

# DÁIL ÉIREANN

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**AN ROGHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS**

**SELECT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY**

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*Dé Céadaoin, 7 Samhain 2012*

*Wednesday, 7 November 2012*

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The Select Committee met at 10 a.m.

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MEMBERS PRESENT:

Deputy Niall Collins,	Deputy Pádraig Mac Lochlainn,
Deputy Seán Kenny,	Deputy Alan Shatter (Minister for Defence).
Deputy Kathleen Lynch (Minister of State at the Department of Justice and Equality),	

In attendance: Deputy Aengus Ó Snodaigh.

DEPUTY DAVID STANTON IN THE CHAIR.

**Estimates for Public Services 2012**

**Vote 35 – Army Pensions (Supplementary)**

**Chairman:** Apologies have been received from Deputy Ann Ferris. I remind members to turn off their mobile telephones because, even in silent mode, they can interfere with the quality of the transmission.

This meeting has been convened to consider a Supplementary Estimate for Vote 35, Army pensions, and Committee Stage of the Europol Bill 2012. We will deal with the Supplementary Estimate first.

A Supplementary Estimate for Vote 35 was referred to the select committee yesterday by the Dáil with an instruction to report back to the Dáil by 8 November. The role of the select committee under Standing Orders is to consider the Supplementary Estimate and report that it has done so to the Dáil.

I welcome the Minister for Defence, Deputy Alan Shatter, and his officials to this meeting to assist the select committee in its consideration of the Supplementary Estimate. I thank them for providing briefing material on the Supplementary Estimate which was circulated to members in advance.

I propose the Minister will address the select committee first after which Opposition spokespersons will have an opportunity to respond. Then we can have an open discussion. Is that agreed? Agreed.

I remind members that under Standing Order 161, discussion must be confined to items included in the Supplementary Estimate.

**Minister for Defence (Deputy Alan Shatter):** I thank the select committee for the opportunity to present for its consideration the 2012 Supplementary Estimate for Vote 35, Army pensions, which is for a net sum of €30 million. I also thank the committee for agreeing to meet at 10 a.m. rather than 9.30 a.m. as I had another meeting in which to participate.

The 2012 Estimate provided for a net sum of €207.9 million. Net outturn this year is expected to be approximately €238 million, leaving a shortfall of €30 million. I must emphasise this Supplementary Estimate for the Army pensions Vote will be met by an appropriate saving on the defence Vote. It is, therefore, a technical Supplementary Estimate with no extra demand on the Exchequer over what was initially voted for the Department of Defence for 2012.

Following the move by the Government to the new performance budgeting format, expenditure under the Vote is now provided under a single programme entitled provision for defence forces pensions benefits. The Army pensions Vote makes provision for retired pay, pensions, allowances and gratuities payable to or in respect of members of the Defence Forces. The original Estimate provided a net sum of €207.9 million to cover a total of over 11,600 pensioners in all categories, the majority of whom are Defence Forces pensioners.

The number of Defence Forces pensioners has continued to increase during the past year. There are almost 12,000 pensioners of all categories paid by the Department of Defence. This

includes 10,047 retired members of the Permanent Defence Force, 1,666 spouses and children of deceased members and 212 spouses of deceased Old IRA veterans. Subhead A2 is the main subhead of the Army pensions Vote. It covers expenditure on all superannuation benefits for former members of the Defence Forces and their dependants. It accounts for over 95% of all military pensions expenditure and is primarily demand-led as well as non-discretionary. The original provision of €204 million for this subhead will be inadequate to meet all requirements. The gross shortfall on this subhead is estimated at €29.9 million. A shortfall of €500,000 is also expected in appropriations-in-aid. The overall supplementary requirement will be offset by expected savings of €400,000 in subheads A1, A3 and A4 to A6, inclusive. When these are taken into account, the net shortfall is €30 million.

The principal reasons for the shortfall in subhead A2 are: the full-year pension impact in 2012 and related carryover costs of the large number who left the Defence Forces on pension in 2011; there were higher than anticipated numbers who retired on pension from the Permanent Defence Force during the first two months of 2012, that is, ahead of the end of the grace period up to 29 February; and many Defence Forces retirees continue to be in the long service category and, therefore, entitled to maximum retirement benefits. Overall, the provision in subhead A2 was not sufficient to meet the costs actually incurred in 2012.

During 2011 and in early 2012 the numbers who retired from the Permanent Defence Force with an entitlement to pension and a retirement gratuity were considerably higher than anticipated. Up to the end of 2011 a total of 498 military personnel of all ranks retired on pension compared to 427 at the end of 2010. However, a total of 559 military personnel have retired on pension so far this year. The bulk of these, 514, did so in the first two months of the year. These early 2012 departures far exceeded expectations, considering that retirements in 2011 were already above average.

