

# DÁIL ÉIREANN

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## AN ROGHFHOCHOISTE UM CHAIDEACHAS POIBLÍ AGUS ATHCHÓIRIÚ

### SELECT SUB-COMMITTEE ON PUBLIC EXPENDITURE AND REFORM

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*Dé Céadaoin, 27 Márta 2013*

*Wednesday, 27 March 2013*

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The Select Sub-Committee met at 2 p.m.

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#### MEMBERS PRESENT:

Deputy Richard Boyd Barrett,*	Deputy Mary Lou McDonald,
Deputy Sean Fleming,	Deputy Dara Murphy,
Deputy Brendan Howlin (Minister for Public Expenditure and Reform),	Deputy Arthur Spring,
Deputy Heather Humphreys,	Deputy Liam Twomey.*

\* In the absence of Deputies Stephen S. Donnelly and Peter Mathews, respectively.

DEPUTY CIARÁN LYNCH IN THE CHAIR.

### **Business of Select Committee**

**Chairman:** As we have a quorum, the meeting is in public session. I welcome the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, and his officials to the meeting, the purpose of which is to consider the National Lottery Bill 2012. The Bill was referred to the committee by the Dáil on 6 February 2013. Is it agreed to conclude consideration of the Bill today? Agreed.

### **National Lottery Bill 2012: Committee Stage**

#### SECTION 1

Question proposed: “That section 1 stand part of the Bill”.

**Deputy Mary Lou McDonald:** I set out at this stage my opposition to the Bill in its totality. Speaking on Second Stage, the Minister, Deputy Brendan Howlin, said “It is fair to say concerns have never been raised about the integrity, probity or ethos of our lottery”. He also said: “The national lottery, an crannchur náisiúnta, has been one of Ireland’s success stories of the past quarter of a century” and “During the past quarter of a century the Irish national lottery has come to be regarded as very innovative and successful”. I view the legislation as a fundamental and radical change in the ethos of the national lottery. Some have expressed their opposition to the Bill by saying that the Minister is selling off the lottery. I acknowledge he is not doing that but to all intents and purposes he is moving the lottery to a private, for profit model. I am against that and the comments he made when we discussed this legislation previously regarding the merits of the current system and, indeed, the success of the lottery as it currently exists, raise the obvious question of why is he trying to fix it if it is not broken. Many areas of our system of public administration require radical change but the national lottery is not one of them. In moving this amendment I state my fundamental objection to the shift he is proposing to make. I do not believe it will be in the public interest in the long term.

**Deputy Richard Boyd Barrett:** I utterly oppose this Bill and the mood that lies behind it. It is wrong to sell State assets in general. Why would we give away an asset, particularly at a time when the State and the economy are in such difficulties? The national lottery has generated enormous revenues for the State over many years and it has supported a wide range of good causes. I see no justification for changing something that has worked so well. The only justification the Government has provided, aside from the real motive of further the asset stripping of this country under the austerity programme, is that the money we get upfront might allow us to fund the new children’s hospital. I do not accept that argument for one minute. Just over one year’s average revenue from the lottery would pay for the hospital. Clearly we would not take an entire year’s revenue but €50 million per year could easily be earmarked from the money allocated to good causes under the current model. Spread over five years, that would cover the cost of the new hospital. There is no need to do what the Minister proposes in order to finance the children’s hospital from lottery money.

It is in effect a giveaway that will change the entire dynamic. Camelot or whichever entity buys it will not be interested unless it can benefit from the transaction. In moving from a set fee structure to a profit line for an entity such as Camelot, the citizens and people who buy lottery tickets and the good causes they finance will be the losers. An Post will also be a loser.

**Minister for Public Expenditure and Reform (Deputy Brendan Howlin):** I thank the Chairman for facilitating today's discussion. I do not think any other proposal has received the same scrutiny as this initiative to date. We have had debates, questions and numerous motions in both Houses on the issue. I welcome that because it is important that we rigorously consider all proposals. I strongly reaffirm the views I expressed on Second Stage on the national lottery as it has been run for a long time. It was interesting to read the older debates, in which grave concerns were expressed about what the original licence for the lotto would do. Most of those fears, concerns and opposition were proven over time to be unfounded. It was a good initiative which provided billions of euro for good causes. Like all good ideas, however, it is not stuck in aspic. We have to revisit it in terms of the requirements of our times. These are unprecedented economic times and we have to look at every asset and initiative we have as a State to see how we can contribute to the reconstruction of our economy and providing for the needs of today's people. I have no doubt that many of the concerns expressed are genuinely felt by Members of both Houses, and I have said that repeatedly.

To deal with the specifics of the matter, we live in extraordinarily challenging economic times. The licence is due to be renegotiated and retendered anyway. There is no escaping that. This is not a decision I made arbitrarily. We need to tender for the licence in the normal way. I have heard views expressed to the effect that we should almost fix who should get it, although nobody around this table has suggested that. We cannot do that. We have to tender and we will see how much interest is expressed in running the lottery in future.

An idea I have advanced and which the Government supports is to use the opportunity of issuing a new licence to seek a significant upfront payment. Deputy Boyd Barrett is wrong to suggest it is being given away. It is quite the reverse. We want to get a significant upfront payment that will enable us to invest a big chunk of it in building the new national children's hospital. When I was setting out the multiannual capital programme, I had to find a significant amount of money for the health area. One of the decisions I made was to preserve the capital expenditure profile for health because we need to refurbish our hospitals and provide new emergency departments and health centres in order to change the focus from acute care to primary health care. We are going to do that as well as providing the new children's hospital as the flagship project of this Administration in terms of capital works. It is a good idea to ring fence a tranche of money for that project. I disagree with the view expressed by Deputy Boyd Barrett that we should simply raid the income stream of the current lotto and take €50 million away from sports, the arts and all the other good causes that currently receive money in order to invest in the children's hospital. That is a point of view that I have encountered elsewhere. If we could both maintain the flow of money to good causes and build the children's hospital by being innovative and creative, that would be a good and proper thing.

There are people who are against change. I have found that to be the case since my new Department was created as a Department of reform. We are an extraordinary people to be resistant to reform. Everybody is in favour of the concept but regard the subject of reform to be somebody or something else. We should have an open mind and a proper debate and analysis. This new licensing regime will give a 20-year horizon to the successful bidder. It sets up an entirely new structure of regulation because an independent regulator will determine all the is-

sues that are important in terms of integrity, probity and ethos. The amendments I have tabled on Committee Stage provide for the long-term sustainability of the national lottery in order to protect its integrity even beyond the term of the licence.

From my discussions with the Minister for Justice and Equality I also realise we need to set out a view on regulating gambling in any event. The lotto has been a good and careful mechanism for gambling but a significant amount of gambling is now migrating online, where we have little control over it. The Minister is anxious that the proposed new regulator will migrate from having responsibility for the lotto to regulating gambling in general, including protecting online gambling in respect of underage people or over exposure. These are challenging issues in an age of technology but are the type of issues with which we need to grapple. While I fully acknowledge the concerns expressed by people in terms of this new departure, objectively it is the right way to go. The proposal has been carefully crafted and balanced, will have a good impact, will provide an up-front payment for the children's hospital, protect an income stream for good causes and, hopefully, grow an income stream beyond what is a diminishing one. I should point out that all products like this need refreshment. Some of our problems over the past number of years are partly related to economic downturn. When one looks at international best practice, that these things run out of steam and need to be regenerated. Given the level of business conducted online these days, it is necessary to refresh this in any event. Much of what is in this set of proposals is aimed at doing so.

**Deputy Sean Fleming:** I have specific reasons for opposing this legislation, which I deal with when we come to the amendments in my name.

Question put and declared carried.

## SECTION 2

**Chairman:** Amendments Nos. 1 and 34 to 36, inclusive, are related and will be taken together by agreement.

**Deputy Brendan Howlin:** I move amendment No. 1:

In page 5, between lines 26 and 27, to insert the following:

““central gaming system” comprises the secure core computer systems of hardware and software that validate and record all entries for National Lottery games and identify winning combinations;”.

The central gaming system is crucial to the operation of a national lottery. It is considered appropriate to include a definition of the central gaming system in section 2. The central gaming system is also referred to in amendment No. 36, which is the reason for the grouping of these amendments.

The National Lottery Act 1986 does not preclude retail agents from purchasing a national lottery ticket. The purpose of amendment No. 34 is to make clear that the word “agent” does not include retail agent for the purposes of this section and, thereby, to leave the position of retail agents unchanged as regards their entitlements to purchase tickets and participate in the national lottery.

Amendment No. 35 substitutes the word “manufactures” for the word “prints” on the advice of the Parliamentary Draftsman that the word “manufactures” is a better phrase and is considered more accurate in this context. Amendment No. 36 is technical in nature and deals with the

classes of persons who may not own a national lottery ticket. This amendment also includes a reference to the central gaming system.

Amendment agreed to.

Section 2, as amended, agreed to.

### SECTION 3

Question proposed: "That section 3 stand part of the Bill."

**Deputy Mary Lou McDonald:** Section 3 repeals the existing national lottery legislation. The more I listen to the Minister the more convinced I am of my view. We were all aware that the licence was due for renewal and that it was necessary to go through that procedure. However, the Minister is availing of this as an opportunity to fundamentally change the model of the national lottery. We will discuss the regulator at a later stage in this debate. The fact that the Minister has been removed from the equation and a regulator is being introduced underscores yet again the private for profit nature of the new lottery model being advanced. While according to this Government tough or challenging economic times can be used as the rationale for anything now, the fact remains that during the quarter of a century since commencement of the national lottery there has been more than €12 billion in sales, €6 billion in prize money and €4 billion raised for good causes. It has been a tremendous success story, with an incredible track record. To interfere with something so successful and try to brand that as a positive reform is wrong. The Government should not be pretending that because the licence was up for renewal these changes had to come about. This is an initiative of the Government's making. It is a move from a traditional successful model, in which the Minister and the State had some control and authority, to a privatised model.

I agree with Deputy Boyd Barrett that the chances are the winner of the licence will be from outside the State. I put it to the Minister that anybody making an upfront cash payment will not be doing so for the good of their health, rather they will do so on the basis of pragmatic decisions. For those who take on the licence, this will be solely a commercial concern. Each time the Minister speaks on the issue of the lottery he reaffirms the success story it has been, which begs the question why is he seeking to undermine it?

**Deputy Richard Boyd Barrett:** The Minister uses the argument of economic circumstances to justify many things. He then goes on to make the argument that this is good legislation because it will inject dynamism into the lottery for the times we are in. The implication is that the current lottery model is getting a bit tired and could do with an injection of new life. The amount of funds generated by the current model and the fact that it has remained broadly steady despite the catastrophic collapse in the economic and financial circumstances of this country is an indication of the resilience and strength of that model and a reason not to change it. The excuses for doing what is proposed are spurious because what the Minister suggests he wants to achieve can be achieved by the current model. Talk of raiding existing revenue streams to finance the children's hospital is loaded, alarmist language which seeks to deflect from the fundamental criticism we are making, namely, the national lottery is supported by the public in this country because it funds good causes.

I am not a fan of gambling. I do not believe it is particularly good to encourage it. However, the national lottery is at least an outlet for gambling that in the greater scheme of the gambling landscape is a more benign form, the revenues from which go towards good causes

which, largely, benefit the socioeconomic category that tend to be the ones spending money on lottery tickets. I do not accept the Minister's justification for this. The Minister suggests we can achieve both aims by privatising the lottery. I believe we can do both by retaining it as it is. Regardless of how the Minister spins or tries to justify this, it is privatisation. Currently, An Post, a State-owned company, is the parent company for the lottery. That is going to change. It is highly likely that, as a consequence, we will have Camelot or some similar outfit, which has absolutely no loyalty or allegiance to or interest in the concerns or needs of the citizens of this country, taking it over. We will move from the payment of a set fee to the introduction of a profit line, which is what it says in the Department's statements. Something gives there because, as Deputy McDonald said, these guys will not come in for the good of their health; they want something. What they want is the profit line. Something will give in a context where that profit line is introduced. I do not see any justification for this and I utterly oppose it. The Minister should not repeal the Act put in place to underpin the lottery as currently constituted, which is what this section is about. It is not necessary and it will not help us in any way justify what the Minister is doing.

**Deputy Brendan Howlin:** It is always interesting to listen to Deputy Boyd Barrett. I dare say if I was introducing a lottery for the very first time, we would have strong socioeconomic arguments against gambling, the idea of a national lottery and-----

**Deputy Richard Boyd Barrett:** The Minister was probably saying that himself at the time.

**Deputy Brendan Howlin:** I am sure we would hear very strong arguments. I am sure that, if I had the set of proposals to do exactly as Deputy Boyd Barrett now suggests and conduct the licence the way the last licence was conducted but with a ring-fenced lasso around an income stream to fund the children's hospital, I would be told of all the good causes which would suffer egregiously from that in working class areas which depend on the national lottery for health spending, social spending and sports facilities. He would be right on all of that too, but it is great to be able to be always against.

**Deputy Richard Boyd Barrett:** I am for.

**Deputy Brendan Howlin:** The unprecedented challenge for this Government is to find resources to invest in job creation and in providing an infrastructure which is urgently needed. Nobody is against the notion of building a national children's hospital, so we need to find the wherewithal to do so. In my judgment, this is a very good way to do so. I do not believe it does any damage to the integrity of the lottery. In fact, we have taken great pains to lay out a structure which preserves the integrity and ethos of the lottery because, ultimately, a lottery is based on trust, and if people lose trust in it there will be no future for the lottery.

I know Deputy Boyd Barrett is allergic to the idea of profit as a motive to do anything, but we sell licences. We sold the broadband spectrum licence last year for many hundreds of millions of euro and I do not remember him attacking that. The last time the licence was issued, it could have gone to Camelot or to anybody else. As I indicated to the committee previously, a number of parties were interested in it, so we will see who will be successful in bidding for this.

As I said, it is our intention to safeguard the income stream for good causes. It is in our interest to preserve a robust prize fund, and we will deal with this in some detail later on. Deputy McDonald tabled an amendment on that issue. All of these things, including the issue of holding on to a decent income stream for the retailers, are the balances and checks we have put into this.

The objective to defend the income stream for good causes is a good one. The Deputies opposite are absolutely right in saying it is important that communities which depend on funding should have access to sports grants and all the things which have been funded from this income into the future. This is a good idea. People will be opposed to it in principle, as they were to the initial lottery, but all the checks and balances we have built into this in more than a year of thinking about it, refining it, getting expert advice on it and looking at best practices internationally will strengthen the lottery into the future.

The nature of people's access to gambling is changing as more people use online facilities and so on. We need to make provision for that or, as I have indicated, the old model will simply run out of steam.

**Chairman:** The licence currently in place was due to expire this year. A six-month extension was given to An Post. If another State agency or a private agency was to take it on, would we need to provide for an extension in ten or 15 years' time or for whatever the licence period is in the legislation? If we had not engaged in this process, would we have been required under EU competition processes to put the licence on the open market?

**Deputy Brendan Howlin:** The Government made decisions in regard to this legislation in principle at the time I published the public capital programme. I was looking at everything available to us to fund infrastructure and to spend money on buildings and get construction workers back to work. We came up with the idea for this in November 2011 and I floated it. We have been working on it since then. In order to allow us the time to do so, I had to take advice from the Attorney General on whether I could extend the licence, and the advice was that I could do so on the basis that there was a process in train which had been accepted. The answer to the Chairman's question is that if the lottery licence runs out, there is no licence extant. We could not issue a new licence without going through a competitive process. Under European law, that would open it up to whomever wishes to tender for it. That is the norm.

**Deputy Liam Twomey:** Will the Minister explain what he just said a little more? We are essentially putting the licence out to tender, as was done 20 years ago.

**Deputy Brendan Howlin:** The last one was put out to tender in 2001.

**Deputy Liam Twomey:** We are simply putting it out to tender in exactly the same way?

**Deputy Brendan Howlin:** To be very honest about it, I have changed the conditions of the licence. I made it a 20-year licence to make it more attractive and to attract a larger up-front payment. The Deputy is right that what we are putting into the market is a licence which we are obliged under European law to put into the market. I cannot award it to An Post or to anybody else. The reason An Post has it is that it won the tender. If we were having this debate in advance of its winning the tender in 2001, it would be exactly the same debate. That is the way the licence is structured. We would have to have an opening tendering mechanism. As I indicated, Swiss Lotto was one of the organisations shortlisted on the last occasion, but it did not win the contract, which was won by An Post. I do not know who will win the licence and I have deliberately kept a mile away from the process of tendering. I have established a series of protocols, which are available on the Department's website, to show that. I should not be expressing any preference but I would not be displeased - I hope it is in order to say this - if An Post won this one as well. It may well tender for this licence as part of a consortium.

