

DÁIL ÉIREANN

SELECT SUB-COMMITTEE ON FINANCE

Dé Máirt, 1 Iúil 2014

Tuesday, 1 July 2014

The Select Sub-Committee met at 5 p.m.

MEMBERS PRESENT:

Deputy Joe Carey,+	Deputy Mary Mitchell O'Connor,+
Deputy Marcella Corcoran Kennedy,+	Deputy Aodhán Ó Ríordáin,
Deputy Pearse Doherty,	Deputy Kieran O'Donnell,
Deputy Regina Doherty,*	Deputy Fergus O'Dowd (Minister of State at the Department of the Environment, Community and Local Government),
Deputy Robert Dowds,*	Deputy Robert Troy.*
Deputy Simon Harris,	
Deputy Joe Higgins,*	
Deputy Derek Keating,+	

* In the absence of Deputies Alan Farrell, Liam Twomey, Richard Boyd Barrett and Michael McGrath, respectively.

+ In the absence of Deputies Kieran O'Donnell, Robert Dowds, Robert Dowds, Regina Doherty and Regina Doherty, respectively, for part of meeting.

In attendance: Deputy John Deasy.

DEPUTY CIARÁN LYNCH IN THE CHAIR.

Business of Select Sub-Committee

Chairman: I call the meeting to order. Apologies have been received from Deputies Alan Farrell and Michael McGrath. I welcome the Minister of State with special responsibility for the NewERA project, Deputy Fergus O'Dowd, and his officials. The purpose of this meeting is to consider the National Treasury Management Agency (Amendment) Bill 2014 on Committee Stage. The Bill was referred to the select sub-committee by Dáil Éireann on 29 May 2014.

I understand the Minister of State must be in the Dáil Chamber at some stage.

Minister of State at the Department of the Environment, Community and Local Government (Deputy Fergus O'Dowd): The Ceann Comhairle has instructed that I must attend.

Chairman: What time is this to happen?

Deputy Fergus O'Dowd: My private secretary will give me five minutes' notice.

Chairman: I will suspend the meeting at that time. Given the weather we could discuss tropical issues. I believe Deputy Deasy wishes to speak.

Deputy John Deasy: This will not take long and I appreciate this opportunity to give notice that I will table amendments on Report Stage. Their substance concerns Part 6 of the Bill, relating to the Ireland Strategic Investment Fund. In essence, I seek to ensure this fund takes account of balanced regional development. When the fund is in place via legislation the agency administering it should pay due attention to the different factors that influence balanced regional development. That is to say, account must be taken of where money from the fund goes over time. This would be done through the annual report and the reporting stipulations in the legislation.

My other amendments are similar in that they allow Ministers a nexus to ensure balanced regional development results from the fund.

Chairman: Is that agreed? Agreed.

National Treasury Management Agency (Amendment) Bill 2014: Committee Stage

Sections 1 to 3, inclusive, agreed to.

Deputy Pearse Doherty: Have we a quorum?

Chairman: Yes.

Deputy Pearse Doherty: I was delayed by 5 minutes. Have we skipped my amendments?

Chairman: No.

SECTION 4

Deputy Pearse Doherty: I move amendment No. 1:

In page 10, between lines 22 and 23, to insert the following:

“(2) Every direction made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the direction is passed by either such House within the next 21 days on which that House has sat after the direction is laid before it, the direction shall be annulled accordingly.”.

This amendment relates to directions proposed under the Bill and there are many references to directions throughout the legislation. This amendment requires that directions be laid before the Houses of the Oireachtas. The same procedures would then apply to directions as to an order under the Act. Section 4 deals with every order being laid before the Houses of the Oireachtas and the Houses having the power to annul such orders but there is no such provision for direction, despite many references to directions throughout the Bill. Directions by a Minister should be subject to the same level of oversight, procedure and transparency as an order, given the weight directions are accorded in the Bill.

Minister of State at the Departments of Communications, Energy and Natural Resources and Environment, Community and Local Government (Deputy Fergus O’Dowd): There are a number of provisions for ministerial directions in the Bill, including those at sections 19, 27, 34, 35, 41, 42 and 47 and those at paragraphs 17 and 18 of Schedule 4. Section 19 provides that the Minister for Public Expenditure and Reform may, with the consent of the Minister for Finance, give directions to the National Treasury Management Agency, NTMA, acting as NewERA, in the performance of its functions. The Minister is required to consult other relevant Ministers before issuing such a direction, which must be published. The only requirement in the Bill is that a direction be published. Ministerial orders must be published but directions are, in most cases, more in the nature of practical instructions on a particular aspect of the agency’s business. We do not believe it should be a statutory requirement that all such directions be published. There is nothing secret about directions. There will be records and they will be subject to freedom of information, FOI, legislation, which will allow the protections built into the FOI legislation to apply, where appropriate.

In addition, there is a practical issue around the Deputy’s proposal that directions be annulled. If that were the case, the National Treasury Management Agency, NTMA, could not take any action under a direction until the 21 day period had elapsed and it was sure the direction would not be annulled. This would cause difficulties which can be illustrated if we consider the way the NPRF’s directed investments are managed. It would not be practical to operate in this manner and therefore we do not propose to accept the Deputy’s amendment.

Deputy Pearse Doherty: The Minister is off to a bad start regarding this amendment. This relates to the Minister of whatever Department giving a direction to what hopefully will be a very valuable fund set up for the interest of the State that those directions should be transparent, published and subject to the oversight that would be required under orders. The legislation does not limit the type of directions that are possible. The Minister said it may be day to day business but it does not necessarily need to be day to day business. It can be substantial and significant and having great consequences in terms of the direction taken by a Minister.

On the point that it would hamper the work of the agency, that is easily remedied by including the other 12 words at the end of section 4, which would state “... without prejudice to the validity of anything previously done under the order”. That would get around that issue. What is at the core here is that Ministers want to be able to issue directions to the fund without having to comply with Oireachtas oversight in a transparent fashion and without having to publish those directions.

Deputy Fergus O'Dowd: The position is as stated in my initial reply, namely, that we believe the orders are published. We believe that is adequate. I repeat what I said earlier. We do not see that it should be a statutory requirement, in other words, a legal requirement that such directions be published. There is nothing secret about them. There will be records, subject to freedom of information legislation, which will allow the protection built into the FOI legislation to apply where appropriate. In any event, there are limited powers to direct the Ireland Strategic Investment Fund, ISIF.

Deputy Pearse Doherty: What does the Minister fear in terms of transparency and including in legislation that the directions he issues to this fund be published?

Deputy Fergus O'Dowd: I do not fear anything. The Deputy is questioning me now. That is democracy. I am sure if the Deputy or the committee wish to bring the Minister responsible before this committee to deal with any issues in regard to that, they will have that transparency and accountability here. That should be the case. I am sure the Minister, whoever he or she may be, will be very happy to respond in the Oireachtas. The Deputy will also have the power, as a Member of the Oireachtas, to table parliamentary questions to the Minister. As a member of the Opposition he will also have the power to table Adjournment motions and Private Members' business in the Dáil. There is no question of not being accountable or transparent.

Deputy Pearse Doherty: Of course there is, and the Minister is very skilled in trying to avoid questions and get around angles. The amendment is clear, and I said it could be subject to being amended further, which would mean that anything that happened within the previous 21 days would not annul or invalidate any action taken. The Minister spoke about parliamentary questions, freedom of information, parliamentary debates and questioning the Minister here but that does not allow for Oireachtas oversight with regard to directions given by the Minister of State or any subsequent Minister that can be annulled through the normal procedures that apply in the Houses of the Oireachtas.

Deputy Fergus O'Dowd: I have given my reply, and it stands up. I do not accept what the Deputy is saying. I repeat that we are not afraid to be accountable here. We want to be accountable here, and the Deputy has the power to ensure we are so accountable. I do not see any issue with that. The statutory instruments published and laid before the Houses of the Oireachtas are rarely debated. I cannot remember when a statutory instrument was last debated but you can enlighten me on that.

Chairman: Members should speak through the Chair.

Deputy Pearse Doherty: I will help inform the Minister. The last time his Government awarded an additional €17,000 to a super junior Minister was through a statutory instrument, and that was raised on the floor of the Dáil and in committees by me. There are parliamentarians who pay close attention to what Government does behind closed doors. That is the reason directions given to this agency in this legislation should be laid before the Houses of the Oireachtas and the Houses of the Oireachtas, which is the democratically elected body on behalf of the Irish people, should be able to decide to annul a direction if it so wishes.

Deputy Fergus O'Dowd: The NTMA is acting under delegated powers from the Minister. The Minister retains the right to direct the NTMA what to do. That is his or her executive function. That is the summary of the case.

Amendment put.

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The Committee divided: Tá, 3; Níl, 6.	
Tá;	Níl;
Doherty, Pearse.	Doherty, Regina.
Higgins, Joe.	Dowds, Robert.
Troy, Robert.	Harris, Simon.
	Lynch, Ciarán.
	O'Dowd, Fergus.
	Ó Riordáin, Aodhán.

Amendment declared lost.

Section 4 agreed to.

SECTION 5

Deputy Fergus O'Dowd: I move amendment No. 2:

In page 10, between lines 27 and 28, to insert the following:

“(3) The amendment of a statutory instrument by *subsection (2)* does not prevent or restrict the subsequent amendment or revocation of the instrument by another statutory instrument.”.

This is a technical amendment proposed by the Office of the Parliamentary Counsel. A statutory instrument may amend another statutory instrument. However, such an instrument may not amend primary legislation. In the Schedules to the Bill we are amending statutory instruments as part of the general exercise of cleaning up references to the likes of the National Pensions Reserve Fund which is being abolished. This raises the question of whether a statutory instrument amended by the Bill can subsequently be amended by a statutory instrument. For the avoidance of doubt, the amendment provides that it can be so amended.

Amendment agreed to.

Section 5, as amended, agreed to.

Sections 6 and 7 agreed to.

SECTION 8

Deputy Pearse Doherty: I move amendment No. 3:

In page 11, to delete line 33 and substitute the following:

“State;

(n) the social economy;

(o) environmental economics.”.

Molaim an leasú seo. Baineann an leasú seo le ballraíocht an choiste. Tá liosta fada, ó (a) síos go (m), maidir leis na taithí difriúla ba chóir a bheith ag duine agus iad á mholadh ag an

Aire le bheith ar an gcoiste don eagraíocht seo. Ba mhaith liomsa dhá thaithí eile a chur leis, agus is iad sin dá mbeadh taithí ag duine ó thaobh an eacnamaíochta sóisialta nó ó thaobh eacnamaíochta na timpeallachta.

To add to the long list of competencies and expertise a person should have if he or she is to be appointed by the Minister to the agency, the social economy and environmental economics are areas of expertise that the Minister should be allowed to consider in making such appointments. The intention of the amendment is to broaden the field of experts available to the Minister from whom to choose members of the agency. Social economy experts and environmental economists could add a different progressive element to the agency's thinking. It is not to take away from any of the other areas identified in paragraphs (a) to (m) but to complement and add to those included in the Bill. It does not necessarily mean that the Minister would have to choose or that somebody in the agency would have to have this expertise, but if it were to be the case that somebody had this expertise and no other, the Minister could make such an appointment. I commend the amendment to the Minister of State.

Deputy Fergus O'Dowd: Nílím ag glacadh leis an leasú seo. Tá sé soiléir ón liosta fada atá ann, mar a luaigh an Teachta, go bhfuil neart cáilíochtaí faoi leith luaite, uimhir (e) ina measc, a luann economics or economic development. Measann muid go mbeadh eolas ag eacnamaí ar an social economy agus ar rudaí a bhaineann leis an timpeallacht. Mar sin, nílím ag glacadh leis an leasú seo. The reason we are not accepting the amendment is the Minister for Finance may appoint only persons with expertise and experience at a senior level in a number of designated areas, including, for example, investment, treasury management, risk management and corporate finance. They also include economics and economic development. From a quick perusal of economic courses at UCD, I note that a lot of the economists there have specific knowledge of these areas. On the generic term "economics or economic development" it is clearly important to have such knowledge. I am not inclined to accept the amendment because the list of relevant areas is extensive and general enough to allow those with a background in areas such as the social economy and environmental economics to be appointed.

Amendment put.

The Committee divided: Tá, 3; Níl, 7.	
Tá;	Níl;
Doherty, Pearse.	Carey, Joe.
Higgins, Joe.	Corcoran Kennedy, Marcella.
Troy, Robert.	Doherty, Regina.
	Harris, Simon.
	Lynch, Ciarán.
	O'Dowd, Fergus.
	Ó Ríordáin, Aodhán.

Amendment declared lost.

Question proposed: "That section 8 stand part of the Bill."

Chairman: We agreed to suspend the sitting briefly for Topical Issue No. 4 because the Minister of State and Deputy Aodhán Ó Ríordáin are being excused to take it. I can suspend

the sitting in the middle of Deputy Pearse Doherty's contribution or else we can wait until he concludes.

Deputy Pearse Doherty: How many more minutes do we have?

Chairman: They are on No. 2. As soon as the discussion on No. 3 has commenced, I will suspend the sitting.

Deputy Pearse Doherty: That is fair enough.

In regard to section 8, Schedule A deals with members of the agency and also with disqualification from appointment. Just to be crystal clear, I seek clarification on what this includes. Section 5(2) stipulates that an appointee will cease to be an appointed member if certain events unfold. The legislation states a Member of the Houses of the Oireachtas, the European Parliament or a local authority is disqualified from being a member of the agency. It also states that if a member of the agency were to be elected to any of these fora, his or her appointment would cease. With regard to definitions, what is the position on the President?

Deputy Fergus O'Dowd: Is the Deputy referring to Uachtarán na hÉireann?

Deputy Pearse Doherty: Yes.

Deputy Fergus O'Dowd: I am sorry; I do not understand the question. If one is no longer a Member of the Oireachtas-----

Deputy Pearse Doherty: The legislation refers to both Houses of the Oireachtas. Does that cover it? Are all arms of the Oireachtas covered?

Deputy Fergus O'Dowd: Is the Deputy stating the President who is not a Member of either House of the Oireachtas or the European Parliament could, in theory, be a member of the agency?

Deputy Pearse Doherty: For argument's sake, if an official sitting behind the Minister of State were a member of the agency and decided to put his name forward to become President of the State-----

Deputy Fergus O'Dowd: Why not?

Deputy Pearse Doherty: -----would he be disqualified from being a member of the agency on his election to that high office?

Deputy Fergus O'Dowd: The question is whether the President who is not a Member of either House of the Oireachtas could be a member of the agency. One is not precluded.

Deputy Pearse Doherty: If an individual who is competent enough to be a member of the agency stands for election to his or her local authority and is elected, he or she may no longer be a member of the agency. The same applies if he or she stands for election to the Seanad or the Dáil. However, if he or she runs for election as President, he or she can remain a member of the agency.

Deputy Fergus O'Dowd: That is an important point. If it is helpful to the Deputy, we will revert to him with a proper response on Report Stage. His question is a very good one.

Deputy Pearse Doherty: The Government considers it important to award additional re-

muneration to the chairperson.

Deputy Fergus O'Dowd: It states "may".

Deputy Pearse Doherty: We could safely go down to Paddy Power and bet that the Minister would award additional remuneration to the chairperson.

Deputy Fergus O'Dowd: The legislation states "may"; it does not state "he will".

Deputy Pearse Doherty: Why does the Minister of State want such flexibility? Does he believe the members of the agency will not be remunerated properly?

Deputy Fergus O'Dowd: I will give an example from local government, although the context is entirely different.

Chairman: Can we suspend the sitting soon because the Dáil is discussing Topical Issue No. 3?

Deputy Fergus O'Dowd: When a local authority meets, it meets as a corporate body and each member is present as a corporate member. Subsequent to a meeting, there may be tasks that the chairman may be delegated to carry out on behalf of the statutory body. I am talking about a local authority, not about the body in question. There could be a role that a chairperson would have to carry out after the meeting that would be onerous. Even a non-executive chairman would be acting in the interests of the members. Depending on the complexity of the issue involved, it could take up a lot of his or her time and involve additional and other expenses. Personally, I would not have a problem with this. Clearly, it is a matter to be decided by the Minister who I presume would have to take account of other State bodies of comparable size and what happened in them.

Deputy Pearse Doherty: Paragraph 4 of Schedule A also deals with the remuneration of appointed members and members of the agency. Will members of the agency be governed by the Government's pay caps?

Chairman: As that is a new question, I propose that we suspend the sitting until after Topical Issue No. 4 has been dealt with.

Sitting suspended at 5.45 p.m. and resumed at 6.20 p.m.

Chairman: We will resume our debate on section 8. Deputy Pearse Doherty was in possession.

Deputy Pearse Doherty: My question relates to the agency and its staff in general. Is the agency governed by public sector pay caps set by the Government?

Deputy Fergus O'Dowd: It is not. The remuneration of the members of the agency - in effect, its board - does not fall within the public sector pay caps. It is for the Minister for Finance to decide on the remuneration of NTMA members. Members should expect remuneration to reflect the substantial commercial responsibilities that go with these positions and the type of international business and finance expertise we hope to attract to fill them. The *ex officio* members will, of course, receive no fee. Therefore, it is only those who do not work for the State who will receive remuneration.

Deputy Pearse Doherty: Therefore, they will receive remuneration and may, as we said

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earlier, receive an additional allowance if they end up as chair of the agency. The Government is not minded to have any cap - €400,000, €500,000, €600,000, €700,000 or €800,000. There is no cap whatsoever.

Deputy Fergus O'Dowd: Commonsense must apply. Remuneration must be reasonable. It could not be €800,000. I do not know who would do that but it would have to be reasonable. I presume it would have to be-----

Deputy Pearse Doherty: Is €300,000 reasonable?

Deputy Fergus O'Dowd: No, in fairness, the amount of money they would get would have to be decided looking at what other people with comparable skills and knowledge bring to other boards. What is important is that we have the best skills available to the NTMA. We are talking about billions of euro being invested and preparing the country for the creation of, hopefully, thousands of jobs and restoring us to full employment. In that context, all of those investments are absolutely critical. That would be my expectation. Perhaps Deputy Doherty can put down a question to the Minister for Finance. I do not know what the current payments to members of the board of the NTMA are. I think we may have them here. The information will give the Deputy some idea of what they are being paid.

It is a matter for the Minister for Finance to decide remuneration. The NTMA advisory committee chairperson receives €45,000 and members receive €22,500. The chairperson of the National Pensions Reserve Fund, NPRF, Commission receives €51,000 and the members of the board receive €34,000. The chairperson of NAMA receives €150,000 and members of the board receive €60,000. Will members of the agency get additional remuneration for being members of the committee. The answer is "No".

Deputy Pearse Doherty: The remuneration that is proposed will not be guided by the Government's pay caps.

Deputy Fergus O'Dowd: I said that it is outside the public sector as such in that they are not working for the State. If they are working for the State or are *ex-officio* members, I presume they just get their normal salary.

Deputy Pearse Doherty: I would say that some of the bankers would suggest that they not working for the State either but pay caps are laid down for them, rightly or wrongly. I believe it is right. The Minister of State has answered the question clearly. They will not be guided by the Government's pay caps and it is up to the Minister to determine.

Deputy Fergus O'Dowd: I understand current remuneration is lower than the public sector pay caps which apply for the banks.

Deputy Pearse Doherty: For the banks?

Deputy Fergus O'Dowd: Yes.