The personnel turnover rate in the Defence Forces is among the highest in the public service. As a matter of policy, the regular recruitment of young soldiers is an absolute necessity to ensure a pool of fit personnel.

The level of retirements in 2012 has placed an additional burden on individual members of the Permanent Defence Force during the year. I acknowledge this and thank them for their efforts. At the end of August the strength of the force was 8,838. Therefore, the recruitment of some 600 personnel is required to maintain the agreed strength of 9,500. The intake of personnel will take place in several tranches before the end of the year. This process commenced in late September. To date, 349 recruits have been enlisted, of whom 22 are instrumentalists. In addition, a medical officer was appointed in July and a military judge in September. There was also an intake of 37 cadets who commenced training in October. An Air Corps apprentice competition and a competition to recruit engine room artificers for the Naval Service were recently advertised, from which it is proposed to enlist 20 and 11 personnel, respectively. At the end of September the strength of the force was 9,028 and is currently in the order of 9,100. All of this recruitment will be achieved within the resource envelope allocated to the Department of Defence to maintain the Government-approved strength of the Permanent Defence Force of 9,500.

That is a brief résumé of the overall position and why the Supplementary Estimate is before the committee. I commend it to the committee and hope it will be supported by it.

**Deputy Pádraig Mac Lochlainn:** The Minister has stated the additional cost of pensions will be met from the savings accruing the fall-off in the threshold of 9,500. Am I correct to interpret it in this way? Is that where the savings have been made?

**Deputy Alan Shatter:** Yes. Far more retired than was anticipated, especially in the period from January to February 2012. They did so because of the advantages in the pension that would accrue to them. After that had occurred we had to assess the impact on the Permanent Defence Force and make arrangements for recruitment which we advertised in June. When one advertises, there is a lead-in period. I may be corrected by my officials if I am wrong, but my recollection is that we advertised for in the region of 600 personnel. There were in the region of 10,000 applications which, once received, had to be assessed. Following this, there was a process whereby individuals initially selected had to go through an interview and health checks. A range of processes had to take place and we were not in a position to starting brining in people until September. The committee will be aware that of the 600 personnel, more than 400 have been recruited. We should be up to speed by the end of the year.

**Deputy Pádraig Mac Lochlainn:** How will the Minister anticipate what the budget for 2013 will be when the numbers get close to 9,500 again? Will the exposure to pension payments continue? How does the Minister intend to balance the position?

**Deputy Alan Shatter:** We should be close to 9,500 by the time we get to the end of the year. That is our objective. In the middle of this process we are implementing a reorganisation programme. As there will be Dáil questions on that issue this afternoon, I will not go into it here. In the context of the Estimates process we are engaged with the Department of Public Expenditure and Reform and the Minister, Deputy Brendan Howlin, on the figures and where we stand in dealing with the financial envelope available to us for 2013. The reality of pension payments is part of the financial envelope. Pension payments are relatively predictable and fixed and this forms part of the discussions with Department of Public Expenditure and Reform. In the current financial climate and with limited resources it is important to stay within our resources. In a sense, members of the Permanent Defence Force in 2012 whom we may have envisaged continuing in the force and for whom salary provision was made went into the pension stream and there was an *interregnum* in bringing people in. We were able to made provision for this within our resources. These issues are part of the Estimates discussions with the Department of Public Expenditure and Reform.

**Deputy Niall Collins:** How many years does a member have to serve to have full service? How many more than expected retired before the grace period expired in February? The Minister has stated many of those who retired had long service. How many did not? Of those who did not have full or long service, how many were granted catch-up years because of ill-health? I understand one can be granted several added years because of ill-health.

**Deputy Alan Shatter:** That is a series of questions to which I have answers which I will gladly give to the Deputy. However, I will consult the statistics because I do not wish to do it from memory in case I give the wrong statistics.

A total of 21 years is normally the length of service required to be on full pension. The retirement age is normally 50 years for those who joined post-2004.

We have a breakdown of the figures for PDF retirements and discharges. Of those who retired as of 30 September 2012, 59 were officers, while 612 were enlisted personnel. That amounts to a total of 671 retirements. Of the number of 671, 559 retired on pension. I am unsure whether I have information on those who retired early as opposed to those who had completed the full 21 year period, but I will be glad to ensure the Deputy is communicated with in that regard. We have a complex and detailed breakdown which covers the 619. If I can give an example of what it says - we are happy to put this into a communication to the committee - in

the context of officers, we list 48 voluntary retirements. Two retired members were deceased. There were ten retirements on age grounds in the context of officers. Where retirements were voluntary they would not have completed service to the full age at which retirement is compulsory. There are various reasons for enlisted personnel. The largest number involved 453 enlisted personnel who retired on the basis that they were on pensions after 21 years of service. The next largest number involved 73 discharges by purchase. That effectively involves personnel who left without completing the full 21-year period but who are ultimately entitled to pension payments.