**Deputy Liam Twomey:** If, for instance, An Post got it, it would not be a fundamental

change to what has happened and to what we are doing now.

**Deputy Brendan Howlin:** What has changed is that there is a different licensing regime, because we now have a 20-year licence and different structure for it in that we are setting up an independent regulator. That is something I was going to go back to because Deputy McDonald threw in the point that it fundamentally altered the situation. Again had I brought in a provision such as: “the Minister having this responsibility “, I think there would be all sorts of criticisms. The way we regulate most things whether it is the energy or the transport sectors is by way of an independent statutory regulator.

**Deputy Mary Lou McDonald:** Deregulated and privatised.

**Chairman:** Will the Deputies address their remarks through the Chair?

**Deputy Mary Lou McDonald:** That is why we have regulators.

**Deputy Brendan Howlin:** No, that is not the case. There will not be two lotteries. There will be one lotto. A licence will be issued by the State to hold a national lottery in the State. It will be done by the successful tenderer, be that a commercial semi-State company or a private company, all of whom may have tendered for a previous licence. That is the long and the short of it.

**Deputy Richard Boyd Barrett:** I do not accept what the Minister has said. The Minister is putting the licence for the national lottery on the market, if nothing is changing what is the selling point? Why would a purchaser make a large upfront payment? If there is nothing in it for the purchaser why would they bother buying it?

**Deputy Brendan Howlin:** Nobody said there was nothing in it. Of course there is a profit margin in it for them.

**Deputy Richard Boyd Barrett:** That is the point.

**Deputy Brendan Howlin:** Why did An Post apply for the licence for the lottery?

**Deputy Richard Boyd Barrett:** An Post was paid a set fee.

**Deputy Brendan Howlin:** That is a different way of making a profit.

**Deputy Richard Boyd Barrett:** It is not because one is a moving profit line.

**Chairman:** We can all move upstairs to the canteen, which would be great. I could go into my office and do a bit of work, or we can discuss it using the structure of a Committee Stage debate.

**Deputy Brendan Howlin:** May I make my apologies to the Chair?

**Chairman:** Questions must be directed through the Chair.

**Deputy Richard Boyd Barrett:** The difference is that there is a moving profit line. That means the whole dynamic of the lottery will change. If nothing is changing why do we need to introduce new legislation?

**Deputy Brendan Howlin:** I am changing the timeframe of the licence as well as the payment mechanism. Instead of a fixed fee, it will be an upfront payment. That is the difference.

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I want an upfront payment to invest in our economy right now. I want to invest the money so that we build the children's hospital. I hope we will get money from the sale of the licence. We do not know how much will be bid for it, but we need the money now. We are in a national crisis. We must think outside the box. Rather than having payments over time, if I can get a company to pay a lump sum directly to me for the licence to run a company that makes a profit line that is controlled and regulated over time that is a good thing.

**Chairman:** Does Deputy McDonald wish to comment?

**Deputy Mary Lou McDonald:** The Minister and I are not going to agree on any of the above.

**Deputy Richard Boyd Barrett:** Chairman, I have made my points, but may I add a further point? May I raise the issue of the regulator?

**Deputy Brendan Howlin:** We will discuss that.

**Chairman:** I will tighten up the debate. We are discussing the repeal of legislation, which is a very broad interpretation of this section. As we progress through the sections, I will define how people refer to the section being discussed. I call Deputy McDonald.

**Deputy Mary Lou McDonald:** I was not seeking to speak at this stage, but if the Chair insists, I will.

**Chairman:** I am always delighted to hear the Deputy's lovely Dublin tones.

**Deputy Mary Lou McDonald:** The Chair is being charming.

Question put and declared carried.

## SECTION 4

**Chairman:** Deputy Sean Fleming has tabled amendment No. 2. Amendments Nos. 2 and 24 are related and will be discussed together by agreement.

**Deputy Sean Fleming:** I move amendment No. 2:

In page 6, between lines 26 and 27, to insert the following:

“4. The Minister shall, within one month of the enactment of this Bill, bring forward a report outlining how the proceeds from the sale of the National Lottery licence shall be ringfenced for the purposes of meeting the cost of constructing the National Children's Hospital.”.

I have spoken on this issue before. Although many are not in favour of gambling, the national lottery is part of the national psyche, so that debate is long since over. People like the national lottery. However, nobody likes selling State assets, if that can be avoided.

**Deputy Brendan Howlin:** Some people do.

**Deputy Sean Fleming:** Most people like to hold on to the family silver, and do not like to have to dispose of their assets. The main sweetener in terms of the public acceptability of the sale of the national lottery licence, is the absolute commitment given by the Minister for Public Expenditure and Reform as well as the Taoiseach and the Minister for Health that a substantial part of the proceeds from the upfront payment will go to the new children's hospital.

This Bill is silent on that issue. This is the place where we must walk the walk instead of talking the talk. This is the Bill in which we must insert a section dealing with the funding of the new children's hospital. Each time the Minister has spoken on this Bill, he has mentioned the national children's hospital. If the public were satisfied that a substantial portion of the national lottery fund would be ring-fenced for the new children's hospital, many, but not everybody would say that is a good idea. People would understand the reason for the sale of the State asset.

In my amendments I propose two methods of dealing with this issue. In amendment No. 2, I have circumscribed the limitations put on amendments submitted by Opposition Members by asking the Minister to give a report, outlining how the proceeds from the national lottery will be ring-fenced for the purpose of meeting the costs of the construction of the national children's hospital. In the course of the Second Stage debate the Minister said he was considering this issue. Now that we are on Committee Stage, the time for considering the use of the funds realised by the sale of the licence is now over, I would expect to hear from the Minister his commitment to do so and have it specified in legislation. The related amendment No. 24 seeks to amend section 41, which deals with the disbursement of funds to good causes, referring in particular to sport and recreation; national culture; the Arts; health; youth and so on. I have added "the National Children's Hospital;" to that list. If there is any substance to the talk of the Taoiseach and other Ministers, the Minister should be able to accept these amendments.

My main concern is that the main costs associated with constructing the new children's hospital will move to 2017 and 2018, depending on the environmental impact statement, planning conditions, the tendering process now that the proposed hospital on the Mater site is not now going ahead. There could have a closer match between the receipt of the funds, when the original statement was made, if the original plan had proceeded as intended. That has not now happened. I do not understand the mechanism by which the Minister can hold this fund. The Minister mentioned the G4 licences. My understanding is that the proceeds realised by G4 last year went into central funds, they did not get ring-fenced for the development of broadband in three years time. There is no other mechanism for the Minister to keep a couple of hundred million in the top drawer for the new children's hospital when it comes along in five years time. I want an assurance on the legal mechanism by which the Minister can actually say, the money that will be realised by the sale of the national lottery licence in the next 12 months can be ring-fenced and held for the national children's hospital. If it goes into the central fund it will be used to pay off the national debt at the end of the year in the end of year balance. When we come to need the money for the new children's hospital, the money that the sale will have realised will have been paid off to the international bond holders or whoever holds the Irish national debt.

Will the Minister respond to the issues I have raised? If the Minister accepts the amendment in principle, and ringfencing the proceeds or holding the money in some other mechanism for the new children hospital, will he explain how he can do that? I believe the Minister should hold this money, but I do not know how he can do that.

The fund that the regulator will hold for good causes does not specify that funds from the sale of the licence should go into that account, as this is not specified in the Bill. I look forward to hearing the Minister's response and then I will comment further.

**Deputy Brendan Howlin:** The Chairman is very indulgent but if I recall, the Ceann Comhairle was even more indulgent on Second Stage as we had a virtual Committee Stage debate on this point when Deputy Fleming made his contribution. I have given my word on what I intend

to do. What we are talking about is the mechanism for doing it. To add it as another beneficiary for good causes is not the way to go. I do not intend it to be a good cause that can be considered. I want it to get a big chunk of the up-front payment. I discussed what I envisage doing with my own departmental Secretary General. The Deputy is correct in saying that I had hoped all of this would be much more in sync, in other words that construction of the national children's hospital would start this year, but obviously the knocking of the original planning permission, the reassessment and the relocation has moved that back. Therefore, it is likely that we will have the accrued money from the sale of this licence available in advance of the requirement to draw it down for this purpose. The reason I mentioned the spectrum licence was that licence sales for money are not an unusual event but that did go to retire part of the national debt and it was part of the budgetary arithmetic and necessary to do that. By Government decision and by agreement with the troika from the outset, this money, by contrast, is not going to be used for that purpose, it is available to invest in the economy. I have always ring-fenced this money, even from other asset sales in terms of the stimulus package where the bulk of it would be used for job creation but eventually some of it would be used to retire debt. All of this money up-front payment, or the bulk of it, will be used to invest in the economy, depending on how much we get because, obviously, I am speaking in the abstract until I see the actual sum used to invest in the national children's hospital. It will be in some form of a ring-fenced account, the exact nature of which is being worked out. It will, I hope, be used to acquire some interest payments until it is required to be drawn down and used to build the national children's hospital.

**Deputy Sean Fleming:** I cannot accept that response. That is almost verbatim the response I got on Second Stage.

**Deputy Brendan Howlin:** At least I am consistent.

**Deputy Sean Fleming:** The Minister said he would look at it.

**Deputy Brendan Howlin:** I am saying-----

**Deputy Sean Fleming:** The Minister is still saying he wants to do it. I do not doubt that he wants to do it. I fully agree that if we are selling the national lottery this money should be ring-fenced. Now is the time to put in the legislation how he proposes to do it. I have given him the option of producing the report within one month of the enactment of the Bill. If the Minister is serious about it he should be able to accept the amendment. I will allow the Minister one month after the legislation is passed to put flesh on his good intentions. Good intentions are no good in reality. The Minister said he had agreement from the troika but the troika is leaving Ireland at the end of December. It is here for three years.

**Deputy Brendan Howlin:** Please God.

**Deputy Sean Fleming:** Please God unless the Government messes things up. I will withdraw that comment. I will leave it on the record.

**Deputy Brendan Howlin:** I can tell the Deputy in September if we did not.

**Deputy Sean Fleming:** We support the Minister's commitment to see out the three year programme and stick to it. The troika will not be here next year. Therefore, what the troika says or does, does not matter. It has told us it will make an annual visit to wish us well and to send on their cheque. The Minister also said he wanted to ring-fence it and that he hoped to acquire interest on an account he will hold somewhere in the meantime. We are now into that hopeful situation where we might have a way of resolving the issue. The Minister has given no specif-

ics. I am a member of the Committee of Public Accounts. The reason I raise the issue is that I do not know the mechanism by which this will be done. If the Minister was to say on Report Stage that he will hand the proceeds to the National Treasury Management Agency to manage the fund I would accept that but he will not even do that.

**Deputy Brendan Howlin:** That is the likely mechanism.

**Deputy Sean Fleming:** The legislation is going through now.

**Deputy Brendan Howlin:** That is not something I would ever put into the legislation.

**Deputy Sean Fleming:** The Minister is selling the legislation in the public mind on the sole basis that a large portion of the up-front payment is going to the national children's hospital.

**Deputy Brendan Howlin:** As it will.

**Deputy Sean Fleming:** I accept the Minister's good intentions but I need to see it. I am a doubting Thomas and it is our job to be a doubting Thomas. I accept the Minister's good intentions but when I do not see the legal mechanism under which he is doing it I cannot accept it. As we sit here today there is not a legal mechanism to do this. I have given the Minister the option of accepting the amendment. I will even give him the option of coming up with the mechanism one month after the legislation is passed. That is giving the Minister a couple of months to come up with the mechanism. I hope he can do that but if he cannot even accept an amendment which requires him to report to the House within a month of the legislation being passed on how he proposes to use the proceeds. Other Departments will have competing interests for the money in the next five years and will look at it enviously in an account managed by some State agency for, say, health purposes when, all of a sudden, the Minister for Health will require money for other purposes.

We need certainly on the issue. If the public was not guaranteed that a large portion of this up-front payment will go to the national children's hospital, there would be no public support for the proposal. Some people will oppose it anyway but I can say that people would be happy to support a national children's hospital, and this legislation, if they believed they were guaranteed it, but there is no guarantee other than the Minister's good intentions. I say that with no disrespect to the Minister. He may not be the Minister at the time. He may be in some other office in government. Governments come and go, and the Minister may not be the Minister who will receive this fund if there is a Cabinet reshuffle or something else happens. A commitment from a Minister regarding what he would like to do with the money does not stack up unless he backs it up by telling us precisely what will happen. I ask the Minister to accept the amendment that within one month of the passage of the Bill he will tell us how he proposes to do that.

**Chairman:** For the purpose of clarity, a mechanism can be put in by way of legislation but that is not to say that there is no mechanism available to do it. I ask the Minister to clarify that.

This meeting is being broadcast live. There may be people watching these proceedings at home. The national children's hospital is a significant part of the national lottery legislation.

**Deputy Sean Fleming:** It is not part of it at all. That is my point, Chairman. It is intended-----

**Chairman:** I accept that comment but it is very much in the context of what we are discussing this afternoon.

**Deputy Sean Fleming:** Yes.

**Chairman:** The tendering of the national lottery will arrive with a capital injection to the Exchequer.

**Deputy Sean Fleming:** There is no capital; the Chairman cannot say that. It is the receipt to central government; that is not capital.

**Chairman:** Okay. It is a receipt, and the desired intention is that there will be capital ring-fencing of a specific sum of money. We do not know what the tendering processes will be and therefore we cannot say to the dollar how much that capital sum will be or whatever. Deputy Fleming indicated that the National Treasury Management Agency may be a holding account for this while planning permission is being sought, the site is cleared and so on. Does the Minister have a process in place that is not in the legislation and if so, how he sees this being done? He might explain to us how it will happen.

**Deputy Brendan Howlin:** I will make a few points. First, the entire reasoning for this initiative is to build a national children's hospital. That is the genesis of it. When we were doing the public capital programme shortly after we came into office I published the public multiannual programme in November 2011. In order to hold €390 million - if I recall correctly - annual expenditure on capital for health I needed to squeeze other areas, and transport is one of the areas that was squeezed, as the Deputy will be aware. I came in for some criticism from the Deputy's party in reducing capital spend generally but we had to squeeze, and that was the decision we made. I have been looking for alternative ways of augmenting the public capital programme since, including moneys through the European Investment Bank and the sale of State assets generally.

I was determined, as was Government, to fund the national children's hospital. It required a very significant chunk of money and in the previous Government's structuring of it, another big chunk of the money was to come from philanthropy. To be blunt, I was never convinced that a volume of money of the size envisaged would come from philanthropy to fund it. I wanted to be certain that we had the money and that it was in place. I wanted to be able to say to the people with an honest heart that this would be built. In fairness to my Department, we examined all possible avenues and the availability of the licence money and how to structure it in a given way if an upfront payment presented itself. I presented that to Government and there has been a formal Government decision – it does not depend on my being in Government – to expend a significant sum of the proceeds of the upfront payment on the national children's hospital and that is what we intend to do.

It is not appropriate to tie that into this legislation. This is the advice I have received from the Office of the Parliamentary Counsel, but I am giving my commitment that this is what the Government intends and this is what I intend. How is it to be done? Initially it was not as challenging an issue because we could allocate it immediately to the Department of Health capital Vote because we would have used it immediately. However, since that is not going to happen we must put it somewhere on hold. It could be placed in an escrow account or a ring-fenced account within the NTMA family. To put it bluntly, I do not want it mixed with other money, I want to see it clear and true to be honest and faithful to the people in the commitments I have made. That is what we will devise.

I have no wish to report within one month, because within one month of enactment I will not know how much money I have. Only when we conclude the sale will we know the volume of

money and whether I have enough to build the hospital, whether I have a significant surplus or what the story will be. However, I would be happy to give a commitment to the committee and the Chairman, once the national lottery licence is sold, placed and taken up, to come back and explain exactly what to do with the money, and to take advices on that and bring in the NTMA and whoever else the committee wishes to discuss it.

**Chairman:** I will come back to Deputy Fleming. We are not making noises at one another anymore, Deputy McDonald. I gather you wish to come in.

**Deputy Mary Lou McDonald:** How much does the Minister need to raise for the hospital?

**Deputy Brendan Howlin:** The indicative figure is €250 million but that is not immutable. We will have to see the costings and so on.

**Deputy Mary Lou McDonald:** Naturally. The project has not gained planning permission as of yet. Our past experience might indicate that may not be as straightforward a proposition as people would wish.