Deputy Pearse Doherty: The figure for the banks is €500,000. I do not think we should be jumping up and down.

Deputy Fergus O'Dowd: These are very good questions and the Deputy is entitled to proper and adequate responses, which I hope he has received.

Deputy Pearse Doherty: Just to clarify, there are a number of new committees and struc-

tures envisaged in this legislation that will have a number of appointees and staff but the Government does not intend to have any pay caps in respect of those appointees and it will be at the discretion of the Minister to award the remuneration as he or she sees fit?

Deputy Fergus O'Dowd: The number of boards is being reduced in this legislation. A number of them have been amalgamated. The answer I gave the Deputy is that remuneration of members of the agency, in effect, its board, does not fall within the public sector pay caps. The questions are whether they are doing a good job and how effective they are. Are we getting value for money? They are the real questions. Experience would show that the NTMA accumulated a fantastic amount of money over many years. The results and the income it got for the State ran into billions of euro. Unfortunately, given what happened to our economy, much of that money is gone to do what it had to do but the fact is that the NTMA gained exceptional levels of income for the State. I hope that capacity to reward enterprise, create jobs and improve our economy is what this is all about. It is not about anything else.

Deputy Pearse Doherty: That is fine. I understand the role the NTMA has played and how the NPRF has performed forgetting the fact that the Government directed large amounts of that into bust banks. I am just going into the detail of it. There are no pay caps in terms of any of the new committees that are being formed such as the investment committee. Does the remuneration structure allow for bonuses? Given that it is outside the pay caps, I presume it is also outside of the bonus structure - the prohibition of bonuses?

Deputy Fergus O'Dowd: The NTMA is a unique position in that it was established to perform commercial and market-facing functions while being funded from the Exchequer except in the case of NAMA, which reimburses the NTMA from income generated from NAMA's operations for expenses incurred in respect of NAMA. The NTMA operates along private sector lines within a public sector environment managing a complex portfolio of financial and risk management businesses. It was established in the first instance to manage the national debt because it was no longer possible to successfully manage that debt within the Department of Finance. It is a hybrid model specifically designed to carry out commercial functions which could not be successfully performed within the traditional public service structure.

The legislation which established the NTMA in 1990 expressly positioned it outside of the wider public service structures with the operational freedom to negotiate market-competitive salaries. The essential feature of the business model is that there are no general pay grades, no incremental pay scales and staff are employed on the basis of confidential individually negotiated contracts. This business model was designed to enable the NTMA to compete with the private sector and attract and retain specialists in mid career who would not normally be attracted to working in a public sector environment. The ability to attract and retain specialists in mid career has been the key ingredient in its success. It has enabled the NTMA to quickly staff itself with the professional expertise necessary to carry out the new functions which Government awarded it over the years.

It has had to recruit for NAMA, the banking unit and NewERA over the past four years. Its number have gone from 169 at the end of 2009 to 657 at the end of 2013, of whom 332 are working for NAMA. It has had to pay market-competitive salaries to get these staff and salaries paid reflect the market. The employment of staff recruited on the basis of specified purpose contracts lasts for as long as their specific function is required. Indeed, some 16% of staff in the NTMA are employed on the basis of fixed-term or specified purpose contracts.

The Government has no plans to seek to alter the business model in this Bill. One of the

main reasons it is proposed to assign the new commercial functions contained in the Bill to the NTMA is its success in performing the commercial functions assigned to it and the flexibility offered by its business model. A business of the size and complexity of the NTMA poses particular challenges and it is critical that the NTMA retains the ability to vigorously compete in the market to attract staff with the necessary skills to effectively manage the risks involved.

I note that the public service pension deduction and reductions in remuneration imposed by the Financial Emergency Measures in the Public Interest Act 2013 were applied to the NTMA. Prior to the application of the provisions of the Act, members of the NTMA senior management team whose salaries exceeded €200,000 had agreed to a 15% reduction in salary or such an amount of salary as exceeds €200,00 if application of the full 15% reduction would bring their salary to below €200,000 on foot of a request from the Minister for Finance.

The salary cap does not apply to the NTMA. However, the Government would expect that the NTMA would only pay salaries in excess of the salary cap where it is clear that the market rate for the post in question requires such a level of remuneration if candidates of sufficient calibre are to be attracted to the post. I can supply details of the salary band to the Chairman, but they have already been published in parliamentary questions and the National Treasury Management Agency, NTMA's accounts. The NTMA can pay staff bonuses, but it is important to note that, in recent years, only a small number of contractual bonuses have been paid.

Deputy Pearse Doherty: I thank the Minister of State for his reply, but the question was not on bonuses. With respect, I already knew everything he told me, as I submitted many of those parliamentary questions on the NTMA recommencing bonus payments in the past year after a few years of not making them. Since we are debating the National Treasury Management Agency (Amendment) Bill, we are not dealing with what is happening currently. Rather, we are creating a number of new structures and giving them substantial powers, for example, the ability to sell off or consider privatising some State resources.

Deputy Fergus O'Dowd: On that point, a sale would require a decision of the Government and be subject to debate in the Oireachtas.

Deputy Pearse Doherty: We will come to that later.

Deputy Fergus O'Dowd: It is not correct to claim that the NTMA would be doing that.

Chairman: Instead of a cross-conversation, the Deputy and the Minister of State should be asking and answering questions through the Chair, please.

Deputy Pearse Doherty: The NTMA has new and wide-ranging powers in respect of semi-State organisations. The Minister of State mentioned that there were no pay caps in the NTMA and provided a rationale for that, even though we may not agree with it. There is no prohibition on bonuses in that remuneration structure. Even during my time as a Member of the House, some former NTMA employees were receiving more than €400,000 in bonus payments. That is no longer the case, but it is being provided for in the legislation. For example, is it acceptable that the NTMA's CEO would get €490,000 per annum and be entitled to a bonus of 80% of his or her annual wage? When creating these new structures in legislation, should we not at least discuss whether this type of remuneration is appropriate? Should there be a reward system for performing well and how do we mark that performance if some of our State assets have been privatised along the course?

Deputy Fergus O'Dowd: The issues the Deputy is raising form part of a debate in which

we do not agree with each other's points. I am sorry if my previous reply upset him, but I am not in a position to read his mind and see what he learned from whatever parliamentary questions he submitted. I am happy to give replies to his questions and do not mean to upset him.

The Deputy's question is on how to benchmark the NTMA's work, what to pay people for what they do and, as they are not State employees, whether the public sector pay caps apply. The labourer must be worthy of his or her hire. As the Deputy acknowledges, the NTMA's performance has been exceptional. I hope it continues to be so. The country's future demands on the people we can attract to this field. The knowledge, experience and skills that they could otherwise be applied at much higher salary rates in the private sector will instead be used on behalf of the Deputy and me.

The legislation empowers a better way of doing business than heretofore. NewERA has no executive powers. It will effect Government decisions, not make those decisions itself.

Chairman: A vote has been called in the Chamber. Does Deputy Pearse Doherty wish to pursue this matter?

Deputy Pearse Doherty: I am nearly finished. The Minister of State mentioned that there was no-----

Deputy Joe Higgins: Is there an informal pairing?

Chairman: That is up to members. If they are agreeable, I will go along with it.

Deputy Joe Higgins: It is up to Deputy Pearse Doherty. I am agreeable.

Deputy Pearse Doherty: I cannot agree without the permission of my party Whip. I would need to consult.

The Minister of State mentioned that remuneration in the NTMA was lower than the cap on bankers' pay. Since there is no cap on the NTMA, its remuneration could exceed that of the banks. As we know, no one in the NTMA earns more than €500,000, so it is in line with the banks. Did the NTMA allow bonuses of up to 80% of salary until recently? Are there still contracts in the NTMA that allow for this level of bonus?

Deputy Fergus O'Dowd: I am looking at the figures. Some 325 people work for the NTMA. Of those, 25 earn more than €150,000. The majority earn much less. I do not have the averages with me, but up to 99 people earn under €50,000, 112 earn between €50,000 and €75,000, 50 earn between €75,000 and €100,000 and 26 earn between €100,000 and €125,000. The majority of the NTMA's employees earn below the salary of an assistant principal, notwithstanding the fact that there is a person at the top whose salary is between €400,000 and €425,000. The next highest paid person earns between €300,000 and €325,000, if these figures are right. Either we have the people to do the job or we do not. These people are doing their job and, notwithstanding the Deputy's points, we need them to be as good as they are.

Deputy Pearse Doherty: I will ask the question again.

Chairman: We must suspend, as the vote in the Chamber on amendment No. 1 on Report Stage of the Radiological Protection (Miscellaneous Provisions) Bill takes precedence over the committee.

Sitting suspended at 6.38 p.m. and resumed at 6.55 p.m.

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Chairman: We will resume on section 8, with Deputy Pearse Doherty in possession.

Deputy Pearse Doherty: As I asked earlier, is it still possible for some staff within the NTMA to receive bonuses of up to 80% of their contracted remuneration?

Deputy Fergus O'Dowd: I do not know if there is a cap. I understand it depends on the individual contracts. It would probably be helpful if we were to come back on Report Stage with more detail for the Deputy.

Chairman: Can the information be provided prior to Report Stage?

Deputy Fergus O'Dowd: Yes, of course.

Deputy Pearse Doherty: The information will be helpful. Perhaps, one does not pay close attention to these matters. When in opposition in 2010, the Minister of State informed the public of the bonus culture within the NTMA and argued that the contracts should be ripped up and that this culture should end. However, here he is presiding over legislation that will set up new structures within the NTMA where there are no salary caps and where a bonus culture remains. Although senior officials in the NTMA have waived their 60% or 80% bonuses in recent years, the legislation does not prevent the NTMA from providing bonuses. Therefore, while the Minister of State says the highest paid official in the NTMA could receive up to €425,000, an 80% bonus could take that figure to over €700,000. This legislation does not in any way, shape or form address or debate the issue of how best the remuneration packages of staff and members of the agency and sub-committees should be dealt with. The Minister for Finance, Deputy Michael Noonan, committed to a review of remuneration, in terms of the need for greater transparency, but I do not see this in the Bill. It is lacking in that regard.

Deputy Fergus O'Dowd: I will take on board and look at the commitment we made before Report Stage.

Question put and agreed to.

SECTION 9

Deputy Fergus O'Dowd: I move amendment No. 4:

In page 16, to delete line 20 and substitute the following:

“shown.”.

“(4) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal, may be entered into or executed on behalf of the Agency by any person generally or specially authorised by the Agency to act in that behalf.”.

This amendment deals with procedures in the agency and allows authorised members of staff to act on behalf of the agency in entering into contracts and in respect of instruments which do not require that they be authenticated by the seal of the agency. The purpose of the amendment is to allow the normal delegation of functions within the agency.

Amendment agreed to.

Section 9, as amended, agreed to.

SECTION 10

Deputy Pearse Doherty: I move amendment No. 5:

In page 17, to delete lines 25 to 29.

The issue is not that subsection (6) in its entirety should be deleted, nor is it just about the expenses that should be provided for in terms of any other committee within the agency that it deems it appropriate to set up. The question goes back to remuneration and the fact that there is no restriction whatsoever in regard to any committee of the agency in terms of the type of remuneration package that would be appropriate or in terms of how the remuneration package should be worked out. The NTMA is one of the few agencies of the State that operates a bonus culture. There is a need for a debate on whether that bonus culture is appropriate. As I said earlier, staff have up to 80% of their wages available to them in the form of a bonus, as is the case in one contract of which we know from 2011. I am not sure if the figure of 80% was within the limit. The issue is how best to ensure we get the right people to make the right decisions. I am not satisfied that the agency can set up whatever committee it wants, with no restrictions and no transparency in terms of remuneration.

Deputy Fergus O'Dowd: The proposed amendment seeks the deletion of new subsection 5B(6) which provides that members of the committee established by the NTMA who are not employed by the agency may be paid such remuneration and expenses as determined by the agency with the consent of the Minister. I recognise that the State has been able to avail of the services of many individuals who were prepared to serve quietly on boards and committees on an unremunerated basis simply by not accepting payment. It is unduly restrictive to expect the agency to function and discharge its many responsibilities while dependent on such individuals. There would be significant responsibilities attached to membership of the NTMA committees and acceptance of this amendment would send out the wrong signal about the level of responsibility involved and commitment expected. I do not propose to accept the amendment.

Amendment, by leave, withdrawn.

Section 10 agreed to.

Section 11 agreed to.

SECTION 12

Deputy Pearse Doherty: I move amendment No. 6:

In page 19, to delete lines 5 to 8.

This amendment seeks the deletion of lines 5 to 8, section 12 6A (2) which states:

In the performance of his or her duties under subsection (1), the Chief Executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

My concern in this regard is in relation to directed investment. Let us look at what the NTMA has done, not through its own willingness but through directed investment by previous Governments, and the current Government. Substantial billions of euro of taxpayers' money, which previously was earning a return of 6% to 8%, was invested in the broken banks, name-

ly, AIB, Bank of Ireland and others. We are unlikely to see any return on that investment. If we get a return on the capital sum we will be lucky.

Under this section the Committee of Public Accounts is not allowed to question the chief executive in relation to any directed investment. This is provided for in the subsection which, as I said earlier, states that the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

I will give an example in relation to the National Pension Reserve Fund. When I was elected to the Seanad in 2007 there was approximately €23 billion in that fund. There is only approximately €6 billion in it now. The remainder of it was invested in the banks. Under this legislation the CEO of that fund cannot appear before the Committee of Public Accounts and express any view whatsoever on the merits of the policy which allowed approximately 80% of that fund to be whittled away by the decisions of previous Governments. I believe that is lacking. People who meet the criteria to be the CEO of an agency and are paid huge bonuses for doing their jobs should be able to give their expert opinion on whether a decision, direction or order was appropriate and met the needs of society, the economy and the agency.

Deputy Fergus O'Dowd: This amendment seeks to delete new section 6A(2) of the NTMA Act which provides that the chief executive of the agency when appearing before the Committee of Public Accounts may not question or express an opinion on Government or ministerial policy. This is standard procedure in respect of all such appearances. The purpose of an appearance before the Committee of Public Accounts is to account for the expenditure of the agency and the CEO appears as the officer responsible for the accounts. It is inappropriate that any chief executive would be asked to express opinions on Government policy in that context or indeed in any context. I do not propose to accept the amendment.

Deputy Pearse Doherty: In my view, this is completely different from a civil servant or other official of any Department appearing before a committee and offering views on Government policy. In terms of the review carried out by the Department of Finance over a ten-year period one of the major issues identified was that alternative opinions should be published. We should not be afraid of people criticising our policies because, in my view, that makes them stronger and more robust. The issue here is that this is a multi-billion euro investment fund in respect of which the best experts in the country are employed to ensure it is managed and invested appropriately on behalf of this generation of Irish citizens and future generations. A situation could arise whereby a school teacher, plumber, electrician and so on who is very popular in his or her constituency is successful in being elected to the Dáil and, because his or her party is the largest party in Government, is appointed Minister for Finance and is allowed to direct the entire fund into a bust bank. The person who is the expert in this regard and may have disagreed with the decision is not allowed to express an opinion on that decision. I believe that is a serious issue. The situation that could arise in this regard is different to that of policy directions. This relates to an order or direction given to an investment fund. I do not understand what would be so wrong with the CEO of the agency coming in here and saying that the Minister directed the agency to invest €20 billion of the fund into a particular bank, that everyone knew it would never provide a return and despite that he or she and others argued at the time that it was a bad investment and could jeopardise X, Y or Z the decision was taken and that bank was then liquidated. What would be so wrong in that? Why do Government, Ministers and other people fear CEOs giving their opinion to other parliamentarians?

Deputy Fergus O'Dowd: The responsibility for the management of the fund is the responsibility of the Minister. The Minister is the person accountable in terms of the political issues that would arise. As I said, the job of the chief executive is to answer questions in relation to the accounts.

Deputy Pearse Doherty: I do not necessarily agree. What we are speaking about is directed investment. Heretofore it may have been the practise that individuals could not criticise or express an opinion on the merits of a policy, order or directive given by a Government Minister. What is so wrong with a person appointed by Government to do this job being able to express an opinion, good, bad or indifferent, on an order or direction given by the Minister of State or any other Minister? I believe the opportunity presented by this legislation should be taken to allow this type of system to operate. It is specifically stated in this legislation that such individual is not allowed to tell the Committee of Public Accounts about any directional order issued by the Minister.

Deputy Fergus O'Dowd: Section 42(1) states:

The Minister has the functions provided for under *subsection (2)* where, following consultation with the Central Bank, the Minister is of the opinion that the performance of the functions so provided is necessary, in the public interest, for either or both of the following purposes:

- (a) to remedy a serious disturbance in the economy of the State;
- (b) to prevent potential serious damage to the financial system in the State and....

Accountability always rests with the political system. That is where it is at. The Minister will be accountable just as we are today. That is how it should be. We are elected to take those decisions and accept responsibility for them.

Deputy Pearse Doherty: The amendment seeks to delete the prohibition or gagging order which this Government is putting on the chief executive officer of the agency preventing him or her from expressing an opinion on any order or direction given by Government. In removing that gagging order the accountability of Government would not be prohibited. The Government will of course be held accountable for any order or direction its gives to the agency. However, it allows for an uncensored position, whereby somebody who has the expertise to head the agency is allowed to express their opinion. It is removing the gag and allowing them to express their opinion. It is not saying the person is now accountable for it, simply that the Government is not allowed to gag the person when he or she appears before the Committee of Public Accounts and is asked for their view about the Government's decision, given their experience and the fact that he or she managed all of these assets and money on behalf of the State heretofore. They might be asked: "What was your view of the order that was issued by the Government to invest all of that money in a bank that is now broken and bust and from which we will never get our money?" That individual will be able to say that under section 12(6A)(2) the Government has a gagging order which prohibits them from expressing an opinion on any policy of the Government or Minister or on the merits of the objectives of such a policy.

Deputy Fergus O'Dowd: The issue is clear. The Minister is elected to take responsibility for all of the issues that arise and to report and account to the Oireachtas on them. The duty of the chief executive is to be accountable for the accounts and to discuss the issues in the accounts, but the Minister takes political responsibility. That is why he or she is elected and why

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he or she stands for election. Governments rise or fall on the accountability of the Ministers concerned. They are the people who are elected and they are accountable. There is nothing more I can say on that.

Deputy Pearse Doherty: Under section 12(6A)(b), one of the areas on which the Committee of Public Accounts will examine the chief executive officer is in regard to the economy and efficiency of the agency and the use of its resources. The resources are obviously the assets available to the agency. The CEO is accountable for ,and can answer questions on, these matters, but not regarding any directed investment on the direction of the Government. Again, there is such a fear on the part of the Government of being criticised by anybody that it considers it necessary to provide in the legislation that this individual is gagged from expressing an opinion. My party was subject to section 31, when our voices were not allowed to be heard on the national broadcaster. Thankfully, that is long gone, but now we have the chief executive officer not being allowed to express an opinion to a committee of the Oireachtas regarding a policy direction that was given that could have wasted billions of euro of Irish taxpayers' money.

Question put.

The Committee divided: Tá, 6; Níl, 1.	
Tá;	Níl;
Carey, Joe.	Doherty, Pearse.
Harris, Simon.	
Lynch, Ciarán.	
O'Donnell, Kieran.	
O'Dowd, Fergus.	
Ó Ríordáin, Aodhán.	

Amendment declared lost.

