

DÁIL ÉIREANN

SELECT SUB-COMMITTEE ON PUBLIC EXPENDITURE AND REFORM

Dé Máirt, 25 Samhain 2014

Tuesday, 25 November 2014

The Select Sub-Committee met at 2.30 p.m.

MEMBERS PRESENT:

Deputy Tom Barry,	Deputy Sean Fleming,
Deputy Ciarán Cannon,	Deputy Brendan Howlin (<i>Minister for Public Expenditure and Reform</i>),
Deputy Ciara Conway,*	Deputy Mary Lou McDonald.
Deputy Regina Doherty,	

* In the absence of Deputy Arthur Spring.

DEPUTY LIAM TWOMEY IN THE CHAIR.

Registration of Lobbying Bill 2014: Committee Stage

Chairman: I welcome the Minister for Public Expenditure and Reform, Deputy Howlin, and his officials. The purpose of this meeting is to consider the Registration of Lobbying Bill 2014 on Committee Stage. The Bill was referred to the select sub-committee by the Dáil on 1 October. Before we begin, I remind members that we are in public session and that all mobile telephones must be switched off to avoid interference with the broadcasting of the meeting. We will proceed until approximately 5 p.m. If we have not completed our work by then, we will recommence at approximately 6 p.m.

SECTION 1

Deputy Mary Lou McDonald: I move amendment No. 1:

In page 5, line 14, to delete “Registration” and substitute “Regulation”.

This amends the Bill’s Short Title and commencement. It suggests replacing “Registration” with the term “Regulation”, which is required to reflect the fact that the legislation does more than simply set up a register. Rather, it offers a necessary regulatory framework that can be built upon by way of ministerial regulation, as provided for in numerous sections, for example, sections 5(6), 6(1)(f), 6(1)(g), 12(4)(g) and 12(7). It is also provided for under the code of conduct and guidance to be produced by the Standards in Public Office Commission, SIPO, under section 16 in Part 3 and as a consequence of learning from the operation of the legislation via the periodic reviews required under section 2 and the annual SIPO reports required under section 25. My amended change would more accurately reflect the extent of the legislation.

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I am minded to agree with the Deputy. In the original version of the Bill, when I brought heads to Cabinet, it was the Regulation of Lobbyists Bill. We changed it on the advice of the Parliamentary Counsel who interpret these matters very strictly. They said the new title more accurately reflected the content and purpose of the Bill. I prefer the Deputy’s title. If the Deputy is agreeable, I will have further discussions with the Office of the Parliamentary Counsel and the Attorney General and unless there is a compelling reason not to do so, I will be happy to accept this on Report Stage.

Deputy Mary Lou McDonald: I appreciate that the Minister will consider this matter and I hope the change will be made. We will return to it on Report Stage.

Amendment, by leave, withdrawn.

Section 1 agreed to.

SECTION 2

Chairman: Amendments Nos. 2, 59, 60, 69 to 71, inclusive, 73, 74, 77 to 79, inclusive, 82, 83, 85 and 86 are related and may be discussed together, by agreement.

Deputy Sean Fleming: I move amendment No. 2:

In page 5, between lines 25 and 26, to insert the following:

“(2) Each review shall list the number of matters subject to delayed publication pur-

suant to *section 14*.”.

This is a straightforward amendment. Section 14 of the legislation states:

provides for delayed publication where the registrant believes the registration or the return relating to the lobbying activity would be expected to

(a) have a serious adverse effect on—

(i) the financial interests of the State,

(ii) the national economy, or

(iii) business interests generally or the business interests of any description of persons, or

(b) cause a material financial loss to the person [who may be covered by that].

My amendment refers to the publication of reviews under section 2. The matters subject to delayed publication would not be covered by normal publication and if several matters have not been published we should know about that. There may be none, and there may be many. It would not be right to have some in the system that are not referred to in the review of the Act.

Deputy Brendan Howlin: I agree with Deputy Fleming that there should be transparency about the number of determinations made under the delayed publication provisions as set out in section 14. I have ensured that transparency does apply in the Bill by including a requirement in section 25 that information relating to any determination made under section 14, or enforced during any year, be included in the annual report. An annual report relating to the operation of the Act is required to be prepared by the Standards in Public Office Commission, SIPOC, and must be laid before each House of the Oireachtas within six months of the end of the year to which the report relates. I hope that meets the Deputy’s requirements.

Deputy Sean Fleming: Is that provision in section 25 as published or is the Minister proposing to make an amendment to that effect?

Deputy Brendan Howlin: No, it is in section 25 on page 21, “2 (a) any determinations under section 14 made or in force in that year.”. Section (1) states:

The Commission shall prepare an annual report relating to the operation of this Act and shall cause a copy of it to be laid before each House of the Oireachtas no later than 30 June in the year following that to which it relates.

Deputy Sean Fleming: That relates to one where a decision has been made. I am more concerned about ones where-----

Deputy Brendan Howlin: Section 14 relates to the publication.

Deputy Sean Fleming: There might be matters subject to delay but on which a determination has not yet been reached. Does the Minister get my point?

Deputy Brendan Howlin: I do, but positive and negative determinations are captured by the section and both will be referenced.

Deputy Sean Fleming: I take the Minister’s word for it.

Deputy Brendan Howlin: Many of the other grouped amendments are technical to ensure consistency throughout the Bill. Amendments Nos. 59, 60, 69, 71, 73, 74, 77, 78, 79, 82, 83, 85 and 86 all have the effect of describing the commission in the singular throughout the Bill, “commission” as opposed to “commissions”. The amendments delete “they” and substitute “it” and delete “believe” and substitute “believes”. It changes all the plural verbs to the singular.

Amendment No. 70 is also technical and proposes to delete “registered” in line 12 of page 13 because it is not required.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 3 to 5, inclusive, are related and may be discussed together, by agreement.

Deputy Brendan Howlin: I move amendment No. 3:

In page 6, line 1, to delete “5 years” and substitute “3 years”.

I will speak on amendments Nos. 3 and 4 first. The published Bill provides a periodic review of this legislation. The first review of the operation of the Act will be one year of operation subsequent to commencement. There was some debate about this on Second Stage. I am proposing to reduce the second and subsequent review periods from five years as I set out originally to three-yearly intervals. This amendment was suggested by Deputies, including Deputy McDonald, on Second Stage and I am happy to accede to that suggestion.

This more frequent review will allow us to closely monitor the implementation of the legislation. As we build up knowledge of the operation of the provisions, we will be in a position to ensure that any issues arising are addressed more promptly. It will kill two birds with one stone because the first annual review is probably too short and a gap of five years beyond that would be too long. A three-year gap is about right. I hope that will be acceptable.

On amendment No. 5, the Bill as published requires the Minister to consult with SIPOC in conducting a review of this legislation and also to take account of any relevant report of a committee of the Houses of the Oireachtas. The amendment proposes that it will require consultation with people who carry out lobbying activities and bodies that represent them, along with any other person or bodies which the Minister considers appropriate in the course of the review. I believe that such consultation is appropriate and proper. These points were made on Second Stage.

Deputy Mary Lou McDonald: I welcome those amendments and am happy to support them.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 4:

In page 6, line 3, to delete “5 years” and substitute “3 years”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 5:

In page 6, to delete lines 7 to 10 and substitute the following:

“(4) In conducting a review the Minister shall—

(a) consult the Commission,

(b) take into account any relevant report of a committee appointed by either House of the Oireachtas or jointly by both Houses, and

(c) consult such persons carrying on lobbying activities and such bodies representing them, and such other persons, as the Minister considers appropriate.”.

Amendment agreed to.

Section 2, as amended, agreed to.

Sections 3 and 4 agreed to.

SECTION 5

Chairman: Amendments Nos. 6 to 21, inclusive, 24 to 26, inclusive, and 52 are related and may be discussed together, by agreement. Amendments Nos. 7 to 21, inclusive, are physical alternatives to amendment No. 6. Amendments Nos. 25 and 26 are physical alternatives to amendment No. 24. If amendment No. 6 is agreed to, amendments Nos. 7 to 21, inclusive, cannot be moved.

Deputy Brendan Howlin: I move amendment No. 6:

In page 6, lines 27 to 35, to delete all words from and including “(1) For” in line 27 down to and including line 35 and substitute the following:

“(1) For the purposes of this Act a person carries on lobbying activities if the person—

(a) makes, or manages or directs the making of, any relevant communications on behalf of another person in return for payment (in money or money’s worth) in any of the circumstances in which subsection (2) applies to that other person,

(b) makes, or manages or directs the making of, any relevant communications in any of the circumstances in which subsection (2) applies to the person, or

(c) makes any relevant communications about the development or zoning of land under the Planning and Development Acts 2000 to 2014.

(2) The circumstances in which this subsection applies to a person are that—

(a) the person has more than 10 full-time employees and the relevant communications are made on the person’s behalf,

(b) the person has one or more full-time employees and is a body which exists primarily to represent the interests of its members and the relevant communications are made on behalf of any of the members, or

(c) the person has one or more full-time employees and is a body which exists primarily to take up particular issues and the relevant communications are made in the furtherance of any of those issues.”

We had some debate about these matters and I listened to various suggestions as to how we could address them. I will speak now on amendments Nos. 6, 24 and 52. The Bill as published brings within its scope consultant lobbyists acting on behalf of a client, employers with more than ten employees and individuals with regard to development and zoning matters, that is, anyone lobbying in connection with a development or zoning matter. Amendment No. 6 aims to ensure that relevant communication by representative and advocacy bodies, that is those established to further a particular issue, will come within the definition of lobbying where the organisation has at least one employee. The proposed amendment will make it clear, therefore, that the exemption from registration for employers of up to ten employees will not apply to employers who are either representative or advocacy bodies. Concerns were expressed by some of the stakeholders we talked to during the very long consultative process, including the Irish Congress of Trade Unions and the Irish Farmers Association, that while some representative bodies can have small numbers of staff, they can actually have a very substantial membership base. The amendment concerning advocacy bodies will allow bodies such as Transparency International Ireland to come within the scope of the Bill and is in line with the transparency objectives of the Bill.

Amendment No. 6 also clarifies that the reference to employees is full-time employees. Amendment No. 24 deletes section 5(3)(b) as this provision is now incorporated into the revised subsection (1) of section 5. I note that the next amendment from Deputy McDonald, amendment No. 24, and amendment No. 25 proposed by Deputy Fleming propose changes to section 5(3)(b) and will both, therefore, fall, if my amendment is passed, as the Chairman has already indicated. The proposed amendment No. 52 in section 7 is necessary consequent to the amendment of section 5(1) so that a definition of full-time employee is included in the Bill. The term full-time employee is defined by reference to section 7 of the Protection of Employees (Part-Time Work) Act of 2001.

Amendment No. 24 proposes an amendment to section 5, which will mean the deletion of section 5(3)(b), as also proposed by Deputy McDonald. I am proposing these amendments to ensure that relevant communication by representative and advocacy bodies, that is, those established to further a particular issue, will come within the definition of lobbying regardless of the number of employees they have. That was a point raised by a number of Deputies at Second Stage. The proposed amendments will make it clear that the exemption for employers of up to ten employees will not apply to representative or advocacy bodies.

Deputy Sean Fleming: We have quite a list of amendments in this group. In fact, there are almost 20 amendments included in the group for discussion.

Deputy Brendan Howlin: A lot of them overlap and deal with the same issue.

Deputy Sean Fleming: Yes, that is fine and that is why they are grouped together. The essence of this line of discussion is to deal with the meaning of carrying on lobbying activities, as the name of section 5 indicates. The Minister has just referred to a number of amendments he proposes to make to the section but I have a number of concerns about this Bill and this issue is probably the one of most concern. I have tabled approximately 15 amendments on this area. I believe that while the legislation is both good and necessary, it is not going far enough. It does not cover aspects of lobbying that I believe should be included under the definition of “carrying on lobbying activities”. As I said on Second Stage, the inclusion or exclusion of some of these issues will be the acid test for this legislation. Many issues have been mentioned in recent times with regard to lobbying and it is important that we take note of the current debate.

The types of lobbying referred to in my amendments Nos. 7 to 21 are specific and in many cases refer to Government monopolies which are not already included in the legislation. Some of them would be commercial in nature but others are monopolies. From that point of view, the issue of competition or an adverse impact on their financial situation does not arise. The issue of lobbying regulators is also very important because regulators can have a major influence on many activities carried out by public bodies and they need to be included or captured by this legislation.

I will start with amendment No. 7, which proposes to include under the meaning of carrying on lobbying activities, a person or body which “makes, manages or directs the making of any relevant communications to any member of Government in relation to appointments to State Boards”. What we saw with the recent controversy over the appointment of Mr. John McNulty to a State board so that he would be eligible to run for the Seanad by-election was unedifying, to say the least. I am not referring here to the character of the individual involved, who I do not know. What transpired there was, to use the old-fashioned phrase, “stroke politics”. The Minister would accept that and he knows that something needs to be done in the area of appointments to State boards. It is all well and good to pass legislation relating to lobbyists but if the mechanisms by which people are appointed to State boards cannot be captured in the legislation, then the legislation is very weak. I will judge this legislation not just on its individual sections, many of which are very good, but also on whether items that should be included are excluded. I do not want to have fig-leaf legislation, with people saying that it is great that we now have registration of lobbyists legislation, indicative of political reform, but when one examines the legislation one finds that some of the key activities that one would expect to be covered by it are excluded. When legislation is brought forward it should not be piecemeal but comprehensive. There is nothing more necessary to include in this legislation than the lobbying of members of Government concerning appointments to State boards.

The Minister issued a press release some time ago indicating that he will issue guidelines to Ministers, will consult widely on the matter and that the Public Appointments Service would be involved. He referred to gender balance on State boards and so forth, all of which is very good. However, none of it is being underpinned by legislation or regulation. All we have is a press release about guidelines and requests to Ministers, who may or may not have to follow those guidelines. Indeed, it will be quite some time before those very guidelines are finalised.

