DÁIL ÉIREANN

AN ROGHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

SELECT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Déardaoin, 13 Meán Fómhair 2012

Thursday, 13 September 2012

The Select Committee met at 10.00 a.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Deputy Finian McGrath,
Deputy Michael Creed,	Deputy Pádraig Mac Lochlainn,*
Deputy Alan Farrell,	Deputy John Paul Phelan,
Deputy Anne Ferris,	Deputy Alan Shatter (Minister for Justice and Equality).
Deputy Seán Kenny,	

* In the absence of Deputy Jonathan O'Brien.

In attendance: Deputies Richard Boyd Barrett and Joan Collins..

DEPUTY DAVID STANTON IN THE CHAIR.

Personal Insolvency Bill 2012: Committee Stage

Chairman: The meeting has been convened to consider the Personal Insolvency Bill 2012. I welcome the Minister and his officials. A grouping list for amendments has been circulated. I welcome Deputies present who are not members of the committee but who I know have an interest in this important legislation. Please note that members of the committee will be called upon first, followed by any other Deputy offering. On Committee Stage the Bill is progressed by disposing of any amendments first followed by the disposal of the section or sections, as amended. There are no time limits on contributions and everyone may offer to make a contribution. I would ask, however, that to progress consideration of the Bill as efficiently as possible, the debate should be focused on the amendment, group of amendments or section under consideration. I will intervene if I consider the contributor is straying from the item being considered. In other words, we do not want Second Stage speeches. As for amendments, please note the sponsor of each amendment will be called upon to move it formally. Moreover, I remind members to say "I move" before making the contribution or offering to withdraw it. Amendments that are grouped will be discussed together when the first amendment is moved but the other amendments must be moved individually when they are reached unless the Chair advises an amendment cannot be moved. The normal procedure for substitutes is that a member of the committee informs the committee in advance that another Deputy will be substituting for him or her at a particular meeting. A substitution arrangement applies only when the committee member is absent from the meeting. Only formal substitutes may move amendments or call votes. As it is not possible to return to sections or amendments that have been disposed of, members should take note of all amendments that are grouped.

I now request that all mobile telephones be switched off completely. Members, myself included, should turn them all off completely and not simply leave them in silent mode.

Section 1 agreed to.

SECTION 2

Minister for Justice and Equality (Deputy Alan Shatter): I move amendment No. 1:

In page 10, subsection (1), to delete lines 20 and 21, and substitute the following:

"whom a debtor owes that debt or to whom the debtor otherwise has a liability in respect of that debt;".

This is a technical drafting amendment. I am advised by Parliamentary Counsel the amendment is necessary to improve the text of this provision and make clear which debt is being referred to in the section.

Amendment agreed to.

Chairman: Amendment No. 2 is out of order.

Amendment No. 2 not moved.

Deputy Alan Shatter: I move amendment No. 3:

In page 11, subsection (1), between lines 10 and 11, to insert the following:

" "personal data" has the meaning it has in the Data Protection Acts 1988 and 2003;".

I ask the Chairman to bear with me for a moment.

Deputy Finian McGrath: While waiting, may I ask a question on the ruling out of order of amendment No. 2 tabled in my name?

Chairman: It is out of order.

Deputy Finian McGrath: Yes, but is there a particular reason for that?

Chairman: As we have moved on from it now, we can talk about it afterwards if the Deputy wishes but not here.

Deputy Niall Collins: Does the Chairman intend to rule amendments out of order as he goes along or is there a pre-published list?

Chairman: As we go along. However, the Deputy should have received notification of it. If one's amendment is out of order, one will have received notification of it. Otherwise, it is not out of order.

Deputy Alan Shatter: I do not have to hand the list of groupings.

Chairman: The Minister should have it now. We are on amendment No. 3 in the name of the Minister.

Deputy Alan Shatter: Again, this is a technical amendment that inserts a new definition in section 2 of the Bill. Following consultation with the Office of the Data Protection Commissioner, I am advised that for the avoidance of doubt, a definition of the term "personal data" should be provided in the Bill.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 4:

In page 11, subsection (1), lines 25 and 26, to delete "Insolvency Service" and substitute "appropriate court".

Again, this is a technical drafting amendment which corrects an error in the existing text. The current reference to the insolvency service is incorrect as protective certificates are issued by the appropriate court.

Amendment agreed to.

Section 2, as amended, agreed to.

Sections 3 to 7, inclusive, agreed to.

SECTION 8

Chairman: Amendments Nos. 5 and 8 to 10, inclusive, are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 5:

In page 14, subsection (4)(*b*), line 26, to delete "Insolvency Service" and substitute "Director".

Amendment No. 5 improves on the existing text by making clear it is the function of the director of the insolvency service to authorise a member of the staff of the service to authenticate the service seal. Amendment No. 8 improves on the existing text by making clear it is the function of the director of the insolvency service to authorise a member of the staff to perform certain functions. Amendments Nos. 9 and 10 are linked. Amendment No. 9 is consequential on amendment No. 10 as it changes the existing text in subsection (2) to take account of the proposed two new subsections (12) and (13). Amendment No. 10 inserts two new subsections in section 11. The new subsection (12) allows the Minister to appoint a person as director designate of the insolvency service prior to the establishment day of the new service. Subsection (13) provides that on establishment day, that person will be appointed by the Minister to be the first director of the insolvency service.

Deputies may be aware that during the summer months, an open competition was run by the Public Appointments Service for the position of director designate of the insolvency service. That recruitment process is almost complete and I expect to be in a position to announce the relevant appointment shortly. The appointment of a director designate is important and is essential to the extensive preparatory work involved in setting up the new insolvency service. In a manner similar to other appointments of this nature, the director designate will become, as mentioned a moment ago, the first director of the new service when it is established formally and the legislation is enacted. This arrangement affords the new director designate an opportunity to be involved in the planning and preparation for the service for which he or she ultimately will have management responsibility on a day-to-day basis and will facilitate the service being established as soon as possible following the enactment and coming into force of the legislation.

Deputy Finian McGrath: I welcome this amendment on the issue of the director designate. I seek to ensure the appointment of the best quality public servant to deal with this issue because the entire bankruptcy system must be changed radically and the balance between the lender and the borrower must be redressed. Moreover, all members seek reasonable solutions in this debate. The important point is that when debating this Personal Insolvency Bill, regardless of their political personal views, members across the political spectrum want to try to assist people who are having major problems with their finances. This is a positive development.

Deputy Alan Shatter: In response to Deputy Finian McGrath, I agree entirely with him that we seek the best solution. I emphasise there is no monopoly of wisdom in this area. We must work through this legislation and ensure we get the best possible Bill. I am sure there will be dialogue during the course of today's proceedings that may give rise to further ideas of amendments to be made to the Bill that may not have been tabled by anyone this morning. It is very important that on the enactment of the legislation, the insolvency agency will operate with speed and that within the parameters of the legislation, everything possible is done to work through solutions with people whose lives are overborne by debt, where there is no realistic possibility of their resolving their debt issues unless new mechanisms such as these are put in place to assist them to so do. Consequently, I very much appreciate the support expressed by the Deputy in this regard. I assure members I am anxious for the legislation to become operative as soon as possible after its enactment and am conscious of the importance of this. Appointing the appropriate person to this position is of course crucial. Moreover, it was important that an independent selection process be conducted by the Public Appointments Service in order that an individual with the best possible experience and qualifications could be selected and that there could be no suggestion that any vested interest of any description was connected with the selection made. I assure members this is the case and I hope to be able to announce who the appointee will be very shortly.

Deputy Joan Collins: I also welcome the amendments and agree that members must find a resolution that, as much as possible, benefits both the lender and the borrower. However, the proposal I put forward regarding the mortgage restructuring arrangement is the elephant in the room in respect of the legislation. The debt relief notice, the debt settlement arrangement and the personal insolvency arrangement do not deal with the actual mortgage itself. The mortgage restructuring arrangement that I put forward did deal with that issue and was a highly progressive legislative item and amendment to the Bill. It is in the Minister's remit to go to the Dáil to seek a resolution by introducing an amendment of this nature because it is an important part of any solution. We cannot debate the amendment today because it has been ruled out of order -----

Chairman: As it has been ruled of order, I would prefer the Deputy not to debate it.

Deputy Joan Collins: It has to be noted. It was an important part of the solution. The Bill is not dealing with the 170,000 mortgages in arrears. I ask the Minister to consider doing that.

Chairman: We need to speak to the amendment.

Deputy Niall Collins: In regard to the insolvency service, what size of entity does the Minister envisage in terms of personnel?

Deputy Alan Shatter: May I respond to two matters? I do not want to be ruled out of order after Deputy Joan Collins was ruled out of order but we will come to deal with the personal insolvency arrangement. The Deputy is incorrect to say that the legislation does not deal with mortgage arrears because the personal insolvency arrangement is specifically designed to deal with secured debt and will specifically apply to residential home mortgages as well as other sorts of property with secured debts. We will get there and I appreciate that it is important to have a conversation on the appropriate provisions in the context of the legislation.

An assessment has been made on the number of staff who may be required in the insolvency agency but we do not want to take a final view on that until the director designate is in place. Obviously work has been done on the matter in my Department and there have been consultations with the Departments of Finance and Public Expenditure and Reform. We do not want to take a definitive view on the exact numbers but a substantial amount of work has been done. One of the advantages of appointing the director at this point in time - who I hope will be in place by the end of this month - is so that before we complete the legislative process we will have a clear view of initial staffing in the context of the director being at least satisfied that the initial staff required by him or her for the insolvency service will enable the functions conferred on it by the Bill to be met. If the Deputy does not mind, I will say more about staff numbers when we reach Report Stage.

Deputy Niall Collins: That is fine. In respect of the structure of the entity, will it allow migration of staff from within the public service or will it seek people who have not previously been employed in it?

Deputy Alan Shatter: We are anticipating a mixture of both. It is important, in the current circumstances, that we use resources wisely. The State, and my Department in particular, has limited funding. We have to ensure we provide a properly staffed service and there is no point in passing the legislation if adequate staffing is not made available. There will be opportunities for some of those who are currently employed in the public service to transfer into the insolvency service but it will also be important that individuals who have the necessary skill sets are

employed in the service. We are anticipating a mixture of individuals already within the public service and some who will be recruited from the private sector through a proper recruitment process.

Chairman: In order to be helpful, I advise members to focus on each amendment as the amendment. At the end of each section I will put the question, "That the section stand part of the Bill". If members wish to ask questions about the section generally at that stage it would be more helpful than asking general questions on specific amendments. There are no restrictions on asking questions about the sections concerned and what they purport to do. It would be more focused and helpful to proceed in that manner because otherwise we may drift away from the content of the amendments.

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9

Chairman: Amendment No. 6 is ruled out of order.

Deputy Richard Boyd Barrett: On a point of order, I do not understand -----

Chairman: We can explain afterwards but we cannot debate anything. It is very straightforward. The amendment involves a potential charge on the Exchequer and is, therefore, out of order. There is no debate on it. If the Deputy wants to discuss it after the meeting, we can explain it in more detail but we cannot do so now. I am glad the Deputy understands and agrees with the ruling.

Deputy Richard Boyd Barrett: I do not understand it.

Amendment No. 6 not moved.

Deputy Niall Collins: I move amendment No. 7:

> In page 15, subsection (1), between lines 18 and 19, to insert the following:
>
> "(j) establish an independent, clear and transparent appeals mechanism for debtors who are unable to reach agreement on a fair and reasonable debt settlement arrangement."

This amendment deals with an issue that has been well aired on Second Stage, namely, the establishment of an appeals mechanism.

Deputy Alan Shatter: I understand the sentiment behind this amendment. It effectively proposes that the insolvency service should establish an appeals mechanism where debtors and creditors cannot agree on a solution. I presume Deputy Niall Collins intends that such an appeals process would then impose a solution. If I felt that an appeals mechanism of the type envisaged by the Deputy - as opposed to the normal avenue of appeal provided by the courts - could be easily achieved, I would be attracted to providing it. Unfortunately, this does not appear to be the case. If parties chose not to freely negotiate in the context of their private contractual debts, we cannot force negotiation, arbitration or agreement on them. The particular areas about which the Deputy is concerned relate to what are effectively agreed debt resolution mechanisms as opposed to solutions being imposed through a court structure or a decision-making process.

I reiterate that we are speaking about the debt settlement and personal insolvency arrangements. These arrangements are to be agreed on a consensual basis, in full recognition of all the realities and rights of both parties. It would be legally difficult to impose through an appeals mechanism a deal on both parties that they cannot or are reluctant to reach themselves. In addition, I would be concerned that the provision of an appeals mechanism would simply result in all potential agreements being submitted to appeal, thus causing delay and an additional expensive administrative burden on the insolvency service. For constitutional reasons, a mechanism of this nature would clearly result in individuals being legally represented with regard to an attempt to resolve matters because where there is an attempt to impose a solution, people, whether debtors or creditors, could not be put in a position in which they did not have adequate legal representation to address the areas of proposed imposition. The current structure envisaged is that the personal insolvency practitioner effectively acts between debtors and creditors to seek to bring about an agreed resolution and ultimately meets them to seek to bring about an agreed resolution. This is all designed to minimise costs, bring about resolutions by consensus and ensure, where possible, that speedy resolutions are effected so that there is not the potential for hundreds, if not thousands, of applications waiting to be dealt with in the courts system or an appellate system.

The primary alternative to failing to agree either a debt settlement arrangement or a PIA, as appropriate, is a petition for bankruptcy. That is not a desirable outcome in most instances and I believe and hope that debtors and creditors will be keen to avoid that outcome where possible. If one is dealing, for example, with a personal insolvency arrangement, there are direct incentives on the part of both debtors and creditors to address difficult issues, particularly where questions of secured debt arise or where the current value of the security is substantially less than the debt that exists. There should not be any incentive on the part of a creditor to force a debtor to petition for bankruptcy. We will deal with the bankruptcy provisions later in the Bill. However, if one is dealing with a PIA, the benefit to the debtor who has a difficulty with debt and who has a family home is that it creates the potential for him to retain that home and work his way through the debt with an agreement to discontinue some debts. From the perspective of the financial institution or other secured creditors, it gives rise to the possibility of recovering more of the money due than could be recovered if a bankruptcy took place. The possibility of bankruptcy in the background, therefore, should, under the provisions of this legislation, create substantial pressure on people to enter into reasonable arrangements.

The big issue in this legislation is whether we try to encourage a consensual resolution of an individual's debt crisis and the incapacity of creditors to recoup what is due to them or whether we force people into a court-type system, be it an appellate system or some form of contested hearing in the Circuit or High Court. The objective is to try to encourage people to deal with issues by consensus. I must reluctantly oppose the amendment. Substantial thought has been given to what was said during the Second Stage debate about people's concerns that certain creditors and, in particular, not to put a tooth in it, some of our financial institutions, may not be co-operative in seeking to bring about an agreed debt settlement. The Deputy must remember that if someone's financial circumstances are genuinely impossible and they do not have the income to discharge the weekly, monthly or annual payments they have to make and if there is no prospect in the foreseeable future of them getting out of their debt and they are effectively insolvent, it would be extremely foolish and counterproductive for a financial institution not to face up to that.

The financial institutions have said they have a series of mechanisms in place to deal with debt issues and we know from the recently published Central Bank residential mortgage arrears

and repossession statistics for the second quarter of the year, which became available in the middle of August, that the banks have entered into restructuring arrangements with a substantial number of individuals in difficulty. Some of them may be of a temporary nature. At the end of June 2012, 84,941 principal dwelling mortgage accounts were categorised as restructured, which means new arrangements were agreed with financial institutions. The majority were forbearance arrangements where, for a time, only interest is paid or a portion of capital and interest or another arrangement is in place. The number of individuals in respect of whom debt was forgiven as opposed to entering forbearance arrangements is not clear from banking statistics. That issue will arise in circumstances where forbearance arrangements would not under the term envisaged for a PIA facilitate people emerging from insolvency.

These are all issues of substantial importance but putting an appellate system in place at this stage would result in a substantial number of creditors, not just financial institutions, who may have no realistic possibility of recovering in full money owed to them having an incentive never to enter into agreements so that these issues always end up in the appellate system. That is not in the interest of debtors. We must create a system that maximises the possibility of agreement and consensus. Bankruptcy would then be the adjudicating mechanism.

The issue that is worth talking about - and, as Minister, I should not encourage this but it is important - is not so much whether we should have an appellate system but whether there should be, ultimately, the possibility of some form of personal examinership system. Again, the concern would be that this would involve a court process and would disincentivise consensual arrangements to facilitate debt resolution and, on balance, we believe the approach we are taking in the Bill is correct. However, I want to make it clear that if, on the Bill's enactment, it becomes clear that certain secured creditors are not fully engaging and are not in appropriate circumstances considering not only debt forbearance but in blindingly obvious circumstances, where it is appropriate, some measure of debt forgiveness, there will always be the possibility of revisiting it. I hope that will not prove necessary because it is in everyone's interest that the level of debt some individuals are confronted by is addressed. It is important that financial institutions are realistic in the manner in which they deal with these issues. We also have to remember with regard to secured creditors that where financial institutions are involved, there is a public interest in ensuring that more taxpayers' money does not have to be put into our banking system. However, no individual in genuine financial difficulty and, in particular, no individual who acquired a reasonably sized appropriate home during the property boom should be a sacrificial lamb on the altar of the mistakes made by the financial institutions.

There is a balance to be achieved in this area and, at this stage, it is our view that an appellate system would change what is a consensual debt resolution series of mechanisms into a contested process, which would be counterproductive, but at some stage in the future, if secured creditors fail to realistically and properly engage in the process, that would not prevent this legislation from being further developed.

Deputy Niall Collins: I agree with the Minister that the legislation is about achieving a balance between the debtor and the creditors but he made my argument in a roundabout way in that he said if certain financial institutions do not co-operate in the spirit of the legislation, we can revisit it. It may be worth making provision for an appeals mechanism without providing for its enactment. This is possibly the first State-sponsored scheme where applicants will be subject to a means test without an appeals mechanism. I acknowledge what the Minister said and it is a judgment call but our judgment is we should provide for such a mechanism now.

Deputy Finian McGrath: I strongly support the amendment. I am concerned that the Min-

ister is being over-cautious. The amendment refers to "independent, transparent and reasonable debt settlement arrangements." They are the key words and the issues on which we should all work. Deputy Niall Collins is right in saying that the vast majority of us want reasonable solutions to allow people to recover from the crisis they are experiencing - that is the objective of the legislation.

The Minister said he did not want to follow the court route and the objective should always be consensus, with which I agree. Many of us feel that excessive authority has been given to the banks. Many people tell me they are concerned the banks have a veto over the homeowner who wants to engage in a process of resolution. This is a major flaw at the heart of the issue we are discussing. Have we not learned from the past five years on the broader issue? In the past 24 hours we have seen reports of what the banks are doing in respect of lending, mortgages and debt. The Minister has said if there is a problem in the future he will revisit the legislation, which I welcome. However, I am concerned about his saying that as it indicates he believes there are people who will try to mess us around. We should be saying, "Listen, we've had enough of you guys destroying this great country of ours over the past five or six years. Let's sort this issue out once and for all."

Deputy Richard Boyd Barrett: I wish to speak on the same theme. Deputy Collins's amendment seeks to address a similar issue to my amendment that was ruled out of order.

Chairman: We cannot talk about that.

Deputy Richard Boyd Barrett: I am just referring to the fact. The legislation contains an appeal mechanism for creditors. They can appeal if they are not happy with a debt settlement arrangement or personal insolvency arrangement, but the debtor cannot, which is problematic. The Minister has said we want to strike an appropriate balance between the debtor and the creditor. I wonder if everybody with a say in drafting this legislation or who may be influencing the legislation has the same view. I refer to a document concerning the Bill produced by the European Commission recently. It states:

> The bill aims at striking an appropriate balance between facilitating the resolution/restructuring of unsustainable household debts on the one hand, and upholding payment discipline and safeguarding creditors' rights on the other. Earlier concerns with the protection of creditors' rights have been addressed through strengthened appeal provisions and greater involvement of the courts.

So the banks' concerns have been addressed by giving them an appeal mechanism. The document continues: "Moreover, concerns remain with a legal gap that prevents banks from repossessing collateral related to some mortgage loans." That is the attitude of the European Commission, or the troika. It believes the banks do not have enough power. It is glad the banks are getting an appeal mechanism. This suggests to me that the legislation gives the whip-hand to the banks. It is not about striking an appropriate balance between the distressed mortgage holder and the banks, but it continues to leave the whip-hand with the banks, which is very problematic.

Part of the problem in that regard is that the legislation is presented as if it is just a necessary updating of insolvency legislation in normal circumstances. The situation we are facing that prompted this legislation is not normal. It was not normal circumstances that produced the mortgage crisis, but exceptional circumstances created by the reckless profiteering of the banks. That is why people have unsustainable mortgages. Why does the Bill not acknowledge that? Why does the mandate of the insolvency service not recognise that the vast majority of

the cases of unsustainable mortgages or unsustainable personal indebtedness it will address result from an exceptional period when people were landed in that debt because of the greed, profiteering and reckless behaviour of the banks, and consequently shift the balance towards the distressed debtor instead of leaving the whip-hand with the banks? That is the problem but the legislation and the Minister's responses do not address it. Setting aside all the window-dressing of personal insolvency and debt settlement arrangement proposals, ultimately the bank can just say "No".

Chairman: I presume the Minister has also considered how the Credit Review Office operates in this context. I ask the Minister to respond to the Deputies.

Deputy Alan Shatter: I shall start by dealing with Deputy Collins's amendment. I know we have strayed a long way from it and I am probably partly responsible for that. The amendment seeks to make it one of the requirements of the insolvency agency to establish an independent, clear and transparent appeals mechanism for debtors who are unable to reach agreement on a fair and reasonable debt settlement. This is why I raised the issue of examinership as opposed to an appeals mechanism. The whole process is about consensus and agreement being reached. If people have not reached an agreement, it is not possible to force them to reach an agreement. Therefore, an appeals mechanism would not be the correct approach to dealing with it.

I would like to stand outside this for a minute and refer to a theoretical group of creditors and one debtor where a consensus cannot be reached. Let us not forget it is a qualified consensus based on the voting provisions for meetings as described in the legislation. I do not want to go into the details of the debt settlement arrangements and the personal insolvency arrangements because we will get there later in our discussions. Contrary to the perception of Deputy Boyd Barrett, arrangements can be agreed and effected through a consensus to which some creditors might object because it is a weighted vote. Some creditors might find themselves required by the majority consensus to effectively go along with arrangements which they themselves oppose. If consensus cannot be reached one cannot appeal against something because someone else does not agree with it.

I have deliberately put into the conversation the issue of whether there should be some sort of alternative examinership process, which would be additional to the bankruptcy process, whereby instead of the court rendering a person bankrupt, it might consider prescribing a set of arrangements as an alternative to bankruptcy which would facilitate individuals in working through their debt situations in circumstances where a weighted consensus had not been achieved. That is not provided for in the legislation and there are suggestions that it could give rise to some unnecessary complexities and possibly even constitutional difficulties. An appeals mechanism is not a possible alternative, as it just would not work.

I share the concern expressed by everybody who has spoken that the financial institutions will need to deal in a realistic manner with the application of this legislation. The legislation is not yet in place and therefore does not yet create the conditions which would require them to properly approach issues of debt in circumstances that fall within the legislation. Many financial institutions - I have given members statistics on the matter - which have entered into forbearance arrangements with a very large number of individuals on the mortgage side do not at present have the alternative that the individual may seek bankruptcy within the framework of this legislation. I have a concern that not all of the financial institutions are realistically dealing with people who are in unsustainable debt situations and that some of them may not yet have the skill-set to deal with these issues in a consistent and uniform way with regard to individuals across the country. I know that within the financial institutions some individuals are dealing

with these issues in a very considered and appropriate way and are giving substantial leeway and assistance to many thousands of people who are in financial trouble. That is a reality and we should not deny it is happening. However, there is need to ensure that an approach is taken which, both for the financial institutions and debtors, does not simply kick the can up the road without any clear vision as to, for example, a time within the life of an individual when they might get out from under the yoke of debt they have incurred.

Let us not also assume, as Deputy Boyd Barrett does, that all creditors in these circumstances are evil and all debtors are saints, because that is not true. There are people who have incurred substantial debt because they made very foolish business decisions or because they believed that, by borrowing money, they were going to just mint money for doing nothing in particular and, ultimately, whatever they purchased was going to inevitability increase in value. They gave no consideration to the risks they were incurring whereas there are hundreds of thousands of people in this country who during the boom did not incur those risks and did not accumulate a profligate level of debt.

Then, there is the group of people for whom I have enormous sympathy, as does everyone in government, and whose circumstances we are trying to address in a comprehensive manner. This legislation is only one piece of that. These are the young people who purchased homes during the boom, who were led to believe residential home prices would increase forever and who, with consideration, borrowed from financial institutions which should have known better, given the same financial institutions were fuelling the boom by providing excessive borrowings to developers who were engaging in projects that led this country down the route to disaster. Young people simply seeking to acquire a home got caught up in that through no fault of their own, with no question of profligacy or trying to make profit but merely due to wanting to have a roof over their heads and some security in the years to come. They are the major victims here.

I repeat there is no monopoly of wisdom in this area. What we want to do is provide a mechanism that facilitates those individuals to reach an agreement that does not require them to go into bankruptcy, gives them a real prospect of ultimately coming out of their debt situation so they can clearly see a light at the end of the tunnel and facilitates people engaging on a consensual basis. We believe the arrangements in this legislation can and should do that but, to be blunt, none of us can predict with absolute certainty the way each of the financial institutions will approach this. To date, there are indications, given the schemes they have announced, that they are willing to co-operate with the legislation. While a substantial number of individuals are in a debt forbearance situation, the ultimate test of this will be the engagement that occurs in the first 18 months after the legislation has been enacted. I am merely putting down a marker that if that engagement does not occur and if there is not a constructive and considered approach based on the reality of the individual circumstances of those in debt situations, including those in mortgage debt situations, this legislation can be revisited.

The reference Deputy Boyd Barrett made to the ECB is interesting for several reasons. First, there is a concern to ensure we deal properly with both debtors and creditors. Not all creditors are financial institutions. Many creditors are small businesses, manufacturers and individuals in business who are barely holding on by their fingernails because other people owe them money. Their survival and their capacity to meet their family obligations is dependent on at least a portion of the money due to them being paid. We should not be blinded by the conduct of financial institutions and should realise this is insolvency legislation that addresses the position of all debtors and all creditors. I come back to what I said - not all creditors are evil individuals or individuals who are in any way remotely responsible for the financial disaster

that has hit the country with the property bubble.