Chairman: Amendments Nos. 7 to 9, inclusive, are related and may be discussed together.

Deputy Pearse Doherty: I move amendment No. 7:

In page 19, line 15, to delete “Subject to subsection (3), the” and substitute “The”.

I give notice that I will withdraw amendment No. 9 and, therefore, will focus my remarks on amendments Nos. 7 and 8 which are linked. Amendment No. 8 has substance.

The section deals with the appearance of members of the agency before Oireachtas committees. Section 12(6B)(ii) states: “The Chairperson and the Chief Executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Agency”. I will outline the issue I have with the provision. One of the biggest committees - probably the most powerful - being created is the investment committee. However, the legislation does not allow for its chairperson to come, for example, before the finance committee to outline how it invests funds, how decisions are made and how issues that arise will be dealt with. Limiting the wording of the section to “the Chairperson and the Chief Executive” is too restrictive; it should include the words “or the Chairperson of the investment committee or any other agency committee”. The reason I want the provision to be included is to allow a relevant committee to be able to call the chairperson and the chief executive of the agency and the

chairperson of whatever other committee may be deemed necessary. As I have mentioned, the investment committee will be very powerful and I want a provision included in the legislation to cover any other committee identified in it or any other committee to be established under it.

Chairman: Is the Deputy referring to amendments Nos. 7 and 8?

Deputy Pearse Doherty: Yes.

Chairman: I note that the Deputy has indicated that he will withdraw amendment No. 9.

Deputy Fergus O'Dowd: It is custom and practice when representatives of the NTMA are before the Oireachtas that the chairman of the National Pensions Reserve Fund accompany the chairman. Let me give as another example the CIE group of companies. The chairman of CIE will attend with his or her staff and the same applies to Bus Éireann, Dublin Bus and Irish Rail. I expect - there is no reason not to anticipate this will happen - that whomever the relevant committee wants to speak to will accompany the chief executive. If they were not present, the representatives present would not be able to account fully to the Oireachtas. It is the custom and practice for them to attend.

Chairman: On a point of information, representatives of the NTMA and NAMA have been before the finance committee and NAMA representatives are due to return around September. I discussed one of the bond flotations with the NTMA's chairperson, Mr. Corrigan, and asked him why more bonds had not been floated at the time when the rate was just under 3%. I also said to him that if he had floated more bonds, we probably would have obtained a lower rate. I ask the Minister of State to clarify what can and cannot be discussed.

Deputy Pearse Doherty: The Minister of State mentioned custom and practice and I acknowledge that he is correct. When a committee requests the chairperson or the chief executive of an agency to appear before it, it is custom and practice for him or her to attend. However, it has been written into the legislation that they must attend before it. We have acknowledged, in drafting the legislation, that we should not rely on custom and practice when it comes to the chairperson or the chief executive of the agency. This issue is not contentious. However, we should not rely on custom and practice when dealing with the chairperson of any other committee. If, for example, the finance committee wants the CEO of the NTMA to attend before it, plus the chairperson of the investment committee, there should be an obligation on them to respond. The committee should not receive one year, five years or ten years later a letter from the CEO stating only he or she will attend. I have tabled the amendment because we have no idea what is down the line. I hope a committee of the Oireachtas will not need to request the chairperson of one of these committees to attend. There may be hostility, friction or tension between the chairperson of a committee and an Oireachtas committee. If I were chairperson in that situation I might decide not to attend and excuse myself by quoting subsection (6B)(ii) which states the only people who must attend before the committee, as laid down in the legislation, are the chairperson of the agency and its CEO. The CEO would probably not be able to do anything about the matter. Truthfully, such a scenario would cause further tension. I agree with the Minister of State that there is custom and practice and, to my knowledge, this has not been an issue heretofore. The investment committee is important, which is why I have singled it out. However, I want its chairperson and the chairperson of any other committee, if requested in writing by the committee to do so, to attend also.

Deputy Fergus O'Dowd: The investment committee is accountable to the board which is accountable to the Oireachtas committee and its chairman represents and is the accounting of-

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ficer. That is how it works. I take the Deputy’s point on custom and practice, but that is what happens and I have never known it to be otherwise. What we are saying makes sense.

Deputy Pearse Doherty: I disagree. We have looked at the position of the Committee of Public Accounts. In the previous section we dealt with the issues of the CEO and accountability for records. We know that other committees have requested individuals to attend and also that the Committee of Public Accounts has powers of compellability. It is important to include what is provided for in the amendment, although I understand what the Minister of State is saying. I do not think this is a contentious issue, given that it has been the custom and practice. By not including it we could be making headlines somewhere because somebody did not provide for it in the legislation. The all-powerful chairperson of a committee who, with the consent of the Minister, could be given additional remuneration for his or her role and responsibility could be able to refuse the request of the Oireachtas committee to appear before it. On that basis I am pressing the amendment.

Amendment put.

The Committee divided: Tá, 2; Níl, 7.	
Tá;	Níl;
Doherty, Pearse.	Carey, Joe.
Higgins, Joe.	Farrell, Alan.
	Harris, Simon.
	Lynch, Ciarán.
	O’Donnell, Kieran.
	O’Dowd, Fergus.
	Ó Riordáin, Aodhán.

Amendment declared lost.

Deputy Pearse Doherty: I move amendment No. 8:

In page 19, line 15, after “Executive” to insert “or the Chairperson of the Investment Committee or any other Agency Committee”.

Amendment put and declared lost.

Amendment No. 9 not moved.

Section 12 agreed to.

Sections 13 and 14 agreed to.

SECTION 15

Deputy Pearse Doherty: I move amendment No. 10:

In page 22, between lines 30 and 31, to insert the following:

“(9) The Agency shall maintain a register of declared interests of all staff which will be publicly available including on the Agency’s website.”.

This amendment probably requires a little work but it is tabled as a matter for discussion. In my view the provision regarding disclosures of interests is appallingly weak. It is up to the individual or member of the agency themselves, and this amendment is supposed to be directed towards members of the agency, not all staff.

The member of the agency must identify the conflict of interest and it is up to him or her to raise it with the chairperson. Should the chairperson think there is a conflict of interest, it is up to the chairperson to ask another member of the agency if he or she thinks the person is conflicted in relation to the subject matter. Even if they do not do that and find they have contravened and are in breach under this section because they have influenced, taken a decision or been in the room when a decision was taken in relation to investment or otherwise, that must be reported to the Minister. The Minister may decide to remove the member from the agency. I think that is appallingly weak.

The investment committee is investing our money. It is pathetically weak that it would be up to a member of the investment committee in the course of the meeting to self-declare whether he or she feels conflicted. Even if they did not - and this would be wrong - which they would be doing wrong, if they did not admit to being conflicted, that they could still remain in the position as a result of the legislation. I believe that like every elected member in this room who must declare his or her interest in an open and transparent register of interests, although it has got its flaws because it only deals with assets and not liabilities, a member of the agency who is handling billions of euro of our funds should also have to declare his or her interests and complete an asset register or a register of declared interests.

This amendment calls for the agency to maintain a register of declared interests. Even when a member of the investment committee or of the agency declares an interest, and therefore has to withdraw and cannot partake in any meetings until that issue has been dealt with, it is recorded only in the minutes of the meeting. There is no register whatsoever. Unless one wants to scour the minutes of all the meetings, there is no register being kept by the agency of declared interests. I believe that those declared interests should be maintained by the agency and they should be available publicly for agency staff.

Deputy Fergus O'Dowd: When a material interest is disclosed pursuant to section 15, the disclosure shall be recorded in the minutes of the meeting of the agency, the investment committee or the committee concerned and for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

The amendment proposed by the Deputy would require a register of interests declared by the NTMA staff to be publicly available. We all agree that it is essential to have clear provisions covering conflicts of interest, especially in a market facing agency such as the NTMA with a commercial focus. There are clear and specific disclosures of interest requirements in this legislation and the NTMA is also covered by the ethics in public office Act. However members of staff of the agency are entitled to their privacy. It would be going too far to have their personal affairs on view to the wider public and would be likely to serve as a significant disincentive to recruitment. Therefore, we cannot support this amendment.

Deputy Pearse Doherty: In respect of the Minister's final point, although the Minister is correct in saying that it deals with staff, I stated that my intention is that this only deals with members of the agency and the committees. One can be on the investment committee but not a member of the agency. It is about capturing those individuals and not the ordinary member

of staff, although one could have a debate on why the member of staff would not be included. In this debate, I am talking about the agency. There is no appropriate mechanism in terms of recording conflicts of interest. Let us take an example. This is where past practice should teach us a lesson.

We know the issues that arose in the glass bottle site in respect of accusations of conflict of interests. We know about the interaction of Anglo Irish Bank and board directors that sat on both boards. What we should have in terms of transparency to ensure that those issues are captured in real time and not four or five years later is that there is a register. This legislation does not even allow for it to be contained within its annual report or some register “that Mr. X had a declared interest in an investment and therefore absented himself from the proceedings on the issue, or Ms Y had a declared interest.” There is no register whatsoever being maintained. It is noted in the minutes of the meeting and the minutes will not be publicised. There is no transparency in relation to conflict of interests with board members and the desire of the public to be aware of those issues.

Even when members contravene this legislation, which means they have not declared a conflict of interest, and means they were participants in the decision process that they had a conflict, the legislation does allow for them to be removed but allows also for them to remain in the position. I think that is appallingly weak. This area needs to be revisited.

I am suggesting, but it needs finessing, that there should be a declared register of interests of agency staff, just as each member of the Oireachtas has to have a declared register of interests or at least the agency should maintain a register where people have identified themselves to be conflicted. It is not proposed to hold a register, one would have to go through every single minute of the agency and every single sub-committee for years on end to find out how many agency members over a period of ten years have acknowledged they were conflicted. This makes for very bad corporate governance and also very poor accountability in my view.

Deputy Kieran O’Donnell: In terms of normal company law and disclosure of a related party transactions and interests, would it not be automatically disclosed when the accounts are done? In terms of the directors of the NTMA, would the related party transactions and interests not automatically be disclosed when the annual financial statements are done? Would it not fall under that legal structure?

Deputy Fergus O’Dowd: They would also be subject to the Ethics in Public Office Act, which applies specifically to them. If the Minister was so advised - I would trust a Minister absolutely, whether he or she was in a party or none to act appropriate in that regard - then not alone would the individual be subject to the Ethics in Public Office Act and a full investigation. As we know, people have faced the court in respect of such issues. I think there would be significant and serious penalties and from a career point of view, given the nature of the qualifications one would need to sit on those committees, it would have very significant adverse impacts also in business and in other areas.

Deputy Pearse Doherty: I will refer to the Irish Glass Bottle site, where there was a suggested conflict of interest. This suggested conflict of interest was discussed at Oireachtas committee meetings, but it was discussed years after what happened. People were involved in both areas at the same time. I am not suggesting that something similar will happen here but the Minister is allowing for a situation where somebody would need to find out and then report them to the ethics committee. The best way to prevent this happening is by having disclosure and if one is not making the information publicly available to have it available centrally within

the agency. The reason a Member of the Oireachtas has to declare his or her interests annually is because the public can go and say, "I know such a Member is involved in that company but I look at the annual report and see he has invested the State assets heavily in the development of X, Y or Z, in which his partner is a shareholder or so on". Most of the disclosures that have come out in the past have not come out as a result of the great interrogation techniques of the Minister or the Department of Finance. They have come to light because of people such as investigative journalists and ordinary members of the public. If the agency does not hold a register and if it is not publicly available the power of people to examine these issues is taken away. While they would be subject to the Ethics in Public Office Act and other laws, such as company law, it makes no difference unless they are found out first and foremost. The legislation signals that someone who is in contravention of the Act is not automatically dismissed from the committee. The legislation provides that if one is elected to Leitrim County Council, one is automatically off the agency. It also provides that if one is conflicted and continues to be conflicted and do not inform anybody about one's confliction and continue to be involved in the decision where one is biased on this issue, one may still be able to serve on the agency. If one gets elected to Leitrim County Council one is out on one's neck. It makes no sense. A terrible signal is being sent to people who may, for reasons right or wrong, be conflicted and hopefully the Minister will never have to examine the areas I am examining. History tells us we have had rogues in Irish society and they may infiltrate the NTMA in years to come and may be involved in decision making that would be in contravention of the ethics register which means that somebody who would be associated with it would receive a benefit from it.

Chairman: How stands the amendment?

Deputy Pearse Doherty: I am interested to hear the reason the Minister of State believes that somebody who contravenes the legislation is not automatically dismissed as a member of the agency.

Deputy Fergus O'Dowd: It is clear from subsection (2) that the person must disclose to the agency, the investment committee or the committee concerned, the fact of his or her interest and its nature in advance of consideration of the matter. The person must neither influence nor seek to influence a decision, must take no part in consideration of the matter, must absent himself or herself from the meeting or the part of the meeting concerned during which the matter is discussed, must not vote on a decision relating to the matter and where a material interest is disclosed, the disclosure shall be recorded in the minutes. Subsection (6) provides that where the Minister is satisfied, on being informed by the agency, that a person has contravened subsection (2), the appropriate action, including removal from office, is taken and, as stated earlier, the person is subject to the full rigours of the law in terms of the Ethics in Public Office Act. The penalties for those who breach the law are significant and are, I think, adequate.

Deputy Pearse Doherty: I will just tease that out, as the Minister of State has said that previously. I do not know how many people have gone to prison as a result of breach of the Ethics in Public Office Act or how many have been fined hundreds of thousands of euro. I know people who have been reported by political parties and found to be in breach of the ethics register but there has been sanction whatsoever. They have been found to be in breach of the Ethics in Public Office Act without any sanction being applied. In view of the claim by the Minister of State that it is sufficiently strong and robust, will he elaborate on the penalties for a person who may be in contravention? Is the penalty more than a slap on the wrist and his or her name in a report?

Deputy Fergus O'Dowd: Very briefly, I do not have the Ethics in Public Office Act with

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me. If I remember correctly, I understand that people can be committed to prison for breach of that Act.

Chairman: How stands the amendment?

Deputy Pearse Doherty: Because the section is flawed, I am pushing the amendment.

Amendment put and declared lost.

Section 15 agreed to.

SECTION 16

Chairman: Amendments Nos. 11 and 12 are related and may be discussed together.

Deputy Fergus O'Dowd: I move amendment No. 11:

In page 23, to delete lines 10 and 11 and substitute the following:

“(c) a member of the staff of the Agency,

(d) a member of the National Pensions Reserve Fund Commission, or

(e) a member of the Board of the National Development Finance Agency.”.

The Bill, as published, allows the agency to indemnify members of the National Pensions Reserve Fund commission provided that actions taken were done in good faith. This will apply after the commission has been dissolved under this legislation and removes the shadow, however remote, of commission members being caught up in illegal actions over things done by the commission. Members will agree that it is reasonable that the State should show that it is prepared to stand behind those it asked to serve on State boards. The purpose of the amendment is to extend the indemnity to the board of the National Development Finance Agency which, like the National Pensions Reserve Fund commission, is being dissolved.

Amendment No. 12 is consequential on amendment No. 11.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 12:

In page 23, line 14, to delete “or the National Pensions Reserve Fund Commission” and substitute the following:

“, the National Pensions Reserve Fund Commission or the Board of the National Development Finance Agency”.

Amendment agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

SECTION 18

Deputy Fergus O'Dowd: I move amendment No. 13:

In page 24, to delete line 28 and substitute the following:

“(b) Ervia.”.

Chairman: I believe Deputy Doherty is opposing the section.

Deputy Fergus O’Dowd: This is a technical amendment to take account of the change in name of Bord Gáis Éireann to Ervia, following the sale of Bord Gáis Energy. My colleague, Deputy Pat Rabbitte, Minister for Communications, Energy and Natural Resources, signed the statutory instrument to that effect on 20 June 2014.

Deputy Pearse Doherty: I wish to speak to the amendment. Is it the case that every time one of the State agencies changes its name the legislation will have to be amended?

Deputy Fergus O’Dowd: What happened was that the change of name occurred during the course of the legislation. In other words, when the legislation commenced the name was Bord Gáis Éireann but now it is Ervia. That is the reason it is proposed to amend the legislation.

Deputy Pearse Doherty: The answer is “No”.

Deputy Fergus O’Dowd: That is why it happened.

Deputy Pearse Doherty: If a State agency changes its name again, is there a need to amend the legislation again?

Deputy Fergus O’Dowd: When the name of a body is changed, the legislation will apply to all other places where the previous name was present from that date.

Chairman: Can that be done by statutory instrument at a future date or must a minor amendment be made to the legislation?

Deputy Fergus O’Dowd: I think the legislation covers that. Wherever Bord Gáis Éireann appears in legislation the word “Ervia” legally appears.

Deputy Pearse Doherty: I was interested to see who changed the name and if the legislation has to be amended each time there is a change of name.

Chairman: Let me go back.

Deputy Pearse Doherty: Is it Irish or English?

Chairman: Is the name as Gaeilge or as Bearla?

Deputy Fergus O’Dowd: It is a combination of names. The best person to ask about that is the chief executive of Ervia.

Deputy Pearse Doherty: Is that-----

Deputy Fergus O’Dowd: I believe “via” comes from the Latin word for “way”. I think “Er” comes from Éire, it may be the Irish way. It is a name that was decided.

Deputy Pearse Doherty: Was the change of name made by statutory instrument or legislation?

Deputy Fergus O’Dowd: The legislation recognises the change. The statutory instrument

was signed on 20 June 2014.

Deputy Pearse Doherty: I do not like that idea.

Deputy Fergus O'Dowd: The Deputy need not tell me he likes something.

Deputy Pearse Doherty: We have had a debate on the role of Gaelic in society but now we are getting rid of Irish. Irish Water is listed instead of Uisce Éireann, not that I agree with either.

Chairman: That-----

Deputy Pearse Doherty: Now we are changing Bord Gáis Éireann for a Latin word.

Chairman: I was chairman of that report. I think the name Uisce Éireann was proposed by one of the Deputy's colleagues on the Joint Committee on the Environment, Community and Local Government.

Deputy Pearse Doherty: Uisce Éireann.

Chairman: Yes.

Deputy Pearse Doherty: In the legislation it is listed as Irish Water.

Chairman: Both names can be used. The name Uisce Éireann was actually-----

Deputy Pearse Doherty: My point is that the Government has decided to use the English version of the name. Both names have equal status. Now we are changing the name of an Irish State-owned organisation, Bord Gáis Éireann, to what seems to be a Latin name, Ervia. Is that correct?

Deputy Fergus O'Dowd: I stand to be corrected, but I think it comes from "via", meaning "way", and that the Er comes from Éire and that it represents "the Irish way". It is better to leave this to the people who deal with names.

Amendment agreed to.

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

Deputy Pearse Doherty: I am opposed to the section because it concerns the establishment of NewERA, which I believe is a Trojan horse for the privatisation of what we might call the family silverware. It is not appropriate this would happen and on that basis I am opposed to all of the sections relating to this. I believe the intention of the Government in regard to State organisations is to bring about their privatisation. Sinn Féin strongly opposes this and believes these organisations should be harnessed to benefit the economy. However, it is clear the Government has an agenda in this regard. Earlier, we discussed directed investment and the role the Government has in regard to directing the agency. For these reasons I am opposed to this section.

Question put and declared carried.

SECTION 19

Chairman: I remind members that I intend to run through all of Committee Stage this evening, but a number of us have been here since 5 p.m. and I propose we take a 20 minute break after section 19 for us to go and get a bite to eat.