**Chairman:** The Minister stated that the Supplementary Estimate for the Army pensions Vote would be met by an appropriate saving under the defence Vote.

**Deputy Alan Shatter:** Effectively, we have stayed within the overall financial envelope. In simple terms, we are moving a portion of money designated as salaries into pensions. That is facilitated as a consequence of the larger than expected number of retirements at the end of February and the obvious hiatus created thereafter. They retired and then became entitled to their pensions as opposed to Army salaries and, effectively, we determined what recruitment was required and how it should be distributed between the Army, the Air Corps and the Naval Service. For example, it is not a question of simply recruiting ordinary personnel but of identifying who should be recruited by way of cadets. The work that was done after February allowed us to advertise in June. We knew exactly where we were heading and could start bringing people into the Defence Forces in September after the preliminary work was done. That created an envelope of money that had not been spent on salaries. It was utilised for pensions and it meant that we stayed firmly within budget, which was important. Obviously, how we deal with funding for 2013 is dependent on the outcome of the Estimates and the conversation we are having with the Department of Public Expenditure and Reform.

**Chairman:** Is there a net saving when people retire?

**Deputy Alan Shatter:** There was a saving on the salary side which then had to be transferred into the pension side. The good thing about it is that, going through the recruitment process, we are substantially on target as we get to the end of the year of ensuring we have the strength we envisaged at the start of the year, which was key to the Defence Forces meeting their operational requirements.

**Chairman:** What level of net savings were achieved when one considers salaries versus pensions and lump sums for the year?

**Deputy Alan Shatter:** Effectively, we are transferring the envelope from one side to the other. With a strength of 9,500 at year end we are going into 2013 with an additional cohort of pensioners but many of the retirements which occurred early in the year might have otherwise gone throughout the year. I think I am right in saying that the normal retirement rate from the Defence Forces was between 350 and 400 per annum. By the end of February, in excess of 500 left in a two-month period. Things should level out as we go into 2013. There is always a degree of the imponderable in this area. People may retire for reasons entirely external to the Defence Forces. I do not think there will be major incentives for people to retire early during 2013. The scheme offered an incentive to retire early but we were in a position that was not shared by any other Department in that we are able to recruit again. That was important in the context of the age profile of members of the Defence Forces.

**Chairman:** Was there a net saving on the overall envelope?

## MESSAGE TO DÁIL

**Deputy Alan Shatter:** I do not have an overall figure but if one takes the annual pension paid to an individual compared with what he or she would have received if he or she was still in the Defence Forces, there is a saving of approximately €17,000 per individual per annum. That is based on a comparison between an annualised pension payment and an annualised salary payment. It is not pure salary because, as members are aware, there are a number of allowances in the Defence Forces which are on occasion misunderstood in the media as some form of perk. Enlisted personnel are paid their basic salaries according to rank and the allowances are paid in the context of specialties they may possess or services, such as service overseas, in which they may engage. This figure is produced by averaging out the figures.

**Chairman:** The €30 million came from net savings.

**Deputy Alan Shatter:** Yes, effectively.

**Deputy Niall Collins:** In regard to the determination of service by the Minister for Defence, is that a discretionary power for the Minister of the day?

**Deputy Alan Shatter:** That is a recommendation that would come to the Minister from the military. There can be reasons as to why someone's service should be terminated. As the Deputy can see, that provision affected three people. Disciplinary, health or other issues could arise in that context.

**Deputy Niall Collins:** Does the Minister confer added years to the individual's service in the determination of service?

**Deputy Alan Shatter:** Not in those circumstances. If there is a recommendation from the military that, for example, it is inappropriate for someone who has undergone a disciplinary process to remain in the military, he or she is not going to receive additional compensation for service being terminated. Fortunately it only affects a small number of individuals.

**Deputy Niall Collins:** Do health grounds come under that subhead?

**Deputy Alan Shatter:** Generally there are no added years as I understand the matter.

**Chairman:** This concludes our consideration of the Supplementary Estimates for Vote 35.

**Deputy Alan Shatter:** I thank the Chairman and members for their co-operation in dealing with this issue and I look forward to reverting to them on other defence matters during Question Time later today by way of a break from dealing with the Personal Insolvency Bill.