Deputy Brendan Howlin: They were published this afternoon.

Deputy Sean Fleming: The guidelines were published?

Deputy Brendan Howlin: Yes.

Deputy Sean Fleming: I will be introducing legislation in the Dáil tomorrow dealing with appointments to State boards. A lot of what the Minister and everyone else agrees should be done in this area should be put on a legislative footing rather than being based on guidelines. I expect the Minister and I will agree with the contents of my legislation tomorrow.

Deputy Brendan Howlin: Perhaps the Deputy should have waited to read the guidelines before drafting legislation.

Deputy Sean Fleming: I did not know that the guidelines were being published today.

Deputy Brendan Howlin: I said I would publish them within six weeks of my last announcement.

Deputy Sean Fleming: Yes. My legislation has been drafted and is in the system. I think the Ceann Comhairle has it listed for tomorrow. It may be listed for another day but that is beyond my control now, to some extent. I would hope that the guidelines will substantially dovetail with what is in my draft legislation. If that is the case, then all I will ask the Minister to do is take one further step and put the guidelines on appointments to State boards on a statutory footing rather than leaving matters the way they are, whereby it is left up to Ministers to adhere to the guidelines. We can talk about that further. Having discussed this legislation on Second Stage, I felt that there was a big lacuna that needed to be addressed because this Bill does not deal with appointments to State boards. That is why I tabled amendment No. 7.

The Minister has stated that, in the context of communications with members of the Government regarding appointments to State boards, he is publishing guidelines today. That is a very welcome development. I hope that what he proposes can be placed on a legislative footing. Amendment No. 7 is the acid test and it is fundamental that the provision it contains be included in the Bill. If it is not, the Bill will fail the test of public opinion. Members of the Oireachtas have their own views with regard to what is and is not necessary but members of the public have their own opinions. We must take on board the views of members of the public and I believe they would like to see the introduction of legislation relating to appointments to State boards. An essential part of such legislation would be provisions relating to communications with Government Ministers. I am of the view that legislation in this regard will be forthcoming in due course and I hope the Minister will agree to take that step tomorrow.

Amendment No. 8 suggests the insertion into the Bill of the phrase “lobbies a consultant employed to carry out work for or on behalf of a public body or Government Department”. This is also an extremely important amendment, particularly as everything seems to be outsourced at present. Different Departments may engage consultants to carry out work in respect of taxation proposals, public expenditure proposals, shared services and many other issues. If one lobbies the consultant employed to perform a particular task, it can sometimes prove far more effective than lobbying a Government official or a Minister. By the time a matter reaches the relevant official or Minister, a body of documentation will have been produced and if it is any way correct it might carry through the system to a conclusion. There is a very big gap in this area in the context of the consultants carrying out work such as that to which I refer. There was a time when this work would have been done by public servants and such a scenario would be captured under the legislation. Now, however, public bodies can outsource work to consultants and this means it is not being done by their staff. As a result, the matter falls outside the scope of the legislation. Lobbying consultants employed by public bodies to carry out work on their behalf should” be contemplated under the Bill.

In amendment No. 9 I am seeking to have included in the Bill the phrase “lobbies Irish Rail and such person shall be required to be a registered person pursuant to *section 8*”. Irish Rail is a State monopoly. The Minister and I share the view that semi-State companies which are competing commercially should not be placed at a disadvantage in the context of the companies in the private sector against which they are competing. Irish Rail is not in competition with anyone because it is the only rail company in the country. It is a State monopoly and it could be lobbied in respect of matters as diverse as the purchase of trains, equipment, contracts, maintenance, services, health and safety, new routes or the deletion of routes or timetables. As a result, it is important that Irish Rail be included under the legislation.

I am seeking, by means of amendment No. 10, to include in the Bill the phrase “lobbies Irish Water and such person shall be required to be a registered person pursuant to *section 8*”.

Deputy Brendan Howlin: God help us.

Deputy Sean Fleming: God help us is right.

Deputy Brendan Howlin: A lot of people are going to be obliged to register.

Deputy Sean Fleming: Absolutely. People who would be contemplated under the terms of the legislation would certainly be obliged to register. For the time being, Irish Water will be a national monopoly and there would be no commercial disadvantage to this information being made known. Some time ago, the Minister refused to allow Irish Water to be included under the freedom of information legislation. Subsequently, he was obliged to have it included. He also refused to have it included under the legislation relating to the Ombudsman and I believe he has also been obliged to row back in that regard. I become confused as a result of the different U-turns being made but I understand that both of the matters to which I refer have been dealt with.

Deputy Brendan Howlin: One thing of which we can be certain is that it was never included by Fianna Fáil under any legislation.

Deputy Sean Fleming: We did not include Irish Water either. It is a Fine Gael invention to which those in Labour have succumbed.

Chairman: Perhaps the Deputy and the Minister might stick to discussing the amendments.

Deputy Sean Fleming: This amendment relates to Irish Water. I have made my point and I will move on.

Amendment No. 11 is designed to obliged those who register An Post to be registered. Again, An Post is a commercial semi-State body and it has a monopoly in the context of the delivery of post to houses. I accept, however, that its parcel delivery and other divisions are obliged to compete with many private contractors. Where State monopolies are being lobbied, people are entitled to know who is doing the lobbying.

Amendment No. 12 relates to Eirgrid. People who lobby Eirgrid should also be contemplated under the legislation, particularly as that entity can have a fundamental influence on people's lives. I accept that it is not a commercial semi-State body and is more along the lines of a regulator or whatever. I also accept that it might be involved in some commercial activity but the majority of what it does in the context of planning new routes is a matter of public interest. People need to know who is lobbying in respect of such matters.

I am seeking in amendment No. 13 to have those who lobby the Commission for Energy Regulation included under the legislation. The role of that office has been devalued to such an extent that I do not know whether the Government is aware of its existence. We are informed that the regulator approves certain matters relating to Irish Water but it is the Government that makes the decisions. In the context of whatever limited role the Commission for Energy Regulation has been left with, the public needs to be informed about those who lobby it.

The position is the same with regard to the National Transport Authority, to which amendment No. 14 relates. The authority, which is not a commercial semi-State body, is responsible - among other things - for licensing public bus passenger services and its work in this regard relates to both Bus Éireann and private operators. There has been some discussion with regard to the privatisation of 10% of bus routes in Dublin and the National Transport Authority will be lobbied extensively in respect of that matter. The people who lobby it in respect of issues of

this nature should be included under the legislation.

Amendment No. 15 relates to people who lobby the Private Security Authority, while amendment No. 16 relates to those who lobby Tourism Ireland. People who lobby Tourism Ireland should be required to be registered. In that context, it might make far more sense for someone who believes there is a case to establish a tourism product in an area in which he or she is commercially involved to lobby officials from Tourism Ireland than lobbying the Minister for Transport, Tourism and Sport or some other Government Minister. Again, Tourism Ireland is similar to a regulator to some extent and it has a great deal of influence.

Amendment No. 17 relates to those who seek to lobby Waterways Ireland. In the event that I have missed out on naming any entities, amendment No. 18 seeks to have included in the Bill the phrase “lobbies bodies, whose funding is made up of in excess of 50 per cent of voted expenditure, and such person shall be required to be a registered person pursuant to *section 8*”. It goes without saying that I am referring here to bodies such as the Central Remedial Clinic, CRC, and Rehab, which receive over 50% of their income through specific voted expenditure provided by the HSE, the Department of Health, etc. There have been many difficulties with regard to such bodies being made accountable to the Houses. The Minister and members are aware that representatives from Rehab came before the Committee of Public Accounts and I understand that the matter relating to it is due to go before the courts. That is in respect of an accountability issue. Members of the public will accept that if an organisation is receiving more than 50% of its funding from voted expenditure provided by the Government, then those who want to lobby it should be contemplated under the legislation.

Amendment No. 19 relates to people who lobby the HSE, while amendment No. 20 relates to the those who lobby the Central Bank. When the Central Bank comes up with an idea to amend the relevant rules to such an extent that people’s ability to obtain mortgages is going to be fundamentally impacted upon, the public is entitled to know who lobbied and exerted pressure on it. I refer here to lobbyists both in Ireland and elsewhere. Pressure can be put on organisations such as the Central Bank from outside the country. Certain aspects of the bank’s activities are subject to confidentiality under the rules of the European Central Bank and I am not proposing that this should be changed.

Amendment No. 21 relates to those who lobby the education and training boards, which replaced the vocational education committees. Again, almost 100% of the money relating to these boards comes from the taxpayer. In my view, the public is entitled to know who might be lobbying the people who serve on these boards.

The next amendments in my name are Nos. 25 and 26. I will speak on those, and the Deputy who has other amendments in this group can then speak on them. Amendment No. 25 relates to the issue of employers, to which the Minister has referred. It proposes the inclusion in that paragraph of other registered persons as well as an employer. Moving on to amendment No. 26, the Minister referred to the number of employees and representative bodies. He said they might not have ten employees and that he is eliminating the requirement in respect of ten employees. In that amendment I propose a turnover figure of €5 million, which is substantial. I am not trying to propose something that would be onerous on businesses, but I picked a substantial turnover figure to make the point. It captures the big contracts in the country. A company could have one or two people working on its behalf and there might not be a representative body. The example I have quoted time and again - the Minister’s Department will know more about this than any other Department - is that of companies applying for a Government contract even to build a school, which could be a contract for €8 million, €10 million, €15 million, or some other

figure. That company might have only two directors and no employees. Essentially, it could be a shelf company for that dedicated project, and it would employ subcontractors who carry out the work on its behalf. I will not go into the subcontractor payment issue, but the Minister can see where I am coming from on this. The issue should not be the number of employees; rather, it should be about the scale of the business conducted by the organisation. An organisation with a turnover of more than €5 million per annum is a very large organisation. That turnover criterion should be included equally alongside the issue of the number of employees. A company could have two directors, neither of whom might be registered employees. They might be registered in other groups, as we found to be the case with the Rehab Group. There could be such a group structure and the company that might get the money might have no employees and be a holding company. A holding company can have major turnover in its consolidated accounts but it might have not have any employees. We must find a mechanism to capture that. Amendment No. 52 is in the Minister's name. That is the summary of my amendments under this sensitive grouping.

Deputy Mary Lou McDonald: My only amendment in this grouping is amendment No. 24. The Minister has echoed the principle of this amendment. Why is there a threshold of ten employees? I imagine he has an eye on avoiding anything that is overly onerous on smaller businesses, and I appreciate that. That is legitimate, but given that we are no longer living in an era of tablets of stone and the use of quills and ink and that we have IT systems and so on, I do not imagine the registration procedure should be so onerous that we need to be sensitive to employee numbers. The Minister and I have tabled an amendment with the same principle, but the threshold of ten employees still features in the legislation. Will the Minister indicate the rationale for that? I do not see it.

Deputy Brendan Howlin: I will first say a few general words to capture the themes that have been expressed by both Deputies. This is a new area of operation to register and capture the lobbying of power - the lobbying of Government. Probably more preparatory work went into this legislation than into the legislation on freedom of information, the protection of whistleblowers and all other such legislation, although a huge amount of consultation went into all of that. It is a delicate balance in terms of how to achieve a very robust, open democracy where everybody can lobby. Everybody should be able to have his or her point of view heard, but the issue is how to stop lobbying by the well connected, which has an impact over the heads of ordinary people. In balance, that is what we are trying to do. I was asked a year ago to speak on this subject at the Open Government Partnership in London because the draft legislation we had published was a model that people were examining. I had many discussions about trying to get that balance right. Unlike Deputy Fleming, I do not think we will get it perfectly right in the first iteration of this. There will be a learning process. All I have learned from other countries that have tried to do it is that they need to tweak it and change it to suit their own domestic circumstances. I will deal with the Deputies' specific amendments. I will be broadening the scope of this mechanism once we have an annual review of it in a year's time to see how we can broaden the definitions, including the definition of the lobbied, and to see how the lobbyists are captured and whether there is anybody who needs to be captured in a better way. I totally disagree with the notion that it is some sort of fig leaf, which I know is good for a soundbite. This is the most honest attempt I can make. A very hard-working team of people have been involved in this, from a public discussion forum that invited submissions to the holding of a seminar for all interested bodies. Some people were frightened that they would be excluded from expressing a legitimate point of view or that there would be a disincentive for them to argue their case with the Government, but the reverse is the case: we we want to encourage and facilitate lobbying in a transparent and open way and not have any impediment to that. Getting that balance

is what I have tried to do in this Bill. To deal with some specific points, on amendment No. 7 relating to the role of Ministers in terms of State boards, the Government this morning approved the guidelines, after considerable consultation, on the appointment of State boards. They are quite ground-breaking. They will bring about a sea change in the way public appointments are made. I will not enter into cheap politics and say that it has been ever thus. If one looks through the list of people who have been appointed by all parties represented here, including Deputy McDonald's when account is taken of the North-South bodies in terms of political affiliation, it is only natural that we appoint people who we know can do the job as opposed to taking a chance on people who on paper may have a great CV but whose ability to do the job, in practical terms, we do not know. Having the robust, independent mechanism that we have now established will be one of the most important things we have done as a Government in terms of the reform agenda that I want to see in place. As to whether it will be the be all and end all, no, it will not. It will be revisited again and there will be a review of it in a year's time. I cannot remember if a year or 18 months was the timescale we settled on for a review of the State boards appointments mechanism. I had a long discussion with the Public Appointments Service, PAS, on this, and I know it is up to the job. I want to say something more profound to Deputy Fleming. I want everybody who is interested to apply. I do not want anybody who would come up to me and say he or she would be a great person to do the job to be in any way inhibited in doing that. I would tell them to go through the PAS system, because that is the new system. This is the only route to a State board appointment, having regard to the legislation that governs some bodies, including the North-South bodies, and it will be by a formal Government decision. With regard to people who express a view to a Minister, to the Deputy as an opposition Member, or to anybody, that they would love to serve on a board and have a great set of skills or that they have retired from their jobs and want to serve in some way, I do not accept that one cannot tell them to look up *stateboards.ie* and check the criteria for each of the State boards. I would welcome that sort of lobbying. It is a significant break from what has happened in the past and, for that reason, I do not propose to accept amendment No. 7. Amendment No. 8 deals with the designation of the lobbied. I would point out that under section 1(g), categories of persons other than public servants can be designated as the lobbied.

