation-making power for the Minister for the purposes of this section and it would appear that this amendment would be more properly located in that subsection. I am happy to accept the thinking behind the amendment, but it should be redrafted for insertion into section 8(3) on Report Stage.

Deputy Eoin Ó Broin: Notwithstanding the Minister of State's comments, the amendment is eminently sensible. There are pros and cons to an abatement decision. One of the pros is the benefit to the local businesses or the ratepayers but one of the negatives is the potential loss of revenue to the local authority and the resultant impact. Having a consultation process would allow some of those issues to be teased out. When I was on South Dublin County Council we found a way to have an abatement, effectively, even though that was not what it was called. We

operated a kind of survey for small and medium-sized businesses and that worked well. We found, however, that the level of take-up from small and medium-sized businesses was low. It was difficult for us to get the injection of cash back out to those small and medium-sized enterprises. If we had public consultation that might have increased the take-up in the first and second years. It was not a great deal of money for some businesses but it was certainly better than nothing. I am, therefore, minded to support this amendment or one from officials that might be better drafted. The principle is a good one.

Deputy Shane Cassells: The Minister of State accepts the thrust of what we are trying to do. We are prepared to work with him on Report Stage so he can accept this amendment and insert it into the Bill.

Deputy John Paul Phelan: We will be seeking to reword the amendment and insert it into a different subsection but I accept the intention of this amendment.

Deputy Shane Cassells: That is fine.

Chairman: Once it has been raised here it can also be raised on Report Stage. Is Deputy Cassells withdrawing the amendment?

Deputy Pat Casey: There is a grand coalition now.

Deputy Shane Cassells: Yes, that is fine. We will withdraw the amendment on the basis of what we have discussed.

Chairman: Is that agreed? Agreed.

Amendment, by leave, withdrawn.

Section 8, as amended, agreed to.

Sections 9 and 10 agreed to.

SECTION 11

Deputy Shane Cassells: I move amendment No. 11:

In page 11, between lines 29 and 30, to insert the following:

"(4) The Minister shall make regulations with regard to an inability to pay clause for rateable premises.".

I will press this amendment. It seeks to make regulations regarding an inability to pay clause for rateable premises. In our earlier discussions the Minister of State spoke about the money being brought in from rates as amounting to €1.5 billion. That is funding 34% of the total local government budget. It is a significant amount of money and that has increased by some 14% over the last decade alone. I have consistently stated, in the Chamber and different committees, my fear that that money from rates is becoming a significant crutch for local authorities in how they source their funding. In that context, every year the Minister requests the councils to show restraint regarding increases, apply that restraint and ensure that they are fair on businesses. Some councils, however, in seeking to do imaginative works beyond the norm, will seek the only source of funding available and that is rates. As a result some people are unable to pay the rates and this is at a time when we are trying to promote local businesses outside of the main city centres. We have seen the impact on small towns and villages

throughout Ireland. Anyone canvassing during the local and European elections would have seen that major impact.

The Minister of State mentioned earlier what the Minister for Rural and Community Development, Deputy Ring, is trying to do. The nuts and bolts of the situation, however, are that people do not have the cash to open their businesses because of debts and that is killing town centres. Certain towns are doing well and powering along but there are also many that are not. The imbalance and disparity between the bigger and the smaller ones is growing. In that context, this inability to pay clause should be inserted into the Bill. I pay tribute to directors of finances throughout the country who are trying, on an *ad hoc* basis, to work with premises experiencing difficulties. There are councils, chief executives and directors of finance trying their best to ensure that those experiencing difficulties are given a fair shake. We should put those efforts on a statutory footing and acknowledge the impact. An inability to pay clause should be inserted into the Bill.

Deputy John Paul Phelan: I argue, in a sense, that the provisions in this legislation will allow for those discussions. The inability to pay clause is, effectively, being inserted into the Bill, albeit by a different mechanism, to some extent where a ratepayer has entered into an agreed payment plan. The provisions under section 11 of the Bill are based on the provisions of the Taxes Consolidation Act 1997 which provide for the addition of interest to unpaid taxes to the Revenue Commissioners and in this respect aims to see rates treated on a similar basis. This measure is proposed as a further incentive to promote compliance with the payment of rates. There is no current legal provision for the imposition of a penalty for the late payment of rates.

The non-availability of a sanction, such as the charging of interest on late payments of rates, is regarded by rating authorities as a major weakness in rating law. It is considered that the charging of interest on the late payments of rates would be an effective method of accelerating collection within the current year and improving cash flow. The interest would accrue from 1 January of the following year and would only apply where a ratepayer refuses to enter into an agreed payment plan with the local authority. As such the introduction of interest on unpaid rates is focussed on incentivising engagement with the local authority rather than increasing the income of local authorities.