The other issue that is worth bringing to the attention of Deputies is that the Irish Banking Federation is not particularly enthusiastic about this legislation. There has not been a great welcome for it because it knows the enactment of this legislation is going to force reality in the context of addressing, not just in the short term but in the medium and long term, debt that people are afflicted by in circumstances where they genuinely do not have the income to meet their repayments. The Irish Banking Federation is not happy with this.

Deputy Boyd Barrett is wrong in the way he represents the court application process. There is not what I describe as a general appeals process for all creditors. Instead, there is a very contained process which is substantially procedural and which deals with a situation where a creditor is unhappy. The creditor who is unhappy is presumably the creditor who has not supported the consensus that if one gets this 65% weighted vote in favour of a new arrangement, this facilitates a debtor's life being reorganised with real hope that they get out of their debt within the time specified in the legislation. While the debtor will not want to appeal as he or she will have reached the consensus and will not be required to enter into an arrangement he or she does not want to enter into, there may be a creditor who is not part of that consensus who may only get 30% to 40% or less of what is due to him or her, or to the business or company, and who may feel he or she is being badly done by. Such creditors cannot reopen the entire process, however. What they can do is make the case that the debt due to them was not addressed or there was not a proper meeting called that should have been called in the context of the prescription contained in the legislation. They can allege they were unfairly dealt with but that would have to mean, essentially, no one told them the meeting was taking place or that their debt was not taken into consideration. If the meeting was held and there was valid and proper financial disclosure of income assets and debts by the debtor, and if the proper notices were issued and the proper procedure was applied by the insolvency agency, there is not an appeals system through which a creditor could be successful.

It is a very restrictive system but it is a system that is important for another reason. New EU proposals are expected to be published in December and there are already existing EU proposals with regard to the mutual recognition and enforcement of court decisions made with regard to insolvency. By referring to a court the final arrangements approved by the insolvency agency under the debt settlement arrangement or personal insolvency arrangement, and by the court making a court order, this should facilitate European-wide recognition as opposed to merely being a local Irish domestic debt resolution process.

Deputy Richard Boyd Barrett: Let us say where we agree. This is a complicated situation and, of course, small businesses that are creditors have rights, which I accept completely. However, that would be an argument for saying there should be a separation, if one likes, of a personal insolvency arrangement from a specific mortgage settlement arrangement, so that we separate these two issues, as Deputy Niall Collins proposed.

Chairman: I remind the Deputy we are dealing with the appeals mechanism proposal.

Deputy Richard Boyd Barrett: The Minister commented that the creditors are not all evil and are engaging in some level of forbearance at present. That is the case but I suspect they are engaging in this forbearance to a fairly large extent because they are awaiting the outcome of this legislation. Everybody has been wondering what legislation will be put in place to hopefully resolve this pretty awful situation. The bulk of this situation comprises people in mortgage distress. The Minister spoke about majority consensus, but in reality most of these

cases involve one creditor, namely, a bank. When we speak about majority consensus we are speaking about one vote at a creditors' meeting in the vast majority of cases. This does not address this fact.

The Minister rightly distinguishes between the ordinary person just trying to put a roof over his or her head and who sought to do so in these exceptional circumstances which were created by developers and lending institutions driven by greed, and others who were a party to the greed and hoped to profiteer from the bubble. Part of the reason for an appeals mechanism is to examine these circumstances. One hears stories from people in mortgage distress who say they were actively cajoled and encouraged by their banks. In some cases they were called in to be asked why they did not buy an extra property as an investment for their kids and that it was a win-win situation because the price of property would always increase. People were told this. Those who did not have that much financial savvy but were most of the way towards paying off an existing mortgage and had extra savings thought they would buy an extra property because the bank told them they should do so and that it was a win-win situation. This must be taken into account when examining personal insolvency or debt settlement arrangements. The problem is that it will not be taken into account in the mandate of the insolvency service and in how arrangements will be formulated. The particular culpability of the banks in creating this situation and putting people in the desperate distress in which many mortgage holders now are is simply not being taken into account and neither is providing for debtors to make these points when coming to a fair arrangement whereby they can testify to these situations and we can hear evidence.

I do not see why the insolvency service cannot be the last court of appeal. I understand it is supposed to be an independent body so why can it not listen to submissions, try to achieve consensus between creditors and debtors but, in the last instance, make a decision if they cannot come to an agreement? Why can it not, as an independent transparent body operating to particular criteria, ultimately decide if an agreement cannot be reached?

Deputy Finian McGrath: With regard to amendment No. 7 and the appeals mechanism, the Minister raised the issue of people who did not get caught up in this and were not reckless or greedy. Their voices must be represented and we have a duty to do so. However, Deputy Boyd Barrett is correct with regard to young families and couples who got caught up and they must also be taken into account. The balance must be right.

In his contribution the Minister spoke about the bankers being against the legislation. Bankers tell me 90% of people with mortgage problems are going to banks and arranging deals quietly. I stated this in the Dáil prior to the summer recess, after which I received a phone call from a banker who stated the figure was 97%. Is this figure accurate or is it spin from the banking sector?

Deputy Joan Collins: I wish to make a point on the circumstances in which debt settlement would take place. The Minister spoke about people who did not buy second or third properties. Much has been said about this issue and it tends to be divisive. In some cases people did not buy second properties. However, in other cases people were encouraged to do so to provide for a pension, such as those who were self-employed and would not receive one from their job. If a genuine attempt is made to deal with the issue of negative equity and the mortgage crisis it will benefit the economy because it will release money which can go back into the economy to buy goods. It is very dangerous to debate those who did and did not and those who created the bubble and did not do so. In general we must state that dealing with the mortgage debt crisis effectively will release money into the economy so that people will again be able to live without

a noose holding them back from spending money.

Deputy Alan Shatter: I agree with the point made by Deputy Joan Collins. There is no doubt that if we can resolve the overall debt crisis it will benefit the economy. This is a circular problem. People are in debt and need to have their debt problems resolved. They have limited funds which they can pay into the economy. A total of 450,000 people are unemployed and if more money were going into the economy more jobs would be created and some of those who cannot pay their mortgages at present would be employed and would be able to pay their mortgages which would reduce the level of indebtedness. There is no doubt that there is connectivity between all of this.

There is also connectivity in ensuring we identify and address the circumstances of those who cannot pay as opposed to those who will not pay. To take what Deputy Finian McGrath stated, the substantial number of people who are mortgage compliant and who are not in financial difficulty cannot also be required to partly further contribute to meeting the indebtedness of those who are indebted. This is why there are no perfect solutions. Extraordinary dilemmas exist and we need to find a balance.

Effectively, this is about identifying people's current financial circumstances and level of indebtedness and how we can resolve their situations. It is not about what Deputy Boyd Barrett suggested, because it would be impossible, whereby in determining how one should deal with each individual's debt circumstances we should look into the history of why he or she made decisions one, two, five, ten or 15 years ago, who told him or her what when the money was borrowed, and what was going on in his or her head when the money was borrowed. This is not what the legislation can do or be about and nor would it resolve the debt circumstances of so many people.

This has been a worthwhile discussion. I know it is a prelude to other discussions we will have. Unfortunately, I cannot accept Deputy Niall Collins's amendment and I must oppose it.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 8:

In page 15, subsection (4), line 28, to delete "Insolvency Service" and substitute "Director".

Amendment agreed to.

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

Deputy Richard Boyd Barrett: I do not wish to extend the debate unnecessarily. The insolvency service, if it is to have serve any purpose, should be able to make determinations in respect of debt and personal insolvency settlement arrangements. Why can it not do that? Why can it not be included in its objectives that it makes the determinations? It will consider the applications for debt relief notices. Why can it not do the same in respect of personal insolvency and debt settlement arrangements?

Deputy Alan Shatter: The service is not a court; rather, it is a body given discrete and specific functions under this legislation. Similar agencies in existence, for example in Northern Ireland, England and Australia, do not do what the Deputy is suggesting. The body will have certain limited, discrete and oversight functions of considerable importance so as to delimit what would otherwise have to occur in the courts. It will not ultimately have adjudicating pow-

ers and could not have such powers in the context of some of the areas dealt with under the legislation because as provided for in relevant Articles of the Constitution, we have a superior court system. We can have courts of limited jurisdiction but this body is not a court and can play no substantial adjudicative role, constitutionally. There is no purpose in creating a new court system. Indeed, we cannot afford to travel that route. The body will undertake work which is reflective of the work done by similar bodies in Northern Ireland and England, which deal with circumstances such as those which arise under our legislation.

Question put and agreed to.

Section 10 agreed to.

SECTION 11

Deputy Alan Shatter: I move amendment No. 9:

In page 16, subsection (2), line 4, to delete "The" and substitute "Subject to *subsections (12)* and *(13)*, the".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 10:

In page 17, between lines 14 and 15, to insert the following subsections:

"(12) The Minister may, before the establishment day, designate a person to be appointed Director.

(13) If, immediately before the establishment day, a person stands designated by the Minister under *subsection (12)*, the Minister shall appoint that person to be the first Director.".

Amendment agreed to.

Question proposed: "That section 11, as amended, stand part of the Bill."

Deputy Niall Collins: In terms of the competition, at what comparative level in the Civil Service will the salary of the director designate be pitched?

Deputy Alan Shatter: It will be at assistant secretary level.

Question put and agreed to.

Sections 12 to 15, inclusive, agreed to.

SECTION 16

Question proposed: "That section 16 stand part of the Bill."

Deputy Alan Shatter: I wish to give notice that a technical amendment to section 16 will be proposed on Report Stage.

Question put and agreed to.

Sections 17 to 21, inclusive, agreed to.

NEW SECTION

Deputy Alan Shatter: I move amendment No. 11:

In page 24, before section 22, but in Part 2, to insert the following new section:

22.—(1) The Freedom of Information Acts 1997 and 2003 do not apply to a record held by the Insolvency Service, unless the record relates to the general administration of the Insolvency Service.

(2) In this section, "record" has the same meaning as in the Freedom of Information Acts 1997 and 2003.".

This amendment inserts into the Bill a new section which exempts certain records held by the insolvency service from the Freedom of Information Acts. The intention is that personal data and information regarding an individual's financial circumstances, other than that which is prescribed to be available on the publicly available register, will not be available for general access under the Freedom of Information Acts.

The amendment also ensures that documentation relating to the internal deliberative process of the insolvency service will not be subject to freedom of information.

Amendment agreed to.

SECTION 22

Chairman: Amendments Nos. 12, 35, 37 and 45 are related and may be discussed together by agreement.

Deputy Alan Shatter: I move amendment No. 12:

In page 25, subsection (1), to delete line 22.

Amendment No. 12 is a technical drafting amendment which proposes to delete the definition of "register" from this section. I am advised by the Parliamentary Counsel that the definition is not required as the term "register of debt relief notices" is used in most references to the register in the debt relief notice chapter.

Amendments Nos. 35, 37 and 45 also relate to the register of debt relief notices and are technical amendments to improve the drafting. It makes clear that the information referred to in each instance is to be recorded in the register of debt relief notices.

Amendment agreed to.

Question proposed: "That section 22, as amended, stand part of the Bill."

Deputy Michael Creed: Perhaps the Minister would elaborate on the freedom of information issue.

Chairman: We have moved on from that issue.

Deputy Michael Creed: It is relevant to section 22. I would like to tease out the thinking behind exempting a creditor that is a public financial institution that has been bailed out by the taxpayer. I can understand the exemption where a creditor is a private business that has reached an arrangement with a debtor. I may have misunderstood the Minister's intentions in respect of the restriction of FOI. However, is there not a case to be made for greater transparency in

regard to settlements involving a creditor which is a financial institution that has been bailed out by the taxpayer, which settlements are de facto publicly funded settlements?

Deputy Alan Shatter: In regard to debt relief notices, there will be a formal notice of the position with regard to a particular individual. This provision is designed to ensure that information relating to individuals that does not need to be contained in the debt relief notice remains private. For example, an individual in dealing with his or her circumstances may give some private or personal information about the health of his or her wife or child or provide other extraneous pieces of information in respect of which there should be no public interest in that they do not provide any information of relevance in terms of creditworthiness.

Similar amendments were made to the Civil Law (Miscellaneous Provisions) Act to ensure that certain material internal to tribunals that was not put into the public domain would remain private. The concern on the part of the Data Commissioner is to ensure unnecessary disclosure of information concerning individuals' personal circumstances does not occur. This provision ensures this will not happen. In a general context, this is of benefit to debtors.

As regards taxpayers' funding, that is a matter relevant to all the decisions we make about secured credit in financial institutions. Taxpayers - the people of this country - are currently providing crucial financial supports to this country and have contributed to the re-financing of our banking system. In the context of a debt relief notice and the person and circumstances to which it applies, it is not of huge relevance.

Question put and agreed to.

SECTION 23

Chairman: Amendments Nos. 13, 14 and 16 are related while amendment No. 15 is a related alternative to amendment No. 14. The amendments may be discussed together.

Deputy Niall Collins: I move amendment No. 13:

In page 26, subsection (2)(*a*), line 1, to delete "€20,000 or less" and substitute the following:

"€50,000 or less".

This deals with the various limits set down in the Bill as published. What will strike a reasonable balance is a subjective judgment but this is our view, given the experiences we all bring to bear as public representatives dealing with people on a daily basis, and bearing in mind that the debt relief notice is the first rung on the ladder, if I can call it that, of the options we will provide within legislation. The limit of €20,000 could be raised to €50,000 to provide for a more meaningful and greater body of people availing of debt resolution mechanisms within a shorter period. It would also allow people to get their lives back to normal over one year rather than dragging out the process over a longer period under the debt settlement arrangement. From that perspective we are proposing to increase the amount from €20,000 to €50,000.

Related to this is the amount of net income available after the provision of reasonable expenses, and we propose to increase the limit. I am sure we all agree this is about allowing people to live a dignified existence. We must also provide for uncertainties which families have in their daily lives. For example, if the price of petrol continues to rise at its current rate, the difference between €60 and €150 every month - which is our proposal - could be wiped out.

Amendment No. 16 proposes to delete "€400 or less" and insert "€1,000 or less".

Chairman: We are discussing all the amendments but they will be moved one at a time. Amendment No. 15 will be moved when we dispose of the preceding amendments.

Deputy Finian McGrath: I will defer to my colleague, Deputy Richard Boyd Barrett.

Deputy Richard Boyd Barrett: I find myself in the odd position of being outflanked on the left by Fianna Fáil.

Chairman: Could we please stick to the amendment?

Deputy Richard Boyd Barrett: I am doing so.

Chairman: The Deputy should focus on the amendment. It is serious.

Deputy Alan Shatter: Fianna Fáil are back to being Bertie's socialists.

Deputy Richard Boyd Barrett: The substantial point is the need to be a bit more generous to people availing of the debt relief notices and leave them with a little more to spare in their monthly income. The proposal of €60 is very minimal and does not take into account that all sorts of exceptional financial demands can occur, particularly if children are involved. All kinds of unexpected problems can arise, including medical costs and other exceptional circumstances. I urge the Minister to be a little more generous to people in these circumstances. It is a self-evident point.

Deputy Pádraig Mac Lochlainn: If the limit is left at €20,000 or less, it is estimated this would only apply to approximately 15% of clients of the Money Advice and Budgeting Service, MABS, and a large number of people would be excluded. The Free Legal Advice Centre has discussed a figure of approximately €30,000 or less so I wonder why Deputy Collins has mentioned a figure of €50,000 or less. I am not necessarily opposed to it but I would like to tease out the rationale. I welcome the amendment as the limit clearly needs to be increased.

There were other points regarding disposable income. The Free Legal Advice Centre submission referred to Social Justice Ireland's reference to a reasonable minimum income. We would support the higher amount proposed by Deputy Collins, although we reserve the right to make amendments on Report Stage. We want to engage with some of the other non-governmental organisations to examine the issue more fully. We reserve the right to make amendments later.

Deputy Alan Shatter: I again urge Deputies to take note of what the debt relief notice is about. It concerns individuals who have incurred a certain level of debt, effectively within a relatively short period; it is a facility to have that debt written off. It is important that we fix this at a level which meets the genuine needs of individuals but does not encourage individuals to engage in abuse when the context is that money is genuinely owed to creditors. This essentially deals with unsecured debt, with a local shop owed a couple of thousand euro, for example. A painter may have worked on a house and not been paid or the local credit union could be owed €4,000 or €5,000. We must ensure that we do not create a system that encourages people to build up substantial credit card debt of €20,000, €30,000 or €40,000, and take the view that it will be written off with a debt relief notice. This is tailored to deal with the particular circumstances of people who have incurred what would in general terms be a low level of debt but for them is substantial and who are in an impossible position within their personal circumstances.

The equivalent limit in Northern Ireland and the UK is £15,000, so €20,000 is a little higher than that if we use today's currency conversion.

Amendments Nos. 13 to 16, inclusive, are essentially concerned with section 23(2), which relates to the eligibility criteria to apply to debt relief notices. As I indicated, the figure is €20,000 in legislation and the equivalent in the UK is £15,000. The proposals from Deputy Collins seek to raise the monetary amounts in respect of qualifying debt, the available monthly disposable income and the assets of the debtor. Deputy Finian McGrath is also seeking to increase the available monthly disposable income level, as we heard in Deputy Boyd Barrett's contribution.

I explained at some length on Second Stage the concepts behind the debt relief notice. It is to provide a non-judicial, low-cost solution to the debt problems of persons of minimal assets and income. It seeks to offer these people relief from what may be crushing debt burdens and provide hope for the future, encouraging full participation in the economy by such persons. It seeks, effectively, to provide an alternative to a judicial bankruptcy for people with a small level of debt.

The debt relief notice provides for the writing off of unsecured debts of up to €20,000, subject to certain conditions. These conditions must, of necessity, be stringent so as to prevent abuse and undue damage to the interests of creditors, many of which may be small local businesses or credit unions, as I referred to earlier. Such creditors may also be struggling with debt issues. The amounts set out in the Bill in regard to qualifying debt, available monthly disposable income and assets mirror those in the comparable debt relief order in operation in England and Wales since 2009 and in Northern Ireland since 2011. It is of some importance, in the context of the island of Ireland, that there is some symmetry between the provisions we have in the Republic of Ireland compared to the provisions in Northern Ireland. While I cannot accept the amendments proposed by Deputies Niall Collins and Finian McGrath, I will undertake to keep all amounts under review prior to the enactment of the Bill, particularly in regard to available monthly disposable income and assets, and to make any sensible adjustments that might be required. With regard to the €60 provision, that is a sum of money left over after meeting all reasonable expenses in the context of the legislation. Certain assets that an individual would use in their daily lives are expressly excluded from being regarded as relevant in the context of their circumstances when facilitating the write-off of debt. If somebody has money in excess of their reasonable expenses, there is a point at which it is reasonable that it is used to discharge some of the debt they owe to individuals or local credit unions. It is important we protect credit unions and that they do not lose moneys due to them in circumstances in which people might try to use this legislation effectively to raise funding, with the objective that some months later they will invoke this legislation to not pay back credit unions, possibly creating difficulties for either the liquidity or solvency of credit unions.

I emphasise to Deputies that this legislation should not be seen in isolation from everything that is relevant to it, surrounds it and interacts with it. There are issues we must address to ensure the legislation does not effect detrimental, unintended consequences. It is a balancing act. As I said earlier, there is no monopoly of wisdom. It is just as reasonable to argue that the net disposable income one would allow somebody to retain should be €70 or €80 rather than €60. These are subjective judgments to be made. We have made judgments based on the experience in other jurisdictions and, in that context, I oppose the amendments. However, we will retain an open mind on some aspects of these as we go through the legislative process. We are giving continuing consideration to them and revisiting them, but I do not anticipate that we will revisit

the €20,000 debt qualification eligibility for falling within the mechanism of the debt relief notice. We must ensure we do not create a situation where some individuals would be incentivised to spend a significant sum of money on their credit cards and then try deliberately to use the debt relief notice to avoid meeting their obligations or, equally, raise moneys through credit unions, in circumstances in which the credit unions are led to believe those moneys will be repaid, and then 12 or 18 months later seek to have them written off by using this mechanism.

Deputy Pádraig Mac Lochlainn: It is not clear in the legislation so will the Minister clarify that the €20,000 limit is the totality of the debts, not just the arrears?

Deputy Alan Shatter: Yes, that is right.

Deputy Pádraig Mac Lochlainn: Is it the intention of the legislation that when considering a debt relief notice all the individual's debts will be taken together in a holistic approach, or will it be a piecemeal approach?

Deputy Alan Shatter: First, it is the totality of debts, excluding debts that are not eligible to fall within the debt relief notice. The legislation details those. An example is a maintenance order requiring somebody to support their spouse and which order has gone into arrears. A number of these apply. Basically, it is all the debts, excluding the ones I mentioned, that qualify for the debt relief notice.

Deputy Pádraig Mac Lochlainn: What about arrears?

Deputy Alan Shatter: The arrears would be part of the debt.

Deputy Pádraig Mac Lochlainn: The €20,000 is the totality of the debt.

Deputy Alan Shatter: Yes. If it goes beyond that, inclusive of arrears, interest and so forth, the person will not qualify for the debt relief notice.

Chairman: It deals with the smaller stuff.

Deputy Alan Shatter: Yes.

Deputy Richard Boyd Barrett: I accept the Minister's statement that we should not do anything that would have negative, unfair or adverse unintended consequences for small business, credit unions or creditors in such situations. Again, however, one must take into account that much of the ballooned personal indebtedness being faced in the country at present is credit card debt. That debt is the result of absolutely reckless behaviour by the banks - throwing money at people, raising credit limits when people did not even ask for their limits to be increased and actively encouraging people to spend money but not explaining the consequences that might follow. That is a huge part of the problem. It is difficult to navigate those circumstances and the circumstances the Minister describes in a way that gets the balance right in the legislation, but it is important to register that point and state that it must be factored into how we get the balance.

In addition, many of the people in difficult circumstances of personal indebtedness are in that situation because they borrowed money with the reasonable belief that they might still have a job in a few years but then found themselves without a job because of the cataclysmic collapse in particular sectors of the economy.

Chairman: That is not relevant.

Deputy Richard Boyd Barrett: The Minister made these points with regard to the amendments and I am simply responding to them. If they were relevant for the Minister, surely it is relevant for me to respond to them.

Chairman: The Minister must abide by the rules as well.

Deputy Alan Shatter: Deputy Boyd Barrett will start whipping me anyway.

Deputy Richard Boyd Barrett: Perhaps I was not quite as radical in my posturing as Deputy Collins on this, but I believe the Minister could consider increasing the income over and above expenses and be a little more generous in that respect. That is pretty tight for people. If any unforeseen or exceptional circumstances arise, as they often do, which go outside the reasonable expenses as defined by the legislation, people could be in serious trouble. My amendment in that regard proposes to increase it a little and is reasonable.

Deputy Alan Shatter: I recognise that people have credit card debt and have also found themselves unemployed. They would have expected to be in a position to meet their financial obligations but through no fault of theirs they cannot. There are also, unfortunately, many people who have incurred credit card debt because they just live on credit and spend more than their income would facilitate. We must recognise that people have personal responsibility for what they spend, and they have a responsibility to pay it back. Judgments must be made as to what the appropriate circumstances are for the debt relief notice and we believe the eligibility provision we have prescribed is the appropriate sum. Based on comparisons of how similar mechanisms are dealt with in other jurisdictions, it is somewhat more generous than the provision in some jurisdictions. However, it is not just a case of being generous but of trying to make a practical judgment as to what the appropriate levels are. We believe we have made those judgments.

I heard what Deputy Boyd Barrett said with regard to disposable income. We will give further thought to that aspect but I do not envisage changing the €20,000 eligibility criterion for the debt relief notice.

Chairman: Is the amendment being pressed?

Deputy Niall Collins: Yes.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 14:

In page 26, subsection (2)(*b*), line 2, to delete "€60 or less a month" and substitute "€150 or less a month".

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 15:

In page 26, subsection (2)(*b*), line 2, to delete "€60" and substitute "€100".

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 16:

In page 26, subsection (2)(*c*), line 4, to delete "€400 or less" and substitute "€1,000 or

less".

Amendment put and declared lost.

Deputy Pádraig Mac Lochlainn: It seemed to me that the number of people saying "Tá" was greater than the number of people saying "Níl" when those votes were taken.

Deputy Niall Collins: It was up to us to say "Vótáil" if we wanted to call a division.

Chairman: There was no "Vótáil" called.

Deputy Pádraig Mac Lochlainn: Fair enough. At least I know I can count.

Chairman: As amendments Nos. 17, 18, 55, 56, 72, 151 and 154 are related, they will be discussed together. If amendment No. 17 is agreed, amendment No. 18 cannot be moved.

Deputy Alan Shatter: I move amendment No. 17:

In page 26, subsection (2)(*e*), line 10, to delete "5 years" and substitute "3 years".

Section 23(2)(*e*) of the Bill provides that one of the criteria for eligibility for a debt relief notice is that the debtor must be "insolvent" and have "no likelihood of becoming solvent within the period of 5 years commencing on the application date, while also maintaining a reasonable standard of living for himself or herself". Having considered the matter further, I have decided that this "look-forward" period should be reduced to three years. A period of five years would be too long, given that the amount of debt to be written off in this instance is up to €20,000. I thank Deputy Finian McGrath for amendment No. 18. We seem to be thinking along similar lines with regard to the period of time in which the person applying for a debt relief notice may become solvent. I am now of the view that a five-year period, as originally proposed, would be too long. I am proposing to reduce it to three years. This would also reflect the proposed supervision period following the granting of a debt relief notice. I hope Deputy McGrath will accept this approach and, in that context, agree to withdraw his proposal.

Amendments Nos. 56, 72, 151 and 154, which have also been proposed by Deputy McGrath, are similarly addressed in amendment No. 18 with regard to the period in which the person applying for a debt relief notice might become solvent. I am proposing that the period in question should be reduced from five years to three years. As I do not intend to proceed with amendment No. 55 on Committee Stage, I will withdraw it formally when it is reached. This amendment has been included in error, unfortunately. I intend to reduce the look-forward period in relation to the solvency of the debtor to three years for the debt relief notice process only. I do not believe a similar reduction should be provided for in the case of the debt settlement and personal insolvency arrangements.

Amendment agreed to.

Amendment No. 18 not moved.

Chairman: As amendments Nos. 19, 93 and 168 are related, they may be discussed together.