Amendments Nos. 14 to 16, inclusive, and amendment No. 18 are related and will be discussed together.

Deputy Pearse Doherty: I move amendment No. 14:

In page 26, to delete lines 3 and 4.

This relates to section 19, which deals with financial and commercial advisory functions relating to designated bodies. Amendment No. 14 proposes to delete the lines relating to where the agency will make any proposals on the acquisition or disposal of any interests in a designated body. As I mentioned earlier, this obviously relates to the privatisation of some of our State bodies. We believe this is a Trojan horse that allows this take place in legislative form.

Amendment No. 15 would delete the Minister's power to ask the NTMA to manage the disposal of a State asset. Section 19(3) states:

The Agency shall, if a Minister of the Government who is a relevant Minister in relation to a designated body requests it to do so, provide project management services in relation to, or services consisting of overseeing -

- (a) any acquisition or disposal of any interest in, or any assets of, the designated body, or
- (b) any winding up, reorganisation or restructuring of the designated body

The first part of this means that NewERA can provide advice to the Minister in regard to the disposal of any designated body and the second means the Minister can request NewERA to be the project manager of the disposal or winding up of any agency. I believe it provides for this without any appropriate accountability.

Amendment No. 16 inserts a provision to try to strengthen section 19(3)(b), because we know the Government is hell bent on facilitating the privatisation of some of our State assets. In order to strengthen this subsection, we propose that "any request from a Minister under this subsection requires the prior approval of the Houses of the Oireachtas."

Amendment No. 18 is grouped with these amendments, but relates to section 20. The amendment seeks to tie the hands of the Minister by requiring the Oireachtas to give prior approval to any move to sell off State assets, through the insertion of an addition to the subsection stating: "and any request from a Minister under this subsection requires the prior approval of the Houses of the Oireachtas."

Basically, our first two amendments, Nos. 14 and 15, try to ensure that the power does not exist to sell off our family silverware either through providing advice to do so or by allowing the Government outsource the sale to the agency, for example by asking it to get rid of Coillte or another body. The second two amendments, Nos. 16 and 18, provide that if the Government is not agreeable to Nos. 14 and 15, and if the section remains, the prior approval of the Houses of the Oireachtas will be required.

Deputy Fergus O'Dowd: My response will cover all the amendments in the grouping. The common theme for these amendments is the involvement of NewERA in the acquisition or sale of State assets. Amendments Nos. 14, 15 and 16 relate to the larger commercial semi-State bodies within NewERA's remit, while amendment No. 18 relates to other State bodies. A State body is a body established under law and controlled directly or indirectly by a Minister. The provisions the amendments seek to delete are either advisory, as in amendment No. 14, or

ones which allow a Minister to ask NewERA to provide project management for or to oversee acquisitions or disposals of State assets, as in the case of amendments Nos. 15, 16 and 18.

I recognise that some Opposition Deputies have strongly held views on the sale of State assets. However, what is being proposed in this section is that Ministers have a source of dedicated corporate finance expertise available to them, both with regard to performance of their ongoing functions in regard to commercial State entities and with regard to any disposal or restructuring of such entities should the Government decide on such a restructuring or disposal. NewERA is not being given any executive functions in this area. These will remain a matter for Government.

It is appropriate that Ministers should have the best possible commercial and financial advice available to them on all issues, including the acquisition or sale of assets. Once the decision to acquire or sell assets is made, Ministers should equally be able to use the expertise available. This is purely a mechanism for carrying out what would generally have to be a decision of the Oireachtas in the first place. Amendment No. 18 would require the Houses of the Oireachtas to approve a request to NewERA to be involved in the sale or acquisition of any interest in or assets of a State body that is not a designated body. I do not see the point of requiring separate approval for what would require an Oireachtas decision in the first place.

I would like to make clear that the provisions in regard to project management and oversight do not concern the actual underlying Government decision about the sale or restructuring of a State asset. Rather, it means that once such a decision is made, Ministers may avail of the expertise in NewERA in implementing the Government decision - once that decision has been endorsed by the Oireachtas. This is purely an enabling provision. The Government reserves the right to propose what should be done with State assets and it is only sensible that once such a decision is made, the decision is implemented as efficiently as possible.

Deputy Pearse Doherty: Will the Minister of State go back over the part dealing with amendments Nos. 16 and 18, where the approval of the House of the Oireachtas is required in the first instance anyway?

Deputy Fergus O'Dowd: Does the Deputy want me to read it all again?

Deputy Pearse Doherty: No, just the relevant part.

Deputy Fergus O'Dowd: First, NewERA is not being given any executive functions. These are a matter for Government. It is appropriate that Ministers should have the best possible commercial and financial advice available to them on all issues, including the acquisition or sale of assets. Once the decision to acquire or sell is made, Ministers should equally be able to use available expertise, so that would be a decision of the Government rather than NewERA. This is purely a mechanism for carrying out what would generally have to be a decision of the Oireachtas in the first place. In other words, if the Government decided to do something, it would be debated in the Oireachtas and I presume it would be-----

Deputy Pearse Doherty: That is the point. The amendments are being dismissed and the Minister of State is saying there is no point in seeking the approval of the Oireachtas when it is already required in the first instance.

Deputy Fergus O'Dowd: The amendment would require the Houses of the Oireachtas to approve a request to NewERA to be involved. In other words, it would place an extra burden on the Minister or the Government to ask NewERA for an opinion on issues.

Deputy Pearse Doherty: That relates to amendment No. 18. Is the Minister of State claiming the Houses of the Oireachtas would have to approve the sale of State assets in the first instance?

Deputy Fergus O'Dowd: The Government has a majority when elected so I presume a decision would be a matter for the Government in the first place. I presume that because it would be such a significant issue, the Oireachtas would have a view. I presume there would be a debate in the Dáil but it would be a matter for the Government or the Dáil to decide.

Deputy Pearse Doherty: Presumptions are dangerous and if we just relied on them, we would not write any legislation or the rules governing the game. Will the Minister of State acknowledge that the sale of State assets does not require approval of the Houses of the Oireachtas?

Deputy Fergus O'Dowd: It requires approval of the Government and it must have the support of the Dáil. If it did not have such support and made such a decision, I am quite sure a motion would be put down to contrary effect. Implicit in every Government decision is that it can be debated in the Oireachtas; the Minister is accountable to the Oireachtas, so there is no question of avoiding Oireachtas involvement in debating or approving a decision.

Deputy Pearse Doherty: Will the Minister of State agree there is no legislative requirement on the Houses of the Oireachtas to give approval for the sale of State assets?

Deputy Fergus O'Dowd: When the Government is elected by the Oireachtas, it has the power-----

Chairman: The Irish Water Bill is very emphatic and the legislation states it must be publicly owned. With any change in ownership of Irish Water, a legislative measure must be put on the floor of the House by the Government of the day in order to privatise it or change the ownership.

Deputy Fergus O'Dowd: It is in two pieces of legislation. It was expressly included in the Irish Water Bill.

Chairman: It is explicit with regard to the public ownership of Irish Water.

Deputy Fergus O'Dowd: The question was about other State assets and I am not quite clear on them.

Deputy Pearse Doherty: Even if we take the case of Irish Water, the Irish Water legislation is being changed as a result of this legislation. Can we acknowledge that for a start? This will affect it.

Deputy Fergus O'Dowd: Not at all.

Deputy Pearse Doherty: This section deals with Irish Water and it is named specifically. Irish Water goes to NewERA as a result of this legislation.

Deputy Fergus O'Dowd: NewERA advises but it has no executive authority. It acts on the request of the responsible Minister, and within the Irish Water legislation these are the Minister for the Environment, Community and Local Government and the Minister for Communications, Energy and Natural Resources, as Bord Gáis is an energy company. NewERA cannot do anything *per se*, other than respond to the requests made to it. It gives significant advice but a

Minister does not have to accept it; there would have to be a good reason not to have a consensus on a way forward, particularly if it is a Government decision. The Deputy is wrong as the question of privatisation does not arise under any legislation because it is already covered in legislation. It cannot happen.

Deputy Pearse Doherty: What does the Minister of State mean by stating it is already covered? Where is the legislation indicating that the ESB cannot be privatised once this legislation is enacted?

Deputy Fergus O'Dowd: With respect, the question I was asked concerned Irish Water.

Deputy Pearse Doherty: No. I asked first about the designated bodies stipulated here going from (a) to (f) and any other State bodies. As the Chairman indicated, Irish Water legislation had a stipulation regarding a resolution of the Oireachtas. The Oireachtas is about to pass a resolution that will allow for a Minister to "direct" - we will come back to that word momentarily - an agency to sell or wind down any of these designated bodies, from the ESB, Bord Gáis, Bord na Móna, Coillte, EirGrid, Irish Water or any other State body. It does not require the approval of the Houses of the Oireachtas.

Deputy Fergus O'Dowd: The point is that NewERA is not a holding company. The shares are held in all the companies mentioned by the Deputy by the line Minister in each case. NewERA advises the line Minister as to the outcome of a Government proposal. There is no question of NewERA doing anything other than giving advice. The shares are owned by the Minister in each case. With Irish Water, there are three shareholders, including the company and the two Ministers. The Bill prohibits the sale of those shares and they cannot be disposed of. There is no question of Irish Water ever being privatised under existing legislation.

Deputy Pearse Doherty: Irish Water is one example but we should move on from that. We could argue until the cows come home about it. With any of the other designated bodies, including the ESB, Bord Gáis, Bord na Móna, Coillte, EirGrid and any other State body specified in any order under subsection (3). The agency, which is the NTMA rather than NewERA, shall:

if a Minister of the Government who is a relevant Minister in relation to a designated body requests it to do so, provide project management services in relation to, or services consisting of overseeing—

(a) any acquisition or disposal of any interest in

This legislation allows for the agency to dispose of any interests of one of these designated State bodies. Where is there a requirement for Houses of the Oireachtas approval for that direction?

Deputy Fergus O'Dowd: It is implicit in the fact that the shares in those companies are owned by Ministers and not NewERA.

Chairman: I should say that if this section is not wrapped up by 8.30 p.m., we will suspend at that time.

Deputy Fergus O'Dowd: The Bill states:

The Agency shall, if a Minister of the Government who is a relevant Minister in relation to a designated body requests it to do so, provide project management services in relation

to, or services consisting of overseeing—

- (a) any acquisition or disposal of any interest in, or any assets of, the designated body, or
- (b) any winding up

The ownership lies with the Minister, as is clear.

Deputy Pearse Doherty: Of course it does, and that is the problem. I am glad we are starting to acknowledge issues. I am not saying the agency - which is not NewERA - can sell all of this. Of course it cannot, and we are not making that argument. That is not what the amendment concerns. It is concerned with the fact that a Minister can direct the agency to privatise or sell its shares in one of these designated bodies without the prior consent of the Houses of the Oireachtas. As a Minister of State, Deputy O'Dowd may think the Minister should be able to do whatever he or she wants without prior approval. Two of these amendments would stipulate that prior approval must be sought.

Deputy Fergus O'Dowd: I will leave it at this, as we have laboured the point. The question is who owns the shares. The Minister owns the shares and not any of these advisory bodies. It is the Minister who decides. Obviously, it would have to be a Government decision, so there is no question of anything other than accountability, ownership and line responsibility resting with the Minister and, through the Minister, by virtue of the function of his office, the Oireachtas itself - through the committees, the parliamentary questions system and so on. That is the current situation.

Deputy Pearse Doherty: Let us look at one investment from the recent past. A total of €31 billion was issued in different tranches in a promissory note. The Minister was able to make that decision. I think the promissory note was issued on three different occasions. Does the Minister know how many times that was debated in the Houses of the Oireachtas at the time of the issuance?

Deputy Fergus O'Dowd: It is a very good question, but I am answering questions on the proposals before us. I am happy to answer questions from the Deputy on the legislation. I have clarified the issue a number of times.

Chairman: The Minister has finalised his contribution.

Deputy Fergus O'Dowd: I have finalised my contribution.

Deputy Pearse Doherty: With respect, the point I am making is that the promissory note was not debated once in the Houses of the Oireachtas. The reason it was not debated in the Houses of Oireachtas, when it was issued on three different occasions, was that there was no requirement for the Minister to seek prior approval for such a thing. The Minister may say it is implicit that the Minister needs Oireachtas approval. The point is that this legislation allows for a Minister to give a direction. We discussed this earlier in my amendment. I said that a direction should be laid before the Houses of the Oireachtas and that it could be annulled within 21 days. The Minister argued that a direction should not have that power and that it should only be an order because directions would be day-to-day issues.

In section 19, one can actually see that a direction and not an order will be given to the agency to dispose of a State asset. It actually states that the agency shall comply with any such directions, so it is not just saying that one would like it to go down that road. This is very

clear. While section 19(7) states that the direction must be published, the ability to annul the direction is not there. This is very serious. A Minister, without any recourse to the Houses of the Oireachtas, can give a direction to sell off a State asset. It does not require the approval of the Houses of the Oireachtas. Does the Minister of State have nothing to say to that? Does he believe the Minister should have that power? That is what is being done in this legislation: the Minister will be able to direct the agency to sell off a State asset without any recourse to the Houses of the Oireachtas.

Deputy Fergus O'Dowd: It is set in legislation that ownership of the shares rests with the Minister. Unless the Minister agrees, nobody else can do it.

Deputy Joe Higgins: That is not the point.

Deputy Pearse Doherty: It is patent nonsense.

Deputy Joe Higgins: It is a simple point.

Chairman: I will call Deputy Higgins, but I would like the Minister to conclude.

Deputy Joe Higgins: Yes, but he is answering a question he was not asked.

Chairman: I will call Deputy Higgins.

Deputy Fergus O'Dowd: If we take the example of Irish Water, with which I am most familiar, the legislation is very clear. The three shares are owned by Irish Water, the Minister for the Environment, Community and Local Government and the Minister for Communications, Energy and Natural Resources. The legislation states that they can never be disposed of. What we are talking about here is about getting advice as to what happens subsequent to a decision by a Minister, which is in legislation. I presume that if the ownership is in legislation, that means the authority of the Oireachtas is behind it. One cannot change it unless one brings in new legislation, because the law does not allow one to do that. That is the summary of the case-----

Deputy Joe Higgins: As I understand it, the question the Minister was asked was whether other designated bodies apart from Uisce Éireann could be privatised without a prior vote in Dáil Éireann. If the Minister says "Yes", we can move on.

Deputy Fergus O'Dowd: All I can say is that this legislation deals with a request from the line Minister, who has ownership of the entity, to ask NewERA to give professional advice.

Deputy Pearse Doherty: It does not. Honest to God, that is appalling. The Minister of State is supposed to be responsible for this legislation. Is he trying to-----

Chairman: Deputy, please. Through the Chair.

Deputy Pearse Doherty: With respect, is the Minister of State trying to peddle it to us that the only thing this legislation does is to provide that NewERA be asked for advice about the sale or disposal of an asset? It is not. I went through the section repeatedly. The Minister of State does not want to own up to this issue. The Minister can direct the agency to sell off his or her own shares. It can actually allow for the agency to provide project management services in regard to the sell-off or disposal of the Minister's interest in the shares. This goes to the very heart of it.

It is really below the Minister to try to tell members of this committee, who have studied

this legislation in great detail, that this is just about advice. It is not. This allows the Minister to issue a direction to the agency, in which the Minister holds a share, saying, “I want to dispose of that share and I am asking you to project-manage the disposal of that share.” The key point here is that there is no recourse to the Houses of the Oireachtas. It will not be debated by Members of the Seanad and the Dáil.

The Minister said earlier that the Government had a majority, as if it did not really matter. It matters, because while the outcome of the debate is important, the debate itself is equally important in terms of holding people to account and ensuring the decisions and the reason for the decisions are teased out in proper parliamentary debate.

Will the Minister of State just acknowledge that the Bill confers on the Minister the ability to issue a direction to a State agency in which the Minister holds a share to dispose of that share without the prior approval of the Houses of the Oireachtas, perhaps with the exception of Irish Water?

Deputy Fergus O’Dowd: All I can say is that raising one’s voice does not make one’s argument any weaker or stronger. It just makes one more strident. The reality is very clear. The legislation states that the agency shall, if a Minister who is the relevant Minister requests it to do so, provide a project manager to do certain acts. I am most familiar with Irish Water. That can never happen in terms of the sale of Irish Water. It can never be privatised. We put a lot of effort into ensuring that the legislation was perfected on that very issue because I acknowledged that it was a critical point, as the experience in the United Kingdom had been very bad.

As regards anything else NewERA does, it is the case that it can only act through the line Minister, who has ownership and accountability for the decision. NewERA does not make that decision. In terms of the Government making that decision, notwithstanding the point the Deputy made that it was good enough for me, a Government is elected as a result of having the majority in the Oireachtas. It is accountable to the Oireachtas. In the case of Irish Water, new legislation would be required to change the law and that would be a matter for a full debate. I cannot envisage any occasion on which a significant issue such as that would not be debated in the Oireachtas and voted on. That is my response.

Deputy Pearse Doherty: There is no requirement in legislation. With respect to the Minister of State, he is coming before this committee with a provision that allows the Minister to direct the agency in which he or she holds a share to dispose of his or her shares. The only designated body about which the Minister seems to be knowledgeable is Irish Water. He does not know whether this section allows for a Minister to direct that the ESB, Bord Gáis Éireann, Bord na Móna, Coillte, EirGrid or any other body be privatised.

Deputy Fergus O’Dowd: I can assure the Deputy that the issue is very clear. The Minister can only act on the powers based in the legislation, which are set up in the individual entity. For this reason, it is not possible to act *ultra vires*.

Chairman: As it is 8.30 p.m., I propose to suspend briefly to allow members to have a bite to eat. Is that agreed? Agreed.

Sitting suspended at 8.30 p.m. and resumed at 9 p.m.

Chairman: We will resume the discussion on amendments Nos. 14 to 16, inclusive, and amendment No. 18.

SELECT SUB-COMMITTEE ON FINANCE

Deputy Fergus O’Dowd: Subsection (3) does not give a Minister more powers in respect of the sale of State assets than he or she already has. It provides him or her with a new means of acquiring or disposing of an asset and allows him or her to ask that NewERA take charge of the asset or act on behalf of the asset. For this reason, I do not agree with the suggestion that State assets can be sold off willy-nilly by Ministers. The best approach I could take at this stage would be to discuss the point with officials in my Department and other Departments and revert to the Deputy on Report Stage with clarification of the circumstances in which the bodies in question can be disposed of.

Deputy Pearse Doherty: I welcome that we will have some clarity on whether there are legislative bars or blocks on the disposal of the relevant State assets. However, the Minister of State explicitly stated that the Bill does not confer on the Minister any additional power. The legislation establishes the agency as the body that can, and most likely will, be used if a circumstance were to arise in which State assets were to be sold by the Minister. We can all read the legislation. The nub of the issue is that this can be done without recourse to a debate in the Dáil or Seanad. That is where I fundamentally disagree with the manner in which this has been established.

Requiring the approval of the Houses of the Oireachtas is one of the most basic protections we can put in place in respect of assets that have been built up with the sweat and labour of many Irish workers and through significant State investment. Decisions to sell off such assets to the private sector and any decision by a Minister to exercise the power to ask the agency to dispose of an asset warrant a debate in the Houses of the Oireachtas. This should be required in the Bill.