Local authorities have a long-standing record, as the Deputy has outlined, of working closely with businesses experiencing difficulty in the payment of commercial rates. I reiterate that one of the main provisions in this legislation is that the penalty will only apply where people do not enter into that agreed payment plan with local authorities. Generally speaking, local authority officials do use discretion with regard to genuine cases of people and businesses with an inability to pay. I have reservations about the creation of a statutory position whereby an inability to pay is put on the books in the manner proposed by this particular amendment. The current level of discretion should continue to be operated by the council officials. That is particularly the case in respect of agreements reached with businesses that may be in difficulty but that have agreed a plan to pay their commercial rates over a period of time.

Deputy Shane Cassells: The last few comments by the Minister of State give us the essence of this matter. I agree that in many cases chief executives and directors of finance are showing that discretion around the country. It is not always the case, however. In my own county we have a chief executive who is a former head of finance and our head of finance works closely in that regard as well. That works well but it is not the experience nationwide, however. This process needs to be established on a formal footing. That is because, outside of the greater Dublin area which is experiencing growth and doing well, there is whole different area that

needs to be examined. Putting this process on a statutory footing would focus the mind regarding the severe pressures that some people are under.

Chairman: Is the amendment being pressed?

Deputy Shane Cassells: Yes, it is.

Deputy Eoin Ó Broin: I will make two brief comments. I have sympathy with the intent of the amendment but I do not support the mechanism by which this is being done. We must keep in mind that any such exemption could potentially have a significant impact on the revenue coming into a local authority or, more important, it could have a significant impact on local authorities during an economic downturn for example. Part of the difficulty with our rates system is that its value is that it gives local authorities a consistent source of revenue regardless of the economic cycle. The difficulty is that that creates a challenge for businesses.

Nobody has yet found a way to marry those two things, though many people have tried. I would prefer a mechanism whereby local authorities at particular times could use the abatement process to make democratic decisions about particular problems in particular sectors or locations and they can do that in the full knowledge of the revenue consequences for them. I would prefer that they have some mechanism to do that. It would then be possible, at least, to make those local decisions. I would worry that, even with the best will in the world, if the Minister were to make such regulations it might not be possible to apply them sensibly in each local authority area. I get the Deputy's intention but I do not think his amendment solves this particular problem. During the depth of the recession, local rates officers and managers in a significant number of local authorities took pragmatic decisions to keep businesses alive. They were in fact beaten up by some politicians in this House because rates collection levels fell significantly. Deputy Cassells is correct, however, that this did not happen everywhere. Anything which potentially reduces the revenue of a local authority without it having some control over it, particularly its elected members, is a matter we should caution against. It is on this basis I will not support the amendment.

Deputy Shane Cassells: The value of this debate and Deputy Ó Broin's comments highlight the impact of the wider problem of the growing dependency of local authorities on rates as their main source of income. In the autumn, local authority members, especially newly-elected councillors, would be seeking to push the boundaries of what local authorities can do. It is then that they suddenly realise local authority revenue fundraising is very dependent on the commercial rates system. That is the essence of the problem.

Amendment put and declared lost.

Section 11 agreed to.

SECTION 12

Chairman: Amendments Nos. 12 and 13 are related and may be discussed together.

Deputy John Paul Phelan: I move amendment No. 12:

> In page 12, lines 2 and 3, to delete "the local authority concerned may decide" and substitute "may be prescribed".

Amendments Nos. 12 and 13 are technical amendments. Amendment No. 12 allows the Minister to prescribe the form of the confirmation of paid or unpaid rates in, for example, a certifi-

cate. This is to ensure consistency across the sector and that all local authorities use the same form of confirmation.

Amendment No. 13 deletes the definition of "sale" in this section as it is already defined in section 12 and is not referenced in section 13.

Amendment agreed to.

Section 12, as amended, agreed to.

SECTION 13

Deputy John Paul Phelan: I move amendment No. 13:

In page 12, to delete lines 26 to 33.

Amendment agreed to.

Section 13, as amended, agreed to.

Sections 14 to 16, inclusive, agreed to.

SECTION 17

Deputy John Paul Phelan: I move amendment No. 14:

In page 15, line 4, to delete "section" and substitute "Act".

This is a technical grammatical amendment.

Amendment agreed to.

Section 17, as amended, agreed to.

Sections 18 and 19 agreed to.

NEW SECTION

Deputy John Paul Phelan: I move amendment No. 15:

In page 15, between lines 21 and 22, to insert the following:

"Amendment of Valuation Act 2001

20. The Valuation Act 2001 is amended—

(a) in section 28 (amended by section 13 of the Act of 2015) by the substitution of the following for subsection (14):

"(14) An amendment of a valuation list made under subsection (10), (11) or (12) shall have full force, from the date of its making, for the purposes of the rating authority concerned making a rate in relation to the property concerned by reference to that list as so amended.