**Chairman:** I thank the Minister and his officials for meeting the committee.

## Message to Dáil

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Select Committee on Justice, Defence and Equality has completed its consideration of the following Supplementary Estimate for public services for the year ending 31 December 2012: Vote 35 — Army pensions.

*Sitting suspended at 10.30 a.m. and resumed at 10.35 a.m.*

**Europol Bill 2012: Committee Stage**

**Chairman:** A grouping list has been circulated. I welcome the Minister of State with responsibility for disability, equality and mental health issues and older people, Deputy Kathleen Lynch, and her officials.

SECTION 1

**Chairman:** As amendments Nos. 1 to 3, inclusive, are related, they may be discussed together.

**Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch):** I move amendment No. 1:

In page 3, between lines 21 and 22, to insert the following:

“ “data” has the same meaning as it has in the Data Protection Acts 1988 and 2003;”.

These amendments have been introduced to bring clarity to the meaning of “data” and “personal data” within the Bill. The Data Protection Acts 1988 and 2003 automatically apply to any processing of data within the State, including processing of data under the Bill. The amendments simply confirm the meaning of the terms used in the Bill to bring it into line with that used in the Data Protection Acts. These technical amendments are important.

**Chairman:** They are straightforward.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 2:

In page 4, between lines 13 and 14, to insert the following:

“ “personal data” has the same meaning as it has in the Data Protection Acts 1988 and 2003;”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 3:

In page 4, line 14, after “ “processing” “ to insert “, in relation to data,”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 4:

In page 4, between lines 17 and 18, to insert the following subsection:

“(2) A word or expression used in this Act and in the Council Decision has the same meaning in this Act as in that Decision.”.

This amendment proposes the inclusion of a new section 1(2) in the Bill to provide that any “word or expression” used in the Bill and the Council decision which is set out in the Schedule to the Bill shall be interpreted as having the meaning provided for in the Council decision. This is particularly necessary to identify the criminal offences covered by the Bill. Article 4 of the Council

decision sets out the offences for which Interpol is competent. A reference to Article 4 is included in the definition of “criminal offences” in section 1 of the Bill. Article 4.1 provides that Interpol’s competence “shall cover organised crime, terrorism and other forms of serious crime as listed in the Annex”. It is necessary to ensure references to serious crime in the Bill, for example, in section 12(1), will be interpreted in accordance with the Council decision. Equally, references to “related crime” in the Bill should be interpreted in accordance with Article 4.3 of the Council decision. The annex that sets out the list of crimes extends much further than it did in the past.

Amendment agreed to.

Section 1, as amended, agreed to.

## SECTION 2

**Deputy Kathleen Lynch:** I move amendment No. 5:

In page 4, subsection (1), line 20, to delete “or, in relation to a revenue offence” and substitute “and, in relation to revenue offences”.

This amendment makes a minor drafting correction to section 2 which sets out the designated competent authorities within the State. As currently worded, the designated competent authority in the State is either the Garda Síochána or the Revenue Commissioners. The amendment clarifies that the designated competent authorities in the State are both the Garda Síochána “and, in relation to revenue offences”, the Revenue Commissioners. It is a technical amendment.

Amendment agreed to.

Section 2, as amended, agreed to.

Section 3 agreed to.

## SECTION 4

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 6:

In page 4, subsection (3), line 36, after “fit” to insert “, and this figure will be made public”.

This is a straightforward amendment. We want to ensure this section provides for the number of officers who serve in the unit to be made public. It is a question of accountability.

**Deputy Kathleen Lynch:** I cannot accept the proposed amendment because it is not appropriate or necessary. However, we can discuss it further. The Interpol national unit is simply a unit of the Garda Síochána. Similarly, the crimes policy unit and operational support unit are units of the Garda Síochána. The staffing of any unit within the Garda Síochána is a matter for the Garda Commissioner. Any assignments may change from time to time. Section 4(5) provides that the head of the national unit may be assigned tasks or duties other than those relating to Interpol. Any person who wishes to make contact with the national unit may do so via the Garda Síochána headquarters in the Phoenix Park. It is not an issue of security. It is very much a question of the specific numbers involved. If we were talking about the individuals, it would be an issue of security. The numbers may change from time to time. The answer one might receive in this context might not be technically true in the following days.



**Deputy Pádraig Mac Lochlainn:** I would like to pursue this matter a little further. The committee has just received a presentation setting out the number of Defence Forces officers and retirees, etc. There was great detail in the presentation, as there should be. All of these things should be accountable to the public. The amendment looks for an indicative number of staff working in the unit. We cannot get agreement on it.