**Deputy Brendan Howlin:** I cannot speak with absolute certainty.

**Deputy Mary Lou McDonald:** Yes, we cannot be certain. I imagine the Minister will appreciate the levels of doubt that enter into the equation. Deputy Fleming is right. The carrot for public opinion in the Minister's moves to change the structure of the lottery is the funding for the children's hospital. Therefore, it is entirely reasonable for the Minister to indicate the manner by which he would hold and ring-fence these moneys. The Minister is clear in his mind that he must do so. I recall this was raised and debated extensively on Second Stage. Now that we are on Committee Stage it is incredible the Minister is no further along in respect of being definitive around whatever sum is achieved and where it will rest. Therefore, I see no reason why the Minister could have a problem accepting Deputy Fleming's amendment. If this Bill goes through I fail to see why the Minister would not be in a position within one month to come back and tell people not in aspirational terms but in concrete terms where the money will rest to guarantee that it will be ring-fenced.

I hope there will not be a further delay in respect of the children's hospital but it might happen and if it does the public and taxpayers need to be sure that the money is secured and safe and that it will not be bled into other areas of expenditure. Given the Minister's refrain about challenging economic times we have no wish to find ourselves sitting in a committee room at a later stage being told that the intention was good but that challenging economic times meant that the kitty had to be raided. Therefore, I support Deputy Fleming's amendment and I see no good reason why the Minister should not accept it.

**Deputy Richard Boyd Barrett:** I support the amendment for all the reasons that have been stated already. I have a question about the troika. The Minister stated he had discussions with the troika about this matter and that he had secured the ring-fencing of this particular disposal and that it would be treated differently from others. Will the Minister elaborate on the discussions? How it is being treated differently? How does it relate to the overall commitment and requirement of the State to dispose of assets?

**Chairman:** I ask the Deputy to finish his point and then I will bring in the Minister.

**Deputy Richard Boyd Barrett:** That is it.

**Chairman:** Will the Minister address the questions of Deputy McDonald and Deputy Boyd Barrett?

**Deputy Brendan Howlin:** I really have nothing more to add for Deputy McDonald. I believe I have answered Deputy Fleming's questions and I have told the committee of the mechanism that I intend to pursue. I will not be in a position to come back within one month of the enactment of the legislation because by then we will not have the licence floated, we will not know who is interested and we will not have the deal done. Until we have that I will not be in a position to know the quantum of money I have. I will happily come back later and I have an open mind on it. I realise Deputy Fleming in particular is interested in the issue. Others might have a view as well but I have no wish to put it somewhere that does not accrue the best money. We are short of resources at the moment. Deputies might have ideas in that regard and I am willing to listen to them. However, I guarantee that it is my intention to have a significant sum of money, sufficient to build the national children's hospital, ring-fenced for that purpose. That is as much as I need to say about it.

Deputy Boyd Barrett asked a general question about my dealings with the troika. I have no wish to open a row with Deputy Fleming, who may have a point of contention in this regard. However, from the outset, the troika conveyed to us the understanding it had with the previous Administration that there was to be a significant sale of State assets and all moneys from the sale of State assets was to be used to pay down debt *simpliciter*. We engaged with the troika on the basis that this was unacceptable. We stated we would sell up to €3 billion of State assets excluding the national lottery. That was to be ring-fenced separately and was never put into this process. Following the initial argument we had and won we agreed half of the money was to be re-invested in job creation and the other half used to write down debt.

I re-engaged after that because one of the problems that arose especially in securing public private partnerships was back-stop money. To secure money from the European Investment Bank we needed to have a backstop from an Irish bank in normal circumstances. However, the governance structure of the European Investment Bank and other similar funding agencies require the backstop to be a AAA-rated resource of money. Of course the Irish banks were not AAA-rated. Other countries used some other resources. Some countries have used Cohesion Fund resources as the backstop to draw down European Investment Bank money.

I posited that we could use some of the resources of the sale of State assets to back-stop money that we could invest in job creation here and that was accepted. That is how the bulk of moneys from State assets sales will be treated, for example, in the case of the generating elements of Bord Gáis Éireann and probably some of the offshore generating capacity of ESB. However, we have always treated this licence separately and not as a State asset. That is why I have made the distinction. This was always a specific and unique proposal to find the capital wherewithal to build the national children's hospital and that is what I intend it to be.

**Deputy Sean Fleming:** I fully understand that the Minister cannot put a figure on what might come through. As a result, the Minister probably cannot indicate what proportion of what might come through will be put into it. However, will he indicate to us on Report Stage and state definitively that a fund will be opened for receipt of an amount? We realise no amount can be specified nor can exact dates at this stage. It is immaterial whether it is by the NTMA or held by the national lottery regulator. I am not saying the Minister wants to do that but I am trying to give him alternatives. He could tell the public as part of the discussion on Committee Stage that a fund will be open. Another possibility arises from the Minister's mention of the troika's being in town next month. After each visit a revised memorandum of understanding is issued

with a few small changes that have been agreed. There could be a sentence in that about the national lottery licence to which the Government has signed up and the troika, being the IMF, the EU and the ECB, could note the Government's decision that a portion of these proceeds will be in a designated account for the future construction of the national children's hospital. I know that the Minister cannot specify the figure, the amount or percentage but such a sentence would be good for the Minister.

It is not my job to help the Minister but it would be good for him to come out of that discussion with that paragraph in the revised memorandum of understanding next month. I would take some credit for making the suggestion. He needs to do something like that because good intentions are only that and there mechanisms that the Minister could easily use to deal with this issue, along the lines of my suggestion. I am not asking in my amendment that he specify amounts, percentages, dates or anything like that. I am asking only that he tell us how the amount, whatever it is, will be ring-fenced. I do not understand his reluctance to ring-fence his own commitment with some mechanism.

**Deputy Brendan Howlin:** I will reflect further on this between now and Report Stage. I am always reluctant to discuss any source of funding on which I have my own designs with the troika.

**Deputy Sean Fleming:** The Minister brought it up. I did not.

**Deputy Brendan Howlin:** I said that I have agreed with it but once we have a satisfactory agreement with the troika it is not my normal practice to open up discussions again because one never knows where these things will meander. I will reflect on what the Deputy is saying because I think he accepts my bona fides in this matter. Therefore I volunteer to come back once the national lottery licence has been acquired. If I can reflect on the suggestions made by the opposition Deputies between now and Report Stage we can discuss it further, if they accept my bona fides.

**Deputy Sean Fleming:** In light of that-----

**Chairman:** Apart from the fate of this amendment because that is a discussion for the floor, if the Minister is making a proposal, regardless of the outcome of this amendment, that he will come before this committee within a specific timeframe I will accept that.

**Deputy Sean Fleming:** I will not press the amendment on this Stage but unless I get clarification on Report Stage I will have no option but to push it to a division because I raised it on Second Stage and again here. I had intended pushing this to a division now but will not because the Minister seems to be listening. On Report Stage, however, I will not accept his saying that he is still reflecting on it. I will table both of these amendments again on Report Stage.

**Chairman:** Before I put the question I will clarify for the committee that, regardless of what happens on Report Stage, the Minister has made a formal offer to come before this committee after the licence has been awarded and a specific sum has been set aside. The committee will then engage with him on that issue. That is a formal proposal.

**Deputy Brendan Howlin:** Yes it is.

Amendment, by leave, withdrawn.

Section 4 agreed to.

Section 5 agreed to.

## SECTION 6

Question proposed: "That section 6 stand part of the Bill."

**Deputy Richard Boyd Barrett:** What is meant by section 6 (1), which states: "There shall be a National Lottery held on behalf of the Minister..."? I am not being facetious but I did not know that the Minister was so hard up that he needed a national lottery for himself.

**Deputy Brendan Howlin:** That is literally it. There will be a national lottery-----

**Deputy Richard Boyd Barrett:** Will it be held on the Minister's behalf?

**Deputy A:** Would Deputy Boyd Barrett like one for himself?

**Deputy Richard Boyd Barrett:** Yes, if they are going around.

**Deputy Brendan Howlin:** Unfortunately I will not be pocketing the proceeds.

**Deputy Richard Boyd Barrett:** What is it? Will the Minister explain it?

**Deputy Brendan Howlin:** It is that there shall be a national lottery. The beginning of the Act will state, "Be it enacted by the Oireachtas there shall be a National Lottery". That is vested in a Minister on behalf of the State in accordance with the terms set out in this Bill.

Question put and agreed to.

## SECTION 7

**Deputy Seán Fleming:** I move amendment No. 3:

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

"(4) The Regulator shall be subject to the Freedom of Information Acts 1997 and 2003."

I am sure that the Minister will accept the amendment because he is a fan of the freedom of information legislation. He tells us he is championing it and when we were discussing freedom of information here recently he made it clear that it was his intention that all new and future organisations in the State would be subject to the freedom of information legislation. We specifically asked him the last time he appeared before the joint committee about Irish Water and he said it was his intention that it would be subject to freedom of information legislation. I presume it was just a drafting omission that this was not included in the formal legislation.

**Deputy Brendan Howlin:** No. I indicated when I discussed it that it is absolutely my intention that the regulator would be subject to FOI but that is in the FOI Bill. We will not do this on a case-by-case basis. It will be an overarching Bill and the only organisations mentioned will be the exclusions. I want to do it that way. This amendment is not necessary. The regulator will be subject to FOI as will virtually everybody else, in accordance with the overarching FOI amendment legislation that I am bringing forward.

**Deputy Sean Fleming:** When does the Minister expect to do that?

**Deputy Brendan Howlin:** It will certainly be this year, if I can get the parliamentary time in the next session.

**Deputy Sean Fleming:** Is there a significance in which items of legislation go through the Oireachtas first? This Bill will have passed through the Oireachtas before we deal with the freedom of information legislation.

**Deputy Brendan Howlin:** The regulator does not exist now and we have to make the appointment subsequent to the enactment of the Bill. I am fairly confident that the overarching legislation will be in place before we have appointed somebody.

**Deputy Sean Fleming:** Is the Minister making a commitment that the national lottery regulator will be subject to freedom of information legislation?

**Deputy Brendan Howlin:** Yes

**Chairman:** How stands the amendment?

**Deputy Sean Fleming:** I am withdrawing it.

Amendment, by leave, withdrawn.

Question proposed: "That section 7 stand part of the Bill."

**Deputy Mary Lou McDonald:** I was interested in what the Minister said about the office of the regulator which he is establishing. It should be noted that the new national lottery regime will involve the creation of another public body or quango, whichever way he wishes to typify it. He can correct me if I am wrong but I understood him to say that he would envisage this regulator at some stage taking on a broader role in respect of the gambling industry. Will he expand on that? I have tabled amendments in respect of this office but I oppose the Bill wholesale and the introduction of this new regulatory function simply underlines the fact that the Minister is moving from the model we have had for the past 25 years into a privatised, for-profit, wholly commercial entity. The Minister referenced the energy and transport markets. He knows as well as I do that the regulatory function arose in respect of those markets as they were deregulated and privatised across the European Union. This initiative is very much part of that trend. That is my opposing view. Can the Minister clarify how the scope of the responsibility of the office of the regulator will be expanded in respect of the gambling industry more generally? The Minister indicated something in that regard earlier.

**Deputy Richard Boyd Barrett:** Consistent with my opposition to the Bill generally, I oppose the section. A regulator is needed where one was not needed before. A separate body is required because whereas the Minister was previously a shareholder of the national lottery, he will not be under the new regime. That is proof that this is privatisation. One considers the experience of two sectors where regulators failed disastrously. The Financial Regulator failed utterly to deal with a deregulated financial services and banking sector. When concerns were expressed about the liberalisation and deregulation of the banking sector, great assurances were given by the Governments of the day that the Financial Regulator was keeping an eye on things. The Financial Regulator, however, went native and failed completely to rein in the vultures and the financial and banking sector. Another example is the Taxi Regulator. The deregulation of the taxi industry has been an utter disaster. The Taxi Regulator, as any taxi driver will tell one, has failed catastrophically to deal with the consequences of the deregulation of the taxi sector. Both cases represent examples of neoliberalism gone mad, but here we have it again.

It is sad that we should be doing this. It is indicative of the fact that the lottery is being privatised that there is a need for a regulator. It is more than likely that we will have another

useless quango that is supposed to rein in what is likely to be a big push to expand online gambling by whatever private operator takes over. Judging by the past experience of regulators, we should not expect too much from the new regulator. It is another reason the Minister should retain direct control whereby whoever holds his office is accountable at some level to the public and the Oireachtas. The appointment of a regulator pushes things at one remove from direct accountability.

**Deputy Sean Fleming:** I oppose the establishment of a new quango - the national lottery regulator. I oppose every section related to the establishment of that quango. The Government has made a great play of cutting the number of State agencies. Specifically, the legislation provides for the Minister to perform the functions of the regulator on certain occasions. There is, therefore, nothing in the Bill that prevents the Minister from being the regulator. I do not see why the Minister needs to establish a new State agency to carry out functions the legislation provides that the Minister can carry out any time there is a vacancy in the office or in other circumstances. The Minister says the last national lottery licence was issued in 2000. The Minister has said himself that the national lottery is held in high esteem and has been operated in a way that is above board and above reproach. The licences were previously given out by the Minister who oversaw the competition for them. He did not need a new quango. It is the fashion in public administration in Europe at the moment to set up a regulator every time one wants to do something new when it is the line Department that should be doing it. There was no problem when previous licences were issued and Ministers were the people who approved them. An Post won the licence then and I cannot see what has changed in the meantime.

The Minister issued a public service reform plan document on 17 November 2011 in which a great deal of fanfare was made about a lot of things which the Minister has never followed through on. At appendix II of the document, the Minister referred to the rationalisation of State agencies and bodies. They are his words, not mine. The document states:

The Government is proposing to:

- (i) press ahead resolutely with the rationalisation and reduction of State Bodies;
- (ii) introduce “sunset clauses” when new Bodies are created;

On the next page, the document states: “In the future, legislation to create a new State Body must include a “sunset clause” ensuring the Body will cease to exist after a predetermined date unless the Body’s mandate is specifically renewed”. The Minister has told every other Minister that he or she cannot introduce a new regulator or quango unless a sunset clause is provided for, yet the legislation on the first quango he introduces himself does not contain one. Enough said.

**Chairman:** Can the Minister clarify if there is a regulator for the gaming, gambling and lottery industry currently?

**Deputy Brendan Howlin:** No.

**Chairman:** In light of the betting legislation that will be coming before the committee and the recognition that there is an “undertake” of revenue on foot of regulation in the broader gambling industry, will the lottery regulator be subsumed or evolved into a general gambling-gaming-lottery regulatory structure in future?

**Deputy Brendan Howlin:** I have been asked a number of questions. Some fair comments were made about regulatory failures in the past. I would not always blame the regulator, how-

ever. Some regulators are so hamstrung by overt Government policy that they are not intended to be an authoritative regulator. There was a deliberate policy decision by the previous administration which examined in a formal commission a structure of financial regulation and decided that light-touch regulation was appropriate. It is not fair to blame a light-touch regulator if his mandate was to have a light touch. The general view after that failure is that we need proper regulation. Bluntly, that should not be done at political level. It should be done at an accountable, regulatory level as is effectively done in other jurisdictions.

I understand Deputy Sean Fleming's point on the general position I set out in the 2011 document. We have made substantial progress on amalgamations and subsumptions in respect of 48 different bodies in 2012 alone. We are working on a range of further bodies now. There will be instances, however, where we must create new bodies. There was a period in which every issue was dealt with by establishing a new agency. Often, it suited Departments to do things at arm's length. Where possible, that should be re-integrated back to Departments. That has certainly been the Government's strategy. For new bodies which have a particular purpose, a sunset clause is appropriate. A regulator is a different kind of entity. As long as the business to be regulated exists, the regulator should be in place. In regard to the general point made by Deputy Boyd Barrett that somehow this is a sell-off or a privatisation, this is a lease of a licence that will revert entirely back to the State when the term of the lease is over.

It is not a sell-off in that sense at all. In regard to the Chairman's question on gambling, the issue of gambling is evolving and it is causing significant concern. The Department of Justice and Equality is preparing substantial overarching legislation on gambling. When we discussed in Cabinet the need to provide for a regulator for the lotto, the synergies in this regard were self-evident. Although it is clear that legislation will first have to emerge from the latter Department and I do not want to pre-empt that work, the Minister and I share the view that one regulator should in due course have a responsibility not only for the lotto but also for gambling in general. That may evolve when the new legislation is introduced.

There will be no charge to the State because the regulator will be funded from lotto income. We will deal with the specifics of the funding in subsequent amendments because Deputy Fleming made several salient points in this regard on Second Stage.

In regard to accountability, section 22 of the Bill as published makes the regulator fully accountable to the Oireachtas by virtue of annual reports and being called to give account before this committee or whatever committee is appropriate. That is important.