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 15:

In page 26, to delete lines 9 to 14.

Amendment put.

The Committee divided: Tá; 3; Níl, 7.	
Tá;	Níl;
Doherty, Pearse.	Carey, Joe.
Higgins, Joe.	Harris, Simon.
Troy, Robert.	Keating, Derek.
	Lynch, Ciarán.
	O’Donnell, Kieran.
	O’Dowd, Fergus.
	Ó Ríordáin, Aodhán.

Amendment declared lost.

Deputy Pearse Doherty: I move amendment No. 16:

In page 26, line 14, to delete “body.” and substitute the following:

“body,

and any request from a Minister under this subsection requires the prior approval of the Houses of the Oireachtas.”.

I will withdraw the amendment on the proviso that I can reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 17:

In page 26, lines 26 and 27, to delete “in such manner as he or she considers appropriate” and substitute “and lay them before the Houses of the Oireachtas within one week”.

Tá an leasú seo ag déileáil leis an ábhar céanna a bhí á phlé againn roimh seo, fá dtaobh stiúradh a thabhairt don eagraíocht nó agency maidir le maoin a dhíol. Deirtear sa Bhille, i ndiaidh an stiúradh sin a thabhairt faoi subsection (5), go bhfoilseoidh an tAire an stiúradh sin sa dóigh a shíleann sise nó seisean an dóigh is fearr. Tá fadhb agam le sin, mar go luíonn sé leis an Aire cinneadh a dhéanamh cén dóigh is fearr leis an stiúradh sin a fhoilsiú. Fosta, deirtear ag tús an ailt beag sin go ndéanfar é seo “chomh luath agus atá sé réasúnta”. Tá fadhb agam leis an bhfrása sin “chomh luath agus atá sé réasúnta” agus leis an treoir go luíonn sé leis an Aire cinneadh a dhéanamh maidir le cén dóigh is fearr an stiúradh nó direction atá tugtha a fhoilsiú. An rud atá sa leasú atá curtha chun tosaigh agam ná go mbainfear amach an giota sin.

The amendment suggests the deletion of “in such a manner as he or she considers appropriate” and its replacement with the phrase “and lay them before the Houses of the Oireachtas within one week”. Obviously, this relates to the earlier issue which arose in the context of what is reasonably practicable and how a direction might be published and not left to the discretion of the Minister to issue in a manner which he or she feels appropriate. Again, the issue here is appropriate oversight. This has happened on previous occasions where, for example, on Christmas Eve a Minister might have decided to put something up on a Department’s website. This means that it was published in the manner which the relevant Minister considered appropriate. The direction should be laid before the Houses of the Oireachtas and this should be done in a reasonable period, namely, one week. It is my contention that amendment No. 17 would strengthen the Bill.

Deputy Fergus O’Dowd: Tá sé soiléir sa Bhille seo go gcaithfear an stiúradh a fhoilsiú agus a chur ar fáil go poiblí ionas go mbeidh a fhios ag daoine cad é an beart atá déanta ag an Aire. Uaireanta, bíonn commercially sensitive information i gceist anseo agus tá sé tábhachtach nach mbeadh an t-eolas sin ar fud na tíre. Tá sé tábhachtach, mar sin, go mbeadh sé faoin Aire cén uair agus conas a d’fhoilseofaí é, ach nach mbeadh gach rud ann ó thaobh an corporate strategy and investment plans.

Notwithstanding what the Deputy stated, section 19 allows the Minister, with the consent of the Minister for Finance and having consulted relevant Ministers, to issue directions. In the first instance, a direction will be issued after due consideration and consultation. It will not, therefore, be either arbitrary or random. In addition, it must be published as soon as is reasonably possible. The proposed amendment could require the publication of commercially sensitive information relating, for example, to corporate strategy and investment plans or - with due respect to the views underlying the amendment - the sale or acquisition of assets. In such cases, commercially sensitive information may have to be redacted until it is no longer commercially sensitive. I am of the view that the provision relating to publication, as contained in the section,

does what is required. In such circumstances, I will not be accepting the amendment.

Deputy Pearse Doherty: There are three issues which arise in the context of section 19(7). The first relates to timely publication, the second - which arises on foot of the Minister of State's reply - to the content of the direction and the third to the forum in which the direction is published. Let us deal first with timely publication. There is no stipulation in the section in the context of what period of time is appropriate. Some reports from semi-State bodies, etc., that are to be laid before the Houses of the Oireachtas can be delayed substantially. It is appropriate, therefore, that a direction from the Minister - which could have a long-term consequences, a matter we dealt earlier - should be laid before the Houses of the Oireachtas or at least published within a week. If the Minister is of the view that a week is too restrictive, then we could consider extending the period to two, three or four weeks. In my view, however, it should not be left open-ended. The section does not make reference to a timeframe. All it states is that the direction should be published as "soon as is reasonably practicable". A timeframe of some form should be put in place.

On the content of what is to be published, the section states "the Minister for Public Expenditure and Reform shall publish the direction in such manner as he or she considers appropriate". This leads me to expect that directions will be published. I interpret the phrase "in such a manner as he or she considers appropriate" as meaning how he or she wants to publish. I do not believe it relates to the content of the direction. Does the phrase "in the manner" mean that a direction can be edited or partly redacted for publication? If that is the case, I am surprised. Even if that is how the Government wants it in order to protect commercial sensitivities, the final issue relates to the forum in which the direction is published and I am of the opinion that should be the Houses of the Oireachtas because it would allow us to debate any issues which might arise.

Publishing something can also mean burying it on a website. Ministers and Ministers of State have used such tricks in the past. Something can be placed on a website and no one will know it is there. In recent days I asked the Minister for Finance about bankers' remuneration but I kept hitting my head against a brick wall. I asked a specific question in which I requested that the Minister not refer back to the Mercer report and he informed me that the information I was seeking is now available on the websites of AIB and Permanent TSB. That information was placed on those websites because the Minister, in light of the question I had tabled, asked the banks in question to see to it that this was done. Very few people visit websites in order to discover information about the remuneration of bankers. It is possible, therefore, to publish information but also bury it at the same time. These directions should be laid before the Houses of the Oireachtas within a reasonable timeframe. While a direction should be published, does the section allow for it to be edited or redacted?

Deputy Fergus O'Dowd: Commercially sensitive information would not be published. The only example I can give is from Irish Water when the Minister for the Environment, Community and Local Government, Deputy Phil Hogan, published a direction that he had given to the Commission for Energy Regulation on certain charges. That was transparent and open. I take the Deputy's point on directions being published in *The Skibbereen Eagle* rather than the *Irish Independent*. However, I would have thought that the nature of the decisions on such a direction would be clear to everyone concerned. If a Minister were to do what the Deputy suggested, namely, hide a significant issue somewhere, it would not be acceptable to anybody concerned.

Deputy Pearse Doherty: Section 19(7) states:

As soon as is reasonably practicable after giving a direction under subsection (5), the Minister for Public Expenditure and Reform shall publish the direction in such manner as he or she considers appropriate.

My reading of that provision is that a direction may not be published having due regard to commercial sensitivities. My reading of the words “such manner” is that it concerns the way it would be published such as in a newspaper or on a website, rather than being put before the Houses of the Oireachtas.

Deputy Fergus O’Dowd: It concerns the manner in which it will be published, not the form.

Deputy Pearse Doherty: Does that mean that one could edit or redact the direction?

Deputy Fergus O’Dowd: It concerns how it is published on a website, in a newspaper or issued in a press release. It would not be appropriate to publish the corporate strategy and investment plans of commercial semi-State companies. It concerns the principle rather than the commercially sensitive parts.

Deputy Pearse Doherty: Owing to the commercial sensitivity of some directions, the Minister may have to allow a period to elapse before a direction is published as the provision does not allow for the publication of a redacted direction.

Deputy Fergus O’Dowd: One would presume there would be no intention to publish the portion that was commercially sensitive.

Deputy Pearse Doherty: For example, a Minister may issue a direction to Irish Water, but it may contain commercially sensitive material such as the rationale behind the decision. Could a Minister use this section to claim what was required was the publishing of the full direction but that it was not reasonably practical to do so until a certain time because a portion of it contained commercially sensitive material?

Deputy Fergus O’Dowd: The section reads, “as soon as is reasonably practicable after giving a direction”. It would be a judgment call on that portion of it. All directions are subject to freedom of information legislation. Accordingly, they would be available in that context also. Obviously, the portions that would be commercially sensitive would be redacted.

Deputy Pearse Doherty: That is the key point. Under this section, the Minister cannot publish a direction and redact the portions that are commercially sensitive because it is either published in full or not at all.

Deputy Fergus O’Dowd: Yes, the Minister must publish it in full.

Deputy Pearse Doherty: Yes, it must be published in full or not at all. If I were to submit a freedom of information request, the part of the direction that was commercially sensitive would be redacted. However, there is no flexibility in section 19 to allow the Minister to do so.

Deputy Fergus O’Dowd: It would depend on what the direction was. I will come back to the issue on Report Stage.

Amendment, by leave, withdrawn.

Question, “That section 19 stand part of the Bill,” put and declared carried.

Amendment No. 18 not moved.

Question, "That section 20 stand part of the Bill," put and declared carried.

SECTION 21

Deputy Pearse Doherty: I move amendment No. 19:

In page 27, line 14, after "body" to insert "who will lay it before the Houses of the Oireachtas".

This amendment relates to annual reports and is connected to the previous two amendments about laying documents before the Houses of the Oireachtas. Section 21(2) states:

The Agency shall submit each report under *subsection (1)* to the Minister for Public Expenditure and Reform and each Minister of the Government who is a relevant Minister in relation to the designated body.

The amendment proposes that it also be laid before the Houses of the Oireachtas by the Minister. The publication of the annual reports of many departmental agencies is often delayed, despite the fact that a Minister may have them for some time.

Deputy Fergus O'Dowd: Section 21 requires NewERA to prepare a report at least annually for the Minister responsible, the Minister for Public Expenditure and Reform, as well as other relevant Ministers, on the financial performance of each designated body. The amendment would require the Minister to lay such a report before the Oireachtas. We need to consider this provision in its full context. NewERA's role is to provide financial and commercial advice for Ministers on the larger commercial semi-State bodies within their remit. Where it provides a report on financial performance, there may well be sensitive commercial information involved and it may be inappropriate for such a report to be published immediately. We would be better off without a broad requirement such as that proposed in the amendment. Such reports would, for example, be available under freedom of information legislation but would have the protection available in respect of commercially sensitive information. It should also be noted that the financial accounts of the commercial semi-States are publicly available. Accordingly, I will not accept the amendment.

Deputy Pearse Doherty: Again, there is no requirement on the agency to publish these reports. The amendment is about providing for transparency. The issues of commercial sensitivity can be dealt with. Freedom of information legislation has different rules which allow such information to be redacted. However, there should be some reports on performance. It would be better for decision-making because the agency will manage State assets. It is important for proper parliamentary scrutiny and empowering not just the 15 Cabinet members but other Members with the best information available without jeopardising the groups' commercial sensitivity. Performance reports should be able to be laid before the Houses of the Oireachtas in some way. Otherwise it is nonsense, because Oireachtas debates would take place without any knowledge as to how the groups are performing. This is the kind of work Oireachtas committees should do. There should be performance reports. The structures to redact commercially sensitive matters can be written into legislation. These bodies should submit performance reports and the Oireachtas and its committees should be able to scrutinise them.

Deputy Fergus O'Dowd: Given that the financial reports of the bodies concerned are laid

before the Oireachtas and are subject to freedom of information, this is adequately dealt with in legislation.

Deputy Pearse Doherty: Given that the financial reports are published, what is the problem with publishing the assessment by the agency of the financial performance? The Minister is assessing the role of the agency because it is the agency that is tasked to have a strategy for these bodies.

Deputy Fergus O'Dowd: Sometimes the information in such a report might damage the asset on which it is reporting if it comes into the public domain. While the annual accounts are published, there might be issues which will inform the company or entity but it would not be in the public interest to disclose.

Amendment, by leave, withdrawn.

Deputy Robert Troy: I move amendment No. 20:

In page 27, between lines 16 and 17, to insert the following:

“(4) The Ireland Strategic Investment Fund (ISIF) shall be required to report on an annual basis the direct and indirect employment and economic impact of its investments.”.

As we all know, the Bill is about facilitating the transfer of the remaining balance of €6 billion left in the National Pensions Reserve Fund into job stimulus projects. While it is very important given our high unemployment and emigration, it is important we have very clear and measurable outcomes and set reasonable targets and benchmarks regarding how these targets will be achieved. We want any investment to be done in a very open and transparent manner. It cannot be invested in particular Ministers' constituencies or pet projects or used as a political slush fund. The IDA can clearly state, if it is supporting a company in Athlone for example - unfortunately it does not support any companies in Mullingar, so I have to use Athlone as an example - that it is investing a certain amount of money and supporting a certain number of jobs. The amendment is to ensure investment is made in a very measurable, clear, open and transparent way to ensure we know we are getting value for money.

Deputy Fergus O'Dowd: Section 21 requires NewERA to prepare a report at least annually for the Minister for Public Expenditure and Reform and other relevant Ministers on the performance of each designated body. This is separate from its report on its NewERA activities, which the agency will present as part of its annual report under section 13 of the 1990 Act. The amendment proposed would require the agency to report annually on the economic and employment impacts of its Ireland Strategic Investment Fund investments. The Bill does not require separate reports in respect of the agency's various activities and the existing provision for an annual report in section 13 of the NTMA Act continues in force. The agency will have to report on all its functions, as it does already. Section 13 of the 1990 Act also provides that the agency shall in its annual report include information in such form, and regarding such matters, as the Minister for Finance may direct.

Regarding the ISIF, I expect the agency will report on the impact of its investments, given that its investment mandate requires the fund to be invested in a manner designed to support economic activity and employment in the State. I do not propose that provision be made for separate reporting in respect of the ISIF. Deputies should note that the NTMA is required to

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include in its annual report information in such form and regarding such matters as the Minister for Finance may direct. Therefore, I do not propose to accept the amendment. However, notwithstanding the existing annual reporting provisions in section 13 of the 1990 Act, the Minister for Finance is considering including a provision on Report Stage requiring the agency to provide a breakdown of ISIF investments in its annual report.

Deputy Robert Troy: At one point in the Minister of State's reply he said he expected the report would outline how the strategic investment fund would be measured in terms of job creation. Later he said the Minister is considering something else. Could the Minister of State repeat what he said at the end?

Deputy Fergus O'Dowd: Notwithstanding the existing reporting provisions in section 13 of the 1990 Act, the Minister for Finance is considering including a provision on Report Stage, which would be before the committee, requiring the agency to provide a breakdown of ISIF investments in its annual report. A number of members have views on this and we are trying to take them on board.

Deputy Robert Troy: On Report Stage the Minister might address somewhat-----

Deputy Fergus O'Dowd: Although we are not addressing them in the legislation before the committee tonight, they will be addressed in a particular way on Report Stage.

Deputy Robert Troy: In light of that, I will withdraw the amendment.

Amendment, by leave, withdrawn.

Question, "That section 21 stand part of the Bill," put and declared carried.

SECTION 22

Chairman: Amendments Nos. 21 and 22 are related and will be discussed together.

Deputy Robert Troy: I move amendment No. 21:

In page 27, between lines 24 and 25, to insert the following:

"(e) social housing;"

This is a very simple amendment about ensuring part of the €6 billion can be invested in social housing. Our social housing provision is at a crisis point, with more than 100,000 people on housing waiting lists throughout the country and, in certain counties, people waiting weeks or months to get on housing lists. Given that the Department of Social Protection pays approximately €500 million per year in rent allowance, it is very important we direct some of the money into the provision of social houses. We would be creating assets and would be able to reap a dividend by way of the differential rent system. Instead of spending €500 million per year of taxpayers' money in rent allowances, we should provide our own housing stock.

This issue has received particular attention in recent weeks by way of Private Members' business and the housing Bill that has come before the Dáil. Many Deputies from constituencies throughout the country have continually raised the need for greater investment in social housing. The amendment requests that the fund would be used for the provision of social housing. We are getting an asset but it is labour intensive. People most adversely affected by the recent downturn - tradesmen, block layers and labourers - are coming back into the workplace.

People will not accept this if the investment focuses on the east coast, on Dublin and its commuter belt areas. We want balanced regional development, with each area getting its fair share of investment to ensure we create jobs, not just in the areas of high population density but also further west. That is why my colleague, Deputy Michael McGrath, put forward these two amendments.

Deputy Fergus O'Dowd: Amendment No. 21 would mean the agency acting as NewERA would be able to develop proposals for investment in social housing in addition to the sectors of energy, water, communications and forestry already set out. The sectors I have listed are those in which the large commercial semi-State bodies on which NewERA advises operate and in which NewERA will have expertise. I note that the section provides that the Minister for Finance may specify other sectors by order.

With regard to social housing, the Government is exploring all avenues to ensure the supply of housing is maximised. According to the recently published construction strategy, it is a key goal of the Government that every citizen has access to suitable housing. The Government continues to prioritise the delivery of good quality social housing, including the return to mainstream local authority housing construction this year, enhancing the role of the not-for-profit sector in the provision of social homes and continuing to work with NAMA, local authorities and approved housing bodies to maximise delivery of units owned by NAMA or its debtors for social housing. We will identify the best ways to deliver social housing for the years ahead through the development of a comprehensive strategy for social housing. It is estimated that up to 5,000 new social housing units will be provided in 2014 through leasing and existing capital programmes. This includes completion of mortgage-to-rent arrangements, the continued transfer of units owned by NAMA or its debtors, completion of existing building and acquisition programmes and transfers under the rental accommodation scheme.

Budget 2014 contained innovative housing measures and announced an additional €30 million investment in local authority housing which is expected to provide a substantial number of new and refurbished homes. Almost half of the investment would enable the construction of new infill developments in areas with the highest demand. In March, the Minister of State with responsibility for housing, Deputy Jan O'Sullivan, launched a two-year €68 million local authority home building initiative which would build 449 new social homes. This investment represents the first return to new mainstream local authority housing since the beginning of the crisis.

Details of the €15 million fund to bring vacant local authority houses back into use were announced in April. This will bring 952 vacant local authority units back into use providing high-quality homes for people in need of housing while also providing employment through labour-intensive activity. This year will also see the completion of a three-year €100 million investment that will provide 800 units for older people, people with disability or people without a home. We are in the process of rolling out a new housing assistance payment which, in addition to helping remove barriers to employment for recipients, will contribute to the creation of a higher quality private rental sector. The contribution of the not-for-profit sector will be facilitated by introducing legislation to regulate the sector. Regulation will enhance the ability of approved housing bodies to attract private finance.

The construction strategy states that later this year we will publish a social housing strategy setting out our vision and will introduce legislation to regulate the approved housing body sector. I have already noted that the investment sectors in which NewERA will operate are those in which it already has expertise. Social housing is not one of those areas. A role in social housing

may be more suitable to other areas of the NTMA family, for example, NAMA has co-operated actively with the Department of the Environment, Community and Local Government and with the Housing Agency in seeking to match the residential stock controlled by its debtors and receivers with the requirements for social housing. It remains open to the Minister to prescribe social housing as an area in which NewERA can develop investment proposals if he forms the view that doing so would help achieve the Government's target.

I do not propose to accept this amendment but in regard to amendment No. 22, I have indicated in my response to amendment No. 20 that the Minister is considering an amendment on Report Stage on how the Ireland Strategic Investment Fund reports on its investments and we will consider amendment No. 22 in that context.