(15) Where—

(a) an amount of monies is paid on account of a rate made in respect of a property, and

(b) it appears, consequent on an amendment of the value of the property made pursuant to an exercise of the powers under this section, that that payment involved an overpayment or an underpayment of the amount due in respect of such a rate,

then the balance owing or owed, as the case may be, to or by the person concerned may be paid or recovered, as appropriate—

(i) in the case of an overpayment, by making a refund to the person concerned of an amount equal to that balance or allowing an amount equal to that balance as a credit against the amount owed by the person concerned on account of a rate made in respect of that or any other property, and

(ii) in the case of an underpayment, by recovering from the person concerned an amount equal to that balance as arrears of the rate concerned (and, accordingly, any of the means provided under any enactment for the recovery of a rate may be employed for that purpose),

(b) in section 53 (amended by section 29 of the Act of 2015)—

(i) in subsection (9), by the substitution of "2 months" for "4 months",

(ii) by the substitution of the following subsection for subsection (11):

"(11) The Commissioner shall, on a date that is not less than 3 months before the date on which he or she issues, in its final terms, under subsection (10), a global valuation certificate, issue a copy of that certificate, in the terms he or she proposes to so issue it under that subsection, to the undertaking concerned, relevant rating authorities and the Minister for Housing, Planning and Local Government and the Commissioner shall issue the notice referred to in subsection (12) to the undertaking concerned and that Minister of the Government.",

(iii) in subsection (12), by the substitution of "40 days" for "28 days",

(c) in section 54, by the substitution of "28 days" for "3 months",

(d) by the substitution of the following section for section 56:

"Power to limit rates income

56. (1) In this section—

'appropriate year' means the financial year immediately following the effective date in relation to the valuation list that, for the time being, stands published in respect of the area of the rating authority concerned;

'consumer price index number' means the All Items Consumer Price Index Number compiled by the Central Statistics Office;

'consumer price index number relevant to the appropriate year' means the consumer price index number most recently published by the Central Statistics Office before the effective date mentioned in the definition of 'appropriate year' in this subsection;

'consumer price index number relevant to the preceding year' means

the consumer price index number lastly published by the Central Statistics Office before the day that falls 12 months before the day on which the consumer price index number referred to in the preceding definition is published;

'preceding year' means the financial year that immediately precedes the financial year mentioned in the definition of 'appropriate year' in this subsection.

(2) The Minister for Housing, Planning and Local Government shall, with the consent of the Minister for Finance, make an order requiring a rating authority to exercise its powers to make rates in such a manner as to secure that the total amount liable to be paid to it in respect of rates made by it in the appropriate year does not exceed an amount determined by the formula

(A x (B + C) +G) + (A x (H+I))

where

A is the figure specified in subsection (3),

B is the total amount liable to be paid to the rating authority in respect of rates levied by it in respect of relevant property on the existing valuation list (but excluding relevant property on the Central Valuation List in the preceding year), and

C is an amount determined by the formula

D x (E + F)

where

D is the annual rate on valuation that was levied by the rating authority for the preceding year pursuant to *section 3* of the *Local Government (Rates) Act 2019*,

E is the aggregate valuation of relevant properties in the area that, pursuant to the exercise of a revision officer's powers under section 28(4)(b) of this Act, were included on the valuation list for the preceding year, as that list was amended for that area in relation to those properties under section 28(10),

F is the aggregate of the increases, if any, in valuations for relevant properties in the area that occurred during the preceding year pursuant to the exercise of a revision officer's powers under section 28(4)(a) and which exercise resulted in amendments to the valuation list for that preceding year in accordance with section 28(10),

G is an amount to be decided by the Minister in consultation with the Commissioner to represent, in so far as is reasonably practicable, the estimated reduction in the total amount liable to be paid to the rating authority in respect of rates in the appropriate year pursuant to the exercise of the Commissioner's powers under section 38 so that any amendment of the valuation list pursuant to the Commissioner's powers under section 38, does not affect

the total amount liable to be paid to the rating authority in respect of rates in the appropriate year,

H is the total amount liable to be paid to the rating authority in respect of rates levied by it, in respect of relevant property on the Central Valuation List in the preceding year,

I is an amount determined by the formula

D x (J + K)

where

D is the annual rate on valuation that was levied by the rating authority for the preceding year pursuant to *section 3* of the *Local Government (Rates) Act 2019*,

J is the aggregate of all global valuation amounts that have been apportioned to the relevant rating authority in accordance with section 53(8), and entered on the Central Valuation List pursuant to the exercise of the Commissioner's powers under section 53(1) of this Act, during the preceding year, and which exercise resulted in amendments to the Central Valuation List for that preceding year in accordance with section 55,

K is the aggregate of the increases, if any, of the global valuation amounts that have been apportioned to the relevant rating authority in accordance with section 53(8), and entered on the Central Valuation List during the preceding year pursuant to the exercise of the Commissioner's powers under section 53(6) and which exercise resulted in amendments to the central valuation list for that preceding year in accordance with section 55.