**Deputy Sean Fleming:** This Bill establishes the office of the regulator of the national lottery. The Minister indicates that an office is not a State body but a regulator. He stated that cases may arise whereby a regulator needs to continue in existence when he or she has something to regulate. I accept there are instances in which new agencies are required and his own document specifically notes that legislation creating new State bodies will have to include sunset clauses. However, he is now offering a more nuanced position by stating that it will not apply to regulators. Who else will be exempted from the sunset clause? I do not believe he has previously indicated that he would provide for exemptions from the clause. I accept his good intentions in publishing his document but he does not provide for a sunset clause in this instance. Is this the only exception in the legislation he is responsible for preparing?

**Deputy Richard Boyd Barrett:** The Minister is correct to point out that the failings in the financial and taxi sectors were not solely the fault of the regulators. However, they were also not simply due to policies or light touch regulation. There was a deliberate policy of deregula-

tion of the financial sector. That was not only the cavalier attitude of the former Minister for Finance, Charlie McCreevy. A general policy of deregulation and privatisation was favoured or dominant in a range of sectors. I put it to the Minister that it is not possible to deny he is committing an act of deregulation and privatisation if he is moving from a situation in which he is the regulator and shareholder in the national lottery, alongside a State company as the other shareholder, to one where a body at one remove from direct accountability becomes the regulator and the State is no longer a shareholder. I do not see how he can sustain his argument. The reason he sets out for a new quango is because something that was significantly under his control and subject to a degree of public accountability will now be controlled by some private and almost certainly external commercially driven entity. This has to be controlled and regulated, particularly in a sector in which one has to be careful. Gambling should not be allowed to run riot. If the running riot of certain elements of the financial and banking sector caused serious problems, allowing gambling to run riot would also be potentially dangerous for society. I am worried that the regulation will be at a further remove from political accountability, and for that reason I oppose the section and everything related to it in the Bill.

Even under the current Government, how often do we get answers when we raise questions about the taxi or financial sectors? We are told it is the regulators' job to deal with the issues arising. The terminology used when Departments reject our parliamentary questions is that they are not in their remit.

**Chairman:** Perhaps we should have regulator at committee meetings in regard to speaking about banks.

**Deputy Richard Boyd Barrett:** I am speaking directly to the issue. The Minister is well aware that we are told the issues raised are not in the remit of Departments and we are directed to the relevant regulator. The reason the citizen has come to the politician is because he or she cannot get an answer from the regulator. The fact that the new regulator will be funded by a private company, even though part of the problem in the financial sector was that the regulator went native, causes one to ask serious questions about how this could be construed as a good thing.

**Deputy Sean Fleming:** I propose that the Minister be required to accept parliamentary questions in respect of the regulator. The HSE is a separate agency from the Department of Health and when we submit a parliamentary question to the Minister for Health it is sent to the HSE for direct reply. It is not sufficient to make the regulator available to committee for an hour or two every year. We require ongoing access to information. A mechanism has been put in place for the HSE and I ask the Minister, Deputy Howlin, to consider it as part of the reporting structure.

**Deputy Brendan Howlin:** I will deal with the last question first. I do not think I have ever been asked a question pertaining to the regulator in my current position as regulator. I do not think a plethora of concerns will be raised regarding the operation of the lotto. It is a good idea to bring the regulator before committees. We are defining the regulator's role in law. Deputy Boyd Barrett gives the impression that we will be leaving a woman or man to do his or her own thing. If the regulator does not meet his or her responsibilities the Oireachtas has to hold him or her to account. We must, as an Oireachtas, hold him or her to account. That is the way the checks and balances should work in the system here. If it did not work in the past, it was not always the regulator's fault. The Deputy has been critical of the taxi regulator with regard to the current situation in that sector. There was a time when a taxi licence had a cash value, which ran to hundreds of thousands of euro. The notion that the right to operate a taxi would have such a

capital value was wrong. It was also virtually impossible to get a licence for a taxi at that time and something had to be done about that situation. I have no responsibility for the taxi sector, and I am sure the Minister for Transport, Tourism and Sport would be willing to answer any questions in that regard. We have an obligation to change the terms of reference of a regulator if it is not meeting the requirements. The same applies in this regard.

I believe gambling will be an issue in the future. I am concerned about the plethora of new casinos opening in towns all over the country. The volume of online gambling is also huge. We seem to have no control over this and will need to have a proper discussion on the issue. However, that comes within the remit of the Minister for Justice and Equality, who will bring forth specific legislation in that regard.

I do not believe that all new bodies, whether regulatory in nature or not, are by definition defunct or inappropriate. It is sometimes very appropriate to establish a new body to carry out a specific function. I do not believe the regulator proposed in this legislation will be compromised because he or she will be funded by the industry. Many regulators, as a normal part of their functioning, are so funded and are completely independent notwithstanding that. I have made the case for this as best I can. The regulator will be accountable to the Oireachtas. An annual report will also be provided and can be debated by the Houses. The regulator can also be called to appear before a committee to answer specific questions. The system will be a very open one.

Question put and declared carried.

#### SECTION 8

**Chairman:** I note section 8 is opposed by Deputy Fleming.

Question, “That section 8 stand part of the Bill”, put and declared carried.

#### SECTION 9

**Chairman:** Amendments Nos. 4 and 5 are related and will be discussed together by agreement.

**Deputy Brendan Howlin:** I move amendment No. 4:

In page 7, line 32, to delete “and”.

Amendment No. 4 seeks the insertion of a comma. Amendment No. 5 seeks to ensure that the long-term sustainability of the national lottery is safeguarded. I have reviewed this since the Second Stage debate and now believe that the long-term sustainability of the national lottery is a consideration that the regulator must in the exercise of his or her functions regard as a first priority. Other considerations, already included in the Bill, are that the regulator must ensure the national lottery is run with due propriety and that the interests of participants in the national lottery are protected. Amendment No. 5 provides for the addition of a third requirement, namely, that the regulator ensure the long-term sustainability of the national lottery is safeguarded. My motivation is to ensure that the regulator seeks to protect the national lottery brand beyond the period of the licence. This issue was raised by many contributors to the Second Stage debate.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 5:

In page 7, line 33, to delete “protected.” and substitute the following:

“protected, and

(c) that the long term sustainability of the National Lottery is safeguarded.”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 6:

In page 8, between lines 5 and 6, to insert the following:

“(5) The Regulator may exercise the enforcement rights of any trade mark of the National Lottery under the Trade Marks Act 1996 or exercise such rights jointly with the licence holder.”.

It is considered appropriate that the regulator would have the power to exercise the enforcement rights of any trademark of the national lottery under the Trade Marks Act 1996. The amendment provides that the regulator may exercise such rights jointly with the holder of the licence to operate the lottery. This is a prudent provision. While the operator is likely to be vigilant in this regard, the regulator must be equally so, particularly in the context of preserving the brand beyond the period of the licence.

Amendment agreed to.

Question, “That section 9, as amended, stand part of the Bill”, put and declared carried.

## SECTION 10

**Deputy Brendan Howlin:** I move amendment No. 7:

In page 8, line 10, to delete “(otherwise than under the licence)”.

Section 10 grants the regulator the power to hold or procure the holding of the national lottery in accordance with the Act but limits the exercise of this power in circumstances where a licence is not in force. It is proposed to delete the words “otherwise than under the licence” as the regulator will not have the power to hold any lottery games while a licence to operate the national lottery is in force. It is envisaged that the regulator’s power to hold the national lottery will be only used in extreme circumstances - for example, if the licence is revoked. This is a tidying of the language of this provision.

Amendment agreed to.

Section 10, as amended, agreed to.

## SECTION 11

**Chairman:** Amendments Nos. 8 and 9 are related and will be discussed together by agreement.

**Deputy Sean Fleming:** I move amendment No. 8:

In page 8, line 22, after “term” to insert “and the salary of the Regulator shall be approved by both Houses of the Oireachtas”.

This amendment relates to the term of office of the regulator. Section 11 provides that such office shall be for a period of seven years and allows for a second contract of seven years. The amendment seeks to insert that the salary of the regulator shall be approved by both Houses of the Oireachtas. There are too many cases of Ministers having approval in this regard. We discussed the issue of payments and salaries in the public interest earlier. It would be good public practice if from now on the salaries of all heads of State bodies or agencies were approved by the Houses of the Oireachtas rather than by the board of the organisation concerned or the line Minister, even with the approval of the Minister for Public Expenditure and Reform or the Minister for Finance. It would be good practice if in future all such salaries were approved by the Houses of the Oireachtas.

**Deputy Brendan Howlin:** The national lottery regulator shall be a public servant, as are all other regulators, including in the communications and energy areas. Members will appreciate that the salaries of such officers are determined by the Minister for Public Expenditure and Reform. I do not consider it appropriate to depart from this practice in the case of one specific officeholder. I would be willing to consider such a proposal in the context of all officeholders but not only in this particular instance.

**Deputy Sean Fleming:** The Minister appears to be saying that there is merit in the proposal but not only in respect of the regulator in this area.

**Deputy Brendan Howlin:** It would be invidious to say that this sole officeholder-----

**Deputy Sean Fleming:** It is a new position.

**Deputy Brendan Howlin:** I understand that and also that we have a vehicle in the legislation before us to do this. I am minded to listen to any view with regard to greater transparency in these matters but to provide that the salary of only this officeholder be subject to approval by the Houses of the Oireachtas-----

**Deputy Sean Fleming:** The Minister might set this as a test case and we will support him in amending all other relevant legislation to bring it into line with this proposal.

**Deputy Brendan Howlin:** I would not like to introduce this particular proposal because I do not believe a vote is required in respect of every officeholder. Whether we can have a more transparent reporting system is an issue constantly under review. However, I do not propose to accept this amendment.

**Deputy Sean Fleming:** My point has been well made.

Amendment put and declared lost.

Section 11 agreed to.

## SECTION 12

**Chairman:** Amendment No. 9 was discussed with amendment No. 8.

**Deputy Sean Fleming:** I move amendment No. 9:

In page 8, line 33, after “Oireachtas” to insert “for the approval of such reasons by each

such House”.

For the same reasons I already outlined, I would like this amendment to be accepted.  
Amendment put and declared lost.

Question proposed: “That section 12 stand part of the Bill.”

**Deputy Richard Boyd Barrett:** I refer to the discussion we just had about the failures of regulation in the past. The Minister explained it by saying the attitude of the Government of the day was the problem.

**Chairman:** This section relates to matters concerning the appointment, resignation and remuneration of the regulator. We will not go into the application of regulation but the specifics of this section.

**Deputy Richard Boyd Barrett:** That was exactly what I was talking about. If the Chairman would let me finish-----

**Chairman:** If I could get the Deputy started, I would be happier. Will the Deputy please speak on the section?

**Deputy Richard Boyd Barrett:** Notwithstanding the Chairman’s attitude, I will make the point I was going to make, which is that the Minister acknowledged the problem with regulators can be that the Government of the day, which writes the legislation for a regulator, can often be at fault in the failures of the regulator. In so far as this section sets out the framework around which a regulator can be made accountable for what he or she should do and can be removed from office if he or she is not doing it, it states he or she can be removed if he or she is unable to carry out his or her duties due to ill-health or if there is misbehaviour, but it does not mention circumstances in which he or she is not regulating properly. It should be more specific in terms of what we consider the effective functioning of the office and if he or she is not doing it properly. There is no provision for removing the regulator if he or she is not regulating as he or she should be. I do not know how one would word that. I do not have a wording off the top of my head.

**Chairman:** I note there are no amendments-----

**Deputy Richard Boyd Barrett:** One is allowed raise issues on Committee Stage.

**Chairman:** Yes, but I remind the Deputy that he is not actually a member of this select sub-committee. I have been quite flexible with him. He is not a member of this select sub-committee-----

**Deputy Richard Boyd Barrett:** I am substituting for someone.

**Chairman:** I did not get notification of that other than the Deputy coming in. If he wants to table an amendment, he should do so on Report Stage.

**Deputy Richard Boyd Barrett:** I am making the point now. There are no limits on my making the point now.

**Chairman:** There are no limits on the Deputy, but if he wants-----

**Deputy Richard Boyd Barrett:** Then I do not understand why the Chairman is cutting across me.

**Chairman:** The Deputy should respect the Chair.

**Deputy Richard Boyd Barrett:** I will respect the Chair if the Chair is being fair.

**Chairman:** No. The Deputy should respect the rulings of the Chair.

**Deputy Richard Boyd Barrett:** What is the ruling of the Chair?

**Chairman:** The ruling of the Chair is that if the Deputy wants to table an amendment, he should do so on Report Stage.

**Deputy Richard Boyd Barrett:** I am allowed to make a comment on this section and on the possible need for it to be expanded.

**Chairman:** It should relate to the section.

**Deputy Richard Boyd Barrett:** I just did so. I said that as far as I was concerned-----

**Chairman:** I am inviting the Deputy to continue. Does he wish to continue?

**Deputy Richard Boyd Barrett:** I do. I wanted to continue a couple of minutes ago. I am making the point that this section seems to have a very narrow set of reasons for removing a regulator and none seems to relate to the potential failure of a regulator to regulate properly. Maybe the Minister will think about that, as I will do. That is something at which we might look before we conclude the Bill.

Question put and agreed to.

Question, "That section 13 stand part of the Bill", put and declared carried.

Question, "That section 14 stand part of the Bill", put and declared carried.

## SECTION 15

**Deputy Mary Lou McDonald:** I move amendment No. 10:

In page 9, line 15, to delete "12 months" and substitute "24 months".

The Minister has very strangely limited the cooling-off period to 12 months should the regulator complete his or her term of office or leave that position in advance of taking up any office, consultancy or employment where in the course of such office, consultancy or employment the person could or might use or disclose any confidential information acquired by him or her in the exercise of his or her functions of regulator under this Act. He will remember that there was a clear commitment in the programme for Government stating that the Government would amend the rules to ensure that no senior public servant, including a political appointee or Minister, could work in the private sector in any area involving potential conflict of interest with his or her former area of public employment until at least two years had elapsed after he or she has left the public service. Two years is 24 months and not 12 months.

This office of regulator is to be funded by the industry, which, as the Minister correctly identified, is not an unusual or unique thing. He also identified concerns he has about the gambling industry in this State. He indicated that this office of regulator will attend not only to the issues pertaining to the national lottery but to the gambling industry more generally, which is a highly

lucrative industry.

The Minister proposes, for reasons I cannot understand, a 12-month cooling off period for a regulator once he or she leaves office. I propose he keep the commitment made in the programme for Government, that he accept my amendment and that he stay true to the two-year period, quite aside from the clearly stated commitment in the programme for Government, to maintain public confidence in the gambling and gaming industry, which is extremely socially contentious for many people and which generates levels of fear and anxiety for reasons with which I am sure we are all familiar. It is new terrain in many senses in terms of regulation of this industry in this State. Gambling is a highly lucrative industry and we are entering new terrain in terms of regulating it. However, it would be completely unacceptable for the Minister to move to a 12-month cooling-off period, and I believe he should accept my amendment. I see no reason the Minister cannot raise the bar to a two-year cooling-off period, as this is in line with the commitment in the programme for Government.

**Deputy Brendan Howlin:** I am very mindful of the point made by Deputy McDonald and I am well aware of the content of the programme for Government, having led the Labour Party team in negotiating it. We are mindful of what we heard in the Mahon tribunal and in the recent debates on this issue. We have had a lengthy debate on the shaping of the lobbying legislation. I do not want to dwell on this point now, but we will debate it.

There is an issue to be addressed: the need for a clean break when people who have been involved in the creation of public policy leave for a career in the private sector with a company, lobby group or any work that overlaps with the work they were doing previously on behalf of the State. The cure for the issue has to be proportionate. I have had very strong representation on the constitutional rights of individuals. One cannot remove the possibility of employment from a person for a very long period. What is the appropriate period? It is a matter of debate; it requires a judgement call to ensure the cure to the potential infirmity is proportionate. Having given this issue a great deal of consideration - I am not suggesting this is a perfect solution or that Deputy McDonald's amendment is not a worthy solution as well - on balance, I believe a proportionate prohibition would be of the order of 12 months, and that is what I propose to recommend to the committee.

**Deputy Sean Fleming:** When a person's term of office in the public sector is up, he or she cannot work in the private sector until a period of 12 months has elapsed. Will the person be compensated for not being able to earn an income during that period? Will he or she receive a golden handshake? How will that be factored in? When I spoke about the remuneration of such people on amendment No. 8, the Minister told me they were public servants and their salaries would be tied to the salary of other regulators, which stands at €188,000. However, if a person is not in a position to earn that income for a year after he or she leaves the post, who carries the cost of that 12-month period?