Deputy Joe Higgins: I am not a member of the sub-committee and have no right to table amendments but I am here to raise several issues to be dealt with in a substantive way in order that I can table amendments on Report Stage. The Minister of State gave a long reply and dealt with the Government's inadequate policy on social housing. Only in the last few sentences did he relate it to what might come under this Bill. I strongly support the idea that the National Pensions Reserve Fund should be used for productive investment in public infrastructure and so forth. I am highly suspicious of this Government's motivation with regard to this Bill. The proposals for investment outlined in section 22 coincidentally are those in which private big business and multinational corporations also have a huge interest. The thrust of this Government is towards privatisation, so-called joint ventures, etc. which are ways of diluting public ownership and moving to sell parts or all of crucial infrastructure to multinational capitalists.

Section 42 increases my suspicion because it states very specifically that more of the pension fund can be put into saving banks but the Minister of State makes no such explicit provision for our greatest infrastructural need, social and affordable homes for the people. He read a long reply on different aspects of Government policy which are intended to deliver a totally inadequate number of homes for people in desperate need but none relates to what would be possible under this Bill if the Government was seriously committed to public investment in social and affordable homes. It should be a prime candidate for investment from the pension funds that are moving over. It is one of the greatest social needs. The construction of homes is also an area that is highly labour intensive, and one in which, unfortunately, there is a large reservoir of unemployed skills. Skilled workers have gone overseas who could come back. These workers are desperately looking for homes. In a short time, if the will existed, a substantial programme of public investment in social and affordable homes could be put in place throughout the country.

The Ireland Strategic Investment Fund should be directed to this work. If this Government were serious about resolving the crisis and ending the suffering, it would make of this a key project that would stand for all time, defining what a Government could do, but that is not proposed in any sense. It is mealy-mouthed in the extreme. In his reply on Second Stage the Minister of State made a small reference to the points raised by many Deputies on the need for social housing and a fund like this to be used for that purpose. Nowhere in the Bill is there any indication whatsoever that we might be moving in that direction. Any Deputy who is in touch with his or her constituents has known for a long time the extent of this crisis. The Bill that has just gone through the Dáil is a scandal, its only purpose being to remove 90,000 households from local authority lists through the trickery that is the housing assistance payment, HAP, programme. It will not resolve anything.

I am asking the Minister of State to come back on Report Stage with clear proposals to ad-

dress this issue. It is, unfortunately, true that much of the expertise that formerly was available within the local authorities has been lost. In the 1970s, for example, many of them were building 7,000 or 8,000 houses a year. These days, some of them have not built any for a long time. Of course, it is the case that expertise has been lost and needs to be reassembled very quickly. Will the Minister of State come forward on Report Stage with a comprehensive proposal on what is possible in this field?

Deputy Pearse Doherty: I am not entirely clear on what is envisaged under this section, specifically in respect of NewERA. I agree absolutely that a substantial injection into social housing is required, particularly from the Ireland Strategic Investment Fund. However, NewERA and the ISIF are two different things. It has been suggested the National Pensions Reserve Fund which will be this new fund will invest in water services, energy projects, telecommunications, forestry and so on. My understanding, however, is that this will not happen. Under this legislation, as I understand it, NewERA will provide its expertise to develop proposals for investment. Moreover, this investment may and most likely will be private sector investment as opposed to public funding, whether from the Exchequer or the ISIF. Will the Minister of State clarify whether this is the case?

Deputy Fergus O'Dowd: The amendment relates to the functions of NewERA; the ISIF is dealt with in a different section. We spoke on Second Stage about the role of the ISIF, what it could do and how it might become involved in the provision of social housing. The key point is that any investment by the investment fund must be commercial - in other words, the expenditure it makes cannot go on the State balance sheet. Any investment must be commercial and create jobs.

As to when the ISIF will be in a position to report on its investments, I am not quite sure, but I assume it will do so as quickly as possible. Issues regarding the provision of social housing are of critical concern to Members on all sides of the House. I received a letter yesterday informing me that seven or eight people in my constituency who had been on the housing list for eight years had finally been allocated homes. It is a very long time to be waiting.

Chairman: We will now return to the amendment.

Deputy Robert Troy: The Government gave a specific commitment regarding investment in the provision of social housing. The Minister of State gave a long reply in which he talked about every citizen having a right to adequate housing. Nobody would argue with this. Unfortunately, however, the record of the Government in the past three years does not give one much confidence or hope that adequate provision will be made. That is why we are asking that it be written clearly into the legislation that some of these moneys should be invested for that purpose.

The Minister of State referred to NAMA, but the reality is that the number of properties transferring from that agency to local authorities has been minuscule. He also referred to the capital programme, but it has been decimated. In one part of County Westmeath the allocation been reduced by more than 150% in the past three years. We moved from a situation where Westmeath County Council was building 40 to 50 houses a year to one where only four were built last year. This simply cannot continue. We have set out very clearly and explicitly in these proposals that some of the funding should be invested in the provision of social housing. There would be a very good return on such investment and it would provide an infrastructure and an asset for the State. This type of investment is also labour intensive and will provide job opportunities for tens of thousands of people who, through no fault of their own, lost their jobs

in the construction industry in recent years.

Amendment put and declared lost.

Deputy Robert Troy: I move amendment No. 22:

In page 27, line 29, after “employment” to insert “and balanced regional development”.

Amendment put and declared lost.

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

Deputy Pearse Doherty: To return to the point I made earlier, my understanding is NewERA and the ISIF are completely and utterly separate and that the money sitting in the National Pensions Reserve Fund and the assets that will be transferred to the new fund will not be put into the five areas. The only way they could be is if there was a substantial commercial return for the agency or it was a directed investment, which means that it would have to be a bank or something substantial in the economy. In essence, this section is about proposals for other investments, private source investments. Will the Minister of State confirm that this is the case?

Deputy Fergus O’Dowd: Infrastructural projects involve significant investment proposals. NewERA does have plans in this regard and can advise Ministers on issues such as broadband investment and so on. Any investment, particularly from the ISIF, must have a commercial outcome, but this does not exclude NewERA from working with the investment fund or making proposals to other parties which, because they have the necessary expertise, might be a suitable vehicle for delivering a particular project. The key objective is transforming infrastructure and analysing existing State companies to identify potential for new synergies. The partial merger of Coillte and Bord na Móna and the associated establishment of BioEnergy Ireland show what is possible. There are radical and significant proposals being made in that area. With respect to Deputy Robert Troy, his amendment has to do with the ISIF, not NewERA. That is the problem.

Deputy Joe Higgins: The issue is still not clear to me. There is no reason NewERA could not develop a proposal for major social projects and utilise the ISIF for that purpose. Is that correct?

Deputy Fergus O’Dowd: Section 22 does not cover social housing but the point-----

Chairman: My understanding is that the entities in question must be enterprises. Deputy Higgins might be in the space if he is talking about affordable housing programmes that are enterprising and where a profit is being made to some extent, albeit for a social gain, and to be reinvested. If a capital investment by the State is involved, which goes onto the State asset book as a capital investment, that is outside the scope of the provision. If the Minister of State could clarify the matter it would assist us in getting through the section.

Deputy Joe Higgins: Approximately eight decent homes could be built for €1 million. A programme of social and affordable homes, even by the logic of the so-called commercial return, for workers on the average industrial wage or even below it would show a return on such an investment, if one wants to put it like that. There is no reason a major programme to build social and affordable homes could not be a so-called commercial activity and therefore come within the provisions.

Deputy Fergus O’Dowd: It comes under the Ireland Strategic Investment Fund, ISIF. It would be possible if a plan could be put together and if partners could be found to do that in a

commercial way.

Deputy Joe Higgins: Why are partners needed?

Deputy Fergus O'Dowd: It is because it has to be off the Government balance sheet. In other words, it must be a commercial entity.

Chairman: Could the Housing Finance Agency put it off balance sheet for us?

Deputy Fergus O'Dowd: The point is that NewERA will deal with the issues it is dealing with, and the ISIF is available for all ideas that will work in the economy that are commercial and that create jobs. It runs the gamut of every single Department. It is not set in stone. It can be done if one has an idea that stands up and works and that will add to the economy, be commercial and that will create jobs.

We are talking about funding worth €6.9 billion. The whole idea is that one gets matching funding. One gets someone else to put up funding to match what is already there. That is what it is all about.

It is getting late. Social housing is something on which we all agree. The issue is significant and must be addressed. I repeat that when such a proposal is ready it will be brought by the Government before the Oireachtas.

Question put and agreed to.

Sections 23 to 25, inclusive, agreed to.

SECTION 26

Deputy Pearse Doherty: I move amendment No. 23:

In page 29, line 15, to delete “instructions” and substitute “directions and orders”.

This is a return to my hobby-horse. We have had directions, orders and now we have instructions. This is the only place in the legislation that the word “instruction” appears. There has been reference to the fact that all orders must be laid before the Houses of the Oireachtas. It has also been said that orders can be annulled. We have directions that do not have to be laid before the Houses of the Oireachtas and do not have to be complied with, although some directions in the legislation require compliance, for example, the disposal of assets. They must be published at a certain stage when it is deemed appropriate. Now we have reference to the agency having to comply with all guidelines and instructions that the Minister for Public Expenditure and Reform may from time to time, with the consent of the Minister, issue to the agency on the performance of its functions under this Part.

What is the difference between an instruction and a direction? The purpose of my amendment is to change the wording and for there to be compliance with all guidelines, instructions and orders the Minister for Public Expenditure and Reform, may from time to time make, with the consent of the Minister, issue to the agency.

Deputy Fergus O'Dowd: The effect of this amendment would be require the agency in its NDFA function to comply with directions and orders issued by the Minister for Public Expenditure and Reform in addition to guidelines issued by the Minister. In this section and the following section, section 27, a verbal distinction is made between guidelines and instructions,

which are issued by the Minister for Public Expenditure and Reform to the NDFA under section 26 and policy directions which are issued by the Minister to State authorities under section 27.

As for having the agency comply with orders, the word “order” is used in a particular way in this Part. The Minister for Public Expenditure and Reform prescribes State authorities by order. The amendment would not add anything to the Bill. Therefore, we are not accepting it.

Deputy Pearse Doherty: What is the difference between a direction and an instruction?

Deputy Fergus O’Dowd: The Deputy has it there.

Deputy Pearse Doherty: I can understand an order.

Deputy Fergus O’Dowd: It is 10.10 p.m. and it is clear that Deputy Doherty does not accept what I said. It is a verbal distinction. I am sorry if Deputy Doherty does not understand it.

Chairman: If I could make the Minister’s case for him, according to other Bills we have dealt with, an instruction is temporal but one can change the context of the paragraph in the Bill by directions and orders. If one reads it through and puts those words into it, more so than using a verb, it creates a different action arising out of the section. Where the Minister may instruct, he is now into directing the Department. We will go through the amendment. That is not to say the Minister is correct or that Deputy Doherty has poorly drafted what he hopes to achieve but there is a material change to the Bill if the amendment were to be accepted.

Deputy Pearse Doherty: There is a material change.

Chairman: I think that is the case if one changes the words. I say that by means of assistance. I stand to be corrected.

Deputy Pearse Doherty: The point relates to the use of the word “instructions”, which only relates to this section, and all instructions must be complied with. The preceding wording is that the agency shall comply with all guidelines and instructions. This is a genuine question. I want to know what the power of the Minister will be. I know what his powers are in terms of orders and directions but I wish to know whether there is a third power in terms of instructions. The only time “instructions” appears in the legislation it states that the agency must comply with the instructions.

Deputy Fergus O’Dowd: It might be helpful to point out that a guideline is a framework in which something will happen.

Deputy Pearse Doherty: I am not talking about guidelines.

Deputy Fergus O’Dowd: I am just talking about the two words together. A verbal distinction is made between guidelines and instructions. I presume an instruction is something that is mandatory; that one must do. A guideline specifies that one must have regard to an issue and a decision must be within those parameters. A guideline as opposed to an instruction allows some flexibility on the outcome.

Deputy Pearse Doherty: I am none the wiser.

Deputy Fergus O’Dowd: Deputy Doherty should get an English dictionary.

Deputy Pearse Doherty: A guideline is clear but if I were Minister I would question whether I should issue an instruction, which is mandatory, an order, which is mandatory or a

direction-----

Deputy Fergus O'Dowd: I am advised that the words “order” and “instruction” are used because-----

Deputy Pearse Doherty: We will move on.

Amendment, by leave, withdrawn.

Question proposed: “That section 26 stand part of the Bill.”

Deputy Joe Higgins: I will be fairly succinct in making some comments following on from our previous discussion. Section 26(1)(b) provides that one of the functions of the NTMA is “to provide advice to any State authority on all aspects of financing, refinancing and insurance of public investment projects to be duly undertaken by means of public private partnership arrangements or within the public sector”. Section 26(1)(e) more specifically provides that the NTMA can “enter into any arrangement or contract to procure as agent for the Minister for Education and Skills any public investment project in relation to a school, educational facility or other building or structure”. Am I correct in suggesting that there is nothing to preclude this legislation from providing that one of the functions of the NTMA could be to enter into an arrangement or contract with a local authority or voluntary housing agency to procure and finance in any way major projects of social and affordable homes?

Deputy Fergus O'Dowd: Is the Deputy's suggestion covered by section 26(1)(a)?

Deputy Joe Higgins: No. Section 26(1)(a) states that one of the functions of the NTMA is “to provide advice”.

Deputy Fergus O'Dowd: Yes. I apologise. It is not excluded in the legislation.

Deputy Joe Higgins: Section 26(1)(e) specifically singles out the Department of Education and Skills.

Deputy Fergus O'Dowd: If it is helpful, I would like to respond to that by saying with respect that this is what the NDFA already does. If I am right, one of the targets the NDFA has had since its establishment in 2003 has been to work with schools by investing in bundles of contracts worth approximately €20 million. As I understand it, this provision reiterates what is in the existing legislation.

Deputy Joe Higgins: That is fine, but that does not stop new and very necessary infrastructure. While I would agree that educational infrastructure such as schools is very necessary, I suggest that one of the biggest infrastructural needs is being neglected. Is there any reason we cannot provide for it specifically in this legislation, in the same way as we are providing for schools?

Deputy Fergus O'Dowd: That point was very well made on all sides in the Dáil and it has been made here again tonight. As I have said to the Deputy, I anticipate that a proposal will be made in that regard. The legislation as it presently stands does not exclude that. In other words, the intention is that it will happen. That is a fact. I think it is very significant that it would happen. I think everybody on all sides of the House agrees with that.

Deputy Joe Higgins: The difference is that some of us want it to be specifically outlined. As I said earlier, the Bill is very forthcoming in certain senses but not at all in others. I am

thinking particularly of the idea of social housing, against which it appears to be tending, in my view. By bringing in the EU rules and all the rest of it, this legislation will discourage the idea that this fund can be used for such a crucial infrastructural need. I am giving the Minister of State notice that I believe it is entirely in order to propose further amendments on Report Stage to be more specific with regard to this crucial social need.

Deputy Fergus O'Dowd: I have reiterated this a number of times. We all agree that this has to be done. As I have said, it is the intention that this will happen. The powers to do that are provided for in this legislation. I take the Deputy's point.

Deputy Joe Higgins: I have to go, but I would like to have the last word. I have made the substantial points I wanted to make.

Deputy Fergus O'Dowd: The Deputy should submit an amendment.

Deputy Joe Higgins: I will do so. I want to mention before I go that when a particular Minister, Noël Browne, was given the full credit for conquering the scourge of tuberculosis, it should really have been given to the public sector in this country. The Government of the time - really, it was the public service - came up with really dramatic proposals and specific and focused actions. It is one of the moments in the history of the State that is remembered. For once, the Irish State, conservative and all as it was, addressed a social ill. It became an iconic development. I suggest to the Minister of State that we are facing a similar crisis here. It involves 90,000 families. There is terrible suffering out there. People are being told by landlords that their rents are increasing by 20% or 30%. If they do not pay, they have to go. They are being housed in hotels. They are shipped from here to there when a particular weekend means that hotels can increase their prices massively for others. It is outrageous. Rather than grudgingly recognising the potential of the Bill before the committee in this regard, as it is doing, the Government should embrace it along the lines I am suggesting. To do so would also be seen as iconic.

Question put and agreed to.

Sections 27 to 29, inclusive, agreed to.

SECTION 30

Deputy Fergus O'Dowd: I move amendment No. 24:

In page 30, after line 39, to insert the following:

“(5) The power of the Minister under *subsection (4)* may be exercised by the Agency.”.

This technical amendment to section 30 deals with the functions of the NDFA, which provides financial advice to State bodies undertaking major public investment projects with a capital value of more than €20 million. It is obvious that the costs and expenses incurred have to be met from somewhere. The legislation provides that the NDFA can use the post office savings bank fund to that end. The NDFA then bills the State authorities to which it provides financial advice or services, and those payments are paid back into the post office savings bank fund. The Bill, as published, provides for this sequence and states that “the Minister may advance moneys from the Post Office Savings Bank Fund to the Agency”. However, the NTMA itself then needs to be authorised to act on the post office savings bank fund for this purpose.

This amendment will allow the Minister to delegate to the NTMA the powers to use this fund. I should add that the post office savings bank fund is a fund managed by the NTMA under delegation from the Minister for Finance. It holds funds raised from retail savers through deposits in the post office savings bank, which form part of the national debt. The structure for using the fund reflects the structure used generally in the National Treasury Management Agency Act 1990, whereby powers are given to the Minister and then delegated to the agency.

Deputy Pearse Doherty: The way this has worked up to now is that the Minister would advance a certain amount of funds from the post office savings bank fund to the NTMA, which would pay the receipts or the costs in terms of the financing projects it would be involved in. We are being asked to allow the NTMA to take the money itself.

Deputy Fergus O'Dowd: The NDFA is doing that at present. We are now proposing to give the same power to the NTMA because the NDFA is moving into the NTMA. These functions currently exist with regard to the NDFA. As the NDFA will no longer exist, it is proposed to transfer the power to the NTMA.

Deputy Pearse Doherty: Did the power exist for the NDFA to take the money from the fund without any recourse to the Minister?

Deputy Fergus O'Dowd: It got the money from the Central Fund and was reimbursed by Departments for that. Perhaps I can get clarity after-----

Deputy Pearse Doherty: All the money is going around anyway. The concern I wish to have teased out is that in the original legislation as written before this amendment was tabled, the Minister was obliged to make certain advances. For example, the Minister could advance €100 million to the agency that it could then use to pay for expenses in respect of subsection (1).

Deputy Fergus O'Dowd: As I understand it, the National Development Finance Agency, NDFA, just took the money from the Central Fund. The Government now proposes to give that function to the National Treasury Management Agency, NTMA, and this just facilitates the NTMA getting the money from the post office.

Deputy Pearse Doherty: I appreciate it is late but I wish to ask a simple question. Under the existing arrangement, was there a middleman, namely, the Minister for Finance? This proposal will cut out the middleman and my question is whether a case could arise whereby the agency left the fund dry. I am aware it is reimbursed from the Central Fund in any event.

Deputy Fergus O'Dowd: The NDFA could draw from the Central Fund only and now that the NTMA will be doing it-----

Deputy Pearse Doherty: It might help, were a note to be circulated to members before Report Stage.

Deputy Fergus O'Dowd: Yes, I can get a note. That probably would be best.