**Deputy Kathleen Lynch:** I need to correct my previous references to “Interpol”. I should have been referring to “Europol”. There is no “indicative number”. There may be times when we need additional resources and times when we do not need as many resources as the Garda Commissioner might deem necessary. It is simply a matter of operation. The operational element has to be allowed to remain in the hands of the Garda Commissioner. The legislation we are proposing seeks to frame a Council decision. The operational element will always have to stay with the Garda Commissioner.

Amendment put and declared lost.

Section 4 agreed to.

## SECTION 5

**Chairman:** As amendments Nos. 7 and 12 are related, they may be discussed together.

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 7:

In page 5, subsection (1)(a), line 25, after “Europol” to insert “on a case by case basis”.

This amendment seeks to copperfasten the sovereignty of the police service and the defence of our human rights standards in the State. Rather than saying we will respond to requests from Europol, we should say responses will be authorised “on a case by case basis” and limited to what is necessary. We should ensure appropriate safeguards and accountability mechanisms are in place before we respond in this way. We should protect and enshrine our own standards, the sovereignty of our police service and policing practices

**Deputy Kathleen Lynch:** I will speak to amendments Nos. 7 and 12. The Deputy will not be surprised to hear I cannot accept these amendments. Our obligation in transposing the EU Council decision involves transposing each and every article that is relevant from a domestic perspective. Section 5 of the Bill gives effect, in line with legal advice, to Article 7 of the Council decision. Article 7.1 provides that “Member States shall deal with any request by Europol to initiate” an investigation. I remind the committee that section 7 of the Bill sets out the action to be taken following a request from Europol to initiate an investigation. In effect, decisions on whether to initiate investigations are made on a case by case basis. The relevant authorities in the State may refuse any such request in line with the provisions of section 7(2). Therefore, in order to comply with the Council decision, we must accept all requests from Europol. However, there is no obligation whatsoever to comply with such requests. I am refusing to accept the amendment to section 5 on the basis that it would undermine our compliance with the Council decision. The provisions of section 7 ensure there is no obligation on the State to comply with any request accepted. For that reason, I am not accepting amendment No. 12 either.

**Deputy Pádraig Mac Lochlainn:** Am I right in saying requests will be considered on a case by case basis? If so, what is the problem with the amendment?

**Deputy Kathleen Lynch:** The problem with the amendment is that it is unnecessary. We

already have a provision in the Bill that does what the amendment seeks to do. There are clear guidelines that govern how we can say “No” to certain investigations. We can refuse to comply with a request if we believe that to do so would compromise national security or compromise ongoing investigations. The amendment is unnecessary.

**Chairman:** All requests must be accepted, but there is no need to go further.

**Deputy Kathleen Lynch:** There are conditions under which we can refuse.

**Chairman:** The requests must be accepted, but one does not have to process them further. A request is made, as if one were receiving a letter, and on a case by case basis one can say one will or will not take action. Is that the case?

**Deputy Kathleen Lynch:** Yes. We cannot just say we will not do this. There have to be very good operational reasons for not doing so.

**Chairman:** One would probably have to look at it in order to make a decision.

**Deputy Kathleen Lynch:** Yes.

Amendment put and declared lost.

**Chairman:** Amendments Nos. 8, 11 and 13 are related and will be discussed together.

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 8:

In page 6, subsection (2), between lines 1 and 2, to insert the following:

“(d) jeopardise the human rights of a person.”.

This amendment concerns human rights standards in the State. Amnesty International has found that almost every state in the European Union has been guilty of human rights abuses, including abuses on the part of their police services. The amendment seeks to enshrine human rights standards to strengthen the Bill.

**Deputy Kathleen Lynch:** Amendments Nos. 8 and 13, as outlined by the Deputy, would add to the grounds for a refusal of assistance to Europol by including the jeopardising of the human rights of a person. Amendment No. 8 is to section 5 and seeks to add new grounds for a refusal to those already listed as reasons to refuse the provision of information for Europol, as set out in subsection (2) of the section. The subsection gives effect to Article 8.5 of the Council decision and the amendment would go beyond our remit in transposing the Council decision.

Equally, amendment No. 13 to section 7(2) would go beyond the remit of Article 7.3 of the Council decision, to which section 7 gives effect. However, the primary reason for refusing the amendments is that they are unnecessary. The State and its agents are committed and obliged to promote and protect the fundamental rights provisions of the Constitution. Equally, the State adheres to the international human rights obligations, including those under the European Convention on Human Rights. There is no need, therefore, to set out or confirm in statute an obligation under the Constitution and internationally.

I cannot accept amendment No. 11, as members of An Garda Síochána, customs officers and all liaison officers are subject to requirements to observe human rights. The promotion and protection of human rights underpin all Garda training. An Garda Síochána has a comprehensive education, training and information system for the professional development of all members.