**Deputy Brendan Howlin:** The Deputy is making a very fair point. That is part of my consideration. The longer the prohibition, the stronger the case such a person would have for significant recompense. I do not want to create such a burden on the public service as I think there would be public resistance to it. If the period is reasonable - I believe 12 months is a reasonable period - people would understand on taking up the job that the prohibition is in place and that they can leave and take up another job, but not in any area that is linked to the previous work they did in the public sphere. That imposition could be a contractual one without requiring the State to pay for it.

**Deputy Sean Fleming:** Who will give approval for such a person to take up a job after leaving his or her post? I understand the current position is that if a senior public official leaves to work in an area outside the public service, approval is required from a more senior Secretary General to say there is no conflict of interest. That is not covered in the Bill. What level of person can grant a former regulator permission to take up a post or arbitrate on that decision?

**Deputy Brendan Howlin:** There is a committee at present - I am speaking off the top of my head because I am not a member of it, but as far as I am aware - which comprises the Secretary General of my Department and the Secretary General of the Government, but what I intend to do in the lobbying legislation is to specify that in law.

**Deputy Mary Lou McDonald:** I do not accept the Minister's explanation for his decision on the 12-month cooling-off period. I presume that when the Minister headed the Labour Party delegation in the negotiation of the programme for Government, he had reflected on these matters considerably and had sought some legal advice on the matter. The regulator's term of office is seven years; however, there is the capacity for the person to serve a second term. Particularly in the context of the gambling and gaming industry, it is extraordinary that the Minister would consider it appropriate that a person who had served as regulator could go into consultancy or private work in the same area after a 12-month cooling-off period. That is not just right. Whatever the stated cooling-off period - we are arguing the toss between one and two years - the critical element is that in the terms of the contract signed and agreed between the State and the person who will take up the position of regulator, the terms and conditions are fully expressed and understood. One cannot compel a person to become the regulator. A person will enter into that role of his own free will and volition. I am astonished at the answer the Minister gave me. Does this mean the programme for Government commitment to a two-year cooling-off period is now off the table? Has the Minister ditched that provision as a general principle?

I do not accept the Minister's point. It displays very poor judgment, if I may say so, on his part. What the public will hear about this legislation are clear messages on the children's hospital and the lotto, but they will not be aware that the position of regulator is intended to have a reach far beyond the national lottery and into the industry of gambling and gaming as a whole. I do not believe for a second the Minister would have any public support for the notion that such a regulator of the gaming industry could, just 12 months after leaving the employment of the State, go into consultancy or some other private role within that industry. I am very alarmed at that. I ask the Minister to reconsider his position. That should be easy enough for the Minister as, after all, he signed up to this commitment in the programme for Government. Of all the things I have heard today, this alarms me the most. As the Minister is responsible for reform in the public sector, he is so eager for reform that we have this new departure for the national lottery. I think a two-year cooling-off period is by every means proportionate, and not just proportionate but absolutely necessary for public confidence in this regulatory office.

**Chairman:** Before I ask the Minister to reply, I have a question that needs to be clarified. In respect of the appointment of the regulator, can a person be recruited from either the private or the public sector?

**Deputy Brendan Howlin:** Yes.

**Chairman:** So the person appointed as regulator could be a senior public servant in the Revenue Commissioners or in any other area, or could be a chief executive officer of one of the gambling houses in Ireland - a poacher-turned-gamekeeper, for want of a better example?

**Deputy Brendan Howlin:** Yes.

**Chairman:** At the end of the period, be it the seven-year period or an extension of that, one could have a senior public servant returning to the Department or a senior person from the private sector returning to the private sector.

**Deputy Brendan Howlin:** The person from the private sector could not go back into the gambling area for a period of 12 months if this legislation is enacted.

Let me deal with the issues raised. I know Deputy McDonald likes to couch everything in nice alarmist terms.

**Deputy Mary Lou McDonald:** It is not the least bit alarmist; I am conforming with the term in the programme for Government. I ask the Minister to answer the question. There is no need to be insulting.

**Chairman:** I will bring in the Deputy again.

**Deputy Brendan Howlin:** If I may speak?

**Deputy Mary Lou McDonald:** This is a regular feature of the Minister's response to me and it is very irritating. I do not know if it is specially reserved for women in the Dáil, but I find it very irritating.

**Chairman:** It may happen above in the Chamber during Minister's questions, but I try to operate a different culture here when we are in committee.

**Deputy Brendan Howlin:** The Deputy likes to meander into the challenges of sexism as well, which I greatly resent.

**Deputy Mary Lou McDonald:** If the Minister resents it he should not behave in that manner. It is not complicated.

**Chairman:** I might need a cooling-off period here for five or ten minutes, besides the issue we are debating.

**Deputy Brendan Howlin:** I will deal with the issues.

**Chairman:** Perhaps the Minister and the Deputy would refer to the amendment.

**Deputy Brendan Howlin:** I will deal with the issue directly put to me but if I am patronised or matronised I will deal with that in like fashion. These are very serious matters. This is serious legislation. I know there are styles that Deputies bring to bear on these things. The style of sudden alarm is one of Deputy McDonald's and I want to refer to that because this should be done in a calm way.

**Deputy Mary Lou McDonald:** If ever there was a patronising remark, that is it. I object to the tone of the remark. The Chairman is charged with ensuring a mature and appropriate exchange. The Minister does this time out of number. He attacks the style of the speaker when it happens to be a woman who is speaking. That is just a reaction.

**Chairman:** Deputy McDonald, please.

**Deputy Mary Lou McDonald:** If the Minister would desist from that and simply answer

the substance of my amendment-----

**Chairman:** Deputy McDonald, I am on my feet. I do not want to suspend the meeting, but as soon as I rise to my feet I must ask you to respect the Chair, regardless of what opinion you may have with regard to other members of the committee. You will respect this Chair. Is that agreed?

**Deputy Mary Lou McDonald:** That is agreed.

**Chairman:** When I am on my feet, what does that mean? It means that members desist from talking. Let us establish the basic rules before the committee continues. I will sit down and make a ruling. I will give the Deputy time to facilitate her response to the Minister. I will ask both the Deputy and the Minister to refrain from referring to personal styles. I will ask the Minister to respond to the substance of the amendment and I will ask the Deputy to desist from interrupting when the Minister is replying. Is that agreed?

**Deputy Mary Lou McDonald:** Yes.

**Deputy Brendan Howlin:** I should like to deal with the issues. Certainly we gave this much thought, in as much as we could, during the negotiation of the programme for Government. In the preparation for policy in advance of the programme for Government, we considered, in response to the Mahon tribunal and other recommendations, what would be a proper cooling-off period between holding office and being re-employed. Obviously things have evolved since then, because we have published the heads of a Bill. We have had forums and hundreds of submissions. I am very conscious that there are people working in the public sphere who cannot be deprived of a livelihood for a protracted period. It is a matter of judgment and a matter of balance as to what is the appropriate period. There are no cooling-off periods now, by and large. There is a committee that people reference. We will probably be able to think of instances in which appointments were made or people moved into areas that would not be particularly appropriate on leaving the public service. This is a matter we will look at in best practice when we deal with the lobbying legislation. I do not think Deputy McDonald or anybody else can make generalisations from this until we see the general provisions of the lobbyist Bill which will be published in due course. We will have ample time to debate them and, I hope, discuss these matters in a mature way and make rational decisions that provide for the essential balance between an issue to be addressed and a cure that is proportionate and fair to people. We do not debar people from applying for other jobs after leaving because if we did so they would not apply for the original job, saying they could not work for two years after they left it. Nor can we make the law subject to constitutional challenge, with people saying they are deprived of their livelihood.

All we are discussing at this committee is the National Lottery Bill and, in particular, the lotto regulator. I have indicated for the purpose of giving information that I and the Cabinet have had discussions on the potential of the role to be expanded and how it is to be expanded. Deputy McDonald referred to the regulator as having a role in gambling. That is a potential role. It will require very specific legislation that will have to be debated in full measure if and when that comes, and it will be a matter for the Minister for Justice and Equality. As of now all we are talking about is a regulator to regulate the new lotto that will come to pass.

**Deputy Mary Lou McDonald:** I have set out in a rational, factual and measured way the reason I believe a two-year cooling off period is not just appropriate but absolutely necessary. It happens to tally precisely with the commitment given in the programme for Government.

This is a new office. This is a new departure if the Minister is successful in bringing forward the legislation in respect of the running of the national lottery. He has indicated clearly that the office of this regulator will in all likelihood extend beyond the lottery and into the broader gambling and gaming industry. It is as much for the protection of the good name and standing and integrity of whomsoever might be the regulator that there should be an appropriate cooling-off period. I do not accept the arguments around constitutional difficulties. The cooling-off period does not represent a denial of a person's ability to find employment *per se*; it represents a very specific limitation on those areas of employment into which a regulator might enter, with the public interest in mind. That is why cooling-off periods are countenanced. I am extremely disappointed the commitment made in the programme for Government is not being honoured in this instance.

Amendment put and declared lost.

Question, "That section 15 stand part of the Bill", put and declared carried.

#### SECTION 16

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

**Deputy Sean Fleming:** Section 16 reads:

The Regulator shall not hold any other office or employment in respect of which emoluments are payable during his or her term of office.

I asked about this on Second Stage. I presume the regulator for the Irish lottery will be part of the European lottery syndicate and the EuroMillions Lottery. Is he prohibited from receiving a payment? As regulator, in the course of his functions, he may have to be involved in some other organisation, not specifically one I have mentioned, where an emolument might be appropriate.

**Deputy Brendan Howlin:** The idea is that this is a job and that he would not be doing any other job from which payment would accrue. I will reflect further on the particular point because I am not sure whether there is a separate payment for that or if it is in the terms of reference for the job.

**Deputy Sean Fleming:** Through the Chair, I am only asking out of curiosity. We all know the Irish lotto is part of the EuroMillions lottery. I have no doubt the chief executive of the national lottery is a member of some European management committee for that outfit. Perhaps the Minister would clarify the current arrangements when we get to the next Stage.

**Deputy Brendan Howlin:** I will ask my officials to examine the issue. The Deputy is interested in the operator having a role. I will check whether there is a European regulatory role.

Question put and agreed to.

Question, "That section 17 stand part of the Bill", put and declared carried.

Question, "That section 18 stand part of the Bill", put and declared carried.

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

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

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

## SECTION 22

**Chairman:** Amendments Nos. 11, 40 and 41 are related and will be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 11:

In page 12, line 14, to delete "3 months" and substitute "4 months".

The amendment is simply to delete the phrase "3 months" and replace it with "4 months". A period of four months is the standard for a listed company to publish accounts in Ireland. It is proposed to amend sections 22 (2), 47(2) and 47(3) in order that this standard accounting mechanism applies to the national lottery regulator and the national lottery operator.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 12:

In page 12, lines 25 and 26, to delete "shall make a report to the Houses of the Oireachtas each year regarding the regulation of the National Lottery and".

Section 22 currently provides that the regulator shall be required to make an annual report to the Minister and the Oireachtas committee with functions relating to the national lottery. The amendment provides that he or she shall be required to make a report to the Minister only. The Minister will then be required to lay copies of the regulator's annual report and accounts before each House of the Oireachtas. I emphasise that the regulator will still be required to appear before the Oireachtas committee whose functions relate to the national lottery - in other words, this committee - when requested to do so by the committee. In essence, instead of having a report for the Minister and the Oireachtas there will be one report that the Minister must lay before the Houses.

Amendment agreed to.

Question, "That section 22, as amended, stand part of the Bill", put and declared carried.

Question, "That section 23 stand part of the Bill", put and declared carried.

*Sitting suspended at 4.25 p.m. and resumed at 4.40 p.m.*

## SECTION 24

**Chairman:** Amendments Nos. 13 and 14 are being taken together. If amendment No. 13 is agreed to, amendment No. 14 cannot be moved.

**Deputy Brendan Howlin:** I move amendment No. 13:

In page 13, to delete line 5.

It is considered appropriate to remove section 24(2) of the Bill. The annual levy to be paid by the operator of the national lottery licence shall be specified in the licence itself.

**Deputy Sean Fleming:** The subsection states: “The amount of levy under this section shall be decided by the Regulator.” The Minister has just said that he is deleting that line and that this will be covered by the licence agreement which means that the person bidding for the licence will know the amount of the levy he or she will have to pay. I am most unhappy with that because it is bad enough setting up a new quango but to give the head of the quango a blank cheque on which he can write any figure the regulator decides by way of the levy payable to keep him and his office in existence is completely wrong. I ask the Minister to take on board the remarks I made about this on Second Stage because there is no balance in this situation. The regulator will decide on the scale of the office, the length of the lease and how many millions of euro he or she will spend and then will say “I have a lovely big office and operation and need a lot of money for contingencies and I would like plenty in reserve in case of legal fees and court challenges arising so I will set a high levy.” The regulator should not be allowed to set the levy because it will be completing a blank cheque to pay for its own operation. The Minister rather than the regulator should set the levy. The Minister has gone in the opposite direction. He is removing the subsection, saying it is not necessary because the regulator will decide the levy and it will be in the tender document for the licence. I want somebody other than the regulator to decide its big fat budget. Does the Minister understand my point?

**Deputy Brendan Howlin:** The Deputy is correct and I removed the subsection because it is not going to be set by the regulator. I will set it in the licence but to meet the point the Deputy is making I will accept a Report Stage amendment which I will discuss with the Deputy. I want to ensure that there is clarity about the levy such that whoever bids for the licence will not feel that the Minister can alter it. I cannot accept the Deputy’s amendment *simpliciter* because if that was in the legislation the implication might be that a Minister might be able to alter it. I accept the Deputy’s point and we might use a phrase like “The Minister while setting the terms of the licence . . . “. I will return to this point on Report Stage and I will discuss it with the Deputy between now and then.

**Deputy Sean Fleming:** This leads into a new area. What role will the Minister have in drawing up the licence agreement? Did we cover this already? The Minister will have to approve the licence. I have to draw the Minister’s attention to this, the mobile telephone licences are a parallel situation. The communications regulator, not the Minister, issues the licence for the various mobile telephone companies. At the Committee of Public Accounts I complained to the regulator that I could not get a signal on my new iPhone. He told me that in the licence he had issued he had specified a requirement for a lower level of coverage for the population using the new iPhones under the 3G licence than under the old 2G licence. That has had a phenomenal impact on people buying iPhones who have no signal because the regulator went soft on the companies about their coverage. The Minister did not seem to have a role there. What role will the Minister have in the terms of this licence. Why buy a dog if you are going to bark? The Minister is setting up a regulator but he is going to call the shots. Why does he need a regulator?

**Deputy Brendan Howlin:** I will approve this licence because the regulator will not exist.

**Deputy Sean Fleming:** Will that cover the licence for 20 years?

**Deputy Brendan Howlin:** Yes but the regulator will regulate the national lottery in accordance with this Act. Compliance with the terms of the licence will be a matter for the regulator.

**Deputy Sean Fleming:** Will the Minister clarify that point?

**Deputy Brendan Howlin:** We are talking about the levy.

**Deputy Sean Fleming:** Will the Minister set the levy in the tender?

**Deputy Brendan Howlin:** Yes.

**Deputy Sean Fleming:** Will that be a public document?

**Deputy Brendan Howlin:** Yes.

**Deputy Sean Fleming:** What is the Minister's timetable? Does he expect to have all this in place before he sets up the national lottery office? I would like the Minister to just sketch in the sequence. I do not want to tie him down to specific months.

**Deputy Brendan Howlin:** We are dealing with the legislation now. We are working on the terms of the licence. The levy will be set in that context. I might set out a timeframe and give it to the Chairman for him to send out to members. The indicative timeframe is: the launch of the competition, which we have done; in the third quarter of this year, select the preferred bidder and negotiate the final terms; in the fourth quarter, the up-front consideration payable by the successful bidder, and we hope to have the allocation of money by the end of the year; and in 2014, commencement of the licence subject to transitional arrangements, to begin from next year.

**Deputy Sean Fleming:** Can we expect to see that money this year?

**Deputy Brendan Howlin:** It is envisaged that the money will be payable to whatever mechanism we determine in the last quarter of this year.

**Deputy Sean Fleming:** To go back to the first part of the Minister's timeframe, has he already opened up the competition?

**Deputy Brendan Howlin:** No it will not be opened until the legislation is enacted.

**Deputy Sean Fleming:** Will it happen within the next month or two, before the summer?

**Deputy Brendan Howlin:** We cannot pre-empt the process in the Oireachtas but as soon as it is done.

**Deputy Sean Fleming:** I thank the Minister.

Amendment agreed to.

Amendment No. 14 not moved.

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

**Deputy Sean Fleming:** I oppose this section.

Question put and agreed to.

## SECTION 25

Question proposed: "That section 25 stand part of the Bill."