Deputy Sean Fleming: What section is that?

Deputy Brendan Howlin: Section 1(g). Apologies; it is section 6(1)(g). Section 6(1)(g) allows the definition of the lobbied to be extended, which I intend to do that but, again, on the basis of experience. The first iteration of this will be secretaries general of the Departments, assistant secretaries general, principal officers, chief executive officers of local authorities, chief executives of companies and so on. Others will be included later.

I will address the issue relating to local authorities when we come to deal with an amendment on that issue in the name of Deputy Mary Lou McDonald. As I said, the list is not fixed. We need to first bed down the system and explain to people what is expected of them. If people are going to be in breach of the law we had better give them a chance to understand what exactly is expected of them in this regard. I want to do this in a way that does not bring the whole system into disrepute before it starts.

In regard to many other categories which Deputies are seeking by way of a number of amendments to have included, some, like the Central Bank, cannot be included because as Deputies will be aware it is part of the Eurogroup system and we would require the authority of the European Central Bank to do this. In regard to the others, there are real practical difficulties. Let us bed down the first tranche of people, who are the real power brokers in the

land, including Ministers and staff of the Departments and so on. I will provide Deputies with a comprehensive list of the first people to be captured by this measure.

Under section 6, we will over time migrate it to other categories. I do not expect Deputy Fleming's list is an exhaustive list. There will be others we want to include in this over time. This legislation is ground breaking a new space. It was regarded as a model Bill by the open government partnership. It is not a finished a product, no more than, say, the Freedom of Information or the protected disclosures legislation. When this Bill becomes an Act of the Oireachtas it will not be the final word on this issue. All the issues covered by it will have to be refined to address new circumstances.

Deputy McDonald asked the reason the threshold is set at ten full-time employees. There is no golden rule about this. What will apply is what is practical. For example, if a person in Wexford who runs a plumbing business and has two employees wishes to lobby Brendan Howlin about water charges or anything else, is that something he should register? I want people to be able to express themselves without inhibition. Larger companies are in a position to do this in a more structured way than the small employer who is not far removed from the individual citizen. There is not a lot of difference between the local plumber, who happens to employ two apprentices or an assistant, making his views known and him as John citizen making known his views, which he should be entitled to do without hindrance. In regard to whether the threshold could be eight rather than ten employees, the answer is yes but one has to make a determination in this regard. We have made the modification in relation to the categories of people who are professionally lobbying, even if a small group of people at the core if they represent a cohort of other people. For example, if a plumbers' advocacy group comprising four employees at the top represented a big cohort of people it would be captured.

In regard to turnover, one could make things more complicated but I have tried to make this as simple as possible. The current threshold for audit is in excess of €8 million. A €5 million turnover company would be audit exempt under the Companies Act. Whether we should have a threshold level that drifts into a particular turnover at a particular point in time in the context of whether people would or would not be captured, the provision as drafted seeks to provide as much certainty as possible. I ask that Deputies opposite give these particular proposals fair wind until we bed them down. If we need to tweak them in 12 months time we will do so.

Deputy Sean Fleming: It is proposed to issue guidelines in relation to appointments of State boards. I am seeking extension of the guidelines to lobbying. This is so serious an issue the Minister is taking up Government time to introduce guidelines on appointments to State boards. Why not go the extra step and address this on a legislative basis? The Government has spent a considerable amount of time on this. As the Minister said earlier, this was cleared this morning by Government. It is clear this is an issue the Government believes needs to be addressed. Why then address it by way of guidelines? I do not believe in over-prescribing but given the political space we are in, I believe the Minister should go the extra step and have what he proposes to introduce by way of guidelines introduced on a statutory basis.

The Minister said he proposes to produce a list of bodies to be prescribed under section 6(1)(g). Will that list be expanded prior to Report Stage or after commencement of the Act? The Minister said it will be possible to include other prescribed office holders and persons at a later stage. Perhaps he would elaborate on whether that might be done prior to the passing of this legislation or following the first annual review.

Deputy Brendan Howlin: The first group of people to be captured is set out on page 8 and

includes, Ministers, Ministers of State, Members of Dáil and Seanad Éireann, members of the European Parliament for constituencies within the State, members of local authorities, special advisers appointed under section 11 of the Public Service Management Act and public servants of a prescribed description. I presume the Deputy's query is in relation to subsection (1)(f).

Deputy Sean Fleming: And subsection (1)(g).

Deputy Brendan Howlin: It provides for any other prescribed office holders or description of persons and is future proofing the provision. I do not want to go much beyond the current list at this point. I do not yet have a list of the other people to be included. This is an issue which this committee might reflect on after a year. We need to give it a year to see how it works. If following a review the committee puts forward suggestions of other people to be included I will happily entertain it.

Deputy Mary Lou McDonald: I understand and support the idea of this being the first iteration of the legislative framework. Unquestionably, we will learn from it and it will change. Provision is being made for a review after one year, followed by further reviews every three years, which is correct. I appreciate the Minister's point that people must have a democratic opportunity to have communications with the power brokers in this State. I agree with him that it is important that is safeguarded. I remain concerned about the ten employee threshold.

Deputy Brendan Howlin: The threshold is not written in stone.

Deputy Mary Lou McDonald: I appreciate that. I do not propose to get into a debate with the Minister at this point on the issue of appointments to the North-South bodies, except to say that they are unique bodies approved by the North-South Ministerial Council. The public appointments system in the North, although not perfect is much more advanced than the system here. I have not yet read the guidelines but will read them with some interest.

Amendment agreed to.

Amendments Nos. 7 to 21, inclusive, not moved.

Chairman: Amendments Nos. 22, 51, 58, 62 and 67 are related and may be discussed together by agreement.

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

In page 6, after line 35, to insert the following:

“(2) Such a person under *section 5(1)(b)*, where the employer has been issued a CHY number by the Revenue Commissioners, provided that the relevant communications relate to relevant matters that concern the advocacy or other advancement of the employer's main charitable purpose, such activity shall be considered to constitute “advocacy activities” and therefore will have no adverse consequence for the employer's charitable status.”.

These are all my amendments. They refer to the charitable sector. In the course of the Minister's consultation, charities were keen to tell him that, given their belief that their standing had been damaged to some extent by the controversies that emerged and were explored by the Oireachtas, they wished to be captured within the State's transparency mechanisms, including this legislation. Therefore, I am surprised that their wish has not been reflected in the Bill. For example, The Wheel, on behalf of its 8,000 members, has made clear that it wants to be subject

to the transparency and accountability regulations contained in the Bill. It believes that the legislation should set out to cover its advocacy activities consistent with advancing its legitimate, charitable purpose. It has received advice from the Revenue Commissioners that this is a complex procedure. As such, my amendment to section 5 on the meaning of “carrying on lobbying activities” tries to capture charities’ need and wish to be included so that there is no uncertainty in the public mind about their transparency and their charitable status in the eyes of Revenue is protected. Each of my amendments caters for this issue. If the Minister believes that the wording is imperfect, I would be open to working on it, but accepting the idea behind them is important, not least because the sector has made it clear that it wishes to be captured within this regulatory framework.

Deputy Brendan Howlin: We can deliver to Deputy McDonald exactly what she wants, namely, that charitable organisations be captured by the provisions of the registration without impacting on their charitable status. That is my intention. Concerns were expressed during the consultation process by the charity sector that the tax exempt status of charities would be compromised by their inclusion in a lobbying register. Therefore, a specific head covering this issue was included in the general scheme of the Bill as published.

The first chief executive of the new Charities Regulatory Authority was appointed in March, with the authority being formally established on 1 October of this year under the terms of the Charities Act 2009. The legal advice is to the effect that the Registration of Lobbying Bill will not change the current legal position in respect of the status of charities. In light of that advice, it is unnecessary as a matter of law to include anything on charities in this Bill as previously proposed in the general scheme.

My officials have met the Revenue Commissioners and the Charities Regulatory Authority. Under the Charities Act, a body that promotes a political cause - unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body - is excluded from charitable status. The Charities Regulatory Authority has confirmed its intention to develop written guidelines for charities on how the authority will implement these provisions of the Act. The authority and Revenue have confirmed that this guidance will be developed in full consultation with the Office of the Revenue Commissioners. Eligibility for a charitable tax exemption is and will remain a matter for the Revenue Commissioners. As such, the requirement to deal with the matter in the way proposed by the Deputy does not arise. This is the strong advice that I have received from the new authority and Revenue.

Deputy Mary Lou McDonald: When did the Minister receive that advice?

Deputy Brendan Howlin: There has been an ongoing dialogue over months, but we have had that advice for some time.

Deputy Mary Lou McDonald: I am happy to take that advice on board. I presume that we can have copies of the advice?

Deputy Brendan Howlin: I am suggesting to my officials that we summarise the position. I am sure that Revenue and the charities authority will have no difficulty in confirming it.

Deputy Mary Lou McDonald: I appreciate that.

Chairman: Would the Deputy be satisfied with the summary being sent to the clerk? We could then forward it to her.

Deputy Mary Lou McDonald: Yes.

Deputy Brendan Howlin: We will do that.

Deputy Mary Lou McDonald: Each of the members could examine it then. In that light, I am happy to withdraw my amendments. We may return to the matter on Report Stage, if necessary.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 23 and 38 are related and may be discussed together by agreement.

Deputy Mary Lou McDonald: I move amendment No. 23:

In page 7, lines 7 and 8, to delete “apart from the individual’s principal private residence”.

Chairman: If the Deputy does not mind, she might move her mobile telephone away from the microphone.

Deputy Mary Lou McDonald: Is it mine? It must be the Minister’s.

Deputy Brendan Howlin: Not mine

Chairman: Is anyone using an iPad?

Deputy Mary Lou McDonald: I have thrown my mobile telephone miles away.

My amendment relates to excepted communications. Subsection (3) includes: “communications by or on behalf of an individual relating to his or her private affairs about any matter other than the development or zoning”, etc. On the face of it, one might accept this as making some sense in terms of people’s privacy. When one delves into it, however, the relevant matters include changes in public policy, laws and regulation, awards of grants, loans, contracts and licences and other authorisations involving public funds, as defined under section 5(7).

I have tabled the amendment because I do not understand the rationale behind this exception. I can understand the reason Government would not wish to regard lobbying by an individual for a medical card for an elderly parent, for example, as official lobbying. However, the relevant matters, including changes in public policy, laws and regulations, the award of grants, loans and contracts, are drilled down. I do not understand why one would exempt the individual’s principal private residence. That is the immediate objective of amendment No. 23. Will the Minister explain the logic?

Deputy Brendan Howlin: The Deputy is right that my aim in developing the Bill was to preserve normal and proper communications and interaction between individuals, as citizens, and their local representatives. I want to ensure, in so far as possible, that there will be no impact on these exchanges as a result of this legislation. Therefore, the private affairs of individuals have been specifically excluded from the registration arrangements set out in the Bill. I refer to private, normal interaction between any of the designated persons. While they might be principal officers in the Department, their normal day-to-day family commitments would not be captured. I regard matters relating to one’s principal private residence as being in this category. As the Deputy said, one could be applying for a modification grant for one’s incapacitated

child. Such activity should not be regarded as lobbying. We should not hobble everybody with a public role and prevent them from conducting some private business that relates exclusively to their private domain and does not affect public policy.

Deputy Mary Lou McDonald: In principle, I agree strongly. The Minister is absolutely correct, but, in the light of some of the scandals and corruption concerns that emerged in the State, decisions did relate to people's private residence in some cases. I am, therefore, concerned about making this exemption.

Deputy Brendan Howlin: I can think of two examples, one involving the painting of a house. That could not be captured in terms of lobbying. What occurred was in the normal course of corrupt action; it had nothing to do with lobbying *per se*.

Deputy Mary Lou McDonald: I am not convinced.

Deputy Brendan Howlin: I will ask my officials to think further about it to see if there is any merit in what the Deputy is saying. If she has further thoughts, she might send them to me.

Chairman: How stands the amendment?

Deputy Mary Lou McDonald: I will withdraw it, subject to my being able to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Chairman: If amendment No. 24 is agreed to, amendments Nos. 25 and 26 cannot be moved. They relate to a section that will have been deleted by the Minister.

Deputy Brendan Howlin: I move amendment No. 24:

In page 7, to delete lines 9 to 12.

Amendment agreed to.

Amendments Nos. 25 and 26 not moved.

Deputy Brendan Howlin: I move amendment No. 27:

In page 7, to delete lines 16 and 17 and substitute the following:

“(e) communications of factual information made in response to a request for the information;”.

I am proposing amendment No. 27 to bring greater clarity to this exemption. The reference in section 5(3)(e) in the Bill as published refers to a request by a designated public official for information. In practice, requests for factual information may come from public servants other than designated public officials, while the information in response to such a request is often submitted to a designated public official such as the Secretary General of the Department. The amendment allows flexibility to cover such scenarios. In addition, the definition of “relevant communication” in section 5(2) already states a communication becomes a “relevant communication” only when made to a designated public official. Therefore, there is no need to repeat this reference. To be clear, the communication of factual information made in response to a request for information is exempt. If people simply want to obtain information, it is not regarded as lobbying.

Amendment agreed to.

Chairman: Amendments Nos. 28 and 29 are related and may be discussed together.

Deputy Mary Lou McDonald: I move amendment No. 28:

In page 7, to delete lines 22 and 23.

Again, this deals with the issue of acceptable communications. In each of my amendments I am querying the exemptions of communications the disclosure of which could pose a threat to the safety of a person or the security of the State. Will the Minister provide us with his rationale for these exemptions?