Deputy Finian McGrath: I move amendment No. 19:

In page 26, subsection (2)(*e*), lines 11 and 12, to delete "a reasonable standard of living"

and substitute the following:

"a reasonable standard of living, as defined by the Minister".

The amendment will ensure that a decision on what constitutes "a reasonable standard of living" will be made by the Minister rather than the banks, the personal insolvency service or any other body.

Deputy Alan Shatter: The Deputy's amendment would impose a duty on the Minister for Justice and Equality to define "a reasonable standard of living" for each and every applicant for a debt settlement arrangement. The Deputy will recognise the inherent difficulties this proposal would present. The financial circumstances and situations of debtors will vary greatly. I believe it is best left to personal insolvency practitioners to base their proposals to creditors on each debtor's individual and particular financial circumstances. Their consideration or assessment of "reasonable" living expenses can be assisted by the insolvency service's evolution of relevant guidelines, drawing on the work of relevant expert bodies in this area. I anticipate that this area will be addressed by the insolvency service in the context of the provisions which apply to its operations.

Deputy Finian McGrath: I take the Minister's point, but I have a major concern. It is unacceptable that a bank can decide what a "reasonable" standard of living is or determine who is allowed to avail of the personal insolvency arrangement process. I suggest it would make sense for an independent mediator or arbitrator to be appointed to adjudicate on the fairness of such arrangements. I am concerned about this matter. I take the points made by the Minister.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 20:

In page 27, subsection (6)(*a*), line 5, to delete "mortgage or charge" and substitute "mortgage, charge or other security".

This drafting amendment will provide for a reference in the Bill to securities other than mortgages or charges.

Amendment agreed to.

Chairman: As amendments Nos. 21 to 23, inclusive, and 76 are related, they may be discussed together.

Deputy Alan Shatter: I move amendment No. 21:

In page 27, subsection (6), lines 12 to 23, to delete paragraph (*c*) and substitute the following:

"(*c*) the following shall not be taken into account—

(i) the following items, to a total value that does not exceed €6,000—

(I) household equipment and appliances that are reasonably necessary to maintain a reasonable standard of living for the debtor and his or her dependants, and

(II) books, tools and other items of equipment used by him or her that are reasonably necessary in his or her employment, business or vocation;

(ii) one motor vehicle, where that motor vehicle is reasonably necessary in order for him or her to carry out his or her everyday activities and—

(I) is worth €1,200 or less, or

(II) where the debtor, or a dependant of the debtor, has a disability, has been specially designed or adapted for use by the debtor or that dependent, as the case may be,".

The amendment to section 23(6)(*c*) that I am proposing provides for the exclusions that will be applicable when the assets of applicants are being calculated for the purposes of debt relief notices. I am providing that "household equipment and appliances that are reasonably necessary to maintain a reasonable standard of living for the debtor and his or her dependants" and "books, tools and other items of equipment used by him or her that are reasonably necessary in his or her employment, business or vocation" will not be taken into account as long as their "total value that does not exceed €6,000". In addition, I am providing that the value of "one motor vehicle, where that motor vehicle is reasonably necessary in order for him or her to carry out his or her everyday activities" will not be taken into account as long as it "is worth €1,200 or less". This equates with the bankruptcy provisions that are provided for in section 138 of the Bill.

This amendment also seeks to improve on the existing text by making clear that the exemption regarding motor vehicles also includes a vehicle adapted by the debtor for use by his or her dependent if he or she has a disability. Some people may quibble with these amounts, or complain that they are too low or ungenerous. I ask them to bear in mind that the purpose of the debt relief notice is to provide for full debt forgiveness of up to €20,000. In that regard, it is not realistic to allow applicants to continue to be in possession of assets which might be sold or surrendered in satisfaction of some of their debts.

Amendments Nos. 22 and 23, in the name of Deputy Niall Collins, propose to add two further exemptions to section 23(6)(*c*) of the Bill, the first of which relates to "assets necessary for the maintenance or education of any children of the debtor who are aged 18 years or under". This would be a very broad, almost unlimited, exemption. If a person has a savings fund of several thousand euro, the proposal made by Deputy Collins would allow that fund to be designated for educational purposes and thus put off limits to creditors, while at the same time requiring the creditor to write off the debt owed by the debtor. While I understand the sentiments behind the proposal, it is not realistic as it is currently framed as creditors would avail of legal action to seize the money regardless of its designation. In any event, the likely applicant for a debt relief notice would not normally be in possession of any significant assets that could be protected by designating them for the maintenance or education of children. As I have said, such assets would be vulnerable to seizure by creditors. There could also be potential for abuse in allowing for such designation. I assure the Deputy that in advance of Report Stage, I will give further consideration to educational matters in the context of this amendment. I want to give some further consideration on Report Stage to the specific amendment I am tabling today. In the context of that amendment, where there is reference to "books, tools and other items of equipment" used by the debtor "that are reasonably necessary in his or her employment, business or vocation", I want to give some consideration to adding into that provision the words "or for the schooling or education or any child or children of the debtor who are under 18 years or, if over that age, who are attending at any school and have not yet completed their second level education and undertaken their leaving certificate examination". In the context of-----

Deputy Richard Boyd Barrett: Is the Minister inserting such a provision?

Deputy Alan Shatter: I want to give consideration on Report Stage to adding those words into the amendment we have tabled today, amendment No. 21, where there is reference to "books, tools and other items of equipment" that are essential to the debtor in his or her employment, business or vocation. No one intends that in the case of a debtor who has school-going children there would be some assessment made, for example, of the value of a small laptop that a child may have for school or his or her school books. I want to look at further broadening what we have said in that context and return to the issue on Report Stage.

On the exemption of the item of jewellery, I should bemoan the absence of Deputy Mattie McGrath who was terribly excited about issues of jewellery in the Second Stage debate. I am surprised, given his level of animation on the issue, that he has not joined us today for discussion of this particular matter. No one wants someone who has a modest wedding or engagement ring valued at a couple of hundred euro to be put in a position where he or she may be deprived of the item in question. However, the amendment tabled by Deputy Niall Collins proposes to exempt what is described as "one item of jewellery of ceremonial significance". I understand and presume this is the closet Deputy McGrath amendment because I noticed Deputy Calleary did not get unduly excited about this issue on Second Stage. I made my views on this point known on Second Stage when I stated I would need convincing to make any exception in regard to retaining possession of expensive items of jewellery - I emphasise the word "expensive" - when applying for significant debt forgiveness. One individual's €100 ring that has ceremonial significance may be another individual's €200,000 or €300,000 diamond bazooka which he or she regards as having a great deal more ceremony than the €100 ring. In circumstances where we are discussing debt relief notices and people having debts of not more than €20,000, I cannot for the life of me figure out why the Deputy would want to exempt major items of ceremonial jewellery and expensive items or enable individuals to retain such items and say to their creditors, for example, the local credit union, an electrician or painter who may have done some work in their home or a local pharmacy or store which may have given them credit, "Sorry, but I am not paying my debts". This is a very misconceived and ill thought out amendment which I cannot, in any circumstances, accept as framed.

Amendment No. 76 relates to assets for the maintenance or education of any children of the debtor who are aged 18 years or under. I have made some reference to my concerns with regard to items of relatively insignificant value which would be used for a child's education. As I stated, I will return to that matter on Report Stage, although I cannot accept Deputy Collins's amendment at this stage.

Deputy Niall Collins: I will withdraw amendments Nos. 22 and 76 on the basis that the Minister has indicated he intends to return to them on Report Stage. The point with regard to amendment No. 76 is that there are examples of educational equipment that children aged under 18 years need but which could become part of a process if they are not catered for properly in this legislation.

On items of jewellery, I do not propose to get caught up in the trivialities of this matter, some of which, as the Minister pointed out, emerged towards the end of the debate on Second Stage. Nevertheless, we must address a significant issue that arises in this regard. I am concerned that people availing of debt relief notice and debt settlement arrangements who have items of jewellery that are not of significant value may find such items being brought into the mix. For example, I became aware during a briefing provided by the National Asset Management Agency that the partner of a developer in Limerick had to return to the agency jewellery worth €200,000. This is as it should be and an appropriate course of action. I am not acting

as a surrogate for Deputy Mattie McGrath, as the Minister indicated, but making the point that many ordinary, decent people have low value engagement and wedding rings which are of ceremonial significance to them and their families. We should provide for such individuals in the Bill because ultimately the individuals in question will be dealing with the banks which, given half a chance, would take the shirt from one's back.

Deputy Michael Creed: I concur with the views expressed by the Minister in his elaboration on the issue of jewellery and I do not propose to dwell on the matter. However, I will raise an issue related to the proposal in the Minister's amendment to limit to €6,000 the value of books, tools and other items of equipment used by the debtor which are reasonably necessary in his or her employment, business or vocation and to impose an upper value of €1,200 on a car or motor vehicle. I wonder whether it is desirable to be so prescriptive. In rural areas, a car is necessary if one is to have any opportunity for economic participation whereas it could be perceived to be a luxury in urban areas where there are significant economic opportunities and reasonable levels of public services. While I do not wish to make allegations that bias is being shown towards rural areas, to impose an upper limit of €1,200 on the value of a car is excessive.

Self-employed people may have a van which must be roadworthy, pass the national car test, have good tyres and be insured. It is not reasonable to expect those living in rural areas to continue to enjoy opportunities to engage in economic activity with a car that is worth less than €1,200. Moreover, the self-employed, for example, mechanics and carpenters, will have acquired, over a number of years, tools and equipment with a value significantly in excess of the €6,000 upper limit. While it may not be the intention, an unfortunate consequence of this legislation may be that it will hamper people's capacity to re-engage economically and trade their way out of their current difficulties because it penalises them by imposing excessive limits of this type. Perhaps the Minister will examine the issue before Report Stage.

Deputy Pádraig Mac Lochlainn: I wish to make two points. I understand this is a very difficult balance to strike. We want to secure assets and access as much finance as possible to pay those who are owed and it is not the big bad banks in all cases. It is also credit unions and small businesses who are owed money. In striking that balance, however, the public wants an opportunity for those who are trying to address their debts in a reasonable fashion to move back into employment again. The Minister is aware that public transport is poor in many rural areas. In my constituency, for example, it is very difficult to get to the main centres of employment when one is living in a rural area and one needs a car of a decent standard. There is room for reconsideration around the valuation. Obviously, people should not be in a position to drive a top-of-the-range Mercedes but they would need a reasonable car that would stay the course in a rural area. I ask the Minister to reconsider this matter.

With regard to the issue of jewellery, while the example provided by Deputy Collins may be an extreme one, the Minister must appreciate that engagement or wedding rings are of immense emotional value. I ask him to look at that issue again. I will be supporting the amendments.

Deputy Anne Ferris: Regarding the amendment on education, the Minister referred to children under 18 who have not completed their leaving certificate. Perhaps the Minister could let the committee know why he is not considering third level education. Many families would have children in college who may be living away from home, and the associated costs can be a big burden on families. I look forward to the Minister's response in this regard.

I have sympathy with Deputy Collins's amendment dealing with jewellery. The Minister referred to engagement rings worth €100 or €200, but I think most women would expect a ring

worth more than €100 when they are being proposed to.

Deputy Pádraig Mac Lochlainn: They might not make it to the marriage.

Deputy Anne Ferris: Perhaps the Minister was simply expressing a male point of view but from a female point of view, engagement rings would cost a lot more than that. Indeed, many very expensive engagement rings were bought during the Celtic tiger times. I have sympathy for Deputy Collins's point about having to hand back a ring. While I know we are talking about debts in the range of €20,000, it would break many people's hearts if they had to hand over their engagement rings.

Deputy Richard Boyd Barrett: On the same theme, the Minister must reconsider the €6,000 limit because it could put those who are self-employed at a particular disadvantage in terms of getting back to work and accruing earnings that could allow them to discharge their debts. A musician, for example, could have guitars and drums worth well in excess of €6,000. Does the Minister really want such people to have to sell the means through which they make a living? A sound engineer would certainly have equipment worth more than €6,000. Vans would exceed the limit and many tradesmen have vans. While the point has been made about tools, a van would be very important to many self-employed tradespeople and it is likely that any van that is functional would be worth more than €1,200. Are we really proposing that a tradesperson who has a van and needs it to seek work would be forced to sell it if its value is in excess of €1,200? The Minister must reconsider both limits. A sum of €6,000 seems arbitrary and overly prescriptive. Similarly, the €1,200 limit is arbitrary, overly prescriptive and unrealistic. Would one get a car for €1,200 that would actually drive? Do we have to have those limits or could the section be reformulated in some way? I understand the balance the Minister is trying to achieve and we do not want people to abuse the system.

The point regarding ceremonial items does not relate just to jewellery. People might have other items in their household that are of particular family importance - family heirlooms, for example. There must be some sort of formulation which is reasonable where, if we are talking about very valuable assets or a significant amount of valuable assets, they would come under the remit of this legislation and people would be required to sell them but other items which are of genuine sentimental value, such as family heirlooms, would be outside the remit and it would be considered unreasonable to force people to sell them to discharge their debts.

Deputy Finian McGrath: I missed the Minister's comments about my Technical Group colleague, Deputy Mattie McGrath, but I wish to defend him, particularly as he is not here to defend himself. It is a pity he is not here because his attendance would make the rest of the debate very entertaining.

Regarding the amendment, the point about items with personal, family or emotional connections is very important. Regarding valuable assets, much of the equipment used by people or children with disabilities is very valuable, which should be taken into consideration. A number of Deputies have mentioned small business people, tradespeople, musicians and so forth who are also relevant in this debate. When dealing with this legislation, we cannot take the human side out of the equation.

Chairman: Often when a specific figure, such as €6,000 or €1,200, is inserted into legislation and the legislation comes into force, five years later we find that the figure is totally out of date and the legislation must be amended. We have seen this happen in the past. Perhaps, as Deputy Boyd Barrett suggested, there is some way of devising a formula whereby such figures

can be adjusted without having to return to the primary legislation at a later date.

Deputy Alan Shatter: To address the Chairman's point, I am very conscious that legislation that has express financial figures in it can, as time moves on, become out of date. We shall examine whether we can address that by a provision that allows the Minister, by statutory instrument, to amend, in years to come, some of the express financial figures detailed in the legislation. We are looking at whether that can be done appropriately in the context of this legislation and perhaps we will return to that issue on Report Stage.

I assure Deputy McGrath that in his absence I did not say anything too unpleasant about his namesake, Deputy Mattie McGrath. I merely bemoaned his absence-----

Deputy Finian McGrath: I thought I had missed something.

Deputy Alan Shatter: -----because of his extraordinary interest in jewellery, which has been transposed back to his original party. It is obviously a general interest in the context of the discussion.

Regarding the matter of ceremonial items, the proposal is that one item of jewellery of ceremonial significance be excluded. Let us deal with what that means. I do not know what that means. The amendment refers to one item of jewellery of ceremonial significance but there is no financial limit prescribed. Are we talking about body piercings? They are of ceremonial significance for some people. Are we talking about an item for which one has affection? Quite reasonably, Deputy Boyd Barrett made the point that there can be, in one's life, different items for which one has affection for various reasons, including the memories they evoke, who gave them to one and so forth. That is not confined to jewellery but could apply to a whole range of items, some of little value and some of substantial value. I note what Deputy Ferris said about expectation of value, in that engagement and wedding rings are likely to be worth more than €200 or €300. What we are dealing with here is debt relief for people who are genuinely unable to discharge their debts. These debts are not, other than in the case of some credit card debt, as Deputy Boyd Barrett pointed out, to banks. Rather, a great deal of the debt will, as I have pointed out repeatedly, comprise moneys owed to the credit union or corner shop, for example. In other words, we are talking about debts owed to individuals or institutions which may be detrimentally affected by a failure on the part of the debtor to pay.

The question that must be considered is the proportion of his or her valuables that a person availing of this process should be allowed to retain. There are many items that could be said to have a particular significance for individuals. I cannot accept an amendment that states simply that a person be allowed to retain one item of jewellery of ceremonial significance. There is no legal value attached to such a condition - the particular item might be worth €1, €100,000 or €1 million. It has been observed that during the Celtic tiger years, some lucky individuals received wedding and engagement rings of a value they would not expect to receive today. I have an abiding memory of weekly reports in the gossip columns of the *Sunday Independent* in which various so-called high rollers breathlessly told the reporting journalists about the latest expensive items of jewellery purchased for their spouses or girlfriends. Such reports were invariably accompanied by a picture of the happy couple. Some of these people have since left the country in an effort to escape their debt obligations, including a number who have property in NAMA. These individuals have cost this country a great deal of money, their business failings having helped to bring down the financial institutions. Deputy Boyd Barrett will be surprised by the number of issues on which I am in agreement with him today. Several of our financial institutions made very bad decisions in terms of the funding they provided. Does anybody in

this room want to see a picture on the back page of the *Sunday Independent* in six months' time of the partner of one of these prominent developers with a great sparkler on display? It is not acceptable that such a person should seek a debt relief notice while his partner holds onto a ring worth €200,000 or €300,000.

We must get real here. Deputy Niall Collins's amendment proposes that debtors should be able to retain one item of jewellery of ceremonial significance. Unfortunately, however, the greater the value the greater the ceremony in the eyes of some people. In that context, I cannot accept the amendment in any circumstance. There may be a case to be made-----

Deputy Niall Collins: Is the Minister open to discussing values?

Deputy Alan Shatter: There may be a case to be made that either an engagement or a wedding ring, the value of which does not exceed X amount - be it €200, €300 or whatever - could be exempt for sentimental reasons. The problem, however, is deciding where to draw the line. Deputy Boyd Barrett is correct in his observation that there are items other than jewellery which may have a significant emotional meaning for individuals. Deputy Creed hit the nail on the head when he pointed out that a person might be emotionally attached to a Jack B. Yeats painting which is worth God knows how much. As such, I cannot accept the amendment in any circumstance. I am surprised the Deputy is pushing it because it has no credibility in the context of the issue we are dealing with.

In regard to the maximum value applicable if a debtor is to be allowed to retain his or her motor vehicle, the point was made that such transportation may be vital in securing employment. It is envisaged that the debt relief notice process will primarily and substantially apply to individuals who are unemployed. Should such persons, within the period of three years for which the process will apply, secure employment or another source of income, they will be permitted to eliminate the totality of their debt obligation by paying 50% of the amount due. This is designed to encourage people who are unemployed to get back into the jobs market. There are many jobs that are not dependent on having a private car. Again, we are not slavishly following other jurisdictions in this regard. In fact, there is a great deal in the legislation that is unique to Ireland and is not reflected in the regimes in place in Northern Ireland or Britain. In the case of financial limits, for example, in the neighbouring jurisdictions the maximum motor vehicle value is £1,000. While we are proposing that the overall value of the items to be retained cannot exceed €6,000, the corresponding requirement in the North and Britain is much more stringent. Nevertheless, I will undertake, without making any promise to change it, to reflect on the car value issue. I am willing to accept that how these limits are fixed is somewhat arbitrary and subjective. There is, however, a philosophy behind it, which is that where individuals have any substantial assets, they should realise them in order to pay their debts. Debts should not be written off where there is an ability to meet them. That is a reasonable proposition. We will give some thought to car value and what Deputies have said on the other issues we have discussed. I cannot, however, in any circumstances, accept Deputy Niall Collins's proposal regarding ceremonial jewellery. I am sorry I cannot be more helpful in this regard.

On the education issue, the reason I made reference to children under 18 years of age is that a person might do his or her leaving certificate at 18 and a half. The point is that a person attending third level is an adult whose possessions are his or her own. They will not be regarded significantly as belonging to the individual's parents. In the context of a child's books or laptop, even without amending the legislation I do not envisage that these provisions will give rise to a difficulty in their practical application. However, it might well be worthwhile to give some thought to including an express provision that would put people's minds at rest on the issue. To

clarify, in the case of adults attending postgraduate or undergraduate education, what they have is essentially their own and would not be considered an asset of a parent who is in financial difficulty.

Deputy Niall Collins: I accept the Minister's point regarding jewellery. Moreover, I accept that the amendment is deficient because it does not specify a particular value. Unfortunately for the Minister, he has backed up his argument with examples from the wrong end of the scale, taken from the gossip columns of the *Sunday Independent*. Our concern is for ordinary, decent people who have no truck with the type of individual whose activities are documented by that newspaper. The Minister referred to engagement rings worth €200,000 or €300,000. I have given examples of how NAMA has dealt with that issue, and rightly so. I will withdraw the amendment on the basis that it is deficient in not specifying a value. The Minister has undertaken to reconsider the question of the maximum value of a motor vehicle. He should in all reasonableness consider a provision which would impose a corresponding maximum value for the retention of one item of ceremonial jewellery. It is not an issue of trivia, as the Minister is trying to portray the proposal originating from Deputy Mattie McGrath and now coming forward in my name. It is a serious issue for some people. The Minister may not accept that and everybody is entitled to their own opinion. We will re-enter the amendment on Report Stage and I ask the Minister to consider it.

Deputy Michael Creed: Will the Minister clarify whether the maximum motor vehicle valuation of €1,200 is being retained?

Deputy Alan Shatter: We are proposing the amendment as currently worded, but I have indicated that we will give some thought to the issue of motor vehicle valuation before Report Stage.

Amendment agreed to.

Amendments Nos. 22 and 23 not moved.

Chairman: Amendments Nos. 24 and 25 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 24:

In page 29, subsection (11), lines 7 and 8, to delete paragraph (*h*).

This is a technical drafting amendment which is designed to improve the existing text of the Bill. The provisions in the existing paragraphs (*g*) and (*h*) in section 23(11) overlap slightly and in the proposed amendment No. 24 we are seeking to delete paragraph (*h*) because the matter is adequately covered in paragraph (*g*).

Amendment No. 25 is also a technical drafting amendment and is designed to correct an error in the existing text. The reference should be to the singular rather than the plural in this instance.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 25:

In page 29, subsection (11)(i), line 10, to delete "payments" and substitute "payment".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 26:

In page 29, subsection (12)(*c*), line 26, to delete "Debt Relief Notice,".

This is a technical drafting amendment and in it we are proposing the deletion of the reference to the debt relief notice because it is not appropriate to refer to this in the context of the provisions of section 23(12)(*c*).

Amendment agreed to.

Amendment No. 27 not moved.

Question proposed: "That section 23, as amended, stand part of the Bill."

Deputy Michael Creed: The Minister indicated earlier that debt notices will, by and large but not exclusively, be availed of by people who are unemployed. Section 23(2)(*d*)(ii) refers to an individual "who is domiciled in the State or, within one year before the application date, has ordinarily ... had a place of business in the State". Does this definition exclude people who may have been employees? Reference to "a place of business" suggests self-employment.

Deputy Alan Shatter: The paragraph refers to an individual who "is domiciled in the State or, within one year before the application date, has ordinarily ... resided in the State, or ... had a place of business in the State".

Deputy Michael Creed: It refers to "a place of business in the State".

Deputy Alan Shatter: Yes, but in the first instance it refers to an individual who is domiciled in the State. This section is going to apply to any person who is an employee and who is domiciled or resident in the State. It will not only apply to those who are self-employed.

Deputy Michael Creed: I will accept-----

Deputy Alan Shatter: An individual could have a place of business in the State and might not be resident here and could be brought into the debt relief notice. However, the overwhelming majority of people will be resident in Ireland and will be either employers, employees or unemployed. No one is excluded by that. This is an inclusive provision designed to cater for the possibility of individuals who had businesses in the State but who are not resident here. It will apply to everyone else who lives in the country.

Chairman: On the question of eligibility for debt relief notices, entities such as the credit union movement will be concerned that people should engage with them as actively as possible before the initiation of the process relating to obtaining a debt relief notice. That is a point the Minister might bear in mind as this matter is given further consideration. We must ensure that people do not use debt relief notices as a first option-----

Deputy Alan Shatter: Yes.

Chairman: -----but that they engage with the relevant entity to the greatest extent possible in respect of pursuing the other avenues open to them prior to trying to obtain such notices.

Question put and agreed to.

SECTION 24

Amendment No. 28 not moved.

Chairman: Amendments Nos. 29 and 30 are related and alternative to each other and will be discussed together.

Deputy Alan Shatter: I move amendment No. 29:

In page 30, subsection (6), lines 33 to 42, to delete paragraphs (*a*) to (*c*) and substitute the following:

"(*a*) the information contained in the debtor's Prescribed Financial Statement is true and accurate, and

(*b*) the debtor satisfies the eligibility criteria specified in section 23(2),".

Again, amendment No. 29 is a technical drafting amendment by means of which we are seeking to improve on the existing construction contained in section 24(6). I am advised that the provisions in paragraph (*c*) are not required as the matter is already addressed in section 23(2)(*e*) in the form of an eligibility criteria.

The issue to which amendment No. 30 in the name of Deputy Finian McGrath refers was addressed earlier. As stated, I will be reducing the original period of five years to three. The Deputy was, I believe, happy with that development.

Amendment agreed to.

Amendment No. 30 not moved.

Chairman: Amendments Nos. 31 and 47 are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 31:

In page 31, between lines 13 and 14, to insert the following subsections:

"(9) Where, at any time during the Debt Relief Notice process after the debtor has made the confirmation referred to in *subsection (3)*, the approved intermediary concerned ("original approved intermediary")—

(*a*) dies,

(*b*) becomes incapable, through ill-health or otherwise, of performing the functions of an approved intermediary as respects the debtor,

(*c*) resigns from the role of approved intermediary as respects the debtor, or

(*d*) is no longer entitled to perform the functions of an approved intermediary under this Act, the debtor shall, as soon as practicable after becoming aware of that fact, appoint another approved intermediary to act as his or her approved intermediary for the purposes of this Chapter.

(10) Where—

(*a*) *paragraph (a)*, *(b)*, *(c)* or *(d)* of *subsection (9)* applies, or

(*b*) an approved intermediary has been appointed under *subsection (9)*, the debtor concerned shall, as soon as practicable, inform the Insolvency Service of that fact and the Insolvency Service shall, on receipt of that information, notify the creditors concerned.

(11) Where an approved intermediary is appointed under *subsection (9)*—

(*a*) that appointment shall not affect the validity of anything previously done under this Chapter by the original approved intermediary,

(*b*) a Debt Relief Notice that is in effect as regards the debtor shall continue to have effect, and

(*c*) references in this Act to an approved intermediary, in relation to the debtor concerned, shall be construed as including references to the approved intermediary so appointed.".

Amendment No. 31 makes provision for the appointment of a replacement approved intermediary in certain circumstances in the context of a debt relief notice. It is necessary to make provision in the Bill for situations where the approved intermediary dealing with a debtor's case may not be in a position to carry out his or her duties and another intermediary may have to be appointed to take on the role. The proposed provision addresses this reality and allows for continuity in respect of the handling of the debtor's case.