**Deputy Sean Fleming:** I am opposing the section.

Question put and declared carried.

SECTION 26

**Deputy Brendan Howlin:** I move amendment No. 15:

In page 13, between lines 28 and 29, to insert the following:

“(2) The Regulator may draw up a draft of a licence to be issued as part of the competition referred to in subsection (1). The draft shall be submitted to the Minister for his or her approval before being issued.”

This amendment should be read in conjunction with section 25 as well as section 26. It deals with the issue of a licence in a 20-year timeframe rather than the current timeframe.

Section 25 provides that the Minister may issue a direction to the regulator in relation to the next licence to be granted by the regulator. This amendment provides that a draft licence issued by the regulator as part of a competition for a licence shall require the approval of a Minister prior to it being issued. The purpose of the amendment is to enable the Minister to ensure that the draft licence issued as part of a competitive process fully reflects the direction he issued to the regulator under section 25.

I reiterate it is not envisaged that any such direction would be issued in the context of the competition for the next national licence. It is intended that the competition for the next licence will be determined by my Department prior to the establishment of the office of the regulator, as we discussed. This is for the licence after the next one.

**Deputy Sean Fleming:** This is for the licence in 2033.

**Deputy Brendan Howlin:** Yes.

**Deputy Sean Fleming:** To return to the first point, I understand from what the Minister said - he can understand why I have opposed everything in connection with the regulator - that he and his Department will do all the heavy lifting.

**Deputy Brendan Howlin:** For this one.

**Deputy Sean Fleming:** For this one for the next 20 years. The Minister will do all the heavy lifting, deal with the tendering process, issue the licence, specify the details, award the licence and receive the upfront payment. In terms of the regulator receiving the payment, that office will not even exist when the cheque comes in. I get that point now. Having done all the work, what is the need for a regulator other than to protect the trademark of the lotto? That seems to be all the regulator will do. The Minister will do all the work. The game is over when the Minister has issued the licence and a competent operator is in place. I know the operator requires supervision but the case for the regulator is even weaker than I had thought because the Minister will do all the work. The regulator will only have to do some ongoing monitoring of the operation for the next 20 years. For what is the regulator needed?

**Deputy Brendan Howlin:** I understand the Deputy's point but, by definition, an office that does not exist cannot do all the work we need in the timeframe we want it done. Therefore, we have done that. My Department and officials have been working on this since we made the decision in Cabinet at the end of 2011. The Deputy is right that this involved a huge volume of work, a huge volume of international analysis and we have also had professional advisers in, as we have explained.

The role of the regulator is to regulate in accordance with both the licence and the Act. It is a very substantial industry of €750 million turnover annually. It is not an inconsequential sum of money. If one considers other regulators, they probably deal with less important volumes of money. It is important that this is dealt with in a very transparent and open way. It will be done in accordance with the legislation. I like the new reporting mechanism to the Oireachtas, which is something I picked up from the case made by Deputy Fleming on Second Stage. Even if we do not travel down the road we discussed of expanding the role of the regulator to cover a broader gambling area, there will be a significant volume of work for the regulator to do.

**Deputy Sean Fleming:** The Minister indicated that he does not receive parliamentary questions on the current lottery.

**Deputy Brendan Howlin:** Seldom.

**Deputy Sean Fleming:** That proves how well his Department is running it or monitoring An Post's operation of it. Therefore, there is no need for a regulator. If there was some disquiet or people had queries, I could understand the Minister considering there was a need for an independent regulator. His remarks have proved that the operation is running very well, and long may it continue, under the auspices of the Department or the line Minister up to now. The Minister will take on all the work of issuing the next licence and receiving the upfront payment. One wonders what the next regulator will do given that the Department that has been regulating the operation up to now did not receive even one parliamentary question on any single aspect of it.

**Deputy Brendan Howlin:** I did not quite say that. I do not want to leave that stand on the record. I am not sure if we got some but we did not get very many.

**Deputy Sean Fleming:** The Department would have received practically none or very few. One would almost wonder if this office of a regulator is being set up because it is the fashion at the moment to set up a regulator every time there is something new like this. It comes back to the basic point.

**Deputy Brendan Howlin:** I understand the point made. We are not setting up an enormous organisation. This will be a very small operation, funded by the lotto. It is something we can keep under review. We will see how it pans out over time and we can always return to it if necessary. I think there will be sufficient work. It is a job of work that is discreet. Deputy Heather Humphreys has spoken to me privately regarding a concern about online gambling generally and how we can regulate it. There might be an expansion role for a regulator in this area.

Amendment agreed to.

**Chairman:** I note the section is opposed by Deputy MacDonald.

Question, "That section 26, as amended, stand part of the Bill", put and declared carried.

## SECTION 27

**Deputy Brendan Howlin:** I move amendment No. 16:

In page 14, to delete line 20 and substitute the following:

"(2) The Regulator may not amend a licence regarding—

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- (a) the duration of its period of operation except in accordance with any terms or conditions set out in the licence,
- (b) provisions governing the payment for good causes included in the licence,
- (c) provisions governing the rate of commission payable to retailers included in the licence, or
- (d) any list of prohibited games included in the licence.”.

Section 27 provides that in general the regulator may amend the terms and conditions of the licence. Subsection 27(3) provides that the regulator may amend the terms and conditions of the licence only with the written consent of the licence holder where the licence provides that the term in question may only be altered with the consent of the licence holder.

Subsection (2) currently provides that the regulator may not amend the licence regarding its period of operation. I am proposing an expanded subsection (2) which would provide that a number of additional terms of the licence may not be amended, namely, those terms which concern the payment for good causes, the rates of commission payable to retailers as well as any list of prohibited games included in the licence. This amendment will give clarity and certainty to the various stakeholders in relation to key provisions of the licence.

Members focused in on a few issues on Committee Stage. For the avoidance of doubt, once the licence is agreed in the terms I have laid out, for example, the provision to pay providers of the service - franchisees - their rate, that cannot be amended subsequently. That will give clarity and certainty to people in regard to the licence and its operation for the duration of the 20 years.

**Chairman:** From tracking the discussion on this, I understand the Bill prior to this amendment did not provide a timeline or process for game approvals in the system. Is that correct?

**Deputy Brendan Howlin:** Sorry?

**Chairman:** I understand the Bill prior to this amendment did not include a timeline or a process for games approvals in the system.

**Deputy Brendan Howlin:** Yes.

**Chairman:** There were regulatory difficulties with that. If a new game was put into the lottery process such as a different type of scratch card or something like that it would have to be in sequence with the regulator. This amendment corrects that. Is the Minister indicating it does not correct that?

**Deputy Brendan Howlin:** That is not encompassed by this amendment. That is a separate issue.

**Chairman:** That is being dealt with as well separately.

**Deputy Brendan Howlin:** Yes.

**Deputy Sean Fleming:** The Minister might explain the sequence in terms of his amendment. It states, “The Regulator may not amend ... provisions governing the payment for good causes ...”. Up to now An Post or the National Lottery company collected the money and handed over the proceeds to, I understand, the Minister’s Department for distribution for good causes.

**Deputy Brendan Howlin:** To go into a designated fund in the NTMA.

**Deputy Sean Fleming:** Sometimes the lottery grants are very specific and organisations know that but other times the lottery grants from Minister's Department are subsumed into Government Estimates as in the case of social housing. One might see an Estimate for the Department of the Environment, Community and Local Government with a figure for social housing and it would state, "which includes a portion funded by.....", but one would not know how much, for what or from where.

It is good that the regulator will not be able to amend the provisions governing the payment for good causes. I thought the regulator was to hand the money over to the Minister's Department and the Government decided on the payment for good causes. I do not know why that provision is included in the amendment. Prior to this amendment, had the regulator the ability to make changes regarding the payment for good causes? Could the regulator have amended this?

The Minister spoke about establishing regulators and in the past regulators were over-prescribed with Government policy. The Minister is proving his point here in that the regulator can do very little at this stage when all these provisions in terms of the regulator are included. As the legislation is drafted, is there provision governing the payment of a good cause under the remit of the regulator? I thought that was the job of the Government.

**Deputy Brendan Howlin:** It is the Government's job and I never intended the regulator to be able to alter that, but for the avoidance of doubt I am being explicit about it now.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 17:

In page 14, line 23, to delete "operator" and substitute "licence holder".

The purpose of the amendment is to replace the term "operator" with the word "licence holder" in line 23 is to make the subsection internally consistent in language.

Amendment agreed to.

Question proposed: "That section 27, as amended, stand part of the Bill."

**Chairman:** The trend in other jurisdictions where lotteries are in place is that due to the evolution of software technology the terminal points can also have additional services other than the lottery. For example, one could perhaps pay one's ESB bill or other bill. Is there an implication with regard to the section that such facilities could be developed in the future?

**Deputy Brendan Howlin:** We thought about that and I am interested in hearing whether members have a different view on it. We are not allowing that. An amendment is being tabled to allow the system to be used for communication of a public interest message if the network is in place in the event of an emergency, for example. It is not envisaged that we would use the lotto network to sell other products or take out----

**Chairman:** What about mobile top-ups or other such services?

**Deputy Brendan Howlin:** No. That is not envisaged. I do not know whether people have views on that but my view is that we should keep the service as a discrete one.

**Chairman:** The Minister's view is that we should ring-fence the activity.

**Deputy Sean Fleming:** We are ring-fencing something at last.

Question put and agreed to.

## SECTION 28

**Chairman:** Amendments Nos. 18 and 19 are related and will be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 18:

In page 14, line 34, to delete "certified" and substitute "deemed".

The word "deemed" is considered more appropriate as it reflects the fact that it is up to the regulator to judge if certain details of the licence are commercially sensitive. Section 28(3) provides that details of a licence certified by a regulator to be commercially sensitive shall not be published unless the regulator considers there is an overriding public interest compelling it to do so.

The proposed new subsection (4) provides that in such a situation the licence holder should be given the opportunity to make representations to the regulator on matter. That is before publication. However, it shall be up to the regulator to make a final decision on whether publication should happen.

**Deputy Sean Fleming:** Will the Minister elaborate on commercial sensitivity? How would the details of the licence be deemed to be commercially sensitive given that the Minister said he would publish the conditions of the licence on the *eTenders* website? Could he explain the difference between the tender documents, which will outline conditions, and the rules and regulations regarding the tenders people make? How could information become commercially sensitive after the fact?

I understand commercial sensitivity. For example, if a company is awarded a contract by a public body, the details of the contract are commercially sensitive. It might harm a company's chances in bidding for the next contract in six months' time or a similar contract elsewhere if someone were to use the information on the successful bidder for commercial purposes in a future bid. Given that the next licence will be 20 years hence, who could use the information against the licence holder or operator, whichever term one uses, given that it will be at least 20 years before any competition can arise? I do not see the need for commercial sensitivity given that a monopoly situation will apply. The Minister has said there will be only one national lottery. We do not disagree with that, but it is a monopoly. How could a monopoly be concerned, as it does not have any competitors?

**Deputy Brendan Howlin:** The Deputy is making a strong and compelling case. Under the existing legislation and all the amendments to it going back to 1986, the licence issued by the Minister was not published as it was deemed to be commercially sensitive. I think that we should move away from that, which is the way we are going. It is not an area in which I have personal expertise. I am guided by the professional advice we have from the commercial sector to move in this direction. The advice is that there is commercial sensitivity involved which is the reason for the replication in the Bill in the manner outlined. The net question the Deputy has asked is what is commercially sensitive about an application that will not be replicated for a

long time. My answer is that I do not know, but the advice I have is to draft the Bill in this way for reasons of commercial sensitivity. This is no more than doing what was done in 1986, when it was considered that the original licence and its terms were commercially sensitive.

**Deputy Sean Fleming:** Through the Chair, such licences were for shorter periods of five to seven years initially. I ask the Minister to provide a note on the section for Report Stage.

**Deputy Brendan Howlin:** Okay.

**Deputy Sean Fleming:** Is it the lazy man's approach to just throw in what was done the last time?

**Deputy Brendan Howlin:** I will ask our advisers to deal with the specific question posed by the Deputy.

**Chairman:** I appreciate Deputy Fleming's position. The national lottery is not a single product agency. It has multiple products, if I can use that term, including scratch cards. There are variations on how the system works. Other companies compete with it, such as Rehab Lotteries, which operates a scratch card so there might be a sensitivity in terms of different operators who are in competition with the national lottery. That must be taken on board as well when the Minister responds on the matter.

**Deputy Brendan Howlin:** I will ask our advisers to examine all the points raised. The points are well made.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 19:

In page 14, between lines 36 and 37, to insert the following:

“(4) In the event of the Regulator deeming that details of a licence which are deemed by him or her to be commercially sensitive should be published in the public interest, he or she shall give the licence holder notice of his intention to do so and afford the licence holder an opportunity to make representations.”.

Amendment agreed to.

Section 28, as amended, agreed to.

## SECTION 29

**Deputy Brendan Howlin:** I move amendment No. 20:

In page 15, lines 10 to 12, to delete all words from and including “shall” in line 10 down to and including ““operator”.” in line 12 and substitute the following:

“shall—

(a) be formed as a company, or

(b) if the holder is (at the time of the application for the licence) a company or a company formed in another jurisdiction, form a company, for the sole purpose of operating the National Lottery in accordance with the terms and conditions of the licence and is referred to in this Act as the “operator”.”.

The purpose of the amendment is to require that the licence holder be established as a company specifically to operate the licence, or if the licence holder is already established as a company, or is a company formed in another jurisdiction, that it forms itself as a company for the sole purpose of operating the licence.

**Deputy Sean Fleming:** We have touched on an interesting point in the amendment. I ask the Minister to specify what he means by a company on Report Stage, because there are various forms of company. For example, one can have a company limited by the amount of paid up capital or one limited by guarantee. Many voluntary organisations have companies and people put their name to them. Could the Minister specify the nature of the company intended? More to the point, in the event of the holder already being a company or one formed in another jurisdiction, I signal my intention to table a Report Stage amendment on the section to the effect that the holder of the licence would be resident for tax purposes in this country. We do not want to see a situation whereby the profits from the national lottery would be in Jamaica or other such country, for example, in a tax haven.

We have seen reports in recent days that the company the Revenue has employed to handle the call charges for people on the property tax has moved its tax affairs and is not tax resident in this country. The company is making a profit. I also understand the company was connected with one handling the calls for the third level grants administered by SUSI. The parent company of those companies is not resident in this country for tax purposes. It would be galling if the profit of the operator or licence holder was not to pay income tax or corporation tax in this country. The Minister might say the licence is subject to international competition. At a minimum the licence holding company must be resident in this country. Perhaps the Minister will tell me there is some reason that cannot be done within the EU or within a country with which we have a double-taxation agreement. However, we cannot have a situation where the holding company for the company running the Irish lottery, which is located on an island in the South Pacific, is not obliged to pay any corporation tax on the profits it makes on the lottery in Ireland by virtue of it being in a foreign tax haven. I would welcome the Minister's views on that. I will raise the matter again on Report Stage.

**Deputy Brendan Howlin:** These issues are important, and we have discussed them. I do not know whether the Deputy has read the terms of the previous licence but the current licence holder is exempt from corporation tax.

**Deputy Sean Fleming:** Correct. It is An Post. We understand that. Most semi-State companies are exempt.

**Deputy Brendan Howlin:** Even the national lottery company, a subsidiary of An Post, is not necessarily exempt from corporation tax unless it was specified. The intention is that the new operator will not be exempt from corporation tax. The issues regarding location and taxation are matters that will be dealt with in the licence, and I will give the Deputy a fuller explanation of that on Report Stage or I might write to him between now and Report Stage to have him brought up to speed on that. There are issues of European competition law that we are engaged with in regard to that, but I will advise the Deputy of the position.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 21:

In page 15, between lines 15 and 16, to insert the following:

“(3) Notwithstanding *subsection (2)* lottery infrastructure may be availed of in circumstances where it is of benefit to the community or is in the public interest but this may only be done by agreement between the regulator and operator following a proposal by the Minister.”.

Section 29(2) provides that the sole object of the operator shall be the holding of the national lottery under the licence, and the doing of such things as are incidental or conducive to achieving that objective. The amendment provides that, notwithstanding this, national lottery infrastructure may be used in circumstances to benefit the community or where they are in the public interest. That is the point to which I referred. What is envisaged here is that perhaps at some point in the future, national lottery infrastructure, whether on the Internet or in shops, could be used to provide a service of a public nature. Examples could be the display of notices regarding a missing person or a warning in the event of a major accident or incident or severe weather.

**Deputy Sean Fleming:** And not for payment of household tax.

**Deputy Brendan Howlin:** That would not be envisaged, no.

**Deputy Sean Fleming:** It would not be in the public interest.

**Deputy Brendan Howlin:** We will debate that point but it might not be conducive to attracting people to use the machine.