Deputy Brendan Howlin: I was hoping there would be an explanation of why the Deputy wanted to delete them. It is self-evident that information that would pose a threat to the safety of an individual should not be disclosed. Certainly, information that could pose a threat to the security of the State should not be disclosed. I do not see any reason it should be.

Deputy Mary Lou McDonald: There are obviously matters which, if disclosed, would pose a threat to the security of an individual or the State. I am sure there are many such examples. However, given the scope of the Bill which relates to the lobbying of power brokers in the State, as the Minister put it, in regard to public policy, the awarding of grants, etc., will the Minister instance where such a communication within the legislative framework could plausibly pose a threat to the safety of a person or the State? I am not asking this tongue in cheek; I genuinely want to know. I would like the Minister to give an example.

Deputy Brendan Howlin: It is important to have the provision included. If there is information that would pose a threat to the security of the State, it should not be disclosed. Consequently, we have included the clause in the Bill.

Deputy Mary Lou McDonald: There are already legislative protections for such information that might pose a threat to the security of the State.

Deputy Brendan Howlin: Where?

Deputy Mary Lou McDonald: The Official Secrets Act is an example. There are checks and balances within the legislative framework.

Deputy Brendan Howlin: Where would a threat to the safety of a person be covered?

Deputy Mary Lou McDonald: Under section 5(3)(n) and section 5(6), the Minister has the power to accept specific communications with designated public officials on relevant matters, policy, law and the allocation of public funds as long as he takes the public interest into account. He actually has power under the legislation should such exceptional circumstances arise. I am simply pointing out, as we work our way through this legislation, that its provisions give the Minister scope to deal with circumstances where there is a real threat to a person or the State consequent to the disclosure of information.

Deputy Brendan Howlin: Why would there be an objection to being explicit about it?

Deputy Mary Lou McDonald: My concern is that we are not operating from a starting position of transparency and a culture of openness in respect of lobbying activities. The Minister will agree with me on that point. This represents the first really significant step forward

in that regard; therefore, I have an automatic reservation about any sweeping provision such as this. It will all be in the interpretation of what circumstances would, on the revealing of the lobbying of an organ or power broker of the State on an issue, represent a threat to the safety of an individual or the security of the State. That is an open question.

Deputy Brendan Howlin: I can think of cases. For example, Ruhama could be lobbying for a legislative change to protect trafficked individuals who might be in an extremely vulnerable position. That is one that springs to mind instantly.

Deputy Mary Lou McDonald: I know, but I very much doubt that Ruhama which has lobbied me very effectively would be naming individuals or-----

Deputy Brendan Howlin: It might need to.

Deputy Mary Lou McDonald: -----disclosing or breaching data protection provisions.

Deputy Brendan Howlin: If Ruhama was trying to break up a trafficking ring, it might be obliged to be specific.

Deputy Mary Lou McDonald: Would that not be a matter for An Garda Síochána?

Deputy Brendan Howlin: Yes, it would, but it might also be captured by this legislation.

Deputy Mary Lou McDonald: The Minister must give this issue more consideration. I will also give it further consideration, but I do not believe the Minister appreciates the point I am making.

Deputy Brendan Howlin: I do, but I wish to err on the side of safety. Where something is posing a manifest threat to the safety of a person, one must pause and think about it. Moreover, one must certainly think about something that might pose a threat to the safety of the security of the State.

Deputy Mary Lou McDonald: I would be more positively disposed to considering these things in that spirit were the Minister in a position to give concrete examples of where that might happen. I will give him another example. Were there to be corporate lobbying of some individual, Department or public official on the arming of the Defence Forces or something like that, there might be an argument on one side to the effect that revealing any communication in that regard would represent a threat to the safety of the State. However, there would be a countervailing argument in people having a legitimate right to know if such lobbying activities were occurring between such a supplier and any organ of the State.

Deputy Brendan Howlin: I do not think that would be captured by the definitions I have set out.

Deputy Mary Lou McDonald: My concern is that, depending on their interpretation, it just might.

Deputy Brendan Howlin: Yes, but one must have an assurance that no action would be taken that would put at risk the security of the State. This needs to be defined clearly and I believe it would be. It certainly would not be captured by the instance the Deputy has just given, in my judgment.

Deputy Mary Lou McDonald: In my judgment, a little more thought must be given to this

issue. I do not argue for any disclosure that may pose a threat to anybody's safety, much less the safety of the State. However, I reiterate the point that we are not at a starting position at which there is a free-for-all with information flows. Far from it, as our dilemma is the opposite, which is that lobbying activities have been lacking in transparency and quite-----

Deputy Brendan Howlin: It is the same approach, which we debated at some length, that I took, for example, in the Freedom of Information Bill. The approach is that there are things which should not be disclosed because they could pose a threat to the life or safety of an individual or undermine the security of the State. That was generally accepted.

Deputy Mary Lou McDonald: I wish to know specifically what that means for the purposes of this Bill operating at full capacity. While I will withdraw the amendment for the present, I probably will return to it on Report Stage.

Amendment, by leave, withdrawn.

Deputy Mary Lou McDonald: I move amendment No. 29:

In page 7, to delete lines 24 and 25.

I will withdraw the amendment with a view to returning to this matter on Report Stage.

Amendment, by leave, withdrawn.

Chairman: As amendment No. 31 is a physical alternative to amendment No. 30, they will be discussed together. If amendment No. 30 is accepted, amendment No. 31 cannot be moved.

Deputy Brendan Howlin: I move amendment No. 30:

In page 7, to delete lines 28 to 30 and substitute the following:

“(k) communications by a designated public official in his or her capacity as such;

(l) communications which—

(i) are made by a person who is employed by, or holds any office or other position in, a public service body in his or her capacity as such, or

(ii) are made by a person engaged for the purposes of a public service body in his or her capacity as such,

and which relate to the functions of the public service body;

(m) communications which—

(i) are made by a person who is employed by, or holds any office or other position in, a body which is not a public service body, but is a body by which a designated public official is employed or in which a designated public official holds any office or other position, in his or her capacity as such, or

(ii) are made by a person engaged for the purposes of such a body in his or her capacity as such,

and which relate to the functions of the body;”.

Currently, section 5(3)(k) exempts communications between public officials acting in an official capacity from registration requirements. The purpose of this exemption is to ensure the large volumes of normal daily communications between public servants are not subject to registration requirements. It will be possible under section 6(1)(g) for the Minister to prescribe a person as a designated public official, that is, a person who is lobbied or “the lobbied” in bodies other than public service bodies. The purpose of amendment No. 30 is to ensure the exemption equally applies to staff in other bodies in which the newly prescribed designated public official works or holds office. The effect of the amendment is that if, for example, the chief executive officer of a commercial semi-State body is prescribed as a designated public official, communications between the staff of that body and between a public service body such as, for example, the parent Department, do not require registration. In other words, the commercial semi-State body would be regarded as “the lobbied” and enjoy the same protection from this exemption as that of other public service bodies.

I note the following amendment, No. 31, tabled by both Deputies Sean Fleming and Mary Lou McDonald relates to section 5(3)(k) and, as the Chairman has indicated, will fall if my amendment is accepted. The Office of the Parliamentary Counsel also has suggested some changes to the wording of the exemption to ensure it is consistent with the wording of section 7 relating to “public servant”. These changes are reflected in the proposed amendment. In essence, my point is I have already included in the Bill that normal communication between officials in a Department or between Departments - for example, if my Department talks to the Department of Finance - does not constitute lobbying and cannot be captured by that provision. Equally, normal communications between Departments and agencies that are designated outside the Civil Service such as, for example, a commercial semi-State body if it was communicating with its parent Department will also enjoy that exemption.

Deputy Sean Fleming: I note that members are discussing amendments Nos. 30 and 31 together. While I understand the Minister’s point, I have a different view on it, which is why I believe this paragraph should be deleted, as should the Minister’s amendment he proposes in lieu of the existing paragraph. The Minister’s amendment should not be proceeded with and I will provide an example I have already mentioned. If one take Dublin Bus and the proposals to privatise some of its routes, under the Minister’s amendment, communications between Dublin Bus, Bus Éireann and their parent Department need not be registered as lobbying under this legislation. If other companies which might be involved in the proposed privatisation of some of the routes are lobbying on precisely the same issue, they will be obliged to register their interests, whereas as the Minister has just noted, a semi-State company communicating with a parent Department will not be so obliged. This is not right, is not equal and is unfair. I note that many semi-State bodies now are in an area which involves competition. For example, what if Aer Lingus is communicating with its parent Department which owns the 25% of the airline currently in public ownership? What about the example of AIB, of which the State owns 99.8%, if it wished to lobby the Minister for some change? What if another bank, not under State control, wishes to lobby on precisely the same issue and point? It is wrong that there should be a new inside track created for commercial semi-State bodies or organisations that are owned by the State, whereas organisations in direct competition with them do not have the same line of access. The electricity sector provides another example. There was a time when the ESB was a State monopoly, but that is no longer the case, as it probably supplies approximately 40% of the electricity used in the State. The amendment provides that if the ESB wants to get across a point of view to its parent Department, it can engage in all of the lobbying it likes and it need not be registered because it will only be communicating with its parent Department, whereas if

any of the other companies producing electricity wished to lobby on precisely the same point, because they would not be lobbying their parent Department, they would be obliged to register. That is my understanding of the Minister's proposal, although perhaps I am misinterpreting him. Perhaps he might clarify the point.

Deputy Brendan Howlin: My point is that the same entity cannot be “the lobbied” and “the lobbying”. Communications between members of the same Department are exempt because it is understood that if a principal officer is talking to an assistant secretary, that is not lobbying. I am providing for where an external person is designated, but it is not automatic that every semi-State body will be designated for this purpose. That is something we will debate. As can be seen, AIB is not on the list of bodies to be designated under section 6. In the same vein, many communications on public policy, reviews and so on between agencies of a Department and that Department would be deemed to be normal, as if they were between civil servants within a Department. This is not lobbying.

On the issue of transparency, it is captured by more than lobbying only. We must have a narrow focus in the Bill on what constitutes “lobbying”. It is something that sets out to change public policy, whereas there are other mechanisms such as FOI legislation and the open data initiative I have described through which general information should be in the public domain. I go some of the way with the Deputy, but AIB is a bad example to use because it is an anomaly that we own 99% of a bank that is not a semi-State company in the normal sense of the word. It is Government policy that this will not remain the position. The Deputy is right; I would have a different view if AIB was lobbying on banking policy that had uniform application rather than communicating with the shareholder, which is different. I will reflect further on the issue to ensure the point the Deputy has made is captured. If it is normal communication between the bank and its prime shareholder, it cannot be regarded as lobbying.

On AIB being in a position to be exempt under the Bill in terms of lobbying on general banking issues, that is not the case because it is not a designated body. Even if it was nominated as a designated body, it should not be exempt in the example given by the Deputy. I have no intention of including it as a designated body.

Deputy Sean Fleming: Essentially, what the Minister has said is that what he has provided for under section 6 are public servants or other prescribed office holders and that he has not yet got around to compiling the list. Therefore, as he has not yet compiled it, there is no issue, but depending on who is prescribed, this could become an issue.

Deputy Brendan Howlin: I will return to the committee in advance of making any such decision. As I said, what I intend to do in the first iteration of the Bill is to capture those groups that are designated public officials as set out in section 6(1). I have the power to broaden that list and will do so over time, in accordance with section 6(1)(g). I will be happy to hear the Deputy's views in that regard in advance. We can discuss the appropriate expansion as time passes. I will probably do nothing about broadening the scope until the first annual review takes place in a year's time.

Deputy Sean Fleming: We can say the danger is potentially down the road.

Deputy Brendan Howlin: Yes; what the Deputy fears will certainly not happen in the first year.

Amendment agreed to.

Amendment No. 31 not moved.

Chairman: Amendments Nos. 32 and 33 are related and will be discussed together.

Deputy Mary Lou McDonald: I move amendment No. 32:

In page 7, to delete lines 31 to 34.

The gist of this amendment is that I remain to be convinced that lobbying by commercial and non-commercial semi-State companies should be excluded from the transparency and scrutiny provisions. I propose that lines 31 to 34 be deleted.

Deputy Brendan Howlin: Section 5(3)(l) provides an exemption for certain communications between a body and a Minister who holds shares in that body, as I have just debated with Deputy Sean Fleming. This exemption is intended to cover governance matters in the ordinary course of business of a commercial semi-State body. Commercial semi-State bodies are of strategic importance and we have debated them in the context of the transparency legislation I have brought before the House. Deputies know that I am committed to preserving the semi-State sector as a viable actor in our commercial structures. The ability of a Minister or parent Department to engage with such bodies as shareholder is essential. We need to have the appropriate balance between strengthening transparency and avoiding the danger of diminution of effective governance of a body by the shareholder who ultimately is the taxpayer. Section 5(3)(l) seeks to ensure this balance between the need for increased transparency and the requirement to continue to engage in ongoing and normal governance by the shareholder of a semi-State entity.

Deputy Mary Lou McDonald: I thought the Minister might say that. There is the ebb and flow of communication between these entities and the shareholder on behalf of the State which should be exempt from this legislation. The definition of what constitutes lobbying activity is set out in the legislation-----

Deputy Brendan Howlin: To be helpful, it is intended that all other relevant communication, outside the narrow scope of governance, on sectoral or regulatory issues covering the environment or a sector in which the particular State body operates, will continue to be subject to a registration requirement, as set out in the Bill.

Amendment, by leave, withdrawn.

Deputy Brendan Howlin: I move amendment No. 33:

In page 7, line 32, after “in” to insert “, or has statutory functions in relation to,”.

Amendment agreed to.

Chairman: Amendments Nos. 34 to 36, inclusive, are related and will be discussed together.

Deputy Mary Lou McDonald: I move amendment No. 34:

In page 7, to delete lines 35 to 38.

I remain to be convinced that lobbying, including inter-member lobbying, by Government appointed members of other public bodies for the purpose of reviewing, assessing or analysing any issue of public policy with a view to reporting to the Minister or public service body should be exempt.