(3) The figure mentioned in subsection (2) is the quotient, rounded up to 3 decimal places, obtained by dividing the consumer price index number relevant to the appropriate year by the consumer price index number relevant to the preceding year."."

Amendment agreed to.

Section 20 deleted.

Sections 21 to 24, inclusive, agreed to.

Schedule agreed to.

Question proposed: "That the Title be the Title to the Bill."

Deputy John Paul Phelan: I am proposing to bring forward additional amendments through this Bill to the Residential Tenancies Act 2004 and Residential Tenancies (Amendment) Act 2019. The changes relating to the recently enacted section 37 of the Residential Tenancies (Amendment) Act 2019 are primarily technical but also to close off a potential means of circumventing the application of aspects of the 2004 Act, such as registration, dispute resolution and rent increase restrictions in rent pressure zones to student-specific accommodation occupied under licence. Technical amendments are also proposed to clarify that the student-spe-

cific accommodation provisions and the provisions requiring annual registration can come into force separately. The student-specific accommodation provisions are intended to commence in mid-July, prior to the late commencement of the provisions requiring annual registration that are expected to commence in the first quarter of 2020. That explains the urgency to address this issue before the summer recess.

The 2019 Act also amended section 19 of the 2004 Act to specify the types of substantial refurbishment works warranting a higher rent level which could qualify for exemption from the rent increase restrictions that operate in rent pressure zones as protected structures are unable to qualify for exemptions on the basis of works to approving their building energy renting. It is proposed to further amend section 19(5A) of the 2004 Act to allow the first rent set under the tenancy of the protected structure dwelling not rented in the previous 12 months to be the market rent.

It is also proposed to make a small technical amendment for consistency in the wording of section 3(1) of the 2004 Act by replacing "include" with "applied to".

I also intend to bring forward amendments to the Planning and Development Acts 2000 to 2018 at the next Stage with amendment to section 31A and consequential amendments to sections 31AQ and 31AR of the regional spatial and economic strategies. This is a time-critical amendment which arises in the context of the establishment of the new Office of the Planning Regulator on 23 April 2019. Section 31A of the Planning and Development Act 2000, as amended, provides for ministerial directions regarding regional spatial and economic strategies. As currently enacted, section 31A provides only that the Minister can issue a direction on foot of a recommendation made to him or her by the Office of the Planning Regulator. This cannot be satisfied in the three regional spatial and economic strategy processes currently under way, given that each commenced prior to the establishment of the Office of the Planning Regulator. This amendment provides for transitional arrangements to ensure the Minister has a robust legal basis to issue a direction to a regional assembly, if necessary. The proposed amendments will apply only in respect of the three current regional spatial and economic strategies which commenced prior to the establishment of the Office of the Planning Regulator. Section 31A, and related sections 31AQ and 31AR, will remain valid in the cases of the regional spatial and economic strategies made in the future.

I also want to flag a further minor technical amendment that is proposed to section 11(1)(*b*) of the Planning and Development Act 2000 to 2018. Section 11(1)(*a*) requires a planning authority to give notice of its intention to review its existing development plan not later than four years after it is made and to prepare a new development for its area. Sections 11(1)(*aa*) and 11(1)(*ab*) allow for an alternate notification period for Cork City and County Councils whereby they may extend the notification period to review their existing development plan from four years to a maximum of five years by way of ministerial order. This is to facilitate the significant workload and range of complex issues arising from the revisions to the local government arrangements in Cork. However, the special provisions of Cork City and County Councils were not included in section 11(1)(*b*) for the purposes of enabling the incorporation of the national planning framework and the regional spatial economic strategy into the development plan. For legal certainty, this technical amendment inserts the special provisions for Cork in paragraphs *(aa)* and *(ab)* and section 11, subsection (1)*(b)*(i), (ii) and (iii). This ensures consistency in section 11(1)*(a)* and section 11(1)*(b)* provisions.

Chairman: Are there any comments for the Minister of State? No. I thank the Minister of State and his officials. I thank the officials for the briefing earlier. They always provide us with

fantastic information.

Question put and agreed to.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Housing, Planning and Local Government has completed its consideration of the Local Government (Rates) Bill 2018 and has made amendments thereto.

The select committee adjourned at 12.20 p.m. *sine die*.