**Chairman:** A vote has been called in the Dáil. We will have a brief suspension but I want to get to the end of this section.

Amendment agreed to.

Section 29, as amended, agreed to.

**Chairman:** We will suspend the meeting while the vote takes place in the Chamber. Following that we will recommence immediately. Is that agreed? Agreed.

*Sitting suspended at 5.13 p.m and resumed at 5.15 p.m.*

#### SECTION 30

**Chairman:** We will recommence on section 30, which is opposed by Deputy McDonald.

Question, “That section 30 stand part of the Bill”, put and declared carried.

Sections 31 to 39, inclusive, agreed to.

#### SECTION 40

**Deputy Mary Lou McDonald:** I move amendment No. 22:

In page 22, line 8, to delete “50 per cent” and substitute “55 per cent”.

In the legislation the Minister has pitched the total value of the prize money at not less than 50% of the total moneys. My amendment proposes to raise that to 55%. The logic behind that is that the increased on-line sales, which will be facilitated by the new regime in this legislation, should be reflected in a greater take for the playing public in respect of prize money.

**Deputy Brendan Howlin:** Clearly the operator will want to give the biggest payback that is

consistent with running an effective lottery because the bigger the prize, the more people play. Under the 1986 National Lottery Act, the minimum percentage of sales which may be paid out in prizes is 40%. I am proposing to increase it from 40% to 50%. Deputy McDonald suggests going a little further. From 40% to 50% is a significant increase in terms of the payout. When one balances giving a decent take of 6.5% to the retailers and maintaining the income stream for good causes, 50% is about right. There will be games when it will be considerably more than that, but that is the minimum. That is the floor; it is not the ceiling.

Amendment put and declared lost.

**Chairman:** Amendment No. 23 involves a potential charge on the Exchequer and must be ruled out of order in accordance with Standing Orders. However, if the Deputy wants to address the general substance of what she was proposing-----

**Deputy Brendan Howlin:** Kind of address it.

**Chairman:** -----she can do so when we are discussing the section.

**Deputy Mary Lou McDonald:** Yes. That is fine.

Amendment No. 23 not moved.

Question proposed: "That section 40 stand part of the Bill."

**Deputy Mary Lou McDonald:** One of the major concerns for the taxpayers and citizens will be that the level of moneys going to good causes will be maintained. For that reason, I thought it appropriate that this proportion be named in the legislation. I would like to hear the Minister's views on that. The amendment was ruled out of order but I would find that helpful. Equally, in respect of the take for retailers, as this represents a fundamental shift in the model of the lottery, it is good practice to give certainty, in as much as the Minister can do so, to retailers but, particularly from my point of view, to the good causes that have been funded by the lottery. That was my thinking in tabling the amendment.

**Deputy Brendan Howlin:** Deputy McDonald has a parliamentary question down today for written answer on the same issue but I do not know if she has had a chance to read the reply.

**Deputy Mary Lou McDonald:** I have not seen it, no.

**Deputy Brendan Howlin:** If the Chairman allows me do so it might help if I read the reply.

**Chairman:** Yes.

**Deputy Brendan Howlin:** Deputy McDonald's question was to ask the Minister for Public Expenditure the measures to be put in place to ensure an alignment of interests between good cause beneficiaries and the new operator within the new national lottery licence framework.

The reply states:

Since 1986, the lottery licence has been managed by An Post National Lottery Company and has made a significant contribution to the State through making good cause contributions of approximately €4 billion. Importantly, the new licence is being designed to align interests between the new operator and the State with the objective of maximising contributions to be paid to good causes over the life of the next licence.

Therefore it is intended that good causes contributions under the new licence will be linked to a percentage of Gross Gaming Revenues (Sales less Prizes) over the period of the new licence. This will offer the new licensee greater flexibility and scope for the growth and development of lottery games and distribution channels. Growth in Good Cause Revenues will ensure contributions to Good Causes are maximised over the period of the new licence.

Our aim is to maximise the annual payment to Good Causes over the period of the new licence. This will be determined prior to the launch of the licence competition when a number of other matters in relation to the licence structure and licence competition have been determined. This development follows detailed engagement by our financial advisers Davy with the marketplace.

The Government's aim in this process is to deliver a significant upfront payment while ensuring that the annual revenues for good causes are maximised.

We are considering how to maximise the income stream to good causes. It is a question of whether we should just fix the figure at 30% of revenue, as indicated, or whether it might be more successful to set a percentage of what we called gross gaming revenues, that is, sales minus revenue. Our advices and the international trend suggest maximisation of the input. There will be a different take per game. If one sets a threshold of 30% per game, one will not have the same income stream available as would be available according to the formula I am setting out. Some games will actually generate little enough profit, while some will generate very large profits. We want to set an overarching figure, that is, full sales minus the prizes, which will constitute a minimum of 50%. The remainder will be an income stream for good causes. Our intention is that the sum will certainly not be less than that which has been available to date.

**Deputy Mary Lou McDonald:** I presume this is a work in progress and that the Minister has not settled on a precise formula.

**Deputy Brendan Howlin:** Exactly.

**Deputy Mary Lou McDonald:** I take it as read that the objective is to maximise the revenue for good causes.

**Deputy Brendan Howlin:** It is my intention that the income stream will not be less than that which has been available to date.

**Deputy Mary Lou McDonald:** The Minister will have to settle upon some formula. How will we monitor how this plays out in practice? Let us imagine a scenario in which, despite the Minister's best efforts, the revenue stream decreases. Who will keep an eye on this? Will it be the regulator or the Minister?

**Deputy Brendan Howlin:** It will be the Minister, the regulator and the operator. The objective is to maximise the yield in a consistent manner. We could design a structure that would have a bigger flow of income but we need to have checks and balances, and that is why we have structured the system as we have. It is a fact that if fewer people play over time, because of economic necessity or more attractive foreign lotteries, it will reduce the volume of money available, not only for prizes but also for good causes. We wanted to design the system such that it would be a robust player in the international market and so that Irish people would want to play the Irish lotto.

**Deputy Mary Lou McDonald:** When will we know the formula the Minister has settled

on?

**Deputy Brendan Howlin:** When the licence arrangements are finalised.

If the Deputies opposite want to be briefed on the general thinking on this legislation, I will have no difficulty with it.

**Deputy Sean Fleming:** When is Report Stage?

**Deputy Brendan Howlin:** Soon. The Deputies may be briefed even after Report Stage to inform them of developments and so the terms of the licence will be clear.

**Deputy Sean Fleming:** I thank the Minister.

**Deputy Mary Lou McDonald:** I thank the Minister.

**Deputy Brendan Howlin:** I assume we can brief the Deputies on a confidential basis.

**Chairman:** Report Stage cannot be taken before 17 April.

**Deputy Brendan Howlin:** I think it is set for 18 April.

Question put and agreed to.

#### SECTION 41

Amendment No. 24 not moved.

Amendment, by leave, withdrawn.

**Deputy Brendan Howlin:** I move amendment No. 25:

In page 22, lines 22 and 23, to delete “the Regulator” and substitute “the Minister”.

Given that any decision to determine additional objectives for national lottery funding shall be made by the Government, it is considered appropriate that the Minister, who is a member of the Government, shall be responsible for causing the publication of that decision in *Iris Oifigiúil* rather than the regulator. This mirrors Deputy Fleming’s amendment, the intention of which is the same.

Amendment agreed to.

Amendment No. 26 not moved.

Section 41, as amended, agreed to.

#### SECTION 42

**Deputy Sean Fleming:** I move amendment No. 27:

In page 22, line 28, after “persons” to insert “, such remuneration shall be approved by the Minister”.

A licence may provide for authorisation by the operator of persons to sell national lottery tickets and the remuneration of such persons. I wish to include “such remuneration shall be approved by the Minister”. If the Minister is issuing the first licence – I was not sure about this when drafting the amendments – he will actually set the remuneration under the licence.

**Deputy Brendan Howlin:** Yes.

**Deputy Sean Fleming:** Therefore, the amendment is unnecessary. In an earlier amendment directly related to this topic, No. 16, it is stipulated that the regular may not amend a licence regarding provisions governing the rate of commission payable to retailers included in the licence. That the regulator has not had the authority and that the Minister is doing it in the first instance sounds a bit-----

**Deputy Brendan Howlin:** Could I explain? The Deputy is correct that I, as Minister, will be issuing the first licence. It is my intention to preserve the margin payable to retailers at the current rate. That will be set in the licence. For the avoidance of doubt, the regulator will have the right to amend the license terms with the agreement in writing of the operator. He or she will not have the right to alter the payment schedule.

**Deputy Sean Fleming:** The commission rate.

**Deputy Brendan Howlin:** Correct.

**Deputy Sean Fleming:** I am happy with that.

Amendment, by leave, withdrawn.

**Deputy Brendan Howlin:** I move amendment No. 28:

In page 22, line 29, to delete “total” and substitute “minimum”.

I am proposing this amendment to section 42. It is a particularly important section of the Bill as it deals with the sale of national lottery tickets. In subsection 42(1)(b) it is proposed to substitute the word “minimum” for the word “total”. The Bill should provide that the number of retailers should be allowed to grow rather than be constrained at a set amount. By setting a minimum we are protecting the interests of retailers who may have some concerns that any new operators operating in their own area would reduce the number of retail outlets.

For the information of the select sub-committee, the number of retail outlets at present is 3,750 nationwide. This amendment ensures that this number will be retained as a minimum for the next 20 years. The Bill as now drafted provides that this number would be the total but I am suggesting that it should be the minimum.

**Deputy Sean Fleming:** The amendment is to be welcomed. As we are talking about the sale of national lottery tickets, can the Minister talk about all the staff who are currently working with the national lottery and their agents? What transfer arrangements will there be to any new operator regarding those who are involved in the sale of lottery tickets?

**Deputy Brendan Howlin:** At official level, we have had discussions with the management of the national lottery company and also with the management of An Post which is the employer of the majority of the staff. Many of them were on secondment with the right to return. Officials of my Department have had some discussions with trade union representatives and staff associations of the national lottery. These discussions were held in order to clarify the issues that arise in the context of the next licence. Further engagement in relation to this matter is happening right now. In view of the ongoing consultation I do not want to say any more about it. However, the welfare, transfer and safeguarding of lottery personnel must and will be encompassed in the whole process. There is a dialogue with the staff representatives underway.

**Deputy Sean Fleming:** Will it be covered in the licence?

**Deputy Brendan Howlin:** Yes.

Amendment agreed to.

**Chairman:** Amendments Nos. 29 and 30 are related and may be discussed together by agreement.

**Deputy Brendan Howlin:** I move amendment No. 29:

In page 23, line 7, to delete “by all means available including” and substitute “through”.

In subsection 42(5) it is proposed to delete the words “by all means available including” and substitute the word “through”. This is considered a more precise wording. The subsection provides that the operator of the national lottery may sell tickets via interactive channels. Interactive channels are defined in subsection 42(2) as communications over the Internet that use any device from which the Internet is able to be accessed. This definition covers lottery play on the Internet whether it is accessed by a computer or by a portable device such as a mobile phone or tablet.

I wish to stress that the regulator will be responsible for ensuring that all national lottery games played on the Internet will have a robust player protection mechanism. At the moment, the national lottery games on the Internet are available on a pilot basis. As members are aware, section 42(5) will provide that a national lottery operator may sell tickets through interactive channels.

I have already stated that the regulator will be responsible for considering and approving any new games which the operator may wish to introduce, whether these games are Internet-based or available in shops only. The regulator will be responsible for ensuring that any new games will be sufficiently robust from a player protection point of view.

Section 9 sets out the overarching functions of the regulator, which will include ensuring that the national lottery is run with all due propriety and that the interests of participants are protected. In view of all this, I do not consider the amendment is necessary.

It is worth noting that safeguards are already in place with respect to current online activity, which is permitted by An Post’s national lottery company. These cover the areas of deposit limits, self exclusion accounts, history and age control.

**Deputy Heather Humphreys:** I welcome the assurances the Minister has given. It is very important that strong safeguards are put in place to stop vulnerable people falling victim to online gambling. This is particularly so in rural Ireland due to the huge problem of isolation. The mere act of purchasing a lottery ticket in itself is a weekly social interaction which some people may not otherwise have. I am concerned that the provision of an online facility for the purchase of lottery tickets could have unintended negative consequences, especially in rural Ireland. If people in isolated areas start to go online, they may not bother to buy a ticket in their local shop and would consequently not meet other people.

Many shops in rural areas depend on the add-on business they get from lottery ticket sales, which makes them viable. I am concerned that the availability of lottery tickets online would impact on rural shops as people will purchase tickets on the Internet rather than visiting the local village. In view of those concerns, I would welcome the Minister’s reassurances concerning

online sales.

**Deputy Brendan Howlin:** I fully appreciate what Deputy Heather Humphreys has said. Unfortunately, however, the way the world is, more and more business is being done online. There was a time when, if one wanted to buy an airline ticket, one went to a travel agency but very few do so now. Such tickets are bought online and that is the way of the world. Looking at the horizon, God knows what will be available via the Internet in 20 years' time. We need to proceed in this way, otherwise if we exclude Internet transactions, we will guarantee making the current lotto obsolete. While being mindful of that, we do need countervailing proposals which is why we have a minimum number of retailers and we have maintained the retail margin. There will still be people who, as part of their normal business, will want to buy a lotto ticket as well. It will be part of the suite of services available in shops.

This week, I had a meeting with the postmasters' association. It is very proactive in looking at a whole range of measures that rural post offices, in particular, might be able to provide. For example, as high street banks deplete and retrench, more banking will be done through local post offices. We should also be seeking to provide a number of State services through post offices. Some people balked at some Garda provisions being provided, such as checking documentation. One can already apply for a passport through the post office, however, so there is no reason why other secure activities could not also be done there. We need to be forward looking in what we can provide to address the very real points made by Deputy Heather Humphreys.

**Deputy Sean Fleming:** We are also discussing amendment No. 30 in my name.

**Chairman:** That is correct, yes.

**Deputy Sean Fleming:** As I said on Second Stage, I am concerned about the issue Deputy Heather Humphreys mentioned, of people having online lottery accounts and playing the lottery at home. I have met the chief executive and other senior people at the national lottery headquarters. They provided a demonstration and at that time they had 7,000 accounts for people who were registered as customers. I was relatively satisfied that they had good control mechanisms in place. People had to produce IDs such as a driving licence or passport to prove their age before opening an account. There was a weekly or monthly limit on the amount of betting they could do. Given that we are in the Internet age, I know that it is happening as we speak. However, my amendment seeks to deal with television. I am not a gambler myself but I can see many gambling channels on television.

**Deputy Brendan Howlin:** They are effectively online casinos.

**Deputy Sean Fleming:** There are online casinos on Sky TV in my living-room every night. If a younger person got hold of the parental control pin number, they could be gambling away to their heart's content. That is why I am including the television issue separately in my amendment which deals with television channels. The door is bolted on the Internet issue. That is happening and people are doing it as we speak. Television channels allow people to play the lottery while sitting at home in their living rooms. That is the same point as Deputy Heather Humphreys has been making. The people to whom she refers might have a television but not an Internet connection as they live in isolated areas. Great broadband does not exist everywhere just yet. What can the Minister tell us about the control of gambling on television? Will he include terms in the licence to deal with playing the lottery by way of the television? Does the Minister understand what I mean in respect of television?

**Deputy Brendan Howlin:** I do. I have Sky at home although I should perhaps not refer to individual channels. I find it disconcerting to see it. One gets a free starter bet and one is off, apparently. I do not gamble either. I do not even back horses. I am sure I have many faults, but that is not one of them. I do not particularly like gambling.

Deputy Humphreys and, in more explicit terms, Deputy Fleming are referring to an area which is not germane to this Bill. It relates to the gambling legislation on which the Minister for Justice and Equality, Deputy Alan Shatter, is working in great detail. He will come forward with detailed, overarching legislation on these matters. In future, television will be one of the media through which we can access lottery tickets. By the looks of things, we will be shortly doing everything on the television. It will be a completely interactive set-up. We will probably not call it “television”, we will call it something else. We will be able to do all our business on interactive screens. That is not for us to deal with.

The lottery has been very responsible and it will remain so. There are specific controls which can be put in place on lottery use. The Deputies are talking about playing blackjack and roulette. I am concerned about those matters, but they are not under my remit and they are not relevant to the Bill. We can have controls. The national lottery requires one to register and to prove one’s identity and age to play. There are weekly and monthly expenditure limits where one plays online. I would like to see controls like that having much wider application. The question is whether we can do that in relation to gambling. I do not know if casinos are in Timbuktu or Singapore. I do not know what controls can be put in place.