Deputy Brendan Howlin: I have already indicated to Deputies that if the Bill is to be fully effective, it must strike the right balance between imposing new transparency requirements which we are setting out and ensuring ongoing and vital communications with all organs of the State continue. This set of provisions relates to working groups, task forces, cross-sectoral committees, etc. established by a Minister or a public body, the membership of which includes designated public officials and persons outside the public service. The purpose of the exemption is to lessen the administrative burden on registrants who are members of groups appointed by Ministers and to ensure persons outside the public service are not deterred from participating in such groups. The transparency objective of the Bill will continue to be met. These groups will be subject to a transparency code to be prepared and set out by my Department. I would envisage, for example, that such a code might require the publication of the membership of the groups, agendas and minutes of meetings, among other issues. I do not propose, therefore, to accept the Deputy's amendment.

Deputy Mary Lou McDonald: I wish to press the amendment. I do not understand and I am not convinced that a separate transparency code is as effective as simply capturing those communications and actions within the scope of the legislation. I understand the Minister does not wish to cause a logjam in the system, as normal business must continue, but where those communications are specifically focused on changes to public policy and the award of grants, as defined in the legislation, there are different types of communications and the legislation will be strengthened by capturing them and encompassing them.

Deputy Brendan Howlin: As I indicated to the Deputy, what I am trying to do is strike a balance. I do not wish to introduce an onerous code that would collapse normal public business, but to meet the specific point the Deputy has made, if she looks at page 8 of the Bill, in section 5(5) it is stated the Minister shall prepare and publish a code to be known as the transparency code, setting out how, having regard to the public interest in their doing so, with an appropriate level of transparency, bodies meeting the conditions of subsection (4)(a) are to conduct their activities, if they are to constitute a relevant body, for the purposes of subsection (3)(m). In essence, if they do not abide by the transparency code set out, they are captured by the Bill because they are not exempt. I do not want every working group to be regarded as lobbyists, one for another. I do not think Deputy McDonald wants that either. She wants transparency in the way working groups conduct their business, to know who is on a group, what its agenda is, and what is being discussed, among other issues, and then the outcome of their work. The notion that any group of people working on Government business is lobbying each other undermines the thrust of what we seek to do with the Bill.

Deputy Mary Lou McDonald: When does the Minister envisage the transparency code being ready?

Deputy Brendan Howlin: That is being worked on coterminously with the Bill.

Deputy Mary Lou McDonald: Within what timeframe of the Bill being enacted will the code be published?

Deputy Brendan Howlin: I am advised that it will be ready before the Act is commenced.
Amendment put and declared lost.

Deputy Mary Lou McDonald: I move amendment No. 35:

In page 7, to delete line 40, and in page 8, to delete lines 1 to 5.

Amendment put and declared lost.

Deputy Mary Lou McDonald: I move amendment No. 36:

In page 8, to delete lines 6 to 10.

Amendment put and declared lost.

Chairman: Amendments Nos. 37 and 39 to 42, inclusive, are related, with amendment No. 42 being a physical alternative to amendment No. 41. Amendments Nos. 37 and 39 to 42, inclusive, may be discussed together, by agreement.

Deputy Brendan Howlin: I move amendment No. 37:

In page 8, lines 14 and 15, to delete “of the relevant matters” and substitute “relevant matter”.

Amendments Nos. 37, 39 and 42 are technical amendments to ensure there is consistency of phrasing throughout the Bill. They have the effect of describing the commission in the singular person throughout the Bill.

Section 5(7) includes within the scope of “relevant matters” any matter relating to the preparation of an enactment. For completeness, I am proposing amendment No. 40 to ensure that any communication relating to the amendment of legislation is also captured in the definition of relevant matters under the Bill. Such communications would therefore be subject to registration requirements.

Deputy Mary Lou McDonald: Amendment No. 41 relates to page 8, section 5(7), and proposes the deletion of lines 29 and 30. It refers to “relevant matters”, which means any matters relating to the initiation, development or modification of any public policy or of any public programme, the preparation of an enactment, or the award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds, apart from matters relating only to the implementation of any such policy, programme, enactment or award or of a technical nature.

My concern relates to the fact that it is very often the implementation phase of any public policy or set of public policies that marks the difference between its success or failure, and how it works in real time. The implementation phase is just as likely to be subject to lobbying as any other phase in the policy deliberation and formulation process. I regard the measure as a fairly serious loophole. In any event I would like the Minister to explain the rationale for its inclusion in the legislation.

Deputy Brendan Howlin: The provision relates only to matters concerning the implementation of a policy or programme, enactment or award or matters of a technical nature, that being the operative phrase.

The provision is again seeking to find the appropriate balance in the Bill to ensure that significant communications affecting policy will be captured, published and accessible but low-level communications relating to implementation or technical matters which potentially would be voluminous would not be captured. This is a standard approach in all referenced lobbying legislation we have examined from overseas.

As the Deputy is aware, often the best way to hide information is to give out tonnes of it. We

must ensure technical, low-level information is not used to mask the more serious stuff. That is the way the Bill is crafted and that is the way international best practice advises.

The feedback from stakeholders during the consultation process pointed to the administrative burden that would be placed on registrants arising from capturing such low level-detail. In the first instance, we should not sink the canoe before we even launch it.

Deputy Mary Lou McDonald: If one reads the Bill again, it is not purely matters of a technical nature. The reference is specifically to relevant matters being those related to the initiation, development or modification of a public policy or programme, preparation of an enactment, the award of a grant, loan or financial support, contract or other agreement or of any licence, apart from matters relating only to the implementation of such policy, programme, enactment or award or of a technical nature. The measure does not relate solely to the exclusion of voluminous technical information. It essentially excludes that phase of implementation of a policy, programme, enactment or award.

Deputy Brendan Howlin: The reference states “apart from matters relating to the implementation of such policy, programme, enactment or award”. The optimal points relate to “the implementation” and “or of a technical nature”.

Deputy Mary Lou McDonald: I thought the Minister indicated in his initial response that the measure referred only to technical matters or information.

Deputy Brendan Howlin: It is the implementation phase of settled policy.

Deputy Mary Lou McDonald: That is a mistake.

Deputy Brendan Howlin: We can review it in a year to see how it works.

Amendment agreed to.

Deputy Mary Lou McDonald: I move amendment No. 38:

In page 8, to delete lines 18 to 22.

Amendment put and declared lost.

Deputy Brendan Howlin: I move amendment No. 39:

In page 8, line 23, to delete “ “relevant matters” means any matters” and substitute “ “relevant matter” means any matter”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 40:

In page 8, line 26, after “preparation” to insert “or amendment”.

Amendment agreed to.

Deputy Mary Lou McDonald: I move amendment No. 41:

In page 8, to delete lines 29 and 30.

Amendment put and declared lost.

Deputy Brendan Howlin: I move amendment No. 42:

In page 8, line 29, to delete “matters” and substitute “any matter”.

Amendment agreed to.

Question proposed: “That section 5, as amended, stand part of the Bill.”

Deputy Sean Fleming: I tabled a series of 15 or 20 amendments, which we have discussed and which I believe should have been included under section 5, with regard to the definition of lobbying activities, including lobbying Ministers on appointments to State boards or consultants working on behalf of bodies in a variety of public regulators. I accept the Minister’s statement that he does not want to overload the legislation before it even starts, but these are two key issues. I listed a large number of public bodies, such as EirGrid and the regulators, but if the legislation does not cover lobbying of Ministers on appointments to State boards it will be seriously defective. I oppose section 5 because of this omission.

Deputy Brendan Howlin: I thought I had explained in some detail that for the first time we have a robust system with regard to appointments to State boards. Many Governments have not grasped the nettle over the years, but we have done so. It is not a matter of lobbying. We are making good progress on this lobbying Bill and are focused in a clear way on it. To graft on extraneous matters such as appointments to State boards is not appropriate when we have a separate system, and doubly so when the Deputy has informed us he will introduce legislation *sui generis* to this issue in the coming days. That he should try to graft it on here is not appropriate. It is simply a political stunt.

Question put.

The Committee divided: Tá, 6; Níl, 2.	
Tá	Níl
Barry, Tom.	Fleming, Sean.
Cannon, Ciarán.	McDonald, Mary Lou.
Conway, Ciara.	
Doherty, Regina.	
Howlin, Brendan.	
Twomey, Liam.	

Question declared carried.

SECTION 6

Chairman: Amendments Nos. 43 to 48, inclusive, are related and will be discussed together.

Deputy Sean Fleming: I move amendment No. 43:

In page 8, between lines 38 and 39, to insert the following:

“(f) Secretaries General and Assistant Secretaries General;”.

This is the first stab at legislation on the registration of lobbyists, and the Minister said he wanted to launch the canoe before we tried to sink it. The definition of “designated public officials”

listed in the legislation is very narrow. It includes Ministers, Members of the Dáil, Members of the Seanad, Members of the European Parliament, members of local authorities and special advisers. It is a very worthwhile list, but it is not sufficient, because most things are decided, and much of the preparatory work is done, before they get to the Minister. Even at the initial stages of the legislation, we should include Secretaries General, assistant secretaries general, principal officers and assistant principal officers, because they are involved in drafting legislation and meeting various people. Even outside the legislative work of a Department, such as the Estimates, these people have critical roles. The Secretary General is an Accounting Officer. An Accounting Officer of a Department could have a budget of €9 billion or €10 billion but is not included as a designated officer in the first incarnation of the Bill.

Deputy Brendan Howlin: They will be.

Deputy Sean Fleming: That is good. I have also listed private secretaries, chief executive officers of local authorities and directors of services of local authorities. I will be very happy if they are included. That is the essence of my group of amendments.

Deputy Mary Lou McDonald: My amendment, No. 48, proposes the inclusion of senior public servants of the rank of Secretary General down to principal officers, as well as regulators and management boards of public bodies. The thrust of it is in line with what Deputy Fleming set out. I have just come at it in a slightly different way. We know that in the case of all three of these categories, they are on the receiving end of lobbying. All are in a position to make decisions and, indeed, make recommendations, that are material to the relevant matters described in section 5(7). I appreciate that the Minister empowers himself to include these categories as designated public officials in future by virtue of the discretionary powers provided for in section 6(1)(f) and (g), but I do not see any reason not to include them at the outset for the avoidance of any doubt.

Deputy Brendan Howlin: This is something we have rehearsed a few times now. As Deputies have said, I have the power to prescribe further public servants. It is my intention, under subsection (f), to include Secretaries General and assistant secretaries general. We can discuss this again, but including all Ministers, Ministers of State, all Members of the Dáil, all Members of Seanad Éireann, all Members of the European Parliament for this State, all members of local authorities, special advisers appointed to Ministers, Secretaries General of Departments and assistant secretaries general is a fair tranche of people to start with. There will be others, as I have indicated. I do not have a closed mind on this other than to ensure it is practical, that we bring people with us and that everybody can cope with the new regime from the beginning. It is better to have an incremental approach rather than trying to capture everybody. I would say both Deputies could think of another few categories, beyond the ones they listed, to add, and that will happen over time. However, I think this is a broad enough tranche to include in the first go.

Deputy Sean Fleming: Are Secretaries General and assistant secretaries included now?

Deputy Brendan Howlin: They will be-----

Deputy Sean Fleming: But they are not included now.

Deputy Brendan Howlin: I will include them from the beginning by order under subsection (f). I intend to include principal officers as soon as may be after that.

Deputy Sean Fleming: The Minister will start with Secretaries General and assistant sec-

retaries general.

Deputy Brendan Howlin: Yes, from the beginning.

Deputy Sean Fleming: They are not prescribed yet?

Deputy Brendan Howlin: I did not want a list. I do not want to say “Secretaries General and assistant secretaries general” because I intend to include principal officers as soon as may be after that.

Deputy Sean Fleming: Let us say this legislation is passed in the coming weeks or months and is commenced-----

Deputy Brendan Howlin: From the date of commencement, Secretaries General of Departments and assistant secretaries general will be prescribed by me under order of subsection (f).

Deputy Sean Fleming: It is good to hear that.

I am thinking of the budget process each year, when people contact us about different aspects they want included in the Finance Bill. Most people would suggest talking to the officials in the Department of Finance and putting the case. I am sure that could happen at principal officer or assistant principal officer level. A final decision is a matter for the Minister and Government, but that level is where the nuts and bolts of the work are done. That is why it is often more important to have such people covered by legislation.

I accept what the Minister said about Secretaries General and assistant secretaries. The chief executives of local authorities are the equivalent of Secretaries General.

Deputy Brendan Howlin: There is equivalence and I intend to include them from the beginning. They are what used to be county managers.

Deputy Sean Fleming: We are making a start. I accept that. In future, many such people will have to register under SIPO or other regulations. They are well used to this kind of thing and there is nothing new in it.

Deputy Brendan Howlin: I have no difficulty with that category. I am more concerned about newly elected members of local authorities than for the chief executives of local authorities because it will come as a bit of a shock to them.

Deputy Sean Fleming: The Minister might explain that. What will it mean for newly elected members? Will they have to register with SIPO? Can the Minister give us a note for us to give them?

Deputy Brendan Howlin: We need a learning curve for these people. That is why we will prepare a briefing note for every local authority in advance of the commencement of the Bill.

Deputy Sean Fleming: That is very good. On that basis-----

Deputy Brendan Howlin: It will come as a shock to some of them.

Deputy Sean Fleming: Of course it will. On that basis, I can withdraw amendments Nos. 43 and 46.

Amendment, by leave, withdrawn.

Deputy Seán Fleming: I move amendment No. 44:

In page 8, between lines 38 and 39, to insert the following:

“(f) Principal Officers and Assistant Principal Officers;”.

Amendment, by leave, withdrawn.

Deputy Seán Fleming: I move amendment No. 45:

In page 8, between lines 38 and 39, to insert the following:

“(f) Private Secretaries to Ministers and Ministers of State;”.

Amendment, by leave, withdrawn.