Amendment No. 47 is similar to amendment No. 31. It makes provision for the appointment of a replacement personal insolvency practitioner who would be central to the negotiation of a debt settlement or personal insolvency arrangement in certain defined circumstances such as death or incapacity. The rationale for this amendment is the same as that which relates to amendment No. 31.

Deputy Pádraig Mac Lochlainn: The Minister has already referred to the credit union movement on a number of occasions. In the context of section 24, the movement is concerned about the fact that a debtor could appoint an approved intermediary and then apply for a debt relief notice and that the appropriate notice would not be given to the creditor. I wish to indicate that I reserve the right to introduce amendments on Report Stage in respect of this matter. The credit union movement is seeking that provision be made in respect of due notice. It is also seeking information regarding how the conditions that will apply in respect of debt settlement and personal insolvency arrangements, both of which are dealt with later in the legislation, will also apply in the context of debt relief notices. The Bill refers to "a statutory declaration declaring that he or she has not been able to agree an alternative repayment arrangement with his or her creditors [for a period of six months], or that his or her creditors have confirmed-----

Chairman: We are dealing with amendment No. 31, which relates to the appointment of replacement approved intermediaries in circumstances where the original approved intermediary dies or is incapable of continuing due to ill health.

Deputy Pádraig Mac Lochlainn: When will I have the opportunity to discuss the matter to which-----

Chairman: The Deputy may do so when we have disposed of amendment No. 31 and are dealing with the section.

Amendment agreed to.

Question proposed: "That section 24, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: I am new to this process so I apologise for trying to deal with this issue in the context of the amendment rather than the section. I will not repeat what I

have already stated. The credit union movement is concerned that its members should be notified and that a debtor must demonstrate that he or she has made every reasonable effort to reach a settlement prior to appointing an approved intermediary and having a debt relief notice issued. The movement is seeking to ensure that this happens before and not afterwards.

Chairman: I made that point in respect of the previous section.

Deputy Michael Creed: We are all aware of the concerns of the credit union movement. Those concerns appear to be reasonable, not just in the context of credit unions but also in respect of all creditors. Instead of people moving immediately to obtain debt relief notices, the credit union movement is suggesting that there be an obligation on approved intermediaries to engage in some way with the relevant creditors in the first instance. On one hand, this seems to be a reasonable proposal. In the context of it applying to all creditors, however, it is the case that many individual debtors find it extremely difficult to engage as equals with their creditors. I refer, in particular, to the larger financial institutions in this regard. People are often intimidated by the latter. The approved intermediary assumes a critical role in this regard. It should be the case that a debtor cannot hit a creditor, be it a financial institution, credit union or a local corner shop or builders' provider, with the debt relief notice procedure without having had some engagement with the creditor regarding the debtor's capacity to repay the debt. There is merit in this proposal and I ask the Minister to consider it before Report Stage.

Deputy Alan Shatter: I am hearing what Deputies are saying. The debt relief notice procedure is designed to be speedy and to deal with small levels of debt. We are trying to ensure it does not produce something that is unnecessarily complex. I am aware of the issue being raised.

There is provision, for example under section 37, for an unhappy creditor to apply to the courts for the debt relief notice period to be extended, which may provide an extra incentive to a debtor to pay off a portion of his or her debt. If we were to make this procedure even more complex it would not work. Individuals to whom money is owed have appropriate mechanisms available to them to seek to recoup what is due to them before someone uses the debt relief notice procedure. Credit unions have, on occasion, sought judgments against individuals who were not meeting their financial obligations.

I hear what Deputies are saying. We will give a little more thought to it. I am loth, however, to turn the debt relief notice procedure into a replica of the debt settlement arrangement or the personal insolvency arrangement procedures because of the smaller level of debt involved and the cost that would be involved in creating the additionals that will arise in the other types of procedures. Besides, I am not sure it would be of any benefit to credit unions or anyone else to do that. Nevertheless, we will give some further thought to it.

Chairman: The only other matter to be considered under section 24 is the regulation of approved intermediaries, and that will come up later on.

Deputy Alan Shatter: Yes. We will deal with that, to some extent, later on. I have tabled some amendments. However, we are doing further work on the issue and will come back to it in greater detail on Report Stage.

Question put and agreed to.

Sections 25 to 28, inclusive, agreed to.

SECTION 29

Deputy Alan Shatter: I move amendment No. 32:

In page 34, subsection (3), line 28, to delete "*subsection (4)(b)*" and substitute "*subsection (1)(c)*".

This is a technical drafting amendment to correct a cross-referencing error in the existing text.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 33:

In page 35, subsection (4), lines 2 to 4, to delete paragraphs (*b*) and (*c*) and substitute the following:

"(*b*) the date on which the Debt Relief Notice was issued,

(*c*) the name and address of the specified debtor concerned, and

(*d*) such other details as may be prescribed under *section 127(3)(b)*.".

The purpose of this amendment is to improve the existing construction of subsection (4) to make clear the type of information to be recorded by the insolvency service in the register of debt relief notices.

Amendment agreed to.

Section 29, as amended, agreed to.

SECTION 30

Chairman: Amendments Nos. 34, 38, 39 and 40 are related. Amendment No. 41 is also related and alternative to amendment No. 40. Amendment No. 43 is an alternative to amendment No. 42. Therefore, amendments Nos. 34 and 38 to 43, inclusive, will be discussed together.

Deputy Finian McGrath: I move amendment No. 34:

In page 35, subsection (1), lines 6 and 7, to delete "3 years" and substitute "2 years".

Deputy Alan Shatter: Amendment No. 34 would reduce the supervision period in respect of a person granted significant debt forgiveness under a debt relief notice from three years to two years. I remain of the view that the three-year period is reasonable in the circumstances. It emphasises that the debt forgiveness granted is a serious concession and imposes certain obligations on the debtor. I am opposing the amendment.

Amendment put and declared lost.

Question proposed: "That section 30 stand part of the Bill."

Deputy Alan Shatter: Chairman, we are taking amendments Nos. 38 and 39 with amendment No. 34.

Chairman: That is correct.

Deputy Alan Shatter: I omitted to make reference to those. Perhaps you will permit me

to do so now.

I am pleased to accept in principle the amendments proposed by Deputy Finian McGrath with regard to limiting the period of extension of the supervision period regarding debt relief notices. I hope the Deputy can accept the slightly revised text, as prepared by the Parliamentary Counsel, in my amendments Nos. 39, 41 and 43 and will consider withdrawing his amendments. Each of the amendments should, in practice, have the same effect but the Parliamentary Counsel has recommended the formula in the amendments I have tabled.

Question put and agreed to.

SECTION 31

Deputy Alan Shatter: I move amendment No. 35:

In page 37, subsection (10), line 13, to delete "register." and substitute "Register of Debt Relief Notices.".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 36:

In page 37, between lines 13 and 14, to insert the following subsection:

"(11) Nothing in this section shall affect the right of a secured creditor to enforce or otherwise deal with his or her security.".

This is a technical drafting amendment and is required for avoidance of doubt. It makes clear that the issuing of a debt relief certificate does not affect the right of a secured creditor to enforce or otherwise deal with his or her security. The debt relief certificate is for unsecured debts only. It does not in any way affect secured debts.

Amendment agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

SECTION 33

Deputy Alan Shatter: I move amendment No. 37:

In page 38, subsection (2)(*b*), line 7, to delete "register," and substitute "Register of Debt Relief Notices,".

Amendment agreed to.

Section 33, as amended, agreed to.

Sections 34 to 37, inclusive, agreed to.

SECTION 38

Amendment No. 38 not moved.

Deputy Alan Shatter: I move amendment No. 39:

In page 39, subsection (3)(*c*), line 39, after "concerned," to insert the following:

"by an additional period not exceeding 12 months,".

Amendment agreed to.

Section 38, as amended, agreed to.

SECTION 39

Amendment No. 40 not moved.

Deputy Alan Shatter: I move amendment No. 41:

In page 40, subsection (5)(*b*), line 36, to delete "concerned," and substitute the following:

"concerned, by an additional period not exceeding 12 months,".

Amendment agreed to.

Section 39, as amended, agreed to.

SECTION 40

Amendment No. 42 not moved.

Deputy Alan Shatter: I move amendment No. 43:

In page 41, subsection (4)(*b*), line 27, to delete "concerned," and substitute the following:

"concerned, by an additional period not exceeding 12 months,".

Amendment agreed to.

Section 40, as amended, agreed to.

SECTION 41

Deputy Alan Shatter: I move amendment No. 44:

In page 41, subsection (2), line 42, to delete "*section 32(2)* and *3(3)*" and substitute "*subsection (2)* or *(3)* of *section 32* or *33*".

The amendment corrects a cross-referencing error in the Bill.

Amendment agreed to.

Section 41, as amended, agreed to.

SECTION 42

Deputy Alan Shatter: I move amendment No. 45:

In page 42, subsection (2)*(a)*, line 10, to delete "register" and substitute "Register of Debt Relief Notices".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 46:

In page 42, subsection (5), line 26, to delete "enforce his or her security." and substitute the following:

"enforce or otherwise deal with his or her security.".

The amendment expands on the existing text by providing that the secured creditor can deal with his or her security by other means besides enforcement.

Amendment agreed to.

Section 42, as amended, agreed to.

SECTION 43

Question proposed: "That section 43 stand part of the Bill."

Deputy Pádraig Mac Lochlainn: There are concerns around the approved intermediaries, the ability to withdraw authorisation of such persons and that the text may not be sufficiently robust in terms of ensuring that the approved intermediary acts in the interests of both the creditor and the debtor. I reserve the right to make amendments to the section at a later stage.

Deputy Alan Shatter: Effectively, the role of the intermediary will be played by MABS, which acts in the interest of the debtor. It is for the creditors to take care of themselves, effectively. I note the Deputy may consider amendments to the section.

Question put and agreed to.

Section 44 agreed to.

SECTION 45

Deputy Alan Shatter: I move amendment No. 47:

In page 43, after line 46, to insert the following subsections:

"(5) Where a personal insolvency practitioner appointed under *subsection (3)*, ("original personal insolvency practitioner")—

(*a*) dies,

(*b*) becomes incapable, through ill-health or otherwise, of acting in the role of personal insolvency practitioner as respects the debtor,

(*c*) resigns from the role of personal insolvency practitioner as respects the debtor, or

(*d*) is no longer entitled to act as a personal insolvency practitioner under this Act, the debtor shall, as soon as practicable after becoming aware of that fact, appoint another personal insolvency practitioner to act as his or her personal insolvency practitioner for the purposes of *Chapter 3* or *4*, as the case may be.

(6) Where—

(*a*) *paragraph (a)*, *(b)*, *(c)* or *(d)* of *subsection (5)* applies, or

(*b*) a personal insolvency practitioner has been appointed under *subsection (5)*, the debtor concerned shall, as soon as practicable, inform the Insolvency Service of that fact and the Insolvency Service shall, on receipt of that information, notify the creditors concerned.

(7) Where a personal insolvency practitioner is appointed under *subsection (5)*—

(*a*) that appointment shall not affect the validity of anything previously done under this Chapter, *Chapter 3* or *Chapter 4*, as the case may be, by the original personal insolvency practitioner,

(*b*) a Debt Settlement Arrangement or a Personal Insolvency Arrangement that is in effect as regards the debtor shall continue to have effect, and

(*c*) references in this Act to a personal insolvency practitioner, in relation to the debtor concerned, shall be construed as including references to the personal insolvency practitioner so appointed.".

Amendment agreed to.

Section 45, as amended, agreed to.

Section 46 agreed to.

Amendments Nos. 48 to 52, inclusive, not moved.

Question, "That section 47 stand part of the Bill", put and declared carried.

SECTION 48

Amendment No. 53 not moved.

Deputy Alan Shatter: I move amendment No. 54:

In page 46, lines 10 to 13, to delete subsection (2).

Amendment agreed to.

Question, "That section 48, as amended, stand part of the Bill", put and declared carried.

SECTION 49

Amendments Nos. 55 and 56 not moved.

Deputy Alan Shatter: I move amendment No. 57:

In page 46, lines 29 to 38, to delete paragraph (*d*) and substitute the following:

"(*d*) having regard to the debtor's circumstances as set out in the Prescribed Financial Statement, it is appropriate for the debtor to make a proposal for a Debt Settlement Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor becoming solvent within a period of not more than 5 years or, as the case may be, it is appropriate for the debtor to make a proposal for a Personal Insol-

vency Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor becoming solvent within a period of not more than 6 years.".

Having considered the matter since the Bill was published I am of the view that section (2) is superfluous to the text as an application for a protective certificate is not optional and there is no need for the debtor to give an express instruction to the personal insolvency practitioner in that regard.

Amendment agreed to.

Amendments Nos. 58 and 59 not moved.

Question, "That section 49, as amended, stand part of the Bill", put and declared carried.

SECTION 50

Amendments Nos. 60 to 71, inclusive, not moved.

Question proposed: "That section 50 stand part of the Bill."

Deputy Joan Collins: On a point of order, I tabled a substantive amendment on the restructuring of mortgages. Can we seek a meeting with the clerk of the committee to find out exactly why it has been ruled out of order?

Chairman: Yes, not now, but later. Deputy Collins may do so when we break for lunch.

Deputy Joan Collins: Okay.

Deputy Richard Boyd Barrett: I presume that having opposed the section on that basis we can submit further amendment on Report Stage.

Chairman: New amendments can be tabled on Report Stage but I am advised that they cannot be the same amendments.

Question put and declared carried.

Section 51 agreed to.

SECTION 52

Amendment No. 72 not moved.

Chairman: Amendments Nos. 73 and 77 are related. Amendment No. 78 is also related and is an alternative to No. 77. Amendments Nos. 73, 77 and 78 will be discussed together.

Deputy Alan Shatter: I move amendment No. 73:

In page 47, subsection (1), lines 31 to 36, to delete paragraph *(e)*.

Amendment No. 73 proposes the deletion of paragraph (*e*) of section 52(1). Having considered the matter since publication of the Bill I am of the view that the requirement for the debtor to confirm by statutory declaration that he or she has not been able to agree an alternative repayment arrangement with his or her creditors, or that his or her creditors have confirmed to the debtor in writing their unwillingness to enter into an alternative repayment arrangement is too onerous. In the circumstances it should be sufficient for the debtor to confirm this in writ-

ing.

Amendment No. 77 arises as a consequence of amendment No. 73 which proposed to delete section 52(1)(*e*). The deletion of section 52(1)(*e*) renders subsection 52(3) invalid.

Amendment No. 78, proposed by Deputy McGrath, would reduce the supervision period in respect of a person granted significant debt forgiveness under a debt relief notice from three to two years. I remain of the view that a three year period is a reasonable period in the circumstances. It emphasises that the debt forgiveness granted is a serious concession and imposes certain obligations on the debtor.

Amendment agreed to.

Chairman: Amendments Nos. 74 and 75 in the name of the Minister are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 74:

In page 47, subsection (1)(*f*)(iii), lines 41 and 42, to delete "a Debt Relief Notice" and substitute "a Debt Relief Notice which is in effect".

These are technical drafting amendments.

For the avoidance of doubt, amendment No. 74 makes it clear that the reference in section 52(1)*(f)*(iii) to a debt relief notice is to a debt relief notice that is in effect. Amendment No. 75 is a consequential amendment to ensure the language used in section 52(1)*(f)*(iv) is consistent with that in paragraph (iii). Deputies are all the wiser now.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 75:

In page 47, subsection (1)(*f*)(iv), line 44, to delete "which is in force" and substitute "which is in effect".

Amendment agreed to.

Deputy Niall Collins: I move amendment No. 76:

In page 48, subsection (2), between lines 25 and 26, to insert the following:

"(*d*) assets necessary for the maintenance or education of any children of the debtor who are aged 18 years or under.".

Chairman: I think the Deputy wishes to withdraw it.

Deputy Alan Shatter: I believe the Deputy intends to withdraw it because we will revert to it on Report Stage.

Deputy Niall Collins: Yes.

Amendment, by leave, withdrawn.

Deputy Alan Shatter: I move amendment No. 77:

In page 48, lines 26 to 35, to delete subsection (3).

Amendment agreed to.

Chairman: Amendment No. 78 has already been discussed with amendment No. 73 and cannot be moved.

Deputy Finian McGrath: May I comment on amendment No. 78?

Chairman: No, it cannot be moved.

Amendment No. 78 not moved.

Question proposed: "That section 52, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: In order to reserve my party's rights to make comments later on, I note Sinn Féin has concerns regarding the eligibility criteria.

Chairman: That is fine.

Deputy Alan Farrell: On a point of order, notwithstanding the level of detail contained in the Standing Orders documents of this House, unless I am mistaken I am not aware of a member's ability to table an amendment on Report Stage having not tabled an amendment on this Stage.

Chairman: Once one has raised an issue, one can. If one indicates one has a concern about something and it is discussed here, then it can be. That is the actual-----

Deputy Alan Farrell: What constitutes discussion?

Chairman: Once it is raised.

Deputy Alan Shatter: A brief reference?

Chairman: The Report Stage amendments arise from what happens here, that is, the discussion and the amendments on this Stage. Once a matter is raised at all it may be dealt with on Report Stage. This always has been the practice and procedure.

Deputy Finian McGrath: I wish to make a strong point because I did not do so earlier. First, I thank the Minister in respect of the three-year-----

Chairman: Does this pertain to the debt settlement arrangement?

Deputy Finian McGrath: I am talking about section 52. My amendment in this regard was intended to allow the personal insolvency practitioner, PIP, to recommend that a person who is insolvent could avail of a debt settlement arrangement without the debt arising being one that runs for five years. This would allow more people to enter a debt settlement arrangement. I wish to put on record that point.

Question put and agreed to.

Sections 53 and 54 agreed to.

SECTION 55

Chairman: Amendments Nos. 79, 80 and 83 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 79:

In page 51, subsection (3), line 10, to delete "*subsection (4)*" and substitute "*subsections (4)* and *(5)*".

Amendment No. 79 is a technical draft amendment which arises as a consequence of the insertion of a new subsection (5) in section 55. Amendment No. 80 arises as a consequence of amendment No. 47 to section 45, which makes provision for the appointment of a replacement personal insolvency practitioner in certain circumstances. This amendment allows for the extension of the period of a protective certificate by the court by an additional 40 days to take account of this situation. It means the debtor will not be disadvantaged or lose the protection of a protective certificate in situations in which the original personal insolvency practitioner is no longer in a position to act on his or her behalf. Amendment No. 83 corrects the existing cross-referencing in this subsection to take account of the insertion of the new subsection (5) as proposed in amendment No. 80. A similar amendment is being made to section 90 to take account of a similar situation arising in the case of a personal insolvency arrangement.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 80:

In page 51, between lines 23 and 24, to insert the following subsections:

"(5) Where a protective certificate has been issued pursuant to *subsection (2)* or extended under *subsection (4)*, the appropriate court may on application to that court extend the period of the protective certificate by a further additional period not exceeding 40 days where—

(*a*) the personal insolvency practitioner has been appointed in accordance with *section 45(5)*, and

(*b*) the court is satisfied that the extension is necessary to enable the personal insolvency practitioner so appointed to perform his or her functions under this Chapter.

(6) The period of a protective certificate may be extended under *subsection (5)* once only.".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 81:

In page 51, subsection (5), line 26, to delete "where it issues" and substitute "where the court issues".

The purpose of this amendment is to make clear it is the court that issues the protective certificate; not the insolvency service.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 82:

In page 51, subsection (6), line 30, to delete "as it considers appropriate" and substitute "as may be prescribed under *section 127(3)(b)*".

This is a technical drafting amendment to improve the text. It makes clear that the information to be recorded in the register of debt relief notices is to be prescribed under section 127(3)*(b)*. I think it is better to prescribe these matters rather than to leave it to the discretion

of the insolvency service. The current provision is a little too broad and I am of the view it is better to be more specific.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 83:

In page 51, subsection (9), line 42, to delete "*subsections (2)* and *(3)*" and substitute "*subsections (3)*, *(4)* and *(5)*".

Amendment agreed to.

Section 55, as amended, agreed to.

SECTION 56

Chairman: Amendments Nos. 84 and 162 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 84:

In page 53, between lines 22 and 23, to insert the following subsection:

"(8) *Subsections (1)*, *(2)* and *(3)* shall not apply to debts or liabilities referred to in *section 59(2)(d)*.".

Amendment No. 84 is a technical drafting amendment. I am advised by the Parliamentary Counsel that this additional subsection is necessary for the avoidance of doubt in respect of the application of certain of the provisions of this section. The amendment makes clear that the provisions of subsections (1), (2) and (3) of section 56 shall not apply to debts or liabilities referred to in section 59(2)(*d*). Section 59(2)(*d*) relates to liabilities arising by virtue of an order under the Proceeds of Crime Acts or a criminal fine and which are not capable of discharge under a debt settlement arrangement. A creditor in respect of a section 59(2)(*d*) liability does not have the option to waive his or her excluded status.

Amendment No. 162 is similar in nature. The proposed amendment is required to provide that the effects of a protective certificate provided for under subsections (1), (2) and (3) of section 91, and which prevent a creditor from taking enforcement or other proceedings or actions against a debtor while the protective certificate remains in force, do not apply to the debts or liabilities referred to in section 94(2)(*e*). The debts and liabilities referred to in section 94(2)(*e*) are those arising by virtue of a court order made under the Proceeds of Crime Acts 1996 and 2005 by virtue of a fine ordered to be paid by a court in respect of a criminal offence. Where a debtor owes such debts or liabilities, he or she cannot be released from them under a personal insolvency arrangement. Accordingly, this amendment provides that enforcement actions can be taken against a debtor in connection with those debts, notwithstanding a protective certificate being in force with regard to the particular debtor.

Amendment agreed to.

Section 56, as amended, agreed to.

SECTION 57

Deputy Niall Collins: I move amendment No. 85:

In page 53, lines 23 to 27, to delete subsection (1) and substitute the following:

"(1) Where a creditor or debtor is aggrieved by the issue of a protective certificate that creditor or debtor may, within 14 days of the giving of notice of the issue of the protective certificate, apply to the appropriate court for an order directing that the protective certificate shall not apply to that creditor or debtor. On such application, the Court shall make such order as seems just and reasonable taking into account all the circumstances of the debt.".

Effectively, this amendment proposes to delete the existing paragraph and insert a new one. The effect of the amendment as inserted is to include the word "debtor" along with the word "creditor". Much already has been heard this morning about having a balance between the debtor and creditor. As only the word "creditor" is itemised in the section, effectively the Minister is not providing a balance between the debtor and creditor. I have tabled it on that basis.

Deputy Alan Shatter: This is a curious amendment as there is no need to extend this appeal facility to the debtor, as the debtor will not be aggrieved by the issue of a protective certificate sought on his or her behalf by an insolvency practitioner. The provision of such a certificate is for the benefit of the debtor. Consequently, I do not see how this issue arises. What is being proposed would make no sense and would only serve to negate efforts to reach a settlement. Were Deputy Niall Collins to give further consideration to this, he might withdraw the proposal.

Amendment, by leave, withdrawn.

Question proposed: "That section 57 stand part of the Bill."

Deputy Michael Creed: I seek clarification from the Minister. When a debtor goes to court seeking a protective certificate, is he or she obliged to notify the creditors?

Deputy Alan Shatter: The protective certificate initially is an *ex parte* application and effectively all it does is prevent creditors from taking action for the period of time specified in the order. It is designed to facilitate an engagement by the personal insolvency practitioner in seeing whether an agreed resolution of the debt can be brought about.

Deputy Michael Creed: The creditors are not notified that the debtor is seeking this from the court.

Deputy Alan Shatter: No.

Deputy Michael Creed: They will in effect be presented with a *fait accompli* when there might be circumstances of which the court should be made aware.

Deputy Alan Shatter: If there are such circumstances, they can come into court if need be to raise an issue in the context of the provisions of the Bill. It is no different from any other *ex parte* application that is made in a variety of circumstances in our court system. For example, where someone seeks an injunction to prevent an immediate action being taken, he or she can initially make what is known as an *ex parte* application and a number of days later any person affected by that injunction will have an opportunity to make a court application. This is an initial protective mechanism which effectively stops a creditor from initiating proceedings against the debtor for a particular debt due once the protective certificate has been granted. It temporarily preserves the *status quo* to facilitate the engagement of the personal insolvency practitioner between the debtor and whatever various creditors exist.

Question put and agreed to.

Sitting suspended at 1 p.m. and resumed at 2.30 p.m.

SECTION 58

Amendment No. 86 not moved.

Chairman: Amendments Nos. 87 and 163 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 87:

In page 54, subsection (2)(*a*), line 24, to delete "the First Schedule of that Act shall apply" and substitute the following:

"paragraphs 1 to 22 of the First Schedule of that Act shall apply with all necessary modifications".

These are technical drafting amendments. I am advised by the Parliamentary Counsel that the cross-reference to the First Schedule should be more specific. It is more correct to cross-reference paragraphs 1 to 22 of the First Schedule to the Bankruptcy Act 1988 rather than the entire First Schedule.

In the case of a debt settlement arrangement, as in section 59, and a personal insolvency arrangement, as in section 93(2)(*a*), the Bill commits a personal insolvency practitioner to request a creditor to file proof of debts and applies the same rules regarding proof of debts as those applicable in bankruptcy, as set out in the First Schedule to the Bankruptcy Act 1988.

There are 24 paragraphs in the First Schedule to the Bankruptcy Act 1988. Only the first 22 are relevant. Paragraph 23 of that Schedule sets out the manner in which the official signee shall deal with creditor claims, including, for example, requiring him to prepare a list of such claims and to place a copy of that list on the High Court file. However, the Bill sets out detailed provisions regarding the duties of a personal insolvency practitioner in relation to recording a schedule of creditors and debts and it would lead to duplication and confusion if paragraph 23 of the First Schedule of the Bankruptcy Act were also to apply.

With regard to paragraph 24 of the First Schedule to the Bankruptcy Act 1988, which deals with proofs of secured creditors, the personal insolvency arrangement sets out detailed provisions regarding the treatment of secured debts and so, again, there would be duplication and confusion with the Bill's provisions if paragraph 23 of the First Schedule to the Bankruptcy Act 1988 were to apply in the context of proof of secured creditor's debt for the purpose of the personal insolvency arrangement.

Amendment No. 87 applies the change to debt settlement arrangements while amendment No. 163 relates to the personal insolvency arrangement.

Amendment agreed to.

Chairman: Amendments Nos. 88 and 164 are related and will be discussed together.