This development programme incorporates training in human rights issues. In addition, I consider that the amendment falls outside the remit of the Council decision. In accordance with Article 9, when seconded to Europol, liaison officers “shall be subject to and required to act in accordance with the national law of the seconding member state”, namely, the Netherlands. Human rights are codified within the Dutch constitution and, as in the case of Ireland, the Netherlands is a party to a number of international human rights instruments, including the European Convention on Human Rights.

The proposed amendments would require some form of national oversight in circumstances where, as a result of their secondment, Irish liaison officers are subject to Dutch law. For these reasons we cannot accept the amendments.

**Deputy Pádraig Mac Lochlainn:** Obviously, there is a resistance to spelling things out in clear terms and outlining the sovereignty of our police service and standards in the State.

Amendment put and declared lost.

Section 5 agreed to.

## SECTION 6

**Chairman:** Amendments Nos. 9 and 10 are related and will be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 9:

In page 6, subsection (2)(a), line 17, to delete “or”.

The two amendments are technical. Amendment No. 9 to section 6(2) removes the word “or” where it appears between paragraphs (a) and (b) of the subsection. As discussed on a previous amendment, this confirms that the Garda Commissioner is not limited to only sending Garda or Revenue officers to Europol to serve as liaison officers. Currently, there are three liaison officers attached to the Irish liaison bureau at Europol headquarters, namely, two detective sergeants and one Customs officer.

Amendment No. 10 is a minor drafting amendment to remove the words “if any” from paragraph (b) of section 6(2), as they are not necessary.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 10:

In page 6, subsection (2)(b), line 21, to delete “(if any)”.

Amendment agreed to.

Section 6, as amended, agreed to.

## NEW SECTION

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 11:

In page 6, before section 7, to insert the following new section:

“7.—(1) The Garda Commissioner shall ensure external human rights auditing of all liaison officers training materials.

(2) The Garda Commissioner shall ensure all liaison officers appointed will undergo human rights training before taking up positions.”.

Amendment put and declared lost.

#### SECTION 7

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 12:

In page 6, subsection (1)(b), line 37, after “request” to insert “on a case by case basis”.

Amendment put and declared lost.

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 13:

In page 7, subsection (2), between lines 5 and 6, to insert the following:

“(d) jeopardise the human rights of a person.”.

Amendment put and declared lost.

Section 7 agreed to.

Section 8 agreed to.

#### SECTION 9

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 14:

In page 8, subsection (2), line 16, to delete “is satisfied” and substitute “has received a guarantee”.

The purpose of the amendment is to strengthen the current draft. Rather than saying they are satisfied they have received a guarantee, they would say they had received a guarantee, which would provide for a stronger position.

**Deputy Kathleen Lynch:** Again, the Deputy will not be surprised that I cannot accept the amendment. Its effect would be to remove the need for the head of the national unit to be satisfied that information provided would not be further disseminated without the prior consent of the unit. In theory, the amendment could result in a scenario where although the head of the national unit may receive a guarantee with which he or she, for whatever reason, is not satisfied, he or she would be required to provide the data in question. However, under the current wording, where the head of the national unit is not satisfied, for whatever reason, prior consent will be sought for the further transmission of data. He or she will not be permitted under the legislation to transmit the data. There are numerous similar examples on the Statute Book, requiring all courts, judges, Ministers, officeholders, officials, etc, to be satisfied about particular information. The important element is the mindframe of the decision-maker. It is that person who must be satisfied about particular information. There are also several similar provisions on the Statute Book in so far as provision is made for the State to co-operate and exchange information with other states.

Amendment put and declared lost.

Section 9 agreed to.

#### SECTION 10

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 15:

In page 8, subsection (1), line 25, after “supplemented,” to insert “or deleted,”.

This is merely a technical amendment intended to strengthen the wording of the related paragraph.

**Deputy Kathleen Lynch:** I am refusing to accept the amendment as it is not necessary. Section 10, which it seeks to amend, clearly provides for the deletion of data under subsections (1)(a) and (b). This is simply a drafting matter.

Amendment put and declared lost.

Section 10 agreed to.

## SECTION 11

**Deputy Kathleen Lynch:** I move amendment No. 16:

In page 8, subsection (1), lines 44 and 45, to delete “access and receive” and substitute “input, access and retrieve”.

This is a straightforward amendment. Section 11 provides for access by the State to the Europol information system and in doing so gives effect to Article 13 of the Council decision. However, the existing subsection (1) refers only to the right of the national unit and liaisons officers to access and receive data and omits their function of inputting data into the system in line with Article 13. The amendment corrects the oversight in this regard.

Amendment agreed to.

Section 11, as amended, agreed to.