Deputy Seán Fleming: I move amendment No. 46:

In page 8, between lines 38 and 39, to insert the following:

“(f) Chief Executive Officers of local authorities;”.

Amendment, by leave, withdrawn.

Deputy Seán Fleming: I move amendment No. 47:

In page 8, between lines 38 and 39, to insert the following:

“(f) Directors of Services of local authorities;”.

Amendment, by leave, withdrawn.

Deputy Mary Lou McDonald: I move amendment No. 48:

In page 8, between lines 38 and 39, to insert the following:

“(f) senior public servants between the ranks of secretaries general and principal officer;

(g) regulators;

(h) management boards of public bodies;”.

I seek clarification on this. It is welcome that the Minister has set out the persons he intends to-----

Deputy Brendan Howlin: I do not have a closed mind on this; I simply have not signed off on it. If people have a strong view about another category that would be captured by subsection (f) from commencement, they can submit that to me and I will submit my list to them in advance of Report Stage.

Deputy Mary Lou McDonald: That is perfect.

Deputy Brendan Howlin: If there is any category we can capture in the first iteration,

without it being too onerous, I will give it consideration.

Amendment, by leave, withdrawn.

Section 6, as amended, agreed to.

NEW SECTION

Chairman: Amendments Nos. 49 and 50 are related and may be discussed together, by agreement.

Deputy Seán Fleming: I move amendment No. 49:

In page 9, between lines 12 and 13, to insert the following:

“7. (1) Where a designated public official is lobbied outside of the State, (in a manner to which *section 5* would apply had the lobbying activities occurred within the State) such public official shall be obliged to register the fact that he or she had been so

lobbied and the public official shall provide the necessary information to the Standards in Public Office Commission for inclusion in the register.

(2) Provision for maintaining this category of information shall be kept in such form as the Commission consider appropriate.”

I will discuss amendments No. 49 and 50 together. They are different but not unconnected. There is scope for additional clarity in the Bill. I accept it is probably a difficult area to deal with, but where a designated public official is lobbied outside the State in a manner in which section 5 would apply had the lobbying activities occurred within the State, such public officials would be obliged-----

Deputy Brendan Howlin: The Deputy is staying up too late at night thinking about these difficult cases.

Deputy Sean Fleming: -----to register the fact the he or she had been so lobbied and the public official shall provide the necessary information to SIPO for inclusion in the register and for the provision and maintenance of a category of information shall be kept by the commission as it considers appropriate because they do not know what other body to lodge that.

Some of the Minister’s ministerial colleagues, such as the Taoiseach or the Minister for Finance, were in Davos, and all of a sudden some of the largest vulture capitalist companies in the world who wanted to get easy pickings in Ireland at the bottom of the property market came here. Bits and pieces of NAMA were sold off for €200 or €300 million rather than having decent offers of €5 billion or €6 billion. That level of lobbying has the potential to have a more significant impact for the future of Irish finances than everything which could be captured under this Bill. There is no mechanism in the Bill to deal with that.

The Minister for Finance, another Minister or other people we have mentioned could easily be lobbied. Had a meeting like that in Davos happened in a Minister’s office or elsewhere in the State, it would be captured under lobbying legislation. It could happen at a European Council meeting. Who knows who a Minister could meet in the course of his or her meetings. I recall the Minister, Deputy Noonan, returned after the Davos trip and said we would consider

larger tranches of the NTMA. It may or may not have been unconnected. Macro-lobbying is a very serious issue and people are not just concerned about micro-lobbying. The Minister can understand where I am coming from.

Amendment No. 50 states: “Where a designated public official is lobbied by an organisation from outside of the State, the onus shall be on that public official to register the fact that he or she had been so lobbied and that public official shall provide the necessary information to the Standards in Public Office Commission” or some other body. I do not think in this day and age, given the level of communications, it is possible that an organisation from outside the State cannot be covered. Organisations based in the State will have to register. Perhaps it does cover organisations that are lobbying designated public officials such as Minister, but do so from outside the State. Are such organisations required to register under the Bill? I hope they are, and if not they should be.

Deputy Brendan Howlin: I have a practical difficulty with what the Deputy is suggesting. The intention of the Bill is that lobbying activity will be regulated through the process of registration and reporting we set out. The responsibility for registration and reporting is assigned in all of the frameworks for the Bill to the person doing the lobbying. The Deputy suggests reversing that.

Deputy Sean Fleming: For bodies outside the State.

Deputy Brendan Howlin: Yes, in this instance. I understand the Deputy’s point, but he can see what would happen. We have discussed local authority members. If anybody talks to them about whether Ireland is a good place to talk about or invest in, they will have a legal obligation to register and report that. I know from attending international fora in Brussels or Council meetings that one meets hundreds of people, particularly at receptions and so on. Sometimes people think they are lobbying one but one is nodding knowingly.

Deputy Sean Fleming: One is being polite.

Deputy Brendan Howlin: That is the truth. The notion that I would have a legal obligation to report and register all of that does not make sense. I should probably not say this, but people come up to me at receptions abroad to talk to me about a million things after what could have been my eighth meeting of the day. That would be a burden which I would not be keen on taking on, and I would not be keen to place it on a range of colleagues.

For those reasons, it is not practical to do what the Deputy suggested. It would change the essential architecture of the Bill. The Bill proposes that if one intends to lobby a public official, one better register and make it known, as opposed to anybody who happens to be a public official, including a local councillor, a member of the European Parliament who would be abroad for much of the time, a member of the Government or a designated official having to register such contact. We do not want people to find themselves in breach of the Bill if they spoke to somebody. A person might not even recall that. People would have to go around with a notepad and to ask anyone who approached to first register before speaking to them. This would make normal business impracticable.

Deputy Sean Fleming: The Minister’s argument is that if serious people want to engage in mega-lobbying, they need to do so outside the State when the Minister is abroad.

Deputy Brendan Howlin: No, bluntly speaking-----

Deputy Sean Fleming: I understand how complicated this measure would be. The Davos meeting was the one that came to my mind.

Deputy Brendan Howlin: People can speak to one another at any given time. I do not believe serious lobbying takes place at these events. While I have not attended the Davos meeting, I have attended the Asian meeting of the World Economic Forum, which was held in China. A great deal of networking and dialogue takes place, particularly at ministerial level and, in my case, among finance Ministers. We discuss economic matters such as the future of the euro or sterling. This type of dialogue and networking is useful.

I can honestly say I have never been approached by anyone. I have been teed up by IDA Ireland to speak to Chinese companies when I visit China but that is a different kettle of fish. If that amounts to lobbying, perhaps I should register in China as a lobbyist when I visit to attract business for Ireland. The Deputy's proposal would be impractical.

Chairman: How stands the amendment?

Deputy Sean Fleming: I will not press it. While it makes a valid point, I accept that it would give rise to complications.

Amendment, by leave, withdrawn.

Amendments Nos. 50 and 51 not moved.

SECTION 7

Deputy Brendan Howlin: I move amendment No. 52:

In page 9, between lines 17 and 18, to insert the following:

“ “full-time employee” has the meaning given by section 7 of the Protection of Employees (Part-Time Work) Act 2001;”.

Amendment agreed to.

Chairman: Amendments Nos. 53 to 57, inclusive, and 98 are related. Amendments Nos. 55 and 56 are alternatives to amendment No. 54. The amendments may be discussed together by agreement.

Deputy Brendan Howlin: I move amendment No. 53:

In page 9, between lines 22 and 23, to insert the following:

“ “pre-existing public service pension scheme” means an occupational pension scheme or pension arrangement, by whatever name called, for any part of the public service—

(a) provided for by or under—

(i) the Superannuation Acts (within the meaning of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012), or

(ii) any enactment (other than the Public Service Pensions (Single Scheme and Other Provisions) Act 2012) or administrative measure for the like purpose and to the like effect as the Superannuation Acts and of either general or limited

application,

or

(b) made by a relevant Minister (within the meaning of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012) or which has been approved or requires the approval or consent, however expressed, of either or both a relevant Minister and the Minister;”.

In the published Bill, the term “public service body” is defined in section 7 by reference to the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. The purpose of the amendment is to insert a full definition of “public service body” in the Bill. This will bring greater transparency to the definition in the Bill. As I noted during the Second Stage debate, some queries were raised about the range of public bodies coming within its scope. I am now listing more clearly many of the bodies which come within the scope of the definition. It is also more prudent to have cross-referencing of the 2012 Act definitions as otherwise there could be a lack of clarity in the implementation of the Bill.

I note that amendments Nos. 55 and 56, in the names of Deputies McDonald and Sean Fleming, respectively, relate to section 5(3)(k) and will fall if my amendment is passed.

Amendment No. 53 sets out a full definition of the term “pre-existing public service pension scheme”. Amendment No. 57 sets out a full definition of the term “Single Public Service Pension Scheme”. The Schedule identifies those bodies which are not public service bodies for the purposes of this Bill. Essentially, the Schedule represents the commercial State body sector. These bodies do not enjoy the exemption in section 5(3)(k) relating to communications between public servants.

For simplicity, I have revisited this issue and rather than refer to “public service bodies”, I am inserting in the Schedule a new section specifying bodies that are not public service bodies. The new Schedule prescribes bodies that are not public service bodies as “Any body corporate established by Act of Parliament before 6 December 1922 that, upon its establishment, was of a commercial character”. The bodies are then listed and include Bord na gCon, Bord na Móna, Córas Iompair Éireann and any “subsidiary of a body to which this Schedule relates, including a subsidiary of such a subsidiary”. The Schedule casts a fairly wide net.

Deputy Sean Fleming: I seek clarification as the insertion of new Schedules can lead to confusion. Amendment No. 54 appears to add to the definitions provided on page 9 and listing public service bodies. Deputy McDonald and I have proposed amendments to this section, which refers to the definition of a “public service body” in another Act. Amendment No. 54 proposes to delete the relevant paragraph and replace it with a new definition of a public service body.

Deputy Brendan Howlin: That is correct.

Deputy Sean Fleming: The new definition reads as follows:

“public service body” means—

- (a) a Department of State,
- (b) the Garda Síochána,

- (c) the Permanent Defence Force,
- (d) a local authority within the meaning of the Local Government Act 2001,
- (e) the National Treasury Management Agency,
- (f) the National Asset Management Agency,
- (g) the National Pensions Reserve Fund Commission,
- (h) the National Development Finance Agency,
- (i) the Health Service Executive,
- (j) an education and training board,
- (k) the Central Bank of Ireland,
- (l) any other body, other than a body specified or referred to in the *Schedule*".

The Schedule referred to here is a new Schedule the Minister will insert in amendment No. 98, which lists bodies that will be excluded from the definition of public service bodies. The Minister gave the impression, perhaps inadvertently, that the new Schedule sets out an extensive list of bodies that will be included in the definition of public service bodies when in fact it is a list of bodies it is proposed to exclude from the definition. That is my understanding.

Deputy Brendan Howlin: The matter is somewhat complicated. The bodies listed in the Schedule are excluded for the protection of the exemption. Perhaps that sounds odd.

Deputy Sean Fleming: I do not understand the point.

Deputy Brendan Howlin: As I indicated, we have excluded the normal discussion between public servants. These bodies will not be excluded from that.

Deputy Sean Fleming: Does this mean that all the bodies listed, which include Departments of State, the Garda Síochána and the Permanent Defence Force, will not be exempted?

Deputy Brendan Howlin: Unless they are designated by me, they are not exempted.

Deputy Sean Fleming: Will the Minister explain the difference between the list in amendment No. 54 and the list in the proposed new Schedule? What is the purpose of having two different lists? Amendment No. 54 lists bodies such as the Central Fund. What is the purpose of this list? What is the purpose of the list in the proposed new Schedule? They appear to be polar opposites.

Deputy Brendan Howlin: Amendment No. 54 sets out a long list of public service bodies, starting with Departments of State, the Garda Síochána and so forth. These bodies come within the ambit of section 5(3)(k) on page 7.

Deputy Sean Fleming: We are dealing with page 9.

Deputy Brendan Howlin: I ask the Deputy to bear with me. Section 5(3)(k) states: "communications between persons who are designated public officials or members of the staff of, or engaged for the purposes of, a public service body relevant to their capacity as such and relating to the functions of the public service body." These are the exempt communications.

Deputy Sean Fleming: They are exempt.

Deputy Brendan Howlin: Yes, they enjoy exemption. The bodies listed in the other Schedule to be inserted at the end of the Bill are exempted from the exemption unless I designate them. Is that clear?

Deputy Sean Fleming: The issue is complicated but we are making progress. The first half is clear.

Deputy Brendan Howlin: Perhaps it would be better to describe these bodies as not being exempted from the exemption.

Deputy Sean Fleming: They are exempt from the exclusion because they are now deemed to be public service bodies. However, according to the heading of the Schedule to be inserted in the later amendment the bodies listed are bodies that are not public service bodies. Does the Minister have a note explaining the purpose of the Schedule? It appears to move in the opposite direction.

Deputy Brendan Howlin: The Schedule is not subject to the exemption given to those bodies that I listed in section 5(3)(k). The Schedule identifies the bodies which are not public service bodies for the purpose of the Bill. Essentially, the Schedule at the end of the Bill represents the commercial semi-State sector. These bodies do not enjoy the exemption that I have set out in section 5(3)(k).

Deputy Sean Fleming: We are happy with that. Some of my earlier amendments about what should be considered as lobbying-----

Deputy Brendan Howlin: As I explained to the Deputy at the time, unless I designated them they are not exempt bodies.

Chairman: That is what the vote was about.

Deputy Sean Fleming: I understand. It was because they were left out.

Deputy Brendan Howlin: His amendment was ruled out of order. That was explained.

Deputy Sean Fleming: Forgive me, but it is very complicated - exempted, non-exempted, Schedules included and Schedules not included.

Deputy Brendan Howlin: I know that exempted from the exemption is a new one.

Deputy Sean Fleming: The Minister can understand that we are here to tease that out.

Deputy Brendan Howlin: Absolutely.