Deputy Finian McGrath: I move amendment No. 88:

In page 54, subsection (2)(*b*)(i), line 28, to delete "vote" and substitute "attend".

Deputy Alan Shatter: I cannot accept amendments Nos. 88 and 164 from Deputy Finian McGrath. The amendments would overly penalise a creditor, where for whatever reason he or she does not respond to a request from the personal insolvency practitioner to prove the debt

owed to him or her, by not allowing the creditor to attend the creditors' meeting. In any case, I do not imagine the situation would arise very frequently where a significant debt is concerned.

Amendment put and declared lost.

Chairman: Amendments Nos. 89 and 165 are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 89:

In page 54, subsection (3)(*b*), line 41, to delete "the insolvent debtor" and substitute "the debtor".

These are both technical drafting amendments. I am advised that the word "insolvent" is superfluous in both instances and should be deleted from the text.

Amendment agreed to.

Section 58, as amended, agreed to.

SECTION 59

Amendment No. 90 not moved.

Deputy Finian McGrath: I move amendment No. 91:

In page 55, subsection (2)(*a*), line 4, to delete "60 months" and substitute "24 months".

Deputy Alan Shatter: The Bill provides that a debt settlement arrangement should not normally exceed 60 months in duration. This provision mirrors similar timeframes allowed for the settlement of unsecured credit in other common law jurisdictions. It permits a reasonable period for the debtor to make payments to creditors and to receive the likely discount on his or her debts. The Deputy's proposal to shorten the period to 24 months would make it very difficult to facilitate the conclusion of debt settlement arrangements in most cases. It is counterproductive in that it would present a major disincentive to creditors ever agreeing to a settlement. As such, I am opposed to the amendment.

Deputy Finian McGrath: To clarify, my aim in this amendment is to reduce the risk of bankruptcy tourism whereby people in debt difficulty in this country might travel to the United Kingdom to file for bankruptcy in order to avail of the shorter discharge period there.

Deputy Alan Shatter: The problem is that the debt settlement arrangement model is all about people entering into a consensual arrangement to resolve debt issues which, in this instance, relate to unsecured debt. In circumstances where, at the end of the period, an amount of the debt may well be forgiven or wiped out, there must be some incentive for creditors to enter into such an agreement. There must be a facility, within a specified time line, for some payments to be made. Therefore, I cannot accept the Deputy's proposal.

Amendment put and declared lost.

Chairman: Amendments Nos. 92 and 95 to 97, inclusive, are related and may be discussed together by agreement.

Deputy Alan Shatter: I move amendment No. 92:

In page 55, subsection (2)(*c*)(ii), lines 23 and 24, to delete "or other charge" and substitute "or other charge of a similar nature".

Amendments Nos. 92, 95 and 96 expand the existing provisions in regard to the costs to the personal solvency practitioners to include fees, costs and outlays. Having considered the provisions since publication of the Bill, I consider it necessary to ensure that the wording of this section adequately captures all of the expenses the practitioner might incur. I am conscious that in certain cases, for instance, the latter might be involved in the sale of the debtor's property for the benefit of creditors, which could give rise to costs and outlays to the practitioner that fall outside his or her agreed fees. These amendments are intended to improve the existing text in order to cover these likely scenarios.

Amendment No. 97 is a technical drafting amendment. I am advised by Parliamentary Counsel that the insertion of the proposed additional words is required to improve the text of the Bill.

Amendment agreed to.

Deputy Finian McGrath: I move amendment No. 93:

In page 56, subsection (2)(*f*), lines 11 and 12, to delete "a reasonable standard of living" and substitute the following:

"a reasonable standard of living, as defined by the Minister".

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 94:

In page 56, subsection (2)(*g*)(i), line 17, to delete "Chapter to" and substitute "Chapter and to".

This is a technical drafting amendment to correct an omission from the Bill. The word "and" should be inserted after the word "Chapter".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 95:

In page 56, subsection (2)(*g*), to delete lines 19 to 21 and substitute the following:

"(ii) indicate the likely amount of the fees, costs and outlays to be incurred, or where this is not practicable, the basis on which those fees, costs and outlays will be calculated, and".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 96:

In page 56, subsection (2)(*g*)(iii), lines 22 and 23, to delete "costs and charges" and substitute "fees, costs and charges".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 97:

In page 56, subsection (2)(*g*)(iii), line 24, to delete "they are to be paid;" and substitute

"they have been or are to be paid;".

Amendment agreed to.

Chairman: Amendments Nos. 98 to 100, inclusive, and 102 to 104, inclusive, are related and may be discussed together by agreement.

Deputy Finian McGrath: I move amendment No. 98:

In page 56, subsection (2)(*i*), to delete line 32, and substitute "unless the debtor explicitly consents to such;".

I will defer to my colleague, Deputy Richard Boyd Barrett, to outline the purpose of this proposal.

Deputy Richard Boyd Barrett: The objective here is self-evident. One of the key priorities of the Bill should be to protect the family home and avoid repossessions and evictions. That imperative should be clearly inserted into the Bill in order to prevent any debt settlement arrangement or personal insolvency arrangement which would require debtors to move out of the family home unless they are themselves of the view that their situation is not sustainable. The priority of the legislation should be to restructure the debt in such a way that those who wish to stay in the family home are allowed to do so. Otherwise, nothing will be done to ease the genuine fears and anxieties of people throughout the State that they might lose their family home because of the difficulties in which they find themselves, not through any fault of their own but arising, rather, out of the exceptional economic crisis we are facing.

Deputy Alan Shatter: Amendment No. 98 seeks to add to the mandatory conditions in regard to a debt settlement arrangement by requiring the explicit consent of debtors in respect of any proposal requiring them to dispose of their principal private residence. This amendment is not required as the Deputies' concerns are already dealt with at length in section 63, which provides full protection for the principal family residence in any debt settlement arrangement. A debtor cannot be forced to move out of the family home. In fact, unless he or she is agreeable to the arrangement that is proposed, there will be no arrangement. The debt settlement model we are proposing is a consensual means of dealing with indebtedness as between debtors and creditors. The debtor has a veto which ensures he or she is not obliged to enter into an arrangement that he or she does not consider appropriate.

We spoke at length on Second Stage about the position of creditors, and it has been suggested that some have vetoes. To reiterate, the bottom line is that there can be no arrangement without the debtor's agreement and a debtor cannot be compelled under a debt settlement arrangement to move out of his or her home. A person may consent to do so, but there can be no compulsion. A personal insolvency practitioner may make such a proposal where the home is large and is not required to meet the needs of the debtor. Ultimately, however, if a debtor is not happy with a proposed debt settlement arrangement, it cannot proceed. The arrangements set out in the Bill are designed to facilitate debtors to extricate themselves from their debt circumstances. As such, the proposal in amendment No. 98 is superfluous and unnecessary.

Amendment No. 99 is a technical drafting amendment. I am advised by Parliamentary Counsel that the cross-reference to section 63 should be more specific and should refer to section 63(3) only. Amendment No. 100 is another technical drafting amendment. Parliamentary Counsel has indicated that the insertion of the proposed additional words is required to improve the text of the Bill. This ensures a consistency of drafting approach in each of the paragraphs of

subsection (2) concerning the mandatory requirements of a debt settlement agreement.

Amendment No. 102 in the name of Deputy Finian McGrath seeks to tie the hands of both the debtor and the personal insolvency practitioner in regard to a debt settlement arrangement proposal in respect of the principal private residence. However, it may be the case that a debtor actually wishes to dispose of the residence or his or her circumstances may be such that continuing to reside there is simply not practical and it is in her or her own interest to propose a disposal. To remove this flexibility would not be desirable.

Amendments Nos. 98 and 103, in the name of Deputy Finian McGrath, would seek to add to the mandatory conditions relating to a debt settlement arrangement - we visited this matter already - by requiring the explicit consent of the debtor in regard to a proposal requiring him or her to dispose of his or her personal private residence. Such a provision is not required, particularly as the matter is dealt with at some length in section 63.

Amendment No. 104, which is also in the name of Deputy Finian McGrath, would delete a very necessary provision from the section. I cannot agree to this proposal.

Deputy Richard Boyd Barrett: I will be seeking that the particular amendment be pressed. The Minister indicated that said amendment is superfluous because a debtor will be obliged to agree to the arrangement proposal. What choice will be available to such a debtor if he or she cannot reach an agreement with a creditor or if the latter does not agree to the arrangement? In such circumstances a debtor will not really have any choice other than to opt for bankruptcy. This will almost certainly lead to that person losing his or her family home. It is not the case that the debtor, who is the holder of the distressed mortgage, will have much choice. It is for this reason I am proposing that it should be an explicit objective and imperative of the Bill to protect people's family homes and that the emphasis in trying to formulate arrangements should be to this end. We must ensure that people retain their family homes and are not forced to vacate or be evicted from them. This is even more important in light of the fact that the vast majority of those whose mortgages are in distress find themselves in that position through no fault of their own but rather as a result of circumstances which were contrived by bankers, developers and politicians. People whose mortgages are now in distress were simply seeking to do something very reasonable, namely, put a roof over their heads.

Deputy Alan Shatter: I appreciate that the Deputy's comments are confined to people's family homes. Individuals who raised substantial funds in order to invest in the acquisition of large numbers of properties clearly did so by choice. If such people find themselves in financial difficulty now, it is as a result of their expectation - which has subsequently proved to be incorrect - that property values would increase and that they might benefit from such a development.

The Deputy is just simply wrong in terms of the proposal he is making. I return to a very basic fact. In the context of debt settlement arrangements, we are dealing with unsecured debt. We are not, therefore, dealing with mortgages owing to financial institutions or anything of that nature, rather we are dealing with other debt for which there is no security. The essence of the debt settlement arrangement is that the personal insolvency practitioner will work on the basis of the background circumstances and will have a knowledge of the debtor's income, assets and liabilities. He or she will also have full knowledge of the debts that exist and will produce a plan which is designed to facilitate the debtor in dealing with his or her debts in a manner that prevents and protects him or her from being sued by his or her creditors. Such plans will also be designed to ensure that at least some portion of people's debts may be repaid to creditors and that debtors will be granted a period of years in which, effectively, they might get their financial

houses in order.

If I were a debtor and I was presented with a proposal by a personal insolvency practitioner, he or she might consider my overall circumstances and inform me that I should sell the very large house in which I am living, purchase a smaller one and use the money left over to pay down my debts. Even though that might be good advice, as a debtor I would be under no obligation to take it or to enter into a debt settlement arrangement. If I, as a debtor, am living in a house which is a good deal larger than I require and which is not in negative equity and if I do not enter into a debt settlement arrangement, my unsecured creditors might choose to sue me in respect of money I owe them - as is the case at present - and might seek to enforce the judgment handed down by, perhaps, putting something called a "judgment mortgage" as a charge against my family home. This has all been part of our law for the past two centuries and there is nothing new about it.

In the context of the insolvency aspect of the legislation before the committee, there is no compulsion, when dealing with a debt settlement arrangement - even a personal insolvency arrangement - on the debtor to agree to enter into the arrangement that is proposed. If a debtor does not enter into such an arrangement, if he or she is in serious debt and is doing nothing to discharge that debt and if he or she has no plan, I presume that the people to whom he or she owes money may sue him or her. If a debtor does not like what is on offer, he or she can choose the alternative and opt for bankruptcy.

There is a misunderstanding on the Deputy's behalf in respect of this matter. I accept that he is well meaning in this regard and that he is acting out of nothing other than a concern that people will not find themselves dispossessed of their homes. I accept from where Deputy Boyd Barrett is coming but he has displayed a very basic misunderstanding with regard to how this provision works. Effectively, unless the debtor consents to the arrangement, no issue relating to his or her home can possibly arise. In terms of many of these arrangements there may not be any issue in respect of the home at all. This is because such arrangements do not expressly apply to secured debt, rather they primarily relate to unsecured debt. When a personal insolvency practitioner comes to deal with a matter, however, he or she must be aware of the other debts that exist and the extent to which these are secured. He or she must also have some idea of values.

Chairman: Before I put the question I remind Deputies that, once it is disposed of, all the amendments in this group will be considered to have been discussed and that the debate on them cannot be reopened.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 99:

In page 56, subsection (2)(*i*), line 32, to delete "*section 63*" and substitute "*section 63(3)*".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 100:

In page 56, subsection (2)(*k*), line 39, to delete "the review referred to" and substitute the following:

"a Debt Settlement Arrangement shall provide that the review referred to".

Amendment agreed to.

Question proposed: "That section 59, as amended, stand part of the Bill."

Deputy Michael Creed: I draw the Minister's attention to the wording contained in this section to the effect that "a Debt Settlement Arrangement shall not require the debtor to sell any of his or her assets that are reasonably necessary for the debtor's employment, business or vocation unless the debtor explicitly consents to such sale". This is a wise formulation of words but I wish to contrast it with that contained in section 23 in respect of debt relief notices. Earlier, we discussed the issue of motor vehicles being included in a debtor's assets and also the matter of the maximum value of €6,000 in respect of excepted articles. In the context of the Minister's commitment to consider this matter before Report Stage, is it not the case that the approach set out in section 59 is more far more acceptable in the context of what is reasonably required for a person to conduct his or her business or to return to employment than that outlined in section 23 in respect of debt relief notices?

Deputy Alan Shatter: In the context of a debt settlement arrangement, it is envisaged that a debtor will, over a period of years and to some extent, work his or her way through his or her debts and make some repayments. The debt relief notice largely anticipates that no repayments at all may be made. Not every person needs a motor vehicle in order to fulfil the requirements of his or her job. As I previously informed the Deputy, I am conscious that there should be nothing in the legislation which would act as a barrier to someone either retaining an existing job, obtaining a new job or creating a real job for himself or herself. We will look again at the points the Deputy made in the discussion of the debt relief notice, and which were made by some other Deputies, and we will give some more consideration to the financial provisions with regard to cars and some other related issues we discussed. The debt settlement arrangement, however, is a very different animal in practical terms from the debt relief notice. The point the Deputy is making is reasonable and gives us food for thought.

Deputy Michael Creed: I appreciate that there is a write-down of debt under €20,000. Nevertheless, we are dealing with individuals who, we must assume, wish to re-emerge as economically viable citizens creating employment for themselves and sustaining their families. Anything we do to jeopardise that capacity will, ultimately, cost the State more. That wording relates to a debt settlement arrangement which is based on the premise that the debtor will pay perhaps a reduced amount of the debt by arrangement. It nevertheless leaves them with the capacity and necessary instruments to continue their profession. I think we could look at that.

Chairman: The Minister has said he would look at that on Report Stage.

Deputy Pádraig Mac Lochlainn: Sinn Féin has concerns about the personal insolvency practitioners. We would like clarity regarding fees and how their level would be arrived at. We reserve the right to table amendments to deal with those issues on Report Stage.

Deputy Richard Boyd Barrett: I acknowledge the Minister's undertaking to consider the matters raised by Deputy Creed, other Deputies and myself. During the lunch break I had a conversation with fishermen, who are another group one might want to think about in this regard. A small fisherman might own a relatively small fishing boat.

Deputy Michael Creed: Have we any small fishermen left in the country?

Deputy Richard Boyd Barrett: We have a few of them left in Dún Laoghaire, but not many. A fisherman's livelihood would be dependent on his boat, whose value would be considerably in excess of €6,000. The Minister might bear this group in mind when considering these issues.

Deputy Alan Shatter: I will bear in mind the Deputy's concern for diminutive fishing people.

Deputy Richard Boyd Barrett: They were quite stocky, actually.

Deputy Alan Shatter: Let us be serious again for a moment. We are happy to work our way through the Bill, listening in a constructive way to issues people are raising, and we will reflect on those before Report Stage. As we go through the Bill issues will arise that we or Deputies opposite may not have previously considered. That is why this is a helpful process.

Chairman: Deputy Boyd Barrett is casting his net wide today.

Deputy Finian McGrath: Will the Minister give priority to the fishermen of Howth?

Chairman: There are fishermen in my area.

Deputy Alan Shatter: So long as we are not drowned in rhetoric.

Chairman: Deputy Mac Lochlainn raised the issue of fees for practitioners. Concern has been expressed that they may be commission-based. Have you any idea, Minister, how the level of fees will be arrived at?

Deputy Alan Shatter: It is not envisaged that they will be commission-based. The insolvency agency itself may look at this question. This issue has already been dealt with in the United Kingdom, in Northern Ireland and England. The fees payable to the personal insolvency practitioner have to be part of what is agreed when a debt settlement or personal insolvency arrangement is entered into. The debtor or, more likely, the creditor may not be happy with the level of fees, because they will come out of whatever pool of money exists. A constraint will be imposed on fees to ensure they are realistic. That has been the experience of similar practices elsewhere.

Earlier, we debated the amendment dealing with costs and expenses. If there are costs and expenses they must be readily identifiable and certified. One cannot invent costs that do not exist, but if outlays are incurred which can be clearly identified and for which there is confirming documentation the matter will be reasonably straightforward. The experience elsewhere has been that fees find their own level. They will be under extraordinary scrutiny. They will be scrutinised not only by the debtor but by the creditor, whose consent is required to put in place an agreed arrangement.

I refer Deputy Barrett and others to paragraph 59(2)(*i*), which states that a debt settlement arrangement shall not require that the debtor dispose of his or her interest in his or her principal private residence or cease to occupy such a residence unless the provisions of section 63 apply. Section 63 deals with circumstances in which the debtor consents to the residence being sold. I point the Deputy in the direction of the specific substantive provision to which I made a general reference when we were dealing with that issue earlier.

Question put and agreed to.

SECTION 60

Deputy Alan Shatter: I move amendment No. 101:

In page 57, subsection (3), line 31, to delete "of the same class".

This is a technical amendment.

Amendment agreed to.

Section 60, as amended, agreed to.

Sections 61 and 62 agreed to.

SECTION 63

Deputy Finian McGrath: I move amendment No. 102:

In page 58, subsection (1), lines 42 to 44, to delete all words from and including ", insofar" in line 42 down to and including "*subsection (2)*," in line 44.

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 103:

In page 58, subsection (1), line 46, after "residence" to insert the following:

"unless the debtor explicitly confirms in writing that he/she does not wish to remain in occupation of his or her principal private residence".

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 104:

In page 58, lines 49 to 52 and in page 59, lines 1 to 40, to delete subsections (2) to (4).

Amendment put and declared lost.

Section 63 agreed to.

NEW SECTION

Deputy Alan Shatter: I move amendment No. 105:

In page 59, before section 64, to insert the following new section:

64.—(1) Where a personal insolvency practitioner has prepared a proposal for a Debt Settlement Arrangement and the debtor has consented to that proposal and the calling of a creditors' meeting, the personal insolvency practitioner shall arrange for the holding of a meeting of the creditors of the debtor for the purpose of considering the proposal for a Debt Settlement Arrangement.

(2) Notice of the meeting shall be given by the personal insolvency practitioner to each creditor in accordance with regulations made by the Minister under *section 68* together with copies of the proposed Debt Settlement Arrangement and the other documentation referred to in *section 65*.

(3) Notwithstanding regulations made under *section 68*, when calling a creditors' meeting under this section, the personal insolvency practitioner shall—

(*a*) give creditors at least 14 days' written notice of the meeting and the date on which, and time and place at which, the meeting will be held;

(*b*) accompany the notice referred to in *paragraph (a)* with the documents referred to in section 65;

(*c*) lodge a copy of the notice referred to in *paragraph (a)* and the documents referred to in section 65 with the Insolvency Service.

(4) Where the debtor does not, before the expiry of the protective certificate, consent to the calling of a creditors' meeting, the procedure as respects that debtor making a proposal for a Debt Settlement Arrangement shall be treated as having concluded.".

On the advice of Parliamentary Counsel, this new section simply replaces the previous version with more accurate cross-referencing of related sections and provisions in regard to the calling of the creditors' meeting to consider a debt settlement arrangement. However, there is minimal amendment to the text and these are, essentially, technical changes to ensure the accuracy of the text.

Deputy Niall Collins: What categories of communication are defined as "written"? Will electronic notification be sufficient or must it be given by registered snail mail?

Deputy Alan Shatter: Section 64(2) states:

The personal insolvency practitioner shall send a written notice of a creditors' meeting to each creditor in accordance with *subsection (3)* and regulations made by the Minister under *section 68*.

Subsection (3) provides that the personal insolvency practitioner must give creditors at least 14 days' written notice of a creditors meeting and furnish them with various items of documentation and a copy of the notice. Regulations can be made to specify these requirements. I am anxious that we avail of electronic means where possible, but the reality is that not everybody has access to a computer or other means of receiving information electronically. When it comes to drawing up the regulations, it may be necessary to make provision for communications to be furnished to individuals in hard-copy format. Whether that is done via ordinary or registered post is a matter of detail.

Deputy Niall Collins: It will be an area of dispute.

Deputy Alan Shatter: These are issues of detail to be addressed and it is important that they are addressed in order to avoid disputes. One of the reasons, for example, that a creditor might make an application to the Circuit Court to reject a proposed debt settlement arrangement is where he or she was not notified in accordance with the relevant provisions of the legislation. We will deal with that issue very carefully within a regulatory framework.

Deputy Niall Collins: We should bear in mind, for instance, that some organisations have functional headquarters which are separate from their registered office address. Those types of logistical anomalies will arise.

Deputy Alan Shatter: I appreciate that. However, the creditor will, in his or her contact with the personal insolvency practitioner, have furnished an address. There will be personal

contact with regard to putting the proposed arrangements together in advance of the creditors meeting being called. On the basis of the personal insolvency practitioner doing his or her work correctly and the debtor making a truthful and comprehensive disclosure of all creditors, which would include their addresses, this should not be an area of difficulty. There would, of course, be a difficulty were a debtor to conceal the identity of creditors or fail to furnish the personal insolvency practitioner with the names and addresses of certain creditors. In that scenario, however, any arrangement would be set aside as a consequence of the fraudulent failure to disclose the existence of particular debts and the names or identities of creditors.

Deputy Anne Ferris: Will the Minister amend the requirement that creditors be given at least 14 days' notice of a meeting to refer to 14 working days? This would take account of bank holidays and so on.

Deputy Alan Shatter: As I understand it, the relevant provision in the Interpretation Act 2005 means that the 14-day requirement is understood to refer to 14 working days. That is the statutory meaning. Nevertheless, I will verify the issue before Report Stage.

Deputy Anne Ferris: It might be useful, for the benefit of the layperson, to include an explicit reference to working days.

Amendment agreed to.

Section 64 deleted.

SECTION 65

Deputy Alan Shatter: I move amendment No. 106:

In page 60, subsection (1), line 16, to delete paragraph (*a*) and substitute the following:

"(*a*) a completed statement of the debtor's financial affairs, showing the debtor's position of insolvency, in the form of the Prescribed Financial Statement;".

This is a technical drafting amendment which better explains the information that is required to be provided to creditors in the prescribed financial statement.

Amendment agreed to.

Chairman: Amendments Nos. 107 and 108 are related and may be discussed together by agreement.

Deputy Alan Shatter: I move amendment No. 107:

In page 60, subsection (1)(*c*)(ii), line 28, to delete *"Chapter 2*" and substitute *"section 47* ".

This is a technical drafting amendment which amends the cross-referencing in this subsection to make it more specific. The Parliamentary Counsel advised that it was more correct to refer only to the provisions of section 47 rather than to all of Chapter 2. Amendment No. 108 proposes to delete the requirement that the personal insolvency practitioner's report to the creditors include an indication that the practitioner is of the view that a debt settlement arrangement proposal is an acceptable alternative to bankruptcy for the debtor. On reflection, this seems a redundant and unnecessary requirement given that it is stating what is essentially obvious. The fact that the practitioner is making the debt settlement arrangement proposal is

an indication that it is a better alternative for the debtor.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 108:

In page 61, subsection (1)(*d*)(ii), lines 6 and 7, to delete all words from and including "Arrangement," in line 6 down to and including "debtor." in line 7 and substitute "Arrangement.".

Amendment agreed to.

Question proposed: "That section 65, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: If the provisions of section 65 (1)(*d*), which deal with the report the personal insolvency practitioner must prepare for creditors, were taken literally, the practitioner would require a crystal ball. We will consider putting forward amendments on Report Stage to address our concerns in this regard.

Deputy Alan Shatter: I note the Deputy's intention. We will discuss any amendment that arises on Report Stage.

Question put and agreed to.

SECTION 66

Deputy Alan Shatter: I move amendment No. 109:

In page 61, subsection (2), lines 24 to 26, to delete all words from and including "is" in line 24 down to and including "creditors," in line 26 and substitute the following:

"believes it is in the interests of obtaining approval of a proposed Debt Settlement Arrangement by the creditors at the meeting,".

This technical drafting amendment proposes to improve the existing construction of subsection (2), which deals with the facility of a personal insolvency practitioner to adjourn a creditors meeting where he or she is of the view that such action will improve the prospect of reaching an agreement. The proposed text reflects the wording of section 104(4) concerning the calling of the creditors meeting in regard to a personal insolvency arrangement.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 110:

In page 61, subsection (3), to delete lines 34 to 38 and substitute the following:

"(*b*) furnish such amended proposal to each creditor,

at least 7 days before the day of the adjourned meeting, unless all of the creditors waive the right to receive such period of notice in writing.".

This is another technical amendment which proposes to improve the existing construction of subsection (3) in regard to the notice that is required to be given to creditors of an amended proposal for their consideration at the next meeting.

Amendment agreed to.

Chairman: Amendments Nos. 111, 113 and 114 are related and may be discussed together

by agreement.

Deputy Finian McGrath: I move amendment No. 111:

In page 61, lines 43 to 47, to delete subsection (5).

I defer to my colleague, Deputy Richard Boyd Barrett, to outline the rationale for this proposal.

Deputy Richard Boyd Barrett: These amendments seek to delete the provisions in this section which grant creditors a vote on the terms of a proposed debt settlement arrangement. While we agree that creditors should have the right to attend meetings in order to voice their concerns - I have proposed, in fact, that the Insolvency Service should consider such submissions from creditors, but this was rejected by the Minister - we do not accept that they should have the right to veto a reasonable arrangement. The question of what constitutes a reasonable arrangement should be determined by the Insolvency Service or another independent body. This is preferable to the banks or other creditors having the final say. I accept the Minister's point to the effect that not all of the creditors involved are banks. Nonetheless, much of what we are dealing with here relates to the banks. For reasons that would be fairly obvious to most people, I do not believe the banks should have the right to refuse to accept reasonable arrangements to restructure debt.

Deputy Michael Creed: As I understand it, 65% of creditors must approve the arrangement.