## SECTION 12

**Chairman:** Amendments Nos. 17 to 22, inclusive, are related and will be taken together.

**Deputy Kathleen Lynch:** I move amendment No. 17:

In page 9, subsection (1), lines 17 and 18, to delete all words from and including “crimes” in line 17 down to and including “combat” in line 18 and substitute “criminal offences or”.

This is a drafting amendment which substitutes the phrase “criminal offences” for the word “crimes”. This relates to offences which Europol is competent to prevent and combat. Criminal offences are already defined in section 1, which refers to the offences “for which Europol has competence”. It is, therefore, not necessary to refer to Europol’s competence in section 12(1).

I cannot accept amendment No. 18, which was tabled by Sinn Féin. This amendment would require the Minister to list “by way of guidelines” the crimes for which Europol has competence. Under section 1, a criminal offence is defined as “an offence for which Europol has competence in accordance with Article 4 of the Council Decision”. As I stated in the context of an earlier amendment, crimes which fall within Europol’s remit are organised crimes, terrorism and other forms of serious crimes affecting two or more member states. The other forms of serious crimes are listed in the annex to the Council decision. Europol also has competence in respect of related criminal offences as listed in Article 4.3 Given that the Council decision is scheduled to the Bill, that it lists the offences which come within the competence of Europol

and that a reference to such offences is contained in section 1, I do not see what value would be added by requiring the further publication of information already contained in the Bill. I am of the view that any person who wants to know the nature of the offences involved will consult the legislation. When one reads the Bill, it is quite easy to discover what are the relevant offences. I accept that in view of the amount of legislation coming forward, it is often difficult for Deputies to read every Bill in detail. That which the Deputy is seeking to do is actually dealt with in the Bill.

Amendments Nos. 19 to 22, inclusive, introduce drafting corrections to section 12. Three of these corrections are minor in nature but that contained in amendment No. 21 is more significant. The latter relates to section 12(3). Amendment No. 19 clarifies that compliance, with restrictions, on the use of data is subject to the power to waive such restrictions under section 12(3). Amendment No. 20 corrects an oversight in section 12(2). It proposes that in addition to the reference to “a communicating third state”, a reference to a third body, such as Europol or the European Anti-Fraud Office, should also have been included. This amendment makes the necessary correction. Amendment No. 22 makes a similar correction in section 12(4).

Amendment No. 21 relates to section 12(3), which itself relates to the waiving of restrictions on the use of data imposed by other states or bodies. The subsection permits the waiving of such restrictions in circumstances where a court, a legislative body or another body is acting in a supervisory role in respect of the competent authorities. However, such waiving of restrictions requires the prior consultation of the communicating state or body. By introducing this provision, we are bringing the Bill more into line with Article 19.2 of the Council decision. Where the Council’s decision can be used to interpret provisions of the Bill, it was considered that the existing section 12(3) went beyond what was required and that the waiving of any restriction should be limited to circumstances relating to the supervision of the designated competent authority. If someone makes a complaint to a court, to the Data Protection Commissioner or to a governing authority within the State in respect of data, such data cannot be used or accessed where it has been provided by another state unless the agreement of said state is obtained in the first instance. This is a technical amendment which brings the legislation into line with the Council’s decision. The existing provision contained in the Bill stands outside the framework and is too loose in nature.

Amendment agreed to.

Amendment No. 18 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 19:

In page 9, subsection (2), line 20, to delete “Any restrictions” and substitute “Subject to subsection (3)\*, any restrictions”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 20:

In page 9, subsection (2), line 21, to delete “or a communicating third State” and substitute the following:

“, a communicating third state or a communicating third body”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 21:

In page 9, lines 23 to 25, to delete subsection (3) and substitute the following:

“(3) Where a court in the State, a legislative body or another body established by statute proposes, when supervising a designated competent authority to waive in accordance with law a restriction placed on information received from a communicating Member State, a communicating third state or a communicating third body, the relevant designated competent authority shall—

(a) consult the communicating state or body concerned as respects the interests and views of that state or body in the matter, and

(b) take all reasonable steps to convey those interests and views to the court, legislative body or supervising authority concerned.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 22:

In page 9, subsection (4), line 27, after “State” to insert the following:

“, a communicating third state or a communicating third body”.

Amendment agreed to.

Section 12, as amended, agreed to.

### SECTION 13

**Chairman:** Amendments Nos. 23 to 29, inclusive, are related and will be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 23:

In page 9, subsection (1), lines 31 and 32, to delete “Data Protection Commissioner” and substitute “head of the national unit”.

Amendments Nos. 23, 24, 25, 25a and 27 seek to streamline the manner in which individuals seek access to personal data processed by Europol. Under the existing provision, a request for access to personal data would be submitted to the Data Protection Commissioner who would forward a request to the national unit. The latter would then liaise with Europol in respect of the request.