Deputy Sean Fleming: If anybody watching this thinks we are not too bright because we have to go through it slowly, so be it. We are doing it in the public interest.

Deputy Brendan Howlin: No, it is perfectly clear.

Deputy Sean Fleming: Those in the final Schedule are not exempted. That means the Minister is free to designate them, if he chooses.

Deputy Brendan Howlin: Yes.

Deputy Sean Fleming: However, he has not yet designated them.

Deputy Brendan Howlin: Correct.

Chairman: Deputy McDonald?

Deputy Mary Lou McDonald: I understood it the first time.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 54:

In page 9, to delete lines 26 to 28 and substitute the following:

“ “public service body” means—

- (a) a Department of State,
- (b) the Garda Síochána,
- (c) the Permanent Defence Force,
- (d) a local authority within the meaning of the Local Government Act 2001,
- (e) the National Treasury Management Agency,
- (f) the National Asset Management Agency,
- (g) the National Pensions Reserve Fund Commission,
- (h) the National Development Finance Agency,
- (i) the Health Service Executive,
- (j) an education and training board,
- (k) the Central Bank of Ireland,
- (l) any other body, other than a body specified or referred to in the *Schedule*,
which—

(i) is established by or under an enactment (other than the Companies Acts), or

(ii) is established under the Companies Acts in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government, and in respect of which a pre-existing public service pension scheme exists or applies or may be made or in respect of which the Single Public Service Pension Scheme is applicable,

(m) any other body, other than a body specified or referred to in the *Schedule*, which is wholly or partly funded directly or indirectly out of monies provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a pre-existing public service pension scheme exists or applies or may be made or in respect of which the Single Public Service Pension Scheme is applicable,

(n) any subsidiary of, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997) by, a body to which any of the preceding paragraphs relates and in respect of which a pre-existing public service pension scheme exists or applies or may be made or in respect of which the Single Public Service Pension Scheme is applicable;”.

Amendment agreed to.

Amendments Nos. 55 and 56 not moved.

Deputy Brendan Howlin: I move amendment No. 57:

In page 9, after line 36, to insert the following:

““Single Public Service Pension Scheme” means the scheme established by Chapter 2 of Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012;”.

Amendment agreed to.

Section 7, as amended, agreed to.

SECTION 8

Deputy Mary Lou McDonald: I move amendment No. 58:

In page 10, between lines 11 and 12, to insert the following:

“(3) Compliance with the registration requirement by a charitable organisation issued with a CHY number by the Revenue Commissioners, or by an employee of such an organisation, shall not have any adverse impact on its charitable status, provided that the activities described in the returns under *section 12* are consistent with advocacy or other advancement of its main charitable purpose.”.

I will withdraw the amendment subject to our earlier discussion and the note on the advice being circulated through the clerk.

Amendment, by leave, withdrawn.

Section 8 agreed to.

Section 9 agreed to.

SECTION 10

Deputy Brendan Howlin: I move amendment No. 59:

In page 10, line 20, to delete “consider” and substitute “considers”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 60:

In page 10, line 24, to delete “consider” and substitute “considers”.

Amendment agreed to.

Section 10, as amended, agreed to.

SECTION 11

Deputy Mary Lou McDonald: I move amendment No. 61:

In page 11, lines 7 and 8, to delete “or (if there is no such address) the address at which the person ordinarily resides”.

This section sets out the need for a commercial address or principal address at which the person conducts business. I am seeking to delete the words “or (if there is no such address) the address at which the person ordinarily resides”. I presume the Minister included that to ensure certainty. It might well be that it is the person’s residential address but, for the purposes of this section, it would be the address at which one carries on one’s business. I considered the phrase unnecessary. It is not an earth-shattering amendment.

Deputy Brendan Howlin: I understand what the Deputy is saying. Section 10(4) provides that the commission can omit from the register any personal data the commission considers might be misused. This provision meets the requirements of the Data Protection (Amendment) Act 2003. The Act states that personal data means data relating to a living individual who is or can be identified either from the data or from data in conjunction with other information. Section 2(1)(d) of that Act provides that appropriate security measures are taken against unauthorised access, alteration or disclosure.

This provision was included following consultation with the Office of the Data Protection Commissioner. It is expected that only a minimal amount of personal information would be on the register, given the nature of the persons to whom the Bill applies. I considered it necessary to have an address of some description. If the Data Protection Commissioner is in agreement, I do not anticipate that it would trample on any personal freedoms or personal data.

Deputy Mary Lou McDonald: Is the Minister saying that the Data Protection Commissioner is so minded?

Deputy Brendan Howlin: We consulted with the Data Protection Commissioner to ensure it was acceptable.

Amendment, by leave, withdrawn.

Deputy Mary Lou McDonald: I move amendment No. 62:

In page 11, between lines 14 and 15, to insert the following:

“(g) any CHY number issued to the charitable organisation by the Revenue Commissioners.”.

I will withdraw the amendment on the basis of our earlier discussion and the circulation of the advice through the clerk.

Amendment, by leave, withdrawn.

Section 11 agreed to.

SECTION 12

Chairman: Amendments Nos. 63 to 65, inclusive, are related and may be discussed together.

Deputy Brendan Howlin: I move amendment No. 63:

In page 11, line 36, to delete “a client” and substitute “another person (in this section referred to as a “client”)”.

The proposed amendment is necessary consequent to the amendment to section 5. It defines the term “client” within section 12 as this term is no longer used in the proposed new section 5(1). We must insert a new definition of “client” here because we have removed it elsewhere.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 64:

In page 12, line 2, to delete “public service”.

This amendment deletes the words “public service” from section 12(4)(b). Again, it is a technical amendment to ensure the Bill is consistent in its reference to bodies. While initially all designated public officials will be either employed or hold office in public service bodies, it is possible that, as the range of designated public officials is expanded over time, they may be employed or hold offices in bodies which are not public service bodies, for example, in the commercial State sector. Section 6(1)(g) allows for such broadening designation, as I have constantly referenced over the last couple of hours, so I propose to delete “public service” to future-proof the Bill and to be consistent in terms of further expansions.

Amendment No. 65 clarifies that it is the designated public official that is being referred to in the phrase “who was engaged in carrying on lobbying activities” in section 12(4)(f), not the registered person.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 65:

In page 12, line 10, after “person” to insert “and”.

Amendment agreed to.

Deputy Mary Lou McDonald: I move amendment No. 66:

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

“(g) in the case of a lobbying activity by a person under *section 5(1)(a)*, the overall amount spent on that lobbying action by the client, and in the case of a lobbying activity by a person under *section 5(1)(b)*, an estimate of costs associated with that lobbying action.”.

The objective of the amendment is to introduce a provision regarding who pays whom how much to pitch what. It is the piece that is missing from the transparency of the legislation. Apart from the nature of, material and frequency of lobbying and its objectives and so forth,

there is also the dimension of how much money passes from an entity to lobbyists in their bid to carry out their work. This is one of the missing pieces of the jigsaw in this legislation.

The amendment contains our proposed wording. I am not fixated on that formula and if there is a better way of stating what I am setting out to achieve, that is fine. One cannot have real and full transparency in respect of lobbying activities unless public light is shone on how much is paid to the lobbyist for the conduct of their business.

Deputy Brendan Howlin: This is an important issue. The Deputy is talking about requiring financial disclosure as part of the registration system. As I indicated, we engaged in a great deal of consultation on the Bill with lobbyists, users and a variety of groups. The consultation process highlighted the need to strike a balance between the real requirements of transparency and ensuring there was commercial confidentiality for some commercially sensitive information. Account must also be taken of the significant administrative issues involved in establishing consistent and comparable financial data which could be included in the register. This is particularly the case with in-house lobbyists, of whose time only a small proportion is spent on lobbying and where such financial data are not currently collected. They might be doing a dozen other things at the same time.

The disclosure of financial data presupposes also that disclosure can give us an insight into the effectiveness of lobbying. We want to know this because we want to know in a transparent way who is influencing public policy. As we know, however, it is often not the amount of money spent by a lobbyist that is the most effective way to determine his or her impact. I am reminded of having reflected on the matter that this is too burdensome to put on people at the outset of the process. It would be resisted by lobbying companies and the normal lobbyists such as the IFA, the ICTU and others who lobby us as a matter of course. While I appreciate fully the intent of the amendment, I am not minded to accept it.

Deputy Mary Lou McDonald: I have made the case. If we are arguing for open government and transparency in lobbying, we must include disclosure of not all but certainly some financial data. People need to know what has been spent by whom.

Amendment put and declared lost.

Amendment No. 67 not moved.

Deputy Sean Fleming: I move amendment No. 68:

In page 12, between lines 36 and 37, to insert the following:

“(9) This section shall not apply to unpaid volunteers of an organisation that is otherwise a registered person for the purposes of this Act.”.

This amendment refers to the returns to be made by registered persons, organisations, lobby groups, lobbyists or organisations that have lobbying carried out. The Minister will appreciate this. We understand the full details of what has to be included in the Schedule and I note that the Minister has already worked with major voluntary organisations with a view to seeing how the legislation will work in practice to help him with guidelines. My amendment is very clear. I am asking that a subsection be included relating to the returns to be made by registered persons to provide that the section does not apply to unpaid volunteers of an organisation that is otherwise a registered person for the purposes of the legislation.

An obvious one that comes to mind is the IFA which will have a system in place as a registered organisation and comply completely. We have all met the secretary and chairman of the county committees who are full-time farmers. How they get time to do all of this, God alone knows. The same could happen with members of trade unions or any other group. The group working on the dreaded EirGrid pylons might register as a lobbyist group if it were to retain an employee. One meets volunteers every day of the week or volunteers in an area might come to us with a local concern. It is pure voluntarism involving ordinary citizens expressing their interest in an area. They know that their national organisations will be registered and making official returns. The Minister has noted that when he is abroad, he may bump into someone at a shopping centre who will refer to something in the Finance Bill or another issue.

Deputy Brendan Howlin: They think one is paying great attention to them.

Deputy Sean Fleming: More importantly, we will see if we get any result.

Chairman: A vote has been called in the Dáil.

Deputy Brendan Howlin: To respond quickly, it is the intention in the Bill that the obligation to register shall not apply to unpaid volunteers. Section 5 is constructed to ensure the obligation to register is linked with an employer. Bluntly, I am attracted to the Deputy's formulation as it is clear. If he will allow me to go back and talk to the Parliamentary Counsel, I invite him to resubmit the amendment on Report Stage. If it is possible to do so, I will accept the amendment.

Deputy Sean Fleming: That is a very good evening's work. We can now go and vote in the Chamber.

Amendment, by leave, withdrawn.

Section 12, as amended, agreed to.

Chairman: As it is now after 5.15 p.m., I propose that we suspend the sitting for one hour and that consideration of the Bill resume at 6.15 p.m. Is that agreed? Agreed.

Sitting suspended at 5.15 p.m. and resumed at 6.15 p.m.

SECTION 13

Deputy Brendan Howlin: I move amendment No. 69:

In page 12, line 38, to delete "consider" and substitute "considers".

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 70:

In page 13, line 12, to delete "registered".

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 71:

In page 13, line 16, to delete "consider" and substitute "considers".

Amendment agreed to.

Section 13, as amended, agreed to.

SECTION 14

Chairman: Amendments Nos. 72, 96 and 97 are related and will be discussed together.

Deputy Brendan Howlin: I move amendment No. 72:

In page 14, line 2, to delete “21 days” and substitute “14 days”.

Section 14 of the Bill provides for delayed publication in certain defined circumstances. Section 23 provides for an appeal mechanism in respect of decisions made under section 14. On foot of a submission from SIPOC, I am proposing amendments Nos. 72, 96 and 97 in sections 14 and 23 to shorten the timeframes in respect of these procedures. Amendment No. 72 amends the timeframe available to the commission to make a decision on a delayed publication application from 21 days to 14 days. Amendment No. 96 amends the timeframe available to the applicant to make an appeal on a delayed publication application from 30 days to 14 days. Amendment No. 97 amends the timeframe available to an appeal officer to make a decision on a delayed publication application from 21 days to 14 days. In short, SIPOC was concerned that this could drag out the process so it wanted shorter timeframes, and I agree with it.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 73:

In page 14, line 3, to delete “consider” and substitute “considers”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 74:

In page 14, line 9, to delete “consider” and substitute “considers”.

Amendment agreed to.

Chairman: Amendments Nos. 75 and 76 are related and will be discussed together by agreement.

Deputy Brendan Howlin: I move amendment No. 75:

In page 14, line 19, after “applicant” to insert the following:

“and any relevant Minister of the Government or Ministers of the Government consulted under *subsection (2)*”.

I am proposing amendment No. 75 to ensure that notification of determinations or decisions to revoke determinations made by SIPOC regarding applications for delayed publication are conveyed to any Minister consulted about the application in the first instance under subsection (2). If a Minister was consulted about the application in the first instance and if there was a determination or decision to revoke a determination by SIPOC, the same Minister should be consulted. Amendment No. 76 is a technical amendment to align the wording regarding consultation in section 14(8)(b) with that in section 14(2).

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 76:

In page 14, to delete lines 26 and 27 and substitute the following:

“(b) any relevant Minister of the Government or Ministers of the Government consulted under *subsection (2)*.”

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 77:

In page 14, line 30, to delete “have” and substitute “has”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 78:

In page 14, line 32, to delete “have” and substitute “has”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 79:

In page 14, line 37, to delete “have” and substitute “has”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 80:

In page 15, between lines 9 and 10, to insert the following:

“(14) The Commission shall not make available for publication any information which is the subject of a decision of the Commission under this section—

(a) if no appeal is brought under *section 23*, until the end of the period specified in that section within which an appeal may be brought,

(b) if such appeal is brought but no further appeal is brought under *section 24*, until the end of the period specified in that section within which such further appeal may be brought, and

(c) if an appeal under *section 23* and further appeal under *section 24* are brought, until the further appeal is finally determined, but, if such appeal or further appeal is at any point withdrawn, then such information may be made available for publication once the appeal has been withdrawn.”