Deputy Alan Shatter: It is 65% based on the weighting in respect of how much is owed to each creditor. It is quite a complex calculation. There is a differentiation between the positions of particular creditors, which is based on what is owed to them. That is in the context of the personal insolvency arrangement. In respect of unsecured creditors, it is 65% *simpliciter*.

Deputy Michael Creed: In a sense, that seems somewhat unfair. The weighting principle is, to an extent, fairer to creditors. There may be a case where several creditors who are owed a relatively small proportion of the overall debt will attract the same weighting in the context of approval as might a single creditor who is owed a great deal. I accept that certain people in this room might not hold the bona fides of particular creditors in as high esteem as they might those of others. For example, there are those who might have little sympathy for financial institutions. However, not all creditors are financial institutions and it must be borne in mind that certain creditors receiving a fair share could mean the difference between their businesses either surviving or going to the wall. The failure of these individuals' businesses would, of course, result in a great deal of collateral damage. I am of the view that weighting approach - that is, proceeding on the basis of volume of debt to the number of creditors - is fairer.

Deputy Alan Shatter: I accept what the Deputy is saying. In the context of the current position regarding debt settlement arrangements, it is the equivalent of one man or one woman to one vote. With regard to personal insolvency arrangements, it is done on the weighted basis. I would be happy to reflect on what the Deputy has said in respect of that issue.

Deputy Richard Boyd Barrett: Does the Minister wish to respond to the points I raised?

Deputy Alan Shatter: I beg the Deputy's pardon. I have not responded to his point. The essence of the amendments to which he spoke would be to turn what is a consensual debt settlement arrangement into an adjudicative process. Such a development would dramatically change the workings of the legislation and completely undermine the rights of creditors. De-

spite what he says, when Deputy Boyd Barrett thinks of creditors he only has the banks in mind. I appreciate that he regards the latter as evil incarnate. It is important, however, that we should have a functioning banking system in this country and that it should not be allowed to collapse entirely. The banks the Deputy regards as evil are the same institutions he criticises for not providing adequate loans or mortgages to those who wish to purchase new homes or properties at the substantially reduced prices that are available. He cannot have it both ways. We cannot deprive the banks of funds they are entitled to recover from anybody who ever borrowed money from them while also encouraging them to make a constructive contribution to the economy by lending money to small businesses and individuals who are financially viable and who wish to purchase homes.

There must be some sense of insight in respect of this matter. In the sole context of the debt settlement arrangement, we are referring to unsecured rather than secured creditors. I presume one of the unsecured creditors may well be a bank that has a client or customer whose current account is in overdraft or who has a credit card debt and who has no security. Many of the unsecured creditors in question will be individuals and businesses which have had nothing to do with the financial and banking system but which provided services, products or assistance to people who are now not paying what they owe. Such creditors are not anonymous aliens who live on one of the outer planets in the solar system; many of them are citizens of this State who are trying to earn a living, support their families, pay their debts and repay their mortgages.

I have no wish to be unkind but there is a lack of comprehensive insight into what we are talking about on the part of Deputy Boyd Barrett. In his mind, all of the creditors involved are evil banking institutions. Even if he acknowledges that some of them might be ordinary individuals who have done a decent day's work for which they would like to be paid, he does not seem to be able to conceptualise that in the context of the workings of the legislation. The reality is that people who have provided services and products for others and who are not being paid by the latter may themselves end up needing to enter into debt settlement or personal insolvency arrangements. Those to whom I refer must be given some entitlement to express their views and the legislation will allow them to do this. The Bill does so in the context of such creditors having what I describe as a "limited input" because all that is required is the 65% approval rating. In England, a rating of 75% is required.

Deputy Creed has a point, namely, that we must ensure we are not being unfair to creditors in our anxiety to be of assistance to debtors. There are many people in this country who, through no fault of their own, are in debt. No one who lives in this State could be unaware of that fact. However, a significant number of people are also in debt because they led profligate lifestyles and spent more money than they earned. These individuals do not care about the impact their failure to pay their debts has on other people and their families.

Effectively, Deputy Boyd Barrett is proposing that instead of having an agreed debt resolution process we should have an adjudicative process in which individual creditors should have practically no say of any description. What is interesting about what he is saying is that the agreement process - which is non-judicial in nature - envisages agreement between debtors and creditors. If the entire process were changed to be adjudicative in nature, it might impose on debtors arrangements with which they could not cope and to which they would not want to agree. We could certainly have a system where debtors would have a say and could state that they are either agreeable to arrangements or can veto them and where creditors would be invisible individuals who would have no say at all. If we put such a system in place, it would be unconstitutional. There is absolutely no doubt of any description about that.

What the Deputy is doing is seeking to remove the right of a creditor at a creditors' meeting to vote on and approve a proposal for a debt settlement arrangement, which, it must be remembered, is proposed on behalf of a debtor. The Deputy is also seeking to replace the process, which is imposed, by a determination on the part of the insolvency service. That is not the role that is intended for the service. What the Deputy proposes would fundamentally change the architecture of the legislation and create substantial constitutional difficulties in the context of the coming into force and operation of the legislation. For that reason, I am opposed to the amendments.

Deputy Richard Boyd Barrett: We are back to our old ways here.

(Interruptions).

Deputy Alan Shatter: In case the Deputy did not hear what I said, I am opposed to the amendments.

(Interruptions).

Deputy Richard Boyd Barrett: We are dealing with a series of amendments which propose, in the first instance, that there should be an attempt to reach an agreement between debtors and creditors. The Minister said that creditors must also have "an entitlement to express a view". In my series of amendments I specifically propose that creditors should have a right to express a view and to make submissions, and that in regard to the arrangements that they should have the right to propose amendments or modifications but that an independent person would make the final adjudication as to what is a reasonable arrangement in the event that the debtors and creditors cannot come to an agreement. That seems a preferable way to proceed. I do not say there might not be difficulties but the principle of having someone who is independent having the final say if agreement cannot be reached is preferable to the banks making the decision. I accept the Minister's point that there is a shortcoming in my amendments in that not all of the institutions involved are banks.

If there is sympathy for what I am trying to do, it would be to try to distinguish between financial institutions and other types of creditors of the type to which Deputy Creed referred who are concerned that they could be in financial difficulty as a result of such an arrangement and that such issues would be taken into consideration. I make no apologies for distinguishing between creditors who are ordinary citizens and financial institutions. While I would not say they are evil incarnate, they do not have the best interests of the economy at heart. It is one of the stated objectives of the Bill, as set out in the Title, that we want a resolution to debt problems not just because we need fairness for debtors and creditors but because it is in the interests of the economy as a whole to do so.

Chairman: I remind Deputy Boyd Barrett that we are discussing the arrangements for the conduct of creditors' meetings. I ask members to focus on that.

Deputy Richard Boyd Barrett: Absolutely. This is at the heart of it.

Chairman: If Deputy Boyd Barrett could come to the heart of it, we could move on.

Deputy Richard Boyd Barrett: The heart of it is simply that the Bill as it currently stands-----

Chairman: We are on section 66.

Deputy Richard Boyd Barrett: I know exactly what section we are on and I know exactly what the amendment proposes. The Bill proposes that creditors get to vote if agreement cannot be reached. In the case of financial institutions and banks the notion that they should have the final say and essentially be able to veto proposals made by the personal insolvency practitioners or proposals that might arise out of a discussion following submissions from both sides to the personal insolvency practitioner or the insolvency agency is not acceptable.

Chairman: Deputy Boyd Barrett should allow the Minister to respond to that point and if he wants to contribute again, he can.

Deputy Alan Shatter: Coming back briefly to one point I made earlier, what the Deputy is proposing is that the insolvency agency would become an adjudicative body. We cannot constitutionally turn the insolvency agency into a court. What the Deputy is proposing is not constitutionally possible in practical terms. It would also effectively change the role that is envisaged for this agency. It is envisaged that the process would be a consensual process whereby a debt settlement arrangement is put in place by agreement between the parties. In the context of the agreement, because it is an agreement ultimately proposed by a personal insolvency practitioner on behalf of the allegedly insolvent debtor, the agreement of creditors that is sought is not an agreement of all the creditors. In fact, it gives a degree of power to the debtor to force arrangements if there are one or two recalcitrant creditors but all the others agree to an arrangement, in that one will have an agreed consensual arrangement put in place to the extent that a majority of creditors are consenting, although there may be a minority who are not. However, it does not involve what the Deputy is proposing – an adjudicative process – and there are constitutional reasons why it cannot do so.

Deputy Richard Boyd Barrett: I made the point and I will not labour it. I am not happy with the Minister's response. I accept the point that has been made by the Minister and Deputy Creed. My amendments might require a little finessing to distinguish between different types of creditors but it is problematic to leave the final say with the creditors in particular if they are banks. That becomes even more pertinent as we move through the Bill when we get to the personal insolvency arrangements but even in the context of unsecured debts it is problematic. In many cases, although not in all - and even more so as we move through the Bill - there will not be a group of creditors; there will be one creditor, and that will be a financial institution.

Deputy Alan Shatter: It is clear that the Deputy and I are going to have to agree to disagree on the role the insolvency agency plays. There is one point on which we are both agreed. I said it this morning and I will probably say it once more later in the day. When we are dealing with the personal insolvency arrangement, it is of vital importance that the banks recognise the reality of the level of indebtedness of some of their customers and their total incapacity to pay, and that they work the legislation in the manner in which it is envisaged. That is something on which the Deputy and I agree.

There is one omission in what I said earlier. I am conscious that we are taking amendment No. 113 at the same time and I should put on the record that it is a technical drafting amendment which proposes to improve on the existing construction on subsection (6) in regard to the correction of an ambiguity or error in the draft debt settlement arrangement.

Amendment put and declared lost.

Amendment No. 112 not moved.

Deputy Alan Shatter: I move amendment No. 113:

In page 62, subsection (6), lines 3 and 4, to delete all words from and including "to" where it secondly occurs in line 3 down to and including "if—" in line 4 and substitute the following:

"where the modification addresses an ambiguity or rectifies an error in the proposed Debt Settlement Arrangement and where—".

Amendment agreed to.

Deputy Finian McGrath: I move amendment No. 114:

In page 62, lines 9 to 19, to delete subsections (7) and (8).

Amendment put and declared lost.

Section 66, as amended, agreed to.

SECTION 67

Amendment No. 115 not moved.

Chairman: Amendments Nos. 116 to 120, inclusive, are related. Amendment No. 121 is also related and is an alternative to No. 120. Amendments Nos. 116 to 121, inclusive, will be discussed together.

Deputy Alan Shatter: I move amendment No. 116:

In page 62, subsection (1), line 21, to delete "section." and substitute "section and regulations under *section 68*.".

Amendment No. 116 is a technical amendment. It inserts a cross-reference to section 68 which provides for regulations governing the procedures relating to the conduct of creditors' meetings. Amendment No. 117 is a technical amendment to clarify the text. I am advised that there is no need for the qualification of time of debt held in this regard. Amendment No. 118 proposes the insertion of new subsections (5) and (6). The new subsection (5) is an improvement of the text in regard to the position of a preferential creditor on participation in a vote. The new subsection (6) clarifies that the provisions of the new subsection (5) do not apply to a creditor, to whom subsection (4) applies. Subsection (4) provides that a creditor referred to in section 59(2)(*c*) which relates to debts and liabilities arising from a domestic support order, tax liabilities, local government charges, etc. shall not be entitled to vote at a creditors' meeting.

Amendment No. 119 is a technical drafting amendment which makes clear that it is the person who owes the debt who is entitled to receive notices concerning the creditors' meeting or to vote at the creditors' meeting. Amendment No. 120 amends the existing provision in subsection (8) by making clear that the requirement for approval of a proposal of a debt settlement arrangement at a creditors' meeting held under this chapter is a majority of creditors representing not less than 65% in value of the total of the debtor's debts due to the creditors participating in the meeting and voting in favour of the proposal. Amendment No. 121 in the name of Deputy McGrath, which also is being discussed, would reduce the requirement that 65% of creditors vote

in favour to 50% and I am opposed to such a reduction.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 117:

In page 62, subsection (2), lines 24 and 25, to delete all words from and including "creditor" in line 24 down to and including "concerned." in line 25 and substitute "creditor.".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 118:

In page 62, lines 33 to 38, to delete subsection (5) and substitute the following:

"(5) A creditor to whom a preferred debt is due shall not be entitled to vote in respect of that debt at a creditors' meeting unless that creditor has furnished to the personal insolvency practitioner a waiver in writing of the creditors' right to have that debt treated as a preferred debt.

(6) *Subsection (5)* does not apply to a creditor to whom *subsection (4)* applies.".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 119:

In page 62, subsection (7), lines 44 and 45, to delete "the person to whom the debt is owed" and substitute "the owner of the debt".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 120:

In page 62, lines 48 to 50 and in page 63, lines 1 and 2, to delete subsection (8) and substitute the following:

"(8) A proposal for a Debt Settlement Arrangement shall be considered as having been approved by a creditors' meeting held under this Chapter where a majority of creditors representing not less than 65 per cent in value of the total of the debtor's debts due to the creditors participating in the meeting and voting have voted in favour of the proposal.".

Amendment agreed to.

Amendment No. 121 not moved.

Section 67, as amended, agreed to.

Section 68 agreed to.

SECTION 69

Chairman: Amendment No. 122 is out of order.

Amendment No. 122 not moved.

Chairman: Amendments Nos. 123, 124 and 127 are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 123:

In page 63, subsection (2), line 35, to delete "within 21 days" and substitute "within 14 days".

Amendment No. 123 seeks to reduce the 21-day appeal period in section 69(2) to 14 days to ensure consistency of approach in the Bill. Amendment No. 124 is linked and provides for the insertion of additional text to section 69(3) to make clear the timeframe for the lodging of a creditor's objection is within 14 days of the date of the sending of the personal insolvency practitioner's notice to the court under subsection (2). This timeframe was not provided in the Bill as published and is considered necessary for the avoidance of any doubt. Amendment No. 127 seeks to increase the ten-day period within which the creditor's objection can be lodged to 14 days. This again is to ensure consistency of approach in the Bill and to avoid any unnecessary confusion arising.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 124:

In page 63, subsection (3), lines 37 and 38, to delete all words from and including "A creditor" in line 37 down to and including "court" in line 38 and substitute the following:

"A creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in *subsection (2)* and".

Amendment agreed to.

Section 69, as amended, agreed to.

SECTION 70

Deputy Finian McGrath: I move amendment No. 125:

In page 64, subsection (1), lines 1 and 2, to delete all words from and including "On" in line 1 down to and including "*section 69(1)*" in line 2 and substitute "On approval of a debt settlement arrangement".

Deputy Alan Shatter: The amendment is not agreed to.

Chairman: As I take it we are not discussing it, how stands the amendment?

Deputy Finian McGrath: It is being pressed.

Amendment put and declared lost.

Section 70 agreed to.

SECTION 71

Deputy Alan Shatter: I move amendment No. 126:

In page 64, lines 15 to 17, to delete subsection (2).

This amendment proposes the deletion of subsection (2) of section 71. Having considered the matter since publication of the Bill, I am of the view this provision is not necessary in the

light of the provisions contained in section 70(2). Section 70(2) makes clear the protective certificate remains in force pending the determination of the creditor's objection under section 69(3). I am putting Deputy Finian McGrath to sleep.

Deputy Finian McGrath: A good tactic.

Chairman: Can we get back to the amendment please?

Amendment agreed to.

Section 71, as amended, agreed to.

SECTION 72

Deputy Alan Shatter: I move amendment No. 127:

In page 64, subsection (1), line 28, to delete "10 days" and substitute "14 days".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 128:

In page 65, lines 1 to 4, to delete subsection (6) and substitute the following:

"(6) On receipt of a notification by it from the court, the Insolvency Service shall —

(*a*) notify the personal insolvency practitioner concerned, and

(*b*) register the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements.

(7) The Debt Settlement Arrangement shall come into effect upon being registered in the Register of Debt Settlement Arrangements.".

This particular amendment deletes the existing subsection (6) and inserts new subsections (6) and (7) into section 72. The purpose of the amendment is to make clear that the insolvency service is required to notify the personal insolvency practitioner on receipt of notification of the approval of the debt settlement arrangement, DSA, by the court and to register the DSA in the register of debt settlement arrangements. The new subsection (7) makes clear that the debt settlement arrangement shall come into effect upon being registered in the register of debt settlement arrangements.

Amendment agreed to.

Section 72, as amended, agreed to.

SECTION 73

Chairman: Amendments Nos. 129 to 131, inclusive, are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 129:

In page 65, subsection (3)(*g*), line 34, to delete "including" and substitute "other than".

This is a technical drafting amendment to improve the text. I am advised by Parliamentary Counsel the text as currently constructed does not convey correctly the intention of the provision. Amendment No. 130 also is a technical amendment. The proposed substitution is required in order that the language used in this section is consistent with that used elsewhere in similar provisions. Amendment No. 131 proposes the deletion of subsection (11). Again, I am advised by Parliamentary Counsel the provision is not required as the matter already is covered by the provisions of subsection (6).

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 130:

In page 66, subsection (7), line 13, to delete "in force" and substitute "in effect".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 131:

In page 66, lines 26 to 29, to delete subsection (11).

Amendment agreed to.

Question proposed: "That section 73, as amended, stand part of the Bill."

Deputy Michael Creed: There is a list of items in the Bill concerning the scenario in which a debt settlement arrangement is in effect, such as that a creditor who is bound by it shall not initiate legal proceedings etc. I presume its intention is that such creditors shall not initiate legal proceedings against the primary party who is the signatory to the debt settlement arrangement. However, there are circumstances in which a creditor may have forwarded loans or goods to a certain value on the basis of guarantors providing security. Does this provision of not taking further steps to enforce collection force or withhold the hand of creditors in respect of guarantors or guarantees they may hold? There is an urban legend to the effect that such guarantees in certain large financial institutions were shredded at a ferocious rate at one point. Nevertheless, banks, credit institutions and other creditors hold guarantees. Whereas they may come to an agreement with their primary debtor, are they prescribed, by virtue of a debt settlement agreement, from pursuing guarantees that may have been offered by others?

Deputy Alan Shatter: First, I do not know anything about guarantees being shredded wholesale in financial institutions. If anyone knows anything in this regard, I dearly would love to know about it because if guarantees were given for moneys borrowed, the guarantor would be legally liable to repay moneys borrowed if the principal beneficiary of the loan was not able to so do. There would be highly specific issues in this regard. When someone goes guarantor for borrowing, it is a solemn commitment to agree to discharge a debt if the principal borrower fails to so do. The legislation does not include a protection for guarantors. A guarantor may be well able financially to discharge a debt for which he or she has gone guarantor. Again, people must take responsibility for being guarantors. However, in the context of a guarantee that exists, where a debt settlement arrangement is being discussed and negotiated, there is nothing to stop the debtor from requesting that the position of the guarantor be considered. In circumstances where they are appropriate, arrangements may be entered into which include providing some protection for guarantors. What the debt settlement arrangement effectively does is protect the debtor against being pursued for what is due rather than protect the guarantor.

Often the reason there is a guarantor is because he or she is a person of substantial financial

standing and is regarded as an individual who will be in a position to discharge a debt should the primary borrower fail to do so. It is a separate issue and it gives rise to other considerations. While we are all familiar with guarantees being given by individuals to financial institutions on behalf of borrowers, guarantees are given by private individuals in all sorts of different circumstances which have nothing to do with financial institutions when it comes to people engaging in business dealings. This does not provide for a general writing off of obligations of guarantors whose financial circumstances are not addressed in the context of debt settlement arrangements.

Question put and agreed to.

SECTION 74

Deputy Alan Shatter: I move amendment No. 132:

In page 67, lines 15 to 17, to delete subsection (9).

This amendment removes the reference to subsection (9) as to the charging of fees in a debt settlement arrangement by personal insolvency practitioners. This is no longer required due to the proposal in amendment No. 238, which will provide for the making of guidelines for personal insolvency practitioners regarding their fees.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 133:

In page 67, subsection (11), line 32, to delete "fees or expenses" and substitute "fees, costs and outlays".

The purpose of this amendment is to expand the existing provisions in regard to the cost of the personal insolvency practitioner to clarify that they also refer to fees and outlays. This is an issue we dealt with previously. The amendment will ensure that the wording of the section adequately captures all of the expenses which the personal insolvency practitioner might incur.

Amendment agreed to.

Section 74, as amended, agreed to.

Section 75 agreed to.

SECTION 76

Question proposed: "That section 76 stand part of the Bill."

Deputy Pádraig Mac Lochlainn: We are concerned about the potential inflexibility in what is laid out in this section regarding debtors. They may unnecessarily be deemed to have broken their arrangements and subsequently deemed to be bankrupt. We reserve the right to introduce amendments at a later Stage.

Question put and agreed to.

Section 77 agreed to.

SECTION 78

Chairman: Amendments Nos. 134 to 138, inclusive, are related and will be discussed to-

gether.

Deputy Niall Collins: I move amendment No. 134:

In page 70, subsection (1)(*e*), line 39, to delete "not less than 3 months" and substitute "not less than 6 months".

This amendment increases the period from three to six months. That will have a consequential effect on increasing the other periods by three months. It will allow greater flexibility and more time should the person at the centre of the arrangement find himself or herself struggling or falling into arrears in terms of his or her commitments and obligations rather than forcing him or her to ditch the process.

Deputy Alan Shatter: Amendments Nos. 134 to 137, inclusive, would extend the period in which a creditor or personal insolvency practitioner may apply to the court for the termination of a debt settlement arrangement where the debtor is in arrears of payment of the agreed amount under the arrangement from three months to six months. In the context of the debt settlement arrangement, where without any notification by the debtor to his or her personal insolvency practitioner a six-month payment default occurs, that debt settlement arrangement is unlikely to succeed. It is important to emphasise that we are seeking to balance the interest of debtors and creditors in the debt resolution process. I am not convinced that the period in this section should be extended to six months, particularly having regard to the likelihood for the debt settlement which was first put in place. It is likely that substantial arrears accumulating in the context of moneys owing to a variety of individuals is the reason that the arrangement is put in place. It would be put in place on the assumption that the debtor is going to meet his or her commitments and has the capacity to meet them. It would be unfair to creditors to unduly prolong matters to a six-month period in circumstances where it has become obvious that the arrangement simply is not working. I am afraid I have to oppose the Deputy's amendment.

Deputy Michael Creed: Where an agreement has been reached and through no fault of the debtor there is an exceptional change of financial circumstances to the detriment of the debtor, does the process provide for a variation of the arrangement to avoid the default to which Deputy Niall Collins refers?

Deputy Alan Shatter: Section 76 of the Bill makes provision for the debtor to re-engage with the personal insolvency practitioner to ascertain whether a new arrangement can be put in place. That can occur with the agreement of the creditors. It is not helpful if someone is allowed to unilaterally desist from complying with his or her obligations for six months or that creditors are unable to act in such circumstances. Effectively a three-month period is given to facilitate an individual in difficulties to get his or her house back in order and to comply with the arrangement. The alternative is that he or she can approach the personal insolvency practitioner and if some horrendous and unexpected event has occurred in his or her life, the practitioner can re-engage with creditors to find out if an amendment or change can be made to the debt settlement arrangement. It is envisaged that one can do this but it requires consent. A difficulty would arise if the message went out to debtors that they could enter into a debt settlement arrangement and have a six-month leeway before they need to implement it. That would completely undermine the credibility of the non-judicial debt settlement process and may in fact cause substantial financial difficulties for creditors who are willing to be flexible in engaging and entering into agreements and undermine the possibility of other creditors entering into future agreements if it became clear that they simply were not being worked. Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 135:

In page 71, subsection (2), line 2, to delete "not less than 3 months" and substitute "not less than 6 months".

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 136:

In page 71, subsection (2)(*a*), line 4, to delete "at the beginning of the 3 month period" and substitute "at the beginning of the six month period".

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 137:

In page 71, subsection (2)(*b*), line 9, to delete "throughout that 3 month period" and substitute "throughout that 6 month period".

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 138:

In page 71, subsection (3)(*c*), line 16, to delete "Agreement" and substitute "Arrangement".

This is simply a technical drafting amendment.

Amendment agreed to.

Section 78, as amended, agreed to.

SECTION 79

Chairman: Amendments Nos. 139 to 143, inclusive, are related and will be discussed together.

Deputy Niall Collins: I move amendment No. 139:

In page 71, subsection (1), line 18, to delete "for a period of 6 months" and substitute "for a period of 9 months".

These amendments are consequential to the previous amendments. They push out the time period by three months.

Deputy Alan Shatter: These amendments are opposed. The Deputy would extend under them the period after which, the debtor being in arrears of payment of the agreed amount, the debt settlement arrangement is deemed to have failed and shall terminate. In a debt settlement arrangement where, without any notification by the debtor to his personal insolvency practitioner, a six-month payment default has occurred, that insolvency arrangement is not likely to succeed. We are again seeking to balance the interests of debtors and creditors in the debt resolution process. I am not convinced the default period should be extended to nine months. When dealing with the earlier amendments, I expressed the view that the three-month period was adequate. I oppose the amendment.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 140:

In page 71, subsection (1), line 19, to delete "a creditor or".

Amendment agreed to.

Deputy Niall Collins: I move amendment No. 141:

In page 71, subsection (3), line 27, to delete "for a period of 6 months" and substitute "for a period of 9 months".

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 142:

In page 71, subsection (3)(*a*), line 28, to delete "at the beginning of the 6 month period" and substitute "at the beginning of the 9 month period".

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 143:

In page 71, subsection (3)(*b*), line 32, to delete "at no time during that 6 month period" and substitute "at no time during that 9 month period".

Amendment put and declared lost.

Question proposed: "That section 79, as amended, stand part of the Bill".

Deputy Michael Creed: Where a debtor is in arrears with his or her payments for six months, does that mean, for the purposes of the definition, that arrears have accumulated over six months, or could he or she have paid for five consecutive months but had one month's arrears outstanding for more than six months?

Deputy Alan Shatter: It refers to consecutive default over six months.

Question put and agreed to.

Sections 80 to 82, inclusive, agreed to.

SECTION 83

Chairman: Amendments Nos. 144 to 146, inclusive, are related and will be discussed together.

Deputy Niall Collins: I move amendment No. 144:

In page 72, subsection (1)(*g*), line 45, to delete "within the preceding 3 years" and substitute "within the preceding 2 years".

The purpose of the amendment is to reduce the time within which the debt settlement arrangement can be challenged by the creditor from three to two years.