Deputy Pearse Doherty: I would appreciate that.

Amendment agreed to.

Section 30, as amended, agreed to.

Chairman: Amendments Nos. 25 to 28, inclusive, are related and will be discussed together.

Deputy Fergus O’Dowd: I move amendment No. 25:

In page 31, to delete lines 15 to 18 and substitute the following:

“that counterclaim is made does not stand delegated to the Agency by virtue of an order under section 9(1) of the Act of 2000;”.

Amendments to Part 5 are to add clarity to the management of claims. Amendment No. 25 corrects the definition of “counterclaim”. In the current version, section 31(1)(b) contradicts 31(1)(a) and, therefore, does not make any sense. Amendment No. 26 expands the meaning of costs to include bills in respect of a person who appears as an expert witness. Amendment No. 27 expands the management remit of the State Claims Agency, SCA, to include claims before an arbitrator, a mediator or a county registrar. Amendment No. 28 is being inserted to allow a relevant Minister flexibility, where appropriate, in defining the body as a State authority for the purposes of delegating the management of its claims to the SCA. This would allow a Minister to include such bodies as the Residential Institutions Redress Board or the Commission to Inquire into Child Abuse within the remit of the section.

The current Part 5 amendments to the original legislation are required to expand the remit of the agency. The original Act is considered to be somewhat restrictive in its definition of claims to be handled as, for example, third-party legal costs could not be handled. It must be noted that the proposed Part 5 amendments would only provide for the power to delegate. Actual delegation would be effected by Government order at the request of the relevant member of the Government following enactment of the Bill. This is the mechanism in the existing SCA legislation and these Committee Stage amendments are being introduced to clarify aspects of the original text.

Amendment agreed to.

Deputy Fergus O’Dowd: I move amendment No. 26:

In page 31, line 20, after “solicitor” to insert “or of a person who appears as an expert witness”.

Amendment agreed to.

Deputy Fergus O’Dowd: I move amendment No. 27:

In page 32, to delete lines 1 and 2 and substitute the following:

“(iv) represent the State authority concerned in a court or other tribunal or before—

(I) the Taxing-Master or a county registrar, or

(II) an arbitrator or a mediator,

in relation to the claim.”.

Amendment agreed to.

Deputy Fergus O’Dowd: I move amendment No. 28:

In page 33, between lines 10 and 11, to insert the following:

“(2) Where it appears to the Minister to be necessary or appropriate that it should do so, an order under *paragraph (j)* of the definition of “State authority” in *subsection (1)* may, in consequence of the particular body concerned being prescribed for the purposes of that definition, include provision—

(a) adding to the matters specified in either or both of *paragraphs (a)* and *(b)* of the definition of “claim for costs” in *section 32*, a reference to a person’s entitlement to have paid to him or her (or, as appropriate, the foregoing body’s entitlement to have paid to it) an amount of costs that arises by virtue of one or more specified provisions of an enactment relating to the foregoing body,

(b) specifying, for the purposes of *section 34(3)*, the date on which an entitlement to the payment of costs referred to in *paragraph (a)* arises.”.

Amendment agreed to.

Section 31, as amended, agreed to.

Sections 32 to 37, inclusive, agreed to.

SECTION 38

Deputy Fergus O’Dowd: I move amendment No. 29:

In page 39, line 21, to delete “new Fund” and substitute “new fund”.

It is just a drafting change whereby a capital “F” is being changed to a small “f”.

Amendment agreed to.

Section 38, as amended, agreed to.

SECTION 39

Chairman: Amendments Nos. 30 to 32, inclusive, are related and will be discussed together.

Deputy Pearse Doherty: I move amendment No. 30:

In page 39, line 33, after “State” to insert the following:

“or to provide for an important public need, to improve public services essential to the operation of the economy or to carry out an essential social or environmental action”.

Amendment No. 30 widens the areas in which the agency can invest assets of the fund. The original stipulation is to support economic activity and employment in the State and I wish to widen its scope to also “provide for an important public need, to improve public services essential to the operation of the economy or to carry out an essential social or environmental action”. This goes back to the debate that flowed earlier on being able to invest in social housing without having it completely privatised and profitable. As for the type of structure one must create to so do, I acknowledge it must be kept off the balance sheet anyway but it need not necessarily be as rigid as what is provided for at present. Moreover, the amendment specifies that the public need is an important area that should be identified, as should social

services and environmental action.

As for amendment No. 32, section 39 deals with securing interest rates, the level of risks and so on to which the agency must have regard in respect of its investment. Sinn Féin argues in this amendment that the broader economic, social and environmental impacts also should be taken into consideration. A question has arisen down through the years as to where the resources have been invested and in the context of the NTMA, it would have arisen in respect of the National Pensions Reserve Fund. One could have, for example, investments being made that are commercially sound but which ethically do not keep in line with the majority wishes of the public or indeed the Government or the Oireachtas. I do not refer to cases in which decisions to invest were based on personal friendships but about the idea of investing in nuclear energy, the arms industry and so on. There were cases in the past, when the fund was dealing with such commercial stuff, in which those areas would have applied. Consequently, the purpose of this amendment is to widen the scope in order that it is not simply about securing rates or the risks of the assets, which I acknowledge are crucially important. However, it also should be about the broader social and environmental impact, which would widen its scope.

Deputy Robert Troy: Amendment No. 31 is self-explanatory and is about ensuring that opportunities are created for those who have been unemployed for longer than 12 months, as well for those under the age of 25 who are unemployed. All members are aware of the serious problem with high unemployment levels among those in the under-25 years age bracket. Again, this feeds into members' earlier observations on those who have been unemployed for longer than 12 months. Typically, they tend to be people who used to work in the construction industry. If the Government is of a mind to ensure there is investment in the provision of social housing, it will help with this amendment here. Any decision being made should be made consciously. We need to look at these two areas of people under 25 and the long-term unemployed where the figures are worryingly high.

Deputy Fergus O'Dowd: I concur with what the Deputy said last, as the experience of Irish Water clearly shows. Approximately 80% of more than 1,200 people working in Irish Water come from those categories of young people, long-term unemployed apprentices and so on.

The investment mandate of the fund is to invest on a commercial basis in a manner that is designed to support economic activity and employment. It is an investment fund and it is important that the fund is invested commercially to ensure the investments are kept off balance sheet and no state aid issues arise.

If the funds were used to provide for an important public need, as suggested in Deputy Doherty's proposal, there would be clear risk that it might be seen as Government expenditure rather than investment, worsening our deficit. The same is true if the ISIF were to seek rates of return adjusted to take into account the broader economic, social and environmental impact. ISIF's commercial mandate is also important to put the fund in a position to leverage its resources by attracting private sector co-investment, recycle its resources in order to make more strategic investment over time and ensure that the public assets entrusted to the fund are not frittered away.

To the extent that there are commercial investment opportunities that support economic activity and employment and also provide an important need or have a desirable social or environmental impact, the ISIF will be able to invest. That was the key point I made to Deputy Higgins earlier. In such a case, it will be a matter for the agency's investment committee to decide

to go ahead. I am satisfied on the one hand that there is no need to amend the Bill, as suggested in amendments Nos. 30 and 32, because the fund can be invested in such areas if commercial investments emerge. On the other hand, we should not be too prescriptive about what the fund can and cannot do in order that it does not become simply a tool of Government policy without a real commercial mandate.

Responding to Deputy Troy-----

Chairman: The Minister may speak to amendment No. 31 also. He addressed amendments Nos. 30 and 32.

Deputy Fergus O'Dowd: The Government is absolutely committed to ensuring that employment opportunities are available to the entire population of working age, including most of those on the first step of the ladder of work. The objective of the medium-term strategy is full employment by 2020. The strategic investment fund will play a key role in supporting this objective and it is important the fund's mandate does not appear to make it a tool of Government policy which could adversely affect the fund's ability to leverage its resources and attract private sector co-investment or worsen the general Government deficit.

However, the Bill provides that the NTMA must consult with the Ministers for Finance, and Public Expenditure and Reform, and have regard to the views they express in framing the investment strategy. Our approach is to be less prescriptive in legislation in order to allow flexibility for the ISIF investment strategy to change over time. Therefore, we are not accepting these amendments.

Deputy Pearse Doherty: The Minister of State has the wrong end of the stick regarding my amendment No. 30 which would not take away the commercial basis for where the fund lends. We in Sinn Féin have our own proposals for how that should be used, obviously. We met representatives of the troika when they used to come here to discuss how that might be managed, including off balance sheet and so on. Obviously, it has to be commercial because it will run out and will need to be able to regenerate.

The section states: "on a commercial basis in a manner designed to support economic activity and employment in the State." Both have to be deliverable. The term "economic activity" is probably broad enough and "employment in the State" is clear. Any investment will probably create economic activity so it is about the interpretation of that. It is not just about economic activity and employment in the State. It is also about important public need, public services essential to the operation of the economy and essential social or environmental action. It needs to be commercial but it may not necessarily result in employment. The stipulation here is that it is commercial to support economic activity and employment in the State. There may be an investment that does not support employment but is still commercial.

It is all about the intention of the section because any investment will create at least one job so it is a question of how it is interpreted. Somebody could say it was not the type of employment envisaged for the amount of money invested.

Deputy Fergus O'Dowd: I believe we all agree on what should happen. I believe Deputy Pearse Doherty accepts the commercial nature of the activities and that they must be off balance sheet. I suppose that economic activity and employment are one in the same thing in that it is really not possible to have one without the other given that jobs come about by creating economic activity. The clarity in the debate and the consensus which one continues to have here

is very clear. The critical issues the Deputy raises are really the same on all sides - we all want the same thing and that is the purpose of the fund.

This is money that is coming home to be invested in Ireland. It is €6.9 billion that is invested abroad. All the issues relating to probity and the type of investment, clarity and transparency in terms of the investment type should be there.

Amendment, by leave, withdrawn.

Amendments Nos. 31 and 32 not moved.

Deputy Fergus O'Dowd: I move amendment No. 33:

In page 40, line 8, to delete “to comply with” and substitute “for the purposes of”.

It is a technical drafting amendment.

Amendment agreed to.

Amendment No. 34 not moved.

Question proposed: “That section 39 stand part of the Bill.”

Deputy Pearse Doherty: Section 39(5) states: “The assets of the Fund may be held or invested in or outside the State.”

Deputy Fergus O'Dowd: They are outside the State at the moment. The idea is to bring them home. I presume the phrasing of that would be an issue if they are assets that need to be sold, cashed or whatever. The intention is to invest here in Ireland.

Deputy Pearse Doherty: However, there is nothing to prevent fulfilling the commitments the State gave in the St. Andrews Agreement to invest in the A5 infrastructure project.

Deputy Fergus O'Dowd: I cannot answer that, but I cannot imagine that anything that would encourage economic activity in the island would be a problem. I can come back to the Deputy on that.

Deputy Pearse Doherty: Obviously, we do not want the investment in areas such as China. However, the commitment that was withdrawn or scaled back is supposed to be revisited as part of the spending programme for next year. I know this provision is included because the assets are outside the State and they need to be freed up in terms of cash and being able to be reinvested. However, the legislation does not prevent us investing outside the State, including on projects such as the A5. How does that marry in with section 39(1) which provides that they be invested on a commercial basis in a manner designed to support economic activity and employment in the State?

Deputy Fergus O'Dowd: The point is the State is the State, and the idea is that as much of the funding as possible would be invested in the State. That is what it is for. The issue is why assets can be held outside the State. It is possible to invest the €7 billion in the discretionary portfolio in commercial projects which support economic activity and employment in the State immediately. The NTMA will need to seek a return on moneys while it is awaiting the return on the investment. The NTMA may wish to invest in a fund which has a substantial, but not exclusively, Irish investment remit. An example of this is the National Pensions Reserve

Fund's €50 million contribution to the €100 million China Ireland technology fund to invest in fast-growing Irish technology companies with a substantial presence or strategic interest in China, and in Chinese fast-growing technology companies with a substantial presence or strategic interest in establishing a presence in Ireland.

Deputy Pearse Doherty: The key point is one can invest outside the State so long as one creates economic activity within the State.

Deputy Fergus O'Dowd: Yes, the mandate is that one must create economic activity.

Question put and agreed to.

SECTION 40

Chairman: Amendments Nos. 35, 37 and 38 are related and will be discussed together.

Deputy Fergus O'Dowd: I move amendment No. 35:

In page 40, line 23, to delete "Fund" and substitute "assets of the Fund (other than directed investments)".

These are all technical amendments. Amendments Nos. 35 and 37 clarify that directed investments, namely, funds invested in the banks at the direction of the Minister for Finance, are outside the investment strategy for the fund. The Minister is responsible for the investment in the banks. The text inserted by amendment No. 35 means the text picked up in amendment No. 37 can be deleted. Amendment No. 38 is another textual amendment.

Deputy Pearse Doherty: I have an issue with only one of the amendments, namely, amendment No. 35. The fund will monitor and keep under review an investment strategy for the fund in accordance with section 39, but it excludes the directed investments. One cannot have a strategy for a directed investment because one has been directed to invest in a certain way. The amendment mentions monitoring and keeping under review an investment strategy for the fund. There is a need to monitor the directed investments of the fund and for a strategy in this regard, even if it is based on an advisory role. There seems to be a gap in the legislation in this respect.

Deputy Fergus O'Dowd: It is done by the Department of Finance and the Minister. The Department has a management unit to deal with this specific issue. It is outside the fund because it is directed investment.

Deputy Pearse Doherty: There should be a role for the agency with regard to directed investment. This is investment directed by the Minister, who has the ability to direct, sell off or dump the assets and stipulate conditions. We have dealt with remuneration and structures; experts and the best minds in Ireland are being gathered to deal with investment. If the Minister directs to invest in a bank, the agency should have a role in monitoring or advising, for example, on whether it is the right time to dump particular shares. It should not be a case of the Minister directing the agency on what to do with half of the portfolio and the agency not wanting to know about that half until somebody in the Department directs it again. It will create a snake with two heads, but they will need to speak to each other. I do not mean to call anyone snakes and I apologise to the officials.

Chairman: It is definitely getting late.

Deputy Fergus O'Dowd: I can think of another snake with two heads but not NewERA.

Deputy Pearse Doherty: I would say beware the Department of Finance.

Deputy Fergus O'Dowd: If the Minister were to request the opinion or advice of the agency it would certainly give it, but it would be up to the Minister to seek it. It would be at his or her initiative.

Deputy Pearse Doherty: I will examine it on Report Stage. It would strengthen the Bill if provision were made for this without interfering with directed investment. Approximately €16 billion of the €22 billion in the National Pensions Reserve Fund was directed. It could not decide to deal only with the other €6 billion. The agency must have a role and everything should be joined up. I am not sure what its role ought to be but there should be more monitoring.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 36:

In page 40, line 24, after “determining” to insert “and reviewing”.

This clarifies that the Ireland Strategic Investment Fund’s investment strategy does not apply to directed investments, which is the point we have been discussing. It is a drafting amendment to pick up on the use of the word “review” in subsection 40(1), which states the agency is to determine, monitor and keep under review an investment strategy for the fund. Subsection (2) as published sets out what the agency must take into account in determining the investment strategy. There is a slight textual inconsistency between the two subsections. The amendment means subsection (2) will refer to the agency determining and reviewing.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 37:

In page 40, to delete line 36.

Amendment agreed to.

Section 40, as amended, agreed to.

SECTION 41

Deputy Fergus O'Dowd: I move amendment No. 38:

In page 41, lines 1 and 2, to delete “assets (other than directed investments) of the Fund” and substitute “assets of the Fund (other than directed investments)”.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 39:

In page 41, line 22, after “corporate,” to insert “or enter into joint ventures, partnerships, coownerships or other similar arrangements,”.

This is a drafting amendment to make clear the Ireland Strategic Investment Fund can engage in joint ventures and similar investment arrangements. Joint ventures will have two benefits, as underscoring the commerciality of the project will mean the assets will be leveraged. If the fund invests €100 million jointly with a private sector partner it will see €200 million worth of

investments.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 40:

In page 41, to delete line 23 and substitute the following:

“(e) enter into transactions of a normal banking nature, and”.

This standard provision ensures the agency will have all the powers it needs for the management of the fund. The words “borrow or lend securities of any kind” will be deleted and the more general phrase “enter into transactions of a normal banking nature” is proposed. This includes the concept of borrowing and lending securities.

Amendment agreed to.

Section 41, as amended, agreed to.

SECTION 42

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

Deputy Pearse Doherty: This is one of the big problems with the legislation. The Bill provides the Minister with certain functions if, following consultation with the Central Bank, he or she is of the opinion the performance of the functions so provided is necessary in the public interest for either or both purposes. There are only two purposes for directed investment, namely, to remedy a serious disturbance in the economy of the State, or to prevent potential serious damage to the financial system of the State to ensure continued stability of the system. How will we define a “serious disturbance in the economy of the State”? Is the housing crisis a serious disturbance in the economy of the State? What is a serious disturbance? The Minister of State’s definition of a “serious disturbance” could be very different to mine. The other purpose is to bail out the banks again. I have huge concern about this. Can limits on direct investment be placed on the fund?

Deputy Fergus O'Dowd: I will give my response and then answer further questions. The National Pension Reserve Fund Act 2000, which set up the NPRF to pre-fund the burden of pensions on the Exchequer, was amended in 2009 to allow the Minister for Finance in certain circumstances direct the commission to invest in financial institutions. This was the mechanism used to recapitalise banks after the financial crisis. This provision is being carried over into this legislation as a precautionary measure with the obvious difference that the Minister will now give a direction to the Agency, rather than the commission. We do not foresee the use of this provision but it is important that it is there.

Deputy Pearse Doherty: Under the rules just agreed if this money is made available and there is a banking problem in future bondholders and shareholders will have to take a hit and this money will be used.

Chairman: Other matters come before this legislation. Banking union legislation has a bail-in, rather than a bailout. I am not sure whether Deputy Pearse Doherty is correct in what he says so we need a brief to examine his concern regarding bailing out banks.

Deputy Pearse Doherty: The first part is a bail-in between bondholders and shareholders. The second part relates to the State’s resources. If legislation provides that 100% of an invest-

ment fund that should be available to invest in the Irish economy and create employment can be scrubbed if banks need money the money will be called on before it is possible to access the European Stability Mechanism, ESM. The Government passed emergency legislation to amend the National Pension Reserve Fund Act to allow it invest in banks, though “invest” is the wrong word. We should not continue with this. This is like passing legislation that takes money from local authorities when banks are in trouble. Just because this has been used once does not mean it makes sense to include it in this legislation. It is a vehicle that was supposed to pay for State pensions. If it is to create employment and economic activity in Ireland we should not allow it to be used when a bank is in trouble. The fact that 100% of this fund may be used for that purpose smacks of this Government’s priorities.

Later in the legislation it says payments to the Exchequer cannot be made until 2025 and that the aggregate payments in any given year can only be 4% of the fund. If there is an issue in future whereby we cannot afford to pay doctors, carers or special needs assistants the most the Exchequer can get back from the fund, even when it is profitable, is 4% of the aggregate total of the combined value of the fund for a year. However, God forbid a bank like AIB or Bank of Ireland should get in trouble and need to phone the Minister for Finance because the entire fund can be put at their disposal.