There are a number of reasons for amending the section in order that requests for access to personal data will be submitted directly to the national unit. First, designating the Data Protection Commissioner under subsection (1) simply creates an extra layer in the application process. Having consulted the latter’s office, I am in a position to state that it is inappropriate for the commissioner to be designated for this purpose because the commissioner has a separate legal obligation under the Data Protection Act. It would not be appropriate, therefore, for the Data Protection Commissioner to be involved in handling a request for data in the first instance. Whereas the data protection officer to be appointed under the Bill will oversee compliance by the national unit, there would be no redress available if the Office of the Data Protection Commissioner were not to forward a request to that unit. For these reasons, we are proposing the amendments to section 13. Essentially, the Office of the Data Protection Commissioner is of the view that there is no need for people to make requests to it in the first instance and that people should submit their requests to the national unit. If the latter does not comply, the Data

Protection Commissioner will have a role to play.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 24:

In page 9, subsection (2), lines 33 and 34, to delete “Data Protection Commissioner” and substitute “head of the national unit”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 25:

In page 9, lines 38 to 40, to delete subsection (3).

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 25a:

In page 9, subsection (4), lines 41 and 42, to delete “*subsection (3)*” and substitute “*subsection (2)*”.

Amendment agreed to.

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 26:

In page 9, subsection (4), line 45, to delete “30 days” and substitute “14 days”.

Amendment put and declared lost.

**Deputy Kathleen Lynch:** I move amendment No. 27:

In page 9, subsection (5), lines 46 and 47, to delete “designated competent authorities” and substitute “national unit”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 28:

In page 10, subsection (7), line 12, to delete “authorities” and substitute “authority concerned”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 29:

In page 10, subsection (8), to delete line 15 and substitute the following:

“to a person by a legal or factual error in data processed by Europol.”

Amendment agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

## SECTION 15



**Chairman:** Amendments Nos. 30 and 31 are related and will be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 30:

In page 10, subsection (1), line 31, after “of” to insert the following:

“any of the following persons in the performance of their functions as”.

These are minor drafting amendments.

Section 15 applies the Official Secrets Act to the persons listed in subsection (1) of that section which includes the director of Europol, a member of the management board, etc. The Official Secrets Act will apply to information which comes to the knowledge of that person listed. Amendment No. 13 clarifies that the Act shall so apply in so far as the information is obtained in the performance of their functions. Amendment No. 31 removes the words, “facts or” from subsection (1). The words are not necessary and are adequately covered by the word, “information”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 31:

In page 10, subsection (1), line 43, to delete “facts or”.

Amendment agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

## SECTION 17

**Deputy Kathleen Lynch:** I move amendment No. 32:

In page 11, subsection (1), line 13, to delete “passing” and substitute “commencement”.

This is a minor amendment to clarify that the confirmation provided in section 17 applies from the commencement of the Act and not from the passing of the Act. This is to ensure there is no gap between pieces of legislation.

Amendment agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

## SECTION 19

**Chairman:** Amendments Nos. 33 and 34 are related and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 33:

In page 11, line 23, to delete “is” and substitute “and the Europol (Amendment) Act 2006 are”.

Amendments Nos. 33 and 34 are technical amendments. The Long Title to the Bill provides that

## MESSAGE TO DÁIL

the Bill will, among other matters, repeal the Europol Act 1997. The repeal of that Act is then provided for in section 19. However, the 1997 Act was itself amended by the Europol (Amendment) Act 2006. Strictly speaking, there is no need to repeal the 2006 amending Act as it is incorporated into the 1997 Act which will be repealed. However, for the purpose of clearing the Statute Book, the Parliamentary Counsel has advised that a reference to the repeal of the Europol (Amendment) Act 2006 be included in the Bill. These amendments make the necessary provision.

Amendment agreed to.

Section 19, as amended, agreed to.

Sections 20 and 21 agreed to.

## TITLE

**Deputy Kathleen Lynch:** I move amendment No. 34:

In page 3, line 8, after “1997” to insert “and the Europol (Amendment) Act 2006”.

Amendment agreed to.

Title, as amended, agreed to.

**Deputy Kathleen Lynch:** I thank the Chairman and the members of the select committee for their co-operation.

**Chairman:** I thank the Minister of State and her officials.

Bill reported with amendments.

## Message to Dáil

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Select Committee on Justice, Defence and Equality has completed its consideration of the Europol Bill 2012 and has made amendments thereto.

The select committee adjourned at 11.05 a.m. until 2.p.m. on Tuesday, 27 Novermeber 2012.