Deputy Alan Shatter: Deputy Collins seeks to reduce the period prior to the debtor seeking to agree a debt settlement arrangement during which a transaction at under value or at a preference may be challenged by a creditor from three to two years. The proposed three-year

period provides a useful deterrent to any temptation on the part of a debtor to strategically rearrange his or her affairs in such a way as to deprive creditors of their rights and entitlements. I am similarly providing for three years in regard to bankruptcy. Deputy Collins has said nothing to convince me that a reduction in warranted. I believe the three-year period is reasonable and I oppose the amendment.

Amendment No. 145 is a technical drafting amendment, which will improve the text of the Bill to provide greater clarity.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 145:

In page 72, subsection (1)(*g*), line 46, to delete "to his or her inability" and substitute "to the debtor's inability".

Amendment agreed to.

Deputy Niall Collins: I move amendment No. 146:

In page 73, subsection (1)(*h*), line 2, to delete "within the preceding 3 years" and substitute "within the preceding 2 years".

Amendment put and declared lost.

Section 83, as amended, agreed to.

SECTION 84

Chairman: Amendments Nos. 147 to 149, inclusive, are related and will be discussed together.

Deputy Finian McGrath: I move amendment No. 147:

In page 73, subsection (1), line 30, to delete "5 years" and substitute "2 years".

Deputy Alan Shatter: These amendments would again reduce the period of commencement of a review of the operation of a PIA under the legislation from five years to two years or one year. The Deputy has not said anything to convince me I should effect these changes. I oppose the amendment.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 148:

In page 73, subsection (1), line 30, to delete "5 years" and substitute "one year".

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 149:

In page 73, subsection (1), line 31, to delete "of its operation" and substitute the following:

"of its operation, and the operation of Chapters 1 and 3".

Deputy Alan Shatter: The Deputy seeks to extend the review period for chapters 1 and 3. I will examine this proposal and give some consideration to it before Report Stage. There are some matters to be worked out in this regard and, in that context, I ask the Deputy to withdraw the amendment and resubmit it on Report Stage.

Amendment, by leave, withdrawn.

Section 84 agreed to.

SECTION 85

Deputy Alan Shatter: I move amendment No. 150:

In page 73, subsection (1), line 43, to delete "the payment or satisfaction of" and substitute "the payment, satisfaction or restructuring of".

This is a technical drafting amendment. It is necessary to insert the word "restructuring" because it is possible for a PIA to provide for a restructuring of secured debt to put it on a sustainable basis in order that it can, unlike unsecured debt under PIAs, continue in existence beyond the PIA period. This may be to the advantage of the debtor.

Amendment agreed to.

Section 85, as amended, agreed to.

Section 86 agreed to.

SECTION 87

Deputy Finian McGrath: I move amendment No. 151:

In page 75, subsection (1)(*f*), line 21, to delete "5 years" and substitute "2 years".

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 152:

In page 75, subsection (1)(*g*), line 35, to delete "its unwillingness to enter" and substitute the following:

"the unwillingness of that secured creditor to enter".

This is a technical amendment, which is required to improve the construction of the existing text. The existing wording gives the impression that the secured creditor is a bank or other financial institution and, as we have discussed at length, this may not always be the case.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 153:

In page 75, subsection (1)(*h*)(iii), lines 41 and 42, to delete "a Debt Relief Notice" and substitute "a Debt Relief Notice which is in effect".

This is a technical amendment. For the avoidance of doubt, it makes clear that the reference in section 87 (1)(*h*)(iii) to a debt relief notice is to a debt relief notice that is in effect.

Amendment agreed to.

Deputy Finian McGrath: I move amendment No. 154:

In page 76, subsection (3), line 32, to delete "5 years" and substitute "2 years".

Amendment put and declared lost.

Question proposed: "That section 87, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: Representatives of the credit unions have briefed us on concerns they have. They have a concern about section 87 that refers to the PIAs seeking an alternative repayment arrangement and wish to change the text "with the secured creditor concerned" to "with his or her creditors". They are concerned that the text would compel some agreements with, for example, banks but not with credit unions which are unsecured. I reserve the right to table amendments on that later on.

Deputy Alan Shatter: I note what the Deputy has said.

Chairman: That is noted.

Question put and agreed to.

SECTION 88

Deputy Alan Shatter: I move amendment No. 155:

In page 77, subsection (2), lines 11 to 14, to delete paragraph (*e*) and substitute the following:

"(*e*) a schedule of the debtor's debts and creditors concerned, stating in relation to each such creditor—

(i) the amount due to that creditor, and

(ii) whether, as respects the debt concerned, the creditor is a secured creditor and, if so, the nature of the security;".

This is a technical drafting amendment. It is proposed to improve on the construction of the existing text so that it conforms to the corresponding text used in section 25(2)(*d*) relating to debt relief notices and section 53(2)(*e*) relating to debt settlement arrangements. This will provide consistency in the language used in the Bill.

Amendment agreed to.

Section 88, as amended, agreed to.

Section 89 agreed to.

SECTION 90

Deputy Alan Shatter: I move amendment No. 156:

In page 79, subsection (2), line 2, to delete "relating to applications" and substitute "relating to an application".

Again this is a technical amendment to correct an error in the text. The reference should be to the singular rather than to the plural in this particular context.

Amendment agreed to.

Chairman: Amendments Nos. 157 to 161, inclusive, are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 157:

> In page 79, subsection (3), line 4, to delete "*subsection (4)*" and substitute "*subsections (4)* and *(5)*".

This is a technical drafting amendment which amends the cross-referencing in subsection (3) to take account of the insertion of the new subsection (5) which is to be inserted by amendment No. 158. Amendment No. 158 arises as a consequence of amendment No. 47 to section 45 dealt with earlier which makes provision for the appointment of a replacement personal insolvency practitioner in certain circumstances. This amendment allows for the extension of the period of a protective certificate by the court by an additional 40 days to take account of the situation. It means the debtor will not be disadvantaged or lose the protection of a protective certificate where the original personal insolvency practitioner is no longer in a position to act on his or her behalf.

Amendment No. 159 makes clear that the appropriate court issues the protective certificate and not the insolvency service. The purpose of amendment No. 160 is to improve the existing construction of subsection (6) to clarify that the other details which may be recorded by the insolvency service in the register of protective certificates, that is, details other than the name and address of the debtor the date of issue of the protective certificate or its extension are those prescribed under section 127(3)(*b*). This change means that such details must formally be prescribed in regulations made by the insolvency service or the Minister. The previous wording committing the insolvency service to enter "such other details, as it considers appropriate" gave too wide discretion to the insolvency service. This change takes account of comments made on the text of the Bill by the Data Protection Commissioner.

Amendment No. 161 corrects the cross-referencing in subsection (9) to now include subsection (5) which is to be inserted by later amendment.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 158:

> In page 79, between lines 17 and 18, to insert the following subsections:
>
> "(5) Where a protective certificate has been issued pursuant to *subsection (2)* or extended under *subsection (4)*, the appropriate court may on application to that court extend the period of the protective certificate by a further additional period not exceeding 40 days where—
>
> (*a*) the personal insolvency practitioner has been appointed in accordance with *section 45(5)*, and
>
> (*b*) the court is satisfied that the extension is necessary to enable the personal insolvency practitioner so appointed to perform his or her functions under this Chapter.
>
> (6) The period of a protective certificate may be extended under *subsection (5)* once only.".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 159:

In page 79, subsection (5), line 20, to delete "where it issues" and substitute "where the court issues".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 160:

In page 79, subsection (6), line 24, to delete "as it considers appropriate" and substitute "as may be prescribed under *section 127(3)(b)*".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 161:

In page 79, subsection (9), line 36, to delete "*subsections (3)* and *(4)*" and substitute "*subsections (3)*, *(4)* and *(5)*".

Amendment agreed to.

Section 90, as amended, agreed to.

SECTION 91

Deputy Alan Shatter: I move amendment No. 162:

In page 81, between lines 21 and 22, to insert the following subsection:

"(8) *Subsections (1)*, *(2)* and *(3)* shall not apply to debts or liabilities referred to in *section 94(2)(e)*.".

Amendment agreed to.

Section 91, as amended, agreed to.

Section 92 agreed to.

SECTION 93

Deputy Alan Shatter: I move amendment No. 163:

In page 82, subsection (2)(*a*), line 25, to delete "the First Schedule of that Act shall apply" and substitute the following:

"paragraphs 1 to 22 of the First Schedule of that Act shall apply with all necessary modifications".

Amendment agreed to.

Deputy Finian McGrath: I move amendment No. 164:

In page 82, subsection (2)(*b*)(i), line 29, to delete "vote" and substitute "attend".

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 165:

In page 82, subsection (3)(*b*), line 42, to delete "the insolvent debtor" and substitute "the debtor".

Amendment agreed to.

Section 93, as amended, agreed to.

SECTION 94

Deputy Finian McGrath: I move amendment No. 166:

In page 83, subsection (2)(*b*), line 10, to delete "72 months" and substitute "24 months".

The amendment would reduce the standard duration of a PIA to two years in order to reduce the risk of bankruptcy tourism - that is, people going to the UK to file for bankruptcy.

Deputy Alan Shatter: I oppose the amendment. The period of 72 months is of reasonable length for the debtor to fulfil the terms of the personal insolvency arrangement. Such terms may include significant debt write-offs by creditors. There must be a reasonable period of time during which the arrangement remains in place so that some portion of the debt is discharged. The proposed amendment would not provide such a period.

Deputy Michael Creed: Are there any ongoing bilateral negotiations with the UK authorities to try to bring the timeframes involved in line? I understand our legislation is more in line with the norm across the rest of Europe. However, it still leaves us out of line with our closest neighbour. There is the likelihood that some will continue to seek to avail of less stringent bankruptcy procedures in the UK in order to extricate themselves from bankruptcy more quickly. It would be desirable to have a uniform system in place. Are there any ongoing bilateral negotiations with the UK authorities even with the different timeframes in place to introduce greater co-operation in this complex area?

Deputy Alan Shatter: I would agree with the Deputy that it would be preferable to have a degree of uniformity. Obviously in the preparation of this legislation we gave very careful consideration to the timeframe periods. I understand the UK at present has no intention to change its legislation. We were concerned that its one-year period was too short and not appropriate. We have obviously fixed the timeframes we regard as appropriate and in the context of our debt resolution measures to seek consensus between debtors and creditors, the personal insolvency arrangements that we have are not replicated in the UK with regard to secured creditors. Of course, some individuals, who even under the existing legislation have sought to invoke certainly the English bankruptcy jurisdiction and also the Northern Ireland bankruptcy jurisdiction, have been determined on challenge in their courts not to be entitled to use it. Clearly they have been engaged in forum shopping in circumstances in which the jurisdictional requirements of those jurisdictions have not been met. Some other well-known individuals have a genuine connection or developed a genuine connection with England and have been able to avail of the bankruptcy jurisdiction. We must make the arrangements we believe are appropriate to this State. This is always an issue in different areas of law and is not unique in bankruptcy law. In the context of a broad range of different areas of law there is a possibility that individuals, by changing their domicile or their habitual residence, may avail of remedies in another legal jurisdiction that they could not avail of in their original jurisdiction. This is not easily solvable. The UK has made its decisions and we are independent of it. There are no arrangements in

place or being discussed that would result in legislation in the State identical to that contained in the UK or *vice versa*.

Amendment put and declared lost.

Chairman: Amendment No. 167 is in the name of the Minister. Amendments Nos. 167 and 169 to 172, inclusive, are related and may be discussed together by agreement.

Deputy Alan Shatter: I move amendment No. 167:

In page 83, subsection (2)(*d*)(ii), lines 31 and 32, to delete "or other charge" and substitute "or other charge of a similar nature".

Amendment No. 167 is another technical drafting amendment. The proposed amendment is required to improve on the construction of the existing text. The amendment clarifies that the reference to "other charge" referred to in section 94(2)(*d*)(ii) and hence excluded from release under a personal insolvency arrangement without the express consent of the creditor concerned is a charge owed or payable to the State which is of a similar nature to a tax, duty or levy owed or payable to the State.

Amendments Nos. 169 to 171, inclusive, expand the existing provisions on the costs of the personal insolvency practitioner to clarify that they refer also to fees and outlays - it is an issue we have had in other parts of the Bill. Having considered the provisions since publication of the Bill, I am of the view that it is necessary to ensure that the wording of this section captures all of the expenses which the personal insolvency practitioner might incur. I am conscious that in certain cases, as I stated earlier, the personal insolvency practitioner might be involved in the sale of the debtor's property for the benefit of creditors and this could give rise to costs and outlays which fall outside his or her agreed fees. The proposed amendments are intended to improve on the existing text to cover these possible scenarios.

Amendment No. 172 is a technical drafting amendment to improve the drafting of paragraph (*l*).

Amendment agreed to.

Deputy Finian McGrath: I move amendment No. 168:

In page 84, subsection (2)(*g*), lines 18 and 19, to delete "a reasonable standard of living" and substitute the following:

"a reasonable standard of living, as defined by the Minister".

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 169:

In page 84, subsection (2)(*h*), to delete lines 26 to 28 and substitute the following:

"(ii) indicate the likely amount of the fees, costs and outlays to be incurred or where this is not practicable the basis on which those fees, costs and outlays will be calculated, and".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 170:

In page 84, subsection (2)(*h*)(iii), lines 29 and 30, to delete "costs and charges" and substitute "fees, costs and charges".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 171:

In page 84, subsection (2)(*h*)(iii), line 31, to delete "they are to be paid;" and substitute "they have been or are to be paid;".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 172:

In page 84, subsection (2)(*l*), line 46, to delete "the review referred to" and substitute the following:

"a Personal Insolvency Arrangement shall provide that the review referred to.

Amendment agreed to.

Question proposed: "That section 94, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: As with one of the earlier sections, my party reserves the right to table amendments on Report Stage on an additional point that the Minister may make regulations on fees which may be charged by personal insolvency practitioners. We would be concerned that there might not be clarity on the fees that can be charged and we reserve the right to return to the matter.

Chairman: It is noted.

Deputy Richard Boyd Barrett: I did not submit an amendment on it but make the point that I might do so. This section on mandatory requirements for personal insolvency arrangements is probably the appropriate section in which to state that it should be a requirement when personal insolvency practitioners are formulating any such proposed arrangement that the exceptional economic circumstances that arose between 2002 and 2008 of a distorted property market and the reckless behaviour of banks and institutions be taken into account. Particularly because these arrangements are the ones that deal with mortgages primarily, there is an onus on the Government to acknowledge those specific circumstances which are different to the ones that this legislation might normally deal with. That must be set out explicitly in the Bill and it should be a major factor in putting together a reasonable and fair proposal for an insolvency arrangement.

Deputy Finian McGrath: Our amendment attempted to improve the existing text. We were trying to ensure that the Minister, not the banks, the insolvency service or any other body, sets the reasonable standard of living.

Question put and declared carried.

Sections 95 and 96 agreed to.

SECTION 97

Deputy Alan Shatter: I move amendment No. 173:

In page 87, subsection (5), lines 11 and 12, to delete "the sale of" and substitute "the sale or other disposal of".

This amendment proposes to expand the existing provisions of section 97(5) to include the words "or other disposal" to reflect the fact that the property which is the subject of the security for a secured debt may be disposed of by means other than a sale. For example, where a debtor does not wish to retain ownership of a mortgaged property or the costs of doing so would be disproportionately large, the personal insolvency arrangement may provide for the sale or other disposal of the property. Such a disposal might arise where the property is transferred from the debtor to the secured creditor in full or in partial satisfaction of the secured debt. In the case of such a sale or disposal, section 97(5) provides an important protection for debtors and assists them in achieving a fresh start because it requires on a mandatory basis that any shortfall between the realised value of the property and the secured debt must be written down proportionately with the unsecured debts covered by the arrangement and discharged with them on the debtor's completion of the arrangement.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 174:

In page 87, subsection (6)(*e*), line 39, to delete "variable, at" and substitute "variable or at".

This is a technical drafting amendment to correct the omission of the word "or" between "variable" and "at a margin" in section 97(6)(*e*) concerning interest rates on secured debts.

Amendment agreed to.

Question proposed: "That section 97, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: My party has some concerns around how this will pan out in terms of the ability for courts to intervene and we may come back to section 97. We reserve the right to return to the section.

Deputy Finian McGrath: I also reserve that right.

Chairman: It is noted that Deputy Boyd Barrett also reserves the right.

Question put and agreed to.

Chairman: With the agreement of colleagues and the Minister, I propose that we suspend for 30 minutes and resume at 5 o'clock and that we see how we get on then.

Deputy Alan Farrell: If we keep going perhaps we would finish it.

Chairman: I am in the hands of the members. If they want to keep going, we can keep going.

Deputy Finian McGrath: Are there members travelling down the country today?

Chairman: I do not think we will get it finished. Do members want to keep going?

Deputy Richard Boyd Barrett: Was it the plan to go until 5 o'clock?

Chairman: It was open-ended. Initially, we planned to go until 4.30 p.m., take a break, and then come back and keep going.

Deputy Richard Boyd Barrett: Why not go until 5 p.m. and call it a day?

Deputy Alan Shatter: The agreement was that we would sit until 8 p.m. to get to a point, hopefully rapidly, where we can take Report Stage. I have no difficulty continuing until 5 p.m. and if we have not completed it by then, I propose we have a 15 minute break to ensure we are still functioning having done two and a half hours and a long session this morning.

Deputy Niall Collins: Will we come back tomorrow?

Chairman: If necessary, there is provision to do so.

Deputy Niall Collins: I must leave by 6 p.m. I was not aware we had made provision to sit until 8 p.m. I thought we would finish at 4.30 p.m.

Deputy Alan Shatter: Let us just motor on.

Chairman: On we go.

Deputy Alan Shatter: I presume if the Minister requires a bathroom stop we can have five minutes to facilitate it.

Chairman: Indeed, or for anyone else for that matter.

Deputy Alan Shatter: Fifteen minutes would not be required.

SECTION 98

Chairman: Amendments Nos. 175 to 178, inclusive, are related and will be taken together.

Deputy Alan Shatter: I move amendment No. 175:

In page 88, subsection (1)(*a*), line 37, to delete "the value of the security" and substitute the following:

"the value of the security determined in accordance with *section 100*".

These amendments are to improve the text by better qualifying references in section 98 to security. Amendment No. 178 provides for consistency in regard to a reference in the text binding sale to disposal. They are essentially technical amendments to ensure there is no ambiguity about the text.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 176:

In page 88, subsection (2)(*a*), line 44, to delete "of its security" and substitute "of the security held by that secured creditor".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 177:

In page 89, subsection (3)(*a*), line 5, to delete "of its security" and substitute "of the security held by that secured creditor".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 178:

In page 89, subsection (3), lines 12 and 13, to delete all words from and including "over" in line 12 down to and including "amount" in line 13 and substitute the following:

"the subject of the security is sold or otherwise disposed of for an amount or at a value".

Amendment agreed to.

Chairman: Amendments Nos. 179 to 181, inclusive, are related and will be discussed together.

Deputy Alan Shatter: I move amendment No. 179:

In page 89, subsection (4), line 19, to delete "*subsection (5)*" and substitute "*subsections (5)*, *(6)* and *(7)*".

Amendment No. 179 corrects the cross-references in subsection (4). Amendment No. 180 inserts three new subsections required to improve the operation of the clawback mechanism provided for under section 98(3). This mechanism provides that where secured debt has been written down under personal insolvency arrangements and the property which is the subject of the security for that debt is subsequently sold or otherwise disposed of by the debtor for an amount or at a value greater than the value attributed to the security for the purpose of the arrangement, the debtor may be obliged to pay an additional amount to the secured creditor. In other words, some or all of the windfall the debtor would otherwise gain due to an increase in property values following a write-down of secured debt under personal insolvency arrangements can be clawed back in favour of the secured creditor.

The new subsection (7) is an adjustment to the clawback mechanism to prevent overpayments by the debtor by providing that payments received by the secured creditor pursuant to the personal insolvency arrangement in respect of the written down amount of the secured debt must be deducted from the clawback amount. Take, for example, the case of a personal insolvency arrangement which provides for a write-down of a secured debt from €120,000 to €100,000 and also provides payments to the secured creditor in respect of the €20,000 written down *pari passu* with the unsecured creditors. If the unsecured creditors receive a dividend of 60 cent in the euro over the course of the arrangement, this would mean the secured creditor would receive 60 cent in the euro with respect to the written down amount of €20,000, that is €12,000. The new subsection (7) means if the debtor were subsequently to sell or otherwise dispose of the property, for example for €150,000, and thereby trigger the clawback provision under section 98, the maximum amount the debtor would be obliged to pay to the secured creditor would be €20,000 less the €12,000 already recovered or paid to the secured creditor under the arrangements. This is effectively a clawback amount of €8,000.

The new subsection (8) is another adjustment to the clawback mechanism to prevent overpayments by providing that the expenses and costs borne by the debtor in connection with the sale or other disposal of the property, such as estate agent fees and legal costs, will be deducted from the value attributable to the property when calculating the amount of the clawback.

The new subsection (9) is intended to ensure the clawback only applies where the sale proceeds exceed the outstanding amount of the secured debt. As mentioned earlier, the clawback is intended to prevent a debtor gaining a windfall at the expense of a secured creditor. However, no such windfall arises for the debtor in the case of what is known as a short sale, that is,

where the sale proceeds of the property subject to the security are not sufficient to discharge the outstanding secured debt. If we take the earlier mentioned example where the secured debt was written down from €120,000 to €100,000, and let us say the property in this case had been attributed a value of €70,000 for the purposes of personal insolvency arrangements. If property prices were to rise gradually in the following ten years such that when the debtor sold the property, the net sale proceeds were €80,000, a clawback amount of €10,000 could be payable to the secured creditor in accordance with section 98. However, I do not think such a clawback would be appropriate where the balance outstanding on the secured debt at the time of the sale was more than the sale proceeds, in this case €80,000. If the balance outstanding of the secured debt after ten years was more than €80,000, this amendment to insert the new subsection (9) in section 98 would relieve the debtor of any obligation to pay a clawback amount to the secured creditor.

Amendment No. 181 improves the drafting of this section.

Chairman: Fascinating stuff.

Deputy Finian McGrath: I thought it was going to be a 20 minute slot.

Chairman: It is actually fascinating when one listens carefully to it. It is amazing.

Deputy Alan Shatter: It indicates how complex this is when one is dealing with its different aspects and trying to provide some fairness in the context of the provisions contained in the Bill.

Chairman: Is anybody offering on this?

Deputy Finian McGrath: It is very technical and the Technical Group is on the case.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 180:

In page 89, between lines 38 and 39, to insert the following subsections:

"(7) For the purposes of *subsection (4)*, any payment to the secured creditor pursuant to the Personal Insolvency Arrangement properly attributable to a reduction of the principal sum due in respect of the secured debt shall be deducted from the additional amount referred to in *subsection (3)*.

(8) For the purposes of *subsection (4)*, the expenses and costs borne by the debtor in connection with the sale or other disposal of the property shall, to the extent that those costs and expenses are of a type and amount normally payable by the vendor of property of that nature, be deducted from the value attributable to the property.

(9) The obligation to pay an additional sum arising by virtue of this section shall not apply where the amount referred to in *subsection (4)(a)* is less than the amount of the debt secured by the security immediately prior to the sale or other disposition of the property.".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 181:

In page 89, subsection (8)(*b*), line 47, to delete "is scheduled to" and substitute "is scheduled or permitted to".

Amendment agreed to.

Question proposed: "That section 98, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: For the same reasons as for the previous section, I reserve the right to come back on this.

Chairman: That is noted.

Question put and agreed to.

SECTION 99

Chairman: Amendments Nos. 182 to 184, inclusive, are related and will be discussed together.

Deputy Finian McGrath: I move amendment No. 182:

In page 90, subsection (1), lines 5 to 7, to delete all words from and including ", insofar" in line 5 down to and including "*subsection (2)*," in line 7.

I will defer to my colleague Deputy Richard Boyd Barrett.

Deputy Richard Boyd Barrett: The points were made on the previous section-----

Chairman: Good.

Deputy Richard Boyd Barrett: -----except to say these amendments are more relevant given that personal insolvency arrangements will deal with mortgage debt which, as we are all aware, preoccupies 160,000 households in the country which are in financial difficulty with their mortgages, and many people are very concerned they might lose their family home and their principal private residence. The purpose of the amendments is to state no proposal should be made which requires the vacation of the family home and there should be no qualifications to this. The Bill as it stands contains qualifications. The proposal should not include a suggestion that people move out of the family home subject to certain qualifications, and this reference should be removed. Under no circumstances should the personal insolvency arrangement involve a proposal for a family to have to vacate its home.

Deputy Alan Shatter: We dealt with this matter previously. The provisions contained in the Bill provide a balanced and proportionate response which is designed, where it is appropriate and where the family home is reasonable in the context of the needs of individuals, to facilitate the family remaining there. However, the provisions of the Bill are also designed to facilitate some degree of flexibility for debtors if they want to dispose of the residence and change their circumstances. What is being proposed would introduce a degree of inflexibility and in these circumstances I oppose it. We thrashed out some of this at some length earlier today so I do not think I need add to this.

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 183:

In page 90, subsection (1), line 9, after "residence" to insert the following:

"unless the debtor explicitly confirms in writing that he or she does not wish to remain in occupation of his/her principal private residence".

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 184:

In page 90, lines 12 to 48 and in page 91, lines 1 to 7, to delete subsections (2) to (4).

Amendment put and declared lost.

Section 99 agreed to.

SECTION 100

Deputy Alan Shatter: I move amendment No. 185:

In page 91, subsection (4), line 34, to delete "the debtor and" and substitute the following:

"the personal insolvency practitioner, the debtor and".

Section 100(4) of the Bill makes provision for the appointment by the insolvency service of an independent expert to determine the market value for secured debt where the personal insolvency practitioner and the relevant secured creditor are unable to agree on the appointment of an independent expert for that purpose. As it stands, the text provides that the valuation carried out by the independent expert should be binding "on the debtor" and a secured creditor concerned. The proposed amendment seeks to address a lacuna in the existing text by providing that the valuation should be binding on the personal insolvency practitioner also. In order for the section to operate as intended, it is important the valuation carried out by the independent expert appointed by the insolvency service should be binding on all the parties concerned, including the debtor, secured creditor and personal insolvency practitioner.

Amendment agreed to.

Section 100, as amended, agreed to.

SECTION 101

Chairman: Amendments Nos. 186 and 187 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 186:

In page 92, lines 44 to 50, to delete subsection (4).