Deputy Fergus O’Dowd: The key point in section 42 of the legislation is “where, following consultation with the Central Bank, the Minister is of the opinion that the performance of the functions so provided is necessary in the public interest”. It must be for either or both of the following purposes: to remedy a serious disturbance in the economy of the State and-or to prevent potential serious damage to the financial system in the State and ensure the continued stability of that system.

It is prudent to have this provision but the intention of the fund is to create employment and improve the economy, as the Deputy said.

Deputy Pearse Doherty: The only point the Minister failed to make was that this provision is included to ensure the ATMs keep working. The previous Minister for Finance thought it was prudent to inject €31 billion into Anglo Irish Bank and I am sure there were also consultations with the Central Bank then. This is supposed to be an investment vehicle for economic activity and job creation and we have called for this for many years. However, the Government has decided to make this a get-out-of-jail card for banks. There only area where this can be used for direct investment is when a bank needs it. The Central Bank will be consulted but its advice need not be heeded.

Deputy Fergus O’Dowd: The reason this provision is here is prudence. If there is a serious disturbance in the State’s economy it is critical for survival and to prevent serious damage to the financial system. The provision can ensure the continued stability of the financial system. The circumstances where this may be used are extremely rare, though they arose during the economic crisis. The Irish economy has recovered significantly since the crisis and we are now in a better position. This provision is included as a prudent measure, it is not intended that it will be invoked. It is intended for investment in jobs.

Deputy Pearse Doherty: Two years ago last week the Government heralded a great moment, the separation of banking and State. It was a European decision and now the Minister of State wants to create the link again. In the event of a bank going bust the Government wants us to allow the bank access to 100% of this investment fund via the agency. If the separation of toxic banking and the State two years ago was so important why does this legislation allow

the new investment fund invest all of its resources in banks if the Minister requires? This does not make sense.

Deputy Fergus O'Dowd: Nobody has a crystal ball but we all want this funding to be used to create jobs and grow the economy. However, if a serious financial crisis occurs it is prudent that we have this provision. We disagree on this point.

Deputy Pearse Doherty: The Cabinet, which approved this provision collectively, feels the only aspect of Irish society in which the Minister should have a say in spending this money is banking. Two areas have been identified. One relates to disturbances in the economy, which most likely means banking, and the other is simply banks. Housing is not covered and nor are the environment, broadband and so on. The Agency may make its own commercial decisions relating to these areas but the only area in which the Minister has the power to intervene is banking.

Amendment put.

The Committee divided: Tá;, 3; Níl, 7.	
Tá;	Níl;
Doherty, Pearse.	Carey, Joe.
Higgins, Joe.	Harris, Simon.
Troy, Robert.	Lynch, Ciarán.
	Mitchell O'Connor, Mary.
	O'Donnell, Kieran.
	O'Dowd, Fergus.
	Ó Ríordáin, Aodhán.

Question declared carried.

Amendment No. 41 not moved.

Section 43 agreed to.

Sections 44 and 45 agreed to.

SECTION 46

Chairman: Amendment No. 42 is in the name of the Minister. Amendment No. 42 is consequential on amendment No. 49, therefore, amendments Nos. 42 and 49 will be discussed together.

Deputy Fergus O'Dowd: I move amendment No. 42:

In page 44, to delete lines 8 and 9.

The National Pensions Reserve Fund is exempt from taxation. The Ireland Strategic Investment Fund, ISIF, is to be similarly exempt. Amendment No. 49 inserts a new Part to amend the Taxes Consolidation Act and the Stamp Duties Consolidation Act accordingly. These provisions were not ready for inclusion in the Bill as published. Amendment No. 42 deletes subsection (4) of section 46 because it duplicates the provision in the proposed new Part 4 of

Schedule 1.

Deputy Pearse Doherty: On amendment No. 49, can we get a note on the sections affected by that table, Part 4, before Report Stage?

Deputy Fergus O'Dowd: Sure.

Amendment agreed to.

Section 46, as amended, agreed to.

SECTION 47

Deputy Fergus O'Dowd: I move amendment No. 43:

In page 44, line 16, to delete “under *subsection (1)*” and substitute “(except under *subsection (4)*)”.

Section 47 provides that the agency shall make payments from the ISIF to the Exchequer as the Minister directs following consultation with the agency. There will be no payment before 2025, but this does not apply to the proceeds from the disposal of directed investments where the Minister may direct that the proceeds are paid over to the Exchequer. Other than in the case of the proceeds of directed investment, the total annual payment must not exceed 4% of the value of the assets of the fund, excluding the directed investments. This proposed drafting amendment is to make clear that the total annual payment which the Minister may request is limited to 4% of the assets of the fund, excluding the directed investments.

I also want to flag to the committee that the Minister for Finance is considering a number of Report Stage amendments on directions given by the Minister to the agency on the Ireland Strategic Investment Fund.

Deputy Pearse Doherty: Can the Minister of State elaborate on the amendments the Minister for Finance intends to bring before us on Report Stage?

Deputy Fergus O'Dowd: They are technical drafting amendments.

Deputy Pearse Doherty: On the 4%, we do not want the Minister to be able to raid the fund for Exchequer spending, given that it is supposed to be an investment fund and is supposed to continue to generate income. As I mentioned earlier on the directed investment area, the Minister gives himself the power to invest the fund in its entirety in a bank, and yet there is a limitation on the percentage that can be drawn down to the Exchequer which would meet the demands in society and which many would argue would be more beneficial. Why has the Minister set it at 4%? Is it 4% of the entire fund? Even if the fund is not profitable in a year, can the Minister still draw down?

Deputy Fergus O'Dowd: It is the average interest cost of serving the debt. It has to be at least that in order that it can proceed because it has to get the income back.

Deputy Pearse Doherty: What is the relationship there?

Deputy Fergus O'Dowd: If we liquidated the fund, we could otherwise pay down our debt. It would be best for me to provide Deputy Pearse Doherty with a note on that. Would that be acceptable?

Deputy Pearse Doherty: At this late hour, I will accept a note on that.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 44:

In page 44, line 22, to delete “order” and substitute “direction”.

It is a textual correction, that “order” should read “direction”.

Amendment agreed to.

Amendment No. 45 not moved.

Section 47, as amended, agreed to.

Section 48 agreed to.

SECTION 49

Question proposed: “That section 49 stand part of the Bill.”

Deputy Pearse Doherty: This is an issue that goes right through all of the other committees and agencies that are being dissolved. What is the position in relation to the personnel on the committees that the Bill would dissolve? By giving effect to the Bill, for example, dissolving the National Pensions Reserve Fund Commission, what is the position of the individuals who serve on the commission? Are they retained?

Deputy Fergus O'Dowd: They are gone then.

Deputy Pearse Doherty: We are cancelling their contracts, if that is the case.

Deputy Fergus O'Dowd: It is a board appointment and it is the end. The board will no longer exist.

Deputy Pearse Doherty: Are there termination payments that will accrue from this section in the Bill?

Deputy Fergus O'Dowd: I am advised that there are no termination payments.

Deputy Pearse Doherty: When the board goes, therefore, they go with it.

Question put and agreed to.

Sections 50 to 53, inclusive, agreed to.

NEW SECTIONS

Chairman: Amendment No. 53 is consequential on amendments Nos. 46 and 47. Amendments Nos. 46, 47 and 53 will be discussed together.

Deputy Fergus O'Dowd: I move amendment No. 46:

In page 45, after line 14, to insert the following:

“PART 8

MISCELLANEOUS

Amendment of section 6 (directions) of State Authorities (Public Private Partnership Arrangements) Act 2002

54. The State Authorities (Public Private Partnership Arrangements) Act 2002 is amended in section 3 by inserting the following subsection after subsection (5):

“(6) An appropriate Minister may provide, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, a guarantee or indemnity, in such form and manner and on such terms and conditions as the appropriate Minister thinks fit, in respect of the obligations of a State authority (other than where the State authority is a Minister of the Government) under or in connection with a public private partnership arrangement.”.

This is a proposal to amend the State Authorities (Public Private Partnership Arrangements) Act 2002 by adding a section that will allow Ministers to issue guarantees or indemnities in respect of public private partnership projects with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform. Such indemnities or guarantees have been essential in recent years to secure funding for projects from international financial institutions, such as the European Investment Bank, where a sub-sovereign entity, such as the National Roads Authority, is procuring that project. A ministerial guarantee may also be required to ensure an appropriate credit rating for a PPP in such cases.

The purpose of the proposed amendment is to provide a legislative basis where a Minister issues a letter of indemnity for or guarantees to fund PPP companies or PPP projects. The office of the Attorney General has indicated that such a provision is appropriate if the practice of Ministers issuing such letters is to continue. The provision formalises an implicit State liability because a Minister providing the guarantee will generally be funding the State authority through the departmental Vote. In the case of roads, for example, it is simply the Minister for Transport, Tourism and Sport vouching that he will be liable for the payment of obligations of the NRA should the NRA fail to pay, as per the terms of the PPP. In simple terms, the Minister is vouching that he or she will make the payments to the NRA that he or she would be making anyway.

Deputy Pearse Doherty: What of amendment No. 47? The Minister did not discuss it.

Deputy Fergus O'Dowd: Amendment No. 47 allows the NTMA to use the personal public service number, PPSN, for the purpose of managing the Government's retail personal savings products, which are marketed under the State savings brand and which are part of Exchequer borrowing. It arises from a request by the NTMA to be allowed to collect and use a customer's PPSN and to use the associated public service card for the purpose of administering the State savings products - savings certificates, savings bonds, national instalment savings, national solidarity bonds and deposit accounts. The NTMA proposes to use the PPSN as a unique identifier for the holders of State savings products and to use the public service card to authenticate identity and facilitate certain types of transactions in respect of State savings products. They are concerned to have such a system of unique identifiers for their customers, not only for efficient record-keeping but also because there are statutory limits on individual holdings of certain State savings products and requirements to be able to identify individuals for the purpose of the EU savings directive and anti-money laundering rules. The alternative of creating a stand-alone system of unique identification would be inefficient in that it would duplicate the existing

arrangements which use the PPSN as the unique identifier and would be costly and a waste of money to the Exchequer.

The Social Welfare Consolidation Act 2005 envisages the PPSN being used by numerous bodies other than the Department of Social Protection. For example, the RSA is a specified body in Schedule 5 of the 2005 Act as the PPSN and associated information is relevant to its driving licence functions. Access to PPSNs has also been extended to a number of public bodies and credit institutions under the Credit Reporting Act 2013 for the purposes of its provisions. It is proposed, therefore, to amend Schedule 5 to the Social Welfare Consolidation Act 2005 to include the NTMA as a specified body for the purposes of that legislation.

Amendment of the Long Title of the Bill is required by way of amendment No. 53 to take account of the amendments to the State Authorities (Public Private Partnership Arrangements) Act 2002 and the Social Welfare Consolidation Act 2005 provided for in amendments Nos. 46 and 47.

Deputy Pearse Doherty: It is the intention of the NTMA to use PPS numbers with prize bonds. Will this happen without delay?

Deputy Fergus O'Dowd: It needs the numbers to identify individuals in terms of limitations on individual holdings to ensure compliance with all regulations, in particular anti-money laundering rules, and the purposes of the EU savings directive. It also includes prize bonds.

Deputy Pearse Doherty: It will be more difficult to buy prize bonds for one's nephew or niece. One will need his or her PPS number.

Deputy Fergus O'Dowd: No. It is just that the cumulative value of holdings must be within the law. It means that if I have money, it will not exceed in my name the maximum I am allowed to hold and that I meet all of the requirements of anti-money laundering legislation. It is to ensure compliance with those laws.

Deputy Kieran O'Donnell: Is that for new bonds? It is not retrospective.

Deputy Fergus O'Dowd: Yes. It is not retrospective.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 47:

In page 45, after line 14, to insert the following:

“Amendment of Schedule 5 (specified bodies) to Social Welfare Consolidation Act 2005

55. Schedule 5 to the Social Welfare Consolidation Act 2005 is amended in paragraph 1(4) by inserting “the National Treasury Management Agency,” after “the National Council for Special Education,”.”

Amendment agreed to.

SCHEDULE 1

Deputy Fergus O'Dowd: I move amendment No. 48:

SELECT SUB-COMMITTEE ON FINANCE

In page 46, to delete lines 24 to 26 and substitute the following:

“

4	Section 11	Substitute “Subject to section 16 of the National Treasury Management Agency (Amendment) Act 2000 and sections 30, 36 and 48 of the National Treasury Management Agency (Amendment) Act 2014, the expenses” for “The expenses”.
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“

This is an amendment to section 11 of the 1990 Act which states that the expenses of the agency are to be paid from central funds. The Bill as published amends this to exclude NDFA expenses which are paid out of the post office savings fund and State Claims Agency expenses relating to its new legal costs unit which are also paid out of the post office savings bank fund. These expenses will all now be direct expenses of the agency itself. We must also take account of section 16 of the National Treasury Management Agency (Amendment) Act 2000 which provides that State Claims Agency expenses are to be paid from the post office savings bank fund. This referred to the functions of the State Claims Agency other than those of the legal costs unit provided for under this Bill.

Amendment agreed to.

Deputy Fergus O’Dowd: I move amendment No. 49:

In page 46, between lines 30 and 31, to insert the following:

“Part 4

AMENDMENTS OF TAXES CONSOLIDATION ACT 1997

Item(1)	Provision affected(2)	Amendment(3)
1	Section 38(1)	Delete all of the words from “to securities” to the end of the subsection and substitute “to securities specified in the Table to section 37.”.
2	Section 172A(1)(a)	In subparagraph (i) of the definition of “relevant distribution”: (a) insert the following clauses after clause (I):“(IA) the National Treasury Management Agency,(IB) a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner,”; (b) delete clause (II);(c) delete clause (III).

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3	Section 230	Insert the following subsection after subsection (1):“(1A) Notwithstanding any provision of the Corporation Tax Acts, profits arising to a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner shall be exempt from corporation tax.”.
4	Section 230A	Repeal.
5	Section 230AB	Repeal.
6	Section 246(3)	Insert the following paragraphs after paragraph (eb):“(ec) interest paid to—(i) the National Treasury Management Agency, (ii) the State acting through the National Treasury Management Agency, or (iii) a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner,(ed) interest paid by a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner.”.
7	Section 256(1)	In paragraph (a) of the definition of “relevant deposit”:(a) insert the following subparagraph after subparagraph (ii):“(iia) a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner.”;(b) delete subparagraph (iia);(c) delete subparagraph (iib);(d) delete subparagraph (iic).
8	Section 607(1)	Delete paragraph (fa).
9	Section 730D	In subsection (2):(a) insert the following paragraphs after paragraph (c):“(ca) where the life policy is an asset held by the National Treasury Management Agency or the State acting through the National Treasury Management Agency, and the National Treasury Management Agency has made a declaration to that effect to the assurance company, or(cb) where the life policy is an asset held by a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner, and the National Treasury Management Agency has made a declaration to that effect to the assurance company.”;(b) delete paragraph (d);(c) delete paragraph (e).

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10	Section 739D	In subsection (6):(a) insert the following paragraph after paragraph (ka):“(kb) is the National Treasury Management Agency or a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner, or the State acting through the National Treasury Management Agency, and the National Treasury Management Agency has made a declaration to that effect to the investment undertaking, or”;(b) delete paragraph (l).
11	Schedule 13	Delete “139. National Development Finance Agency.”.
12	Schedule 15	(a) Insert the following paragraph after paragraph 33:“33A. A Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner.”.(b) Delete paragraph 34. (c) Delete paragraph 34A.(d) Delete paragraph 34B.(e) Delete paragraph 35.

Part 5

AMENDMENTS OF STAMP DUTIES CONSOLIDATION ACT 1999

Item(1)	Provision affected(2)	Amendment(3)
1	Section 108A	Repeal.
2	New section	Insert the following section after section 108B:“Ireland Strategic Investment Fund 108C. Stamp duty shall not be chargeable under or by reference to any Heading in Schedule 1 on an instrument for the sale, transfer, lease or other disposition of any property, asset or documentation to a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister is the sole beneficial owner.”.

Amendment agreed to.

Question proposed: “That Schedule 1, as amended, be Schedule 1 to the Bill”.

Deputy Pearse Doherty: There are two deletions in Part 2 of Schedule 2, the amendments to the Ombudsman Act 1980, which relate to the National Development Finance Agency and the National Pensions Reserve Fund Commission. Obviously, that is because both agencies will be dissolved as part of the legislation.

Deputy Fergus O’Dowd: In other words, it goes through the list of legislation and sets out how it affects those bodies.

Deputy Pearse Doherty: My focus is on the amendments to the Ombudsman Act 1980. Can the Minister of State clarify which provisions are being affected?

Deputy Fergus O'Dowd: The amendment provides "(a) Delete "71. National Development Finance Agency" and (b) Delete "76. National Pensions Reserve Fund Commission". Those bodies are being dissolved, which is why they are being removed from the Act.

Deputy Pearse Doherty: Is it that they are removed from recourse to the ombudsman?

Deputy Fergus O'Dowd: Yes.

Deputy Pearse Doherty: The agencies will cease to exist when the presidential seal is put on the legislation. The effect of the provision we are deleting was to give individuals recourse to the financial ombudsman. That was the reason for the Schedule in the first place. Is that not correct? Were these agencies exempted from the Ombudsman Act? Is it that they no longer need to be exempt as they are being dissolved?

Deputy Fergus O'Dowd: Yes.

Question put and agreed to.

Schedules 2 and 3 agreed to.

SCHEDULE 4

Chairman: Amendments Nos. 50 and 52 are related and may be discussed together, by agreement.

Deputy Fergus O'Dowd: I move amendment No. 50:

In page 54, line 16, to delete "required" and substitute "that it is reasonably practicable to do".

As with section 47, I draw to the committee's attention the fact that the Minister for Finance is considering an amendment to Schedule 4 in relation to directed investments. These are the investments made at the direction of the Minister for Finance. It will be a technical amendment.

Deputy Pearse Doherty: In relation to technical amendments on Report Stage, can we have the notes circulated?

Deputy Fergus O'Dowd: Yes, to clarify the intent.

Chairman: The memorandum has to be updated.

Deputy Pearse Doherty: It would avoid us having to wait on the floor of the Dáil if we could have that before hand.

Deputy Fergus O'Dowd: It will be provided as soon as possible.

Amendment agreed to.

Deputy Fergus O'Dowd: I move amendment No. 51:

In page 54, line 20, to delete "Fund" and substitute "Ireland Strategic Investment Fund".

SELECT SUB-COMMITTEE ON FINANCE

This is a drafting amendment. The term “fund” has been used without being defined. The full name of the fund should be used.

Amendment agreed to.

Deputy Fergus O’Dowd: I move amendment No. 52:

In page 54, line 21, to delete “required” and substitute “that it is reasonably practicable to do”.

Amendment agreed to.

Schedule 4, as amended, agreed to.

TITLE

Deputy Fergus O’Dowd: I move amendment No. 53:

In page 9, line 20, after “enactments;” to insert the following:

“to amend the State Authorities (Public Private Partnership Arrangements) Act 2002 and the Social Welfare Consolidation Act 2005;”.

Amendment agreed to.

Title, as amended, agreed to.

Chairman: I thank the Minister, his officials and the committee members for engaging in a robust, detailed and lengthy exchange on this legislation.

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 Sub-Committee on Finance has completed its consideration of the National Treasury Management Agency (Amendment) Bill 2014 and has made amendments thereto.

The select sub-committee adjourned at 11.35 p.m. *sine die*.