I am proposing amendment No. 80 to ensure that where a person wishes to appeal a decision of the commission in respect of delayed publication, the information in question will not be published until the appeal mechanism is fully completed.

Amendment agreed to.

Question proposed: “That section 14, as amended, stand part of the Bill.”

Deputy Sean Fleming: Section 14 concerns delayed publication. This section provides for

two scenarios where publication can be delayed. One is where the State's interests are at risk and the other is where the individual's business is likely to suffer a material loss. With regard to the former, as the Bill is written the commission can only delay publication when the registered person applies, i.e. the private party. Surely, in order to protect the interests of the State, the commission or a designated public body should be empowered to make an application.

With regard to the delay of six months, the period of delay should be decided on a case-by-case basis, because it is unclear from the drafting whether the period of delay is capped for six months with the use of the phrase "if that happens sooner". A six-month delay could be wholly damaging, particularly where litigation is contemplated or apprehended. A more practical approach to the realities of business and private affairs should be considered - that is, on a case-by-case basis.

The provision allows the commission to revoke a delayed publication decision and mandates the commission to inform the applicant that the determination has now been revoked. The issue that arises is that there is no consultation with the applicant prior to the decision. If delayed publication was granted in the first place, extenuating circumstances must have existed to revoke it without any consultation. This may appear to be disproportionate.

Deputy Brendan Howlin: This is part of the submission we received from the Law Society. The Bill is consistent in placing the onus for registration on the person lobbying, for good reason. There is nothing in the Bill to prevent a person from consulting with the Minister at the time of the lobbying communication, or subsequently, regarding the sensitivity of the information prior to making a return if he or she is in doubt about whether the section applies. In addition, section 14 requires the commission to consult with any relevant Minister or Ministers before making a decision under section 14. In practice, it will probably be the case that any matter so sensitive as to impact on the interests of the State will also have a commercial sensitivity for the person lobbying.

With regard to the period of delay, section 14(11) provides that nothing in this section prevents the making of a determination under the section in respect of any information on more than one occasion.

With regard to revoking a delayed publication determination, the checks and balances in the Bill include a provision that decisions by the commission, including to revoke a determination, are subject to the appeals procedure as set out in section 23.

Deputy Sean Fleming: I note the Minister's comments.

Question put and agreed to.

SECTION 15

Question proposed: "That section 15 stand part of the Bill."

Deputy Sean Fleming: I presume this point could come in under a variety of sections. Section 15 is entitled "Evidence of entries on Register". The issue has been raised by some people involved in the industry connected with lobbying. They are concerned about the level of lobbying activity in this building, the national Parliament. In Brussels, there is an open system where lobbyists are registered and badged appropriately when they enter the European Parliament or the European Commission buildings. People fully understand the systems in place. Coming into Leinster House, people get a visitor's badge, but some people in the industry are concerned

about informal lobbying within the national Parliament. This may also apply to other Government offices. Is it feasible, practical or right to have a mechanism for people lobbying in the national Parliament? It is unusual to request specific measures for lobbying in a particular location to be identified, but in the public mind the national Parliament is the Legislature and people would like to think there are slightly more transparent regulations for lobbying in the national Parliament over and above every other opportunity for lobbying.

Deputy Brendan Howlin: It is not a matter to which I have given any consideration, but, in the first instance, it is a matter for the Committee on Procedure and Privileges, CPP, to determine access. Is there an area in Westminster called the lobby area? It is a matter for the CPP to consider. I do not think there is as much buttonholing of people here as in other areas, just because of the layout of these buildings. I am not minded to put it in law. It is presumptuous of the Executive to propose it when it is a matter for the Oireachtas to deal with.

Deputy Sean Fleming: Is it a matter for the Houses of the Oireachtas Commission to introduce it?

Deputy Brendan Howlin: I would say the CPP rather than the commission.

Deputy Sean Fleming: I do not know the difference between them.

Deputy Brendan Howlin: The CPP determines access to the House, who goes where and what label they should wear.

Deputy Sean Fleming: The Public Relations Institute of Ireland is concerned that a Deputy or Senator must sign people in to get access to the building, whereas other people might have more informal access through former connections with the building.

Deputy Brendan Howlin: I would not diminish former Members. We will all be former Members one day.

Deputy Sean Fleming: Some day we will. It is a matter to be raised internally in the Oireachtas rather than in legislation.

Deputy Brendan Howlin: Yes.

Question put and agreed to.

SECTION 16

Deputy Brendan Howlin: I move amendment No. 81:

In page 15, to delete lines 28 to 30 and substitute the following:

“(2) Before producing or revising the code of conduct the Commission shall consult such persons carrying on lobbying activities and such bodies representing them, and such other persons, as the Commission considers appropriate.”.

This amends section 16(2) to ensure consistency between the wording of that section and the wording in amendment No. 5 to section 2, which also deals with consultation. There is no change to the substance of the section - it is simply to do with consistency of wording.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 82:

In page 15, line 34, to delete “consider” and substitute “considers”.

Amendment agreed to.

Section 16, as amended, agreed to.

SECTION 17

Deputy Brendan Howlin: I move amendment No. 83:

In page 16, line 5, to delete “consider” and substitute “considers”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 84:

In page 16, line 6, to delete “fostering” and substitute “promoting awareness and”.

I am proposing this amendment to clarify that the commission has a statutory function in promoting awareness of this legislation. We have already discussed it. The amendment was requested by SIPOC to ensure that the role of the commission in promoting awareness, as well as understanding of the Act, is understood and emphasised.

Amendment agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

SECTION 19

Deputy Brendan Howlin: I move amendment No. 85:

In page 16, line 19, to delete “believe” and substitute “believes”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 86:

In page 16, line 22, to delete “they” and substitute “it”.

Amendment agreed to.

Section 19, as amended, agreed to.

Section 20 agreed to.

SECTION 21

Chairman: Amendments Nos. 87 to 90, inclusive, are related and may be discussed together.

Deputy Brendan Howlin: I move amendment No. 87:

In page 19, between lines 10 and 11, to insert the following:

“(c) state that the person is not obliged to pay the fixed payment,”.

These are technical amendments. I am proposing these amendments to bring clarity to section 21 and to streamline the details to be included in the fixed payment notice.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 88:

In page 19, line 11, to delete “, accompanied by the notice,”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 89:

In page 19, line 13, after “initiated,” to insert “and”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 90:

In page 19, to delete line 14.

Amendment agreed to.

Section 21, as amended, agreed to.

SECTION 22

Chairman: Amendments Nos. 91 to 95, inclusive, are related and will be taken together, by agreement.

Deputy Mary Lou McDonald: I move amendment No. 91:

In page 20, line 4, to delete “*paragraph (a), (e) or (f) of*”.

This relates to the exemption of Deputies, Senators, MEPs and councillors from the requirement to obtain pre-authorisation by way of application to SIPOC if they wish to take up employment as a lobbyist within two years - the defined cooling-off period - of leaving public office. I do not think that should be the case. Notwithstanding that these would not be people who were members of Government when exiting the system and taking up this employment, none the less they, or we, could be reasonably depicted as insiders and therefore potentially influence peddlers. My amendment seeks to strike the exemption of Deputies, Senators, MEPs and councillors from those requirements.

Amendments Nos. 92 and 93 relate to the cooling-off period required before somebody can uninhibitedly work as a lobbyist without clearance by anybody. The Bill sets the conditional period at one year and I believe it would be more appropriate to set it at two years. We have had this discussion on cooling-off periods previously in respect of other legislation. I do not believe two years is excessively onerous. It is reasonable, all the more so because it is not an absolute prohibition but just a period of time within which conditions have to be met and clearance has to be given to the individual in question to take up a lobbyist’s role.

Deputy Brendan Howlin: The imposition of restrictions on post-term employment on

relevant designated public officials must be proportionate and practical. We have taken very careful advice because people have constitutional rights. The categories included are Ministers, Ministers of State, special advisers, public servants of a prescribed description - in the first instance they will be Secretaries General, assistant secretaries general, CEOs of local authorities and directors of services of local authorities.

These are the categories of office-holders of officials who are most likely to have worked personally or substantially on the types of policy matters this provision is intended to address. These are also the categories of persons who are most likely to have direct links back to individual public bodies and be in a position to be influential in lobbying such bodies.

This would not be the case for Members of these Houses by virtue of their very differing role. Similarly, I do not believe that it would be proportionate to apply a one-year cooling-off period to members of local authorities in light of their part-time role.

It is something we might think about. It would be a shock if we told newly-elected local authority members that there was a restriction on their future employment for a period of a year. I do not believe that is proportionate and that is why I believe they should be exempted. I have given some consideration to these matters and the provisions in the Bill are proper and proportionate and will meet objective criteria without being excessively onerous or impacting on people's right to work.

On amendments Nos. 92 and 93, the cooling-off period is limited to one year. Again the provision must be proportionate and practical to operate. We have to ensure that the cooling-off period deals with the public policy objective, which is to prevent what has been characterised as an immediate "switching of sides" - whereby a poacher becomes gamekeeper or *vice versa*. It is balanced with the personal rights and freedoms of an individual to earn a living.

It is increasingly difficult to get people of calibre to find the public service acceptable because of the degree of scrutiny under which public servants of all ilks, including volunteers on committees, rightly now find themselves. There are the Standards in Public Office Commission registration requirements and other things. In each case we need a proportionate and balanced approach. I believe one year after leaving a job is a sufficient period of time to address that issue.

This approach reflects a review of the duration of similar provisions in other jurisdictions which highlighted that the introduction of a two-year restriction for a relatively wide range of public officials would fall into the upper-end of the international norms, notwithstanding that there are even longer cooling-off periods in some jurisdictions.

The one-year period also aligns with the current post-public employment restriction in place under the Civil Service code of standards and behaviour. This provision is focused on lobbying activity. I will be reviewing the wider issues relating to conflict of interest in the ongoing current review of the ethics legislation. We will return to that matter when we introduce the new ethics Bill. As the Deputy knows, I plan to consolidate the ethics legislation into one enactment and to have regard for the recommendations of the Mahon tribunal and other tribunals in doing so. We will have an opportunity to deal with direct conflicts of interest in that regard.

Amendment No. 94 is a technical amendment to ensure that there is consistency of phrasing in the Bill.

Amendment No. 95 was requested by SIPOC so that it can determine the manner and form

in which applications for consent under section 22, which relates to restrictions on post-term employment as lobbyist, should be submitted to it.

Deputy Mary Lou McDonald: I disagree with the Minister. I do not think a two-year cooling off period is disproportionate, particularly since it does not represent an outright ban on taking up lobbying activities. It simply requires that the persons have clearance to do so. I know we have talked about cooling-off periods before. I think two years is appropriate. It does not represent an outright prohibition on lobbying and much less an outright prohibition on the person's constitutional right to work. It would be wiser to include Deputies, Senators, MEPs and councillors, some of whom might have spent a good portion of their working lives within the democratic institutions.

The Minister spoke about the potential shock to the brand-new councillor; I accept that. However, equally there could be councillors or others who have spent many long years within these institutions and are absolutely networked in terms of all the movers and shakers, and decision makers. It is a mistake to leave them out and the one-year cooling-off period is too short.

Amendment put and declared lost.

Deputy Mary Lou McDonald: I move amendment No. 92:

In page 20, line 5, to delete "one year" and substitute "two years".

Amendment put and declared lost.

Deputy Mary Lou McDonald: I move amendment No. 93:

In page 20, line 10, to delete "one year" and substitute "two years".

Amendment put and declared lost.

Deputy Brendan Howlin: I move amendment No. 94:

In page 20, lines 15 and 16, to delete "in or for the purposes of which the person held office or was employed" and substitute "by which the person was employed or in which the person held any office or other position".

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 95:

In page 20, line 17, to delete "to the Commission for consent" and substitute "for consent made to the Commission in such manner and form as the Commission may require,".

Amendment agreed to.

Section 22, as amended, agreed to.

SECTION 23

Deputy Brendan Howlin: I move amendment No. 96:

In page 20, line 25, to delete "30 days" and substitute "14 days".

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 97:

In page 21, line 13, to delete “30 days” and substitute “14 days”.

Amendment agreed to.

Section 23, as amended, agreed to.

Sections 24 to 26, inclusive, agreed to.

NEW SCHEDULE

Deputy Brendan Howlin: I move amendment No. 98:

In page 22, after line 17, to insert the following:

“SCHEDULE

Section 7

BODIES THAT ARE NOT PUBLIC SERVICE BODIES

1. Any body corporate established by Act of Parliament before 6 December 1922 that,

upon its establishment, was of a commercial character.

2. Bord na gCon.

3. Bord na Móna Plc.

4. Córas Iompair Éireann.

5. Coillte Teoranta (being a company formed and registered under the Companies Acts

as provided for by section 9 of the Forestry Act 1988).

6. Cork Airport Authority, public limited company.

7. daa, public limited company.

8. EirGrid Plc.

9. Electricity Supply Board.

10. Ervia.

11. A harbour authority within the meaning of the Harbours Acts 1946 to 2005.

12. Horse Racing Ireland.

13. Irish National Stud Company Limited.

14. Irish Aviation Authority.

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15. An Post.

16. Raidió Teilifís Éireann.

17. Shannon Airport Authority, public limited company.

18. Teilifís na Gaeilge.

19. Railway Procurement Agency.

20. Voluntary Health Insurance Board.

21. A subsidiary of a body to which this Schedule relates, including a subsidiary of such a

subsidiary.”.

Amendment agreed to.

Title agreed to.

Chairman: I thank the Minister and his officials for attending. I also thank members for their contributions.

Bill reported with amendments.

Message to Dáil

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

The Select Sub-Committee on Public Expenditure and Reform has completed its consideration of the Registration of Lobbying Bill 2014 and has made amendments thereto.

The select sub-committee adjourned at 6.40 p.m. until 6 p.m. on Tuesday, 9 December 2014.