This proposes to delete section 101(4), which provides for the insolvency service's preparation and publication of guidelines for personal insolvency practitioners with regard to certain matters. Subsection (4) is superseded by the proposed amendment No. 229, which is to be inserted in page 111 after section 130, regarding a new section in Part 3 relating to the preparation and publication by the insolvency service of guidelines for personal insolvency practitioners. I referred earlier to those guidelines.

Amendment No. 187 would insert two new subsections in section 102. The new subsec-

tions provide for certain procedures to be followed where the debtor's financial circumstances have materially changed in the period between the completion of the prescribed financial statement by the debtor at the outset of the process, prior to applications for protective certificate, and the personal insolvency practitioner giving notice of the creditors' meeting pursuant to section 101(3). Among other things, the debtor must inform the personal insolvency practitioner of such a change and may need to complete a new prescribed financial statement, which must be provided by the insolvency service. Essentially, the new provision addresses a lacuna in the published Bill.

Amendment agreed to.

Section 101, as amended, agreed to.

SECTION 102

Deputy Alan Shatter: I move amendment No. 187:

In page 93, between lines 45 and 46, to insert the following subsections:

"(2) Where a debtor's financial position has materially changed in the period between the completion by him or her of a Prescribed Financial Statement under *section 46* and the giving of notice of a creditors' meeting pursuant to *section 101 (3)*—

(*a*) the debtor shall inform the personal insolvency practitioner of that fact and of the nature of such change, and

(*b*) the personal insolvency practitioner shall, if he or she considers that the change necessitates the completion of a new Prescribed Financial Statement, assist the debtor in completing such a new statement, and where those circumstances arise the reference in this section to the Prescribed Financial Statement shall be construed as references to the new Prescribed Financial Statement.

(3) Where a new Prescribed Financial Statement is completed pursuant to *subsection (2)*, the personal insolvency practitioner shall furnish a copy of that Statement to the Insolvency Service.".

Amendment agreed to.

Section 102, as amended, agreed to.

SECTION 103

Chairman: Amendments Nos. 188 to 191, inclusive, are related and may be discussed together.

Deputy Finian McGrath: I move amendment No. 188:

In page 93, lines 46 to 49, to delete subsection (1).

I defer to my colleague, Deputy Richard Boyd Barrett.

Deputy Richard Boyd Barrett: This again relates to earlier points on the debt settlement

arrangement. This section is important as it is the section intended to deal with mortgage distress. As I indicated, I do not see it as acceptable that the creditors, most of whom would be banks and financial institutions, should have the right to veto through the voting system proposed a reasonable debt settlement arrangement. I do not intend to elongate the discussion.

Deputy Alan Shatter: To avoid similar elongation, I should say we are opposed to the amendments for the reasons previously described.

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 189:

In page 94, subsection (4), line 13, to delete "vote" and substitute "attend".

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 190:

In page 94, lines 15 and 16, to delete subsection (5).

Amendment put and declared lost.

Deputy Finian McGrath: I move amendment No. 191:

In page 94, lines 17 to 23, to delete subsections (6) and (7).

Amendment put and declared lost.

Section 103 agreed to.

SECTION 104

Amendment No. 192 not moved.

Deputy Alan Shatter: I move amendment No. 193:

In page 94, subsection (1), line 24, to delete "The meeting shall consider" and substitute the following:

"A creditors' meeting called in accordance with *section 103* shall consider".

This is effectively a technical amendment. It improves the construction used in the existing text.

Amendment agreed to.

Amendments Nos. 194 and 195 not moved.

Section 104, as amended, agreed to.

SECTION 105

Chairman: Amendments Nos. 196 to 198, inclusive, are related and may be discussed together.

Deputy Niall Collins: I move amendment No. 196:

In page 95, subsection (1)(*a*), lines 12 and 13, to delete all words from and including "creditors" in line 12 down to and including "value" in line 13 and substitute the following:

"creditors representing not less than 50 per cent in value".

The effect of this amendment is to reduce the percentage of value as it relates to creditors, which would lessen the significance of any large single creditor. This will enhance the functionality of an agreement reached by parties and will not allow for any one large creditor to dictate the pace. Anything above 50% represents a majority; what is currently in the Bill represents almost a two thirds majority.

Chairman: Does the Deputy wish to speak to the other amendments?

Deputy Niall Collins: I will move them and they are covered by the same argument.

Deputy Alan Shatter: In amendment No. 196 Deputy Collins is again seeking to delete a crucial provision relating to the necessary voting proportions required to prove a personal insolvency arrangement. There are particular reasons for these in the context of secured debt and there are constitutional reasons, in particular, in ensuring rights are protected in how we deal with the legislation. I remain opposed to the proposal made by the Deputy.

Amendments Nos. 197 and 198 propose to alter the proportions of total creditors in secured and unsecured creditors required to prove a personal insolvency arrangement. I am not convinced that the reductions as proposed represent the best approach and they could inhibit reaching an agreement that would be sustainable over six years in a personal insolvency arrangement. However, I am willing to consider further issues regarding voting proportions with a view to bringing forward any necessary revised proposals at a later stage. They would have to be very carefully considered in the context of background issues and advice that I may receive from the Attorney General.

In giving this further consideration, I ask that the Deputy would consider withdrawing the proposals and submitting them again, if required, on Report Stage. It might be useful to have further time for consideration of the matter. I do not wish to mislead the Deputy in what I am saying as there are difficulties in this area. We have in preparing the Bill spent considerable time examining the best way to deal with and manage this issue within the constitutional parameters in which we must operate and having regard to balancing the rights of both debtors and creditors. Without reverting to my previous theme at length, we must recognise the fact that not all creditors are financial institutions, but even where they are there is a public interest in financial institutions recouping moneys due to them to ensure that the taxpayer does not have to make up the difference between what the financial institutions should be receiving but which cannot be discharged by debtors and what is necessary to maintain the continuing viability of institutions that have had to be recapitalised.

Deputy Niall Collins: The Minister said there are significant constitutional issues in respect of that but he did not expand on what he meant. Will he expand on it?

Deputy Alan Shatter: In the context of debtors, particularly secured debtors, they would have legitimate property rights in certain circumstances that are recognised under Article 43 of the Constitution. The courts have been very cautious about devaluing or depriving individuals of property rights in any way. In achieving a balanced provision there is a need to provide a degree of protection for creditors and a provision that is proportionate and which takes account

of the issue of property rights and has regard to the provisions in that Article while facilitating the State's intervention in specific circumstances. However, the courts have defined those circumstances in a very narrow manner.

There is a balance to be attained here. Again, I do not wish to continue to use the phrase but in this particular area, because there are levels of uncertainty, there is no monopoly of wisdom. One is trying to make a judgment as to what is not only feasible but permissible within the constitutional architecture under which we must operate, as well as having regard to what is fair to the position of both debtors and creditors. We have given a great deal of thought to how to deal with this. Other matters are currently being considered in this context as well and if further amendments can be tabled by the Government to improve the legislation, we will do that. However, it is important that what we enact does not have a constitutional infirmity that could lead to issues being raised about the efficacy of the legislation and undermine its impact for the many debtors who would look to this legislation to facilitate having their individual circumstances addressed in a constructive way in the not too distant future.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 197:

In page 95, subsection (1)(*b*), lines 16 and 17, to delete all words from and including "creditors" in line 16 down to and including "debts" in line 17 and substitute the following:

"creditors representing more than 30 per cent of the value of the secured debts".

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 198:

In page 95, subsection (1)(*c*), lines 22 and 23, to delete all words from and including "creditors" in line 22 down to and including "creditors" in line 23 and substitute the following:

"creditors representing more than 30 per cent by value of the creditors".

Amendment put and declared lost.

Section 105 agreed to.

Section 106 agreed to.

SECTION 107

Chairman: Amendment No. 199 is out of order.

Amendment No. 199 not moved.

Chairman: Amendments Nos. 200 and 201 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 200:

In page 96, subsection (2), line 44, to delete "within 21 days" and substitute "within 14 days".

This amendment seeks to reduce the 21-day appeal period in section 107(2) to 14 days to

ensure consistency with earlier sections in the Bill. Amendment No. 201 is linked to amendment No. 200 and provides for the insertion of additional text in section 107(3) to make clear that the time frame for the lodging of a creditor's objection is within 14 days of the date of the sending of the personal insolvency petitions notice to each creditor under section 107(2). This time frame was not provided for in the Bill as published and is considered necessary for the avoidance of doubt.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 201:

In page 97, subsection (3), lines 1 and 2, to delete all words from and including "A creditor" in line 1 down to and including "court" in line 2 and substitute the following:

"A creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in *subsection (2)* and".

Amendment agreed to.

Section 107, as amended, agreed to.

SECTION 108

Deputy Finian McGrath: I move amendment No. 202:

In page 97, subsection (1), lines 6 and 7, to delete all words from and including "On" in line 6 down to and including "*section 107*" in line 7 and substitute "On approval of a personal insolvency arrangement".

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 203:

In page 97, subsection (1), lines 8 and 9, to delete "the register maintained by it under *section 127*" and substitute "the Register of Personal Insolvency Arrangements".

This is a technical amendment.

Amendment agreed to.

Section 108, as amended, agreed to.

SECTION 109

Deputy Alan Shatter: I move amendment No. 204:

In page 97, lines 20 to 22, to delete subsection (2).

This amendment proposes the deletion of subsection (2). The subsection is superfluous as the provisions of section 108(2) already provide that the protective certificate shall continue in force until the personal insolvency arrangement comes into effect or all objections lodged with the appropriate court pursuant to section 107(3) have been determined by the appropriate court.

Amendment agreed to.

Section 109, as amended, agreed to.

SECTION 110

Deputy Alan Shatter: I move amendment No. 205:

In page 97, subsection (1), line 31, to delete "10 days" and substitute "14 days".

This amendment provides for an increase in the number of days within which a creditor may lodge an objection with the appropriate court from ten to 14 days. Again, this provides for consistency in the legislation and will avoid confusion.

Amendment agreed to.

Chairman: Amendments Nos. 206 and 207 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 206:

In page 98, lines 6 to 9, to delete subsection (6) and substitute the following:

"(6) On receipt of a notification by it from the court, the Insolvency Service shall —

(*a*) notify the personal insolvency practitioner concerned, and

(*b*) register the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements.

(7) The Personal Insolvency Arrangement shall come into effect upon being registered in the Register of Personal Insolvency Arrangements.".

Amendment No. 206 is required to clarify the functions of the insolvency service when it receives notification from the appropriate court regarding the court's approval of the coming into effect of a personal insolvency arrangement. This amendment adds a new function which is to require the insolvency service to notify the personal insolvency practitioner concerned. The amendment also clarifies the timing of the coming into effect of a personal insolvency arrangement, which is on it being registered by the insolvency service in the register of personal insolvency arrangements.

Amendment No. 207 replaces section 111(1) with a shorter subsection. I am advised that paragraphs (*b*), (*c*) and (*d*) of the existing text of subsection (1) are superfluous. These paragraphs purport to prevent creditors from taking certain actions against the debtor following the coming into effect of a personal insolvency arrangement, but the matters covered by these paragraphs are all comprehensively covered in subsections (3) to (5) of section 111.

Amendment agreed to.

Section 110, as amended, agreed to.

SECTION 111

Deputy Alan Shatter: I move amendment No. 207:

In page 98, lines 10 to 28, to delete subsection (1) and substitute the following:

"(1) Upon a Personal Insolvency Arrangement being registered in the Register of Personal Insolvency Arrangements it shall have effect according to its terms and remain in effect until—

(*a*) it is completed in accordance with its terms or the terms of any variation

made, or

(*b*) it is terminated in accordance with this Chapter.".

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 208:

In page 99, lines 47 and 48 and in page 100, lines 1 and 2, to delete subsection (11).

This amendment proposes the deletion of subsection (11). I am advised that the provision is not required as the matter is already covered by subsection (6).

Amendment agreed to.

Section 111, as amended, agreed to.

SECTION 112

Chairman: Amendments Nos. 209 and 210 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 209:

In page 100, lines 37 to 40, to delete subsection (9).

This amendment removes the reference at subsection (9) as to the charging of fees by a personal insolvency practitioner. This is no longer required due to the proposed amendment No. 238, which will provide for the making of guidelines for personal insolvency practitioners regarding their fees. Amendment No. 210 is similar to amendment No. 133. Its purpose is to expand the existing provisions relating to the costs of personal insolvency practitioners to clarify that they also refer to fees and outlays.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 210:

In page 101, subsection (11), line 9, to delete "fees or expenses" and substitute "fees, costs and outlays".

This is similar to previous amendments.

Amendment agreed to.

Section 112, as amended, agreed to.

SECTION 113

Deputy Alan Shatter: I move amendment No. 211:

In page 101, subsection (4), line 36, to delete "is subject to" and substitute "is subject as a debtor to".

This is a technical amendment.

Amendment agreed to.

Section 113, as amended, agreed to.

SECTION 114

Chairman: Amendments Nos. 212 to 215, inclusive, are related and may be discussed together.

Deputy Niall Collins: I move amendment No. 212:

In page 102, subsection (4)(*a*), lines 21 and 22, to delete "representing not less than 65 per cent in value" and substitute "representing not less than 50 per cent in value".

These are straightforward amendments which seek to reduce the value from 65% to 50% and from 50% to 30% for previously stated reasons.

Deputy Alan Shatter: These amendments replicate the previous restructuring arrangements proposed by the Deputy in regard to voting matters. Previously we discussed their impact on creditors and the difficulties that could arise. The amendments are opposed.

Chairman: Does the Minister wish to refer to his amendment, No. 215, which is also being discussed?

Deputy Alan Shatter: Amendment No. 215 inserts a new subsection (10) into section 114. It is required for interpretation purposes to clarify the statement in Chapter 4 that a personal insolvency arrangement shall be construed as including such as an arrangement as varied in accordance with section 114. I dare anyone to disagree with that.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 213:

In page 102, subsection (4)(*b*), line 25, to delete "representing more than 50 per cent by value" and substitute "representing more than 30 per cent by value".

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 214:

In page 102, subsection (4)(*c*), line 29, to delete "representing more than 50 per cent by value" and substitute "representing more than 30 per cent by value".

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 215:

In page 103, between lines 14 and 15, to insert the following subsection:

"(10) A reference in this Chapter to a Personal Insolvency Arrangement shall be construed as including such an arrangement as varied in accordance with this section.".

Amendment agreed to.

Section 114, as amended, agreed to.

SECTION 115

Chairman: Amendment No. 216 is ruled out of order.

Amendment No. 216 not moved.

Deputy Alan Shatter: I move amendment No. 217:

In page 103, subsection (1)(*g*), line 39, to delete "to his inability to pay his debts" and substitute "to the debtor's inability to pay his or her debts".

Amendment agreed to.

Section 115, as amended, agreed to.

Section 116 agreed to.

SECTION 117

Chairman: Amendments Nos. 218 and 219 are related and may be discussed together.

Deputy Niall Collins: I move amendment No. 218:

In page 104, subsection (1), line 45, to delete "for a period of 6 months" and substitute "for a period of 9 months".

The amendment seeks to delete the words "for a period of 6 months" and substitute "for a period of 9 months". This is in keeping with our previous amendments to provide for additional breathing space for a struggling debtor of three months.

Deputy Alan Shatter: I am opposed to the amendment, which is similar to amendment No. 139 in regard to debt settlement arrangements. There is no point in revisiting the arguments.

Amendment No. 219 limits the scope of section 117, which relates to the termination of a personal insolvency arrangement which has failed because the debtor is in arrears with his or her payments for a period of six months. The existing text of section 117(1) provides that the personal insolvency arrangement shall terminate where a creditor or the personal insolvency practitioner notifies the insolvency service of such default. On reflection, it is not appropriate for a creditor to be able to automatically terminate a personal insolvency arrangement on notice to the insolvency service. This amendment means that only the personal insolvency practitioner will be entitled to give such a notice requiring termination of the service. This amendment does not prejudice to the right of creditors under section 116, to apply to the appropriate court to have a personal insolvency arrangement terminated including on the ground that the debtor is in arrears with his or her payments for a period of not less than three months.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 219:

In page 104, subsection 1, line 46, to delete "a creditor or".

Amendment agreed to.

Section 117, as amended, agreed to.

Section 118 agreed to.

SECTION 119

Deputy Alan Shatter: I move amendment No. 220:

In page 105, subsection (3), line 31, to delete "secured debts" and substitute "secured debts covered by the Arrangement".

This is a technical amendment.

Amendment agreed to.

Section 119, as amended, agreed to.

Sections 120 and 121 agreed to.

Chairman: Amendments Nos. 221 and 222 are ruled out of order.

Amendments Nos. 221 and 222 not moved.

Section 122 agreed to.

Chairman: Amendments Nos. 223 and 224 are ruled out of order.

Amendments Nos. 223 and 224 not moved.

Section 123 agreed to.

SECTION 124

Question proposed: "That section 124 stand part of the Bill."

Deputy Pádraig Mac Lochlainn: We may table pedantic amendments on Report Stage. In the case of debt relief and debt settlement agreements, the amount should be €650 or more. This will be a tidying-up amendment. I wish to give notice of that.

Deputy Alan Shatter: We are always happy to be assisted with tidying up.

Question put and agreed to.

Sections 125 and 126 agreed to.

Chairman: Amendments Nos. 225 and 226 are ruled out of order.

Amendments Nos. 225 and 226 not moved.

Section 127 agreed to.

Section 128 agreed to.

SECTION 129

Deputy Alan Shatter: I move amendment No. 227:

In page 110, line 24, to delete "may be set off" and substitute "shall be set off".

The amendment deals with the application of a set-off by a creditor in respect of mutual credits or debts. This is now made mandatory.

Amendment agreed to.

Question proposed: "That section 129, as amended, stand part of the Bill."

Deputy Pádraig Mac Lochlainn: Another tidying-up exercise, which is an important one,

is needed in section 129. It works in tandem with section 35(8) of the Credit Union Act 1997. I give notice that I will table an amendment on Report Stage. The amendment will seek to require the consent of creditor and debtor where there are mutual credits or debts. One will appreciate how that can apply to a credit union.

Chairman: We will note that.

Question put and agreed to.

Chairman: Amendment No. 228 is ruled out of order.

Amendment No. 228 not moved.

Section 130 agreed to.

NEW SECTIONS

Deputy Alan Shatter: I move amendment No. 229:

In page 111, before section 131, but in Part 3, to insert the following new section:

131.-(1) The Insolvency Service may prepare and publish guidelines for personal insolvency practitioners in relation to the duties of personal insolvency practitioners under this Part (which may include a model form of a Debt Settlement Arrangement or Personal Insolvency Arrangement).

(2) A personal insolvency practitioner shall have regard to any guidelines published under *subsection (1)* in carrying out his or her duties under this Part.".

This amendment proposes the insertion of a new section which will allow the Insolvency Service to prepare and publish guidelines for personal insolvency practitioners on their duties. Such guidelines may include a model form of a debt settlement arrangement and also a personal insolvency arrangement. Subsection (2) of the proposed new section provides that a personal insolvency practitioner is required to have regard to any guidelines published by the insolvency service in carrying out his or her duties. The purpose of this subsection is to ensure there is consistency of approach by personal insolvency practitioners in respect of their duties and, if necessary, to provide model forms of debt settlement arrangements or personal insolvency arrangements. It is appropriate for this function to be carried out by the insolvency service as it would be best placed to offer the necessary guidance to practitioners in respect of these matters. I should note at this stage that in regard to the oversight of personal insolvency practitioners, we may bring forward some further amendments on Report Stage.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 230:

In page 111, before section 131, but in Part 3, to insert the following new section:

"132.—(1) Nothing in this Act—

(*a*) affects the operation of—

(i) the Netting of Financial Contracts Act 1995,

(ii) the European Communities (Settlement Finality) Regulations 2010 (S.I.

No. 624 of 2010), or

(iii) the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010), in relation to an agreement to which a debtor is a party, or

(*b*) affects the operation of any provision of the law of a Member State required for the implementation of the provisions of —

(i) Directive 98/26/EC4 of the European Parliament and of the Council of 19 May 1998 (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009), or

(ii) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009).

(3) Nothing in this Act affects the operation of the Asset Covered Securities Act 2001.".

The new section that this amendment proposes to insert into the Bill is required for the avoidance of doubt. It provides that the operation of certain specified laws in relation to an agreement, to which an authorised credit institution or any of its subsidiaries or holding companies is a party, will not be not affected by anything contained in the Bill. I am advised that this type of provision is standard in financial legislation. Given the subject matter of this Bill, I believe a similar provision should be included to avoid any doubt.

Amendment agreed to.

Chairman: Amendments Nos. 231 to 235, inclusive, are out of order.

Deputy Finian McGrath: I might as well tog in and go home.

Amendment No. 231 not moved.

Section 131 agreed to.

Amendments Nos. 232 to 235, inclusive, not moved.

Sections 132 to 143, inclusive, agreed to.

SECTION 144

Chairman: As amendments Nos. 236 and 237 are related, they may be discussed together.

Deputy Niall Collins: I move amendment No. 236:

In page 117, subsection (1), line 19, to delete "may" and substitute "shall".

I am proposing the replacement of the word "may" with the word "shall" in this section to emphasise the need for the Minister to ensure there is a properly regulated register of personal insolvency practitioners, who are central to the proper functioning of this entire legislation. I want to ensure they are regulated by a competent and qualified person.

Deputy Alan Shatter: Amendments Nos. 236 and 237 relate to the regulation of personal insolvency practitioners. I acknowledge that significant further work on this part of the Bill

is required. I mentioned earlier that I intend to introduce amendments that will address these areas. I intend to continue the intensive efforts that are necessary to put in place the appropriate and detailed regulatory regime that can best provide for the regulation of the work of such practitioners. Work is under way to prepare what is required for this new and complex area of law. I intend to introduce our proposals at a later stage. I hope it will prove possible to do so on Report Stage. In that context, I ask Deputy Collins to withdraw his amendments.

Amendment, by leave, withdrawn.

Amendments Nos. 237 and 238 not moved.

Deputy Alan Shatter: I move amendment No. 239:

In page 117, after line 47, to insert the following subsection:

"(6) The person designated pursuant to *subsection (1)* may make regulations relating to the circumstances and purposes for which a personal insolvency practitioner may charge fees, costs and expenses, and a personal insolvency practitioner shall not charge fees or costs or seek to recover outlays which are not incurred—

(*a*) in accordance with such regulations, and

(*b*) where a Debt Settlement Arrangement or a Personal Insolvency Arrangement comes into effect, in accordance with the terms of such an arrangement.".

The purpose of this amendment is to provide for the making of guidelines with regard to the fees that may be charged by personal insolvency practitioners.

Amendment agreed to.

Section 144, as amended, agreed to.

Schedule agreed to.

TITLE

Chairman: As amendments Nos. 240 and 241 are related, they may be discussed together.

Deputy Alan Shatter: I move amendment No. 240:

In page 9, line 27, to delete "PERSONS" and substitute "DEBTORS".

Amendments Nos. 240 and 241 are technical drafting amendments.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 241:

In page 9, line 31, to delete "WITH" and substitute "WITHOUT".

Amendment agreed to.

Chairman: Amendment No. 242 is out of order.

Deputy Finian McGrath: I thought I might have got the last one past the Chairman.

Amendment No. 242 not moved.

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

Chairman: Before we agree the Title, I would like to draw the Minister's attention to the plight of people who have ended up with two mortgages through no fault of their own. A small number of people who were selling houses to trade up were caught when the sale fell through after they had agreed to buy another house. Perhaps such cases might be taken into account. We all have sympathy for people who are at risk of losing their principal private property, but people in these cases have inadvertently ended up with two such properties. I have come across a few cases of people who purchased a new house in order to trade up but were unable to sell their existing house. This matter might be noted somewhere along the way.

Deputy Alan Shatter: We have all come across a small number of individuals in our constituencies who are caught in those circumstances. I am not sure that this legislation can make special provision for them. Obviously, we will have a look at it.

I would like to conclude by adopting Deputy Mac Lochlainn's approach of formally advising the committee that I hope to introduce some further amendments on Report Stage. I think I touched on some of them as we went through the Bill. I have already mentioned that I hope to table amendments relating to the regulation of personal insolvency practitioners. It is possible that some amendments to the Courts Acts will be proposed too. We are considering a means of ensuring the courts can deal efficiently with their functions with regard to the various debt relief mechanisms that are prescribed in the Bill and will be available. Some possible amendments relating to the Office of the Official Assignee in Bankruptcy and a number of tax-related amendments might be introduced. It could be decided that further refinement of the voting process at meetings that take place in the presence of creditors is necessary. In our exchanges, we barely touched on the provisions in the Bill with regard to offences. Some fine-tuning might be needed in that area.

I thank Deputies for their co-operation and assistance today. We have had a very useful exchange on different provisions in the Bill. While I was not able to take on board many of the amendments that were proposed, I am pleased that they gave us a valuable opportunity to discuss various issues about which we are all concerned and to consider how we can help those who are under severe pressure as a result of debt. I will reflect on the exchanges that have taken place today and examine any additional amendments that might be appropriate to ensure the best possible legislation is in place following the coming into force of this Bill.

Question put and declared carried.

Deputy Anne Ferris: When is it proposed to take Report Stage?

Deputy Niall Collins: Obviously we are not sitting tomorrow as originally planned. What is our schedule for next week?

Chairman: There will be a joint committee meeting on Wednesday next at 9.30 a.m.

Deputy Niall Collins: Will that be a private meeting?

Chairman: Yes.

Deputy Alan Shatter: In reply to Deputy Anne Ferris, I anticipate that we will commence the Report Stage debate in October. There is further work to be done in the areas I mentioned. I cannot give the committee a definitive date at this moment in time. It will depend on the

completion of that work and obviously other matters within the House but we are very anxious to progress the legislation as rapidly as possible. We are also anxious that we get it right.

Chairman: I thank the Minister and his officials for attending and members for their co-operation and input into this Bill. I also thank all the staff who have worked hard to ensure we completed our work today. Everyone will agree it is good that we managed to do it in one sitting, albeit a marathon one.

Deputy Finian McGrath: On behalf of the members of the committee I thank the Chairman for the efficient way in which he conducted this meeting. I also thank all of the staff for their hard work and the Minister and his officials for their contributions. I agree with the Minister that the objective here is to help people who are having problems. One could play political football with an issue such as this but in reality, we are all here trying to help people.

Chairman: I agree with the Deputy. This has been a very constructive meeting.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 87, the following message will be sent to the Clerk of the Dáil:

> The Select Committee on Justice, Defence and Equality has completed its consideration of the Personal Insolvency Bill 2012 and has made amendments thereto.

The select committee adjourned at 5.25 p.m. until 2 p.m. on Wednesday, 17 October 2012.