**Deputy Mary Lou McDonald:** Given that he has praised the controls the national lottery currently has in place, I presume the Minister is minded to replicate them in the terms and conditions of the new licence.

**Deputy Brendan Howlin:** I will not say they will be exactly the same. Some of them are cumbersome such as requiring the provision of one’s passport in the post. We will have to be smarter. While I do not wish to think aloud, it may be that we can use pps numbers to verify age. I would prefer that. These are the sorts of things on which we are working.

**Deputy Mary Lou McDonald:** If we avail of the briefing the Minister has offered with his advisers, there should be an eye to data protection and a range of other issues. It is important that checks and balances are included in the licence and not left to the discretion of the operator.

**Deputy Brendan Howlin:** No. I am confident we will have robust structures in place for the lottery. My fear relates to everything else that is out there.

**Deputy Mary Lou McDonald:** It is a broader issue.

**Chairman:** I have been doing some work to prepare for the betting legislation which is coming before the committee. It is not an homogenous industry. There are lotteries like bingo or the national lottery which have fixed odds.

**Deputy Brendan Howlin:** And a guaranteed payout.

**Chairman:** “Gambling” is the overarching term. On the Internet, there are what are called “remote devices”. It is not the case that a horse is running which might outrun another horse, rather they are computer generated programmes that have a very nuanced way to extract a profit from gambling. Some of these issues are coming before this committee and some are going to the Select Committee on Justice, Defence and Equality. It is a very complex area. The Minister

may be interested to know that there is approximately €500 million in ungained taxes in the area. It is something we should be looking at.

Amendment agreed to.

**Deputy Sean Fleming:** I move amendment No. 30:

In page 23, between lines 11 and 12, to insert the following:

“(7) The sale, supply, distribution and purchase of a National Lottery ticket through the use of interactive television channels is prohibited until such time as the operator puts a mechanism in place that limits the amount a person can spend, obliges persons to provide proof of age and limits the amount and other such related matters.”.

Amendment put and declared lost.

**Chairman:** Amendments Nos. 31 and 32 are related and may be discussed together, by agreement. Is that agreed? Agreed.

**Deputy Brendan Howlin:** I move amendment No. 31:

In page 23, line 13, to delete “shall not,”.

Amendments Nos. 31 and 32 purely deal with drafting issues and involve providing that the words “shall not” come after rather than before the sub-clause.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 32:

In page 23, line 14, after “offers,” to insert “shall not,”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 33:

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

“(11) The defence provided for in subsection (10) shall apply to a person, including An Post National Lottery Company, who sells a ticket (including by way of interactive channels) while the licence granted to that company under the National Lottery Act 1986 is in force.”.

This is a significant amendment to provide that the defence provided for in subsection (10) will apply while the current licence is in force. It is envisaged that the amendment will allow the national lottery company to put in place arrangements for registering to play lottery games on the Internet which will be less cumbersome than those which currently apply under the pilot scheme. I understand the current arrangements involve the player posting a copy of his or her passport to the national lottery offices in Abbey Street. I am advised that this cumbersome mechanism leads to many people who log on to the process not completing it. I understand the fall off between registration and sending a copy of a passport is approximately 70%.

Amendment agreed to.

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

**Deputy Sean Fleming:** We depend on strong sales of lottery tickets to generate funds for good causes. The more that are sold, the more money we have for good causes. I worry. If the operator who gets the licence does not have the same impetus to sell tickets due to a need to tighten marketing budgets or some other rationalisation, the fall off in money for good causes could be a problem. The State relies on the hundreds of millions of euro that are generated. I was looking at the figures. The level of lottery ticket sales in Ireland is high relative to the United Kingdom. The average spend per individual here is much higher. It is higher than some other countries also, although I do not have to hand the international comparisons. The Minister will say that international companies have an incentive to make profits and that the more tickets they sell, the more money they will make. Many companies have that incentive but are not as good as others.

What will happen if we find in six years' time that the level of sales is falling off and the company does not put the same effort into marketing as it puts into its lottery marketing in Latin America where people love to play more than we do? Has the Minister any thoughts on what he can do to force the lottery operator to whom the licence is granted to perform to certain standards? This is like a public private partnership. The State is entering into a contract with an operator which will make a profit while providing money for good causes. It is the same as a public private partnership for a motorway or schools building project. What mechanism is being put in place? I am sure the prospect of the organisation going bust or defaulting will be covered in the licence but how will the Minister deal with a situation in which it is not up to the mark and we fear we are losing out on money for good causes?

**Deputy Brendan Howlin:** That is a good question. We expect that whoever wins the franchise will be motivated to operate it in a successful way. The licence will set out performance criteria and if it becomes manifest that the operator is no longer interested in running the lotto in a way that generates significant funds we will be able to cancel the licence on performance grounds. That would be an extreme position, however.

**Deputy Sean Fleming:** In dealing with non-performance in companies with State contracts, Members of the Oireachtas have discovered it is very difficult to get rid of such companies. A contractor may drag his or her feet when doing a job for a local authority or Department. The ultimate sanction is to cancel the contract but the grounds on which that can be done have to be specified in the licence. We cannot wake up one morning and do it.

**Deputy Brendan Howlin:** Performance criteria will be set out in the licence. Somebody who coughs up a significant up-front payment will be motivated to run an effective lottery.

**Deputy Sean Fleming:** Every business is motivated to make a profit but some are better at doing so than others.

**Deputy Brendan Howlin:** We do not want to be too intrusive or pushy. We must strike a balance.

Question put and agreed to.

#### SECTION 43

**Deputy Brendan Howlin:** I move amendment No. 34:

In page 23, to delete line 27 and substitute the following:

“(a) the operator or a director, or agent of the operator (but not including a retail sales agent), or employee of the operator;”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 35:

In page 23, line 28, to delete “prints” and substitute “manufactures”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 36:

In page 23, to delete lines 30 to 35 and substitute the following:

“(c) a person who operates, controls or programmes the central gaming system of the National Lottery or any employee of the person or, if that person is a company, a director of the company.”.

Amendment agreed to.

Section 43, as amended, agreed to.

Section 44 agreed to.

#### SECTION 45

**Chairman:** Amendments Nos. 37 to 39, inclusive, are related and will be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 37:

In page 24, line 37, after “game” to insert “or category of game”.

Amendments Nos. 37 to 39, inclusive, amend section 45 to provide that the regulator may approve categories of games as well as individual games. It will be a matter for the regulator to determine what constitutes a category of game for the purpose of this section. This is deemed appropriate from an administrative and practical point of view.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 38:

In page 24, line 39, after “game” to insert “or category of games”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 39:

In page 25, line 7, after “game” to insert the following:

“or category of game.

(e) The Regulator shall determine what constitutes a game category for the purpose of this section”.

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Amendment agreed to.

Section 45, as amended, agreed to.

Section 46 agreed to.

SECTION 47

**Deputy Brendan Howlin:** I move amendment No. 40:

In page 26, line 12, to delete “3 months” and substitute “4 months”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 41:

In page 26, line 17, to delete “3 months” and substitute “4 months”.

Amendment agreed to.

**Chairman:** Amendments Nos. 42 and 43 are logical alternatives and will be discussed together.

**Deputy Brendan Howlin:** I move amendment No. 42:

In page 26, between lines 23 and 24, to insert the following:

“(5) Representatives of the operator shall appear before the Oireachtas Committee having functions relating to the National Lottery when requested to so do by that Committee.”.

Deputies will recall that Deputy Sean Fleming expressed a view on Second Stage that the committee should have power to call before it representatives of the national lottery company. Having considered the matter, I agree with the Deputy and I am happy to provide for this in section 47. I note that the Deputy has tabled a similar amendment to the one I am proposing.

**Deputy Sean Fleming:** I am very happy with that.

**Chairman:** I once tabled an amendment which merely changed a date. It was changed on Report Stage but it referred to a date which had been incorrectly cited by a Minister and it was refused in this very room. I welcome the change of approach.

Amendment agreed to.

Amendment No. 43 not moved.

Section 47, as amended, agreed to.

Section 48 agreed to.

SECTION 49

**Deputy Mary Lou McDonald:** I move amendment No. 44:

In page 26, line 31, after “Office.” to insert “Such disclosure will not be used to apply taxation on National Lottery prize monies.”.

This amendment relates to the provision in section 49 requiring the operator to disclose specific information on prize winners to the office of the Revenue Commissioners for the purpose of administering the Taxes Consolidation Act 1997. The section also provides that information will be made available to the Department of Social Protection. My amendment seeks to ensure that the provision of this information to the Revenue Commissioners is not the first step towards taxing prize moneys.

**Deputy Brendan Howlin:** I assure the Deputy there is no plan to change the current position of tax exemption for lotto winnings. That is one of the attractions of the lotto. If the Revenue Commissioners knocks on the door of someone who claims to have won the lotto, it is reasonable to give it the ability to check such claims. A former significant office holder in this land once won money on the horses.

**Deputy Mary Lou McDonald:** I think that is good practice for all concerned but, given that there is no intention to tax winnings, the position would be stronger if it was stated in the legislation.

**Deputy Brendan Howlin:** That would be taxation legislation, which is outside my purview and remit.

**Deputy Mary Lou McDonald:** Obviously the Minister is not responsible for tax law but the national lottery and the issues arising around prize moneys and donations to good causes are in his remit. I argue that it should be stated clearly in legislation. I do not think it should be put into the licence. I accept his word that there is no intention to tax these moneys but I remind him of the financial emergency situation. We would not like to see a situation in which lotto winnings are taxed as an emergency measure in the public interest. I commend my amendment to the Minister.

**Deputy Brendan Howlin:** As I have said, this is a matter of tax law and it would not be appropriate to this legislation. It is also not a matter for the licence. It has been Government policy to make winnings tax-exempt since the foundation of the lotto and that policy remains in place.

**Deputy Sean Fleming:** Has the Minister any idea about how the system will work in terms of the Revenue Commissioners writing to the operator? Will there be a delay in issuing prizes?

**Deputy Brendan Howlin:** No.

**Deputy Sean Fleming:** We would be concerned if there is a potential for delay.

**Deputy Brendan Howlin:** If somebody wins a prize, the money will be paid out. There is no embargo impediment or delay in that regard. This provision permits the Revenue Commissioners to check if a person's explanation of winning the lotto, in respect of X amount stashed in a bank account, is true or not.

**Chairman:** Currently, a person who wins the lotto can remain anonymous.

**Deputy Brendan Howlin:** Yes.

**Chairman:** Will that remain the case?

**Deputy Brendan Howlin:** Yes. All dealings with the Revenue Commissioners are confidential.

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**Deputy Sean Fleming:** At what stage of claiming a prize does a person have to give his or her name to the National Lottery? Prizes are often won by syndicates. What is the mechanism by which a person supplies his or her name? A winning ticket could be in the name of a social club and so on.

**Deputy Brendan Howlin:** It is a simple matter. Lotto wins will remain tax free. The Revenue Commissioners will not be going after a person if they find €5,000 in an account somewhere. However, if they discover an account wherein there is €5 million they will have the power to inquire from where it came. This provision ensures that where a person declares that he or she won a particular amount on the lotto that would not be taken on face value but would be checked.

**Deputy Liam Twomey:** If a person owes money to the Revenue Commissioners, can it take what is owned from his or her winnings?

**Deputy Brendan Howlin:** No.

**Chairman:** A person does not have to be tax compliant to win the lotto either, as witnessed on live television.

**Deputy Brendan Howlin:** I would go no further than that, Chairman, if I were you.

Amendment put and declared lost.

Section 49 agreed to.

Section 50 agreed to.

Question, "That section 51 be deleted", put and agreed to.

SECTION 52

**Chairman:** Amendments Nos. 45 to 51, inclusive, are related and will be discussed together by agreement.

**Deputy Brendan Howlin:** I move amendment No. 45:

In page 27, between lines 15 and 16, to insert the following:

“(a) after section 22, by inserting the following:

“22A. Section 22 does not apply to a lottery held under section 27 or 28.”,

(b) in section 27(2), by substituting for paragraph (b) the following:

“(b) the total value of the prizes shall not be more than €5,000 or such other amount that, for the time being, stands specified in

lieu of that amount in regulations made by the Minister;”.”.

The two sections of the Bill to which these amendments relate deal with the Gaming and Lotteries Act 1956 which is the responsibility of my colleague, the Minister for Justice and Equality who has asked me to propose these amendments. While they are not a necessary part of this legislation I have agreed to his request to incorporate them.

These amendments relate to section 22 of the Gaming and Lotteries Act 1956 as applied by section 33(1) of the National Lottery Act 1986. This Bill makes changes to the Gaming and Lotteries Act 1956, which changes are contained in sections 51 and 52 of the Bill as initiated. The aim now is to group all of the changes being made to the Gaming and Lotteries Act into one section. In this process, we lose one section from the Bill. All the changes to the 1956 Act will now be in section 51. Under the substance of the old section 51, the 1956 Act as enacted prohibited the advertising of lotteries. In 1986, this position was modified by section 33(1) of the National Lottery Act 1986 which stated that the ban did not apply to lotteries held under sections 27 and 28 of the 1956 Act. We wish to continue this approach in the current legislation when enacted. We are repealing the 1986 Act, thereby in effect returning to the position as pertained pre-1986. However, section 51 of this Bill as initiated restores the position to that in force since the original National Lottery Act of 1986.

The Parliamentary Counsel has recommended that we have a separate section in the 1956 Act, namely, section 22A. The first amendment to section 52 is to preserve the effect of the now deleted section 51 which concerns the restriction of section 22 of the 1956 Act, namely, to ensure that charitable lotteries continue to be exempt from the general prohibition on the advertising of lotteries. These amendments relate to private charitable lotteries conducted under sections 27 and 28 of the 1956 Act. The maximum weekly prize for lotteries held under section 27 is being increased from €3,000 as set down in the 1987 Act to €5,000. The maximum weekly prize fund for lotteries held under section 28 is being increased from €20,000, as set down in the 2002 Act, to €30,000. These changes are being made to afford the operators of private charitable lotteries the flexibility to increase the total value of their weekly prize funds if they so wish.

As has been the case since 1986, it will remain open to the Minister for Justice and Equality to alter these levels in the future by way of regulations. However, the new section 28A sets out for the first time the matters to be taken into consideration by that Minister in making such regulations. This is being done to comply with recent constitutional jurisprudence regarding the amending of primary legislation by secondary legislation, which requires that the relevant factors to be considered in making such amendment be set out in primary legislation.

**Deputy Sean Fleming:** Local sports clubs that run weekly lotteries are not registered charities. I understand the term “registered charities”. However, how is “charitable lottery” defined? We all know of weekly lotteries in our communities to support good causes locally. However, they are not registered charities. What is the situation in that regard?

**Deputy Brendan Howlin:** The amendments relate to charities encompassed under sections 27 and 28 of the 1956 Act.

**Deputy Sean Fleming:** The remainder are being left alone.

**Deputy Brendan Howlin:** Yes. We will leave them to the Minister for Justice and Equality to deal with.

**Chairman:** Standard lotteries are justice issues.

**Deputy Brendan Howlin:** Yes.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 46:

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In page 27, line 19, to delete “the amount specified” and substitute “€5,000 or such other amount that, for the time being, stands specified in lieu of that amount”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 47:

In page 27, to delete line 21.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 48:

In page 27, line 24, to delete “the amount specified” and substitute “€30,000 or such other amount that, for the time being, stands specified in lieu of that amount”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 49:

In page 27, lines 27 and 28, to delete “the amount specified” and substitute “€30,000 or such other amount that, for the time being, stands specified in lieu of that amount”.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 50:

In page 27, between lines 29 and 30 to insert the following:

“and

(c) after section 28, by inserting the following:

**“Matters to take into consideration when making regulations under section 27 or 28**

28A. Before the Minister makes any regulations under section 27 or 28, he or she shall, in so far as it is possible to do so, consider and take account of the consequences of any proposed alteration of the amount in the total value of prizes on—

- (a) lotteries which are conducted under this Act,
- (b) any other lottery conducted in accordance with law, and
- (c) charitable or philanthropic giving in society generally.””.

Amendment agreed to.

**Deputy Brendan Howlin:** I move amendment No. 51:

In page 27, line 30, to delete “section 27(4)” and substitute “section 27”.

Amendment agreed to.

Section 52, as amended, agreed to.

Title agreed to.

MESSAGE TO DÁIL

Bill reported with amendments.

**Chairman:** I thank the Minister and his officials for attending today.

**Message to Dáil**

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

The Select Sub-Committee on Public Expenditure and Reform has completed its consideration of the National Lottery Bill 2012 and has made amendments thereto.

The select sub-committee adjourned at 6 p.m. until 1 p.m. on Thursday, 23 April 2013.